►B DIRECTIVE 2014/59/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 15 May 2014

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

(Text with EEA relevance)

(IO L 173, 12.6.2014, lch. 190)

Arna leasú le:

		Iris Oifigiúil		
		Uimh	Leathanach	Dáta
►M1	Treoir (AE) 2017/1132 ó Pharlaimint na hEorpa agus ón gComhairle an 14 Meitheamh 2017	L 169	46	30.6.2017
►M2	Treoir (AE) 2017/2399 ó Pharlaimint na hEorpa agus ón gComhairle an 12 Nollaig 2017	L 345	96	27.12.2017
►M3	Treoir (AE) 2019/879 ó Pharlaimint na hEorpa agus ón gComhairle an 20 Bealtaine 2019	L 150	296	7.6.2019
►M4	Treoir (AE) 2019/2162 ó Pharlaimint na hEorpa agus ón gComhairle an 27 Samhain 2019	L 328	29	18.12.2019

Arna ceartú le:

►C1 Ceartúchán, IO L 283, 31.8.2020, lch. 2 (2019/879)

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DIRECTIVE 2014/59/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 15 May 2014

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

(Text with EEA relevance)

TITLE I

SCOPE, DEFINITIONS AND AUTHORITIES

Article 1

Subject matter and scope

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

(a) institutions that are established in the Union;

(b) financial institutions that are established in the Union when the financial institution is a subsidiary of a credit institution or investment firm, or of a company referred to in point (c) or (d), and is covered by the supervision of the parent undertaking on a consolidated basis in accordance with Articles 6 to 17 of Regulation (EU) No 575/2013;

(c) financial holding companies, mixed financial holding companies and mixed-activity holding companies that are established in the Union;

(d) parent financial holding companies in a Member State, Union parent financial holding companies, parent mixed financial holding companies in a Member State, Union parent mixed financial holding companies;

(e) branches of institutions that are established outside the Union in accordance with the specific conditions laid down in this Directive.

When establishing and applying the requirements under this Directive and when using the different tools at their disposal in relation to an entity referred to in the first subparagraph, and subject to specific provisions, resolution authorities and competent authorities shall take account of the nature of its business, its shareholding structure, its legal form, its risk profile, size and legal status, its interconnectedness to other institutions or to the financial system in general, the scope and the complexity of its activities, its membership of an institutional protection scheme (IPS) that meets the requirements of Article 113(7) of Regulation (EU) No 575/2013 or other cooperative mutual solidarity systems as referred to in Article 113(6) of that Regulation and whether it exercises any investment services or activities as defined in point (2) of Article 4(1) of Directive 2014/65/EU.

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2. Member States may adopt or maintain rules that are stricter or additional to those laid down in this Directive and in the delegated and implementing acts adopted on the basis of this Directive, provided that they are of general application and do not conflict with this Directive and with the delegated and implementing acts adopted on its basis.

Article 2

Definitions

1. For the purposes of this Directive the following definitions apply:

(1) ‘resolution’ means the application of a resolution tool or a tool referred to in Article 37(9) in order to achieve one or more of the resolution objectives referred to in Article 31(2);

(2) ‘credit institution’ means a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013, not including the entities referred to in Article 2(5) of Directive 2013/36/EU;

(3) ‘investment firm’ means an investment firm as defined in point (2) of Article 4(1) of Regulation (EU) No 575/2013 that is subject to the initial capital requirement laid down in Article 28(2) of Directive 2013/36/EU;

(4) ‘financial institution’ means a financial institution as defined in point (26) of Article 4(1) of Regulation (EU) No 575/2013;

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(5) ciallaíonn ‘fochuideachta’ fochuideachta mar a shainmínitear í i bpointe (16) d'Airteagal 4(1) de Rialachán (AE) Uimh 575/2013, agus, chun críocha Airteagail 7, 12, 17, 18, 45 go 45m, 59, 62, 91 agus 92 den Treoir seo a chur i bhfeidhm i gcás grúpaí réitigh dá dtagraítear i bpointe (b) de phointe (83b) den mhír seo, áireofar sa tagairt d'fhochuideachtaí, de réir mar is iomchuí, institiúidí creidmheasa atá buanchleamhnaithe le comhlacht lárnach, an comhlacht lárnach féin, agus a bhfochuideachtaí faoi seach, agus aird á tabhairt ar an mbealach ina gcomhlíonann grúpaí réitigh Airteagal 45e(3) den Treoir seo;

(5a) ciallaíonn ‘fochuideachta ábhartha’ fochuideachta ábhartha mar a shainmhínítear i bpointe (135) d'Airteagal 4(1) de Rialachán (AE) Uimh. 575/2013;

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(6) ‘parent undertaking’ means a parent undertaking as defined in point (15)(a) of Article 4(1) of Regulation (EU) No 575/2013;

(7) ‘consolidated basis’ means the basis of the consolidated situation as defined in point (47) of Article 4(1) of Regulation (EU) No 575/2013;

(8) ‘institutional protection scheme’ or ‘IPS’ means an arrangement that meets the requirements laid down in Article 113(7) of Regulation (EU) No 575/2013;

(9) ‘financial holding company’ means a financial holding company as defined in point (20) of Article 4(1) of Regulation (EU) No 575/2013;

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(10) ‘mixed financial holding company’ means a mixed financial holding company as defined in point (21) of Article 4(1) of Regulation (EU) No 575/2013;

(11) ‘mixed-activity holding company’ means a mixed-activity holding company as defined in point (22) of Article 4(1) of Regulation (EU) No 575/2013;

(12) ‘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 Regulation (EU) No 575/2013;

(13) ‘Union parent financial holding company’ means an EU parent financial holding company as defined in point (31) of Article 4(1) of Regulation (EU) No 575/2013;

(14) ‘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 Regulation (EU) No 575/2013;

(15) ‘Union parent mixed financial holding company’ means an EU parent mixed financial holding company as defined in point (33) of Article 4(1) of Regulation (EU) No 575/2013;

(16) ‘resolution objectives’ means the resolution objectives referred to in Article 31(2);

(17) ‘branch’ means a branch as defined in point (17) of Article 4(1) of Regulation (EU) No 575/2013;

(18) ‘resolution authority’ means an authority designated by a Member State in accordance with Article 3;

(19) ‘resolution tool’ means a resolution tool referred to in Article 37(3);

(20) ‘resolution power’ means a power referred to in Articles 63 to 72;

(21) ‘competent authority’ means a competent authority as defined in point (40) of Article 4(1) of Regulation (EU) No 575/2013 including the European Central Bank with regard to specific tasks conferred on it by Council Regulation (EU) No 1024/2013 ([1]);

(22) ‘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);

(23) ‘institution’ means a credit institution or an investment firm;

(24) ‘management body’ means a management body as defined in point (7) of Article 3(1) of Directive 2013/36/EU;

(25) ‘senior management’ means senior management as defined in point (9) of Article 3(1) of Directive 2013/36/EU;

([1]) 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 institutions (OJ L 287, 29.10.2013, p. 63).

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

(27) ‘cross-border group’ means a group having group entities established in more than one Member State;

(28) ‘extraordinary public financial support’ means State aid within the meaning of Article 107(1) TFEU, or 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 point (b), (c) or (d) of Article 1(1) or of a group of which such an institution or entity forms part;

(29) ‘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;

(30) ‘systemic crisis’ means a disruption in the financial system with the potential to have serious negative consequences for the internal market and the real economy. All types of financial intermediaries, markets and infrastructure may be potentially systemically important to some degree;

(31) ‘group entity’ means a legal person that is part of a group;

(32) ‘recovery plan’ means a recovery plan drawn up and maintained by an institution in accordance with Article 5;

(33) ‘group recovery plan’ means a group recovery plan drawn up and maintained in accordance with Article 7;

(34) ‘significant branch’ means a branch that would be considered to be significant in a host Member State in accordance with Article 51(1) of Directive 2013/36/EU;

(35) ‘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;

(36) ‘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;

(37) ‘consolidating supervisor’ means consolidating supervisor as defined in point (41) of Article 4(1) of Regulation (EU) No 575/2013;

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(38) ‘own funds’ means own funds as defined in point (118) of Article 4(1) of Regulation (EU) No 575/2013;

(39) ‘conditions for resolution’ means the conditions referred to in Article 32(1);

(40) ‘resolution action’ means the decision to place an institution or entity referred to in point (b), (c) or (d) of Article 1(1) under resolution pursuant to Article 32 or 33, the application of a resolution tool, or the exercise of one or more resolution powers;

(41) ‘resolution plan’ means a resolution plan for an institution drawn up in accordance with Article 10;

(42) ‘group resolution’ means either of the following:

(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 in relation to group entities that meet the conditions for resolution;

(43) ‘group resolution plan’ means a plan for group resolution drawn up in accordance with Articles 12 and 13;

(44) ‘group-level resolution authority’ means the resolution authority in the Member State in which the consolidating supervisor is situated;

(45) ‘group resolution scheme’ means a plan drawn up for the purposes of group resolution in accordance with Article 91;

(46) ‘resolution college’ means a college established in accordance with Article 88 to carry out the tasks referred to in Article 88(1);

(47) ‘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 and either specific to those institutions or generally applicable to any natural or legal person;

▼M2

(48) ‘ionstraimí fiachais’:

(i) chun críche phointe (g) agus phointe (j) d’Airteagal 63(1), ciallaíonn ‘ionstraimí fiachais’ bannaí agus cineálacha eile fiachais inaistrithe, ionstraimí lena gcruthaítear nó lena n-aithnítear fiachas, agus ionstraimí lena dtugtar cearta chun ionstraimí fiachais a fháil; agus

(ii) chun críche Airteagal 108, ciallaíonn ‘ionstraimí fiachais’ bannaí agus cineálacha eile fiachais inaistrithe agus ionstraimí lena gcruthaítear nó lena n-aithnítear fiachas;

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(49) ‘parent institution in a Member State’ means a parent institution in a Member State as defined in point (28) of Article 4(1) of Regulation (EU) No 575/2013;

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(50) ‘Union parent institution’ means an EU parent institution as defined in point (29) of Article 4(1) of Regulation (EU) No 575/2013;

(51) ‘own funds requirements’ means the requirements laid down in Articles 92 to 98 of Regulation (EU) No 575/2013;

(52) ‘supervisory college’ means a college of supervisors established in accordance with Article 116 of Directive 2013/36/EU;

(53) ‘Union State aid framework’ means the framework established by Articles 107, 108 and 109 TFEU and regulations and all Union acts, including guidelines, communications and notices, made or adopted pursuant to Article 108(4) or Article 109 TFEU;

(54) ‘winding up’ means the realisation of assets of an institution or entity referred to in point (b), (c) or (d) of Article 1(1);

(55) ‘asset separation tool’ means the mechanism for effecting a transfer by a resolution authority of assets, rights or liabilities of an institution under resolution to an asset management vehicle in accordance with Article 42;

(56) ‘asset management vehicle’ means a legal person that meets the requirements laid down in Article 42(2);

(57) ‘bail-in tool’ means the mechanism for effecting the exercise by a resolution authority of the write-down and conversion powers in relation to liabilities of an institution under resolution in accordance with Article 43;

(58) ‘sale of business tool’ means the mechanism for effecting a transfer by a resolution authority 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 Article 38;

(59) ‘bridge institution’ means a legal person that meets the requirements laid down in Article 40(2);

(60) ‘bridge institution tool’ means the mechanism for transferring 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 Article 40;

(61) ‘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;

(62) ‘shareholders’ means shareholders or holders of other instruments of ownership;

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(63) ‘transfer powers’ means the powers specified in point (c) or (d) of Article 63(1) to transfer shares, other instruments of ownership, debt instruments, assets, rights or liabilities, or any combination of those items from an institution under resolution to a recipient;

(64) ‘central counterparty’ means a CCP as defined in point (1) of Article 2 of Regulation (EU) No 648/2012;

(65) ‘derivative’, means a derivative as defined in point (5) of Article 2 of Regulation (EU) No 648/2012;

(66) ‘write-down and conversion powers’ means the powers referred to in Article 59(2) and in points (e) to (i) of Article 63(1);

(67) ‘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;

(68) ‘Common Equity Tier 1 instruments’ means capital instruments that meet the conditions laid down in Article 28(1) to (4), Article 29(1) to (5) or Article 31(1) of Regulation (EU) No 575/2013;

▼M3

(68a) ciallaíonn ‘Caipiteal Ghnáthchothromas Leibhéal 1’ caipiteal Ghnáthchothromas Leibhéal 1 arna ríomh i gcomhréir le hAirteagal 50 de Rialachán (AE) Uimh. 575/2013;

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(69) ‘Additional Tier 1 instruments’ means capital instruments that meet the conditions laid down in Article 52(1) of Regulation (EU) No 575/2013;

(70) ‘aggregate amount’ means the aggregate amount by which the resolution authority has assessed that ►M3 dliteanais in-fhortharrthála ◄ are to be written down or converted, in accordance with Article 46(1);

▼M3

(71) ciallaíonn ‘dliteanais in-fhortharrthála’ na dliteanais agus na hionstraimí caipitil nach gcáilíonn mar ionstraimí Gnáthchothromas Leibhéal 1, mar ionstraimí Breise Leibhéal 1 nó mar ionstraimí Leibhéal 2 de chuid institiúide nó eintitis dá dtagraítear i bpointe (b), (c) nó (d) d'Airteagal 1(1) agus nach n-eisiatar ó raon feidhme na huirlise fortharrthála imheánaí de bhun Airteagal 44(2);

(71a) ciallaíonn ‘dliteanais incháilithe’ dliteanais in-fhortharrthála lena gcomhlíontar, de réir mar is infheidhme, coinníollacha Airteagal 45b nó phointe (a) d'Airteagal 45f(2) den Treoir seo, agus ionstraimí Leibhéal 2 lena gcomhlíontar coinníollacha phointe (b) d'Airteagal 72a(1) de Rialachán (AE) 575/2013;

(71b) ciallaíonn ‘ionstraimí incháilithe fo-ordaithe’ ionstraimí a chomhlíonann na coinníollacha uile dá dtagraítear in Airteagal 72a de Rialachán (AE) Uimh. 575/2013, seachas míreanna (3) go (5) d'Airteagal 72b den Rialachán sin;

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(72) ‘deposit guarantee scheme’ means a deposit guarantee scheme introduced and officially recognised by a Member State pursuant to Article 4 of Directive 2014/49/EU;

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(73) ‘Tier 2 instruments’ means capital instruments or subordinated loans that meet the conditions laid down in Article 63 of Regulation (EU) No 575/2013;

(74) ‘relevant capital instruments’ for the purposes of Section 5 of Chapter IV of Title IV and Chapter V of Title IV, means Additional Tier 1 instruments and Tier 2 instruments;

(75) ‘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;

(76) ‘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;

(77) ‘affected holder’ means a holder of instruments of ownership whose instruments of ownership are cancelled by means of the power referred to in point (h) of Article 63(1);

(78) ‘appropriate authority’ means authority of the Member State identified in accordance with Article 61 that is responsible under the national law of that State for making the determinations referred to in Article 59(3);

(79) ‘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;

(80) ‘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;

(81) ‘business day’ means a day other than a Saturday, a Sunday or a public holiday in the Member State concerned;

(82) ‘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;

(83) ‘institution under resolution’ means an institution, a financial institution, a financial holding company, a mixed financial holding company, a mixed-activity holding company, a parent financial holding company in a Member State, a Union parent financial holding company, a parent mixed financial holding company in a Member State, or a Union parent mixed financial holding company, in respect of which a resolution action is taken;

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(83a) ciallaíonn ‘eintiteas réitigh’:

(a) duine dlítheanach atá bunaithe san Aontas agus, i gcomhréir le hAirteagal 12, a shainaithníonn an t-údarás réitigh mar eintiteas a ndéanann an plean réitigh foráil maidir le gníomhaíocht réitigh ina leith; nó

▼M3

(b) institiúid nach cuid í de ghrúpa atá faoi réir maoirseachta comhdhlúite de bhun Airteagail 111 agus 112 de Threoir 2013/36/AE, a bhfuil foráil do ghníomhaíocht réitigh ina leith sa phlean réitigh arna ndearadh de bhun Airteagal 10 den Treoir seo.

(83b) ciallaíonn 'grúpa réitigh'

(a) grúpa réitigh agus a fhochuideachtaí nach:

(i) eintitis réitigh iad féin;

(ii) fochuideachtaí eintiteas réitigh eile iad; nó

(iii) eintitis arna mbunú i dtríú tír nach n-áirítear sa ghrúpa réitigh i gcomhréir leis an bplean réitigh agus a bhfochuideachtaí; nó

(b) institiúidí creidmheasa atá buanchleamhnaithe le comhlacht lárnach agus an comhlacht lárnach é féin nuair is eintiteas réitigh ceann amháin ar a laghad de na hinstitiúidí creidmheasa sin nó an comhlacht lárnach, agus a bhfochuideachtaí faoi seach.

(83c) ciallaíonn 'institiúid dhomhanda a bhfuil tábhacht shistéamach léi' nó 'G-SII' G-SII mar a shainmhínítear í i bpointe (133) d'Airteagal 4(1) de Rialachán (AE) Uimh. 575/2013;

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(84) '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;

(85) 'Union parent undertaking' means a Union parent institution, a Union parent financial holding company or a Union parent mixed financial holding company;

(86) '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;

(87) '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;

(88) '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 this Directive;

(89) 'Union branch' means a branch located in a Member State of a third-country institution;

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

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

(92) 'back-to-back transaction' means a transaction entered into between two group entities for the purpose of transferring, in whole or in part, the risk generated by another transaction entered into between one of those group entities and a third party;

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

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

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

▼M4

(96) ciallaíonn ‘banna faoi chumhdach’ banna faoi chumhdach faoi mar a shainmhínítear é in Airteagal 3 de Threoir (AE) 2019/2162 ó Pharlaimint na hEorpa agus ón gComhairle [1]nó, i dtaca le ionstraim arna heisiúint roimh an 8 Iúil 2022, banna dá dtagraítear in Airteagal 52(4) de Threoir 2009/65/CE ó Pharlaimint na hEorpa agus ón gComhairle [2], de réir mar is infheidhme ar an dáta a eisítear é;

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(97) ‘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 of the European Parliament and of the Council [3];

(98) ‘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;

(99) ‘set-off arrangement’ means an arrangement under which two or more claims or obligations owed between the institution under resolution and a counterparty can be set off against each other;

(100) ‘financial contracts’ includes the following contracts and agreements:

(a) securities contracts, including:

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

(ii) 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:

(i) contracts for the purchase, sale or loan of a commodity or group or index of commodities for future delivery;

[1] Treoir (AE) 2019/2162 ó Pharlaimint na hEorpa agus ón gComhairle an 27 Samhain 2019 maidir le heisiúint bannaí faoi chumhdach agus maoirseacht phoiblí ar bhannaí faoi chumhdach agus lena leasaítear Treoracha 2009/65/CE agus 2014/59/AE (IO L 328, 18.12.2019, lch.29).

[2] Treoir 2009/65/CE ó Pharlaimint na hEorpa agus ón gComhairle an 13 Iúil 2009 maidir le comhordú forálacha reachtaíochta, rialúchán agus riaracháin a bhaineann le gnóthais i gcomhair comhinfheistíocht in urrúis inaistrithe (GCUInna) (IO L 302, 17.11.2009, lch. 32).

[3] Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements (OJ L 168, 27.6.2002, p. 43).

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(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:

(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 point (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 three months or less;

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

(101) ‘crisis prevention measure’ means the exercise of powers to direct removal of deficiencies or impediments to recoverability under Article 6(6), the exercise of powers to address or remove impediments to resolvability under Article 17 or 18, the application of an early intervention measure under Article 27, the appointment of a temporary administrator under Article 29 or the exercise of the write down or conversion powers under Article 59;

(102) ‘crisis management measure’ means a resolution action or the appointment of a special manager under Article 35 or a person under Article 51(2) or under Article 72(1);

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

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

(105) ‘investor’ means an investor within the meaning of point (4) of Article 1 of Directive 97/9/EC of the European Parliament and of the Council ([1]);

(106) ‘designated national macroprudential authority’ means the authority entrusted with the conduct of macroprudential policy referred to in Recommendation B1 of the Recommendation of the European Systemic Risk Board of 22 December 2011 on the macroprudential mandate of national authorities (ESRB/2011/3);

([1]) Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes (OJ L 84, 26.3.1997, p. 22).

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(107) ‘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/EC ([1]);

(108) ‘regulated market’ means a regulated market as defined in point (21) of Article 4(1) of Directive 2014/65/EU;

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(109) ciallaíonn ‘ceanglas maoláin chomhcheangailte’ ceanglas maoláin chomhcheangailte faoi mar a shainmhínítear é i bpointe (6) d'Airteagal 128 de Threoir 2013/36/AE.

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2. The Commission shall be empowered to adopt delegated acts in accordance with Article 115 in order to specify the criteria for the determination of the activities, services and operations referred to in point (35) of the first subparagraph as regards the definition of ‘critical functions’ and the criteria for the determination of the business lines and associated services referred to in point (36) of the first subparagraph as regards the definition of ‘core business lines’.

Article 3

Designation of authorities responsible for resolution

1. Each Member State shall designate one or, exceptionally, more resolution authorities that are empowered to apply the resolution tools and exercise the resolution powers.

2. The resolution authority shall be a public administrative authority or authorities entrusted with public administrative powers.

3. Resolution authorities may be national central banks, competent ministries or other public administrative authorities or authorities entrusted with public administrative powers. Member States may exceptionally provide for the resolution authority to be the competent authorities for supervision for the purposes of Regulation (EU) No 575/2013 and Directive 2013/36/EU. Adequate structural arrangements shall be in place to ensure operational independence and avoid conflicts of interest between the functions of supervision pursuant to Regulation (EU) No 575/2013 and Directive 2013/36/EU or the other functions of the relevant authority and the functions of resolution authorities pursuant to this Directive, without prejudice to the exchange of information and cooperation obligations as required by paragraph 4. In particular, Member States shall ensure that, within the competent authorities, national central banks, competent ministries or other authorities there is operational independence between the resolution function and the supervisory or other functions of the relevant authority.

The staff involved in carrying out the functions of the resolution authority pursuant to this Directive shall be structurally separated from, and subject to, separate reporting lines from the staff involved in carrying out the tasks pursuant to Regulation (EU) No 575/2013 and Directive 2013/36/EU or with regard to the other functions of the relevant authority.

For the purposes of this paragraph, the Member States or the resolution authority shall adopt and make public any necessary relevant internal rules including rules regarding professional secrecy and information exchanges between the different functional areas.

([1]) Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

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4. Member States shall require that authorities exercising supervision and resolution functions and persons exercising those functions on their behalf cooperate closely in the preparation, planning and application of resolution decisions, both where the resolution authority and the competent authority are separate entities and where the functions are carried out in the same entity.

5. Each Member State shall designate a single ministry which is responsible for exercising the functions of the competent ministry under this Directive.

6. Where the resolution authority in a Member State is not the competent ministry it shall inform the competent ministry of the decisions pursuant to this Directive and, unless otherwise laid down in national law, have its approval before implementing decisions that have a direct fiscal impact or systemic implications.

7. Decisions taken by competent authorities, resolution authorities and EBA in accordance with this Directive shall take into account the potential impact of the decision in all the Member States where the institution or the group operate and minimise the negative effects on financial stability and negative economic and social effects in those Member States. Decisions of EBA are subject to Article 38 of Regulation (EU) No 1093/2010.

8. Member States shall ensure that each resolution authority has the expertise, resources and operational capacity to apply resolution actions, and is able to exercise their powers with the speed and flexibility that are necessary to achieve the resolution objectives.

9. EBA, in cooperation with competent authorities and resolution authorities, shall develop the required expertise, resources and operational capacity and shall monitor the implementation of paragraph 8, including through periodical peer reviews.

10. Where, in accordance with paragraph 1, a Member State designates more than one authority to apply the resolution tools and exercise the resolution powers, it shall provide a fully reasoned notification to EBA and the Commission for doing so and shall allocate functions and responsibilities clearly between those authorities, ensure adequate coordination between them and designate a single authority as a contact authority for the purposes of cooperation and coordination with the relevant authorities of other Member States.

11. Member States shall inform EBA of the national authority or authorities designated as resolution authorities and the contact authority and, where relevant, their specific functions and responsibilities. EBA shall publish the list of those resolution authorities and contact authorities.

12. Without prejudice to Article 85, Member States may limit the liability of the resolution authority, the competent authority and their respective staff in accordance with national law for acts and omissions in the course of discharging their functions under this Directive.

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TITLE II

PREPARATION

CHAPTER I

Recovery and resolution planning

Section 1

General provisions

Article 4

Simplified obligations for certain institutions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. Institutions subject to direct supervision by the European Central Bank pursuant to Article 6(4) of Regulation (EU) No 1024/2013 or constituting a significant share in the financial system of a Member State shall draw up their own recovery plans in accordance with Section 2 of this Chapter and shall be the subject of individual resolution plans in accordance with Section 3.

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

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

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

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

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

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

Section 2

Recovery planning

Article 5

Recovery plans

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

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

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

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

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

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

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

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

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

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

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

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

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

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Article 6

Assessment of recovery plans

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) enable timely recapitalisation measures;

(c) review the institution's strategy and structure;

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

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

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

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

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

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

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

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

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Article 7

Group recovery plans

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

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

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

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

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

(c) the group- level resolution authority; and

(d) the resolution authorities of subsidiaries.

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

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

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

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

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

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

Article 8

Assessment of group recovery plans

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

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

(a) the review and assessment of the group recovery plan;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 9

Recovery Plan Indicators

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

Notwithstanding the first subparagraph, an institution may:

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

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

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

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

Section 3

Resolution planning

Article 10

Resolution plans

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

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

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

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

(b) any central bank emergency liquidity assistance; or

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

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

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

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

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

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Déanfar an t-athbhreithniú dá dtagraítear sa chéad fhomhír den mhír seo tar éis na ngníomhaíochtaí réitigh a chur chun feidhme nó tar éis feidhmiú na gcumhachtaí dá dtagraítear in Airteagal 59.

Agus na spriocdhátaí dá dtagraítear i bpointí (o) agus (p) de mhír 7 den Airteagal seo á leagan síos sna cúinsí dá dtagraítear sa tríú fomhír den mhír seo, déanfaidh an t-údarás réitigh an spriocdháta chun an ceanglas dá dtagraítear in Airteagal 104b de Threoir 2013/36/AE a chomhlíonadh a chur san áireamh.

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

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

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

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

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

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

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

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

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

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

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

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(ii) any central bank emergency liquidity assistance; or

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

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

(k) a description of critical interdependencies;

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

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

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

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(o) na ceanglais dá dtagraítear in Airteagal 45e agus 45f agus spriocdháta chun an leibhéal sin a bhaint amach i gcomhréir le hAirteagal 45m;

(p) i gcás ina bhfeidhmíonn an t-údarás réitigh Airteagail 45b(4), (5) nó (7), amlíne don chomhlíonadh don eintiteas réitigh i gcomhréir le hAirteagal 45m;

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

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

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

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

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

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

Article 11

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

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

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

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

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

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

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

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

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

Article 12

Group resolution plans

▼M3

1. Áiritheoidh na Ballstáit go ndéanfaidh na húdaráis réitigh ar leibhéal grúpa, in éineacht le húdaráis réitigh fochuideachtaí agus tar éis dóibh dul i gcomhairle le húdaráis réitigh brainsí suntasacha a mhéid is ábhartha ar leith an bhrainse shuntasaigh, pleananna réitigh grúpaí a tharraingt suas. Sainaithneofar sa phlean réitigh grúpa na bearta le déanamh ina leith seo a leanas:

(a) an máthairghnóthas de chuid an Aontais;

(b) na fochuideachtaí ar cuid den ghrúpa iad agus atá bunaithe san Aontas;

(c) na heintitis dá dtagraítear i bpointe (c) agus pointe (d) d'Airteagal 1(1); agus

(d) faoi réir Theideal VI, na fochuideachtaí ar cuid den ghrúpa iad agus atá bunaithe lasmuigh den Aontas.

▼M3

I gcomhréir leis na bearta dá dtagraítear sa chéad fhomhír, sainaitheoidh an plean réitigh i leith gach grúpa: na heintitis réitigh agus na grúpaí réitigh.

▼B

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

3. The group resolution plan shall:

▼M3

(a) na gníomhaíochtaí réitigh a leagan amach a bhfuil le déanamh le haghaidh eintitis réitigh sna cásanna dá dtagraítear in Airteagal 10(3) agus impleachtaí na ngníomhaíochtaí réitigh sin maidir le heintitis ghrúpa eile dá dtagraítear i bpointe (b), pointe (c) agus pointe (d) d'Airteagal 1(1), le haghaidh an mháthairghnóthais agus fo-institiúidí;

(aa) má bhíonn níos mó ná grúpa réitigh amháin i ngrúpa, gníomhaíochtaí réitigh a leagan amach a bhfuil le déanamh i leith eintitis réitigh gach grúpa réitigh maille le himpleachtaí na ngníomhaíochtaí sin don dá chás seo a leanas:

(i) do ghrúpeintitis eile atá sa ghrúpa réitigh céanna;

(ii) do ghrúpaí réitigh eile;

(b) scrúdú a dhéanamh ar an méid a d'fhéadfaí na huirlisí agus cumhachtaí réitigh a chur i bhfeidhm agus a fheidhmiú ar bhealach comhordaithe maidir le heintitis réitigh atá bunaithe san Aontas, lena n-áirítear bearta a chuideodh le grúpa ina iomláine a bheith á cheannach ag tríú páirtí, nó línte gnó nó gníomhaíochtaí ar leithligh a chuireann roinnt grúpeintiteas, nó grúpeintitis nó eintitis réitigh ar fáil ar leith, agus aon bhaic fhéideartha ar réiteach comhordaithe a shainaithint;

▼B

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

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

▼M3

(e) aon ghníomhaíochtaí breise, nach dtagraítear dóibh sa Treoir seo, a leagan amach, a bhfuil sé beartaithe ag na húdaráis réitigh ábhartha iad a dhéanamh i leith na n-eintiteas laistigh de gach grúpa réitigh;

▼B

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

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

▼B

(ii) any central bank emergency liquidity assistance; or

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

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

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

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

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

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

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

Article 13

Requirement and procedure for group resolution plans

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

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

(a) EBA;

(b) the resolution authorities of subsidiaries;

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

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

▼B

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

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

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

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

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

▼M3

Má bhíonn níos mó ná grúpa réitigh amháin i ngrúpa, déanfar pleanáil na ngníomhaíochtaí réitigh dá dtagraítear i bpointe (aa) d'Airteagal 12(3) a áireamh le cinneadh comhpháirteach dá dtagraítear sa chéad fhomhír den mhír seo.

▼B

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

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

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

▼B

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

6. ►**M3** Mura ndéanfar cinneadh comhpháirteach idir na húdaráis réitigh laistigh de ceithre mhí, déanfaidh gach údarás réitigh atá freagrach as fochuideachta agus a easaontaíonn leis an bplean réitigh grúpa a chinneadh féin agus, más iomchuí, sainaithneoidh sé an t-eintiteas réitigh agus tarraingeoidh suas agus cothabhálfaidh sé plean réitigh le haghaidh an ghrúpa réitigh ina bhfuil eintitis atá faoina dhlínse féin. Tabharfar bunús iomlán le gach ceann de na cinntí ó údaráis réitigh a easaontaíonn, leagfar amach na cúiseanna atá leis an easaontas leis an bplean réitigh grúpa atá molta agus cuirfear san áireamh tuairimí agus ábhair amhrais na n-údarás réitigh eile agus na n-údarás inniúil eile. Tabharfaidh gach údarás réitigh fógra faoina chinneadh chuig comhaltaí eile an choláiste réitigh. ◄

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

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

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

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

▼B

10. Where joint decisions are taken pursuant to paragraphs 4 and 7 and where a resolution authority assesses under paragraph 9 that the subject matter of a disagreement regarding group resolution plans impinges on the fiscal responsibilities of its Member State, the group-level resolution authority shall initiate a reassessment of the group resolution plan, including the minimum requirement for own funds and eligible liabilities.

Article 14

Transmission of resolution plans to the competent authorities

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

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

CHAPTER II

Resolvability

Article 15

Assessment of resolvability for institutions

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

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

(b) any central bank emergency liquidity assistance;

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

An institution shall be deemed to be resolvable if it is feasible and credible for the resolution authority to either liquidate it under normal insolvency proceedings or to resolve it by applying the different resolution tools and powers to the institution while avoiding to the maximum extent possible any significant adverse effect on the financial system, including in circumstances of broader financial instability or system-wide events, of the Member State in which the institution is established, or other Member

▼B

States or the Union and with a view to ensuring the continuity of critical functions carried out by the institution. The resolution authorities shall notify EBA in a timely manner whenever an institution is deemed not to be resolvable.

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

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

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

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

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

Article 16

Assessment of resolvability for groups

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

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

(b) any central bank emergency liquidity assistance;

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

▼M3

Measfar go bhfuil grúpa inréitithe má bhíonn sé indéanta agus inchreidte ag na húdaráis réitigh grúpeintitis a fhoirceannadh faoi ghnáthimeachtaí dócmhainneachta nó an grúpa sin a réiteach trí uirlisí réitigh a fheidhmiú, agus cumhachtaí réitigh a fheidhmiú i dtaca le heintitis réitigh an ghrúpeintitis sin agus a mhéid is mó is féidir, aon iarmhairtí díobhálacha suntasacha a sheachaint i gcórais airgeadais na mBallstát ina bhfuil grúpeintitis nó brainsí lonnaithe, nó na mBallstát eile, nó an Aontais, lena n-áirítear éagobhsaíocht airgeadais nó teagmhais shistéamacha, chun a áirithiú go leanfar d'fheidhmeanna criticiúla a dhéanann na grúpeintitis sin, i gcás inar féidir iad a dheighilt go héasca agus go tráthúil nó ar bhealach eile.

▼M3

Tabharfaidh údaráis réitigh leibhéal an ghrúpa fógra do ÚBE ar bhealach tráthúil cibé uair a meastar nach bhfuil grúpa inréitithe.

▼B

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

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

3. The assessment of group resolvability under this Article shall be made at the same time as, and for the purposes of drawing up and updating of the group resolution plans in accordance with Article 12. The assessment shall be made under the decision-making procedure laid down in Article 13.

▼M3

4. Áiritheoidh na Ballstáit go ndéanfaidh na húdaráis dá dtagraítear i mír 1, má bhíonn níos mó ná grúpa réitigh amháin i ngrúpa, inréititheacht gach grúpa réitigh a mheasúnú i gcomhréir leis an Airteagal seo.

Déanfar an measúnú dá dtagraítear sa chéad fhomhír den mhír seo sa bhreis ar an measúnú ar inréititheacht an ghrúpa ina iomláine agus déanfar sin sa nós imeachta cinnteoireachta a leagtar síos in Airteagal 13.

Airteagal 16a

An chumhacht roinnt dáiltí a thoirmeasc

1. Más rud é go mbeidh eintiteas i gcás ina mbeidh an ceanglas maoláin chomhcheangailte á chomhlíonadh aige agus an ceanglas sin á mheas sa bhreis ar gach ceann de na ceanglais dá dtagraítear i bpointí (a), (b) agus (c) d'Airteagal 141a(1) den Treoir sin, ach go mainníonn sé an ceanglas maoláin chomhcheangailte sin a chomhlíonadh nuair a dhéantar é a mheas sa bhreis ar na ceanglais dá dtagraítear in Airteagail 45c agus 45d den Treoir seo, agus é sin á ríomh i gcomhréir le pointe (a) d'Airteagal 45(2) den Treoir seo, beidh de chumhacht ag údarás réitigh, i gcomhréir le mír 2 agus 3 den Airteagal seo, an eintitis sin toirmeasc a chur ar eintiteas,, níos mó ná an t-uasmhéid indáilte a bhaineann leis an íoscheanglas le haghaidh cistí dílse agus dliteanas incháilithe ('M-MDA'), arna ríomh i gcomhréir le mír 4 den Airteagal seo, a dháileadh, trí cheann ar bith de na gníomhaíochtaí a leanas:

(a) dáileachán a dhéanamh i ndáil le caipiteal Gnáthchothromas Leibhéal 1;

(b) oibleagáid a chruthú chun luach saothair inathraitheach nó sochair phinsin lánroghnacha a íoc nó luach saothair inathraitheach a íoc más rud é gur cruthaíodh an oibleagáid chun íoc tráth ar mhainnigh an t-eintiteas an ceanglas maoláin chomhcheangailte a chomhlíonadh; nó

(c) íocaíochtaí a dhéanamh ar ionstraimí Breise Leibhéal 1.

I gcás ina mbeidh eintiteas sa chás dá dtagraítear sa chéad fhomhír, tabharfaidh sé fógra láithreach don údarás réitigh maidir leis an gcliseadh sin.

▼M3

2. Sa chás dá dtagraítear i mír 1, measúnóidh údarás réitigh an eintitis, tar éis dó dul i gcomhairle leis an údarás inniúil, gan mhoill neamhriachtanach, cibé an ndéanfaidh sé an chumhacht dá dtagraítear i mír 1 a fheidhmiú, agus na gnéithe seo a leanas á gcur san áireamh:

(a) cúis na mainneachtana, fad agus mhéid na mainneachtana sin agus an tionchar atá aici ar inréititheacht;

(b) dul chun cinn staid airgeadais an eintitis agus an dóchúlacht go bhféadfaidh sé, amach anseo, an coinníoll dá dtagraítear i bpointe (a) d'Airteagal 32(1) a chomhlíonadh;

(c) an t-ionchas go mbeidh an t-eintiteas in ann a áirithiú go gcomhlíonfar na gceanglas dá dtagraítear i mír 1 laistigh de thréimhse ama réasúnta;

(d) i gcás nach mbeidh an t-eintitis in ann dliteanais a chur in ionad dliteanas nach gcomhlíonann na critéir incháilitheachta ná aibíochta a leagtar síos in Airteagal 72b agus 72c de Rialachán (AE) Uimh. 575/2013, nó in Airteagal 45b nó 45f(2) den Treoir seo a thuilleadh, más rud é go bhfuil an neamhábaltacht sin neamhghnách nó más toradh ar shuaitheadh ar fud an mhargaidh í;

(e) arb é feidhmiú na cumhachta dá dtagraítear i mír 1 an modh is leordhóthanaí agus is comhréirí chun aghaidh a thabhairt ar chás an eintitis bunaithe, ag cur san áireamh go háirithe an tionchar a d'fhéadfadh a bheith aige ar choinníollacha maoinithe agus ar inréititheacht an eintitis sin.

Déanfaidh an t-údarás réitigh a mheasúnú an athuair le féachaint faoin gcumhacht dá dtagraítear i mír 1 a fheidhmiú gach mí ar a a fhad is a leanann an t-eintiteas de bheith sa chás dá dtagraítear i mír 1.

3. Má chinneann an t-údarás réitigh go bhfuil an t-eintiteas fós sa chás dá dtagraítear i mír 1 naoi mhí tar éis fógra faoi chás mar sin a fháil ón eintiteas, déanfaidh an t-údarás réitigh, tar éis dul i gcomhairle leis an údarás inniúil, an chumhacht dá dtagraítear i mír 1 a fheidhmiú ach amháin má chinneann an t-údarás réitigh, tar éis dó measúnú a dhéanamh, go gcomhlíontar dhá cheann de na coinníollacha seo a leanas ar a laghad:

(a) tarlaíonn an cliseadh mar gheall ar shuaitheadh tromchúiseach i bhfeidhmiú na margaí airgeadais, as a n-eascraíonn strus forleathan sa mhargadh airgeadais in an-chuid deighleoga de na margaí airgeadais;

(b) an suaitheadh dá dtagraítear i bpointe (i), ní hamháin go mbíonn luaineacht mhéadaithe i bpraghas ionstraimí cistí dílse agus ionstraimí dliteanas incháilithe an eintitis nó costais bhreise don eintiteas mar gheall air, ach chomh maith leis sin dúntar na margaí go hiomlán nó go páirteach, rud a chuireann cosc ar an eintiteas ionstraimí cistí dílse agus ionstraimí dliteanas incháilithe a eisiúint ar na margaí sin;

(c) feictear go mbaineann dúnadh na margaí dá dtagraítear i bpointe (b) ní hamháin leis an eintitis sin amháin ach le roinnt eintiteas eile freisin;

(d) leis an suaitheadh dá dtagraítear i bpointe (a) toirmisctear an t-eintiteas i dtrácht go leor ionstraimí cistí dílse agus ionstraimí dliteanas incháilithe a eisiúint chun an sárú a leigheas;

(e) eascraíonn éifeachtaí iarmharta diúltacha as feidhmiú na cumhachta dá dtagraítear i mír 1 do chuid den earnáil baincéireachta, rud a d'fhéadfadh an bonn a bhaint de chobhsaíocht airgeadais.

▼M3

Nuair a bhíonn an eisceacht dá dtagraítear sa chéad fhomhír i bhfeidhm, tabharfaidh an t-údarás réitigh fógra don údarás inniúil maidir lena chinneadh agus míneoidh sé a mheasúnú i scríbhinn.

Gach mí, déanfaidh an t-údarás réitigh a mheasúnú an athuair i dtaobh an féidir an eisceacht dá dtagraítear sa chéad fhomhír a chur i bhfeidhm.

4. Ríomhfar M-MDA tríd an tsuim arna ríomh i gcomhréir le mír 5 a iolrú faoin bhfachtóir arna chinneadh i gcomhréir le mír 6. Laghdófar M-MDA de réir mhéid ar bith a bhíonn mar thoradh ar cheann ar bith de na gníomhaíochtaí dá dtagraítear i bpointe (a), (b) nó (c) de mhír 1.

5. Beidh sa tsuim atá le hiolrú i gcomhréir le mír 4 na nithe seo a leanas:

(a) brabúis eatramhacha ar bith nach n-áirítear ar chaipiteal Ghnáthchothromas Leibhéal 1 de bhun Airteagal 26(2) de Rialachán (AE) Uimh. 575/2013 ar glanbhrabúis iad i ndáil le haon dáileachán brabús nó aon íocaíocht a bhíonn mar thoradh ar aon cheann de na gníomhaíochtaí dá dtagraítear i bpointe (a), i bpointe (b) nó i bpointe (c) de mhír 1 den Airteagal seo;

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(b) aon bhrabúis chinn bhliana nach n-áirítear ar chaipiteal Ghnáthchothromas Leibhéal 1 de bhun Airteagal 26(2) de Rialachán (AE) Uimh. 575/2013 ar glanbhrabúis iad i ndáil le haon dáileachán brabús nó aon íocaíocht a bhíonn mar thoradh ar aon cheann de na gníomhaíochtaí dá dtagraítear i bpointe (a), i bpointe (b) nó i bpointe (c) de mhír 1 den Airteagal seo;

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(c) méideanna ba iníoctha le cáin dá gcoimeádfaí na hítimí a shonraítear i bpointe (a) agus i bpointe (b) den mhír seo.

6. Is mar a leanas a dhéanfar an fachtóir dá dtagraítear i mír 4 a chinneadh:

(a) i gcás gur laistigh den chéad cheathairíl (i.e. an cheathairíl is ísle) den cheanglas maoláin chomhcheangailte atá caipiteal Gnáthchothromais Leibhéal 1 an eintitis, nach n-úsáidtear chun aon cheann de na ceanglais cistí dílse a chomhlíonadh a leagtar amach in Airteagal 92a de Rialachán (AE) Uimh. 575/2013 agus in Airteagal 45c agus Airteagal 45d den Treoir seo, arna shloinneadh mar chéatadán de mhéid iomlán na neamhchosanta ar riosca arna ríomh i gcomhréir le hAirteagal 92(3) de Rialachán (AE) Uimh. 575/2013, is é 0 an fachtóir a bheidh ann;

(b) i gcás gur laistigh den dara ceathairíl den cheanglas maoláin chomhcheangailte atá caipiteal Gnáthchothromais Leibhéal 1 an eintitis, nach n-úsáidtear chun aon cheann de na ceanglais a chomhlíonadh a leagtar amach in Airteagal 92a de Rialachán (AE) Uimh. 575/2013 agus in Airteagal 45c agus Airteagal 45d den Treoir seo, arna shloinneadh mar chéatadán de mhéid iomlán na neamhchosanta ar riosca arna ríomh i gcomhréir le hAirteagal 92(3) de Rialachán (AE) Uimh. 575/2013, is é 0,2 an fachtóir a bheidh ann.

(c) i gcás gur laistigh den tríú ceathairíl den cheanglas maoláin chomhcheangailte atá caipiteal Gnáthchothromais Leibhéal 1 an eintitis, nach n-úsáidtear chun aon cheann de na ceanglais a chomhlíonadh a leagtar amach in Airteagal 92a de Rialachán (AE) Uimh. 575/2013 agus in Airteagal 45c agus Airteagal 45d den Treoir seo, arna shloinneadh mar chéatadán de mhéid iomlán na neamhchosanta ar riosca arna ríomh i gcomhréir le hAirteagal 92(3) de Rialachán (AE) Uimh. 575/2013, is é 0,4 an fachtóir a bheidh ann;

▼M3

(d) i gcás gur laistigh den cheathrú ceathairíl (i.e. an cheathairíl is airde) den cheanglas maoláin chomhcheangailte atá caipiteal Gnáthchothromais Leibhéal 1 an eintitis, nach n-úsáidtear chun aon cheann de na ceanglais a chomhlíonadh a leagtar amach in Airteagal 92a de Rialachán (AE) Uimh. 575/2013 agus in Airteagal 45c agus Airteagal 45d den Treoir seo, arna shloinneadh mar chéatadán de mhéid iomlán na neamhchosanta ar riosca arna ríomh i gcomhréir le hAirteagal 92(3) de Rialachán (AE) Uimh. 575/2013, is é 0,6 an fachtóir a bheidh ann;

Déanfar cuimsí íochtair agus uachtair gach ceathairíl den cheanglas maoláin chomhcheangailte a ríomh mar a leanas:

$$\text{Cuimse íochtair na ceathairíle} = \frac{\text{Ceanglas maoláin chomhcheangailte}}{4} \times (Q_n - 1)$$

$$\text{Cuimse uachtair na ceathairíle} = \frac{\text{Ceanglas maoláin chomhceangailte}}{4} \times Q_n$$

inar ionann 'Q_n' agus orduimhir na ceathairíle lena mbaineann.

▼B

Article 17

Powers to address or remove impediments to resolvability

▼M3

1. Tráth a gcinnfidh údarás réitigh – ar dhul i gcomhairle dó leis an údarás inniúil de bhun measúnacht inréititheachta arna dhéanamh i gcomhréir le hAirteagal 15 agus 16, agus ar dhul i gcomhairle dó leis an údarás inniúil – go bhfuil baic shubstaintiúla roimh inréiteacht an eintitis sin, áiritheoidh na Ballstáit go gcuirfidh an t-údarás réitigh sin an cinneadh sin in iúl i scríbhinn don eintiteas a bheidh i gceist, don údarás inniúil, agus do na húdaráis réitigh sna ndlínsí ina bhfuil brainsí suntasacha suite.

▼B

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

▼M3

3. Laistigh de cheithre mhí tar éis an dáta a bhfaighfear fógra arna thabhairt i gcomhréir le mír 1, molfaidh an t-eintiteas don údarás réitigh bearta a d'fhéadfaí a ghlacadh chun dul i ngleic leis na baic a shainaithnítear san fhógra nó chun deireadh a chur leo.

Tráth nach déanaí ná dhá sheachtain ón dáta a bhfaighfear fógra arna thabhairt i gcomhréir le mír 1 den Airteagal seo, molfaidh an t-eintiteas don údarás réitigh bearta féideartha maille le hamlíne lena gcur chun feidhme d'fhonn a áirithiú go gcloíonn an t-eintiteas le hAirteagal 45e nó Airteagal 45f den Treoir seo agus leis an gceanglas maoláin chomhceangailte, i gcás gur i ngeall ar cheann díobh seo a leanas atá bac roimh inréititheacht an eintitis sin:

▼M3

(a) sásaíonn an t-eintiteas an ceanglas maoláin chomhcheangailte nuair a mheastar é anuas ar gach ceann de na ceanglais dá dtagraítear i bpointí (a), (b) agus (c) d'Airteagal 141a(1) de Threoir 2013/36/AE, ach ní shásaíonn sé an ceanglas maoláin chomhcheangailte nuair a mheastar é anuas ar na ceanglais dá dtagraítear in Airteagal 45c agus 45d den Treoir seo arna ríomh i gcomhréir le pointe (a) d'Airteagal 45(2) den Treoir seo; nó

(b) ní chomhlíonann an t-eintiteas na ceanglais dá dtagraítear in Airteagal 92a agus Airteagal 494 de Rialachán (AE) Uimh. 575/2013 ná na ceanglais dá dtagraítear in Airteagal 45c agus 45d den Treoir seo.

Cuirfear na cúiseanna atá leis an mbac substainteach san áireamh san amlíne faoina gcuirfear chun feidhme na bearta arna moladh sa dara fomhír.

Déanfaidh an t-údarás réitigh, ar dhul i gcomhairle dó leis an údarás inniúil, measúnú a dhéanamh an dtugtar aghaidh go héifeachtach, leis na bearta a mholtar sa chéad fhomhír agus sa dara fomhír, ar an mbac substainteach atá i gceist nó an gcuirtear deireadh leis.

4. I gcás ina chinneann an t-údarás réitigh nach ndéanann na bearta, arna moladh ag an eintiteas i gcomhréir le mír 3, na baic atá i gceist a laghdú nó a bhaint go leordhóthanach, iarrfaidh sé ar an eintiteas go díreach nó go hindíreach tríd an údarás inniúil, bearta malartacha a ghlacadh lena bhféadfaí an cuspóir sin a bhaint amach, agus cuirfidh sé na bearta sin in iúl i scríbhinn don eintiteas, agus molfaidh an t-eintiteas laistigh de mhí plean faoina gcomhlíonfar na bearta sin.

Agus bearta malartacha á sainaithint aige, taispeánfaidh an t-údarás réitigh conas nach mbeadh na bearta a mhol an t-eintiteas in ann na baic ar inréititheacht a bhaint agus conas atá na bearta malartacha atá á moladh comhréireach chun iad a bhaint. Cuirfidh an t-údarás réitigh san áireamh an bhagairt atá ann don chobhsaíocht airgeadais sna baic sin roimh an inréititheacht mar aon le héifeacht na mbeart ar chúrsaí gnó an eintitis gona chobhsaíocht agus a chumas rannchuidiú leis an ngeilleagar.

▼B

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

(a) require the ►M3 eintitis ◄ to revise any intragroup financing agreements or review the absence thereof, or draw up service agreements, whether intra-group or with third parties, to cover the provision of critical functions;

(b) require the ►M3 eintitis ◄ to limit its maximum individual and aggregate exposures;

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

(d) require the ►M3 eintitis ◄ to divest specific assets;

(e) require the ►M3 eintitis ◄ to limit or cease specific existing or proposed activities;

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

▼B

(g) require changes to legal or operational structures of the ►M3 eintitis ◄ or any group entity, either directly or indirectly under its control, so as to reduce complexity in order to ensure that critical functions may be legally and operationally separated from other functions through the application of the resolution tools;

(h) require an ►M3 eintitis ◄ or a parent undertaking to set up a parent financial holding company in a Member State or a Union parent financial holding company;

▼M3

(ha) a chur de cheangal ar institiúid nó ar eintiteas dá dtagraítear i bpointe (b), (c) nó (d) d'Airteagal 1(1) plean a thíolacadh chun comhlíonadh cheanglais Airteagal 45e nó Airteagal 45f den Treoir seo a athbhunú, arna shloinneadh mar mhéid iomlán na neamhchosanta ar riosca arna ríomh i gcomhréir le hAirteagal 92(3) de Rialachán (AE) Uimh. 575/2013 agus, i gcás inarb infheidhme, leis an gceanglas maoláin chomhcheangailte agus leis na ceanglais dá dtagraítear in Airteagal 45e nó Airteagal 45f den Treoir seo arna shloinneadh mar chéatadán den bheart iomlán neamhchosanta dá dtagraítear in Airteagal 429 agus Airteagal 429a de Rialachán (AE) Uimh. 575/2013;

(i) a chur de cheangal ar institiúid nó ar eintiteas dá dtagraítear i bpointe (b), (c) nó (d) d'Airteagal 1(1) dliteanais incháilithe a eisiúint chun na ceanglais atá in Airteagal 45e nó in Airteagal 45f a chomhlíonadh;

(j) a chur de cheangal ar institiúid nó ar eintiteas dá dtagraítear i bpointe (b), (c) nó (d) d'Airteagal 1(1) bearta eile a ghlacadh ar mhaithe leis na híoscheanglais maidir le cistí dílse agus le dliteanais incháilithe a shásamh faoi Airteagal 45e nó Airteagal 45f, lena n-áirítear go háirithe féachaint le haon dliteanas incháilithe, ionstraim bhreise Leibhéal 1 nó ionstraim Leibhéal 2 atá eisithe aige a chaibidil an athuair, d'fhonn a áirithiú gur faoi dhlí na dlínse a rialaíonn an dliteanas nó an ionstraim sin a dhéanfaí aon chinneadh de chuid an údaráis réitigh maidir le díluacháil nó comhshó an dliteanais nó na hionstraime sin;

(ja) chun a áirithiú go gcomhlíonfar go leanúnach Airteagal 45e nó Airteagal 45f, a cheangal ar institiúid nó ar eintiteas dá dtagraítear i bpointe (b), (c) nó (d) d'Airteagal 1(1), próifíl aibíochta a athrú i dtaca le:

(i) ionstraimí cistí dílse, tar éis comhaontú an údaráis inniúil a fháil, agus

(ii) dliteanais incháilithe dá dtagraítear in Airteagal 45b agus i bpointe (a) d'Airteagal 45f(2);

(k) i gcás inar fochuideachta de chuid cuideachta sealbhaíochta gníomhaíochtaí measctha atá san eintiteas, agus nach mór go mbunódh an chuideachta sealbhaíochta gníomhaíochtaí measctha cuideachta sealbhaíochta airgeadais ar leithligh chun an t-eintiteas a rialú, d'fhonn, más gá, réiteach an eintitis a éascú agus d'fhonn nach gcuirfear chun feidhme na hionstraimí agus feidhmiú na gcumhachtaí réitigh dá dtagraítear i dTeideal IV a bhfuil tionchar díobhálach acu ar an gcuid neamhairgeadais den ghrúpa.

▼B

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

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

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

(c) it shall be subject to a right of appeal.

▼M3

7. Sula sainaithnítear aon bhearta dá dtagraítear i mír 4, déanfaidh an t-údarás réitigh, ar dhul i gcomhairle dó leis an údarás inniúil agus, más iomchuí, leis an údarás náisiúnta macrastuamachta ainmnithe, an éifeacht a d'fhéadfadh na bearta sin a imirt ar an eintiteas áirithe atá i gceist, ar mhargadh inmheánach na seirbhísí airgeadais, agus ar chobhsaíocht airgeadais i mBllstáit eile agus san Aontas trí chéile a bhreithniú.

▼B

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

Article 18

Powers to address or remove impediments to resolvability: group treatment

▼M3

1. Déanfaidh údarás réitigh leibhéal an ghrúpa, in éineacht le húdaráis réitigh na bhfochuideachtaí, ar dhul i gcomhairle dóibh leis an gcoláiste maoirseachta agus údaráis mhaoirseachta na ndlínsí ina bhfuil brainsí suntasacha suite a mhéid is ábhartha don bhrainse suntasach, machnamh faoin measúnú a leagtar síos mar cheangal in Airteagal 16 laistigh den choláiste réitigh agus tabharfaidh siad na céimeanna uile atá réasúnta chun cinneadh comhpháirteach a dhéanamh faoi bheart a chur i bhfeidhm a sainaithníodh i gcomhréir le hAirteagal 17(4) i ndáil leis na heintitis réitigh uile agus lena bhfochuideachtaí ar eintitis iad dá dtagraítear in Airteagal 1(1) agus ar cuid den ghrúpa iad.

2. Déanfaidh údarás réitigh leibhéal an ghrúpa, in éineacht leis an maoirseoir comhdhlúthaithe agus le ÚBE i gcomhréir le Airteagal 25(1) de Rialachán (AE) Uimh. 1093/2010, tuarascáil a ullmhú agus a thíolacadh don mháthairghnóthas de chuid an Aontais agus d'údaráis réitigh fochuideachtaí, agus tabharfaidh siadsan an tuarascáil sin do na fochuideachtaí atá laistigh dá sainchúram, agus d'údaráis réitigh dlínsí ina bhfuil brainsí suntasacha suite. Ullmhófar an tuarascáil ar dhul i gcomhairle leis na húdaráis inniúla, agus beidh anailísiú ann ar na baic shubstaintiúla ar chur i bhfeidhm éifeachtach na n-uirlisí réitigh agus ar fheidhmiú na gcumhachtaí réitigh i ndáil leis an ngrúpa agus le grúpaí réitigh má bhíonn níos mó ná grúpa réitigh amháin sa ghrúpa sin freisin. Breithneofar sa tuarascáil sin freisin an tionchar ar shamhail ghnó an ghrúpa agus molfar inti aon bhearta comhréireacha agus spriocdhírithe is gá nó is iomchuí, dar le húdarás réitigh leibhéal an ghrúpa, chun na baic sin a bhaint.

▼M3

Má bhíonn bac ar inréititheacht an ghrúpa de dheasca cás sonrach ghrúpeintitis dá dtagraítear sa dara fomhír d'Airteagal 17(3), tabharfaidh údarás réitigh leibhéal an ghrúpa fógra don mháthairghnóthas de chuid an Aontais tar éis dó dul i gcomhairle le húdarás réitigh an eintitis réitigh agus le húdaráis réitigh a fho-institiúidí go ndearna sé measúnú ar an mbac sin.

3. Tráth nach déanaí ná ceithre mhí tar éis dó an tuarascáil a fháil, féadfaidh an máthairghnóthas de chuid an Aontais barúlacha a chur isteach agus bearta malartacha a mholadh don Bhord chun na baic atá sainaitheanta sa tuarascáil a leigheas.

I gcás gurb é is cúis leis na baica sainaithnítear sa tuarascáilan cás sonrach ina bhfuil grúpeintiteas dá dtagraítear sa dara fomhír d'Airteagal 17(3) den Treoir seo, molfaidh an máthairghnóthas de chuid an Aontais, tráth nach déanaí ná dhá sheachtain ó gheofar an fógra arna dhéanamh i gcomhréir leis an dara fhomhír de mhír 2 den Airteagal seo, d'údarás réitigh leibhéal an ghrúpa bearta féideartha maille le hamlíne lena gcur chun feidhme d'fhonn a áirithiú go gcloíonn an grúpeintiteas leis na ceanglais dá dtagraítear in Airteagal 45e nó Airteagal 45f den Treoir seo, arna shloinneadh mar chéatadán de mhéid iomlán na neamh-chosanta ar riosca arna ríomh i gcomhréir le hAirteagal 92(3) de Rialachán (AE) Uimh. 575/2013 agus, i gcás inarb infheidhme, i gcomhréir leis an gceanglas maoláin chomhcheangailte, agus leis na ceanglais dá dtagraítear in Airteagal 45e agus 45f den Treoir seo arna sloinneadh mar chéatadán de mhéid iomlán na neamhchosanta dá dtagraítear in Airteagal 429 agus in Airteagal 429a de Rialachán (AE) Uimh. 575/2013.

Cuirfear san áireamh san amlíne faoina gcuirfear chun feidhme na bearta arna moladh sa dara fomhír na cúiseanna atá leis an mbac substainteach. Déanfaidh an t-údarás réitigh, tar íes dul i gcomhairle leis an údarás inniúil, measúnú a dhéanamh an dtugtar aghaidh go héifeachtach, leis na bearta sin, ar an mbac substainteach nó an gcuirtear deireadh leis.

4. Cuirfidh údarás réitigh leibhéal an ghrúpa in iúl aon bheart a mhol an máthairghnóthas de chuid an Aontais don mhaoirseoir comhdh-lúthaithe, do ÚBE, d'údaráis réitigh na bhfochuideachtaí agus d'údaráis réitigh na ndlínsí ina bhfuil brainsí suntasacha suite a mhéid is ábhartha don bhrainse suntasach atá i gceist. Déanfaidh údaráis réitigh leibhéal an ghrúpa agus údaráis réitigh na bhfochuideachtaí, ar dhul i gcomhairle dóibh leis na húdaráis inniúla agus le húdaráis réitigh dlínsí ina bhfuil brainsí suntasacha suite, déanfaidh siad a bhfuil ar a gcumas chun cinneadh comhpháirteach a dhéanamh laistigh den choláiste réitigh i ndáil le baic shubstainteacha a shainaithint, agus, más gá, leis an measúnú ar bhearta arna moladh ag an máthairghnóthas de chuid an Aontais agus leis na bearta arna gceangal ag na húdaráis chun aghaidh a thabhairt ar na baic nó deireadh a chur leo, agus sa mheasúnú sin cuirfear tionchar féideartha na mbeart sna Ballstáit uile ina n-oibríonn an grúpa san áireamh.

5. Déanfar an cinneadh comhpháirteach tráth nach déanaí ná ceithre mhí ó chuirfidh an máthairghnóthas de chuid an Aontais barúlacha isteach. I gcás nár chuir an máthairghnóthas de chuid an Aontais barúlacha isteach, déanfar an cinneadh comhpháirteach tráth nach déanaí ná aon mhí amháin ó rachaidh in éag an tréimhse ceithre mhí dá dtagraítear sa chéad fhomhír de mhír 3.

Déanfar an cinneadh comhpháirteach faoin mbac ar inréititheacht de dheasca cás dá dtagraítear sa dara fomhír d'Airteagal 17 3 laistigh de dhá sheachtain ó chuir an máthairghnóthas de chuid an Aontais aon bharúlacha isteach i gcomhréir le mír 3 den Airteagal seo.

▼M3

Cuirfear an réasúnú a bhaineann leis an gcinneadh comhpháirteach i ndoiciméad a chuirfidh údarás réitigh leibhéal an ghrúpa ar fáil don mháthairghnóthas de chuid an Aontais agus leagfar an cinneadh comhpháirteach amach sa doiciméad sin.

Féadfaidh ÚBE, ar iarratas ó údarás réitigh, cuidiú leis na húdaráis réitigh cinneadh comhpháirteach a dhéanamh i gcomhréir le pointe (c) den dara mír d'Airteagal 31 de Rialachán (AE) Uimh. 1093/2010.

6. Mura ndéanfar cinneadh comhpháirteach laistigh den tréimhse ábhartha dá dtagraítear i mír 5, déanfaidh an máthairghnóthas de chuid an Aontais a chinneadh féin faoi bhearta iomchuí atá le déanamh i gcomhréir le hAirteagal 17(4) ar leibhéal an ghrúpa nó ar leibhéal an ghrúpa réitigh.

Beidh réasúnú iomlán leis an gcinneadh agus cuirfear tuairimí agus ábhair amhrais údarás réitigh eile san áireamh ann. Tabharfaidh údarás réitigh leibhéal an ghrúpa an cinneadh don mháthairghnóthais de chuid an Aontais.

Más rud é, ag deireadh na tréimhse ábhartha dá dtagraítear i mír 5 den Airteagal seo, gur chuir aon údarás réitigh ábhar atá luaite i mír 9 den Airteagal faoi bhráid ÚBE de réir Airteagal 19 de Rialachán (AE) Uimh. 1093/2010, cuirfidh údarás réitigh leibhéal an ghrúpa a chinneadh siar agus fanfaidh sé le haon chinneadh a ghlacfaidh ÚBE de réir Airteagal 19(3) den Rialachán sin maidir lena chinneadh, agus déanfaidh sé a chinneadh i gcomhréir le cinneadh ÚBE. Measfar gurb í an tréimhse ábhartha dá dtagraítear i mír 5 den Airteagal seo an tréimhse idir-réitigh de réir bhrí Rialachán (AE) uimh. 1093/2010. Déanfaidh ÚBE an cinneadh laistigh d'aon mhí amháin. Ní chuirfear an t-ábhar faoi bhráid ÚBE tar éis dheireadh na tréimhse ábhartha dá dtagraítear i mír 5 den Airteagal seo ná tar éis cinneadh comhpháirteach a dhéanamh. Mura ndéana ÚBE cinneadh, beidh feidhm ag cinneadh údarás réitigh leibhéal an ghrúpa.

6a. Mura ndéanfar cinneadh comhpháirteach laistigh den tréimhse ábhartha dá dtagraítear i mír 5 den Airteagal seo, déanfaidh údarás réitigh an eintitis ábhartha réitigh a chinneadh féin faoi bhearta iomchuí atá le déanamh i gcomhréir le hAirteagal 17(4) ar leibhéal an ghrúpa réitigh.

Beidh réasúnú iomlán leis an gcinneadh dá dtagraítear sa chéad fhomhír, agus cuirfear san áireamh inti pé tuairimí agus ábhair amhrais a bheidh ag údarás réitigh na n-eintiteas eile atá sa ghrúpa réitigh céanna agus ag údarás réitigh leibhéal an ghrúpa. Tabharfaidh an t-údarás ábhartha réitigh an cinneadh sin don eintiteas réitigh.

Más rud é, ag deireadh na tréimhse ábhartha dá dtagraítear i mír 5 den Airteagal seo, gur chuir aon údarás réitigh ábhar atá luaite i mír 9 den Airteagal faoi bhráid ÚBE de réir Airteagal 19 de Rialachán (AE) Uimh. 1093/2010, cuirfidh údarás réitigh an eintitis réitigh a chinneadh siar agus fanfaidh sé le haon chinneadh a ghlacfaidh ÚBE de réir Airteagal 19(3) den Rialachán sin maidir lena chinneadh, agus déanfaidh sé a chinneadh i gcomhréir le cinneadh ÚBE. Measfar gurb í an tréimhse ábhartha dá dtagraítear i mír 5 den Airteagal seo an tréimhse idir-réitigh de réir bhrí Rialachán (AE) Uimh. 1093/2010. Déanfaidh ÚBE an cinneadh laistigh d'aon mhí amháin. Ní chuirfear an t-ábhar faoi bhráid ÚBE tar éis dheireadh na tréimhse ábhartha dá dtagraítear i mír 5 den Airteagal seo ná tar éis cinneadh comhpháirteach a dhéanamh. Mura ndéana ÚBE cinneadh, beidh feidhm ag cinneadh údarás réitigh an eintitis réitigh

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7. Mura ndéanfar cinneadh comhpháirteach, déanfaidh údaráis réitigh fochuideachtaí nach eintitis réitigh iad a gcinntí féin faoi na bearta iomchuí atá le déanamh ag fochuideachtaí, gach ceann léi féin, i gcomhréir le hAirteagal 17(4).

Beidh réasúnú iomlán leis an gcinneadh agus cuirfear tuairimí agus ábhair amhrais na n-údarás réitigh eile san áireamh ann. Cuirfear an cinneadh in iúl don fhochuideachta lena mbaineann agus d'eintiteas réitigh an ghrúpa réitigh chéanna, d'údarás réitigh an eintitis réitigh sin agus, i gcás nach ionann iad, d'údarás réitigh leibhéal an ghrúpa.

Más rud é, ag deireadh na tréimhse ábhartha dá dtagraítear i mír 5 den Airteagal seo, gur chuir aon údarás réitigh ábhar atá luaite i mír 9 den Airteagal faoi bhráid ÚBE de réir Airteagal 19 de Rialachán (AE) Uimh. 1093/2010, cuirfidh údarás réitigh na fochuideachta a chinneadh siar agus fanfaidh sé le haon chinneadh a ghlacfaidh ÚBE de réir Airteagal 19(3) den Rialachán sin maidir lena chinneadh, agus déanfaidh sé a chinneadh i gcomhréir le cinneadh ÚBE. Measfar gurb í an tréimhse ábhartha dá dtagraítear i mír 5 den Airteagal seo an tréimhse idir-réitigh de réir bhrí Rialachán (AE) Uimh. 1093/2010. Déanfaidh an ÚBE an cinneadh laistigh d'aon mhí amháin. Ní chuirfear an t-ábhar faoi bhráid ÚBE tar éis dheireadh na tréimhse ábhartha dá dtagraítear i mír 5 den Airteagal seo ná tar éis cinneadh comhpháirteach a dhéanamh. Mura ndéana ÚBE cinneadh, beidh feidhm ag cinneadh údarás réitigh na fochuideachta.

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

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

CHAPTER III

Intra group financial support

Article 19

Group financial support agreement

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

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

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

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

(b) to operate in a Member State.

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

5. The group financial support agreement may:

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

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

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

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

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

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

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

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

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

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

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

Article 20

Review of proposed agreement by competent authorities and mediation

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

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

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

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

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

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

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

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

Article 21

Approval of proposed agreement by shareholders

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

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

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

Article 22

Transmission of the group financial support agreements to resolution authorities

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

Article 23

Conditions for group financial support

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 24

Decision to provide financial support

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

Article 25

Right of opposition of competent authorities

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

(a) its competent authority;

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

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

(d) EBA.

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

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

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

(a) the consolidating supervisor;

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

(c) EBA.

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

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

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

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

(a) the competent authority;

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

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

(d) EBA.

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

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

Article 26

Disclosure

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

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

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

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

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

TITLE III

EARLY INTERVENTION

Article 27

Early intervention measures

1. Where an institution infringes or, due, inter alia, to a rapidly deteriorating financial condition, including deteriorating liquidity situation, increasing level of leverage, non-performing loans or concentration of exposures, as assessed on the basis of a set of triggers, which may include the institution's own funds requirement plus 1,5 percentage points, is likely in the near future to infringe the requirements of Regulation (EU) No 575/2013, Directive 2013/36/EU, Title II of Directive 2014/65/EU or any of Articles 3 to 7, 14 to 17, and 24, 25 and 26 of Regulation (EU) No 600/2014, Member States shall ensure that competent authorities have at their disposal, without prejudice to the measures referred to in Article 104 of Directive 2013/36/EU where applicable, at least the following measures:

(a) require the management body of the institution to implement one or more of the arrangements or measures set out in the recovery plan or in accordance with Article 5(2) to update such a recovery plan when the circumstances that led to the early intervention are different from the assumptions set out in the initial recovery plan and implement one or more of the arrangements or measures set out in the updated plan within a specific timeframe and in order to ensure that the conditions referred to in the introductory phrase no longer apply;

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

(c) require the management body of the institution to convene, or if the management body fails to comply with that requirement convene directly, a meeting of shareholders of the institution, and in both cases set the agenda and require certain decisions to be considered for adoption by the shareholders;

(d) require one or more members of the management body or senior management to be removed or replaced if those persons are found unfit to perform their duties pursuant to Article 13 of Directive 2013/36/EU or Article 9 of Directive 2014/65/EU;

(e) require the management body of the institution to draw up a plan for negotiation on restructuring of debt with some or all of its creditors according to the recovery plan, where applicable;

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(f) require changes to the institution's business strategy;

(g) require changes to the legal or operational structures of the institution; and

(h) acquire, including through on-site inspections and provide to the resolution authority, all the 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 Article 36.

2. Member States shall ensure that the competent authorities shall notify the resolution authorities without delay upon determining that the conditions laid down in paragraph 1 have been met in relation to an institution and that the powers of the resolution authorities include the power to require the institution to contact potential purchasers in order to prepare for the resolution of the institution, subject to the conditions laid down in Article 39(2) and the confidentiality provisions laid down in Article 84.

3. For each of the measures referred to in paragraph 1, competent authorities shall set an appropriate deadline for completion, and to enable the competent authority to evaluate the effectiveness of the measure.

4. EBA shall, by 3 July 2015, issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 to promote the consistent application of the trigger for use of the measures referred to in paragraph 1 of this Article.

5. Taking into account, where appropriate, experience acquired in the application of the guidelines referred to in paragraph 4, EBA may develop draft regulatory technical standards in order to specify a minimum set of triggers for the use of the measures referred to in paragraph 1.

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

Article 28

Removal of senior management and management body

Where there is a significant deterioration in the financial situation of an institution or where there are serious infringements of law, of regulations or of the statutes of the institution, or serious administrative irregularities, and other measures taken in accordance with Article 27 are not sufficient to reverse that deterioration, Member States shall ensure that competent authorities may require the removal of the senior management or management body of the institution, in its entirety or with regard to individuals. The appointment of the new senior management or management body shall be done in accordance with national and Union law and be subject to the approval or consent of the competent authority.

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Article 29

Temporary administrator

1. Where replacement of the senior management or management body as referred to in Article 28 is deemed to be insufficient by the competent authority to remedy the situation, Member States shall ensure that competent authorities may appoint one or more temporary administrators to the institution. Competent authorities may, based on what is proportionate in the circumstances, appoint any temporary administrator either to replace the management body of the institution temporarily or to work temporarily with the management body of the institution and the competent authority shall specify its decision at the time of appointment. If the competent authority appoints a temporary administrator to work with the management body of the institution, the competent authority shall further specify at the time of such an appointment the role, duties and powers of the temporary administrator and 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. The competent authority shall be required to make public the appointment of any temporary administrator except where the temporary administrator does not have the power to represent the institution. Member States shall further ensure that any temporary administrator has the qualifications, ability and knowledge required to carry out his or her functions and is free of any conflict of interests.

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

3. The role and functions of the temporary administrator shall be specified by competent authority at the time of appointment and may include ascertaining the financial position of the institution, managing the business or part of the business of the institution with a view to preserving or restoring the financial position of the institution and taking measures to restore the sound and prudent management of the business of the institution. The competent authority shall specify any limits on the role and functions of the temporary administrator at the time of appointment.

4. Member States shall ensure that the competent authorities have the exclusive power to appoint and remove any temporary administrator. The competent authority may remove a temporary administrator at any time and for any reason. The competent authority may vary the terms of appointment of a temporary administrator at any time subject to this Article.

5. The competent authority may require that certain acts of a temporary administrator be subject to the prior consent of the competent authority. The competent authority shall specify any such requirements at the time of appointment of a temporary administrator or at the time of any variation of the terms of appointment of a temporary administrator.

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

6. The competent authority may require that a temporary administrator draws up reports on the financial position of the institution and on the acts performed in the course of its appointment, at intervals set by the competent authority and at the end of his or her mandate.

7. The appointment of a temporary administrator shall not last more than one year. That period may be exceptionally renewed if the conditions for appointing the temporary administrator continue to be met. The competent authority shall be responsible for determining whether conditions are appropriate to maintain a temporary administrator and justifying any such decision to shareholders.

8. Subject to this Article the appointment of a temporary administrator shall not prejudice the rights of the shareholders in accordance with Union or national company law.

9. Member States may limit the liability of any temporary administrator in accordance with national law for acts and omissions in the discharge of his or her duties as temporary administrator in accordance with paragraph 3.

10. A temporary administrator appointed pursuant to this Article shall not be deemed to be a shadow director or a de facto director under national law.

Article 30

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

1. Where the conditions for the imposition of requirements under Article 27 or the appointment of a temporary administrator in accordance with Article 29 are met in relation to a Union parent undertaking, the consolidating supervisor shall notify EBA and consult the other competent authorities within the supervisory college.

2. Following that notification and consultation the consolidating supervisor shall decide whether to apply any of the measures in Article 27 or appoint a temporary administrator under Article 29 in respect of the relevant Union parent undertaking, taking into account the impact of those measures on the group entities in other Member States. The consolidating supervisor shall notify the decision to the other competent authorities within the supervisory college and EBA.

3. Where the conditions for the imposition of requirements under Article 27 or the appointment of a temporary administrator under Article 29 are met in relation to a subsidiary of an Union parent undertaking, the competent authority responsible for the supervision on an individual basis that intends to take a measure in accordance with those Articles shall notify EBA and consult the consolidating supervisor.

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On receiving the notification the consolidating supervisor may assess the likely impact of the imposition of requirements under Article 27 or the appointment of a temporary administrator in accordance with Article 29 to the institution in question, on the group or on group entities in other Member States. It shall communicate that assessment to the competent authority within three days.

Following that notification and consultation the competent authority shall decide whether to apply any of the measures in Article 27 or appoint a temporary administrator under Article 29. The decision shall give due consideration to any assessment of the consolidating supervisor. The competent authority shall notify the decision to the consolidating supervisor and other competent authorities within the supervisory college and EBA.

4. Where more than one competent authority intends to appoint a temporary administrator or apply any of the measures in Article 27 to more than one institution in the same group, the consolidating supervisor and the other relevant competent authorities shall consider whether it is more appropriate to appoint the same temporary administrator for all the entities concerned or to coordinate the application of any measures in Article 27 to more than one institution in order to facilitate solutions restoring the financial position of the institution concerned. The assessment shall take the form of a joint decision of the consolidating supervisor and the other relevant competent authorities. The joint decision shall be reached within five days from the date of the notification referred to in paragraph 1. The joint decision shall be reasoned and set out in a document, which shall be provided by the consolidating supervisor to the Union parent undertaking.

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

In the absence of a joint decision within five days the consolidating supervisor and the competent authorities of subsidiaries may take individual decisions on the appointment of a temporary administrator to the institutions for which they have responsibility and on the application of any of the measures in Article 27.

5. Where a competent authority concerned does not agree with the decision notified in accordance with paragraph 1 or 3, or in the absence of a joint decision under paragraph 4, the competent authority may refer the matter to EBA in accordance with paragraph 6.

6. EBA may at the request of any competent authority assist the competent authorities that intend to apply one or more of the measures in point (a) of Article 27(1) of this Directive with respect to the points (4), (10), (11) and (19) of Section A of the Annex to this Directive, in point (e) of Article 27(1) of this Directive or in point (g) of Article 27(1) of this Directive in reaching an agreement in accordance with Article 19(3) of Regulation (EU) No 1093/2010.

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7. The decision of each competent authority shall be reasoned. The decision shall take into account the views and reservations of the other competent authorities expressed during the consultation period referred to in paragraph 1 or 3 or the five-day period referred to in paragraph 4 as well as the potential impact of the decision on financial stability in the Member States concerned. The decisions shall be provided by the consolidating supervisor to the Union parent undertaking and to the subsidiaries by the respective competent authorities.

In the cases referred to in paragraph 6 of this Article, where, before the end of the consultation period referred to in paragraphs 1 and 3 of this Article or at the end of the five-day period referred to in paragraph 4 of this Article, any of the competent authorities concerned has referred the matter to EBA in accordance with Article 19(3) of Regulation (EU) No 1093/2010, the consolidating supervisor and the other competent authorities shall defer their decisions and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take their decision in accordance with the decision of EBA. The five-day period shall be deemed to be the conciliation period within the meaning of that Regulation. EBA shall take its decision within three days. The matter shall not be referred to EBA after the end of the five-day period or after a joint decision has been reached.

8. In the absence of a decision by EBA within three days, individual decisions taken in accordance with paragraph 1 or 3, or the third subparagraph of paragraph 4, shall apply.

TITLE IV

RESOLUTION

CHAPTER I

Objectives, conditions and general principles

Article 31

Resolution objectives

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

2. The resolution objectives referred to in paragraph 1 are:

(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;

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(e) to protect client funds and client assets.

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

3. Subject to different provisions of this Directive, the resolution objectives are of equal significance, and resolution authorities shall balance them as appropriate to the nature and circumstances of each case.

Article 32

Conditions for resolution

1. Member States shall ensure that resolution authorities shall take a resolution action in relation to an institution referred to in point (a) of Article 1(1) only if the resolution authority considers 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, after consulting the resolution authority or,; subject to the conditions laid down in paragraph 2, by the resolution authority after consulting the competent authority;

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(b) ag féachaint d'uainiú agus d'imthosca ábhartha eile, níl aon ionchas réasúnta ann go gcuirfeadh aon bhearta malartacha ón earnáil phríobháideach lena n-áirítear bearta ó IPS nó aon ghníomhaíocht mhaoirseachta, lena n-áirítear bearta luath-idirghabhála nó díluachála nó comhshó ionstraimí caipitil ábhartha agus dliteanas incháilithe i gcomhréir le hAirteagal 59(2), a dhéanfaí i ndáil leis an institiúid, cosc ar chliseadh na hinstitiúide laistigh de thréimhse réasúnta;

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(c) a resolution action is necessary in the public interest pursuant to paragraph 5.

2. Member States may provide that, in addition to the competent authority, the determination that the institution is failing or likely to fail under point (a) of paragraph 1 can be made by the resolution authority, after consulting the competent authority, where resolution authorities under national law have the necessary tools for making such a determination including, in particular, adequate access to the relevant information. The competent authority shall provide the resolution authority with any relevant information that the latter requests in order to perform its assessment without delay.

3. The previous adoption of an early intervention measure according to Article 27 is not a condition for taking a resolution action.

▼B

4. For the purposes of point (a) of paragraph 1, an institution shall be deemed to be failing or likely to fail in one or more of the following circumstances:

(a) the institution infringes or there are objective elements to support a determination that the institution will, in the near future, infringe the requirements for continuing authorisation in a way that would justify the withdrawal of the authorisation by the competent authority including but not limited to because the institution has incurred or is likely to incur losses that will deplete all or a significant amount of its own funds;

(b) the assets of the institution are or there are objective elements to support a determination that the assets of the institution will, in the near future, be less than 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 except when, in order to remedy a serious disturbance in the economy of a Member State and preserve financial stability, the extraordinary public financial support takes any of the following forms:

(i) a State guarantee to back liquidity facilities provided by central banks according to the central banks' conditions;

(ii) a State guarantee of newly issued liabilities; or

(iii) an injection of own funds or purchase of capital instruments at prices and on terms that do not confer an advantage upon the institution, where neither the circumstances referred to in point (a), (b) or (c) of this paragraph nor the circumstances referred to in Article 59(3) are present at the time the public support is granted.

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

Support measures under point (d)(iii) of the first subparagraph 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, EBA or national authorities, where applicable, confirmed by the competent authority.

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EBA shall, by 3 January 2015, issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 on the type of tests, reviews or exercises referred to above which may lead to such support.

By 31 December 2015, the Commission shall review whether there is a continuing need for allowing the support measures under point (d)(iii) of the first subparagraph and the conditions that need to be met in the case of continuation and report thereon to the European Parliament and to the Council. If appropriate, that report shall be accompanied by a legislative proposal.

5. For the purposes of point (c) of paragraph 1 of this Article, a resolution action shall be treated as in the public interest if it is necessary for the achievement of and is proportionate to one or more of the resolution objectives referred to in Article 31 and winding up of the institution under normal insolvency proceedings would not meet those resolution objectives to the same extent.

6. EBA shall, by 3 July 2015, issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 to promote the convergence of supervisory and resolution practices regarding the interpretation of the different circumstances when an institution shall be considered to be failing or likely to fail.

▼M3

Airteagal 32a

Coinníollacha réitigh maidir le comhlacht lárnach agus institiúidí creidmheasa atá buanchleamhnaithe le comhlacht lárnach

Áiritheoidh na Ballstáit go bhféadfaidh na húdaráis réitigh gníomhaíocht réitigh a ghlacadh i dtaca le comhlacht lárnach agus i dtaca le gach institiúid creidmheasa bhuanchleamhnaithe de chuid an ghrúpa réitigh chéanna i gcás ina gcomhlíonann an grúpa sin ina iomláine na coinníollacha arna mbunú in Airteagal 32(1).

Airteagal 32b

Imeachtaí dócmhainneachta i leith institiúidí agus eintitis nach bhfuil faoi réir gníomhaíocht réitigh

I dtaca le hinstitiúid nó eintiteas dá dtagraítear i bpointí (b), (c) nó (d) d'Airteagal 1(1) a measann an t-údarás réitigh go sásaíonn siad na coinníollacha atá i bpointí (a) agus (b) d'Airteagal 32(1), ach nach chun leas an phobail gníomhaíocht a bheadh gníomhaíocht réitigh i gcomhréir le pointe (c) d'Airteagal 32(1), áiritheoidh na Ballstáit go ndéanfar iad a fhoirceannadh go hordúil i gcomhréir leis an dlí náisiúnta is infheidhme.

▼B

Article 33

Conditions for resolution with regard to financial institutions and holding companies

1. Member States shall ensure that resolution authorities may take a resolution action in relation to a financial institution referred to in point (b) of Article 1(1), when the conditions laid down in Article 32(1), are met with regard to both the financial institution and with regard to the parent undertaking subject to consolidated supervision.

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2. Áiritheoidh na Ballstáit go ndéanfaidh na húdaráis réitigh gníomhaíocht réitigh i ndáil le heintiteas dá dtagraítear i bpointe (c) nó pointe (d) d'Airteagal 1(1), má chomhlíonann an t-eintiteas sin na coinníollacha a leagtar síos in Airteagal 32(1).

3. Má bhíonn fo-institiúidí cuideachta sealbhaíochta gníomhaíochtaí measctha i seilbh, go díreach nó go hindíreach, ag cuideachta sealbhaíochta airgeadais idirmheánach, forálfar sa phlean réitigh go sainaithneofar an chuideachta sealbhaíochta airgeadais mar eintiteas réitigh agus áiritheoidh na Ballstáit go ndéanfar gníomhaíochtaí réitigh chun críocha réitigh grúpa i ndáil leis an gcuideachta sealbhaíochta airgeadais idirmheánach. Áiritheoidh na Ballstát nach ndéanfaidh na húdaráis réitigh gníomhaíochtaí réitigh chun críocha réitigh grúpa i ndáil leis an gcuideachta sealbhaíochta gníomhaíochtaí measctha.

4. Faoi réir mhír 3 den Airteagal seo, fiú i gcás nach gcomhlíonann eintiteas dá dtagraítear i bpointe (c) nó pointe (d) d'Airteagal 1(1) na coinníollacha a leagtar síos in Airteagal 32(1), féadfaidh na húdaráis réitigh gníomhaíocht réitigh a dhéanamh i ndáil le heintiteas dá dtagraítear i bpointe (c) nó pointe (d) d'Airteagal 1(1), má chomhlíontar na coinníollacha seo a leanas go léir:

(a) is eintiteas réitigh é an t-eintiteas;

(b) comhlíonann ceann amháin nó níos mó d'fhochuideachtaí an eintitis sin ar institiúidí iad, ach nach eintitis réitigh iad, na coinníollacha a leagtar síos in Airteagal 32(1);

(c) tá an oiread sin sócmhainní agus dliteanas ag na fochuideachtaí dá dtagraítear i bpointe (b) go gcuirfeadh cliseadh na bhfochuideachtaí sin an grúpa réitigh i mbaol ar an iomlán agus is gá gníomhaíocht réitigh a dhéanamh i ndáil leis an eintiteas chun go réiteofar na fochuideachtaí sin ar institiúidí iad nó chun go réiteofar an grúpa réitigh ábhartha ar an iomlán.

Airteagal 33a

An chumhacht oibleagáidí áirithe a chur ar fionraí

1. Áiritheoidh na Ballstáit go mbeidh de chumhacht ag na húdaráis réitigh, ar dhul i gcomhairle do na húdaráis sin leis na húdaráis inniúla, a fhreagróidh ar bhonn tráthúil, aon oibleagáidí íocaíochta nó seachadta a fhionraí, de bhun aon chonartha inar páirtí an institiúid nó an-t-eintiteas dá dtagraítear i bpointí (b), (c) nó (d) d'Airteagal 1(1), i gcás ina sásaítear na coinníollacha uile seo a leanas:

(a) táthar tar éis cinneadh a dhéanamh, faoi phointe (a) d'Airteagal 32(1), go bhfuil ag cliseadh ar an institiúid nó eintiteas nó ar dóigh dóibh cliseadh;

(b) níl fáil láithreach ar aon bheart de chuid na hearnála príobháidí dá dtagraítear i bpointe (b) d'Airteagal 32(1) a choiscfeadh loiceadh na hinstitiúide nó an eintitis;

(c) meastar gur gá an chumhacht fionraíochta a fheidhmiú d'fhonn nach rachaidh dálaí airgeadais na hinstitiúide nó an eintitis chun donachta a thuilleadh; agus

▼M3

(d) tá feidhmiú na cumhachta fionraí:

(i) riachtanach chun gur féidir teacht ar an gcinneadh dá bhforáiltear i bpointe (c) d'Airteagal 32(1); nó

(ii) riachtanach chun gur féidir gníomhaíochtaí réitigh iomchuí a roghnú nó chun gur féidir ceann amháin nó níos mó de na hionstraimí réitigh a chur chun feidhme go héifeachtúil.

2. Ní bheidh feidhm ag an gcumhacht dá dtagraítear i mír 1 den Airteagal seo i leith oibleagáidí íocaíochta nó seachadtaite maidir leo seo a leanas:

(a) córais gona n-oibreoirí arna n-ainmniú i gcomhréir le Treoir 98/26/CE;

(b) contrapháirtithe lárnacha arna n-údarú san Aontas de bhun Airteagal 14 de Rialachán (AE) Uimh. 648/2012 agus contrapháirtithe lárnacha de chuid tríú tír arna n-aithint ag ESMA de bhun Airteagal 25 den Rialachán sin;

(c) bainc ceannais.

Déanfaidh na húdaráis réitigh raon na cumhachta dá dtagraítear i mír 1 den Airteagal seo a shocrú de réir cúinsí gach aon chás. Go sonrach, déanfaidh na húdaráis réitigh measúnú cúramach ar a iomchuí atá sé an fionraí a shíneadh chun go gcuimseofar faoi taiscí is incháilithe de réir an tsainmhínithe atá i bpointe (4) d'Airteagal 2(1) de Threoir 2014/49/AE, go mór mór chun go gcuimseofar faoi taiscí faoi chumhdach de chuid daoine nádúrtha, micrifhiontar, agus fiontar beag agus meánmhéide.

3. Féadfaidh na Ballstáit a fhoráil go ndéanfaidh na húdaráis réitigh a áirithiú, i gcás ina bhfeidhmítear an chumhacht fionraíochta i leith taiscí is incháilithe, go mbeidh rochtain ag taisceoirí ar shuim iomchuí as na taiscí sin gach lá.

4. Beidh an tréimhse fionraíochta a ghearrfar de bhun mhír 1 chomh gearr agus is féidir agus ní sháróidh sí an íostréimhse is gá, dar leis an údarás réitigh, chun na gcríoch a shonraítear i bpointe (c) agus (d) de mhír 1, ná ní mhairfidh sí, i ngach cás, níos faide ná an tréimhse ó fhoilsiú an fhógra fionraíochta de bhun mhír 8 go huair an mheán oíche sa Bhallstát ina bhfuil údarás réitigh na hinstitiúide nó an eintitis ar an gcéad lá gnó eile ó foilsíodh an fógra.

Ach a dté in éag an tréimhse fionraíochta dá dtagraítear sa chéad fhomhír, scoirfidh an fhionraíocht d'éifeacht a bheith aici.

5. Agus cumhachtaí á bhfeidhmiú acu dá dtagraítear i mír 1 den Airteagal seo, beidh aird ag na húdaráis réitigh ar an iarmhairt a d'fhágfadh feidhmiú na cumhachta sin ar fheidhmiú ordúil na margaí airgeadais agus tabharfaidh siad dá n-aire na rialacha reatha náisiúnta, agus na cumhachtaí maoirseachta agus breithiúnacha, chun go gcosnófar cearta na gcreidiúnaithe agus go dtabharfar an chóir chéanna dóibh sna gnáthimeachtaí dócmhainneachta. Beidh aird ag na húdaráis réitigh, go háirithe, ar an bhféidearthacht imeachtaí náisiúnta dócmhainneachta a chur i bhfeidhm ar an institiúid nó ar an eintiteas i ngeall ar an gcinneadh atá i bpointe (c) d'Airteagal 32(1) agus déanfaidh siad pé socruithe a mheasann siad is iomchuí leis chun comhordú leordhóthanach a áirithiú leis na húdaráis náisiúnta riaracháin nó bhreithiúnacha.

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6. Nuair a chuirfear ar fionraí oibleagáidí íocaíochta nó seachadta faoi chonradh de bhun mhír 1, cuirfear oibleagáidí íocaíochta nó seachadta chontrapháirtithe an chonartha sin ar fionraí le linn na tréimhse céanna.

7. Oibleagáid íocaíochta nó seachadta a bheadh dlite le linn na tréimhse fionraíochta, beidh sí dlite láithreach ach a dté an tréimhse sin in éag.

8. Áiritheoidh na Ballstáit go gcuirfidh na húdaráis réitigh scéala chuig an institiúid nó chuig an eintiteas dá dtagraítear i bpointe (b), (c) nó (d) d'Airteagal 1(1) agus chuig na húdaráis dá dtagraítear i bpointí (a) go (h) d'Airteagal 83(2) gan mhoill tráth a mbeidh a gcumhacht fionraíochta dá dtagraítear i mír 1 den Airteagal seo á feidhmiú acu i dtaca le hoibleagáidí áirithe ón uair a chinnfear go bhfuil an institiúid ag cliseadh nó ar dóigh di cliseadh de bhun phointe (a) d'Airteagal 32(1)(a) agus sula nglacfar an cinneadh réitigh.

Foilseoidh an t-údarás réitigh féin, nó áiritheoidh sé go gcuirfear á foilsiú, an t-ordú nó an ionstraim lenar cuireadh ar fionraí na hoibleagáidí faoin Airteagal seo, mar aon le téarmaí agus tréimhse na fionraíochta, ar an dóigh dá dtagraítear in Airteagal 83(4).

9. Tá an tAirteagal seo gan dochar do na forálacha atá i ndlí náisiúnta na mBallstát lena dtugtar de chumhacht oibleagáidí íocaíochta nó seachadta a chur ar fionraí sula ndéantar cinneadh gur institiúidí nó eintitis atá ag cliseadh na hinstitiúidí nó na heintitis sin nó gur dóigh dóibh cliseadh faoi phointe (a) d'Airteagal 32(1) nó sula ndéantar cinneadh oibleagáidí íocaíochta nó seachadta institiúidí nó eintitis atá le foirceannadh de réir gnáthimeachtaí dócmhainneachta a fhionraí,agus a théann thar an raon feidhme agus an ré dá bhforáiltear sa nAirteagal seo. Déanfar na cumhachtaí sin a fheidhmiú i gcomhréir leis an raon fheidhme, an ré agus na coinníollacha dá bhforáiltear sna dlithe náisiúnta ábhartha. Na coinníollacha dá bhforáiltear san airteagal seo, ní dochar iad do na coinníollacha a bhaineann leis na cumhachtaí íocaíochta nó oibleagáidí seachadta a chur ar fionraí,

10. Áiritheoidh na Ballstáit gurb amhlaidh, nuair a fheidhmíonn údarás réitigh cumhacht fionraíochta i leith oibleagáidí íocaíochta nó seachadta i dtaca le hinstitiúid nó le heintiteas dá dtagraítear i bpointe (b), (c) nó (d) d'Airteagal 1(1) de bhun mhír 1 den Airteagal seo, go bhfuil an t-údarás réitigh in ann, le linn ré na fionraíochta sin, an chumhacht a fheidhmiú freisin, le linn ré na fionraíochta sin:

(a) chun creidiúnaithe urraithe na hinstitiúide nó an eintitis a theorannú i dtaca le leasanna urrúis a fhorfheidhmiú i dtaca le haon cheann de shócmhainní na hinstitiúide nó an eintitis sin, ar feadh na tréimhse céanna, agus sa chás sin beidh feidhm ag Airteagal 70(2)(3) agus (4)s; agus

(b) chun cearta chun foirceanta aon pháirtí a bhfuil conradh aige leis an institiúid nó an eintiteas sin a chur a fhionraí, ar feadh na tréimhse céanna, agus sa chás sin beidh feidhm ag Airteagal 71(2 go (8).

11. Agus cinneadh déanta ag an údarás réitigh go bhfuil institiúid nó eintiteas ag cliseadh nó ar dóigh dóibh cliseadh de bhun phointe (a) d'Airteagal 32(1), má tharlaíonn sé go bhfuil an t-údarás réitigh tar éis an chumhacht a fheidhmiú i leith oibleagáidí íocaíochta nó seachadta fhionraí sna cúinsí a leagtar amach i mír 1 nó 10 den Airteagal seo, agus má ghlactar gníomhaíocht réitigh dá éis sin i leith na hinstitiúide nó an eintitis sin, ní fheidhmeoidh an t-údarás réitigh a chuid cumhachtaí faoi Airteagal 69(1), Airteagal 70(1) nó Airteagal 71(1) i leith na hinstitiúide nó an eintitis sin.

▼B

Article 34

General principles governing resolution

1. Member States shall ensure that, when applying the resolution tools and exercising the resolution powers, resolution authorities take all appropriate measures to ensure that the resolution action is taken in accordance with the following principles:

(a) the shareholders of the institution under resolution bear first losses;

(b) creditors of the institution under resolution bear losses after the shareholders in accordance with the order of priority of their claims under normal insolvency proceedings, save as expressly provided otherwise in this Directive;

(c) management body and senior management of the institution under resolution are replaced, except in those cases when the retention of the management body and senior management, in whole or in part, as appropriate to the circumstances, is considered to be necessary for the achievement of the resolution objectives;

(d) management body and senior management of the institution under resolution shall provide all necessary assistance for the achievement of the resolution objectives;

(e) natural and legal persons are made liable, subject to Member State law, under civil or criminal law for their responsibility for the failure of the institution;

(f) except where otherwise provided in this Directive, 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 point (b), (c) or (d) of Article 1(1) had been wound up under normal insolvency proceedings in accordance with the safeguards in Articles 73 to 75;

(h) covered deposits are fully protected; and

(i) resolution action is taken in accordance with the safeguards in this Directive.

2. Where an institution is a group entity resolution authorities shall, without prejudice to Article 31, 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, Member States shall ensure that they comply with the Union State aid framework, where applicable.

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4. Where the sale of business tool, the bridge institution tool or the asset separation tool is applied to an institution or entity referred to in point (b), (c) or (d) of Article 1(1), that institution or entity shall be considered to be the subject of bankruptcy proceedings or analogous insolvency proceedings for the purposes of Article 5(1) of Council Directive 2001/23/EC ([1]).

5. When applying the resolution tools and exercising the resolution powers, resolution authorities shall inform and consult employee representatives where appropriate.

6. Resolution authorities shall apply resolution tools and exercise resolution powers without prejudice to provisions on the representation of employees in management bodies as provided for in national law or practice.

CHAPTER II

Special management

Article 35

Special management

1. Member States shall ensure that resolution authorities may appoint a special manager to replace the management body of the institution under resolution. Resolution authorities shall make public the appointment of a special manager. Member States shall further ensure that the special manager has the qualifications, ability and knowledge required to carry out his or her functions.

2. The special manager shall have all the powers of the shareholders and the management body of the institution. However, the special manager may only exercise such powers under the control of the resolution authority.

3. The special manager shall have the statutory duty to take all the measures necessary to promote the resolution objectives referred to in Article 31 and implement resolution actions according to the decision of the resolution authority. Where necessary, that duty shall override any other duty of management in accordance with the statutes of the institution or national law, insofar as they are inconsistent. Those measures may include an increase of capital, reorganisation of the ownership structure of the institution or takeovers by institutions that are financially and organisationally sound in accordance with the resolution tools referred to in Chapter IV.

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

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

([1]) Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ L 82 22.3.2001, p. 16).

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6. A special manager shall not be appointed for more than one year. That period may be renewed, on an exceptional basis, if the resolution authority determines that the conditions for appointment of a special manager continue to be met.

7. Where more than one resolution authority intends to appoint a special manager in relation to an entity affiliated to a group, they shall consider whether it is more appropriate to appoint the same special manager for all the entities concerned in order to facilitate solutions redressing the financial soundness of the entities concerned.

8. In the event of insolvency, where national law provides for the appointment of insolvency management, such management may constitute special management as referred to in this Article.

CHAPTER III

Valuation

Article 36

Valuation for the purposes of resolution

1. Before taking resolution action or exercising the power to write down or convert relevant ►**M3** ionstraimí capitil agus dliteanais incháilithe i gcomhréir le hAirteagal 59 ◄ resolution authorities shall ensure that a fair, prudent and realistic valuation of the assets and liabilities of the institution or entity referred to in point (b), (c) or (d) of Article 1(1) is carried out by a person independent from any public authority, including the resolution authority, and the institution or entity referred to in point (b), (c) or (d) of Article 1(1). Subject to paragraph 13 of this Article and to Article 85, where all the requirements laid down in this Article are met, the valuation shall be considered to be definitive.

2. Where an independent valuation according to paragraph 1 is not possible, resolution authorities may carry out a provisional valuation of the assets and liabilities of the institution or entity referred to in point (b), (c) or (d) of Article 1(1), in accordance with paragraph 9 of this Article.

3. The objective of the valuation shall be to assess the value of the assets and liabilities of the institution or entity referred to in point (b), (c) or (d) of Article 1(1) that meets the conditions for resolution of Articles 32 and 33.

4. The purposes of the valuation shall be:

(a) to inform the determination of whether the conditions for resolution or the conditions for the write down or conversion of ►**M3** ionstraimí capitil agus dliteanais incháilithe i gcomhréir le hAirteagal 59 ◄ are met;

(b) if the conditions for resolution are met, to inform the decision on the appropriate resolution action to be taken in respect of the institution or entity referred to in point (b), (c) or (d) of Article 1(1);

(c) when the power to write down or convert relevant ►**M3** ionstraimí capitil agus dliteanais incháilithe i gcomhréir le hAirteagal 59 ◄ 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 ►**M3** ionstraimí capitil agus dliteanais incháilithe i gcomhréir le hAirteagal 59 ◄;

▼B

(d) when the bail-in tool is applied, to inform the decision on the extent of the write down or conversion of ►M3 dliteanais in-fhortharrthála ◄;

(e) when the bridge institution tool or asset separation tool is applied, to inform the decision on the assets, rights, liabilities or shares or other instruments of ownership to be transferred and the decision on the value of any consideration to be paid to the institution under resolution or, as the case may be, to the owners of the shares or other instruments of ownership;

(f) when the sale of business tool is applied, to inform the decision on the assets, rights, liabilities or shares or other instruments of ownership to be transferred and to inform the resolution authority's understanding of what constitutes commercial terms for the purposes of Article 38;

(g) in all cases, to ensure that any losses on the assets of the institution or entity referred to in point (b), (c) or (d) of Article 1(1) are fully recognised at the moment the resolution tools are applied or the power to write down or convert relevant ►M3 ionstraimí capitil agus dliteanais incháilithe i gcomhréir le hAirteagal 59 ◄ is exercised.

5. Without prejudice to the Union State aid framework, where applicable, the valuation shall be based on prudent assumptions, including as to rates of default and severity of losses. The valuation shall not assume any potential future provision of extraordinary public financial support or central bank emergency liquidity assistance or any central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms to the institution or entity referred to in point (b), (c) or (d) of Article 1(1) from the point at which resolution action is taken or the power to write down or convert relevant ►M3 ionstraimí capitil agus dliteanais incháilithe i gcomhréir le hAirteagal 59 ◄ is exercised. Furthermore, the valuation shall take account of the fact that, if any resolution tool is applied:

(a) the resolution authority and any financing arrangement acting pursuant to Article 101 may recover any reasonable expenses properly incurred from the institution under resolution, in accordance with Article 37(7);

(b) the resolution financing arrangement may charge interest or fees in respect of any loans or guarantees provided to the institution under resolution, in accordance with Article 101.

6. 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 point (b), (c) or (d) of Article 1(1):

(a) an updated balance sheet and a report on the financial position of the institution or entity referred to in point (b), (c) or (d) of Article 1(1);

(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 point (b), (c) or (d) of Article 1(1), with an indication of the respective credits and priority levels under the applicable insolvency law.

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7. Where appropriate, to inform the decisions referred to in points (e) and (f) of paragraph 4, the information in point (b) of paragraph 6 may be complemented by an analysis and estimate of the value of the assets and liabilities of the institution or entity referred to in point (b), (c) or (d) of Article 1(1) on a market value basis.

8. The valuation shall indicate the subdivision of the creditors in classes in accordance with their priority levels under the applicable insolvency law and an estimate of the treatment that each class of shareholders and creditors would have been expected to receive, if the institution or entity referred to in point (b), (c) or (d) of Article 1(1) were wound up under normal insolvency proceedings.

That estimate shall not affect the application of the 'no creditor worse off' principle to be carried out under Article 74.

9. Where due to the urgency in the circumstances of the case it is not possible to comply with the requirements in paragraphs 6 and 8 or paragraph 2 applies, a provisional valuation shall be carried out. The provisional valuation shall comply with the requirements in paragraph 3 and in so far as reasonably practicable in the circumstances with the requirements of paragraphs 1, 6 and 8.

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

10. A valuation that does not comply with all the requirements laid down in this Article shall be considered to be provisional until an independent person has carried out a valuation that is fully compliant with all the requirements laid down in this Article. That *ex-post* definitive valuation shall be carried out as soon as practicable. It may be carried out either separately from the valuation referred to in Article 74, or simultaneously with and by the same independent person as that valuation, but shall be distinct from it.

The purposes of the *ex-post* definitive valuation shall be:

(a) to ensure that any losses on the assets of the institution or entity referred to in point (b), (c) or (d) of Article 1(1) are fully recognised in the books of accounts of the institution or entity referred to in point (b), (c) or (d) of Article 1(1);

(b) to inform a decision to write back creditors' claims or to increase the value of the consideration paid, in accordance with paragraph 11.

11. In the event that the *ex-post* definitive valuation's estimate of the net asset value of the institution or entity referred to in point (b), (c) or (d) of Article 1(1) is higher than the provisional valuation's estimate of the net asset value of the institution or entity referred to in point (b), (c) or (d) of Article 1(1), the resolution authority may:

(a) exercise its power to increase the value of the claims of creditors or owners of relevant capital instruments which have been written down under the bail-in tool;

(b) instruct a bridge institution or asset management vehicle to make a further payment of consideration in respect of the assets, rights, liabilities to the 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.

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12. Notwithstanding paragraph 1, a provisional valuation conducted in accordance with paragraphs 9 and 10 shall be a valid basis for resolution authorities take resolution actions, including taking control of a failing institution or entity referred to in point (b), (c) or (d) of Article 1(1), or to exercise the write down or conversion power of ►M3 ionstraimí capitil agus dliteanais incháilithe i gcomhréir le hAirteagal 59 ◄.

13. The valuation shall be an integral part of the decision to apply a resolution tool or exercise a resolution power, or the decision to exercise the write down or conversion power of ►M3 ionstraimí capitil agus dliteanais incháilithe i gcomhréir le hAirteagal 59 ◄. The valuation itself shall not be subject to a separate right of appeal but may be subject to an appeal together with the decision in accordance with Article 85.

14. EBA shall develop draft regulatory technical standards to specify the circumstances in which a person is independent from both the resolution authority and the institution or entity referred to in point (b), (c) or (d) of Article 1(1) for the purposes of paragraph 1of this Article, and for the purposes of Article 74.

15. EBA may develop draft regulatory technical standards to specify the following criteria for the purposes of paragraphs 1, 3 and 9 of this Article, and for the purposes of Article 74:

(a) the methodology for assessing the value of the assets and liabilities of the institution or entity referred to in point (b), (c) or (d) of Article 1(1);

(b) the separation of the valuations under Articles 36 and 74;

(c) the methodology for calculating and including a buffer for additional losses in the provisional valuation.

16. EBA shall submit the draft regulatory technical standards referred to in paragraph 14 to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in paragraphs 14 and 15 in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

CHAPTER IV

Resolution tools

Section 1

General principles

Article 37

General principles of resolution tools

1. Member States shall ensure that resolution authorities have the necessary powers to apply the resolution tools to institutions and to entities referred to in point (b), (c) or (d) of Article 1(1) that meet the applicable conditions for resolution.

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2. Where a resolution authority decides to apply a resolution tool to an institution or entity referred to in point (b), (c) or (d) of Article 1(1), and that resolution action would result in losses being borne by creditors or their claims being converted, the resolution authority shall exercise the power to write down and convert ►M3 ionstraimí capitil agus dliteanais incháilithe i gcomhréir le hAirteagal 59 ◄ in accordance with Article 59 immediately before or together with the application of the resolution tool.

3. 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.

4. Subject to paragraph 5, resolution authorities may apply the resolution tools individually or in any combination.

5. Resolution authorities may apply the asset separation tool only together with another resolution tool.

6. Where only the resolution tools referred to in point (a) or (b) of paragraph 3 of this Article 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 point (b), (c) or (d) of Article 1(1) from which the assets, rights or liabilities have been transferred, shall be wound up under normal insolvency proceedings. Such winding up shall be done within a reasonable timeframe, having regard to any need for that institution or entity referred to in point (b), (c) or (d) of Article 1(1) to provide services or support pursuant to Article 65 in order to enable the recipient to carry out the activities or services acquired by virtue of that transfer, and any other reason that the continuation of the residual institution or entity referred to in point (b), (c) or (d) of Article 1(1) is necessary to achieve the resolution objectives or comply with the principles referred to in Article 34.

7. The resolution authority and any financing arrangement acting pursuant to Article 101 may recover any reasonable expenses properly incurred in connection with the use of the resolution tools or powers or government financial stabilisation tools 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;

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(b) from the institution under resolution, as a preferred creditor; or

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

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

9. Member States may confer upon resolution authorities additional tools and powers exercisable where an institution or entity referred to in point (b), (c) or (d) of Article 1(1) meets the conditions for resolution, provided that:

(a) when applied to a cross-border group, those additional powers do not pose obstacles to effective group resolution; and

(b) they are consistent with the resolution objectives and the general principles governing resolution referred to in Articles 31 and 34.

10. In the very extraordinary situation of a systemic crisis, the resolution authority may seek funding from alternative financing sources through the use of government stabilisation tools provided for in Articles 56 to 58 when the following conditions are met:

(a) a contribution to loss absorption and recapitalisation equal to an amount not less than 8 % of total liabilities including own funds of the institution under resolution, measured at the time of resolution action in accordance with the valuation provided for in Article 36, has been made by the shareholders and the holders of other instruments of ownership, the holders of relevant capital instruments and other ►M3 dliteanais in-fhortharrthála ◄ through write down, conversion or otherwise;

(b) it shall be conditional on prior and final approval under the Union State aid framework.

Section 2

The sale of business tool

Article 38

The sale of business tool

1. Member States shall ensure that resolution authorities have the power to transfer to a purchaser that is not a bridge institution:

(a) shares or other instruments of ownership issued by an institution under resolution;

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

Subject to paragraphs 8 and 9 of this Article and to Article 85, the transfer referred to in the first subparagraph shall take place without obtaining the consent of the shareholders of the institution under resolution or any third party other than the purchaser, and without complying with any procedural requirements under company or securities law other than those included in Article 39.

2. 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.

3. In accordance with paragraph 2 of this Article, resolution authorities shall take all reasonable steps to obtain commercial terms for the transfer that conform with the valuation conducted under Article 36, having regard to the circumstances of the case.

4. Subject to Article 37(7), any consideration paid by the purchaser shall benefit:

(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.

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

6. Following an application of the sale of business tool, resolution authorities may, with the consent of the purchaser, exercise the transfer powers in respect of assets, rights or liabilities transferred to the purchaser in order to transfer the assets, rights or liabilities back to the institution under resolution, or the shares or other instruments of ownership back to their original owners, and the institution under resolution or original owners shall be obliged to take back any such assets, rights or liabilities, or shares or other instruments of ownership.

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

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8. By way of derogation from Articles 22 to 25 of Directive 2013/36/EU, from the requirement to inform the competent authorities in Article 26 of Directive 2013/36/EU, from Article 10(3), Article 11(1) and (2) and Articles 12 and 13 of Directive 2014/65/EU and from the requirement to give a notice in Article 11(3) of that Directive, where a transfer of shares or other instruments of ownership by virtue of an application of the sale of business tool would result in the acquisition of or increase in a qualifying holding in an institution of a kind referred to in Article 22(1) of Directive 2013/36/EU or Article 11(1) of Directive 2014/65/EU, the competent authority of that institution shall carry out the assessment required under those Articles in a timely manner that does not delay the application of the sale of business tool and prevent the resolution action from achieving the relevant resolution objectives.

9. Member States shall ensure that if the competent authority of that institution has not completed the assessment referred to in paragraph 8 from the date of transfer of shares or other instruments of ownership in the application of the sale of business tool by the resolution authority, the following provisions shall apply:

(a) such 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 by point (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 by point (f), the penalties and other measures for infringing the requirements for acquisitions or disposals of qualifying holdings contemplated by Articles 66, 67 and 68 of Directive 2013/36/EU shall not apply to such a transfer of shares or other instruments of ownership;

(d) promptly upon completion of the assessment by the competent authority, the competent authority shall notify the resolution authority and the acquirer in writing of whether the competent authority approves or, in accordance with Article 22(5) of Directive 2013/36/EU, opposes such a transfer of shares or other instruments of ownership to the acquirer;

(e) if 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) if the competent authority opposes such a transfer of shares or other instruments of ownership to the acquirer, then:

(i) the voting rights attached to such shares or other instruments of ownership as provided by point (b) shall remain in full force and effect;

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(ii) the resolution authority may require the acquirer to divest such shares or other instruments of ownership within a divestment period determined by the resolution authority having taken into account prevailing market conditions; and

(iii) if the acquirer does not complete such a divestment within the divestment period established by the resolution authority, then the competent authority, with the consent of the resolution authority, may impose on the acquirer penalties and other measures for infringing the requirements for acquisitions or disposals of qualifying holdings contemplated by Articles 66, 67, and 68 of Directive 2013/36/EU.

10. Transfers made by virtue of the sale of business tool shall be subject to the safeguards referred to in Chapter VII of Title IV.

11. For the purposes of exercising the rights to provide services or to establish itself in another Member State in accordance with Directive 2013/36/EU or Directive 2014/65/EU, 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.

12. Member States shall ensure that the 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 membership and participation criteria for participation in such systems.

Notwithstanding the first subparagraph, Member States shall ensure that:

(a) access is not denied on the ground that the purchaser does not possess a rating from a credit rating agency, or that rating is not commensurate to the rating levels required to be granted access to the systems referred to in the first subparagraph;

(b) where the purchaser does not meet the membership or participation criteria for a relevant payment, clearing or settlement system, stock exchange, investor compensation scheme or deposit guarantee scheme, the rights referred to in the first subparagraph are exercised for such a period of time as may be specified by the resolution authority, not exceeding 24 months, renewable on application by the purchaser to the resolution authority.

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

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Article 39

Sale of business tool: procedural requirements

1. Subject to paragraph 3 of this Article, when applying the sale of business tool to an institution or entity referred to in point (b), (c) or (d) of Article 1(1), a 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 authority intends to transfer. Pools of rights, assets, and liabilities may be marketed separately.

2. Without prejudice to the Union State aid framework, where applicable, the marketing referred to in paragraph 1 shall be carried out in accordance with the following criteria:

(a) it shall be as transparent as possible and shall not materially misrepresent the assets, rights, liabilities, shares or other instruments of ownership of that institution that the authority intends to transfer, 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 conflict of interest;

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

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

(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.

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

Any public disclosure of the marketing of the institution or entity referred to in point (b), (c) or (d) of Article 1(1) of this Directive that would otherwise be required in accordance with Article 17(1) of Regulation (EU) No 596/2014 may be delayed in accordance with Article 17(4) or (5) of that Regulation.

3. The resolution authority may apply the sale of business tool without complying with the requirement to market as laid down in paragraph 1 when it determines that compliance with those requirements would be likely to undermine one or more of the resolution objectives and in particular if the following conditions are met:

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

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(b) it considers that compliance with those requirements would be likely to undermine the effectiveness of the sale of business tool in addressing that threat or achieving the resolution objective referred to in point (b) of Article 31(2).

4. EBA shall, by 3 July 2015, issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 specifying the factual circumstances amounting to a material threat and the elements relating to the effectiveness of the sale of business tool provided for in points (a) and (b) of paragraph 3.

Section 3

The bridge institution tool

Article 40

Bridge institution tool

1. In order to give effect to the bridge institution tool and having regard to the need to maintain critical functions in the bridge institution, Member States shall ensure that resolution authorities have the power to transfer to a bridge institution:

(a) shares or other instruments of ownership issued by one or more institutions under resolution;

(b) all or any assets, rights or liabilities of one or more institutions under resolution.

Subject to Article 85, the transfer referred to in the first subparagraph may take place without obtaining the consent of the shareholders of the institutions under resolution or any third party other than the bridge institution, and without complying with any procedural requirements under company or securities law.

2. The bridge institution shall be a legal person that meets all of the following requirements:

(a) it is wholly or partially owned by one or more public authorities which may include the resolution authority or the resolution financing arrangement and is controlled by the resolution authority;

(b) it is created for the purpose of receiving and holding some or all of the shares or other instruments of ownership issued by an institution under resolution or some or all of the assets, rights and liabilities of one or more institutions under resolution with a view to maintaining access to critical functions and selling the institution or entity referred to in point (b), (c) or (d) of Article 1(1).

The application of the bail-in tool for the purpose referred to in point (b) of Article 43(2) shall not interfere with the ability of the resolution authority to control the bridge institution.

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3. When applying the bridge institution tool, the resolution authority shall ensure that the total value of liabilities transferred to the bridge institution does not exceed the total value of the rights and assets transferred from the institution under resolution or provided by other sources.

4. Subject to Article 37(7), any consideration paid by the bridge institution shall benefit:

(a) the owners of the shares or instruments of ownership, where the transfer to the bridge institution has been effected by transferring shares or instruments of ownership issued by the institution under resolution from the holders of those shares or instruments to the bridge institution;

(b) the institution under resolution, where the transfer to the bridge institution has been effected by transferring some or all of the assets or liabilities of the institution under resolution to the bridge institution.

5. When applying the bridge institution tool, the resolution authority may exercise the transfer power more than once in order to make supplemental transfers of shares or other instruments of ownership issued by an institution under resolution or, as the case may be, assets, rights or liabilities of the institution under resolution.

6. Following an application of the bridge institution tool, the resolution authority may:

(a) 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 laid down in paragraph 7 are met;

(b) transfer, shares or other instruments of ownership, or assets, rights or liabilities from the bridge institution to a third party.

7. Resolution authorities may transfer shares or other instruments of ownership, or assets, rights or liabilities back from the bridge institution in one of the following circumstances:

(a) the possibility that the specific shares or other instruments of ownership, assets, rights or liabilities might be transferred back is stated expressly in the instrument by which the transfer was made;

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

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

8. 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 VII of Title IV.

9. For the purposes of exercising the rights to provide services or to establish itself in another Member State in accordance with Directive 2013/36/EU or Directive 2014/65/EU, 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.

For other purposes, resolution authorities may require that a bridge institution be considered to be a continuation of the institution under resolution, and be able to continue to exercise any right that was exercised by the institution under resolution in respect of the assets, rights or liabilities transferred.

10. Member States shall ensure that 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 membership and participation criteria for participation in such systems.

Notwithstanding the first subparagraph, Member States shall ensure that:

(a) access is not denied on the ground that the bridge institution does not possess a rating from a credit rating agency, or that rating is not commensurate to the rating levels required to be granted access to the systems referred to in the first subparagraph;

(b) where the bridge institution does not meet the membership or participation criteria for a relevant payment, clearing or settlement system, stock exchange, investor compensation scheme or deposit guarantee scheme, the rights referred to in the first subparagraph are exercised for such a period of time as may be specified by the resolution authority, not exceeding 24 months, renewable on application by the bridge institution to the resolution authority.

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11. Without prejudice to Chapter VII of Title IV, shareholders or creditors of the institution under resolution and other third parties whose assets, rights or liabilities are not transferred to the bridge institution shall not have any rights over or in relation to the assets, rights or liabilities transferred to the bridge institution, its management body or senior management.

12. The objectives of the bridge institution shall not imply any duty or responsibility to shareholders or creditors of the institution under resolution, and the management body or senior management shall have no liability to such shareholders or creditors for acts and omissions in the discharge of their duties unless the act or omission implies gross negligence or serious misconduct in accordance with national law which directly affects rights of such shareholders or creditors.

Member States may further limit the liability of a bridge institution and its management body or senior management in accordance with national law for acts and omissions in the discharge of their duties.

Article 41

Operation of a bridge institution

1. Member States shall ensure that the operation of a bridge institution respects the following requirements:

(a) the contents of the bridge institution's constitutional documents are approved by the resolution authority;

(b) subject to the bridge institution's ownership structure, the resolution authority either appoints or approves the bridge institution's management body;

(c) the resolution authority approves the remuneration of the members of the management body and determines their appropriate responsibilities;

(d) the resolution authority approves the strategy and risk profile of the bridge institution;

(e) the bridge institution is authorised in accordance with Directive 2013/36/EU or Directive 2014/65/EU, as applicable, and has the necessary authorisation under the applicable national law to carry out the activities or services that it acquires by virtue of a transfer made pursuant to Article 63 of this Directive;

(f) the bridge institution complies with the requirements of, and is subject to supervision in accordance with Regulation (EU) No 575/2013 and with Directives 2013/36/EU and Directive 2014/65/EU, as applicable;

(g) the operation of the bridge institution shall be in accordance with the Union State aid framework and the resolution authority may specify restrictions on its operations accordingly.

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Notwithstanding the provisions referred to in points (e) and (f) of the first subparagraph and where necessary to meet the resolution objectives, the bridge institution may be established and authorised without complying with Directive 2013/36/EU or Directive 2014/65/EU for a short period of time at the beginning of its operation. To that end, the resolution authority shall submit a request in that sense to the competent authority. If the competent authority decides to grant such an authorisation, it shall indicate the period for which the bridge institution is waived from complying with the requirements of those Directives.

2. Subject to any restrictions imposed in accordance with Union or national competition rules, the management of the bridge institution shall operate the bridge institution with a view to maintaining access to critical functions and selling the institution or entity referred to in point (b), (c) or (d) of Article 1(1), its assets, rights or liabilities, to one or more private sector purchasers when conditions are appropriate and within the period specified in paragraph 4 of this Article or, where applicable, paragraph 6 of this Article.

3. The resolution authority shall take a decision that the bridge institution is no longer a bridge institution within the meaning of Article 40(2) in any of the following cases, whichever occurs first:

(a) the bridge institution merges with another entity;

(b) the bridge institution ceases to meet the requirements of Article 40(2);

(c) the sale of all or substantially all of the bridge institution's assets, rights or liabilities to a third party;

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

(e) the bridge institution's assets are completely wound down and its liabilities are completely discharged.

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

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

5. If none of the outcomes referred to in points (a), (b), (c) and (e) of paragraph 3 applies, the resolution authority shall terminate the operation of a bridge institution as soon as possible and in any event two years after the date on which the last transfer from an institution under resolution pursuant to the bridge institution tool was made.

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6. The resolution authority may extend the period referred to in paragraph 5 for one or more additional one-year periods where such an extension:

(a) supports the outcomes referred to in point (a), (b), (c) or (e) of paragraph 3; or

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

7. Any decision of the resolution authority to extend the period referred to in paragraph 5 shall be reasoned and shall contain a detailed assessment of the situation, including of the market conditions and outlook, that justifies the extension.

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

Subject to Article 37(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.

9. Where a bridge institution is used for the purpose of transferring assets and liabilities of more than one institution under resolution the obligation referred to in paragraph 8 shall refer to the assets and liabilities transferred from each of the institutions under resolution and not to the bridge institution itself.

Section 4

The asset separation tool

Article 42

Asset separation tool

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

Subject to Article 85, the transfer referred to in the first subparagraph may take place without obtaining the consent of the shareholders of the institutions under resolution or any third party other than the bridge institution, and without complying with any procedural requirements under company or securities law.

2. For the purposes of the asset separation tool, an asset management vehicle shall be a legal person that meets all of the following requirements:

(a) it is wholly or partially owned by one or more public authorities which may include the resolution authority or the resolution financing arrangement and is controlled by the resolution authority;

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

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

4. Member States shall ensure that the operation of an asset management vehicle respects the following provisions:

(a) the contents of the asset management vehicle's constitutional documents are approved by the resolution authority;

(b) subject to the asset management vehicle's ownership structure, the resolution authority either appoints or approves the vehicle's management body;

(c) the resolution authority approves the remuneration of the members of the management body and determines their appropriate responsibilities;

(d) the resolution authority approves the strategy and risk profile of the asset management vehicle.

5. Resolution authorities may exercise the power specified in paragraph 1 to transfer assets, rights or liabilities only if:

(a) the situation of the particular market for those assets is of such a nature that the liquidation of those assets under normal insolvency proceedings could have an adverse effect on one or more financial markets.

(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.

6. When applying the asset separation tool, resolution authorities shall determine the consideration for which assets, rights and liabilities are transferred to the asset management vehicle in accordance with the principles established in Article 36 and in accordance with the Union State aid framework. This paragraph does not prevent the consideration having nominal or negative value.

7. Subject to Article 37(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. Consideration may be paid in the form of debt issued by the asset management vehicle.

8. 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.

▼B

9. Resolution authorities may transfer assets, rights or liabilities from the institution under resolution to one or more asset management vehicles on more than one occasion and transfer assets, rights or liabilities back from one or more asset management vehicles to the institution under resolution provided that the conditions specified in paragraph 10 are met.

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

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

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

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

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

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

12. Without prejudice to Chapter VII of Title IV shareholders or creditors of the institution under resolution and other third parties whose assets, rights or liabilities are not transferred to the asset management vehicle shall not have any rights over or in relation to the assets, rights or liabilities transferred to the asset management vehicle or its management body or senior management.

13. The objectives of an asset management vehicle shall not imply any duty or responsibility to shareholders or creditors of the institution under resolution, and the management body or senior management shall have no liability to such shareholders or creditors for acts and omissions in the discharge of their duties unless the act or omission implies gross negligence or serious misconduct in accordance with national law which directly affects rights of such shareholders or creditors.

Member States may further limit the liability of an asset management vehicle and its management body or senior management in accordance with national law for acts and omissions in the discharge of their duties.

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14. EBA shall, by 3 July 2015, issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 to promote the convergence of supervisory and resolution practices regarding the determination when, in accordance to paragraph 5 of this Article the liquidation of the assets or liabilities under normal insolvency proceeding could have an adverse effect on one or more financial markets.

Section 5

The bail-in tool

Subsection 1

Objective and scope of the bail-in tool

Article 43

The bail-in tool

1. In order to give effect to the bail-in tool, Member States shall ensure that resolution authorities have the resolution powers specified in Article 63(1).

2. Member States shall ensure that resolution authorities may apply the bail-in tool to meet the resolution objectives specified in Article 31, in accordance with the resolution principles specified in Article 34 for any of the following purposes:

(a) to recapitalise an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) of this Directive 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 Directive 2013/36/EU or Directive 2014/65/EU, where the entity is authorised under those Directives, and to sustain sufficient market confidence in the institution or entity;

(b) to convert to equity or reduce the principal amount of claims or debt instruments that are transferred:

(i) to a bridge institution with a view to providing capital for that bridge institution; or

(ii) under the sale of business tool or the asset separation tool.

3. Member States shall ensure that resolution authorities may apply the bail-in tool for the purpose referred to in point (a) of paragraph 2 of this Article only if there is a reasonable prospect that the application of that tool together with other relevant measures including measures implemented in accordance with the business reorganisation plan required by Article 52 will, in addition to achieving relevant resolution objectives, restore the institution or entity referred to in point (b), (c) or (d) of Article 1(1) in question to financial soundness and long-term viability.

▼B

Member States shall ensure that resolution authorities may apply any of the resolution tools referred to in points (a), (b) and (c) of Article 37(3), and the bail-in tool referred to in point (b) of paragraph 2 of this Article, where the conditions laid down in the first subparagraph are not met.

4. Member States shall ensure that resolution authorities may apply the bail-in tool to all institutions or entities referred to in point (b), (c) or (d) of Article 1(1) while respecting in each case the legal form of the institution or entity concerned or may change the legal form.

Article 44

Scope of bail-in tool

1. Member States shall ensure that the bail-in tool may be applied to all liabilities of an institution or entity referred to in point (b), (c) or (d) of Article 1(1) that are not excluded from the scope of that tool pursuant to paragraphs 2 or 3 of this Article.

2. Resolution authorities 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 or of a third country:

(a) covered deposits;

(b) secured liabilities including covered bonds and liabilities in the form of financial instruments used for hedging purposes which form an integral part of the cover pool and which according to national law are secured in a way similar to covered bonds;

(c) any liability that arises by virtue of the holding by the institution or entity referred to in point (b), (c) or (d) of Article 1(1) of this Directive of client assets or client money including client assets or client money held on behalf of UCITS as defined in Article 1(2) of Directive 2009/65/EC or of AIFs as defined in point (a) of Article 4(1) of Directive 2011/61/EU of the European Parliament and of the Council ([1]), provided that such a client is protected under the applicable insolvency law;

(d) any liability that arises by virtue of a fiduciary relationship between the institution or entity referred to in point (b), (c) or (d) of Article 1(1) (as fiduciary) and another person (as beneficiary) provided that such a beneficiary is protected under the applicable insolvency or civil law;

(e) liabilities to institutions, excluding entities that are part of the same group, with an original maturity of less than seven days;

([1]) Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

▼M3

(f) dliteanais a bhfuil aibíocht níos lú ná seacht lá fágtha iontu, atá dlite do chórais nó d'oibreoirí córas atá ainmnithe i gcomhréir le Treoir 98/26/CE nó dá rannpháirtithe agus a thagann as rannpháirtíocht i gcóras den chineál sin, nó do contrapháirtithe lárnacha arna n-údarú san Aontas de bhun Airteagal 14 de Rialachán (AE) Uimh. 648/2012 agus contrapháirtithe lárnacha de chuid tríú tíortha arna n-aithint ag ESMA de bhun Airteagal 25 den Rialachán sin;

▼B

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

(i) an employee, in relation to accrued salary, pension benefits or other fixed remuneration, except for the variable component of remuneration that is not regulated by a collective bargaining agreement;

(ii) a commercial or trade creditor arising from the provision to the institution or entity referred to in point (b), (c) or (d) of Article 1(1) of goods or services that are critical to the daily functioning of its operations, including IT services, utilities and the rental, servicing and upkeep of premises;

(iii) tax and social security authorities, provided that those liabilities are preferred under the applicable law;

(iv) deposit guarantee schemes arising from contributions due in accordance with Directive 2014/49/EU;

▼M3

(h) dliteanais, chuig institiúidí nó eintitis dá dtagraítear i bpointí (b), (c) nó (d) d'Airteagal 1(1) a bhaineann leis an ngrúpa réitigh céanna ach nach eintitis réitigh iad féin per se, gan beann ar a gcuid aibíochtaí, seachas i gcás inarb ísle rangú do na dliteanais sin ná do ghnáthdhliteanais neamhurraithe faoin dlí ábhartha náisiúnta lena rialaítear gnáthimeachtaí dócmhainneachta agus is infheidhme ar dháta trasuí na Treorach seo; i gcásanna ina bhfuil feidhm ag an eisceacht sin, déanfaidh údarás réitigh na fochuideachta ábhartha nach eintiteas réitigh a mheasúnú cé acu is leor nó nach leor líon na n-ítimí a chomhlíonann Airteagal 45f(2) chun go gcuirfí chun feidhme straitéis réitigh na tosaíochta.

▼B

Point (g)(i) of the first subparagraph shall not apply to the variable component of the remuneration of material risk takers as identified in Article 92(2) of Directive 2013/36/EU.

Member States shall ensure that all secured assets relating to a covered bond cover pool remain unaffected, segregated and with enough funding. Neither that requirement nor point (b) of the first subparagraph shall prevent resolution authorities, where appropriate, from exercising those powers in relation to any part of a secured liability or a liability for which collateral has been pledged that exceeds the value of the assets, pledge, lien or collateral against which it is secured.

Point (a) of the first subparagraph shall not prevent resolution authorities, where appropriate, from exercising those powers in relation to any amount of a deposit that exceeds the coverage level provided for in Article 6 of Directive 2014/49/EU.

▼B

Without prejudice to the large exposure rules in Regulation (EU) No 575/2013 and Directive 2013/36/EU, Member States shall ensure that in order to provide for the resolvability of institutions and groups, resolution authorities limit, in accordance with point (b) of Article 17(5) of this Directive, the extent to which other institutions hold ►M3 dliteanais in-fhortharrthála ◄, save for liabilities that are held at entities that are part of the same group.

3. In exceptional circumstances, where the bail-in tool is applied, the resolution authority may exclude or partially exclude certain liabilities from the application of the write-down 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.

▼M3

I dtaca le dliteanais chuig institiúidí nó eintitis dá dtagraítear i bpointí (b), (c) nó (d) d'Airteagal 1(1) den Treoir seo, a bhaineann leis an ngrúpa réitigh céanna ach nach eintitis réitigh iad féin per se, agus nach n- eisiatar ó chur i bhfeidhm na gcumhachtaí díluachála agus comhshó faoi phointe (h) de mhír (2) den Airteagal seo, déanfaidh na húdaráis réitigh measúnú go cúramach ar cé acu is ceart nó nach ceart iad a eisiamh go huile nó go páirteach faoi phointí (a) go (d) den chéad fhomhír den mhír seo d'fhonn a áirithiú go gcuirtear an straitéis réitigh chun feidhme go héifeachtúil.

I gcás ina ndéanann eitinteas réitigh dliteanas in-fhortharrthála, nó aicme dliteanas in-fhortharrthála, a eisiamh nó a eisiamh go páirteach faoin mhír seo, féadfar leibhéal na díluachála nó an chomhshó a chuirtear i bhfeidhm maidir le dliteanais infhortharrthála eile a mhéadú chun eisiamh den sórt sin a chur san áireamh, ar choinníoll go gcomhlíonann leibhéal na díluachála agus an chomhshó a chuirtear i bhfeidhm maidir le dliteanais in-fhortharrthála eile an prionsabal i bpointe (g) d'Airteagal 34(1).

4. I gcás ina gcinnfidh údarás réitigh dliteanas in-fhortharrthála nó aicme dliteanas in-fhortharrthála a eisiamh nó a eisiamh go páirteach de bhun an Airteagail seo, agus nár tugadh ar aghaidh na caillteanais a bheadh dlite do na dliteanais sin go hiomlán do chreidiúnaithe eile, féadfaidh an socrú um maoiniú réitigh ranníocaíocht a dhéanamh leis an institiúid faoi réiteach chun ceann amháin nó an dá cheann díobh seo a leanas a dhéanamh:

▼M3

(a) aon chaillteanais nach bhfuil glactha ag dliteanais in-fhortharrthála a chumhdach agus glanluach sócmhainní na hinstitiúide faoi réiteach a aisíoc go nialas i gcomhréir le pointe (a) d'Airteagal 46 (1);

(b) scaireanna nó ionstraimí eile úinéireachta nó ionstraimí caipitil a cheannach san institiúid faoi réiteach, chun an institiúid a athchaipitliú i gcomhréir le pointe (b) d'Airteagal 46 (1).

▼B

5. The resolution financing arrangement may make a contribution referred to in paragraph 4 only 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 Article 36, has been made by the shareholders and the holders of other instruments of ownership, the holders of relevant capital instruments and other ►M3 dliteanais in-fhortharrthála ◄ through write down, conversion or otherwise; and

(b) the contribution of the resolution financing arrangement does not exceed 5 % of the total liabilities including own funds of the institution under resolution, measured at the time of resolution action in accordance with the valuation provided for in Article 36.

6. The contribution of the resolution financing arrangement referred to in paragraph 4 may be financed by:

(a) the amount available to the resolution financing arrangement which has been raised through contributions by institutions and Union branches in accordance with Article 100(6) and Article 103;

(b) the amount that can be raised through *ex-post* contributions in accordance with Article 104 within three years; and

(c) where the amounts referred to (a) and (b) of this paragraph are insufficient, amounts raised from alternative financing sources in accordance with Article 105.

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

(a) the 5 % limit specified in paragraph 5(b) has been reached; and

(b) all unsecured, non-preferred liabilities, other than eligible deposits, have been written down or converted in full.

As an alternative or in addition, where the conditions laid down in the first subparagraph are met, the resolution financing arrangement may make a contribution from resources which have been raised through *ex-ante* contributions in accordance with Article 100(6) and Article 103 and which have not yet been used.

8. By way of derogation from paragraph 5 (a), the resolution financing arrangement may also make a contribution as referred to in paragraph 4 provided that:

(a) the contribution to loss absorption and recapitalisation referred to in point (a) of paragraph 5 is equal to an amount not less than 20 % of the risk weighted assets of the institution concerned;

▼B

(b) the resolution financing arrangement of the Member State concerned has at its disposal, by way of *ex-ante* contributions (not including contributions to a deposit guarantee scheme) raised in accordance with Article 100(6) and Article 103, an amount which is at least equal to 3 % of covered deposits of all the credit institutions authorised in the territory of that Member State; and

(c) the institution concerned has assets below EUR 900 billion on a consolidated basis.

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

(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; and

(c) the need to maintain adequate resources for resolution financing.

10. Exclusions under paragraph 3 may be applied either to completely exclude a liability from write down or to limit the extent of the write down applied to that liability.

11. The Commission shall be empowered to adopt delegated acts in accordance with Article 115 in order to specify further the circumstances when exclusion is necessary to achieve the objectives specified in paragraph 3 of this Article.

12. Before exercising the discretion to exclude a liability under paragraph 3, the resolution authority shall notify the Commission. Where the exclusion would require a contribution by the resolution financing arrangement or an alternative financing source under paragraphs 4 to 8, the Commission may, within 24 hours of receipt of such a notification, or a longer period with the agreement of the resolution authority, prohibit or require amendments to the proposed exclusion if the requirements of this Article and delegated acts are not met in order to protect the integrity of the internal market. This is without prejudice to the application by the Commission of the Union State aid framework.

▼M3

Airteagal 44a

Dliteanais incháilithe fo-ordaithe a dhíol le cliaint mhiondíola

1. Áiritheoidh na Ballstáit nach ndéanfaidh díoltóir dliteanas incháilithe a chomhlíonann na coinníollacha uile dá dtagraítear in Airteagal 72a de Rialachán (AE) Uimh. 575/2013, seachas pointe (b) d'Airteagal 72a(1), agus míreanna (3) go (5) d'Airteagal 72b den Rialachán sin, na dliteanais sin a dhíol le cliant miondíola, mar a shainmhínítear i bpointe 11 d'Airteagal 4(1) de Threoir 2014/65/AE, ach amháin ar choinníoll go sásaítear na coinníollacha uile seo a leanas:

(a) tá tástáil oiriúnachta curtha i gcrích ag an díoltóir i gcomhréir le hAirteagal 25(2) de Threoir 2014/65/AE;

▼M3

(b) tá an díoltóir sásta, bunaithe ar an tástáil dá dtagraítear i bpointe (a), go n-oireann na dliteanais incháilithe sin don chliant miondíola sin;

(c) tá doiciméadú déanta ag an díoltóir ar an oiriúnacht i gcomhréir le hAirteagal 25(6) de Threoir 2014/65/AE.

In ainneoin na chéad fhomhíre, féadfaidh na Ballstáit a fhoráil go mbeidh feidhm ag na coinníollacha a leagtar síos i bpointí (a) go (c) den fhomhír sin i dtaca le díoltóirí ionstraimí eile a cháilíonn mar chistí dílse nó mar dhliteanais in-fhortharrthála.

2. I gcás ina gcomhlíontar na coinníollacha a leagtar amach i mír 1 agus nach airde ná EUR 500 000 punann ionstraimí airgeadais an chliaint miondíola sin tráth a gceannófar, áiritheoidh an díoltóir, bunaithe ar an bhfaisnéis a chuirfidh an cliant miondíola ar fáil i gcomhréir le mír 3, go sásófar an dá choinníoll seo a leanas tráth a gceannófar:

(a) i dtaca leis an méid comhiomlán a infheistíonn an cliant miondíola sna dliteanais dá dtagraítear i mír 1, ní airde sin ná 10 % de na dliteanais atá i bpunann ionstraimí airgeadais an chliaint sin;

(b) is fiú EUR 10 000, ar a laghad, méid na hinfheistíochta tosaigh sin in ionstraim dliteanais amháin nó níos mó dá dtagraítear i mír 1.

3. Soláthróidh an cliant miondíola faisnéis chruinn don díoltóir maidir le punann ionstraime airgeadais an chliaint, lena n-áirítear aon infheistíocht i ndliteanais dá dtagraítear i mír 1.

4. Chun críocha mhír 2 agus mhír 3, áireofar i bpunann ionstraime airgeadais an chliaint miondíola taiscí in airgead tirim agus ionstraimí airgeadais, ach eiseofar aon ionstraim airgeadais a tugadh mar chomh-thaobhacht.

5. Gan dochar d'Airteagal 25 de Threoir 2014/65/AE, agus de mhaolú ar na ceanglais a leagtar amach i mír 1 go mír 4 den Airteagal seo, féadfaidh na Ballstáit íos-suim a leagan síos dar luach EUR 50,000, ar a laghad, i gcás na ndliteanas dá dtagraítear i mír 1, á chur san áireamh dóibh dálaí agus cleachtais an mhargaidh sa Bhallstát sin mar aon leis na bearta reatha cosanta tomhaltóirí laistigh de dhlínse an Bhallstáit réamhráite.

6. I gcás nach airde ná EUR 50 billiún luach foriomlán na sócmhainní dá dtagraítear in Airteagal 1(1) atá bunaithe i gceann de na Ballstáit agus iad faoi réir na gceanglas dá dtagraítear in Airteagal 45e, is ceadmhach don Bhallstát sin, de mhaolú ar na ceanglais a leagtar amach i mír 1 go mír 5 den Airteagal seo, gan ach na ceanglais a leagtar amach i mír 2(b) den Airteagal seo a chur i bhfeidhm.

7. Ní cheanglófar ar na Ballstáit an tAirteagal seo a chur i bhfeidhm ar dhliteanais dá dtagraítear i mír 1 arna n-eisiúint roimh … [18 mí ó dháta theacht i bhfeidhm na Treorach leasaithí seo].

▼B

Subsection 2

Minimum requirement for own funds and eligible liabilities

▼M3

Airteagal 45

An t-íoscheanglas maidir le cistí dílse agus dliteanais incháilithe a ríomh agus a chur i bhfeidhm

1. Áiritheoidh na Ballstáit go gcomhlíonfaidh institiúidí agus eintitis dá dtagraítear i bpointe (b), pointe (c) agus pointe (d) d'Airteagal 1(1), i gcónaí, na ceanglais maidir le cistí dílse agus dliteanais incháilithe nuair is gá sin agus i gcomhréir leis an Airteagal seo agus le hAirteagal 45a go 45i.

2. Ríomhfar an ceanglas dá dtagraítear i mír 1 den Airteagal seo i gcomhréir le hAirteagal 45c(3), (5) nó (7), de réir mar is infheidhme, mar mhéid na gcistí dílse agus na ndliteanas incháilithe arna shloinneadh mar chéatadáin de na méideanna seo a leanas:

(a) méid iomlán neamhchosaint ar riosca an eintitis ábhartha dá dtagraítear i mír 1 den Airteagal seo, arna ríomh i gcomhréir le hAirteagal 92(3) de Rialachán (AE) Uimh. 575/2013; agus

(b) tomhas iomlán neamhchosanta an eintitis ábhartha dá dtagraítear i mír 1 den Airteagal seo arna ríomh i gcomhréir le hAirteagail 429 agus 429a de Rialachán (AE) Uimh. 575/2013.

Airteagal 45a

Díolmhú ón íoscheanglas maidir le cistí dílse agus dliteanais incháilithe

1. D'ainneoin Airteagal 45, déanfaidh na húdaráis réitigh institiúidí creidmheasa morgáiste a mhaoinítear le bannaí faoi chumhdach nach bhfuil cead acu, de réir an dlí náisiúnta, taiscí a fháil a dhíolmhú ón gceanglas a leagtar síos in Airteagal 45(1) ar choinníoll go gcomhlíontar na coinníollacha seo a leanas go léir:

(a) foirceannfar na hinstitiúidí sin in himeachtaí náisiúnta dócmhainneachta, nó i gcineálacha eile imeachtaí a leagtar síos do na hinstitiúidí sin agus a chuirfear chun feidhme i gcomhréir le hAirteagal 38, Airteagal 40 nó Airteagal 42; agus

(b) áiritheofar leis na himeachta dá dtagraitear i mír (a), go n-iompróidh creidiúnaithe na n-institiúidí sin, lena n-áirítear sealbhóirí bannaí faoi chumhdach, i gcás inarb ábhartha, caillteanais ar shlí a chomhlíonfadh cuspóirí réitigh.

2. Ní bheidh institiúidí a díolmhaíodh ón gceanglas a leagtar síos in Airteagal 45(1) ina gcuid den chomhdhlúthú dá dtagraítear in Airteagal 45e(1).

▼M3

Airteagal 45b

Dliteanais incháilithe le haghaidh eintitis réitigh

1. Ní chuimseofar dliteanais i méid chistí dílse agus dhliteanas na n-eintiteas réitigh ach amháin má chomhlíonann siad na coinníollacha dá dtagraítear sna hAirteagail seo a leanas de Rialachán (AE) Uimh. 575/2013:

(a) Airteagal 72a;

(b) Airteagal 72b, cé is moite de phointe (d) de mhír 2; agus

(c) Airteagal 72c.

De mhaolú ar an gcéad fhomhír den mhír seo, i gcás ina dtagraítear sa Treoir seo do na ceanglais atá in Airteagal 92a nó in Airteagal 92b de Rialachán (AE) Uimh. 575/2013, is éard a bheidh i gceist le dliteanais incháilithe, chun críche na nAirteagal sin, dliteanais incháilithe mar a shainmhínítear iad in Airteagal 72k den Rialachán sin agus mar a chinntear iad i gcomhréir le Caibidil 5a de Theideal I de Chuid a Dó den Rialachán sin.

2. I dtaca le dliteanais a eascraíonn as ionstraimí fiachais ina bhfuil comhpháirt dhíorthach leabaithe, amhail nótaí struchtúrtha, a chomhlíonann na coinníollacha atá sa chéad fhomhír de mhír 1, cé is moite de phointe (l) d'Airteagal 72a(2) de Rialachán (AE) Uimh. 575/2013, ní áireofar iad i suim na gcistí dílse agus dliteanais incháilithe ach i gcás ina gcomhlíontar ceann amháin de na coinníollacha seo a leanas:

(a) is eol, tráth a eisítear í, príomhshuim na ndliteanas a eascraíonn as an ionstraim fiachais, tá sí socraithe, nó ag méadú, agus níl aon bheann uirthi ag an ngné dhíorthach neadaithe, is féidir méid iomlán an dliteanais a eascraíonn as an ionstraim fiachais lena n-áirítear an díorthach neadaithe a luacháil ar bhonn laethúil i leith margadh dhá threo leachtach gníomhach d'ionstraim choibhéiseach gan riosca creidmheasa i gcomhréir le hAirteagal 104 agus Airteagal 105 de Rialachán (AE) Uimh. 575/2013, nó

(b) áirítear mar chuid den ionstraim fiachais téarma conarthach ina sonraítear, i gcás dócmhainneacht an eisitheora nó i gcásanna réiteach an eisitheora,ar aon go bhfuil luach an éilimh a dhéanfaidh an t-eisitheoir socraithe nó ag méadú, agus nach mó é ná an tsuim tosaigh a íocadh i leith an dliteanais.

I dtaca le hionstraimí fiachais dá dtagraítear sa chéad fhomhír, lena n-áirítear a gcuid díorthach neadaithe, ní bheidh siad faoi réir aon chomhaontú glanluachála agus ní bheidh luacháil na n-ionstraimí sin faoi réir Airteagal 49(3).

Ní chuimseofar na dliteanais dá dtagraítear sa chéad fhomhír i méid na gcistí dílse agus dliteanas incháilithe ach i gcás na coda den dliteanas a chomhfhreagraíonn don phríomhshuim dá dtagraítear i bpointe (a) den bhfomhír sin nó don tsuim shocraithe nó mhéadaitheach dá dtagraítear i bpointe (b) den fhomhír sin.

3. Maidir le dliteanais arna n-eisiúint ag fochuideachta atá bunaithe san Aontas do cheann dá scairshealbhóir atá ann cheana agus nach cuid den ghrúpa réitigh céanna é, agus go bhfuil an fhochuideachta sin mar chuid den ghrúpa réitigh céanna leis an eintiteas réitigh, cuimseofar na dliteanais sin mar chuid de chistí dílse agus dhliteanas incháilithe an eintitis réitigh sin ar choinníoll go gcomhlíonfar na coinníollacha uile seo a leanas:

▼M3

(a) is i gcomhréir le pointe (a) d'Airteagal 45f(2) a eisítear iad;

(b) ní dhéantar difear, ach a bhfeidhmítear an chumhacht chun díluacháil nó comhshó a dhéanamh i dtaca leis na dliteanais sin i gcomhréir le hAirteagal 59 nó Airteagal 62, don rialú a dhéanann an t-eintiteas réitigh ar an bhfochuideachta;

(c) ní mó na dliteanais sin ná an méid a chinnfear tríd an tsuim seo a leanas a dhealú:

(i) suim na ndliteanas arna n-eisiúint don eintiteas réitigh agus a cheannaigh an t-eintiteas réitigh sin go díreach nó go hindíreach trí eintitis eile sa ghrúpa réitigh céanna agus méid na gcistí dílse arna n-eisiúint i gcomhréir le pointe (b) d'Airteagal 45f(2) ó;

(ii) an méid is gá de bhun Airteagal 45f(1).

4. Gan dochar don íoscheanglas atá in Airteagal 45c(5) nó pointe (a) d'Airteagal 45d(1)(a), áiritheoidh na húdaráis réitigh go ndéanfaidh eintitis réitigh ar GSIIanna iad nó ar eintitis réitigh atá faoi réir Airteagal 45c(5)nó (6) iad, cuid den cheanglas dá dtagraítear in Airteagal 45e is comhionann le 8 % de na dliteanais iomlána, lena n-áirítear cistí dílse, a chomhlíonadh lena gcistí dílse féin, le hionstraimí incháilithe fo-ordaithe nó le dliteanais dá dtagraítear i mír 3 den Airteagal seo. Féadfaidh an t-údarás réitigh a cheadú go bhféadfaidh údaráis réitigh ar GSIIanna iad nó ar eintitis réitigh atá faoi réir Airteagal 45c(5) nó (6) iad, leibhéal is ísle ná 8 % d'iomlán na ndliteanas, lena n-áirítear cistí dílse, ach is airde ná an méid is toradh ar chur i bhfeidhm na foirmle (1-X1/X2) x8 % de na dliteanais iomlána, lena n-áirítear cistí dílse, a chomhlíonadh lena gcistí dílse féin, le hionstraimí incháilithe fo-ordaithe nó le dliteanais dá dtagraítear i mír 3 den Airteagal seo, ar an gcoinníoll go gcomhlíontar na coinníollacha uile a leagtar amach in Airteagal 72b(3) de Rialachán (AE) Uimh. 575/2013, agus i gcás ina gcomhlíontar, i bhfianaise an laghdaithe is ceadmhach faoi Airteagal 72b (3) den Rialachán, gur fíor an méid seo a leanas:

X1 = 3.5 % de mhéid iomlán na neamhchosanta ar riosca arna ríomh i gcomhréir le hAirteagal 92(3) de Rialachán (AE) Uimh. 575/2013; agus

X2 = toradh 18 % de mhéid iomlán na neamhchosanta ar riosca arna ríomh i gcomhréir le hAirteagal 92(3) de Rialachán (AE) Uimh. 575/2013; agus suim an cheanglais mhaoláin chomhcheangailte.

I dtaca le heintitis réitigh atá faoi réir Airteagal 45c(5), más rud é gur ceanglas is airde ná 27 % de mhéid iomlán na neamhchosanta ar riosca is toradh ar chur i bhfeidhm na chéad fhomhíre den mhír seo, teorannóidh an t-údarás réitigh, i gcás an einteatas réitigh lena mbaineann, an chuid sin den cheanglas dá dtagraítear in Airteagal 45e, atá le comhlíonadh le húsáid cistí dílse, le hionstraimí incháilithe fo-ordaithe, nó leis na dliteanais dá dtagraítear i mír 3 den Airteagal seo – do mhéid is ionann agus 27 % de mhéid iomlán na neamhchosanta riosca, má mheasann an t-údarás réitigh an méid seo a leanas:

(a) ní mheastar gur féidir an t-eintiteas réitigh sin sa socrú reitigh a réiteach fiú má thugtar rochtain dó ar an socrú maoinithe réitigh; agus

▼M3

(b) san áit nach infheidhme pointe (a), ceadaítear don eintiteas réitigh sin de bhíthin an cheanglais dá dtagraítear in Airteagal 45e na ceanglais atá in Airteagal 44(5) nó Airteagal 44(8) a chomhlíonadh, mar is infheidhme.

Agus an measúnú dá dtagraítear sa dara fomhír á chur i gcrích, cuirfidh an t-údarás réitigh san áireamh an riosca go mbeidh tionchar díréireach ar shamhail ghnó an eintitis réitigh lena mbaineann.

Ní infheidhme an dara fomhír den mhír seo d'eintitis réitigh atá faoi réir Airteagal 45c(6).

5. I gcás eintitis réitigh nach GSIIanna iad ná eintitis réitigh atá faoi réir Airteagal 45c(5) nó (6) féadfaidh an t-údarás réitigh a chinneadh go ndéanfar cuid den cheanglas dá dtagraítear in Airteagal 45e nach airde ná 8 % de dhliteanais iomlána an eintitis réitigh, lena n-áirítear cistí dílse, móide an fhoirmle dá dtagraítear i mír 7, a chomhlíonadh trí chistí dílse, ionstraimí incháilithe fo-ordaithe hionstraimí nó dliteanais dá dtagraítear i mír 3 den Airteagal seo a úsáid, ar choinníoll go gcomhlíontar na coinníollacha seo a leanas:

(a) tá an t-aicmiú tosaíochta céanna ag dliteanais neamh-fho-ordaithe san ordlathas dócmhainneachta náisiúnta dá dtagraítear i mír 1 agus agus mír 2 den Airteagal seo agus atá ag dliteanais atá eisiata ó chur i bhfeidhm na gcumhachtaí díluachála agus comhshó i gcomhréir le hAirteagal 44(2) nó Airteagal 44(3);

(b) tá riosca ann go dtabhóidh creidiúnaithe éileamh a tháinig as dliteanais neamh-fho-ordaithe nach bhfuil eisiata ó chur i bhfeidhm cumhachtaí díluachála agus comhshó i gcomhréir le hAirteagal 44(2) nó Airteagal 44(3), go dtabhódh siad caillteanais níos mó ná a thabhódh siad i bhfoirceannadh faoi ghnáthimeachtaí dócmhainneachta mar gheall ar chur i bhfeidhm beartaithe cumhachtaí díluachála agus comhshó maidir leis na dliteanais sin.

(c) ní bheidh méid na gcistí dílse agus na ndliteanas fo-ordaithe eile os cionn an méid is gá chun a áirithiú nach dtabhóidh creidiúnaithe dá dtagraítear i bpointe (b) caillteanais os cionn leibhéal na gcaillteanas a thabhóidís ina mhalairt de chás i bhfoirceannadh faoi ghnáthimeachtaí dócmhainneachta.

I gcás ina gcinnfidh an t-údarás réitigh gurb amhlaidh, laistigh d'aicme dliteanas lena gcuimsítear dliteanais incháilithe, gur mó é méid na ndliteanas a bhfuil sé réasúnta dóchúil go n-eisiafar iad ó chur i bhfeidhm cumhachtaí díluachála agus comhshó i gcomhréir le hAirteagal 44(2) nó Airteagal 44(3), gur mó é ná 10 % den aicme sin, déanfaidh an t-údarás réitigh an riosca dá dtagraítear i bpointe (b) den chéad fhomhír den mhír seo a mheasúnú.

6. Chun críocha mhír 4, mhír 5 agus mhír 7, áireofar dliteanais dhíorthacha sna dliteanais iomlána ar an mbonn go dtugtar lánaitheantas do chearta glanluachála contrapháirtí.

Cistí dílse de chuid eintiteas réitigh a úsáidtear chun an ceanglas maoláin chomhcheangailte a chomhlíonadh, beidh siad incháilithe chun na ceanglais dá dtagraítear i mír 4, i mír 5 agus i mír 7 a chomhlíonadh.

▼**M3**

7. De mhaolú ar mhír 4 den Airteagal seo, féadfaidh an t-údarás réitigh a chinneadh gur eintitis réitigh ar GSIIanna iad nó ar eintitis réitigh atá faoi réir Airteagal 45c(5) agus (6) den Treoir seo iad a dhéanfaidh na ceanglais dá dtagraítear in Airteagal 45e den Treoir seo a chomhlíonadh, le cistí dílse, le ionstraimí incháilithe fo-ordaithe, nó le dliteanais dá dtagraítear i mír 3 den Airteagal seo, a mhéid is nach airde suim na gcistí dílse, na n-ionstraimí, ná na ndliteanas sin – mar gheall ar an oibleagáid atá ar an eintiteas réitigh cloí leis an gceanglas maoláin chomhcheangailte agus na ceanglais dá dtagraítear in Airteagal 92a de Rialachán (AE) Uimh. 575/2013, Airteagal 45c(5) agus Airteagal 45e den Treoir seo – ná an tsuim is airde díobh seo a leanas:

(a) 8 % de dhliteanais iomlána, lena n-áirítear cistí dílse, an eintitis réitigh, nó,

(b) an méid is toradh do chur i bhfeidhm na foirmle Ax2+Bx2+C, nuair is ionann A, B agus C agus na suimeanna seo a leanas:

A = an méid a eascraíonn as an gceanglas dá dtagraítear i bpointe (c)d'Airteagal 92(1) de Rialachán (AE) Uimh. 575/2013;

B = an méid a eascraíonn as an gceanglas dá dtagraítear in Airteagal 104a de Threoir 2013/36/AE;

C = an méid a eascraíonn as an gceanglas maoláin chomhcheangailte.

8. Féadfaidh na húdaráis réitigh an chumhacht dá dtagraítear i mír 7 den Airteagal seo a fheidhmiú i dtaca leis na heintitis réitigh ar G-SIIanna iad nó atá faoi réir Airteagal 45c(5) nó (6), agus a chomhlíonann ceann de na coinníollacha a leagtar síos sa dara fomhír den mhír seo, ar choinníoll nach mó líon na n-eintiteas réitigh a shainaithnítear ná 30 % de na heintitis réitigh ar G-SIIanna iad nó atá faoi réir Airteagal 45c(5) nó (6) agus arb é an t-údarás réitigh a chinneann an ceanglas dá dtagraítear in Airteagal 45e ina leith.

Is iad na coinníollacha a leanas a bhreithneoidh na húdaráis réitigh:

(a) táthar tar éis baic ar inréititheacht a shainaithint sa mheasúnú inréiteachta roimhe sin, agus:

(i) ní dhearnadh aon ghníomhaíocht feabhais tar éis chur i bhfeidhm na mbeart dá dtagraítear in Airteagal 17(5), san amlíne a éilíonn an t-údarás réitigh, nó

(ii) ní féidir aghaidh a thabhairt ar an mbac substaintiúil a sainaithníodh le haon cheann de na bearta dá dtagraítear in Airteagal 17(5), agus dhéanfaí tionchar diúltach na mbaic substainteach ar inréititheacht a chúiteamh go páirteach nó go hiomlán tríd an gcumhacht dá dtagraítear i mír 7 den Airteagal seo a fheidhmiú, nó

(b) measann an t-údarás réitigh go bhfuil teorainn le hindéantacht agus le creidiúnacht straitéis réitigh tosaíochta an eintitis réitigh, agus aird á tabhairt ar mhéid agus idirnascacht an eintitis, nádúr, raon feidhme, riosca agus castacht ghníomhaíochtaí an eintitis, stádas dlíthiúil an eintitis agus struchtúr scairshealbhóireachta an eintitis, nó

▼M3

(c) is léiriú é an ceanglas dá dtagraítear in Airteagal 104a de Threoir 2013/36/AE gur G-SII atá san eintiteas réitigh nó go bhfuil sé faoi réir Airteagal 45c(5) nó (6) den Treoir seo, i dtéarmaí riosca, i measc 20 % is airde d'institiúidí arb é an t-údarás réitigh a chinneann an ceanglas dá dtagraítear in Airteagal 45(1) ina leith den Treoir seo.

Chun críocha na gcéatadán dá dtagraítear sa chéad fhomhír agus sa dara fomhír, déanfaidh an t-údarás réitigh an uimhir a eascraíonn as an ríomh a shlánú suas go dtí an uimhir iomlán is gaire.

Trí shainiúlachtaí an chórais baincéireachta náisiúnta acu féin a chur san áireamh, lena n-áirítear go háirithe eintitis réitigh ar GSIIanna iad nó atá faoi réir Airteagal 45c(5) nó (6) agus arb é an t-údarás náisiúnta réitigh a chinneann an ceanglas dá dtagraítear in Airteagal 45e ina leith, féadfaidh na Ballstáit an céatadán dá dtagraítear sa chéad fhomhír a shocrú ar leibhéal is airde ná 30 %.

9. Is tar éis dul i gcomhairle leis an údarás inniúil amháin a ghlacfaidh an t-údarás réitigh na cinnti dá dtagraítear i mír 5 nó i mír 7.

Agus na cinntí sin á ndéanamh ag an údarás réitigh, cuirfidh sé san áireamh an méid seo a leanas:

(a) doimhneacht an mhargaidh atá ann d'ionstraimí cistí an eintitis réitigh agus d'ionstraimí incháilithe fo-ordaithe, praghsáil na n-ionstraimí sin, i gcás inarb ann dóibh, mar aon leis an am a theastaíonn chun idirbhearta a chur i gcrích a bhfuil gá leo chun go mbeifear in ann an cinneadh a chomhlíonadh;

(b) méid na n-ionstraimí dliteanais incháilithe a chomhlíonann na coinníollacha uile dá dtagraítear in Airteagal 72a de Rialachán (AE) Uimh. 575/2013 a bhfuil aibíocht iarmhair acu is giorra ná aon bhliain amháin ón dáta a ndearnadh an cinneadh, d'fhonn go ndéanfaí coigeartuithe cainníochtúla ar na ceanglais dá dtagraítear i mír 5 agus i mír 7 den Airteagal seo;

(c) infhaighteacht agus líon na n-ionstraimí a chomhlíonann na coinníollacha uile dá dtagraítear in Airteagal 72a de Rialachán (AE) Uimh. 575/2013, seachas pointe (d) d'Airteagal 72b(2) den Rialachán sin;

(d) an suntasach, le hais dliteanais incháilithe agus cistí dílse an eintitis réitigh, líon na ndliteanas a eisiatar ó chur i bhfeidhm na gcumhachtaí díluachála agus comhshó i gcomhréir le hAirteagal 44(2) nó le hAirteagal 44(3) agus a rangaítear, i ngnáthimeachtaí dócmhainneachta, ar aon chéim leis na dliteanais incháilithe is airde rangú nó faoina mbun. I gcás nach mó méid na ndliteanas eisiata ná 5 % de mhéid na gcistí dílse agus na ndliteanas incháilithe de chuid an eintitis réitigh, measfar gur gan suntas an méid a eisiadh. Más airde ná an tairseach sin, déanfaidh na húdaráis réitigh na dliteanais eisiata a mheasúnú;

(e) samhail ghnó, samhail mhaoinithe, agus próifíl riosca an eintitis réitigh, chomh maith lena chobhsaíocht agus a chumas rannchuidiú leis an ngeilleagar; agus

(f) an tionchar a bheadh ag costais fhéideartha athstruchtúrúcháin ar athchaipitliú an eintitis réitigh.

▼M3

Airteagal 45c

An t-íoscheanglas maidir le cistí dílse agus dliteanais incháilithe a chinneadh

1. Is é an t-údarás réitigh, tar éis dó dul i gcomhairle leis an údarás inniúil, a chinnfidh an ceanglas dá dtagraítear in Airteagal 45(1) i gcás gach eintitis, ar bhonn na gcritéar seo a leanas:

(a) an gá atá ann a áirithiú gur féidir an grúpa réitigh a réiteach trí na huirlisí, lena n-áirítear, an uirlis fortharrthála, a chur i bhfeidhm ar an eintiteas réitigh ar chaoi a chomhlíonann na cuspóirí réitigh;

(b) an gá atá ann a áirithiú, i gcás inarb iomchuí, go mbeidh cistí dílse agus dliteanais incháilithe leordhóthanacha ag an eintiteas réitigh gona fhochuideachtaí ar institiúidí nó eintitis dá dtagraítear i bpointí (b), (c) agus (d) d'Airteagal 1(1) iad ach nach eintitis réitigh iad, chun a áirithiú, dá gcuirfíí i bhfeidhm orthu an uirlis fortharrthála nó na cumhachtaí díluachála agus comhshó, faoi seach, gurbh fhéidir caillteanais a ionsú agus gurbh fhéidir an cóimheas caipitil iomlán a athbhunú agus, mar is infheidhme, cóimheas luamhánaithe na n-eintiteas ábhartha a thabhairt ar ais go dtí an leibhéal is gá chun gur féidir leo leanúint de bheith ag comhlíonadh na gcoinníollacha maidir le húdarú agus leanúint de na gníomhaíochtaí a bhfuil siad údaraithe ina leith faoi Threoir 2013/36/AE nó Treoir 2014/65/AE;

(c) an gá atá ann a áirithiú gur leor, má tá coinne sa phlean réitigh gur féidir go mbeidh aicmí áirithe dliteanas incháilithe eisiata ón bhfortharrtháil de bhun Airteagal 44(3) den Treoir seo, nó go n-aistreofar iad chuig faighteoir go hiomlán faoi pháirt-aistriú, gur leor na cistí dílse agus dliteanais incháilithe eile atá ag eintiteas réitigh chun a áirithiú gur féidir caillteanais a iompar agus gur féidir a chóimheas caipitil iomlán, agus más infheidhme, a chóimheas luamhánaithe a athbhunú go dtí an leibhéal is gá chun gur féidir leis leanúint de bheith ag comhlíonadh na gcoinníollacha maidir le húdarú agus leanúint de na gníomhaíochtaí a bhfuil sé údaraithe ina leith faoi Threoir 2013/36/AE nó Treoir 2014/65/AE;

(d) méid, samhail ghnó, samhail mhaoinithe agus próifíl riosca na hinstitiúide agus an eintitis;

(e) a mhéid a dhéanfadh cliseadh an eintitis dochar do chobhsaíocht airgeadais, lena n-áirítear trí aicídiú an eintitis le hinstitiúidí nó eintitis eile mar gheall ar idirnascthacht an eintitis le hinstitiúidí nó eintitis eile nó leis an gcuid eile den chóras airgeadais.

2. Má fhoráiltear sa phlean réitigh go bhfuil an ghníomhaíocht réitigh le déanamh nó go bhfuil an chumhacht chun ionstraimí caipitil agus dliteanais incháilithe ábhartha a dhíluacháil agus a chomhshó i gcomhréir le hAirteagal 59 le feidhmiú, i gcomhréir leis an gcás dá dtagraítear in Airteagal 10(3), beidh an ceanglas dá dtagraítear in Airteagal 45(1) cothrom le pé méid is leor chun a áirithiú:

▼M3

(a) go n-ionsúfar go hiomlán na caillteanais ar féidir go mbeifí ag súil go dtabhódh an t-eintiteas iad ('ionsú caillteanas');

(b) go n-athchaipitleofar an t-eintiteas réitigh gona fhochuideachtaí ar institiúidí nó eintitis dá dtagraítear i bpointí (b), (c) agus (d) n Airteagal 1(1) iad, ach nach eintitis réitigh, go dtí an leibhéal is gá chun gur féidir leo leanúint de bheith ag comhlíonadh na gcoinníollacha maidir le húdarú agus leanúint de na gníomhaíochtaí a bhfuil siad údaraithe ina leith faoi Threoir 2013/36/AE, Treoir 2014/65/AE nó a choibhéis de ghníomh reachtach ar feadh tréimhse iomchuí nach faide ná bliain amháin ('athchaipitliú').

I gcás ina bhforáiltear sa phlean réitigh go bhfuil an t-eintiteas le foirceannadh faoi ghnáthimeachtaí dócmhainneachta, nó faoi nósanna imeachta náisiúnta coibhéiseacha eile, measfaidh an t-údarás réitigh cé acu atá nó nach bhfuil bonn cirt le teorannú a dhéanamh ar an gceanglas dá dtagraítear in Airteagal 45(1) le haghaidh an eintitis sin, ionas nach mbeidh sé os cionn méid is leor chun caillteanais a iompar i gcomhréir le pointe (a) den chéad fhomhír.

Sa mheasúnú a dhéanfaidh an t-údarás réitigh, déanfar meastóireacht ar an teorainn dá dtagraítear sa dara fomhír maidir le haon tionchar a d'fhéadfadh a bheith ar an gcobhsaíocht airgeadais agus ar an riosca aicídithe i ndáil leis an gcóras airgeadais.

3. I gcás eintitis réitigh, is éard a bheidh sa mhéid dá dtagraítear sa chéad fhomhír de mhír 2 an méid seo a leanas:

(a) chun an ceanglas dá dtagraítear in Airteagal 45(1) a ríomh, i gcomhréir le pointe (a) d'Airteagal 45(2), suim na méideanna seo a leanas:

(i) an méid caillteanas atá le hionsú i réiteach a chomhfhreagraíonn do cheanglais an eintitis réitigh dá dtagraítear i bpointe (c) d'Airteagal 92(1) de Rialachán (AE) Uimh. 575/2013 Airteagal 104a de Threoir 2013/36/AE ar leibhéal an ghrúpa réitigh fo-chomhdhlúite;

(ii) méid athchaipitliúcháin lenar féidir leis an ngrúpa réitigh a tháinig as réiteach an comhlíonadh lena cheanglas i leith cóimheas caipitil iomlán dá dtagraítear i bpointe (c) d'Airteagal 92(1) de Rialachán (AE) Uimh. 575/2013 a athbhunú agus a cheanglas dá dtagraítear in Airteagal 104a de Threoir 2013/36/AE ar leibhéal comhdhlúite an ghrúpa réitigh tar éis straitéis réitigh na tosaíochta a chur chun feidhme; agus

(b) chun an ceanglas dá dtagraítear in Airteagal 45(1) a ríomh, i gcomhréir le pointe (b) d'Airteagal 45(2), suim na méideanna seo a leanas:

(i) méid na gcaillteanas atá le hionsú i réiteach a chomhfhreagraíonn do chóimheas luamhánaithe an eintitis réitigh dá dtagraítear i bpointe (d) d'Airteagal 92(1) de Rialachán (AE) Uimh. 575/2013 ar leibhéal comhdhlúite an ghrúpa réitigh; agus

(ii) méid athchaipitliúcháin lenar féidir leis an ngrúpa réitigh a tháinig as réiteach an comhlíonadh leis an gceanglas cóimheasa luamhánaithe dá dtagraítear i bpointe (d) d'Airteagal 92(1)(d) de Rialachán (AE) Uimh. 575/2013 a athbhunú ar leibhéal comhdhlúite an ghrúpa réitigh tar éis straitéis réitigh na tosaíochta a chur chun feidhme.

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Chun críocha phointe (a) d'Airteagal 45(2), sloinnfear an ceanglas dá dtagraítear in Airteagal 45(1) i dtéarmaí céatadán mar an méid a ríomhadh i gcomhréir le pointe (a) den chéad fhomhír, roinnte ar mhéid na neamhchosanta ar riosca iomlán.

Chun críocha phointe (b) d'Airteagal 45(2), sloinnfear an ceanglas dá dtagraítear in Airteagal 45(1) i dtéarmaí céatadán mar an méid a ríomhadh i gcomhréir le pointe (b) den chéad fhomhír den mhír seo, roinnte ar thomhas na neamhchosanta iomláine.

Agus an ceanglas aonair dá bhforáiltear i bpointe (b) den chéad fhomhír den mhír seo á socrú aige, cuirfidh an t-údarás réitigh san áireamh na ceanglais dá dtagraítear in Airteagail 37(10), 44(5) agus 44(8).

Agus na méideanna athchaipitliúcháin dá dtagraítear sna fomhíreanna roimhe seo á socrú, déanfaidh an t-údarás réitigh:

(a) leas a bhaint as na luachanna tuairiscithe is déanaí le haghaidh mhéid iomlán ábhartha na neamhchosanta ar riosca nó thomhas na neamhchosanta iomláine, arna choigeartú le haghaidh aon athruithe a thagann as gníomhaíochtaí réitigh a leagtar amach sa phlean réitigh; agus

(b) tar éis dó dul i gcomhairle leis an údarás inniúil, an méid atá comhfhreagrach leis an gceanglas atá ann faoi láthair dá dtagraítear in Airteagal 104a de Threoir 2013/36/AE a choigeartú anuas nó aníos chun an ceanglas atá le feidhm a bheith aige maidir leis an eintiteas réitigh a chinneadh tar éis chur chun feidhme straitéis réitigh na tosaíochta.

Beidh an t-údarás réitigh in ann an ceanglas dá bhforáiltear i bpointe (a)(ii) den chéad fhomhír a mhéadú méid iomchuí is gá chun a áirithiú go bhfuil an t-eintiteas in ann muinín mhargaidh leordhóthanach a chothú, tar éis an réitigh, ar feadh tréimhse ama iomchuí, nach faide ná bliain amháin.

I gcás ina mbeidh feidhm ag an séú fomhír den mhír seo, is é a bheidh sa mhéid dá dtagráitear san fhomhír sin méid is ionann agus an ceanglas maoláin chomhcheangailte a bhfuil feidhm le bheith aige tar éis chur i bhfeidhm na n-uirlisí réitigh, lúide an méid dá dtagraítear i bpointe (a) de phointe (6) d'Airteagal 128 de Threoir 2013/36/ AE.

Déanfar an méid dá dtagraítear sa séú fomhír den mhír seo a choigeartú anuas más rud é, tar éis dó dul i gcomhairle leis an údarás inniúil, go gcinneann an t-údarás réitigh, gurb indéanta agus inchreidte é gur leordhóthanach méid níos ísle chun muinín an mhargaidh a chaomhnú agus lena háirithiú go leanfaidh an institiúid nó an t-eintiteas dá dtagraítear i bpointí (b), (c) agus (d) d'Airteagal 1(1) d'fheidhmeanna criticiúla eacnamaíochta a sholáthar agus go mbeadh rochtain ar mhaoiniú gan gá le tacaíocht airgeadaisphoiblí urghnách seachas ranníocaíochtaí ó shocruithe maoinithe réitigh, i gcomhréir le agus Airteagal 44(5) agus (8) agus le hAirteagal 101 (2), tar éis chur chun feidhme na straitéise réitigh. Déanfar an méid sin a ardú más rud é, tar éis dó dul i gcomhairle leis an údarás inniúil, go gcinneann an t-údarás réitigh gur gá leibhéal níos airde chun muinín mhargaidh leordhóthanach a chothú agus lena háirithiú go leanfaidh an institiúid nó eintiteas dá dtagraítear i bpointe (b), i bpointe (c) agus i bpointe (d) d'Airteagal 1 (1) d'fheidhmeanna criticiúla eacnamaíochta a sholáthar agus go mbeadh rochtain aige nó aici ar mhaoiniú gan gá le tacaíocht airgeadais phoiblí urghnách seachas ranníocaíochtaí ó shocruithe maoinithe réitigh, i gcomhréir le hAirteagal 44(5) agus (8) agus le hAirteagal 101(2), ar feadh tréimhse iomchuí ama nach faide ná bliain amháin.

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4. Ceapfaidh ÚBE dréachtchaighdeáin theicniúla rialála ina sonrófar an mhodheolaíocht atá le húsáid ag na húdaráis réitigh chun an ceanglas dá dtagraítear in Airteagal 104a de Threoir 2013/36/AE agus an ceanglas maoláin chomhcheangailte a mheas i dtaca le heintitis réitigh leibhéal comhdhlúite an ghrúpa i gcás nach mbíonn an grúpa réitigh faoi réir na gceanglas sin per se de bhun na Treorach réamhráite.

Cuirfidh ÚBE na dréachtchaighdeáin theicniúla rialála sin faoi bhráid an Choimisiúin faoin ... [sé mhí tar éis dháta theacht i bhfeidhm na Treorach leasaithí seo].

Tarmligtear an chumhacht chuig an gCoimisiún na caighdeáin theicniúla rialála dá dtagraítear sa chéad fhomhír den mhír seo a ghlacadh i gcomhréir le hAirteagal 10 go hAirteagal 14 de Rialachán (AE) Uimh. 1093/2010.

5. I dtaca le heintitis réitigh nach bhfuil faoi réir Airteagal 92a de Rialachán (AE) Uimh. 575/2013 agus atá mar chuid de ghrúpa réitigh ar mó ná EUR 100 billiún a shócmhainní iomlána, beidh leibhéal an cheanglais dá dtagraítear i mír 3 den Airteagal seo ar a laghad cothrom:

(a) le 13,5 % nuair a ríomhtar i gcomhréir le pointe (a) d'Airteagal 45(2); agus

(b) le 5 % nuair a ríomhtar i gcomhréir le pointe (b) d'Airteagal 45(2).

De mhaolú ar Airteagal 45b, na heintitis réitigh dá dtagraítear sa chéad fhomhír den mhír seo, comhlíonfaidh siad leibhéal an cheanglais dá dtagraítear sa chéad fhomhír den mhír seo atá cothrom le 13.5 % nuair a ríomhtar i gcomhréir le pointe (a) d'Airteagal 45(2) é agus cothrom le 5 % nuair a ríomhtar i gcomhréir le pointe (b) d'Airteagal 45(2) é ag úsáid cistí dílse, ionstraimí incháilithe fo-ordaithe, nó dliteanais dá dtagraítear in Airteagal 45b(3) den Treoir seo.

6. Ar dhul i gcomhairle leis an údarás inniúil, féadfaidh an t-údarás a chinneadh na ceanglais a leagtar síos i mír 5 den Airteagal seo a chur i bhfeidhm maidir le heintiteas réitigh nach bhfuil faoi réir Airteagal 92a de Rialachán (AE) Uimh. 575/2013 agus atá mar chuid de ghrúpa réitigh ar lú ná EUR 100 billiún a shócmhainní iomlána, agus a measann an t-údarás réitigh gur dócha go réasúnta, dar leis an údarás náisiúnta réitigh, riosca sistéamach a bheith ag gabháil leis i gcás a chliste.

Agus cinneadh dá dtagraítear sa chéad fhomhír den mhír seo a dhéanamh, cuirfidh an t-údarás náisiúnta réitigh an méid seo san áireamh:

(a) leitheadúlacht taiscí agus neamhláithreacht ionstraimí fiachais sa tsamhail chistiúcháin;

(b) an méid a bhfuil rochtain ar na margaí caipitil le haghaidh dliteanais incháilithe teoranta;

(c) an méid a bhfuil an eintiteas réitigh spleách ar chaipiteal Ghnáthchothromas Leibhéal 1 chun freastal ar an riachtanas dá dtagraítear in Airteagal 45e.

I gcás nach ndéantar cinneadh de bhun na chéad fhomhíre den mhír seo, beidh sin gan dochar d'aon chinneadh a dhéanfar faoi Airteagal 45b(5).

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7. I gcás eintitis nach eintitis réitigh iontu féin iad, is éard a bheidh sa mhéid dá dtagraítear sa chéad fhomhír de mhír 2 an méid seo a leanas:

(a) chun an ceanglas dá dtagraítear in Airteagal 45(1) a ríomh, i gcomhréir le pointe (a) d'Airteagal 45(2), suim na méideanna seo a leanas:

(i) an méid caillteanas atá le hionsú a chomhfhreagraíonn do cheanglais an eintitis dá dtagraítear i bpointe (c) d'Airteagal 92(1) de Rialachán (AE) Uimh. 575/2013 agus Airteagal 104a de Threoir 2013/36/AE; agus

(ii) méid athchaipitliúcháin lenar féidir leis an eintiteas an comhlíonadh lena cheanglas i leith cóimheas caipitil iomlán dá dtagraítear in Airteagal 92(1)(c) de Rialachán (AE) Uimh. 575/2013, agus lena cheanglas dá dtagraítear in Airteagal 104a de Threoir 2013/36/AE, a athbhunú, tar éis fheidhmiú na cumhachta chun ionstraimí caipitil ábhartha agus dliteanais incháilithe a dhíluacháil nó a chomhshó i gcomhréir le hAirteagal 59 den Treoir seo nó tar éis réiteach an ghrúpa réitigh; agus

(b) chun an ceanglas dá dtagraítear in Airteagal 45(1) a ríomh, i gcomhréir le pointe (b) d'Airteagal 45(2), suim na méideanna seo a leanas:

(i) an méid caillteanas atá le hionsú i réiteach a chomhfhreagraíonn do chóimheas luamhánaithe an eintitis dá dtagraítear i bpointe (d) d'Airteagal 92(1) de Rialachán (AE) Uimh. 575/2013; agus

(ii) méid athchaipitliúcháin lenar féidir leis an eintiteas an comhlíonadh lena cheanglas cóimheasa luamhánaithe dá dtagraítear i bpointe (d) d'Airteagal 92(1)(d) de Rialachán (AE) Uimh. 575/2013 a athbhunú, tar éis fheidhmiú na cumhachta chun ionstraimí caipitil ábhartha agus dliteanais incháilithe a dhíluacháil nó a chomhshó i gcomhréir le hAirteagal 59 den Treoir seo nó le réiteach an ghrúpa réitigh.

Chun críocha phointe (a) d'Airteagal 45(2), sloinnfear an ceanglas dá dtagraítear in Airteagal 45(1) i dtéarmaí céatadán mar an méid a ríomhadh i gcomhréir le pointe (a) den chéad fhomhír den mhír seo roinnte ar mhéid na neamhchosanta ar riosca iomlán.

Chun críocha phointe (b) d'Airteagal 45(2), sloinnfear an ceanglas dá dtagraítear in Airteagal 45(1) i dtéarmaí céatadán mar an méid a ríomhadh i gcomhréir le pointe (b) den chéad fhomhír den mhír seo, roinnte ar thomhas na neamhchosanta iomláine.

Agus an ceanglas aonair dá bhforáiltear i bpointe (b) den chéad fhomhír den mhír seo á shocrú aige, cuirfidh an t-údarás réitigh san áireamh na ceanglais dá dtagraítear in Airteagail 37(10), 44(5) agus 44(8).

Agus na méideanna athchaipitliúcháin dá dtagraítear sna fomhíreanna sin roimhe seo á socrú aige, déanfaidh an t-údarás réitigh an méid seo a leanas:

(a) leas a bhaint as na luachanna tuairiscithe is déanaí le haghaidh mhéid iomlán ábhartha na neamhchosanta ar riosca nó thomha iomlán na neamhchosanta, arna choigeartú le haghaidh aon athruithe a thagann as gníomhaíochtaí réitigh a leagtar amach sa phlean réitigh; agus

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(b) tar éis dó dul i gcomhairle leis an údarás inniúil, an méid atá comhfhreagrach leis an gceanglas atá ann faoi láthair dá dtagraítear in Airteagal 104a de Threoir 2013/36/AE a choigeartú síos nó suas chun an ceanglas a chinneadh atá le feidhm a bheith aige a maidir leis an eintiteas ábhartha tar éis fheidhmiú na cumhachta chun ionstraimí caipitil ábhartha agus dliteanais incháilithe a dhíluacháil nó a chomhshó i gcomhréir le hAirteagal 59 den Treoir seo nó tar éis réiteach an ghrúpa réitigh.

Beidh an t-údarás réitigh in ann an ceanglas dá bhforáiltear i bpointe (a) (ii) den chéad fhomhír den mhír seo a mhéadú méid iomchuí is gá chun a áirithiú, tar éis an chumhacht chun ionstraimí caipitil ábhartha agus dliteanais incháilithe a dhíluacháil nó a chomhshó i gcomhréir le hAirteagal 59 a fheidhmiú, go bhfuil an t-eintiteas in ann muinín mhargaidh leordhóthanach a chothú ar feadh tréimhse iomchuí ama nach faide ná bliain amháin.

I gcás ina mbeidh feidhm ag an séú fomhír den mhír seo, beidhméid an dá dtagraítrear san fhomhír ionann agus an ceanglas maoláin comhcheangailte atá le feidhm a bheith aige, tar éis an chumhacht dá dtagraítear Airteagal 59 a fheidhmiú, nó tar éis réiteach an eintitis réitigh, lúide an méid dá dtagraítear i bpointe (6) d'Airteagal 128 de Threoir 2013/36/ AE

Déanfar an méid dá dtagraítear sa séú fomhír den mhír seo a choigeartú aníos, más rud é, tar éis dó dul i gcomhairle leis an údarás inniúil, go gcinneann an t-údarás réitigh gurb indéanta agus inchreidte é gur leordhóthanach méid níos ísle chun muinín an mhargaidh a áirithiú agus lena áirithiú go leanfaidh an institiúid nó an t-eintiteas dá dtagraítear i bpointí (b), (c) nó (d) d'Airteagal 1(1) d'fheidhmeanna criticiúla eacnamaíochta a sholáthar agus go mbeadh rochtain aige nó aici ar mhaoiniú gan gá le tacaíocht airgeadais phoiblí urghnách seachas ranníocaíochtaí ó shocruithe maoinithe réitigh, i gcomhréir agus le míreanna 5 agus 8 d'Airteagal 44 agus le hAirteagal 101(2), tar éis fheidhmiú na cumhachta dá dtagraítear in Airteagal 59 nó tar éis réiteach an ghrúpa réitigh. Déanfar an méid sin a choigeartú suas más rud é, tar éis dó dul i gcomhairle leis an údarás inniúil, go gcinneann an Bord gur gá méid níos airde chun muinín mhargaidh leordhóthanach a chothú agus lena áirithiú go leanfaidh an institiúid nó an t-eintiteas dá dtagraítear i bpointí (b), (c) nó (d) d'Airteagal 1(1) d'fheidhmeanna criticiúla eacnamaíochta a sholáthar agus go mbeadh rochtain aige nó aici ar mhaoiniú gan gá le tacaíocht airgeadais phoiblí urghnách seachas ranníocaíochtaí ó shocruithe maoinithe réitigh, i gcomhréir lemíreanna 5 agus 8 d'Airteagal 44(5) agus (8) agus le hAirteagal 101(2) ar feadh tréimhse iomchuí ama nach faide ná bliain amháin.

8. I gcás inar dóigh leis an údarás réitigh go bhfuil sé réasúnta dóchúil go n-eisiafar, go hiomlán nó go páirteach, aicmí áirithe dliteanas incháilithe ón bhfortharrtháil de bhun Airteagal 44(3) nó go n-aistreofaí iad go iomlán chuig faighteoir in aistriú páirteach, déanfar an ceanglas dá dtagraítear in Airteagal 45(1) a chomhlíonadh le cistí dílse nó dliteanais incháilithe eile ar leor iad chun:

(a) méid na ndliteanas eisiata a sainaithníodh i gcomhréir le hAirteagal 44(3) a chumhdach;

(b) a áirithiú go gcomhlíonfar na coinníollacha dá dtagraítear i mír 2.

▼M3

9. I gcinneadh ar bith ón údarás réitigh íoscheangal cistí dílse agus dliteanas incháilithe a fhorchur faoin Airteagal seo, beidh na cúiseanna atá leis an gcinneadh sin, lena n-áirítear measúnú iomlán ar na heilimintí dá dtagraítear i míreanna 2 go dtí 8 den Airteagal seo, agus déanfaidh an t-údarás réitigh athbhreithniú air gan aon mhoill mhíchuí chun aon athruithe ar leibhéal an cheanglais dá dtagraítear in Airteagal 104a de Threoir 2013/36/AE a léiriú.

10. Chun críocha mhír 3 agus mhír 7 den Airteagal seo, léireofar na ceanglais chaipitil i gcomhréir leis an gcur i bhfeidhm a dhéanann an t-údarás inniúil ar fhorálacha idirthréimhseacha a leagtar síos i gCaibidil 1, Caibidil 2 agus Caibidil 4 de Theideal I de Chuid a Deich de Rialachán (AE) Uimh. 575/2013 agus i bhforálacha na reachtaíochta náisiúnta a fheidhmíonn na roghanna a tugadh do na húdaráis inniúla leis an Rialachán sin.

Article 45d

An t-íoscheanglas a chinneadh maidir le cistí dílse agus dliteanais incháilithe i gcás eintitis réitigh de chuid G-SIIanna agus fochuideachtaí ábhartha de chuid an Aontais nach G-SIIanna de chuid an Aontais Eorpaigh iad

1. Beidh an ceanglas dá dtagraítear in Airteagal 45(1) d'eintiteas réitigh ar G-SII nó cuid de G-SII é déanta de na nithe seo a leanas:

(a) na ceanglais dá dtagraítear in Airteagal 92a agus Airteagal 494 de Rialachán (AE) Uimh. 575/2013; agus

(b) aon cheanglas breise maidir le cistí dílse agus dliteanais incháilithe arna chinneadh ag an údarás réitigh a bhaineann go sonrach maidir leis an eintiteas sin i gcomhréir le mír 3 den Airteagal seo.

2. Is éard a bheidh sa cheanglas dá dtagraítear in Airteagal 45(1), d'fhochuideachta ábhartha de chuid an Aontais de G-SII neamh-AE/ na nithe seo a leanas:

(a) na ceanglais dá dtagraítear in Airteagal 92b agus Airteagal 494 de Rialachán (AE) Uimh. 575/2013; agus

(b) aon cheanglas breise maidir le cistí dílse agus dliteanais incháilithe arna chinneadh ag an údarás réitigh go sonrach i ndáil leis an bhfochuideachta ábhartha sin i gcomhréir le mír 3 den Airteagal seo, agus comhlíonfar an ceanglas sin le cistí dílse agus dliteanais a úsáid a chomhlíonann coinníollacha Airteagal 45f agus Airteagal 89(2).

3. Ní fhorchuirfidh an t-údarás réitigh ceanglas breise maidir le cistí dílse agus dliteanais incháilithe dá dtagraítear i bpointe (b) de mhír 1 agus i bpointe (b) de mhír 2 ach amháin sa chás seo a leanas:

(a) i gcás nach leor an ceanglas dá dtagraítear i bpointe (a) de mhír 1 nó i bpointe (a) de mhír 2 den Airteagal seo chun na coinníollacha a leagtar amach in Airteagal 45c; agus

(b) go dtí an pointe lena n-áirithítear go gcomhlíontar na coinníollacha a leagtar amach in Airteagal 45c.

▼M3

4. Chun críocha Airteagal 45h(2), i gcás inar eintitis réitigh níos mó ná eintiteas G-SII amháin de chuid an G-SII céanna de chuid an Aontais Eorpaigh, ríomhfaidh na húdaráis réitigh an méid dá dtagraítear i mír 3:

(a) le haghaidh gach eintitis réitigh;

(b) le haghaidh an mháthaireintitis de chuid an Aontais Eorpaigh amhail gurbh é an t-aon eintiteas réitigh de chuid an G-SII é.

5. I gcinneadh an údaráis réitigh ceanglas breise cistí dílse agus dliteanas incháilithe a fhorchur faoi phointe (b) de mhír 1 den Airteagal seo nó faoi phointe (b) de mhír 2 den Airteagal seo, beidh na cúiseanna atá leis an gcinneadh sin, lena n-áirítear measúnú iomlán ar na heilimintí dá dtagraítear i mír 3 den Airteagal seo, agus déanfaidh an t-údarás réitigh athbhreithniú air gan aon mhoill mhíchuí chun aon athruithe ar leibhéal an cheanglais dá dtagraítear in Airteagal 104a de Threoir 2013/36/AE is infheidhme maidir leis an ngrúpa réitigh nó le fochuideachta ábhartha de chuid an Aontais de G-SII neamh-AE a léiriú.

Airteagal 45e

An t-íoscheanglas maidir le cistí dílse agus dliteanais incháilithe a chinneadh a chur i bhfeidhm maidir le heintitis réitigh

1. Comhlíonfaidh eintitis réitigh na ceanglais a leagtar síos in Airteagail 45b go 45d ar bhonn comhdhlúite ar leibhéal an ghrúpa réitigh.

2. Cinnfidh an t-údarás réitigh an ceanglas d'eintitis réitigh dá dtagraítear in Airteagal 45(1) ar leibhéal an ghrúpa chomhdhlúite i gcomhréir le hAirteagal 45h ar bhonn na gceanglas a leagtar síos in Airteagail 45b go 45d agus ar bhonn cé acu atá nó nach bhfuil fochuideachtaí tríú tír an ghrúpa le réiteach in éineacht leis an eintiteas réitigh de réir an phlean réitigh.

3. I gcás grúpaí réitigh a shainaithnítear i gcomhréir le pointe (b) de phointe (83b) d'Airteagal 2(1), cinnfidh an t-údarás ábhartha réitigh, ag brath ar ghnéithe an tsásra dlúthpháirtíochta agus na straitéise réitigh tosaíochta roghnaithe, cé na heintitis sa ghrúpa réitigh a mbeidh de cheangal orthu Airteagal 45c(3) agus(5) agus Airteagal 45d(1)a chomhlíonadh, chun a áirithiú go gcomhlíonfaidh an grúpa réitigh ina iomláine an ceanglas dá dtagraítear i mír (1) agus i mír (2) den Airteagal seo agus an chaoi a ndéanfaidh eintitis den sórt sin an méid sin i gcomhréir leis an bplean réitigh.

Airteagal 45f

Íoscheanglais cistí dílse agus dliteanais eintitis incháilithe nach eintitis réitigh iad féin a chur i bhfeidhm

1. Comhlíonfaidh institiúidí ar fochuideachtaí d'eintiteas réitigh iad nó d'eintiteas tríú tír agus nach eintitis réitigh iad féin na ceanglais a leagtar síos in Airteagal 45c ar bhonn aonair.

Féadfaidh údarás réitigh, tar éis dul i gcomhairle leis an údarás inniúil, a chinneadh an ceanglas a leagtar síos san Airteagal sin a chur i bhfeidhm ar eintiteas dá dtagraítear i bpointí (b) (c) nó (d) d'Airteagal 1(1) ar fochuideachta d'eintiteas réitigh é agus nach eintiteas réitigh é féin.

▼M3

De mhaolú ar an gcéad fhomhír den mhír seo, déanfaidh máthairghnóthais de chuid an Aontais nach eintitis réitigh iad féin ach ar fochuideachtaí de chuid eintitis tríú tír iad, na ceanglais a leagtar síos in Airteagal 45c go hAirteagal 45d ar bhonn comhdhlúite.

I dtaca le grúpaí réitigh arna sainaithint i gcomhréir le pointe (b) de phointe (83b) d'Airteagal 2(1), le hinstitiúidí creidmheasa atá buanchleamhnaithe le comhlacht lárnach ach nach eintitis réitigh iad féin, comhlacht lárnach nach eintitis réitigh í féin, agus aon eintitis réitigh nach bhfuil faoi réir ceanglais faoi Airteagal 45e(3), comhlíonfaidh siad siúd Airteagal 45c(7) ar bhonn aonair.

Déanfar an ceanglas a leagfar ar eintiteas dá dtagraítear sa mhír seo a chinneadh i gcomhréir le hAirteagal 45h agus Airteagal 89, nuair is infheidhme, agus ar bhonn na gceanglas a leagtar síos in Airteagal 45c.

2. Déanfar an ceanglas dá dtagraítear in Airteagal 45(1) d'eintitis dá dtagraítear i mír 1 den Airteagal seo a chomhlíonadh le ceann amháin nó níos mó díobh seo a úsáid:

(a) dliteanais

(i) arna n-eisiúint don eintiteas réitigh agus arna gceannach ag an eintiteas sin go díreach nó go hindíreach trí eintitis eile sa ghrúpa réitigh céanna a cheannaigh na dliteanais ón eintiteas atá faoi réir an Airteagail seo nó arna n-eisiúint do scairshealbhóir, nó arna gceannach aige, atá ann cheana nach bhfuil mar chuid den ghrúpa réitigh céanna chomh fada agus nach ndéantar difear, le feidhmiú na cumhachta díluachála nó comhshó i gcomhréir le hAirteagail 59 go 62, don rialú a dhéanann an t-eintiteas réitigh ar an bhfochuideachta;

(ii) a chomhlíonann na critéir incháilithe dá dtagraítear in Airteagal 72a de Rialachán (AE) Uimh 575/2013, cé is moite de phointí (b), (c), (k), (l) agus (m) d'Airteagal 72b(2) agus Airteagal 72b(3) go (5) den Rialachán sin;

(iii) a rangaítear, de réir gnáthimeachtaí dócmhainneachta, níos ísle ná dliteanais nach gcomhlíonann an coinníoll dá dtagraítear i bpointe (1) agus nach bhfuil incháilithe i dtaca le ceanglais cistí dílse;

(iv) atá faoi réir ag an gcumhacht díluachála nó comhshó i gcomhréir le hAirteagail 59 go hAirteagal 62 ar bhealach atá comhsheasmhach le straitéis réitigh an ghrúpa réitigh, is é sin go háirithe gan difear a dhéanamh don rialú a dhéanann an t-eintiteas réitigh ar an bhfochuideachta;

(v) nach bhfuil a n-éadáil úinéireachta cistithe go díreach ná go hindíreach ag an eintiteas atá faoi réir an Airteagail seo;

(vi) ní thugtar le fios go sainráite ná go hintuigthe sna forálacha maidir leis na dliteanais go ndéanfadh an t-eintiteas na dliteanais a cheannach, a fhuascailt, a aisíoc nó a athcheannach go luath, de réir mar is infheidhme, ag an eintiteas atá faoi réir an Airteagail seo ach amháin i gcás dhócmhainneacht nó leachtú an eintitis sin agus ní thugann an t-eintiteas sin an méid sin le fios ar aon tslí eile;

▼M3

(vii) ní thugann na forálacha maidir leis na dliteanais an ceart don sealbhóir dlús a chur faoi íocaíocht sceidealta an úis nó na príomhshuime amach anseo, ach amháin i gcás dhócmhainneacht nó leachtú an eintitis a bheidh faoi réir an Airteagail seo;

(viii) ní dhéantar leibhéal an úis nó na n-íocaíochtaí dáileacháin, de réir mar is infheidhme, a bheidh dlite i leith na ndliteanas, a leasú ar bhonn sheasamh creidmheasa an eintitis atá faoi réir an Airteagail seo nó a mháthairghnóthais.

(b) cistí dílse

(i) caipiteal Gnáthchothromas Leibhéal 1, agus

(ii) ionstraimí cistí dílse eile:

— arna n-eisiúint d'eintitis, agus arna gceannach acu, ar eintitis iad a chuimsítear sa ghrúpa réitigh céanna, nó

— arna n-eisiúint d'eintitis, agus arna gceannach acu, ar eintitis iad nach gcuimsítear sa ghrúpa réitigh céanna, iad chomh fada agus nach ndéantar difear, le feidhmiú na cumhachta díluachála nó comhshó i gcomhréir le hAirteagail 59 go 62, difear don rialú a dhéanann an t-eintiteas réitigh ar an bhfochuideachta.

3. Féadfaidh údarás réitigh fochuideachta nach eintiteas réitigh é cur i bhfeidhm an Airteagail seo ar an bhfochuideachta a tharscaoileadh i gcás:

(a) ina bhfuil an fhochuideachta agus an t-eintiteas réitigh bunaithe sa Bhallstát céanna agus gur cuid den aon ghrúpa réitigh amháin iad;

(b) ina gcomhlíonann an t-eintiteas réitigh an ceanglas dá dtagraítear in Airteagal 45e;

(c) nach ann do bhac ábhartha praiticiúil nó dlíthiúil, ná bac intuartha, ar an eintiteas réitigh cistí dílse a aistriú agus dliteanais a aisíoc go pras leis an bhfochuideachta i dtaca lena ndearnadh cinneadh i gcomhréir le hAirteagal 59(3), go háirithe nuair a dhéantar gníomh réitigh i dtaca leis an eintiteas réitigh;

(d) ina sásaíonn an t-eintiteas réitigh an t-údarás inniúil maidir le bainistíocht stuama na fochuideachta agus tá sé fógartha aige, le toiliú an údaráis inniúil, go ráthaíonn sé na gealltanais arna ndéanamh ag an bhfochuideachta, nó nach mbaineann tábhacht ar bith leis na rioscaí san fhochuideachta;

(e) cuimsíonn nósanna imeachta rialaithe, tomhas agus meastóireachta riosca eintitis réitigh na fochuideachta freisin;

(f) tá os cionn 50 % de na cearta vótála a bhaineann le scaireanna i gcaipiteal na fochuideachta i seilbh an eintitis réitigh nó tá sé de cheart ag an eintiteas réitigh formhór comhaltaí chomhlacht bainistíochta na fochuideachta a cheapadh nó a chur as oifig;

4. Féadfaidh údarás réitigh fochuideachta nach eintiteas réitigh é cur i bhfeidhm an Airteagail seo ar an bhfochuideachta a tharscaoileadh freisin, i gcás:

(a) ina bhfuil an fhochuideachta agus a máthairghnóthas bunaithe san aon Bhallstát amháin agus gur cuid den aon ghrúpa réitigh amháin iad;

▼M3

(b) ina gcomhlíonann an máthairghnóthas ar bhonn comhdhlúite fochuideachta, leis an gceanglas dá dtagraítear in Airteagal 45(1) sa Bhallstát sin;

(c) nach ann do bhac ábhartha praiticiúil nó dlíthiúil, ná bac intuartha, ar an máthairghnóthas cistí dílse a aistriú agus dliteanais a aisíoc go pras leis an bhfochuideachta i dtaca lena ndearnadh cinneadh i gcomhréir le hAirteagal 59(3), go háirithe nuair a dhéantar gníomh réitigh nó cumhacht dá dtagraítear in Airteagal 59(1) i dtaca leis an máthairghnóthas;

(d) ina sásaíonn an máthairghnóthas an t-údarás inniúil maidir le bainistíocht stuama na fochuideachta agus tá sé fógartha aige, le toiliú an údaráis inniúil, go ráthaíonn sé na gealltanais arna ndéanamh ag an bhfochuideachta, nó nach mbaineann tábhacht ar bith leis na rioscaí san fhochuideachta;

(e) cuimsíonn nósanna imeachta rialaithe, tomhais agus meastóireachta riosca an mháthairghnóthais an fhochuideachta freisin;

(f) tá os cionn 50 % de na cearta vótála a bhaineann le scaireanna i gcaipiteal na fochuideachta i seilbh an mháthairghnóthais nó tá sé de cheart ag an eintiteas réitigh formhór comhaltaí chomhlacht bainistíochta na fochuideachta a cheapadh nó a chur as oifig.

5. I gcás ina gcomhlíontar na coinníollacha a leagtar síos i bpointí (a) agus (b) de mhír 3, féadfaidh údarás réitigh na fochuideachta a cheadú dá dtagraítear in Airteagal(1) go sásófar an ceanglas go hiomlán nó go páirteach trí ráthaíocht a fháil ón eintiteas réitigh a chomhlíonann na coinníollacha seo a leanas:

(a) cuirtear an ráthaíocht ar fáil maidir leis an méid atá coibhéiseach le méid an cheanglais a dtéann sé ina ionad;

(b) déantar an ráthaíocht a thionscnamh nuair nach bhfuil sé ar chumas na fochuideachta a fiacha nó dliteanais eile a ghlanadh nuair a bheidh siad dlite nó nuair a dhéantar cinneadh i gcomhréir le hAirteagal 59(3) i dtaca le fochuideachta, cibé acu is túisce a tharlóidh;

(c) déantar an ráthaíocht a comhthaobhú le socrú airgeadais comhthaobhach mar a shainítear i bpointe (a) d'Airteagal 2(1) de Threoir 2002/47/CE ar 50 % dá méid ar a laghad;

(d) comhlíonann an chomhthaobhacht lena dtacaítear an ráthaíocht ceanglais Airteagal 197 de Rialachán (AE) Uimh. 575/2013, agus is leordhóthanach é, agus caolchorrlaigh atá coimeádach go hiomchuí curtha i bhfeidhm, chun an méid a rathaítear, dá dtagraítear i bpointe (c), a chumhdach go hiomlán;

(e) tá an chomhthaobhacht lena dtacaítear leis an ráthaíocht neamhualaithe agus ní úsáidtear go háirithe í chun tacú le haon ráthaíocht eile;

(f) tá aibíocht éifeachtach ag an gcomhthaobhacht a chomhlíonann an coinníoll aibíochta céanna dá dtagraítear in Airteagal 72c(1) de Rialachán (AE) Uimh. 575/2013; agus

(g) níl aon bhacainní dlíthiúla, rialála nó oibríochtúla ar aistriú na comhthaobhachta ón eintiteas réitigh chuig an bhfochuideachta ábhartha, lena n-áirítear i gcás ina ndéantar an gníomh réitigh i dtaca leis an eintiteas réitigh.

▼M3

Chun críocha phointe (g) den chéad fhomhír, arna iarraidh sin don údarás réitigh, soláthróidh an t-eintiteas réitigh tuairim dhlíthiúil neamhspleách, réasúnaithe i scríbhinn uaidh nó léireoidh sé go sásúil ar shlí eile nach ann d'aon bhacainní rialála ná oibríochtúla ar chomhthaobhacht a aistriú ón eintiteas réitigh chuig an bhfochuideachta ábhartha.

6. Ceapfaidh ÚBE dréachtchaighdeáin theicniúla rialála ina sonrófar a thuilleadh na modheolaíochtaí a úsáidfear chun nach mbeidh ionstraimí, a aithnítear chun críocha an Airteagail seo arna suibscríobh, go páirteach nó go hiomlán, ag an eintiteas réitigh, ina gconstaic roimh chur chun feidhme rianúil na straitéise réitigh. Ba cheart go háirithe, leis na modhanna sin, a áirithiú go rachaidh caillteanais chomh fada leis an eintiteas réitigh mar is cóir agus caipiteal chomh fada leis na heintitis ar cuid den ghrúpa réitigh iad ach nach eintitis réitigh iad féin, mar is cóir, agus go bhfeidhmeoidh na modhanna mar shásra chun nach ndéanfar áireamh dúbailte ar ionstraimí incháilithe a aithnítear chun críocha an Airteagail 45 seo. Córas asbhainte nó a choibhéis de chur chuige stóinseach a bheidh sna modhanna sin lena n-áiritheofar go mbeidh ag eintitis, nach iad féin an t-eintiteas réitigh per se, toradh is ionann agus dá ndéanfadh an t-eintiteas réitigh suibscríobh lán díreach ar na hionstraimí arna n-aithint chun críocha an Airteagail seo.

Cuirfidh an tÚdarás Baincéireachta Eorpach na dréachtchaighdeáin theicniúla rialála sin faoi bhráid an Choimisiúin faoin ... [sé mhí tar éis dháta theacht i bhfeidhm na Treorach seo].

Tarmligtear an chumhacht chuig an gCoimisiún na caighdeáin theicniúla rialála dá dtagraítear sa chéad fhomhír a ghlacadh i gcomhréir le hAirteagal 10 go hAirteagal 14 de Rialachán (AE) Uimh. 1093/2010.

Airteagal 45g

Tarscaoileadh i gcás comhlacht lárnach agus institiúidí creidmheasa atá buanchleamhnaithe le comhlacht lárnach

Féadfaidh an t-údarás réitigh cur i bhfeidhm Airteagal 45f maidir le comhlacht lárnach nó institiúid chreidmheasa atá buanchleamhnaithe le comhlacht lárnach a tharscaoileadh, go páirteach nó go hiomlán, i gcás ina gcomhlíontar na coinníollacha seo a leanas uile:

(a) tá na hinstitiúidí creidmheasa agus an comhlacht lárnach faoi réir maoirseacht ag an aon údarás inniúil amháin agus tá siad bunaithe san aon Bhallstát amháin agus is cuid den ghrúpa réitigh céanna iad;

(b) is dliteanais chomhpháirteacha agus leithleacha iad gealltanais an chomhlachta lárnaigh agus a institiúidí creidmheasa buanchleamhnaithe, nó tá gealltanais a institiúidí credimheasa buanchleamhnaithe ráthaithe go hiomlán ag an gcomhlacht lárnach;

(c) déantar faireachán ar an íoscheanglas le haghaidh chistí dílse agus dhliteanais incháilithe, agus ar shócmhainneacht agus leachtacht an chomhlachta lárnaigh agus na n-institiúidí creidmheasa buanchleamhnaithe uile ina n-iomlán ar bhonn chuntais chomhdhlúite na n-institiúidí sin;

(d) i gcás tarscaoileadh maidir le hinstitiúid creidmheasa atá buanchleamhnaithe le comhlacht lárnach, beidh sé de chumhacht ag bainistíocht an chomhlachta lárnaigh treoracha a atheisiúint do bhainistíocht na n-institiúidí buanchleamhnaithe;

▼M3

(e) comhlíonann an grúpa réitigh ábhartha an ceanglas dá dtagraítear in Airteagal 45e(3); agus

(f) ní ann d'aon bhac ábhartha, praiticiúil ná dlíthiúil reatha ná intuartha maidir le haistriú pras cistí dílse nó aisíocaíocht dliteanas ón gcomhlacht lárnach agus na hinstitiúidí creidmheasa atá buanchleamhnaithe leis i gcás réitigh.

Airteagal 45h

Nós imeachta maidir leis an gceanglas a chinneadh

1. Údarás réitigh an eintitis réitigh, an t-údarás réitigh ar leibhéal an ghrúpa, i gcás nach ionann é agus údarás réitigh an eintitis réitigh, agus na húdaráis réitigh atá freagrach as fochuideachtaí grúpa réitigh atá faoi réir an cheanglais dá dtagraítear in Airteagal 45f ar bhonn aonair, déanfaidh siad sin gach dá bhfuil ar a gcumas chun teacht ar chinneadh comhpháirteach maidir le:

(a) méid an cheanglais atá le cur i bhfeidhm ar leibhéal an ghrúpa chomhdhlúite réitigh maidir le gach eintiteas réitigh; agus

(b) méid an cheanglais arna chur i bhfeidhm ar bhonn aonair maidir le gach eintiteas de chuid grúpa réitigh nach eintiteas réitigh é.

Áiritheofar leis an gcinneadh comhpháirteach go mbeidh comhlíonadh Airteagal 45e agus 45f lánréasúnaithe agus:

(a) go gcuirfidh an t-údarás réitigh ar fáil don údarás réitigh é;

(b) go gcuirfidh údaráis réitigh na n-eintiteas sin nach eintitis réitigh iad féin ach ar cuid de ghrúpa réitigh iad an cinneadh réamhráite ar fáil dóibh;

(c) go gcuirfidh údarás réitigh an eintitis réitigh ar fáil do mháthairghnóthas Aontais an ghrúpa é, nuair nach eintiteas réitigh sa ghrúpa réitigh céanna an máthairghnóthas an Aontais féin.

Féadfar a fhoráil sa chinneadh comhpháirteach arna ghlacadh i gcomhréir leis an Airteagal seo, ach sin a bheith ag teacht leis an straitéis réitigh agus a fhad is nár cheannaigh an t-eintiteas réitigh go díreach nó go hindíreach leordhóthain ionstraimí i gcomhréir le hAirteagal 45f(2), go bhfuil na ceanglais dá dtagraítear in Airteagal 45c(7) comhlíonta go páirteach ag an bhfochuideachta i gcomhréir le hAirteagal 45f(2) le hionstraimí arna n-eisiúint do na heintitis nach mbaineann leis an ngrúpa réitigh agus á gceannach acu.

▼C1

2. I gcás inar eintitis réitigh níos mó ná G-SII amháin a bhaineann leis an G-SII céanna, déanfaidh na húdaráis réitigh dá dtagraítear i mír 1 cur i bhfeidhm Airteagal 72e de Rialachán (AE) Uimh. 575/2013 agus aon choigeartú a dhéanfar chun an difríocht idir suim na méideanna dá dtagraítear i bpointe (a) d'Airteagal 45d(4) agus in Airteagal 12a de Rialachán (AE) Uimh. 575/2013 maidir le heintitis réitigh aonair agus suim na méideanna dá dtagraítear i bpointe (b) d'Airteagal 45d(4) agus in Airteagal 12a de Rialachán (AE) Uimh. 575/2013 a íoslaghdú nó a dhíothú a phlé agus, i gcás ina bhfuil sin iomchuí agus comhsheasmhach le straitéis réitigh G-SII, a chomhaontú.

▼C1

Féadfar coigeartú den chineál sin a chur i bhfeidhm faoi réir an mhéid seo a leanas:

(a) féadfar an coigeartú a chur i bhfeidhm i dtaca leis na difríochtaí i ríomh méideanna neamhchosanta riosca iomlána idir na Ballstáit ábhartha trí leibhéal an cheanglais a choigeartú;

(b) ní chuirfear an coigeartú i bhfeidhm chun difríochtaí a eascraíonn ó neamhchosaintí idir grúpaí réitigh a dhíothú.

Ní bheidh suim na méideanna dá dtagraítear i bpointe (a) d'Airteagal 45d(4) den Treoir seo agus in Airteagal 12a de Rialachán (AE) Uimh. 575/2013 maidir le heintitis réitigh aonair níos lú ná suim na méideanna dá dtagraítear i bpointe (b) d'Airteagal 45d(4) den Treoir seo agus in Airteagal 12a de Rialachán (AE) Uimh. 575/2013.

▼M3

3. Mura dtagtar ar chinneadh comhpháirteach laistigh de cheithre mhí, déanfar cinneadh i gcomhréir le míreanna 4 go 6.

4. I gcás nach dtagtar ar chinneadh comhpháirteach laistigh de cheithre mhí de thoradh easaontú maidir le ceanglas comhdhlúite ar leibhéal an ghrúpa dá dtagraítear in Airteagal 45e, déanfaidh údarás réitigh an eintitis réitigh cinneadh maidir leis an gceanglas comhdhlúite tar éis an méid seo a chur san áireamh go hiomchuí:

(a) measúnú ar eintitis an ghrúpa eintiteas nach eintitis réitigh iad, arna dhéanamh ag na húdaráis ábhartha réitigh;

(b) tuairim an údaráis réitigh ar leibhéal grúpa, i gcás nach ionann é sin agus tuairim údaráis réitigh an eintitis réitigh.

Más rud é, ag deireadh na tréimhse ceithre mhí, gur chuir aon cheann de na húdaráis an t-ábhar a chur faoi bhráid ÚBE de réir Airteagal 19 de Rialachán (AE) Uimh. 1093/2010, cuirfidh údarás réitigh an eintitis réitigh a chinneadh siar agus fanfaidh sé ar aon chinneadh a ghlacfaidh ÚBE de réir Airteagal 19(3) den Rialachán sin maidir lena chinneadh, agus glacfaidh sé a chinneadh i gcomhréir le cinneadh ÚBE.

Cuirfidh cinneadh ÚBE pointí (a) agus (b) den chéad fhomhír san áireamh.

Measfar gurb é an tréimhse ceithre mhí an tréimhse idir-réitigh de réir bhrí Rialachán (AE) Uimh 1093/2010. Déanfaidh an ÚBE an cinneadh laistigh d'aon mhí amháin.

Ní chuirfear an t-ábhar ar aghaidh chuig ÚBE má tá an tréimhse ceithre mhí thart nó má thángthas ar chinneadh comhpháirteach.

In éagmais chinneadh ó ÚBE laistigh d'aon mhí amháin, beidh feidhm ag cinneadh údarás réitigh an eintitis réitigh.

5. Mura dtagtar ar chinneadh comhpháirteach laistigh de cheithre mhí de thoradh easaontú maidir le leibhéal an cheanglais dá dtagraítear in Airteagal 45f a bheidh le cur i bhfeidhm ar aon eintiteas de chuid grúpa réitigh ar bhonn aonair, déanfaidh údaráis réitigh an eintitis sin faoi seach an cinneadh i gcás ina gcomhlíonfar na coinníollacha seo a leanas go léir:

(a) tá na tuairimí agus na forchoimeádais a chuir údarás réitigh an eintitis réitigh i scríbhinn curtha san áireamh go hiomchuí, agus

▼M3

(b) tá tuairimí agus ábhair amhrais an údaráis réitigh ar leibhéal grúpa, a cuireadh i scríbhinn, curtha san áireamh go hiomchuí i gcás nárbh é údarás réitigh an eintitis réitigh an t-údarás sin;

I gcás, ag deireadh na tréimhse ceithre mhí, ina bhfuil údarás réitigh an eintitis réitigh nó an t-údarás réitigh ar leibhéal grúpa tar éis an t-ábhar a chur faoi bhráid ÚBE i gcomhréir le hAirteagal 19 de Rialachán (AE) Uimh. 1093/2010, cuirfidh na húdaráis réitigh atá freagrach as na fochuideachtaí ar bhonn aonair a gcinntí siar agus fanfaidh siad ar aon chinneadh a fhéadfaidh ÚBE a dhéanamh de réir Airteagal 19(3) den Rialachán sin, agus déanfaidh siad a gcinneadh i gcomhréir le cinneadh ÚBE. Cuirfidh cinneadh ÚBE pointí (a) agus (b) den chéad fhomhír san áireamh.

Measfar gurb é an tréimhse ceithre mhí an tréimhse idir-réitigh de réir bhrí Rialachán (AE) Uimh 1093/2010. Déanfaidh an ÚBE an cinneadh laistigh d'aon mhí amháin.

Ní chuirfear an t-ábhar ar aghaidh chuig ÚBE má tá an tréimhse ceithre mhí thart nó má thángthas ar chinneadh comhpháirteach.

Ní dhéanfaidh údarás réitigh an eintitis réitigh ná údarás réitigh leibhéal an ghrúpa an scéal a chur faoi bhráid ÚBE le hidirghabháil cheangailteach a dhéanamh nuair atá an leibhéal a shocraigh údarás réitigh na fochuideachta:

(a) faoi bhun 2 % de mhéid iomlán méid iomlán na neamhchosanta riosca arna ríomh i gcomhréir le hAirteagal 92(3) de Rialachán (AE) Uimh. 575/2013 den cheanglas dá dtagraítear in Airteagal 45e; agus

(b) i gcomhréir go hiomlán le hAirteagal 45c(7).

Cheal ar chinneadh ó ÚBE laistigh de mhí amháin, beidh feidhm ag cinntí údarás réitigh na bhfochuideachtaí.

Déanfar an cinneadh comhpháirteach agus aon chinntí a dhéanfar mura ndéantar cinneadh comhpháirteach a athbhreithniú agus a nuashonrú ar bhonn rialta i gcás inarb ábhartha.

6. Mura dtagtar ar chinneadh comhpháirteach laistigh de cheithre mhí de thoradh easaontú maidir le leibhéal cheanglas an ghrúpa réitigh comhdhlúite agus leibhéal an cheanglais a bheidh le cur ar eintitis an ghrúpa réitigh ar bhonn aonair, beidh feidhm ag an méid seo a leanas:

(a) déanfar cinneadh maidir le leibhéal an cheanglais a bheidh le cur ar fhochuideachtaí an ghrúpa réitigh ar bhonn aonair i gcomhréir le mír 5;

(b) déanfar cinneadh maidir le leibhéal cheanglas an ghrúpa réitigh chomhdhlúite i gcomhréir le mír 4.

7. Beidh an cinneadh comhpháirteach dá dtagraítear i mír 1 agus aon chinntí a dhéanfaidh na húdaráis réitigh dá dtagraítear i míreanna 4, 5 agus 6 mura ndéantar cinneadh comhpháirteach, beidh siad sin ina gceangal ar na húdaráis réitigh lena mbaineann.

Déanfar an cinneadh comhpháirteach agus aon chinntí a dhéanfar mura ndéantar cinneadh comhpháirteach a athbhreithniú agus a nuashonrú ar bhonn rialta i gcás inarb ábhartha.

▼M3

8. Éileoidh údaráis réitigh, i gcomhar leis na húdaráis inniúla, agus fíoróidh siad go gcomhlíonfaidh eintitis an ceanglas dá dtagraítear in Airteagal 45(1), agus déanfaidh siad aon chinneadh de bhun an Airteagail seo i gcomhthráth le forbairt agus cothabháil na bpleananna réitigh.

Airteagal 45i

Tuairisciú maoirseachta agus nochtadh poiblí a dhéanamh ar an gceanglas

1. Cuirfidh na heintitis dá dtagraítear in Airteagal 1(1), faoi réir an cheanglais dá dtagraítear in Airteagal 45(1), an fhaisnéis seo a leanas ar fáil dá gcuid údarás inniúil agus réitigh:

(a) méideanna na gcistí dílse a chomhlíonann, mar is infheidhme, na coinníollacha atá i bpointe (b) d'n Airteagal 45f(2)den Treoir seo agus méideanna na ndliteanas incháilithe, agus sloinneadh na méideanna sin i gcomhréir le hAirteagal 45(2) den Treoir seo, tar éis laghduithe ar bith i gcomhréir le hAirteagail 72e go 72j de Rialachán (AE) Uimh. 575/2013;

(b) méideanna na ndliteanas in-fhortharrthála eile;

(c) i dtaca leis na hítimí dá dtagraítear i bpointí (a) agus (b):

(i) a gcomhdhéanamh, lena n-áirítear a bpróifíl aibíochta,

(ii) a rangú de réir gnáthimeachtaí dócmhainneachta, agus

(iii) cé acu atáthar nó nach bhfuiltear á rialú ag dlíthe tríú tír agus, más amhlaidh an cás, ainm an tríú tír agus cé acu atá nó nach bhfuil sna dlíthe sin na téarmaí conarthacha dá dtagraítear in Airteagal 55(1) den Treoir seo, pointí (p) agus (q) d'Airteagal 52(1) agus pointí (n) agus (o) d'Airteagal 63 de Rialachán (AE) Uimh. 575/2013.

Ní bheidh feidhm ag an oibleagáid tuairisciú a dhéanamh ar mhéideanna na ndliteanas in-fhortharrthála eile dá dtagraítear i bpointe (b) den chéad fhomhír den mhír seo maidir le heintitis a shealbhaíonn, ar dháta tuairiscithe na faisnéise sin, méideanna cistí dílse agus dliteanais incháilithe de 150 % ar a laghad den cheanglas dá dtagraítear in Airteagal 45(1) arna ríomh i gcomhréir le pointe (a) den chéad fhomhír den mhír seo.

2. Tuairisceoidh na heintitis dá dtagraítear i mír 1:

(a) faoi dhó sa bhliain, ar a laghad, an fhaisnéis dá dtagraítear i bpointe (a) de mhír 1, agus

(b) uair sa bhliain, ar a laghad, an fhaisnéis dá dtagraítear i bpointe (b) agus (c) de mhír 1.

▼M3

Mar sin féin, arna iarraidh sin don údarás inniúil nó don údarás réitigh, tuairisceoidh na heintitis dá dtagraítear i mír 1 an fhaisnéis dá dtagraítear i mír 1 níos minice ná sin.

3. Cuirfidh na heintitis dá dtagraítear i mír 1 an fhaisnéis seo a leanas ar fáil go poiblí ar bhonn bliantúil ar a laghad:

(a) méideanna na gcistí dílse, nuair is infheidhme, a chomhlíonann na coinníollacha atá i bpointe (b)d'Airteagal 45f(2) maille le dliteanais incháilithe;

(b) comhdhéanamh na n-ítimí dá dtagraítear i bpointe (a), lena n-áirítear a bpróifíl aibíochta agus a rangú i ngnáthnósanna imeachta dócmhainneachta.

(c) na ceanglais is infheidhme dá dtagraítear in Airteagal 45e nó in Airteagal 45f arna sloinneadh i gcomhréir le hAirteagal 45(2).

4. Ní bheidh feidhm ag míreanna 1 agus 3 den Airteagal seo i dtaca le heintitis a bhforáiltear ina bplean réitigh gur faoi ghnáthimeachtaí dócmhainneachta a dhéanfar an t-eintiteas a fhoirceannadh.

5. Forbróidh ÚBE dréachtchaighdeáin theicniúla cur chun feidhme chun na teimpléid aonfhoirmeacha don tuairisciú a shonrú, mar aon leis na treoracha agus an mhodheolaíocht chun na teimpléid a úsáid, minicíocht agus dátaí an tuairiscithe, na sainmhínithe agus na réitigh teicneolaíochta faisnéise maidir leis an tuairisciú dá dtagraítear i mír 1 agus mír 2.

Leis na dréachtchaighdeáin theicniúla cur chun feidhme sin, sonrófar bealach caighdeánaithe chun faisnéis maidir le rangú ítimí dá dtagraítear i bpointe (c) de mhír 1 is infheidhme in imeachtaí náisiúnta dócmhainneachta i ngach Ballstát.

I gcás institiúidí nó eintiteas dá dtagraítear i bpointí (b),(c) agus (d) d'Airteagal 1(1) den Treoir seo atá faoi réir Airteagal 92a agus Airteagal 92b de Rialachán (AE) Uimh. 575/2013, beidh na dréachtchaighdeáin theicniúla cur chun feidhme sin, i gcás inarb iomchuí, ailínithe leis na caighdeáin theicniúla cur chun feidhme a glacadh i gcomhréir le hAirteagal 430 den Rialachán sin.

Cuirfidh ÚBE na caighdeáin theicniúla cur chun feidhme sin faoi bhráid an Choimisiúin faoin … [12 mhí tar éis dháta theacht i bhfeidhm an Rialacháin leasaithigh seo].

Tugtar an chumhacht don Choimisiún na caighdeáin theicniúla cur chun feidhme dá dtagraítear sa chéad fhomhír a ghlacadh i gcomhréir le hAirteagal 15 de Rialachán (AE) Uimh. 1093/2010.

6. Forbróidh ÚBE dréachtchaighdeáin theicniúla cur chun feidhme chun formáidí aonfhoirmeacha, an mhinicíocht agus treoracha gaolmhara don nochtadh a shonrú i gcomhréir leo a ndéanfar na nochtaí a cheanglaítear faoi mhír 3.

Leis na formáidí aonfhoirmeacha sin, cuirfear faisnéis ar leor a cuimsitheacht agus a hinchomparáideacht in iúl chun próifílí riosca na n-eintiteas dá dtagraítear in Airteagal 1(1) a mheas agus a mhéid a chomhlíonann siad an ceanglas is infheidhme dá dtagraítear in Airteagal 45e nó Airteagal 45f. I gcás inarb iomchuí, beidh formáidí don nochtadh i bhformáid tábla.

I gcás institiúidí nó eintiteas dá dtagraítear i bpointí (b), (c) agus (d)d'Airteagal 1(1) den Treoir seo atá faoi réir Airteagal 92a agus Airteagal 92b de Rialachán (AE) Uimh. 575/2013, beidh na dréachtchaighdeáin theicniúla cur chun feidhme sin, i gcás inarb iomchuí, ailínithe leis na caighdeáin theicniúla cur chun feidhme a glacadh i gcomhréir le hAirteagal 434a den Rialachán sin.

▼M3

Cuirfidh ÚBE na caighdeáin theicniúla cur chun feidhme sin faoi bhráid an Choimisiúin faoin … [12 mhí tar éis dháta theacht i bhfeidhm an Rialacháin leasaithigh seo].

Tugtar an chumhacht don Choimisiún na caighdeáin theicniúla cur chun feidhme dá dtagraítear sa chéad fhomhír a ghlacadh i gcomhréir le hAirteagal 15 de Rialachán (AE) Uimh. 1093/2010.

7. I gcás inar cuireadh gníomhaíochtaí réitigh chun feidhme nó i gcás ina ndearnadh na cumhachtaí díluachála nó comhshó dá dtagraítear in Airteagal 59 a fheidhmiú, beidh feidhm ag ceanglais maidir le nochtadh poiblí dá dtagraítear i mír 3 ón spriocdháta chun ceanglais Airteagal 45e nó Airteagal 45f dá dtagraítear in Airteagal 45m a chomhlíonadh.

Airteagal 45j

Tuairisc a thabhairt do ÚBE

1. Cuirfidh na húdaráis réitigh in iúl do ÚBE an t-íoscheanglas maidir le cistí dílse agus dliteanais incháilithe a socraíodh i gcomhréir le hAirteagal 45e nó le hAirteagal 45f do gach eintiteas atá faoina ndlínse.

2. Forbróidh ÚBE dréachtchaighdeáin theicniúla cur chun feidhme chun teimpléid tuairiscithe aonfhoirmeacha a shonrú agus, ina theannta sin, na treoracha agus an mhodheolaíocht chun na teimpléid sin a úsáid, an mhinicíocht agus dátaí an tuairiscithe, na sainmhínithe agus na réitigh teicneolaíochta faisnéise chun faisnéis a shainaithint agus a tharchur ag údaráis réitigh, i gcomhar leis na húdaráis inniúla, chuig ÚBE chun críocha mhír 1.

Cuirfidh ÚBE na dréachtchaighdeáin theicniúla cur chun feidhme sin faoi bhráid an Choimisiúin faoin 28 Meitheamh 2020.

Tugtar an chumhacht don Choimisiún na caighdeáin theicniúla cur chun feidhme dá dtagraítear sa chéad fhomhír a ghlacadh i gcomhréir le hAirteagal 15 de Rialachán (AE) Uimh. 1093/2010.

Airteagal 45k

Sáruithe ar an íoscheanglas maidir le cistí dílse agus dliteanais incháilithe

1. Tabharfaidh na húdaráis ábhartha aghaidh ar aon sárú ar an íoscheanglas maidir le cistí dílse agus dliteanais incháilithe dá dtagraítear in Airteagal 45e nó Airteagal 45f ar bhonn ceann amháin de na pointí seo a leanas:

(a) na cumhachtaí aghaidh a thabhairt ar bhacainní ar inréititheacht nó iad a dhíothú i gcomhréir le hAirteagail 17 agus 18;

(b) cumhachtaí dá dtagraítear in Airteagal 16a;

(c) bearta dá dtagraítear in Airteagal 104 de Threoir 2013/36/AE;

(d) bearta luath-idirghabhála i gcomhréir le hAirteagal 27;

(e) pionóis riaracháin agus bearta riaracháin eile i gcomhréir le hAirteagail 110 agus 111.

▼M3

Ina theannta sin, féadfaidh na húdaráis ábhartha measúnú a dhéanamh le fáil amach an bhfuil nó nach bhfuil an institiúid nó an t-eintiteas dá dtagraítear i bpointí (b), (c) agus (d) d'Airteagal 1(1) ag cliseadh nó gur dócha go gclisfidh sé nó sí, i gcomhréir le hAirteagal 32, 32a nó le hAirteagal 33, de réir mar is infheidhme.

2. Rachaidh údaráis réitigh agus údaráis inniúla i gcomhairle le chéile nuair a fheidhmeoidh siad a gcumhachtaí faoi seach dá dtagraítear i mír 1.

Airteagal 45l

Tuarascálacha

1. Cuirfidh ÚBE, i gcomhar leis na húdaráis inniúla agus na húdaráis réitigh, tuarascáil faoi bhráid an Choimisiúin go bliantúil ina soláthrófar measúnuithe ar na nithe seo a leanas ar a laghad:

(a) an chaoi inar cuireadh chun feidhme, ar an leibhéal náisiúnta, an ceanglas maidir le cistí dílse agus dliteanais incháilithe, arna shocrú i gcomhréir le hAirteagal 45e nó Airteagal 45f agus, go háirithe, féachaint an raibh dibhéirseachtaí sna leibhéil a leagadh síos d'eintitis inchomparáide sna Ballstáit;

(b) an chaoi inar fheidhmigh údaráis réitigh an chumhacht dá dtagraítear in Airteagal 45b(4), (5) agus (7) agus féachaint an raibh dibhéirseachtaí i bhfeidhmiú na cumhachta sin sna Ballstáit;

(c) leibhéal comhiomlán agus comhdhéanamh chistí dílse agus dhliteanais incháilithe na n-institiúidí agus na n-eintiteas, líon na n-ionstraimí a eisíodh le linn na tréimhse, agus na méideanna breise is gá chun na ceanglais is infheidhme a chomhlíonadh.

2. Le cois na tuarascála bliantúla dá bhforáiltear i mír 1, cuirfidh ÚBE, gach trí bliana, tuarascáil faoi bhráid an Choimisiúin ina ndéanfar measúnú ar na nithe seo a leanas:

(a) tionchar an íoscheanglais maidir le cistí dílse agus dliteanais incháilithe, agus aon leibhéil chomhchuibhithe den íoscheanglas sin atá beartaithe, ar na nithe seo a leanas:

(i) margaí airgeadais go ginearálta agus margaí i gcomhair fiacha neamhurraithe agus díorthach go háirithe;

(ii) samhlacha gnó agus struchtúir cláir chomhardaithe institiúidí, go háirithe a bpróifíl chistiúcháin agus a straitéis chistiúcháin, agus an struchtúr dlíthiúil agus oibríochtúil grúpaí;

(iii) brabúsacht institiúidí, go háirithe an costas a bhaineann lena gcistiú;

(iv) imirce neamhchosaintí chuig eintitis nach bhfuil faoi réir maoirseacht stuamachta;

(v) nuálaíocht airgeadais;

(vi) leitheadúlacht ionstraimí cistí dílse agus ionstraimí incháilithe fo-ordaithe, mar aon le cineál agus indíoltacht na n-ionstraimí sin.

▼M3

(vii) iompar glactha riosca institiúidí nó eintiteas dá dtagraítear i bpointí (b), (c) agus (d) d'Airteagal 1(1);

(viii) leibhéal ualaithe sócmhainní institiúidí nó eintiteas dá dtagraítear in i bpointí (b), (c) agus (d) d'Airteagal 1(1);

(ix) na gníomhartha a dhéanann institiúidí nó eintitis dá dtagraítear i bpointí (b), (c) agus (d) d'Airteagal 1(1)chun na híoscheanglais a chomhlíonadh agus, go háirithe, an méid a comhlíonadh na híoscheanglais trí shócmhainní a dhíluamhánú, fiacha fadtéarmacha a eisiúint agus caipiteal a chruinniú; agus

(x) leibhéal iasachtaithe ag institiúidí creidmheasa, agus fócas faoi leith ar iasachtú le micrifhiontair, fiontair bheaga agus mheánmhéide, údaráis áitiúla, rialtais réigiúnacha agus eintitis earnála poiblí agus ar mhaoiniú trádála, lena n-áirítear iasachtú faoi scéimeanna oifigiúla árachais creidmheasa onnmhairiúcháin;

(b) idirghníomhaíocht na n-íoscheanglas leis na ceanglais cistí dílse, leis an gcoibhneas luamhánaithe agus leis na ceanglais leachtachta a leagtar síos i Rialachán Uimh. 575/2013 agus Treoir 2013/36/AE;

(c) acmhainneacht na n-institiúidí nó na n-eintiteas dá dtagraítear i bpointí (b), (c) agus (d) d'Airteagal 1(1) caipiteal nó cistiú a thógáil ar na margaí chun aon íoscheanglais chomhchuibhithe atá beartaithe a chomhlíonadh;

3. Tíolacfarr an tuarascáil dá dtagraítear i mír 1 don Choimisiún faoin 30 Meán Fómhair sa bhliain féilire tar éis na bliana deireanaí a chumhdófar sa tuarascáil. Cuirfear an chéad tuarascáil faoi bhráid an Choimisiúin tráth nach déanaí ná … [30 Meán Fómhair na bliana tar éis dháta theacht i bhfeidhm na Treorach seo].

Cumhdóidh an tuarascáil dá dtagraítear i mír 2 trí bliana féilire agus déanfar í a thíolacadh don Choimisiún faoin 31 Nollaig na bliana féilire tar éis na bliana deireanaí a chumhdófar sa tuarascáil. Cuirfear an chéad tuarascáil faoi bhráid an Choimisiúin faoin 31 Nollaig 2022.

Airteagal 45m

Socruithe idirthréimhseacha agus iar-réitigh

1. De mhaolú ar Airteagal 45(1), cinnfidh na húdaráis réitigh idirthréimhsí iomchuí d'institiúid nó d'eintiteas dá dtagraítear i bpointí (b), (c) agus (d) d'Airteagal 1(1) na ceanglais in Airteagal 45e agus in Airteagal 45f a chomhlíonadh nó ceanglais atá de thoradh ar chur i bhfeidhm Airteagal 45b(4), Airteagal 45b(5) ó Airteagal 45b(7), a chomhlíonadh, mar is iomchuí. Is é an spriocdháta do na hinstitiúidí agus na heintitis na ceanglais atá in Airteagal 45e nó in Airteagal 45f a chomhlíonadh, nó ceanglais de bharr chur i bhfeidhm Airteagal 45b(4), Airteagal 45b(5) nó Airteagal 45b(7) a chomhlíonadh an 1 Eanáir 2024.

Cinnfidh an t-údarás réitigh spriocleibhéal idirmheánach do na ceanglais atá in Airteagail 45e nó 45f, nó do cheanglas atá de thoradh ar chur i bhfeidhm Airteagal 45b(4), Airteagal 45b(5) nó Airteagal 45b(7) mar is iomchuí, nach mór d'institiúidí nó d'eintitis dá dtagraítear i bpointí (b), (c) agus (d) d'Airteagal 1(1) a chomhlíonadh ar an 1 Eanáir 2022. Is ceart, de ghnáth, go n-áiritheofaí leis na leibhéil sprice idirmheánaí méadú líneach ar na cistí dílse agus ar na dliteanais incháilithe ionsar an cheanglas.

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Féadfaidh an t-údarás réitigh idirthréimhse a leagan síos a dtagann deireadh léi tar éis 1 Eanáir 2024 i gcás ina mbeidh údar cuí leis agus nuair is iomchuí ar bhonn na gcritéar dá dtagraítear i mír 7, agus an méid seo a leanas á chur san áireamh:

(a) forbairt staid airgeadais an eintitis;

(b) go bhféadfaidh an t-eintiteas a áirithiú go gcomhlíonfar laistigh de thréimhse ama réasúnta na ceanglais in Airteagal 45e nó Airteagal 45f nó ceanglas atá de thoradh ar chur i bhfeidhm Airteagal 45b(4), Airteagal 45b(5) nó Airteagal 45b(7); agus

(c) pé acu an mbeidh an t-eintiteas in ann dliteanais a chur in ionad dliteanas nach gcomhlíonann na critéir incháilitheachta ná aibíochta a leagtar síos in Airteagal 72b agus 72c de Rialachán (AE) Uimh. 575/2013, nó in Airteagal 45b nó Airteagal 45f(2) den Treoir seo a thuilleadh, agus mura mbeidh, agus mura bhfuil, cibé acu an bhfuil an neamhábaltacht sin neamhghnách nó an bhfuil sé mar thoradh ar shuaitheadh ar fud an mhargaidh.

2. Is é an spriocdháta a chomhlíonfaidh na heintitis réitigh íosleibhéal na gceanglas dá dtagraítear in Airteagal 45c(5) nó (6) an 1 Eanáir 2022..

3. Ní bheidh feidhm ag leibhéil íosta na gceanglas dá dtagraítear in Airteagal 45c(5) agus Airteagal 45c(6) laistigh den tréimhse dhá bhliain tar éis:

(a) an dáta a chuir an t-údarás réitigh an uirlis fortharrthála i bhfeidhm; nó

(b) an dáta ar chuir an t-eintiteas réitigh beart malartach ón earnáil phríobháideach i bhfeidhm dá dtagraítear i bpointe (b) d'Airteagal 32(1) lena ndearnadh ionstraimí caipitil agus dliteanais eile a dhíluacháil nó a chomhshó ina n-ionstraimí Gnáthchothromas Leibhéal 1, nó ina ndearnadh na cumhachtaí díluachála nó comhshó a fheidhmiú i gcomhhréir le hAirteagal 59 i dtaca leis an eintiteas réitigh sin, chun an t-eintiteas réitigh a athchaipitliú gan uirlisí réitigh a chur i bhfeidhm.

4 Ní bheidh feidhm ag na ceanglais dá dtagraítear in in Airteagal 45b(4) agus Airteagal 45b(7) ná in Airteagal 45c(5) agus Airteagal 45c(6), mar is infheidhme, laistigh den tréimhse thrí bliana tar éis an dáta a dtosaíonn an t-eintiteas réitigh nó an grúpa a bhfuil an t-eintiteas réitigh mar chuid de a bheith aitheanta mar GSII, nó má tharlaíonn go dtosaíonn an t-eintiteas réitigh a bheith sa staid dá dtagraítear in Airteagal 45c(5) nó Airteagal 45c(6).

5. De mhaolú ar Airteagal 45(1), cinnfidh na húdaráis réitigh idir-thréimhse iomchuí chun na ceanglais atá in Airteagal 45e nó in Airteagal 45f a chomhlíonadh laistigh de, nó ceanglas atá de thoradh ar chur i bhfeidhm Airteagal 45b(4), (5) nó (7) a chomhlíonadh laistigh de, de réir mar is iomchuí, d'institiúidí nó d'eintitis dá dtagraítear i bpointí (b), (c) agus (d) d'Airteagal 1(1) a ndearnadh uirlisí réitigh, nó an chumhacht díluachála nó comhshó dá dtagraítear in Airteagal 59 a chur i bhfeidhm maidir leo.

6. Chun críocha mhír 1 go mír 5, cuirfidh údaráis réitigh an institiúid nó an t-eintiteas dá dtagraítear i bpointí (b), (c) agus (d) d'Airteagal 1(1) ar an eolas faoin íoscheanglas maidir le cistí dílse agus dliteanais incháilithe atá pleanáilte do gach tréimhse 12 mhí le linn na hidir-thréimhse d'fhonn an acmhainneacht ionsúcháin caillteanais agus athchaipitliúcháin atá ag an institiúid nó ag an eintiteas a mhéadú de réir a chéile. Ag deireadh na hidirthréimhse, beidh an t-íoscheanglas maidir le cistí dílse agus dliteanais incháilithe cothrom leis an méid a chinnfear faoi Airteagal 45b(4), (5) nó (7), Airteagal 45c(5) nó (6) nó Airteagal 45e nó Airteagal 45f mar is infheidhme.

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7. Agus na hidirthréimhsí á chinneadh acu, cuirfidh na húdaráis réitigh an méid seo a leanas san áireamh:

(a) leitheadúlacht taiscí agus neamhláithreacht ionstraimí fiachais sa tsamhail chistiúcháin;

(b) an rochtain ar na margaí caipitil le haghaidh dliteanais incháilithe;

(c) méid a bhraitheann an t-eintiteas réitigh ar chaipiteal Ghnáthchothromas Leibhéal 1 chun freastal ar an gceangal dá dtagraítear in Airteagal 45e.

8. Faoi réir mhír 1, ní chuirfear cosc ar an mBord athbhreithniú a dhéanamh, ina dhiaidh sin, ar an idirthréimhse nó ar aon íoscheanglas maidir le cistí dílse agus dliteanais incháilithe pleanáilte a cuireadh in iúl faoi mhír 6.

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Subsection 3

Implementation of the bail-in tool

Article 46

Assessment of amount of bail-in

1. Member States shall ensure that, when applying the bail-in tool, resolution authorities assess on the basis of a valuation that complies with Article 36 the aggregate of:

(a) where relevant, the amount by which ►M3 dliteanais in-fhortharrthála ◄ 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 ►M3 dliteanais in-fhortharrthála ◄ must be converted into shares or other types of 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 of this Article shall establish the amount by which ►M3 dliteanais in-fhortharrthála ◄ need to be written down or converted in order to restore the Common Equity Tier 1 capital ratio of the institution under resolution or where applicable establish the ratio of the bridge institution taking into account any contribution of capital by the resolution financing arrangement pursuant to point (d) of Article 101(1) of this Directive, and to sustain sufficient market confidence in the institution under resolution or the bridge institution and enable it 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 Directive 2013/36/EU or Directive 2014/65/EU.

Where resolution authorities intend to use the asset separation tool referred to in Article 42, the amount by which ►M3 dliteanais in-fhortharrthála ◄ need to be reduced shall take into account a prudent estimate of the capital needs of the asset management vehicle as appropriate.

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3. Where capital has been written down in accordance with Articles 59 to 62 and bail-in has been applied pursuant to Article 43(2) and the level of write-down based on the preliminary valuation according to Article 36 is found to exceed requirements when assessed against the definitive valuation according to Article 36(10), a write-up mechanism may be applied to reimburse creditors and then shareholders to the extent necessary.

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

Article 47

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

1. Member States shall ensure that, when applying the bail-in tool in Article 43(2) or the write down or conversion of capital instruments in Article 59, resolution authorities take in respect of shareholders and holders of other instruments of ownership one or both of the following actions:

(a) cancel existing shares or other instruments of ownership or transfer them to bailed-in creditors;

(b) provided that, in accordance to the valuation carried out under Article 36, the institution under resolution has a positive net value, dilute 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 Article 59(2); or

(ii) ►M3 dliteanais in-fhortharrthála ◄ issued by the institution under resolution pursuant to the power referred to in point (f) of Article 63(1).

With regard to point (b) of the first subparagraph, the conversion shall be conducted at a rate of conversion that severely dilutes existing holdings of shares or other instruments of ownership.

2. The actions referred to in paragraph 1 shall also be taken in respect of shareholders and holders of other instruments of ownership where the shares or other instruments of ownership in question were issued or conferred in the following circumstances:

(a) pursuant to conversion of debt instruments to shares or other instruments of ownership in accordance with contractual terms of the original debt instruments on the occurrence of an event that preceded or occurred at the same time as the assessment by the resolution authority that the institution or entity referred to in point (b), (c) or (d) of Article 1(1) met the conditions for resolution;

(b) pursuant to the conversion of relevant capital instruments to Common Equity Tier 1 instruments pursuant to Article 60.

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

(a) the valuation carried out in accordance with Article 36;

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(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 Article 60(1); and

(c) the aggregate amount assessed by the resolution authority pursuant to Article 46.

4. By way of derogation from Articles 22 to 25 of Directive 2013/36/EU, the requirement to give a notice in Article 26 of Directive 2013/36/EU, Article 10(3), Article 11(1) and(2) and Articles 12 and 13of Directive 2014/65/EU and the requirement to give a notice in Article 11(3) of Directive 2014/65/EU, 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 Article 22(1) of Directive 2013/36/EU or Article 11(1) of Directive 2014/65/EU, competent authorities shall carry out the assessment required under those Articles in a timely manner that does not delay the application of the bail-in tool or the conversion of capital instruments, or prevent resolution action from achieving the relevant resolution objectives.

5. If the competent authority of that institution has not completed the assessment required under paragraph 4 on the date of application of the bail-in tool or the conversion of capital instruments, Article 38(9) shall apply to any acquisition of or increase in a qualifying holding by an acquirer resulting from the application of the bail-in tool or the conversion of capital instruments.

6. EBA shall, by 3 July 2016, issue guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010, on the circumstances in which each of the actions referred to in paragraph 1 of this Article would be appropriate, having regard to the factors specified in paragraph 3 of this Article.

Article 48

Sequence of write down and conversion

1. Member States shall ensure that, when applying the bail-in tool, resolution authorities exercise the write down and conversion powers, subject to any exclusions under Article 44(2) and (3), meeting the following requirements:

(a) Common Equity Tier 1 items are reduced in accordance with point (a) of Article 60(1);

(b) if, and only if, the total reduction pursuant to point (a) is less than the sum of the amounts referred to in points (b) and (c) of Article 47(3), authorities reduce the principal amount of Additional Tier 1 instruments to the extent required and to the extent of their capacity;

(c) if, and only if, the total reduction pursuant to points (a) and (b) is less than the sum of the amounts referred to in points (b) and (c) of Article 47(3), authorities reduce the principal amount of Tier 2 instruments to the extent required and to the extent of their capacity;

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(d) if, and only if, the total reduction of shares or other instruments of ownership and relevant capital instruments pursuant to points (a), (b) and (c) is less than the sum of the amounts referred to in points (b) and (c) of Article 47(3), authorities reduce to the extent required the principal amount of subordinated debt that is not Additional Tier 1 or Tier 2 capital in accordance with the hierarchy of claims in normal insolvency proceedings, in conjunction with the write down pursuant to points (a), (b) and (c) to produce the sum of the amounts referred to in points (b) and (c) of Article 47(3);

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(e) más rud é, ach ar an gcuntar sin amháin, gur lú laghdú iomlán scaireanna nó ionstraimí úinéireachta eile, ionstraimí caipitil ábhartha agus dliteanais in-fhortharrthála de bhun phointí (a) go (d) den mhír seo ná suim na méideanna dá dtagraítear i bpointí (b) agus (c) d'Airteagal 47(3), laghdóidh na húdaráis a mhéid is gá, an príomhshuim, nó an tsuim iníoctha amuigh i ndáil le haon dliteanas in-fhortharrthála eile, lena n-áirítear ionstraimí fiachais dá dtagraítear in Airteagal 108(3), i gcomhréir leis an ordlathas éileamh i gcomhthéacs gnáthimeachtaí dócmhainneachta, lena n-áirítear rangú na dtaiscí dá bhforáiltear in Airteagal 108, de bhun Airteagal 44, i gcomhcheangal leis an díluacháil de bhun phointí (a) go (d) den mhír seo chun suim na suimeanna dá dtagraítear i bpointí (b) agus (c) d'Airteagal 47(3) a sholáthar.

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2. When applying the write down or conversion powers, resolution authorities shall allocate the losses represented by the sum of the amounts referred to in points (b) and (c) of Article 47(3) equally between shares or other instruments of ownership and ►M3 dliteanais in-fhortharrthála ◄ of the same rank by reducing the principal amount of, or outstanding amount payable in respect of, those shares or other instruments of ownership and ►M3 dliteanais in-fhortharrthála ◄ to the same extent pro rata to their value except where a different allocation of losses amongst liabilities of the same rank is allowed in the circumstances specified in Article 44(3).

This paragraph shall not prevent liabilities which have been excluded from bail-in in accordance with Article 44(2) and (3) from receiving more favourable treatment than ►M3 dliteanais in-fhortharrthála ◄ which are of the same rank in normal insolvency proceedings.

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

(a) terms that provide for the principal amount of the instrument to be reduced on the occurrence of any event that refers to the financial situation, solvency or levels of own funds of the institution or entity referred to in point (b), (c) or (d) of Article 1(1);

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

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

5. When deciding on whether liabilities are to be written down or converted into equity, resolution authorities shall not convert 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 Article 44(2) and (3).

6. For the purposes of this Article, EBA shall, by 3 January 2016, issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 for any interpretation relating to the interrelationship between the provisions of this Directive and those of Regulation (EU) No 575/2013 and Directive 2013/36/EU.

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7. Áiritheoidh na Ballstáit, i gcás eintitis dá dtagraítear i bpointí (a) go (d) den chéad fhomhír d'Airteagal 1(1), go mbeidh rangú tosaíochta níos ísle ag gach éileamh a thig ó ítimí cistí dílse, i ndlíthe náisiúnta lena rialaítear gnáthimeachtaí dócmhainneachta, ná aon éileamh nach bhfuil de thoradh ar ítim cistí dílse.

Chun críocha na chéad fhomhíre, a mhéid nach n-aithnítear ionstraim ach go páirteach mar ítim cistí dílse, déanfar an ionstraim iomlán a láimhseáil mar éileamh a bheidh mar thoradh ar ítim cistí dílse agus rangófar níos ísle í ná aon éileamh nach mbeidh mar thoradh ar ítim cistí dílse.

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Article 49

Derivatives

1. Member States shall ensure that this Article is complied with when resolution authorities apply the write-down and conversion powers to liabilities arising from derivatives.

2. Resolution authorities shall exercise the write-down and conversion powers in relation to a liability arising from a derivative only upon or after closing-out the derivatives. Upon entry into resolution, resolution authorities shall be empowered to terminate and close out any derivative contract for that purpose.

Where a derivative liability has been excluded from the application of the bail-in tool under Article 44(3), resolution authorities shall not be obliged to terminate or close out the derivative contract.

3. Where derivative transactions are subject to a netting agreement, the resolution authority or an independent valuer shall determine as part of the valuation under Article 36 the liability arising from those transactions on a net basis in accordance with the terms of the agreement.

4. Resolution authorities 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; and

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(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.

5. EBA, after consulting the European Supervisory Authority (European Securities and Markets Authority) ('ESMA'), established by Regulation (EU) No 1095/2010, shall develop draft regulatory technical standards specifying methodologies and the principles referred to in points (a), (b) and (c) of paragraph 4 on the valuation of liabilities arising from derivatives.

In relation to derivative transactions that are subject to a netting agreement, EBA shall take into account the methodology for close-out set out in the netting agreement.

EBA shall submit those draft regulatory technical standards to the Commission by 3 January 2016.

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

Article 50

Rate of conversion of debt to equity

1. Member States shall ensure that, when resolution authorities exercise the powers specified in Article 59(3) and point (f) of Article 63(1), they may apply 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 of this Article.

2. The conversion rate shall represent appropriate compensation to the affected creditor for any loss incurred by virtue of the exercise of the write down and conversion powers.

3. When different conversion rates are applied according to paragraph 1, the conversion rate applicable to liabilities that are considered to be senior under applicable insolvency law shall be higher than the conversion rate applicable to subordinated liabilities.

4. EBA shall, by 3 January 2016, issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 on the setting of conversion rates.

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

Article 51

Recovery and reorganisation measures to accompany bail-in

1. Member States shall ensure that, where resolution authorities apply the bail-in tool to recapitalise an institution or entity referred to in point (b), (c) or (d) of Article 1(1) in accordance with point (a) of Article 43(2), arrangements are adopted to ensure that a business

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reorganisation plan for that institution or entity is drawn up and implemented in accordance with Article 52.

2. The arrangements referred to in paragraph 1 of this Article may include the appointment by the resolution authority of a person or persons appointed in accordance with Article 72(1) with the objective of drawing up and implementing the business reorganisation plan required by Article 52.

Article 52

Business reorganisation plan

1. Member States shall require that, within one month after the application of the bail-in tool to an institution or entity referred to in point (b), (c) or (d) of Article 1(1) in accordance with point (a) of Article 43(2), the management body or the person or persons appointed in accordance with Article 72(1) shall draw up and submit to the resolution authority, a business reorganisation plan that satisfies the requirements of paragraphs 4 and 5 of this Article. Where the Union State aid framework is applicable, Member States shall ensure that such a plan is compatible with the restructuring plan that the institution or entity referred to in point (b), (c) or (d) of Article 1(1) is required to submit to the Commission under that framework.

2. When the bail-in tool in point (a) of Article 43(2) is applied to two or more group entities, the business reorganisation plan shall be prepared by the Union parent institution and cover all of the institutions in the group in accordance with the procedure specified in Articles 7 and 8 and shall be submitted to the group-level resolution authority. The group-level resolution authority shall communicate the plan to other resolution authorities concerned and to EBA.

3. In exceptional circumstances, and if it is necessary for achieving the resolution objectives, the resolution authority may extend the period in paragraph 1 up to a maximum of two months since the application of the bail-in tool.

Where the business reorganisation plan is required to be notified within the Union State aid framework, the resolution authority may extend the period in paragraph 1 up to a maximum of two months since the application of the bail-in tool or until the deadline laid down by the Union State aid framework, whichever occurs earlier.

4. A business reorganisation plan shall set out measures aiming to restore the long-term viability of the institution or entity referred to in point (b), (c) or (d) of Article 1(1) or parts of its business within a reasonable timescale. Those measures shall be based on realistic assumptions as to the economic and financial market conditions under which the institution or entity referred to in point (b), (c) or (d) of Article 1(1) will operate.

The business reorganisation plan shall take account, inter alia, of the current state and future prospects of the financial markets, reflecting best-case and worst-case assumptions, including a combination of events allowing the identification of the institution's main vulnerabilities. Assumptions shall be compared with appropriate sector-wide benchmarks.

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5. A business reorganisation plan shall include at least the following elements:

(a) a detailed diagnosis of the factors and problems that caused the institution or entity referred to in point (b), (c) or (d) of Article 1(1) 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 or entity referred to in point (b), (c) or (d) of Article 1(1) that are to be adopted;

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

6. Measures aiming to restore the long-term viability of an institution or entity referred to in point (b), (c) or (d) of Article 1(1) may include:

(a) the reorganisation of the activities of the institution or entity referred to in point (b), (c) or (d) of Article 1(1);

(b) changes to the operational systems and infrastructure within the institution;

(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.

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

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

8. If the resolution authority is not satisfied that the plan would achieve the objective referred to in paragraph 7, the resolution authority, in agreement with the competent authority, shall notify the management body or the person or persons appointed in accordance with Article 72(1) of its concerns and require the amendment of the plan in a way that addresses those concerns.

9. Within two weeks from the date of receipt of the notification referred to in paragraph 8, the management body or the person or persons appointed in accordance with Article 72(1) shall submit an amended plan to the resolution authority for approval. The resolution authority shall assess the amended plan, and shall notify the management body or the person or persons appointed in accordance with Article 72(1) within one week whether it is satisfied that the plan, as amended, addresses the concerns notified or whether further amendment is required.

10. The management body or the person or persons appointed in accordance with Article 72(1) 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 six months on progress in the implementation of the plan.

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11. The management body or the person or persons appointed in accordance with Article 72(1) shall revise the plan if, in the opinion of the resolution authority with the agreement of the competent authority, it is necessary to achieve the aim referred to in paragraph 4, and shall submit any such revision to the resolution authority for approval.

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

(a) the minimum elements that should be included in a business reorganisation plan pursuant to paragraph 5; and

(b) the minimum contents of the reports pursuant to paragraph 10.

EBA shall submit those draft regulatory technical standards to the Commission by 3 January 2016.

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

13. EBA shall, by 3 January 2016, issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 to specify further the minimum criteria that a business reorganisation plan is to fulfil for approval by the resolution authority pursuant to paragraph 7.

14. Taking into account, where appropriate, experience acquired in the application of the guidelines referred to in paragraph 13, EBA may develop draft regulatory technical standards in order to specify further the minimum criteria that a business reorganisation plan is to fulfil for approval by the resolution authority pursuant to paragraph 7.

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

Subsection 4

Bail-in tool: ancillary provisions

Article 53

Effect of bail-in

1. Member States shall ensure that where a resolution authority exercises a power referred to in Article 59(2) and in points (e) to (i) of Article 63(1), the reduction of principal or outstanding amount due, conversion or cancellation takes effect and is immediately binding on the institution under resolution and affected creditors and shareholders.

2. Member States shall ensure that the resolution authority shall have the power to complete or require the completion of all the administrative and procedural tasks necessary to give effect to the exercise of a power referred to in Article 59(2) and in points (e) to (i) of Article 63(1), including:

(a) the amendment of all relevant registers;

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(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 ([1]).

3. Where a resolution authority reduces to zero the principal amount of, or outstanding amount payable in respect of, a liability by means of the power referred to in point (e) of Article 63(1), that liability and any obligations or claims arising in relation to it that are not accrued at the time when the power is exercised shall be treated as discharged for all purposes, and shall not be provable in any subsequent proceedings in relation to the institution under resolution or any successor entity in any subsequent winding up.

4. Where a resolution authority reduces in part, but not in full, the principal amount of, or outstanding amount payable in respect of, a liability by means of the power referred to in point (e) of Article 63(1):

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

(b) the relevant instrument or agreement that created the original liability shall continue to apply in relation to the residual principal amount of, or outstanding amount payable in respect of the liability, subject to any modification of the amount of interest payable to reflect the reduction of the principal amount, and any further modification of the terms that the resolution authority might make by means of the power referred to in point (j) of Article 63(1).

Article 54

Removal of procedural impediments to bail-in

1. Without prejudice to point (i) of Article 63(1), Member States shall, where applicable, require institutions and entities referred to in points (b), (c) and (d) of Article 1(1) to maintain at all times a sufficient amount of authorised share capital or of other Common Equity Tier 1 instruments, so that, in the event that the resolution authority exercises the powers referred to in points (e) and (f) of Article 63(1) in relation to an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) or any of its subsidiaries, the institution or entity referred to in point (b), (c) or (d) of Article 1(1) is not prevented from issuing sufficient new shares or other instruments of ownership to ensure that the conversion of liabilities into shares or other instruments of ownership could be carried out effectively.

([1]) Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (OJ L 345, 31.12.2003, p. 64).

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2. Resolution authorities shall assess whether it is appropriate to impose the requirement laid down in paragraph 1 in the case of a particular institution or entity referred to in point (b), (c) or (d) of Article 1(1) in the context of the development and maintenance of the resolution plan for that institution or group, having regard, in particular, to the resolution actions contemplated in that plan. If the resolution plan provides for the possible application of the bail-in tool, authorities shall verify that the authorised share capital or other Common Equity Tier 1 instruments is sufficient to cover the sum of the amounts referred to in points (b) and (c) of Article 47(3).

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

4. This Article is without prejudice to the amendments to Directives 82/891/EEC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU and Directive 2012/30/EU set out in Title X of this Directive.

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Airteagal 55

Fortharrtháil chonarthach a aithint

1. Cuirfidh na Ballstáit de cheanglas ar institiúidí agus eintitis dá dtagraítear i bpointí (b), (c) agus (d) d'Airteagal 1(1) téarma conarthach a chur san áireamh trína n-aithneoidh an creidiúnaí nó an páirtí sa chomhaontú nó san ionstraim lena gcruthaítear an dliteanas go bhféadfaidh an dliteanas sin a bheith faoi réir na gcumhachtaí díluachála agus comhshó agus go dtoileoidh sé a bheith faoi réir aon laghdú ar an bpríomhshuim nó aon mhéid gan íoc atá dlite, aon chomhshó nó cealú a bhfuil tionchar ag feidhmiú na gcumhachtaí sin orthu ag údarás réitigh, ar choinníoll go gcomhlíonann an dliteanas sin na coinníollacha seo uile a leanas:

(a) ní eiseofar an dliteanas faoi Airteagal 44(2);

(b) ní taisce í an dliteanas dá dtagraítear i bpointe (a) d'Airteagal 108;

(c) rialófar an dliteanas faoi dhlí tríú tír;

(d) eiseofar an dliteanas nó téitear ina bhun tar éis an dáta a chuireann Ballstát na forálacha i bhfeidhm arna nglacadh chun an Roinn sin a thrasuí.

Féadfaidh údaráis réitigh a chinneadh nach mbeidh feidhm ag an oibleagáid sa chéad fhomhír de mhír 1 i ndáil le hinstitiúidí ná eintitis i gcás ina bhfuil an méid ionsúcháin caillteanais, mar a shainmhínítear faoi phointe (a) d'Airteagal 45c(2), cothrom leis an gceanglas faoi Airteagal 45(1) ina leith, ar choinníoll nach n-áirítear ionsair an cheanglais sin dliteanais a chomhlíonann na coinníollacha dá dtagraítear i bpointe (a) go pointe (d) den chéad fhomhír agus ar dliteanais iad nach gcuimsíonn an téarma conarthach dá dtagraítear san fhomhír sin.

Ní bheidh feidhm ag an gcéad fhomhír i gcás ina gcinneann údarás réitigh Ballstáit gur féidir le húdarás réitigh Ballstáit na dliteanais nó na hionstraimí dá dtagraítear sa chéad fhomhír a bheith faoi réir dhíluacháil nó chomhshó de bhun dlí tríú tír nó de bhun comhaontú ceangailteach arna thabhairt i gcrích leis an tríú tír sin.

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2. Áiritheoidh na Ballstáit, i gcás ina gcineann institiúid nó eintiteas dá dtagraítear i bpointí (b), c) nó (d) d'Airteagal 1(1) go bhfuil sé dofheidhmithe, ó thaobh an dlí nó eile de, téarma a chur isteach i bhforálacha conarthacha lena rialaítear dliteanas ábhartha ar téarma é a cheanglaítear i gcomhréir le mír 1, tabharfaidh institiúid nó eintiteas den sórt sin fógra faoina gcinneadh don údarás réitigh, ina n-áireofar ainmniú aicme an dliteanais agus an réasúnú faoi deara an chinnidh sin. Soláthróidh an institiúid nó an t-eintiteas an fhaisnéis go léir don údarás réitigh a fhéadfaidh an t-údarás réitigh a iarraidh laistigh de thréimhse réasúnta tar éis an fógra a fháil, d'fhonn éifeacht fógra den sórt sin ar inréiteacht na hinstitiúide nó an eintitis sin a mheasúnú ag an eintiteas réitigh.

Áiritheoidh na Ballstáit, i gcás fógra a fháil faoin gcéad fhomhír den mhír seo, go gcuirfear ar fionraí go huathoibríoch tráth a fhaigheann an t-údarás réitigh an fógra an oibleagáid téarma a áireamh a cheanglaítear sna forálacha conarthacha i gcomhréir le mír 1.

I gcás ina gcinneann an t-údarás réitigh nach bhfuil sé dofheidhmithe, ó thaobh an dlí nó eile de, téarma a chur isteach i bhforálacha conarthacha a cheanglaítear i gcomhréir le mír 1, ag cur san áireamh an gá atá le hinréiteacht na hinstitiúide nó an eintitis a áirithiú, ceanglófar, laistigh de thréimhse réasúnta tar éis an fógra a fháil de bhun na chéad fhomhíre, go n-áiritheofar téarma conarthach den sórt sin. Anuas air sin, féadfaidh an t-údarás réitigh a cheangal ar an institiúid nó ar an eintiteas a gcuid cleachtas maidir le cur i bhfeidhm na díolúine ó aitheantas conarthach a thabhairt don fhortharrtháil.

Ní áireofar sna dliteanais dá dtagraítear sa chéad fhomhír den mhír seo ionstraimí Breise Leibhéal 1, ionstraimí Leibhéal 2, na hionstraimí fiachais dá dtagraítear i bpointe (48)(ii) d'Airteagal 2(1), i gcás inar dliteanais neamhurraithe iad. Ina theannta sin, na dliteanais dá dtagraítear sa chéad fhomhír den mhír seo, beidh rangú sinsearachta acu ar na dliteanais dá dtagraítear i bpointí (a), (b) agus (c) d'Airteagal 108(2) agus in Airteagal 108(3).

I gcás ina gcinnfidh an t-údarás réitigh, i gcomhthéacs an mheasúnaithe ar inréititheacht institiúide nó eintitis dá dtagraítear i bpointí (b), (c) agus (d) d'Airteagal 1(1) i gcomhréir le hAirteagal 15 agus le hAirteagal 16, nó tráth ar bith eile, gurb amhlaidh laistigh d'aicme dliteanas lena gcuimsítear dliteanais incháilithe, gur mó líon na ndliteanas sin, i gcomhréir leis an gcéad fhomhír den mhír seo, nach gcuimsítear leo an téarma conarthach dá dtagraítear i mír 1, mar aon leis na dliteanais atá eisiata ó chur i bhfeidhm na huirlise fortharrthála i gcomhréir le hAirteagal 44(2) nó ar dócha go n-eiseofar iad i gcomhréir le hAirteagal 44(3), gur mó é ná 10 % den aicme sin, déanfaidh sé measúnú láithreach ar thionchar an fhíorais áirithe sin ar inréititheacht na hinstitiúide nó an eintitis sin, lena n-áirítear an tionchar ar an inréititheacht a eascraíonn as an riosca a bheith ann nuair a sháraítear coimircí an chreidiúnaithe dá bhforáiltear in Airteagal 73 agus na cumhacht díluachála agus comhshó á gcur i bhfeidhm acu.

I gcás ina gcinnfidh an t-údarás réitigh, ar bhonn an mheasúnaithe dá dtagraítear sa chúigiú fomhír den mhír seo, i dtaobh na dliteanas, nach gcuimsítear leo, i gcomhréir leis an gcéad fhomhír, an téarma conarthach

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dá dtagraítear i mír 1, go gcruthaíonn siad bac substaintiúil ar inréititheacht, cuirfidh sé i bhfeidhm na cumhachtaí dá bhforáiltear in Airteagal 17 mar is iomchuí chun fáil réidh leis an mbac sin ar an inréititheacht.

I gcás ina mainníonn an institiúid nó an t-eintiteas dá dtagraítear i bpointí (b),(c) nó (d) d'Airteagal 1(1) an téarma a cheanglaítear faoi mhír 1 den Airteagal seo a áirithint sna forálacha conarthacha i leith dliteanas nó, i gcás nach bhfuil feidhm ag an gceangal sin i gcomhréir leis an mír seo, ní chuirfear na dliteanais sin san áireamh i gcomhair an íoscheanglais do chistí dílse ná do dhliteanais incháilithe.

3. Áiritheoidh na Ballstáit go bhféadfaidh na húdaráis réitigh ceanglas a chur ar institiúidí agus eintitis dá dtagraítear i bpointí (b), (c) agus (d) d'Airteagal 1(1) tuairim dhlíthiúil a chur ar fáil do na húdaráis maidir le hinfhorghníomhaíocht dhlíthiúil agus éifeachtacht an téarma chonarthaigh dá dtagraítear i mír 1 den Airteagal seo.

4. I gcás nch ndéanann institiúid nó eintiteas dá dtagraítear i bpointí (b), (c) nó (d) d'Airteagal 1(1) téarma conarthach a chur sna forálacha conarthacha lena rialaítear dliteanas ábhartha a cheanglaítear i gcomhréir le mír 1 den Airteagal seo, ní chuirfidh sé sin cosc ar an údarás réitigh a chumhachtaí díluachála agus comhshó a fheidhmiú i dtaca leis an dliteanas sin.

5. Forbróidh ÚBE dréacht-chaighdeáin theicniúla rialála chun an liosta dliteanas lena mbaineann an t-eisiamh i mír 1agus inneachar an téarma chonarthaigh dá gceanglaítear sa mhír sin a chinneadh a thuilleadh, agus samhlacha gnó difriúla institiúidí á gcur san áireamh.

Cuirfidh ÚBE na dréachtchaighdeáin theicniúla rialála sin faoi bhráid an Choimisiúin faoin 3 Iúil 2015.

Tarmligtear an chumhacht chuig an gCoimisiún na caighdeáin theicniúla rialála dá dtagraítear sa chéad fhomhír a ghlacadh i gcomhréir le hAirteagal 10 go hAirteagal 14 de Rialachán (AE) Uimh. 1093/2010.

6. Forbróidh ÚBE dréachtchaighdeáin theicniúla rialála chun na nithe seo a leanas a shonrú tuilleadh:

(a) na coinníollacha ina mbeadh sé dofheidhmithe, ó thaobh an dlí nó eile de, d'institiúid nó d'eintiteas dá dtagraítear i bpointí (b), (c) nó (d) d'Airteagal 1(1) an téarma conarthach dá dtagraítear i mír 1 den Airteagal seo a áireamh i gcatagóirí áirithe dliteanas

(b) na coinníollacha don údarás réitigh a cheangal go n-áireofar an téarma conarthach de bhun an tríú fomhír de mhír 2.

(c) tréimhse réasúnta don údarás réitigh a cheangal go n-áireofar téarma conarthach de bhun an tríú fomhír de mhír 2.

Cuirfidh ÚBE na dréachtchaighdeáin theicniúla rialála sin faoi bhráid an Choimisiúin faoin 28 Meitheamh 2020.

Tarmligtear an chumhacht chuig an gCoimisiún na caighdeáin theicniúla rialála dá dtagraítear sa chéad fhomhír a ghlacadh i gcomhréir le hAirteagal 10 go hAirteagal 14 de Rialachán (AE) Uimh. 1093/2010.

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7. Sonróidh an t-údarás réitigh, má mheasann sé gur gá, catagóirí na ndliteanas ar féidir le hinstitiúid nó eintiteas dá dtagraítear i bpointí (b), (c) nó (d) d'Airteagal 1(1) a chinneadh ina leith go bhfuil sé dofheidhmithe, ó thaobh an dlí nó eile de, an téarma conarthach dá dtagraítear i mír 1 den Airteagal seo, bunaithe ar na coinníollacha a shonraítear tuilleadh de bharr mír 6 a chur i bhfeidhm.

8. Forbróidh ÚBE dréachtchaighdeáin theicniúla cur chun feidhme chun formáidí agus teimpléid aonfhoirmeacha a shonrú le haghaidh sainaithint agus traschur faisnéise ag údaráis réitigh, i gcomhar leis na húdaráis inniúla, chuig ÚBE chun críocha mhír 1.

Cuirfidh ÚBE na dréachtchaighdeáin theicniúla cur chun feidhme sin faoi bhráid an Choimisiúin faoin 28 Meitheamh 2020.

Tugtar an chumhacht don Choimisiún na caighdeáin theicniúla cur chun feidhme dá dtagraítear sa chéad fhomhír den mhír seo a ghlacadh i gcomhréir le hAirteagal 15 de Rialachán (AE) Uimh. 1093/2010.

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Article 56

Government financial stabilisation tools

1. Member States may provide extraordinary public financial support through additional financial stabilisation tools in accordance with paragraph 3 of this Article, Article 37(10) and with Union State aid framework, for the purpose of participating in the resolution of an institution or an entity referred to in point (b), (c) or (d) of Article 1(1), including by intervening directly in order to avoid its winding up, with a view to meeting the objectives for resolution referred to in Article 31(2) in relation to the Member State or the Union as a whole. Such an action shall be carried out under the leadership of the competent ministry or the government in close cooperation with the resolution authority.

2. In order to give effect to the government financial stabilisation tools, Member States shall ensure that their competent ministries or governments have the relevant resolution powers specified in Articles 63 to 72, and shall ensure that Articles 66, 68, 83 and 117 apply.

3. The government financial stabilisation tools shall be used as a last resort after having assessed and exploited the other resolution tools to the maximum extent practicable whilst maintaining financial stability, as determined by the competent ministry or the government after consulting the resolution authority.

4. When applying the government financial stabilisation tools, Member States shall ensure that their competent ministries or governments and the resolution authority apply the tools only if all the conditions laid down in Article 32(1) as well as one of the following conditions are met:

(a) the competent ministry or government and the resolution authority, after consulting the central bank and the competent authority, determine that the application of the resolution tools would not suffice to avoid a significant adverse effect on the financial system;

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(b) the competent ministry or government and the resolution authority determine that the application of the resolution tools would not suffice to protect the public interest, where extraordinary liquidity assistance from the central bank has previously been given to the institution;

(c) in respect of the temporary public ownership tool, the competent ministry or government, after consulting the competent authority and the resolution authority, determines that the application of the resolution tools would not suffice to protect the public interest, where public equity support through the equity support tool has previously been given to the institution.

5. The financial stabilisation tools shall consist of the following:

(a) public equity support tool as referred to in Article 57;

(b) temporary public ownership tool as referred to in Article 58.

Article 57

Public equity support tool

1. Member States may, while complying with national company law, participate in the recapitalisation of an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) of this Directive by providing capital to the latter in exchange for the following instruments, subject to the requirements of Regulation (EU) No 575/2013:

(a) Common Equity Tier 1 instruments;

(b) Additional Tier 1 instruments or Tier 2 instruments.

2. Member States shall ensure, to the extent that their shareholding in an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) permits, that such institutions or entities subject to public equity support tool in accordance with this Article are managed on a commercial and professional basis.

3. Where a Member State provides public equity support tool in accordance with this Article, it shall ensure that its holding in the institution or an entity referred to in point (b), (c) or (d) of Article 1(1) is transferred to the private sector as soon as commercial and financial circumstances allow.

Article 58

Temporary public ownership tool

1. Member States may take an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) into temporary public ownership.

2. For that purpose a Member State may make one or more share transfer orders in which the transferee is:

(a) a nominee of the Member State; or

(b) a company wholly owned by the Member State.

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3. Member States shall ensure that institutions or entities referred to in point (b), (c) or (d) of Article 1(1) subject to the temporary public ownership tool in accordance with this Article are managed on a commercial and professional basis and that they are transferred to the private sector as soon as commercial and financial circumstances allow.

CHAPTER V

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Ionstraimí caipitil agus dliteanais incháilithe a dhíluacháil nó a chomhshó

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Article 59

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An ceanglas ionstraimí caipitil agus dliteanas incháilithe ábhartha a dhíluacháil nó a chomhshó

1. Féadtar na cumhachtaí ionstraimí caipitil ábhartha agus dliteanais incháilithe a dhíluacháil nó a chomhshó a fheidhmiú:

(a) beag beann ar ghníomhaíocht réitigh; nó

(b) i gcomhcheangal le gníomhaíocht réitigh, i gcás ina gcomhlíonfar na coinníollacha maidir le réiteach a shonraítear in Airteagal 32, 32a nó in Airteagal 33.

I gcás inar cheannaigh an t-eintiteas réitigh, go hindíreach trí eintitis eile sa ghrúpa réitigh céanna, ionstraimí caipitil ábhartha agus dliteanais incháilithe ábhartha, feidhmeofar an chumhacht chun díluacháil nó comhshó a dhéanamh ar na hionstraimí caipitil ábhartha sin agus na dliteanais incháilithe ábhartha sin i dteannta fheidhmiú na cumhachta céanna ar leibhéal mháthairghnóthas an eintitis lena mbaineann nó ar leibhéal máthairghnóthas eile nach eintitis réitigh iad ionas go gcuirtear na caillteanais ar aghaidh chuig an eintiteas réitigh agus ionas go ndéanann an t-eintiteas réitigh an t-eintiteas lena mbaineann a athchaipitliú.

Tar éis fheidhmiú na cumhachta chun dliteanais incháilithe ábhartha agus dliteanais incháilithe a dhíluacháil nó a chomhshó beag beann ar ghníomhaíocht réitigh, déanfar an luacháil dá bhforáiltear in Airteagal 74 agus beidh feidhm ag Airteagal 75.

1a. Ní fhéadtar na cumhachtaí dliteanais incháilithe a dhíluacháil nó a chomhshó beag beann ar ghníomhaíocht réitigh a fheidhmiú ach amháin maidir le dliteanais incháilithe a chomhlíonann na coinníollacha dá dtagraítear i bpointe (a) d'Airteagal 45 f(2) den Treoir seo, cé is moite den choinníoll maidir le haibíocht dliteanas atá fágtha mar a leagtar amach in Airteagal 72(c)1 de Rialachán (AE) Uimh. 575/2013.

I gcás ina bhfeidhmítear an chumhacht sin, áiritheoidh na Ballstáit gur i gcomhréir leis an bprionsabal dá dtagraítear i bpointe (g) d'Airteagal 34(1) a dhéanfar an díluacháil nó an comhshó.

1b. I gcás ina ndéantar gníomhaíocht réitigh maidir le heintiteas réitigh nó, i gcúinsí eisceachtúla de dhiallas ón bplean réitigh, maidir le heintiteas nach eintiteas réitigh é, an méid a dhéanfar a laghdú, a dhíluacháil nó a chomhshó i gcomhréir le hAirteagal 60(1) ar leibhéal an eintitis sin, cuirfear an méid sin san áireamh i dtaca leis na tairseacha a leagtar síos in Airteagal 37(10) agus i bpointe (a) d'Airteagal 44(8) is infheidhme maidir leis an eintiteas lena mbaineann.

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2. Member States shall ensure that the resolution authorities have the power to write down or convert relevant ►M3 ionstraimí caipitil, agus dliteanais incháilithe dá dtagraítear i mír 1a ◄ into shares or other instruments of ownership of institutions and entities referred to in points (b), (c) and (d) of Article 1(1).

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3. Ceanglóidh na Ballstáit ar údaráis réitigh an chumhacht díluachála nó comhshó a fheidhmiú, i gcomhréir le hAirteagal 60 agus gan mhoill, maidir le hionstraimí caipitil ábhartha, agus maidir le dliteanais incháilithe dá dtagraítear i mír 1a arna n-eisiúint ag institiúid nó ag eintiteas dá dtagraítear i bpointe (b), (c) nó (d) d'Airteagal 1(1) nuair a bheidh feidhm ag ceann amháin nó níos mó de na himthosca seo a leanas:

(a) i gcás inar cinneadh gur comhlíonadh na coinníollacha maidir le réiteach a shonraítear in Airteagal 32, 32a nó in Airteagal 33, sula nglacfar aon ghníomhaíocht réitigh;

(b) i gcás ina gcinnfidh an t-údarás iomchuí, mura ndéantar an chumhacht sin a fheidhmiú i ndáil leis na hionstraimí caipitil ábhartha agus i ndáil leis na dliteanais incháilithe dá dtagraítear i mír 1a, nach mbeidh an institiúid nó an t-eintiteas dá dtagraítear i bpointe (b), (c) nó (d) d'Airteagal 1(1) inmharthana a thuilleadh;

▼B

(c) 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 appropriate authority of the Member State of the consolidating supervisor and the appropriate authority of the Member State of the subsidiary make a joint determination taking the form of a joint decision in accordance with Article 92(3) and (4) that unless the write down or conversion power is exercised in relation to those instruments, the group will no longer be viable;

(d) 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, and the appropriate authority of the Member State of the consolidating supervisor makes a determination that unless the write down or conversion power is exercised in relation to those instruments, the group will no longer be viable;

(e) extraordinary public financial support is required by the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) except in any of the circumstances set out in point (d)(iii) of Article 32(4).

4. For the purposes of paragraph 3, an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) or a group shall be deemed to be no longer viable only if both of the following conditions are met:

(a) the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) or the group is failing or likely to fail;

(b) having regard to timing and other relevant circumstances, there is no reasonable prospect that any action, including alternative private sector measures or supervisory action (including early intervention measures), other than the write down or conversion of ►M3 ionstraimí caipitil, nó dliteanais incháilithe dá dtagraítear i mír 1a ◄, independently or in combination with a resolution action,

▼B

would prevent the failure of the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) or the group within a reasonable timeframe.

5. For the purposes of point (a) of paragraph 4 of this Article, an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) shall be deemed to be failing or likely to fail where one or more of the circumstances set out in Article 32(4) occurs.

6. For the purposes of point (a) of paragraph 4, a group shall be deemed 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 on worse terms pursuant to point (c) of paragraph 3 than equally ranked capital instruments at the level of the parent undertaking which have been written down or converted.

8. Where an appropriate authority makes a determination referred to in paragraph 3 of this Article, it shall immediately notify the resolution authority responsible for the institution or for the entity referred to in point (b), (c) or (d) of Article 1(1) in question, if different.

9. Before making a determination referred to in point (c) of paragraph 3of this Article in relation to a subsidiary that issues relevant capital instruments that are recognised for the purposes of meeting the own funds requirements on an individual and on a consolidated basis, the appropriate authority shall comply with the notification and consultation requirements laid down in Article 62.

10. Before exercising the power to write down or convert ►**M3** ionstraimí caipitil, nó dliteanais incháilithe dá dtagraítear i mír 1a ◄, resolution authorities shall ensure that a valuation of the assets and liabilities of the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) is carried out in accordance with Article 36. That valuation shall form the basis of the calculation of the write down to be applied to the relevant ►**M3** ionstraimí caipitil, nó dliteanais incháilithe dá dtagraítear i mír 1a ◄ in order to absorb losses and the level of conversion to be applied to relevant ►**M3** ionstraimí caipitil, nó dliteanais incháilithe dá dtagraítear i mír 1a ◄ in order to recapitalise the institution or the entity referred to in point (b), (c) or (d) of Article 1(1).

Article 60

▼M3

Forálacha maidir le hionstraimí caipitil agus dliteanas incháilithe ábhartha a dhíluacháil nó a chomhshó

▼B

1. When complying with the requirement laid down in Article 59, resolution authorities shall exercise the write down or conversion power in accordance with the priority of claims under normal insolvency proceedings, in a way that produces the following results:

▼B

(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 both of the actions specified in Article 47(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 Article 31 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 Article 31 or to the extent of the capacity of the relevant capital instruments, whichever is lower;

▼M3

(d) díluachálfar príomhshuim na ndliteanas incháilithe dá dtagraítear in Airteagal 59(1a) nó comhshófar iad in ionstraimí Ghnáthchothromas Leibhéal 1 nó an dá rud, a mhéad is gá chun na cuspóirí réitigh a leagtar amach in Airteagal 31 a bhaint amach nó suas go dtí méid acmhainneachta na ndliteanais incháilithe ábhartha, cibé acu is ísle.

2. I gcás ina ndíluachálfar príomhshuim ionstraime caipitil ábhartha, nó dliteanais incháilithe dá dtagraítear in Airteagal 59(1a):

(a) is laghdú buan a bheidh sa laghdú ar an bpríomhshuim sin, faoi réir aon uasluacháil a dhéanfar i gcomhréir leis an sásra aisíoca in Airteagal 46(3);

(b) ní fhanfaidh aon dliteanas do shealbhóir na hionstraime caipitlí ábhartha, ná den dliteanas incháilithe dá dtagraítear in Airteagal 59(1a) faoi mhéid na hionstraime sin a díluacháladh, nó i dtaca leis, cé is moite d'aon dliteanas a fabhraíodh cheana, agus aon dliteanas i leith damáiste a d'fhéadfadh tarlú de bhíthin achomhairc mar thoradh ar agóid in aghaidh dlíthiúlacht fheidhmiú na gcumhachtaí díluachála;

(c) ní íocfar aon chúiteamh le haon sealbhóir na n-ionstraimí caipitil ábhartha nó na ndliteanas dá dtagraítear in Airteagal 59(1a) seachas i gcomhréir le mír 3 den Airteagal seo.

▼B

3. ►M3 Ionas go ndéanfar ionstraimí caipitil ábhartha, agus dliteanais incháilithe dá dtagraítear in Airteagal 59(1a) faoi phointí (b), (c) agus (d) de mhír 1 den Airteagal seo a chomhshó, féadfaidh údaráis réitigh a cheangal ar institiúidí agus ar eintitis dá dtagraítear i bpointí (b), (c) agus (d) d'Airteagal 1(1) ionstraimí Ghnáthchothromas Leibhéal 1 a eisiúint do shealbhóirí ionstraimí ábhartha agus dliteanais incháilithe den sórt sin. Ní fhéadfar ionstraimí caipitil ábhartha agus dliteanais incháilithe den sórt sin a chomhshó ach amháin nuair a chomhlíontar na coinníollacha seo a leanas: ◄

(a) those Common Equity Tier 1 instruments are issued by the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) or by a parent undertaking of the institution or the entity referred to in point (b), (c) or (d) of Article 1(1), with the agreement of the resolution authority of the institution or the entity referred to in points (b), (c) or (d) of Article 1(1) or, where relevant, of the resolution authority of the parent undertaking;

▼B

(b) those Common Equity Tier 1 instruments are issued prior to any issuance of shares or other instruments of ownership by that institution or that entity referred to in point (b), (c) or (d) of Article 1(1) for the purposes of provision of own funds by the State or a government entity;

(c) those Common Equity Tier 1 instruments are awarded and transferred without delay following the exercise of the conversion power;

(d) the conversion rate that determines the number of Common Equity Tier 1 instruments that are provided in respect of ►M3 gach ionstraim caipitil, nó gach dliteanas incháilithe dá dtagraítear in Airteagal 59(1a) ◄ complies with the principles set out in Article 50 and any guidelines developed by EBA pursuant to Article 50(4).

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

5. Where an institution meets the conditions for resolution and the resolution authority decides to apply a resolution tool to that institution, the resolution authority shall comply with the requirement laid down in Article 59(3) before applying the resolution tool.

Article 61

Authorities responsible for determination

1. Member States shall ensure that the authorities responsible for making the determinations referred to in Article 59(3) are those set out in this Article.

2. Each Member State shall designate in national law the appropriate authority which shall be responsible for making determinations pursuant to Article 59. The appropriate authority may be the competent authority or the resolution authority, in accordance with Article 32.

3. Where the relevant capital instruments are recognised for the purposes of meeting the own funds requirements in accordance with Article 92 of Regulation (EU) No 575/2013 on an individual basis, the authority responsible for making the determination referred to in Article 59(3) of this Directive shall be the appropriate authority of the Member State where the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) has been authorised in accordance with Title III of Directive 2013/36/EU.

▼M3

I gcás ina n-aithnítear na hionstraimí caipitil ábhartha, nó na dliteanais incháilithe dá dtagraítear in Airteagal 59 (1a) den Treoir seo, chun críocha an ceanglas dá dtagraítear in Airteagal 45f(1) den Treoir seo a chomhlíonadh, is é an t-údarás atá freagrach as an gcinneadh a dhéanamh dá dtagraítear in Airteagal 59(3) den Treoir seo údarás iomchuí an Bhallstáit inar údaraíodh an institiúid nó an t-eintiteas dá dtagraítear i bpointí (b), (c) nó (d) d'Airteagal 1(1) den Treoir seo i gcomhréir le Teideal III de Threoir 2013/36/AE.

▼B

4. Where relevant capital instruments are issued by an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) that is a subsidiary and are recognised for the purposes of meeting the own funds requirements on an individual and on a consolidated basis, the authority responsible for making the determinations referred to in Articles 59(3) shall be the following:

(a) the appropriate authority of the Member State where the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) of this Directive that issued those instruments has been established in accordance with Title III of Directive 2013/36/EU shall be responsible for making the determinations referred to in (b) of Article 59(3) of this Directive;

(b) the appropriate authority of the Member State of the consolidating supervisor and the appropriate authority of the Member State where the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) of this Directive that issued those instruments has been established in accordance with Title III of Directive 2013/36/EU shall be responsible for making the joint determination taking the form of a joint decision referred to in point (c) of Article 59(3) of this Directive.

Article 62

Consolidated application: procedure for determination

▼M3

1. Sula ndéanfaidh siad cinneadh dá dtagraítear i bpointí (b), (c) (d) nó (e) d'Airteagal 59(3) i ndáil le fochuideachta a eisíonn ionstraimí caipitil ábhartha, nó dliteanais incháilithe dá dtagraítear in Airteagal 59 (1a), chun críocha an ceanglas dá dtagraítear in Airteagal 45f a chomhlíonadh ar bhonn aonair nó ionstraimí caipitil ábhartha a aithnítear chun críocha na ceanglais i ndáil le cistí dílse a chomhlíonadh ar bhonn aonair nó ar bhonn comhdhlúite, áiritheoidh na Ballstáit go gcomhlíonfaidh údarás réitigh iomchuí na ceanglais seo a leanas:

(a) agus measúnú a dheanamh an ndéanfar cinneadh dá bhforáiltear i bpointí (b), (c) (d) nó (e) d'Airteagal 59(3), tar éis dul i gcomhairle le húdarás réitigh an eintitis réitigh ábhartha, go dtabharfaidh sé fógra, laistigh de 24 uair an chloig tar éis dul i gcomhairle leis an údarás réitigh sin, don dá dhream seo:

(i) an maoirseoir comhdhlúthaithe agus munarb ionann, an t-údarás iomchuí sa Bhallstáit ina bhfuil an maoirseoir comhdhlúthaithe lonnaithe;

(ii) údaráis réitigh eintitis eile sa ghrúpa réitigh céanna a cheannaigh na dliteanais, go díreach nó go hindíreach, dá dtagraítear in Airteagal 45f(2) ón eintiteas atá faoi réir Airteagal 45f(1);

(b) agus measúnú á dhéanamh an ndéanfar cinneadh dá bhforáiltear i bpointí (b), (c) (d) nó (e) d'Airteagal 59(3), go gcuirfidh sé fógra, gan mhoill, chuig an údarás inniúil atá freagrach as gach institiúid nó eintiteas dá dtagraítear i bpointí (b), (c) nó (d) d'Airteagal 1(1) a d'eisigh na hionstraimí caipitil ábhartha a bhfuil na cumhachtaí díluachála nó comhshó le feidhmiú ina leith dá ndéanfaí an cinneadh sin, agus, ina mhalairt de chás, na húdaráis iomchuí sna Ballstáit ina bhfuil na húdaráis inniúla agus an maoirseoir comhdhlúthaithe lonnaithe.

▼B

2. When making a determination referred to in point (c), (d) or (e) of Article 59(3) in the case of an institution or of a group with cross-border activity, the appropriate authorities shall take into account the potential impact of the resolution in all the Member States where the institution or the group operate.

3. An appropriate authority shall accompany a notification made pursuant to paragraph 1 with an explanation of the reasons why it is considering making the determination in question.

4. ►M3 I gcás inar tugadh fógra de bhun mhír 1, tar éis dó dul i gcomhairle leis na húdaráis dár tugadh fógra i gcomhréir le pointí (a),(i) nó (b) den mhír sin, déanfaidh an t-údarás iomchuí na nithe seo a leanas a mheas: ◄

(a) whether an alternative measure to the exercise of the write down or conversion power in accordance with Article 59(3) is available;

(b) if such an alternative measure is available, whether it can feasibly be applied;

(c) if such an alternative measure could feasibly be applied, whether there is a realistic prospect that it would address, in an adequate timeframe, the circumstances that would otherwise require a determination referred to in Article 59(3) to be made.

5. For the purposes of paragraph 4 of this Article, alternative measures mean early intervention measures referred to in Article 27 of this Directive, measures referred to in Article 104(1) of Directive 2013/36/EU or a transfer of funds or capital from the parent undertaking.

6. Where, pursuant to paragraph 4, the appropriate authority, after consulting the notified authorities, assesses that one or more alternative measures are available, can feasibly be applied and would deliver the outcome referred to in point (c) of that paragraph, it shall ensure that those measures are applied.

7. Where, in a case referred to in point (a) of paragraph 1, and pursuant to paragraph 4 of this Article, the appropriate authority, after consulting the notified authorities, assesses that no alternative measures are available that would deliver the outcome referred to in point (c) of paragraph 4, the appropriate authority shall decide whether the determination referred to in Article 59(3) under consideration is appropriate.

8. Where an appropriate authority decides to make a determination under point (c) of Article 59(3), it shall immediately notify the appropriate authorities of the Member States in which the affected subsidiaries are located and the determination shall take the form of a joint decision as set out in Article 92(3) and (4). In the absence of a joint decision no determination under point (c) of Article 59(3) shall be made.

9. The resolution authorities of the Member States where each of the affected subsidiaries are located shall promptly implement a decision to write down or convert capital instruments made in accordance with this Article having due regard to the urgency of the circumstances.

▼B

CHAPTER VI

Resolution powers

Article 63

General powers

1. Member States shall ensure that the resolution authorities have all the powers necessary to apply the resolution tools to institutions and to entities referred to in points (b), (c) and (d) of Article 1(1) that meet the applicable conditions for resolution. In particular, the resolution authorities shall have the following resolution powers, which they may exercise individually or in any combination:

(a) the power to require any person to provide any information required for the resolution authority to decide upon and prepare a resolution action, including updates and supplements of information provided in the resolution plans and including requiring information to be provided through on-site inspections;

(b) the power to take control of an institution under resolution and exercise all the rights and powers conferred upon the shareholders, other owners and the management body of the institution under resolution;

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

(d) the power to transfer to another entity, with the consent of that entity, rights, assets or liabilities of an institution under resolution;

(e) the power to reduce, including to reduce to zero, the principal amount of or outstanding amount due in respect of ►**M3** dliteanais in-fhortharrthála ◄, of an institution under resolution;

(f) the power to convert ►**M3** dliteanais in-fhortharrthála ◄ of an institution under resolution into ordinary shares or other instruments of ownership of that institution or entity referred to in point (b), (c) or (d) of Article 1(1), a relevant parent institution or a bridge institution to which assets, rights or liabilities of the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) are transferred;

(g) the power to cancel debt instruments issued by an institution under resolution except for secured liabilities subject to Article 44(2);

▼B

(h) the power to reduce, including to reduce to zero, the nominal amount of shares or other instruments of ownership of an institution under resolution and to cancel such shares or other instruments of ownership;

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

(j) the power to amend or alter the maturity of debt instruments and other ►M3 dliteanais in-fhortharrthála ◄ issued by an institution under resolution or amend the amount of interest payable under such instruments and other ►M3 dliteanais in-fhortharrthála ◄, or the date on which the interest becomes payable, including by suspending payment for a temporary period, except for secured liabilities subject to Article 44(2);

(k) the power to close out and terminate financial contracts or derivatives contracts for the purposes of applying Article 49;

(l) the power to remove or replace the management body and senior management of an institution under resolution;

(m) the power to require the competent authority to assess the buyer of a qualifying holding in a timely manner by way of derogation from the time-limits laid down in Article 22 of Directive 2013/36/EU and Article 12 of Directive 2014/65/EU.

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

(a) subject to Article 3(6) and Article 85(1), requirements to obtain approval or consent from any person either public or private, including the shareholders or creditors of the institution under resolution;

(b) prior to the exercise of the power, procedural requirements to notify any person including any requirement to publish any notice or prospectus or to file or register any document with any other authority.

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

Point (b) of the first subparagraph is without prejudice to the requirements laid down in Articles 81 and 83 and any notification requirements under the Union State aid framework.

▼B

3. Member States shall ensure that, to the extent that any of the powers listed in paragraph 1 of this Article is not applicable to an entity within the scope of Article 1(1) of this Directive as a result of its specific legal form, resolution authorities shall have powers which are as similar as possible including in terms of their effects.

4. Member States shall ensure that, when resolution authorities exercise the powers pursuant to paragraph 3 the safeguards provided for in this Directive, or safeguards that deliver the same effect, shall be applied to the persons affected, including shareholders, creditors and counterparties.

Article 64

Ancillary powers

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

(a) subject to Article 78, provide for a transfer to take effect free from any liability or encumbrance affecting the financial instruments, rights, assets or liabilities transferred; for that purpose, any right of compensation in accordance with this Directive shall not be considered to be a liability or an encumbrance;

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

(c) require the relevant authority to discontinue or suspend the admission to trading on a regulated market or the official listing of financial instruments pursuant to Directive 2001/34/EC of the European Parliament and of the Council ([1]);

(d) provide for the recipient to be treated as if it were the institution under resolution for the purposes of any rights or obligations of, or actions taken by, the institution under resolution, including, subject to Articles 38 and 40, any rights or obligations relating to participation in a market infrastructure;

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

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

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

([1]) 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 securities (OJ L 184, 6.7.2001, p. 1).

▼B

3. Member States shall ensure that, when exercising a resolution power, resolution authorities have the power to provide for continuity arrangements necessary to ensure that the resolution action is effective and, where relevant, the business transferred may be operated by the recipient. Such continuity arrangements shall include, in particular:

(a) the continuity of contracts entered into by the institution under resolution, so that the recipient assumes the rights and liabilities of the institution under resolution relating to any financial instrument, right, asset or liability that has been transferred and is substituted for the institution under resolution, expressly or implicitly in all relevant contractual documents;

(b) the substitution of the recipient for the institution under resolution in any legal proceedings relating to any financial instrument, right, asset or liability that has been transferred.

4. The powers in point (d) of paragraph 1 and point (b) of paragraph 3 shall not affect the following:

(a) the right of an employee of the institution under resolution to terminate a contract of employment;

(b) subject to Articles 69, 70 and 71, any right of a party to a contract to exercise rights under the contract, including the right to terminate, where entitled to do so in accordance with the terms of the contract by virtue of an act or omission by the institution under resolution prior to the relevant transfer, or by the recipient after the relevant transfer.

Article 65

Power to require the provision of services and facilities

1. Member States shall ensure that resolution authorities have the power to require an institution under resolution, or any of its group entities, to provide any services or facilities that are necessary to enable a recipient to operate effectively the business transferred to it.

The first subparagraph shall apply including where the institution under resolution or relevant group entity has entered into normal insolvency proceedings.

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

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

▼B

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

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

(b) where there is no agreement or where the agreement has expired, on reasonable terms.

5. EBA shall, by 3 July 2015, issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 to specify the minimum list of services or facilities that are necessary to enable a recipient to effectively operate a business transferred to it.

Article 66

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

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

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

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

4. Where a resolution authority of a Member State (Member State A) exercises the write-down or conversion powers, including in relation to capital instruments in accordance with Article 59, and the ►M3 dlitheanais in-fhortharrthála ◄ or relevant capital instruments of the institution under resolution include the following:

(a) instruments or liabilities that are governed by the law of a Member State other than the State of the resolution authority that exercised the write down or conversion powers (Member State B);

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

▼B

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

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

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

(a) the right for shareholders, creditors and third parties to challenge, by way of appeal pursuant to Article 85, a transfer of shares, other instruments of ownership, assets, rights or liabilities referred to in paragraph 1 of this Article;

(b) the right for creditors to challenge, by way of appeal pursuant to Article 85, the reduction of the principal amount, or the conversion, of an instrument or liability covered by points (a) or (b) of paragraph 4 of this Article;

(c) the safeguards for partial transfers, as referred to in Chapter VII, in relation to assets, rights or liabilities referred to in paragraph 1.

Article 67

Power in respect of assets, rights, liabilities, shares and other instruments of ownership located in third countries

1. Member States shall provide that, in cases in which resolution action involves action taken in respect of assets located in a third country or shares, other instruments of ownership, rights or liabilities governed by the law of a third country, resolution authorities may require that:

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

(b) the administrator, receiver or other person exercising control of the institution under resolution hold the shares, other instruments of ownership, assets or rights or discharge the liabilities on behalf of the recipient until the transfer, write down, conversion or action becomes effective;

(c) the reasonable expenses of the recipient properly incurred in carrying out any action required under points (a) and (b) of this paragraph are met in any of the ways referred to in Article 37(7).

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2. Where the resolution authority assesses that, in spite of all the necessary steps taken by the administrator, receiver or other person in accordance with paragraph 1(a), it is highly unlikely that the transfer, 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. If it has already ordered the transfer, write down, conversion or action, that order shall be void in relation to the assets, shares, instruments of ownership, rights or liabilities concerned.

Article 68

Exclusion of certain contractual terms in early intervention and resolution

1. A crisis prevention measure or a crisis management measure taken in relation to an entity in accordance with this Directive, including the occurrence of any event directly linked to the application of such a measure, shall not, per se, under a contract entered into by the entity, be deemed to be an enforcement event within the meaning of Directive 2002/47/EC or as 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.

In addition, a crisis prevention measure or crisis management measure shall not, per se, be deemed 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.

2. Where third country resolution proceedings are recognised pursuant to Article 94, or otherwise where a resolution authority so decides, such proceedings shall for the purposes of this Article constitute a crisis management measure.

3. ►M3 Ar choinníoll go leanfar de na oibleagáidí substainteacha faoin gconradh, lena n-áirítear oibleagáidí íocaíochta agus seachadta agus soláthar comhthaobhachta, a fheidhmiú, ní chuirfidh beart coiscthe géarchéime, oibleagáid a chur ar fionraí faoi Airteagal 33a nó beart bainistithe géarchéime, lena n-áirítear aon teagmhas a tharlódh a bheadh bainteach go díreach le cur i bhfeidhm birt den sórt sin, ar chumas duine ar bith, per se, an méid seo a leanas a dhéanamh: ◄

(a) exercise any termination, suspension, modification, netting or set-off rights, including in relation to a contract entered into by:

(i) a subsidiary, the obligations under which are guaranteed or otherwise supported by a group entity;

▼B

(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 point (b), (c) or (d) of Article 1(1) concerned or any group entity in relation to a contract which includes cross-default provisions;

(c) affect any contractual rights of the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) concerned or any group entity in relation to a contract which includes cross-default provisions.

4. This Article shall not affect the right of a person to take an action referred to in paragraph 3 where that right arises by virtue of an event other than the crisis prevention measure, the crisis management measure or the occurrence of any event directly linked to the application of such a measure.

▼M3

5. Ní neamhchomhlíonadh oibleagáid conarthach chun críocha mhír 1 agus mhír 3 den Airteagal seo agus Airteagal 71(d) a bheidh i bhfionraíocht nó i srian.

▼B

6. The provisions contained in this Article shall be considered to be overriding mandatory provisions within the meaning of Article 9 of Regulation (EC) No 593/2008 of the European Parliament and of the Council ([1]).

Article 69

Power to suspend certain obligations

1. Member States shall ensure that resolution authorities have the power to suspend any payment or delivery obligations pursuant to any contract to which an institution under resolution is a party from the publication of a notice of the suspension in accordance with Article 83(4) until midnight in the Member State of the resolution authority of the institution under resolution at the end of the business day following that publication.

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

3. If an institution under resolution's payment or delivery obligations under a contract are suspended under paragraph 1, the payment or delivery obligations of the institution under resolution's counterparties under that contract shall be suspended for the same period of time.

▼M3

4. Ní bheidh feidhm ag aon fhionraíocht a dhéanfar faoi mhír 1 i leith oibleagáidí íocaíochta agus seachadta is dlite dóibh seo a leanas:

(a) córais gona n-oibreoirí arna n-ainmniú i gcomhréir le Treoir 98/26/CE;

([1]) Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ L 177, 4.7.2008, p. 6).

▼M3

(b) contrapháirtithe lárnacha arna n-údarú san Aontas de bhun Airteagal 14 de Rialachán (AE) Uimh. 648/2012 agus contrapháirtithe lárnacha de chuid tríú tír arna n-aithint ag ESMA de bhun Airteagal 25 den Rialachán sin;

(c) bainc ceannais.

▼B

5. When exercising a power under this Article, resolution authorities shall have regard to the impact the exercise of that power might have on the orderly functioning of financial markets.

▼M3

Déanfaidh na húdaráis réitigh raon na cumhachta sin a shocrú de réir cúinsí gach aon chás. Go sonrach, déanfaidh na húdaráis réitigh measúnú cúramach ar a iomchuí atá sé an fionraí a shíneadh chun go gcuimseofar faoi taiscí is incháilithe mar a shainmhínítear i bpointe (4) d'Airteagal 2(1) de Threoir 2014/49/AE, go mór mór chun go gcuimseofar taiscí faoi chumhdach de chuid daoine nádúrtha, micrifhiontar, agus fiontar beag agus meánmhéide.

Féadfaidh na Ballstáit a fhoráil go ndéanfaidh na húdaráis réitigh a áirithiú, i gcás ina bhfeidhmítear an chumhacht fionraíochta i leith taiscí is incháilithe, go mbeidh rochtain ag taisceoirí ar shuim iomchuí as na taiscí sin gach lá.

▼B

Article 70

Power to restrict the enforcement of security interests

1. Member States shall ensure that resolution authorities have the power to restrict secured creditors of an institution under resolution from enforcing security interests in relation to any assets of that institution under resolution from the publication of a notice of the restriction in accordance with Article 83(4) until midnight in the Member State of the resolution authority of the institution under resolution at the end of the business day following that publication.

▼M3

2. Ní fheidhmeoidh na húdaráis réitigh na cumhachtaí dá dtagraítear i mír 1 den Airteagal seo maidir le haon cheann acu seo a leanas:

(a) i dtaca le haon leas urrúis córas nó le hoibreoirí córas a ainmneofar chun críocha Threoir 98/26/CE;

(b) contrapháirtithe lárnacha arna n-údarú san Aontas de bhun Airteagal 14 de Rialachán (AE) Uimh. 648/2012 agus contrapháirtithe lárnacha de chuid tríú tír arna n-aithint ag ESMA de bhun Airteagal 25 de Rialachán AE) Uimh. 648/2012; agus

(c) bainc ceannais maidir le sócmhainní a gheallfar nó a sholáthrófar mar chorrlach nó mar chomhthaobhacht ag an institiúid atá faoi réiteach.

▼B

3. Where Article 80 applies, resolution authorities shall ensure that any restrictions imposed pursuant to the power referred to in paragraph 1 of this Article are consistent for all group entities in relation to which a resolution action is taken.

▼B

4. When exercising a power under this Article, resolution authorities shall have regard to the impact the exercise of that power might have on the orderly functioning of financial markets.

Article 71

Power to temporarily suspend termination rights

1. Member States shall ensure that resolution authorities have the power to suspend the termination rights of any party to a contract with an institution under resolution from the publication of the notice pursuant to Article 83(4) until midnight in the Member State of the resolution authority of the institution under resolution at the end of the business day following that publication, provided that the payment and delivery obligations and the provision of collateral continue to be performed.

2. Member States shall ensure that resolution authorities have the power to suspend the termination rights of any party to a contract with a subsidiary of an institution under resolution 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; and

(c) in the case of a transfer power that 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 authority provides in any other way adequate protection for such obligations.

The suspension shall take effect from the publication of the notice pursuant to Article 83(4) until midnight in the Member State where the subsidiary of the institution under resolution is established on the business day following that publication.

▼M3

3. Ní bheidh feidhm ag aon fhionraíocht faoi mhír 1 nó mír 2 maidir leis an méid seo a leanas:

(a) córais agus oibreoirí córas chun críocha Threoir 98/26/CE,

(b) contrapháirtithe lárnacha arna n-údarú san Aontas de bhun Airteagal 14 de Rialachán (AE) Uimh. 648/2012 ná maidir le contrapháirtithe lárnacha tríú tír arna n-aithint ag ESMA de bhun Airteagal 25 de Rialachán (AE) Uimh.648/2012; nó

(c) bainc ceannais.

▼B

4. A person may exercise a termination right under a contract before the end of the period referred to in paragraph 1 or 2 if 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 point (a) of Article 43(2).

5. Where a resolution authority exercises the power specified in paragraph 1 or 2 of this Article to suspend termination rights, and where no notice has been given pursuant to paragraph 4 of this Article, those rights may be exercised on the expiry of the period of suspension, subject to Article 68, as follows:

(a) if the rights and liabilities covered by the contract have been transferred to another entity, a counterparty may exercise termination rights in accordance with the terms of that contract only on the occurrence of any continuing or subsequent enforcement event by the recipient entity;

(b) if the rights and liabilities covered by the contract remain with the institution under resolution and the resolution authority has not applied the bail-in tool in accordance with Article 43(2)(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.

6. When exercising a power under this Article, resolution authorities shall have regard to the impact the exercise of that power might have on the orderly functioning of the financial markets.

7. Competent authorities or resolution authorities may require an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) to maintain detailed records of financial contracts.

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

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

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

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

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

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

▼M3

Airteagal 71a

Aitheantas conarthach a thabhairt do chumhachtaí um bac réitigh

1. Ceanglóidh Ballstáit ar institiúidí agus ar eintitis dá dtagraítear i bpointí (b), (c) agus (d) d'Airteagal 1(1) téarma a áireamh in aon chonradh airgeadais a dhéanfaidh siad agus atá faoi rialú dlíthe tríú tír, ar téarmaí iad lena n-aithníonn na páirtithe go bhféadfadh an conradh airgeadais a bheith faoi réir feidhmiú cumhachtaí an údaráis réitigh cearta agus oibleagáidí a chur ar fionraí nó a shrianadh de réir Airteagal 33a, Airteagal 69, Airteagal 70 agus Airteagal 71 agus go bhfuil siad faoi cheangal cheanglais Airteagal 68.

2. D'fhéadfadh Ballstáit a cheangal chomh maith go n-áiritheoidh máthairghnóthais Aontais dá dtagraítear i mír 1 go n-áireoidh a gcuid fochuideachtaí i dtríú tír, téarmaí ina gcuid conarthaí airgeadais dá dtagraítear i mír 1, ar téarmaí iad lena n-eisiafar gur forais bhailí le haghaidh luathfhoirceanta, fionraíochta, modhnaithe, glanluachála, feidhmiú cearta frithláirimh, nó forghníomhú leasanna urrúis i ndáil leis na conarthaí sin feidhmiú chumhacht an údaráis réitigh cearta agus oibleagáidí máthairghnóthais de chuid an Aontais a chur ar fionraí nó a shrianadh.

D'fhéadfadh feidhm a bheith ag an gceanglas sa chéad fhomhír maidir le fochuideachtaí i dtríú tír arb iad:

(a) institiúidí creidmheasa;

(b) gnólachtaí infheistíochta (nó a bheadh ina ghnólachtaí infheistíochta dá mba rud é go raibh a gceannoifig sa Bhallstát ábhartha); nó

(c) institiúidí airgeadais.

3. Beidh feidhm ag mír 1 maidir le haon chonradh airgeadais:

(a) is conradh a chruthaíonn oibleagáid nua nó a leasaíonn go suntasach oibleagáid atá ann cheana tar éis theacht i bhfeidhm na bhforálacha arna nglacadh ar an leibhéal náisiúnta chun an tAirteagal seo a thrasuí;

(b) is conradh lena bhforáiltear d'fheidhmiú ceart foirceanta amháin nó níos mó, nó d'fheidhmiú cearta chun leasanna urrúis a fhorfheidhmiú a mbeadh feidhm ag Airteagal 33a, Airteagal 68, Airteagal 69, Airteagal 70 nó Airteagal 71 ina leith dá mbeadh an conradh airgeadais á rialú ag dlíthe Ballstáit.

4. I gcás nach ndéanann institiúid nó eintiteas an téarma conarthach a chur san áireamh a cheanglaítear i gcomhréir le mír 1 den Airteagal seo, ní chuirfidh an méid sin cosc ar an údarás réitigh na cumhachtaí dá dtagraítear in Airteagal 33a, Airteagal 68, Airteagal 69, Airteagal 70 nó Airteagal 71 a chur i bhfeidhm i ndáil leis an gconradh airgeadais sin.

5. Forbróidh ÚBE dréacht-chaighdeáin theicniúla rialála chun inneachar an téarma chonarthaigh dá gceanglaítear i mír 1 a chinneadh a thuilleadh, agus samhlacha gnó difriúla institiúidí agus eintiteas á gcur san áireamh.

Cuirfidh an tÚdarás Baincéireachta Eorpach na dréachtchaighdeáin theicniúla rialála sin faoi bhráid an Choimisiúin faoin 28 Meitheamh 2020.

Tarmligtear an chumhacht chuig an gCoimisiún na caighdeáin theicniúla rialála dá dtagraítear sa chéad fhomhír a ghlacadh i gcomhréir le hAirteagal 10 go hAirteagal 14 de Rialachán (AE) Uimh. 1093/2010.

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Article 72

Exercise of the resolution powers

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

(a) operate and conduct the activities and services of the institution under resolution with all the powers of its shareholders and management body; and

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

The control referred to in the first subparagraph may be exercised directly by the resolution authority or indirectly by a person or persons appointed by the resolution authority. Member States shall ensure that voting rights conferred by shares or other instruments of ownership of the institution under resolution cannot be exercised during the period of resolution.

2. Subject to Article 85(1), Member States shall ensure that resolution authorities are able to take a resolution action through executive order in accordance with national administrative competences and procedures, without exercising control over the institution under resolution.

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

4. Resolution authorities shall not be deemed to be shadow directors or de facto directors under national law.

CHAPTER VII

Safeguards

Article 73

Treatment of shareholders and creditors in the case of partial transfers and application of the bail-in tool

Member States shall ensure that, where one or more resolution tools have been applied and, in particular for the purposes of Article 75:

(a) except where point (b) applies, where resolution authorities transfer only parts of the rights, assets and liabilities of the institution under resolution, the shareholders and those creditors whose claims have not been transferred, receive in satisfaction of their claims at least as much as what they would have received if the institution under resolution had been wound up under normal insolvency proceedings at the time when the decision referred to in Article 82 was taken;

(b) where resolution authorities apply the bail-in tool, the shareholders and creditors whose claims have been written down or converted to equity do not incur greater losses than they would have incurred if the institution under resolution had been wound up under normal insolvency proceedings immediately at the time when the decision referred to in Article 82 was taken.

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Article 74

Valuation of difference in treatment

1. For the purposes of assessing whether shareholders and creditors would have received better treatment if the institution under resolution had entered into normal insolvency proceedings, including but not limited to for the purpose of Article 73, Member States shall ensure that a valuation is carried out by an independent person as soon as possible after the resolution action or actions have been effected. That valuation shall be distinct from the valuation carried out under Article 36.

2. The valuation in paragraph 1 shall determine:

(a) the treatment that shareholders and creditors, or the relevant deposit guarantee schemes, would have received if the institution under resolution with respect to which the resolution action or actions have been effected had entered normal insolvency proceedings at the time when the decision referred to in Article 82 was taken;

(b) the actual treatment that shareholders and creditors have received, in the resolution of the institution under resolution; and

(c) if there is any difference between the treatment referred to in point (a) and the treatment referred to in point (b).

3. The valuation shall:

(a) assume that the institution under resolution with respect to which the resolution action or actions have been effected, would have entered normal insolvency proceedings at the time when the decision referred to in Article 82 was taken;

(b) assume that the resolution action or actions had not been effected;

(c) disregard any provision of extraordinary public financial support to the institution under resolution.

4. EBA may develop draft regulatory technical standards specifying the methodology for carrying out the valuation in this Article, in particular the methodology for assessing the treatment that shareholders and creditors would have received if the institution under resolution had entered insolvency proceedings at the time when the decision referred to in Article 82 was taken.

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

Article 75

Safeguard for shareholders and creditors

Member States shall ensure that if the valuation carried out under Article 74 determines that any shareholder or creditor referred to in Article 73, or the deposit guarantee scheme in accordance with Article 109(1), has incurred greater losses than it would have incurred in a winding up under normal insolvency proceedings, it is entitled to the payment of the difference from the resolution financing arrangements.

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Article 76

Safeguard for counterparties in partial transfers

1. Member States shall ensure that the protections specified in paragraph 2 apply in the following circumstances:

(a) a resolution authority transfers some but not all of the assets, rights or liabilities of an institution under resolution to another entity or, in the exercise of a resolution tool, from a bridge institution or asset management vehicle to another person;

(b) a resolution authority exercises the powers specified in point (f) of Article 64(1).

2. Member States shall ensure appropriate protection of the following arrangements and of the counterparties to the following arrangements:

(a) security arrangements, under which a person has by way of security an actual or contingent interest in the 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 two or more claims or obligations owed between the institution under resolution and a counterparty can be set off against each other;

(d) netting arrangements;

(e) covered bonds;

(f) structured finance arrangements, including securitisations and instruments used for hedging purposes which form an integral part of the cover pool and which according to national law are secured in a way similar to the covered bonds, which involve the granting and holding of security by a party to the arrangement or a trustee, agent or nominee.

The form of protection that is appropriate, for the classes of arrangements specified in points (a) to (f) of this paragraph is further specified in Articles 77 to 80, and shall be subject to the restrictions specified in Articles 68 to 71.

3. The requirement under paragraph 2 applies irrespective of the number of parties involved in the arrangements and of whether the arrangements:

(a) are created by contract, trusts or other means, or arise automatically by operation of law;

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(b) arise under or are governed in whole or in part by the law of another Member State or of a third country.

4. The Commission shall adopt delegated acts in accordance with Article 115 further specifying the classes of arrangement that fall within the scope of points (a) to (f) of paragraph 2 of this Article.

Article 77

Protection for financial collateral, set off and netting agreements

1. Member States shall ensure that there is appropriate protection for title transfer financial collateral arrangements and set-off and netting arrangements so as to prevent the transfer of some, but not all, of the rights and liabilities that are protected under a title transfer financial collateral arrangement, a set-off arrangement or a netting arrangement between the institution under resolution and another person and the modification or termination of rights and liabilities that are protected under such a title transfer financial collateral arrangement, a set-off arrangement or a netting arrangement through the use of ancillary powers.

For the purposes of the first subparagraph, rights and liabilities are to be treated as protected under such an arrangement if the parties to the arrangement are entitled to set-off or net those rights and liabilities.

2. Notwithstanding paragraph 1, where necessary in order to ensure availability of the covered deposits the resolution authority 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; and

(b) transfer, modify or terminate those assets, rights or liabilities without transferring the covered deposits.

Article 78

Protection for security arrangements

1. Member States shall ensure that there is appropriate protection for liabilities secured under a security arrangement so as to prevent one of the following:

(a) the transfer of assets against which the liability is secured unless that liability and benefit of the security are also transferred;

(b) the transfer of a secured liability unless the benefit of the security are also transferred;

(c) the transfer of the benefit of the security unless the secured liability is also transferred; or

▼B

(d) the modification or termination of a security arrangement through the use of ancillary powers, if the effect of that modification or termination is that the liability ceases to be secured.

2. Notwithstanding paragraph 1, where necessary in order to ensure availability of the covered deposits the resolution authority 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; and

(b) transfer, modify or terminate those assets, rights or liabilities without transferring the covered deposits

Article 79

Protection for structured finance arrangements and covered bonds

1. Member States shall ensure that there is appropriate protection for structured finance arrangements including arrangements referred to in points (e) and (f) of Article 76(2) so as to prevent either of the following:

(a) the transfer of some, but not all, of the assets, rights and liabilities which constitute or form part of a structured finance arrangement, including arrangements referred to in points (e) and (f) of Article 76(2), to which the institution under resolution is a party;

(b) the termination or modification through the use of ancillary powers of the assets, rights and liabilities which constitute or form part of a structured finance arrangement, including arrangements referred to in points (e) and (f) of Article 76(2), to which the institution under resolution is a party.

2. Notwithstanding paragraph 1, where necessary in order to ensure availability of the covered deposits the resolution authority 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, and

(b) transfer, modify or terminate those assets, rights or liabilities without transferring the covered deposits.

Article 80

Partial transfers: protection of trading, clearing and settlement systems

1. Member States shall ensure that the application of a resolution tool does not affect the operation of systems and rules of systems covered by Directive 98/26/EC, where the resolution authority:

(a) transfers some but not all of the assets, rights or liabilities of an institution under resolution to another entity; or

▼B

(b) uses powers under Article 64 to cancel or amend the terms of a contract to which the institution under resolution is a party or to substitute a recipient as a party.

2. In particular, a transfer, cancellation or amendment as referred to in paragraph 1 of this Article shall not revoke a transfer order in contravention of Article 5 of Directive 98/26/EC; and shall not modify or negate the enforceability of transfer orders and netting as required by Articles 3 and 5 of that Directive, the use of funds, securities or credit facilities as required by Article 4 thereof or protection of collateral security as required by Article 9 thereof.

CHAPTER VIII

Procedural obligations

Article 81

Notification requirements

1. Member States shall require the management body of an institution or any entity referred to in point (b), (c) or (d) of Article 1(1) to notify the competent authority where they consider that the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) is failing or likely to fail, within the meaning specified in Article 32(4).

2. Competent authorities shall inform the relevant resolution authorities of any notifications received under paragraph 1 of this Article, and of any crisis prevention measures, or any actions referred to in Article 104 of Directive 2013/36/EU they require an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) of this Directive to take.

3. Where a competent authority or resolution authority determines that the conditions referred to in points (a) and (b) of Article 32(1) are met in relation to an institution or an entity referred to in point (b), (c) or (d) of Article 1(1), it shall communicate that determination without delay to the following authorities, if different:

(a) the resolution authority for that institution or entity referred to in point (b), (c) or (d) of Article 1(1);

(b) the competent authority for that institution or entity referred to in point (b), (c) or (d) of Article 1(1);

(c) the competent authority of any branch of that institution or entity referred to in point (b), (c) or (d) of Article 1(1);

(d) the resolution authority of any branch of that institution or entity referred to in point (b), (c) or (d) of Article 1, (1)

(e) the central bank;

(f) the deposit guarantee scheme to which a credit institution is affiliated where necessary to enable the functions of the deposit guarantee scheme to be discharged;

(g) the body in charge of the resolution financing arrangements where necessary to enable the functions of the resolution financing arrangements to be discharged;

▼B

(h) where applicable, the group-level resolution authority;

(i) the competent ministry;

(j) where the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) of this Directive is subject to supervision on consolidated basis under Chapter 3 of Title VII of Directive 2013/36/EU, the consolidating supervisor; and

(k) the ESRB and the designated national macro-prudential authority.

4. Where the transmission of information referred to in paragraphs 3(f) and 3(g) does not guarantee the appropriate level of confidentiality, the competent authority or resolution authority shall establish alternative communication procedures that achieve the same objectives while ensuring the appropriate level of confidentiality.

Article 82

Decision of the resolution authority

1. On receiving a communication from the competent authority pursuant to paragraph 3 of Article 81, or on its own initiative, the resolution authority shall determine, in accordance with Article 32(1) and Article 33, whether the conditions of that paragraph are met in respect of the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) in question.

2. A decision whether or not to take resolution action in relation to an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) shall contain the following information:

(a) the reasons for that decision, including the determination that the institution meets or does not meet the conditions for resolution;

(b) the action that the resolution authority intends to take including, where appropriate, the determination to apply for winding up, the appointment of an administrator or any other measure under applicable normal insolvency proceedings or, subject to Article 37(9), under national law.

3. EBA shall develop draft regulatory technical standards in order to specify the procedures and contents relating to the following requirements:

(a) the notifications referred to in Article 81(1), (2) and (3);

(b) the notice of suspension referred to in Article 83.

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

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

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Article 83

Procedural obligations of resolution authorities

1. Member States shall ensure that, as soon as reasonably practicable after taking a resolution action, resolution authorities comply with the requirements laid down in paragraphs 2, 3 and 4.

2. The resolution authority shall notify the institution under resolution and the following authorities, if different:

(a) the competent authority for the institution under resolution;

(b) the competent authority of any branch of the institution under resolution;

(c) the central bank;

(d) the deposit guarantee scheme to which the credit institution under resolution is affiliated;

(e) the body in charge of the resolution financing arrangements;

(f) where applicable, the group-level resolution authority;

(g) the competent ministry;

(h) where the institution under resolution is subject to supervision on a consolidated basis under Chapter 3 of Title VII of Directive 2013/36/EU, the consolidating supervisor;

(i) the designated national macroprudential authority and the ESRB;

(j) the Commission, the European Central Bank, ESMA, the European Supervisory Authority (European Investment and Occupational Pensions Authority) ('EIOPA') established by Regulation (EU) No 1094/2010 and EBA;

(k) 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.

3. The notification referred to in paragraph 2 shall include a copy of any order or instrument by which the relevant powers are exercised and indicate the date from which the resolution action or actions are effective.

4. The resolution authority shall publish or ensure the publication of a copy of the order or instrument by which the resolution action is taken, or a notice summarising the effects of the resolution action, and in particular the effects on retail customers and, if applicable, the terms and period of suspension or restriction referred to in Articles 69, 70 and 71, by the following means:

(a) on its official website;

(b) on the website of the competent authority, if different from the resolution authority, and on the website of EBA;

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

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

5. If the shares, instruments of ownership or debt instruments are not admitted to trading on a regulated market, the resolution authority shall ensure that the documents providing proof of the instruments referred to in paragraph 4 are sent to the shareholders and creditors of the institution under resolution that are known through the registers or databases of the institution under resolution which are available to the resolution authority.

Article 84

Confidentiality

1. The requirements of professional secrecy shall be binding in respect of the following persons:

(a) resolution authorities;

(b) competent authorities and EBA;

(c) competent ministries;

(d) special managers or temporary administrators appointed under this Directive;

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

(f) auditors, accountants, legal and professional advisors, valuers and other experts directly or indirectly engaged by the resolution authorities, competent authorities, competent ministries or by the potential acquirers referred to in point (e);

(g) bodies which administer deposit guarantee schemes;

(h) bodies which administer investor compensation schemes;

(i) the body in charge of the resolution financing arrangements;

(j) central banks and other authorities involved in the resolution process;

(k) a bridge institution or an asset management vehicle;

(l) any other persons who provide or have provided services directly or indirectly, permanently or occasionally, to persons referred to in points (a) to (k);

([1]) Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38).

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(m) senior management, members of the management body, and employees of the bodies or entities referred to in points (a) to (k) before, during and after their appointment.

2. With a view to ensuring that the confidentiality requirements laid down in paragraphs 1 and 3 are complied with, the persons in points (a), (b), (c), (g), (h), (j) and (k) of paragraph 1 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, the persons referred to in that paragraph shall be prohibited from disclosing confidential information received during the course of their professional activities or from a competent authority or resolution authority in connection with its functions under this Directive, to any person or authority unless it is in the exercise of their functions under this Directive or in summary or collective form such that individual institutions or entities referred to in point (b), (c) or (d) of Article 1(1) cannot be identified or with the express and prior consent of the authority or the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) which provided the information.

Member States shall ensure that no confidential information is disclosed by the persons referred to in paragraph 1 and that the possible effects of disclosing information on the public interest as regards financial, monetary or economic policy, on the commercial interests of natural and legal persons, on the purpose of inspections, on investigations and on audits, are assessed.

The procedure for checking the effects of disclosing information shall include a specific assessment of the effects of any disclosure of the contents and details of recovery and resolution plan as referred to in Articles 5, 7, 10, 11 and 12 and the result of any assessment carried out under Articles 6, 8 and 15.

Any person or entity referred to in paragraph 1 shall be subject to civil liability in the event of an infringement of this Article, in accordance with national law.

4. This Article shall not prevent:

(a) employees and experts of the bodies or entities referred to in points (a) to (j) of paragraph 1 from sharing information among themselves within each body or entity; or

(b) resolution authorities and competent authorities, including their employees and experts, from sharing information with each other and with other Union resolution authorities, other Union competent authorities, competent ministries, central banks, deposit guarantee schemes, investor compensation schemes, authorities responsible for normal insolvency proceedings, authorities responsible for maintaining the stability of the financial system in Member States through the use of macroprudential rules, persons charged with carrying out statutory audits of accounts, EBA, or, subject to Article 98, third-country authorities that carry out equivalent functions to resolution authorities, or, subject to strict confidentiality requirements, to a potential acquirer for the purposes of planning or carrying out a resolution action.

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5. Notwithstanding any other provision of this Article, Member States may authorise the exchange of information with any of the following:

(a) subject to strict confidentiality requirements, any other person where necessary for the purposes of planning or carrying out a resolution action;

(b) parliamentary enquiry committees in their Member State, courts of auditors in their Member State and other entities in charge of enquiries in their Member State, under appropriate conditions; and

(c) national authorities responsible for overseeing payment systems, the authorities responsible for normal insolvency proceedings, the authorities entrusted with the public duty of supervising other financial sector entities, the authorities responsible for the supervision of financial markets and insurance undertakings and inspectors acting on their behalf, the authorities of Member States responsible for maintaining the stability of the financial system in Member States through the use of macroprudential rules, the authorities responsible for protecting the stability of the financial system, and persons charged carrying out statutory audits;

6. This Article shall be without prejudice to national law concerning the disclosure of information for the purpose of legal proceedings in criminal or civil cases.

7. EBA shall, by 3 July 2015, issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 to specify how information should be provided in summary or collective form for the purposes of paragraph 3.

CHAPTER IX

Right of appeal and exclusion of other actions

Article 85

Ex-ante judicial approval and rights to challenge decisions

1. Member States may require that a decision to take a crisis prevention measure or a crisis management measure is subject to *ex-ante* judicial approval, provided that in respect of a decision to take a crisis management measure, according to national law, the procedure relating to the application for approval and the court's consideration are expeditious.

2. Member States shall provide in national law for a right of appeal against a decision to take a crisis prevention measure or a decision to exercise any power, other than a crisis management measure, under this Directive.

3. Member States shall ensure that all persons affected by a decision to take a crisis management measure, have the right to appeal against that decision. Member States shall ensure that the review is expeditious and that national courts use the complex economic assessments of the facts carried out by the resolution authority as a basis for their own assessment.

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4. The right to appeal referred to in paragraph 3 shall be subject to the following provisions:

(a) the lodging of an appeal shall not entail any automatic suspension of the effects of the challenged decision;

(b) the decision of the resolution authority shall be immediately enforceable and it shall give rise to a rebuttable presumption that a suspension of its enforcement would be against the public interest.

Where it is necessary to protect the interests of third parties acting in good faith who have acquired shares, other instruments of ownership, assets, rights or liabilities of an institution under resolution by virtue of the use of resolution tools or exercise of resolution powers by a resolution authority, the annulment of a decision of a resolution authority shall not affect any subsequent administrative acts or transactions concluded by the resolution authority concerned which were based on the annulled decision. In that case, remedies for a wrongful decision or action by the resolution authorities shall be limited to compensation for the loss suffered by the applicant as a result of the decision or act.

Article 86

Restrictions on other proceedings

1. Without prejudice to point (b) of Article 82(2), Member States shall ensure with respect to an institution under resolution or an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) in relation to which the conditions for resolution have been determined to be met, that normal insolvency proceedings shall not be commenced except at the initiative of the resolution authority and that a decision placing an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) into normal insolvency proceedings shall be taken only with the consent of the resolution authority.

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

(a) competent authorities and resolution authorities are notified without delay of any application for the opening of normal insolvency proceedings in relation to an institution or an entity referred to in point (b), (c) or (d) of Article 1(1), irrespective of whether the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) is under resolution or a decision has been made public in accordance with Article 83(4) and (5);

(b) the application is not determined unless the notifications referred to in point (a) have been made and either of the following occurs:

(i) the resolution authority has notified the authorities responsible for normal insolvency proceedings that it does not intend to take any resolution action in relation to the institution or the entity referred to in point (b), (c) or (d) of Article 1(1);

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(ii) a period of seven days beginning with the date on which the notifications referred to in point (a) were made has expired.

3. Without prejudice to any restriction on the enforcement of security interests imposed pursuant to Article 70, Member States shall ensure that, if necessary for the effective application of the resolution tools and powers, resolution authorities may request the court to apply a stay for an appropriate period of time in accordance with the objective pursued, on any judicial action or proceeding in which an institution under resolution is or becomes a party.

TITLE V

CROSS-BORDER GROUP RESOLUTION

Article 87

General principles regarding decision-making involving more than one Member State

Member States shall ensure that, when making decisions or taking action pursuant to this Directive which may have an impact in one or more other Member States, their authorities have regard to the following general principles:

(a) the imperatives of efficacy of decision-making and of keeping resolution costs as low as possible when taking resolution action;

(b) that decisions are made and action is taken in a timely manner and with due urgency when required;

(c) that resolution authorities, competent authorities and other authorities cooperate with each other to ensure that decisions are made and action is taken in a coordinated and efficient manner;

(d) that the roles and responsibilities of relevant authorities within each Member State are e defined clearly;

(e) that due consideration is given to the interests of the 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 is 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 is 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;

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(h) that due consideration is 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 any obligation under this Directive to consult an authority before any decision or action is taken implies at least that such an obligation to consult that authority on those elements of the proposed decision or action which have or which are likely to have:

(i) an effect on the Union parent undertaking, the subsidiary or the branch,; and

(ii) an impact on the stability of the Member State where the Union parent undertaking, the subsidiary or the branch, is established or located;

(j) that resolution authorities, when taking resolution actions, take into account and follow the resolution plans referred to in Article 13 unless the resolution authorities consider, 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;

(k) that the requirement for transparency whenever a proposed decision or action is likely to have implications on the financial stability, fiscal resources, resolution fund, deposit guarantee scheme or investor compensation scheme of any relevant Member State; and

(l) recognition that coordination and cooperation are most likely to achieve a result which lowers the overall cost of resolution.

Article 88

Resolution colleges

1. ►**M3** Faoi réir Airteagal 89, déanfaidh údaráis réitigh ar leibhéal grúpa coláistí réitigh a bhunú chun na cúraimí dá dtagraítear in Airteagal 12, Airteagal 13, Airteagal 16, Airteagal 18, Airteagal 45 go hAirteagal 45h, Airteagal 91 agus Airteagal 92 a dhéanamh agus, i gcás inarb iomchuí, chun comhar agus comhordú le húdaráis réitigh tríú tír a áirithiú. ◄

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

(a) exchanging information relevant for the development of group resolution plans, for the application to groups of preparatory and preventative powers and for group resolution;

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(b) developing group resolution plans pursuant to Articles 12 and 13;

(c) assessing the resolvability of groups pursuant to Article 16;

(d) exercising powers to address or remove impediments to the resolvability of groups pursuant to Article 18;

(e) deciding on the need to establish a group resolution scheme as referred to in Article 91 or 92;

(f) reaching the agreement on a group resolution scheme proposed in accordance with Article 91 or 92;

(g) coordinating public communication of group resolution strategies and schemes;

(h) coordinating the use of financing arrangements established under Title VII;

(i) setting the minimum requirements for groups at consolidated and subsidiary level under ►**M3** Airteagal 45 go 45h ◄.

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

2. The following shall be members of the resolution college:

(a) the group-level resolution authority;

(b) the resolution authorities of each Member State in which a subsidiary covered by consolidated supervision is established;

(c) the resolution authorities of Member States where a parent undertaking of one or more institutions of the group, that is an entity referred to in point (d) of Article 1(1), are established;

(d) the resolution authorities of Member States in which significant branches are located;

(e) the consolidating supervisor and the competent authorities of the Member States where the resolution authority is a member of the resolution college. Where the competent authority of a Member State is not the Member State's central bank, the competent authority may decide to be accompanied by a representative from the Member State's central bank;

(f) the competent ministries, where the resolution authorities which are members of the resolution college are not the competent ministries;

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(g) the authority that is responsible for the deposit guarantee scheme of a Member State, where the resolution authority of that Member State is a member of a resolution college;

(h) EBA, subject to paragraph 4.

3. The resolution authorities of third countries where a parent undertaking or an institution established in the Union has a subsidiary institution or a branch that would be considered to be significant were it located in the Union may, at their request, be invited to participate in the resolution college as observers, provided that they are subject to confidentiality requirements equivalent, in the opinion of the group-level resolution authority, to those established by Article 98.

4. EBA shall contribute to promoting and monitoring the efficient, effective and consistent functioning of resolution colleges, taking into account international standards. EBA shall be invited to attend the meetings of the resolution college for that purpose. EBA shall not have any voting rights to the extent that any voting takes place within the framework of resolution colleges.

5. The group-level resolution authority shall be the chair of the resolution college. In that capacity it shall:

(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.

The members participating in the resolution college shall cooperate closely.

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Notwithstanding point (e), resolution authorities shall be entitled to participate in resolution college meetings whenever matters subject to joint decision-making or relating to a group entity located in their Member State are on the agenda.

6. Group-level resolution authorities are not obliged to establish a resolution college if other groups or colleges perform the same functions and carry out the same tasks specified in this Article and comply with all the conditions and procedures, including those covering membership and participation in resolution colleges, established in this Article and in Article 90. In such a case, all references to resolution colleges in this Directive shall also be understood as references to those other groups or colleges.

7. EBA shall, taking into account international standards, develop draft regulatory standards in order to specify the operational functioning of the resolution colleges for the performance of the tasks referred to in paragraph 1.

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

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

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Airteagal 89

Coláistí réitigh Eorpacha

1. I gcás ina bhfuil fochuideachtaí atá bunaithe san Aontas nó máthairghnóthais atá bunaithe san Aontas ag institiúid tríú tír nó máthairghnóthas tríú tír, atá bunaithe in dhá Bhallstát nó níos mó, nó dhá bhrainse nó níos mó san Aontas a mheasann dhá Bhallstát nó níos mó go bhfuil siad suntasach, déanfaidh údaráis réitigh na mBallstát ina bhfuil na heintitis sin bunaithe nó ina bhfuil na brainsí sin lonnaithe aon choláiste réitigh Eorpach amháin a bhunú.

2. Déanfaidh an coláiste réitigh Eorpach dá dtagraítear i mír 1 den Airteagal seo na feidhmeanna agus na cúraimí a shonraítear in Airteagal 88 i dtaca leis na heintitis dá dtagraítear i mír 1 den Airteagal seo agus, sa mhéid is go bhfuil na cúraimí sin ábhartha, i dtaca leis na brainsí.

Cuimseofar sna cúraimí dá dtagraítear sa chéad fhomhír den mhír seo leagan amach an cheanglais dá dtagraítear in Airteagal 45 go hAirteagal 45h.

Nuair a bheidh an ceanglas dá dtagraítear in Airteagal 45 go hAirteagal 45h á leagan amach cuirfidh comhaltaí an choláiste réitigh Eorpaigh san áireamh an straitéis réitigh dhomhanda, más ann di, arna glacadh ag údaráis tríú tír.

I gcás nach eintitis réitigh iad fochuideachtaí atá bunaithe san Aontas nó máthairghnóthas an Aontais agus a cuid fo-institiúidí i gcomhréir leis an straitéis réitigh dhomhanda, agus i gcás ina gcomhaontaíonn comhaltaí an choláiste réitigh Eorpaigh leis an straitéis sin, comhlíonfaidh fochuideachtaí atá bunaithe san Aontas nó, ar bhonn comhdhlúite, máthairghnóthas an Aontais ceanglas Airteagal 45f(1) trí ionstraimí a eisiúint dá

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dtagraítear i bpointe (a) agus (b) d'Airteagal 45f(2) dá máthairghnóthas deiridh atá bunaithe i dtríú tír, nó d'fhochuideachtaí an mháthairghnóthais deiridh sin atá bunaithe sa tríú tír chéanna nó d'eintitis eile faoi na coinníollacha atá leagtha amach i bpointe (a)(i) agus i bpointe (b)(ii) d'Airteagal 45f(2).

3. I gcás ina shealbhaíonn máthairghnóthas amháin san Aontas fochuideachtaí uile an Aontais tríú tír nó máthairghnóthas tríú tír, is é údarás réitigh an Bhallstáit, ina bhfuil an máthairghnóthas san Aontas bunaithe, a dhéanfaidh cathaoirleacht ar an gcoláiste réitigh Eorpach.

I gcás nach mbeidh feidhm ag an gcéad fhomhír, is é údarás réitigh máthairghnóthais an Aontais nó fochuideachta an Aontais, ar airde luach na sócmhainní cláir chomhardaithe a shealbhaíonn sé, is é sin an t-údarás réitigh a ghníomhóidh mar chathaoirleach ar an gcoláiste réitigh Eorpach.

4. Féadfaidh na Ballstáit, trí chomhaontú frithpháirteach na bpáirtithe ábhartha, tarscaoileadh a dhéanamh ar an gceanglas coláiste réitigh Eorpach a bhunú má dhéanann grúpa nó coláiste eile na feidhmeanna agus na cúraimí céanna a shonraítear san Airteagal seo agus má chomhlíonann sé, na coinníollacha agus na nósanna imeachta lena gcumhdaítear ballraíocht agus rannpháirtíocht i gcoláistí réitigh Eorpacha san áireamh, a bhunaítear san Airteagal seo agus in Airteagal 90. I gcás den chineál sin, tuigfear gur tagairt do na grúpaí nó na coláistí eile sin gach tagairt do choláistí réitigh Eorpacha sa Treoir seo.

5. Faoi réir mhíreanna 3 agus 4 den Airteagal seo, feidhmeoidh an coláiste réitigh Eorpach seachas sin i gcomhréir le hAirteagal 88.

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Article 90

Information exchange

1. Subject to Article 84, resolution authorities and competent authorities shall provide one another on request with all the information relevant for the exercise of the other authorities' tasks under this Directive.

2. The group-level resolution authority shall coordinate the flow of all relevant information between resolution authorities. In particular, the group-level resolution authority shall provide the resolution authorities in other Member States with all the relevant information in a timely manner with a view to facilitating the exercise of the tasks referred to in points (b) to (i) of the second subparagraph of Article 88(1).

3. Upon a request for information which has been provided by a third-country resolution authority, the resolution authority shall seek the consent of the third-country resolution authority for the onward transmission of that information, save where the third-country resolution authority has already consented to the onward transmission of that information.

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

4. Resolution authorities shall share information with the competent ministry when it relates to a decision or matter which requires notification, consultation or consent of the competent ministry or which may have implications for public funds.

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Article 91

Group resolution involving a subsidiary of the group

1. Where a resolution authority decides that an institution or any entity referred to in point (b), (c) or (d) of Article 1(1) that is a subsidiary in a group meets the conditions referred to in Article 32 or 33, that authority shall notify the following information without delay to the group-level resolution authority, if different, to the consolidating supervisor, and to the members of the resolution college for the group in question:

(a) the decision that the institution or entity referred to in point (b), (c) or (d) of Article 1(1) meets the conditions referred to in Article 32 or 33;

(b) the resolution actions or insolvency measures that the resolution authority considers to be appropriate for that institution or that entity referred to in point (b), (c) or (d) of Article 1(1).

2. On receiving a notification under paragraph 1, the group-level resolution authority, after consulting the other members of the relevant resolution college, shall assess the likely impact of the resolution actions or other measures notified in accordance with point (b) of paragraph 1, on the group and on group entities in other Member States, and, in particular, whether the resolution actions or other measures would make it likely that the conditions for resolution would be satisfied in relation to a group entity in another Member State.

3. If the group-level resolution authority, after consulting the other members of the resolution college, assesses that the resolution actions or other measures notified in accordance with point (b) of paragraph 1, would not make it likely that the conditions laid down in Article 32 or 33 would be satisfied in relation to a group entity in another Member State, the resolution authority responsible for that institution or that entity referred to in point (b), (c) or (d) of Article 1(1) may take the resolution actions or other measures that it notified in accordance with point (b) of paragraph 1 of this Article.

4. If the group-level resolution authority, after consulting the other members of the resolution college, assesses that the resolution actions or other measures notified in accordance with point (b) of paragraph 1 of this Article, would make it likely that the conditions laid down in Article 32 or 33 would be satisfied in relation to a group entity in another Member State, the group-level resolution authority shall, no later than 24 hours after receiving the notification under paragraph 1, propose a group resolution scheme and submit it to the resolution college. That 24-hour period may be extended with the consent of the resolution authority which made the notification referred to in paragraph 1 of this Article.

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5. 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 which made the notification referred to in paragraph 1 may take the resolution actions or other measures that it notified in accordance with point (b) of that paragraph.

6. A group resolution scheme required under paragraph 4 shall:

(a) take into account and follow the resolution plans as referred to in Article 13 unless resolution authorities assess, taking into account 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 and principles referred to in Articles 31 and 34;

(c) specify how those resolution actions should be coordinated;

(d) establish a financing plan which takes into account the group resolution plan, principles for sharing responsibility as established in accordance with point (f) of Article 12(3) and the mutualisation as referred to in Article 107.

7. Subject to paragraph 8, the group resolution scheme shall take the form of a joint decision of the group-level resolution authority and the resolution authorities responsible for the subsidiaries that are covered by the group resolution scheme.

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

8. If any resolution authority disagrees with or departs from the group resolution scheme proposed by the group-level resolution authority or considers that it needs to take independent resolution actions or measures other than those proposed in the scheme in relation to an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) for reasons of financial stability, it shall set out in detail the reasons for the disagreement or the reasons to depart from the group resolution scheme, notify the group-level resolution authority and the other resolution authorities that are covered by the group resolution scheme of the reasons and inform them about the actions or measures it will take. When setting out the reasons for its disagreement, that resolution authority shall take into consideration the resolution plans as referred to in Article 13, the potential impact on financial stability in the Member States concerned as well as the potential effect of the actions or measures on other parts of the group.

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9. The resolution authorities which did not disagree under paragraph 8 may reach a joint decision on a group resolution scheme covering group entities in their Member State.

10. The joint decision referred to in paragraph 7 or 9 and the decisions taken by the resolution authorities in the absence of a joint decision referred to in paragraph 8 shall be recognised as conclusive and applied by the resolution authorities in the Member States concerned.

11. Authorities shall perform all actions under this Article without delay, and with due regard to the urgency of the situation.

12. In any case where a group resolution scheme is not implemented and resolution authorities take resolution actions in relation to any group entity, those resolution authorities shall cooperate closely within the resolution college with a view to achieving a coordinated resolution strategy for all the group entities that are failing or likely to fail.

13. Resolution authorities that take any resolution action in relation to any group entity shall inform the members of the resolution college regularly and fully about those actions or measures and their on-going progress.

Article 92

Group resolution

1. Where a group-level resolution authority decides that a Union parent undertaking for which it is responsible meets the conditions referred to in Article 32 or 33 it shall notify the information referred to in points (a) and (b) of Article 91(1) without delay to the consolidating supervisor, if different, and to the other members of the resolution college of the group in question.

The resolution actions or insolvency measures for the purposes of point (b) of Article 91(1) may include the implementation of a group resolution scheme drawn up in accordance with Article 91(6) in any of the following circumstances:

(a) resolution actions or other measures at parent level notified in accordance with point (b) of Article 91(1) make it likely that the conditions laid down in Article 32 or 33 would be fulfilled in relation to a group entity in another Member State;

(b) resolution actions or other measures at parent level only are not sufficient to stabilise the situation or are not likely to provide an optimum outcome;

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(c) one or more subsidiaries meet the conditions referred to in Article 32 or 33 according to a determination by the resolution authorities responsible for those subsidiaries; or

(d) resolution actions or other measures at group level will benefit the subsidiaries of the group in a way which makes a group resolution scheme appropriate.

2. Where the actions proposed by the group-level resolution authority under paragraph 1 do not include a group resolution scheme, the group-level resolution authority shall take its decision after consulting the members of the resolution college.

The decision of the group-level resolution authority shall take into account:

(a) and follow the resolution plans as referred to in Article 13 unless resolution authorities assess, taking into account 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) the financial stability of the Member States concerned.

3. Where the actions proposed by the group-level resolution authority under paragraph 1 include a group resolution scheme, the group resolution scheme shall take the form of a joint decision of the group-level resolution authority and the resolution authorities responsible for the subsidiaries that are covered by the group resolution scheme.

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

4. If any resolution authority disagrees with or departs from the group resolution scheme proposed by the group-level resolution authority or considers that it needs to take independent resolution actions or measures other than those proposed in the scheme in relation to an institution or entity referred to in point (b), (c) or (d) of Article 1(1) for reasons of financial stability, it shall set out in detail the reasons for the disagreement or the reasons to depart from the group resolution scheme, notify the group-level resolution authority and the other resolution authorities that are covered by the group resolution scheme of the reasons and inform them about the actions or measures it intends to take. When setting out the reasons for its disagreement, that resolution authority shall give consideration to the resolution plans as referred to in Article 13, the potential impact on financial stability in the Member States concerned as well as the potential effect of the actions or measures on other parts of the group.

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5. Resolution authorities which did not disagree with the group resolution scheme under the paragraph 4 may reach a joint decision on a group resolution scheme covering group entities in their Member State.

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

7. Authorities shall perform all actions under this Article without delay, and with due regard to the urgency of the situation.

In any case where a group resolution scheme is not implemented and resolution authorities take resolution action in relation to any group entity, those resolution authorities shall cooperate closely within the resolution college with a view to achieving a coordinated resolution strategy for all affected group entities.

Resolution authorities that take resolution action in relation to any group entity shall inform the members of the resolution college regularly and fully about those actions or measures and their on-going progress.

TITLE VI

RELATIONS WITH THIRD COUNTRIES

Article 93

Agreements with third countries

1. In accordance with Article 218 TFEU, the Commission may submit to the Council proposals for the negotiation of agreements with one or more third countries regarding the means of cooperation between the resolution authorities and the relevant third country authorities, inter alia, for the purpose of information sharing in connection with recovery and resolution planning in relation to institutions, financial institutions, parent undertakings and third country institutions, with regard to the following situations:

(a) in cases where a third country parent undertaking has subsidiary institutions or branches where such branches are regarded as significant in two or more Member States;

(b) in cases where a parent undertaking established in a Member State and which has a subsidiary or a significant branch in at least one other Member State has one or more third country subsidiary institutions;

(c) in cases where an institution established in a Member State and which has a parent undertaking, a subsidiary or a significant branch in at least one other Member State has one or more branches in one or more third countries.

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2. The agreements referred to in paragraph 1 shall, in particular, seek to ensure the establishment of processes and arrangements between resolution authorities and the relevant third country authorities for co-operation in carrying out some or all of the tasks and exercising some or all of the powers indicated in Article 97.

3. The agreements referred to in paragraph 1 shall not make provision in relation to individual institutions, financial institutions, parent undertakings or third country institutions.

4. Member States may enter into bilateral agreements with a third country regarding the matters referred to in paragraphs 1 and 2 until the entry into force of an agreement referred to in paragraph 1 with the relevant third country to the extent that such bilateral agreements are not inconsistent with this Title.

Article 94

Recognition and enforcement of third-country resolution proceedings

1. This Article shall apply in respect of third-country resolution proceedings unless and until an international agreement as referred to in Article 93(1) enters into force with the relevant third country. It shall also apply following the entry into force of an international agreement as referred to in Article 93(1) with the relevant third country to the extent that recognition and enforcement of third-country resolution proceedings is not governed by that agreement.

2. Where there is a European resolution college established in accordance with Article 89, it shall take a joint decision on whether to recognise, except as provided for in Article 95, third-country resolution proceedings relating to a third-country institution or a parent undertaking that:

(a) has Union subsidiaries established in, or Union branches located in and regarded as significant by, two or more Member States; or

(b) has assets, rights or liabilities located in two or more Member States or are governed by the law of those Member States.

Where the joint decision on the recognition of the third-country resolution proceedings is reached, respective national resolution authorities shall seek the enforcement of the recognised third-country resolution proceedings in accordance with their national law.

3. In the absence of a joint decision between the resolution authorities participating in the European resolution college, or in the absence of a European resolution college, each resolution authority concerned shall make its own decision on whether to recognise and enforce, except as provided for in Article 95, third-country resolution proceedings relating to a third-country institution or a parent undertaking.

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The decision shall give due consideration to the interests of each individual Member State where a third-country institution or parent undertaking operates, and in particular to the potential impact of the recognition and enforcement of the third-country resolution proceedings on the other parts of the group and the financial stability in those Member States.

4. Member States shall ensure that resolution authorities are, as a minimum, empowered to do the following:

(a) exercise the resolution powers in relation to the following:

(i) assets of a third-country institution or parent undertaking that are located in their Member State or governed by the law of their Member State;

(ii) rights or liabilities of a third-country institution that are booked by the Union branch in their Member State or governed by the law of their Member State, or where claims in relation to such rights and liabilities are enforceable in their Member State;

(b) perfect, including to require another person to take action to perfect, a transfer of shares or other instruments of ownership in a Union subsidiary established in the designating Member State;

(c) exercise the powers in Article 69, 70 or 71 in relation to the rights of any party to a contract with an entity referred to in paragraph 2 of this Article, where such powers are necessary in order to enforce third-country resolution proceedings; and

(d) render unenforceable any right to terminate, liquidate or accelerate contracts, or affect the contractual rights, of entities referred to in paragraph 2 and other group entities, where 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 itself or otherwise pursuant to legal or regulatory requirements as to resolution arrangements in that country, provided that the substantive obligations under the contract, including payment and delivery obligations, and provision of collateral, continue to be performed.

5. Resolution authorities may take, where necessary in the public interest, resolution action with respect to a parent undertaking where the relevant third-country authority determines that an institution that is incorporated in that third country meets the conditions for resolution under the law of that third country. To that end, Member States shall ensure that resolution authorities are empowered to use any resolution power in respect of that parent undertaking, and Article 68 shall apply.

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6. The recognition and enforcement of third-country resolution proceedings shall be without prejudice to any normal insolvency proceedings under national law applicable, where appropriate, in accordance with this Directive.

Article 95

Right to refuse recognition or enforcement of third-country resolution proceedings

The resolution authority, after consulting other resolution authorities, where a European resolution college is established under Article 89, may refuse to recognise or to enforce third-country resolution proceedings pursuant to Article 94(2) if it considers:

(a) that the third-country resolution proceedings would have adverse effects on financial stability in the Member State in which the resolution authority is based or that the proceedings would have adverse effects on financial stability in another Member State;

(b) that independent resolution action under Article 96 in relation to a Union branch is necessary to achieve one or more of the resolution objectives;

(c) that creditors, including in particular depositors located or payable in a Member State, would not receive the same treatment as third-country creditors and depositors with similar legal rights under the third-country home resolution proceedings;

(d) that recognition or enforcement of the third-country resolution proceedings would have material fiscal implications for the Member State; or

(e) that the effects of such recognition or enforcement would be contrary to the national law.

Article 96

Resolution of Union branches

1. Member States shall ensure that resolution authorities have the powers necessary to act in relation to a Union branch that is not subject to any third-country resolution proceedings or that is subject to third-country proceedings and one of the circumstances referred to in Article 95 applies.

Member States shall ensure that Article 68 applies to the exercise of such powers.

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2. Member States shall ensure that the powers required in paragraph 1 may be exercised by resolution authorities where the resolution authority considers that action is necessary in the public interest and one or more of the following conditions is met:

(a) the Union branch no longer meets, or is likely not to meet, the conditions imposed by national law for its authorisation and operation within that Member State and there is no prospect that any private sector, supervisory or relevant third-country action would restore the branch to compliance or prevent failure in a reasonable timeframe;

(b) the third-country institution is, in the opinion of the resolution authority, unable or unwilling, or is likely to be unable, to pay its obligations to Union creditors, or obligations that have been created or booked through the branch, as they fall due and the resolution authority is satisfied that no third-country resolution proceedings or insolvency proceedings have been or will be initiated in relation to that third-country institution in a reasonable timeframe;

(c) the relevant third-country authority has initiated third-country resolution proceedings in relation to the third-country institution, or has notified to the resolution authority its intention to initiate such a proceeding.

3. Where a resolution authority takes an independent action in relation to a Union branch, 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 Article 34;

(b) the requirements relating to the application of the resolution tools in Chapter III of Title IV.

Article 97

Cooperation with third-country authorities

1. This Article shall apply in respect of cooperation with a third country unless and until an international agreement as referred to in Article 93(1) enters into force with the relevant third country. It shall also apply following the entry into force of an international agreement provided for in Article 93(1) with the relevant third country to the extent that the subject matter of this Article is not governed by that agreement.

2. EBA may conclude non-binding framework cooperation arrangements with the following relevant third-country authorities:

(a) in cases where a Union subsidiary is established in two or more Member States, the relevant authorities of the third country where the parent undertaking or a company referred to in points (c) and (d) of Article 1(1) are established;

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(b) in cases where a third-country institution operates Union branches in two or more Member States, the relevant authority of the third country where that institution is established;

(c) in cases where a parent undertaking or a company referred to in points (c) and (d) of Article 1(1) established in a Member State with a subsidiary institution or significant branch in another Member State also has one or more third-country subsidiary institutions, the relevant authorities of the third countries where those subsidiary institutions are established;

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

The arrangements referred to in this paragraph shall not make provision in relation to specific institutions. They shall not impose legal obligations upon Member States.

3. The framework cooperation agreements referred to in paragraph 2 shall establish processes and arrangements between the participating authorities for sharing information necessary for and cooperation in carrying out some or all or the following tasks and exercising some or all of the following powers in relation to institutions referred to in points (a) to (d) of paragraph 2 or groups including such institutions:

(a) the development of resolution plans in accordance with Articles 10 to 13 and similar requirements under the law of the relevant third countries;

(b) the assessment of the resolvability of such institutions and groups, in accordance with Articles 15 and 16 and similar requirements under the law of the relevant third countries;

(c) the application of powers to address or remove impediments to resolvability pursuant to Articles 17 and 18 and any similar powers under the law of the relevant third countries;

(d) the application of early intervention measures pursuant to Article 27 and similar powers under the law of the relevant third countries;

(e) the application of resolution tools and exercise of resolution powers and similar powers exercisable by the relevant third-country authorities.

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

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

5. Cooperation arrangements concluded between resolution authorities of Member States and third countries in accordance with this Article may include provisions on the following matters:

(a) the exchange of information necessary for the preparation and maintenance of resolution plans;

(b) consultation and cooperation in the development of resolution plans, including principles for the exercise of powers under Articles 94 and 96 and similar powers under the law of the relevant third countries;

(c) the exchange of information necessary for the application of resolution tools and exercise of resolution powers and similar powers under the law of the relevant third countries;

(d) early warning to or consultation of parties to the cooperation arrangement before taking any significant action under this Directive or relevant third-country law affecting the institution or group to which the arrangement relates;

(e) the coordination of public communication in the case of joint resolution actions;

(f) procedures and arrangements for the exchange of information and cooperation under points (a) to (e), including, where appropriate, through the establishment and operation of crisis management groups.

6. Member States shall notify EBA of any cooperation arrangements that resolution authorities and competent authorities have concluded in accordance with this Article.

Article 98

Exchange of confidential information

1. Member States shall ensure that resolution authorities, competent authorities and competent ministries exchange confidential information, including recovery plans, with relevant third-country authorities only if the following conditions are met:

(a) those third-country authorities are subject to requirements and standards of professional secrecy at least considered to be equivalent, in the opinion of all the authorities concerned, to those imposed by Article 84.

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.

(b) the information is necessary for the performance by the relevant third-country authorities of their resolution functions under national law that are comparable to those under this Directive and, subject to point (a) of this paragraph, is not used for any other purposes.

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2. Where confidential information originates in another Member State, resolution authorities, competent authorities and competent ministries shall not disclose that information to relevant third-country authorities unless the following conditions are met:

(a) the relevant authority of the Member State where the information originated (the originating authority) agrees to that disclosure;

(b) the information is disclosed only for the purposes permitted by the originating authority.

3. For the purposes of this Article, information is deemed to be confidential if it is subject to confidentiality requirements under Union law.

TITLE VII

FINANCING ARRANGEMENTS

Article 99

European system of financing arrangements

A European system of financing arrangements shall be established and shall consist of:

(a) national financing arrangements established in accordance with Article 100;

(b) the borrowing between national financing arrangements as specified in Article 106,

(c) the mutualisation of national financing arrangements in the case of a group resolution as referred to in Article 107.

Article 100

Requirement to establish resolution financing arrangements

1. Member States shall establish one or more financing arrangements for the purpose of ensuring the effective application by the resolution authority of the resolution tools and powers.

Member States shall ensure that the use of the financing arrangements may be triggered by a designated public authority or authority entrusted with public administrative powers.

The financing arrangements shall be used only in accordance with the resolution objectives and the principles set out in Articles 31 and 34.

2. Member States may use the same administrative structure as their financing arrangements for the purposes of their deposit guarantee scheme.

3. Member States shall ensure that the financing arrangements have adequate financial resources.

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4. For the purpose of paragraph 3, financing arrangements shall in particular have the power to:

(a) raise *ex-ante* contributions as referred to in Article 103 with a view to reaching the target level specified in Article 102;

(b) raise *ex-post* extraordinary contributions as referred to in Article 104 where the contributions specified in point (a) are insufficient; and

(c) contract borrowings and other forms of support as referred to in Article 105.

5. Save where permitted under paragraph 6, each Member State shall establish its national financing arrangements through a fund, the use of which may be triggered by its resolution authority for the purposes set out in Article 101(1).

6. Notwithstanding paragraph 5 of this Article, a Member State may, for the purpose of fulfilling its obligations under paragraph 1 of this Article, establish its national financing arrangements through mandatory contributions from institutions which are authorised in its territory, which contributions are based on the criteria referred to in Article 103(7) and which are not held through a fund controlled by its resolution authority provided that all of the following conditions are met:

(a) the amount raised by contributions is at least equal to the amount that is required to be raised under Article 102;

(b) the Member State's resolution authority is entitled to an amount that is equal to the amount of such contributions, which the Member State makes immediately available to that resolution authority upon the latter's request, for use exclusively for the purposes set out in Article 101;

(c) the Member State notifies the Commission of its decision to avail itself of the discretion to structure its financing arrangements in accordance with this paragraph;

(d) the Member State notifies the Commission of the amount referred to in point (b) at least annually; and

(e) save as laid down in this paragraph, the financing arrangements comply with Articles 99 to 102, Article 103(1) to (4) and (6) and Articles 104 to 109.

For the purposes of this paragraph, the available financial means to be taken into account in order to reach the target level specified in Article 102 may include mandatory contributions from any scheme of mandatory contributions established by a Member State at any date between 17 June 2010 and 2 July 2014 from institutions in its territory for the purposes of covering the costs relating to systemic risk, failure and resolution of institutions, provided that the Member State complies with this Title. Contributions to deposit guarantee schemes shall not count towards the target level for resolution financing arrangements set out in Article 102.

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Article 101

Use of the resolution financing arrangements

1. The financing arrangements established in accordance with Article 100 may be used by the resolution authority only 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 the institution under resolution, its subsidiaries, a bridge institution or an asset management vehicle;

(b) to make loans to the institution under resolution, its subsidiaries, a bridge institution or an asset management vehicle;

(c) to purchase assets of the institution under resolution;

(d) to make contributions to a bridge institution and an asset management vehicle;

(e) to pay compensation to shareholders or creditors in accordance with Article 75;

(f) to make a contribution to the institution under resolution in lieu of the write down or conversion of liabilities of certain creditors, when the bail-in tool is applied and the resolution authority decides to exclude certain creditors from the scope of bail-in in accordance with Article 44(3) to (8);

(g) to lend to other financing arrangements on a voluntary basis in accordance with Article 106;

(h) to take any combination of the actions referred to in points (a) to (g).

The financing arrangements may be used to take the actions referred to in the first subparagraph also with respect to the purchaser in the context of the sale of business tool.

2. The resolution financing arrangement shall not be used directly to absorb the losses of an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) or to recapitalise such an institution or an entity. In the event that the use of the resolution financing arrangement for the purposes in paragraph 1 of this Article indirectly results in part of the losses of an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) being passed on to the resolution financing arrangement, the principles governing the use of the resolution financing arrangement set out in Article 44 shall apply.

Article 102

Target level

1. Member States shall ensure that, by 31 December 2024, the available financial means of their financing arrangements reach at least 1 % of the amount of covered deposits of all the institutions authorised in their territory. Member States may set target levels in excess of that amount.

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2. During the initial period of time referred to in paragraph 1, contributions to the financing arrangements raised in accordance with Article 103 shall be spread out in time as evenly as possible until the target level is reached, but with due account of the phase of the business cycle and the impact pro-cyclical contributions may have on the financial position of contributing institutions.

Member States may extend the initial period of time for a maximum of four years if the financing arrangements have made cumulative disbursements in excess of 0,5 % of covered deposits of all the institutions authorised in their territory which are guaranteed under Directive 2014/49/EU.

3. If, after the initial period of time referred to in paragraph 1, the available financial means diminish below the target level specified in that paragraph, the regular contributions raised in accordance with Article 103 shall resume until the target level is reached. After the target level has been reached for the first time and where the available financial means have subsequently been reduced to less than two thirds of the target level, those contributions shall be set at a level allowing for reaching the target level within six years.

The regular contribution shall take due account of the phase of the business cycle, and the impact procyclical contributions may have when setting annual contributions in the context of this paragraph.

4. EBA shall submit a report to the Commission by 31 October 2016 with recommendations on the appropriate reference point for setting the target level for resolution financing arrangements, and in particular whether total liabilities constitute a more appropriate basis than covered deposits.

5. Based on the results of the report referred to in paragraph 4, the Commission shall, if appropriate, submit, by 31 December 2016, to the European Parliament and to the Council a legislative proposal on the basis for the target level for resolution financing arrangements.

Article 103

Ex-ante contributions

1. In order to reach the target level specified in Article 102, Member States shall ensure that contributions are raised at least annually from the institutions authorised in their territory including Union branches.

2. The contribution of each institution shall be pro rata to the amount of its liabilities (excluding own funds) less covered deposits, with respect to the aggregate liabilities (excluding own funds) less covered deposits of all the institutions authorised in the territory of the Member State.

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

3. The available financial means to be taken into account in order to reach the target level specified in Article 102 may include irrevocable payment commitments which are fully backed by collateral of low risk assets unencumbered by any third party rights, at the free disposal and earmarked for the exclusive use by the resolution authorities for the purposes specified in Article 101(1). The share of irrevocable payment commitments shall not exceed 30 % of the total amount of contributions raised in accordance with this Article.

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

Member States shall set up appropriate regulatory, accounting, reporting and other obligations to ensure that due contributions are fully paid. Member States shall ensure measures for the proper verification of whether the contributions have been paid correctly. Member States shall ensure measures to prevent evasion, avoidance and abuse.

5. The amounts raised in accordance with this Article shall only be used for the purposes specified in Article 101(1).

6. Subject to Articles 37, 38, 40, 41 and 42, the amounts received from the institution under resolution or the bridge institution, the interest and other earnings on investments and any other earnings may benefit the financing arrangements.

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 115 in order to specify the notion of adjusting contributions in proportion to the risk profile of institutions as referred to in paragraph 2 of this Article, taking into account all of the following:

(a) the risk exposure of the institution, including the importance of its trading activities, its off-balance sheet exposures and its degree of leverage;

(b) the stability and variety of the company’s sources of funding and unencumbered highly liquid assets;

(c) the financial condition of the institution;

(d) the probability that the institution enters into resolution;

(e) the extent to which the institution has previously benefited from extraordinary public financial support;

(f) the complexity of the structure of the institution and its resolvability;

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(g) the importance of the institution to the stability of the financial system or economy of one or more Member States or of the Union;

(h) the fact that the institution is part of an IPS.

8. The Commission shall be empowered to adopt delegated acts in accordance with Article 115 in order to specify:

(a) the registration, accounting, reporting obligations and other obligations referred to in paragraph 4 intended to ensure that the contributions are in fact paid;

(b) the measures referred to in paragraph 4 to ensure proper verification of whether the contributions have been paid correctly.

Article 104

Extraordinary ex-post contributions

1. Where the available financial means are not sufficient to cover the losses, costs or other expenses incurred by the use of the financing arrangements, Member States shall ensure that extraordinary *ex-post* contributions are raised from the institutions authorised in their territory, in order to cover the additional amounts. Those extraordinary *ex-post* contributions shall be allocated between institutions in accordance with the rules laid down in Article 103(2).

Extraordinary *ex-post* contributions shall not exceed three times the annual amount of contributions determined in accordance with Article 103.

2. Article 103(4) to (8) shall be applicable to the contributions raised under this Article.

3. The resolution authority may defer, in whole or in part, an institution's payment of extraordinary *ex-post* contributions to the resolution financing arrangement if the payment of those contributions would jeopardise the liquidity or solvency of the institution. Such a deferral shall not be granted for a period of longer than six months but may be renewed upon the request of the institution. The contributions deferred pursuant to this paragraph shall be paid when such a payment no longer jeopardises the institution's liquidity or solvency.

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 115 to specify the circumstances and conditions under which the payment of contributions by an institution may be deferred pursuant to paragraph 3 of this Article.

Article 105

Alternative funding means

Member States shall ensure that financing arrangements under their jurisdiction are enabled to contract borrowings or other forms of support from institutions, financial institutions or other third parties in the event that the amounts raised in accordance with Article 103 are not sufficient to cover the losses, costs or other expenses incurred by the use of the financing arrangements, and the extraordinary *ex-post* contributions provided for in Article 104 are not immediately accessible or sufficient.

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Article 106

Borrowing between financing arrangements

1. Member States shall ensure that financing arrangements under their jurisdiction may make a request to borrow from all other financing arrangements within the Union, in the event that:

(a) the amounts raised under Article 103 are not sufficient to cover the losses, costs or other expenses incurred by the use of the financing arrangements;

(b) the extraordinary *ex-post* contributions provided for in Article 104 are not immediately accessible; and

(c) the alternative funding means provided for in Article 105 are not immediately accessible on reasonable terms.

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

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

4. The rate of interest, repayment period and other terms and conditions of the loans shall be agreed between the borrowing financing arrangement and the other financing arrangements which have decided to participate. The loan of every participating financing arrangement shall have the same interest rate, repayment period and other terms and conditions, unless all participating financing arrangements agree otherwise.

5. The amount lent by each participating resolution financing arrangement shall be pro rata to the amount of covered deposits in the Member State of that resolution financing arrangement, with respect to the aggregate of covered deposits in the Member States of participating resolution financing arrangements. Those rates of contribution may vary upon agreement of all participating financing arrangements.

6. An outstanding loan to a resolution financing arrangement of another Member State under this Article shall be treated as an asset of the resolution financing arrangement which provided the loan and may be counted towards that financing arrangement's target level.

Article 107

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

1. Member States shall ensure that, in the case of a group resolution as referred to in Article 91 or Article 92, the national financing arrangement of each institution that is part of a group contributes to the financing of the group resolution in accordance with this Article.

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2. For the purposes of paragraph 1, the group-level resolution authority, after consulting the resolution authorities of the institutions that are part of the group, shall propose, if necessary before taking any resolution action, a financing plan as part of the group resolution scheme provided for in Articles 91 and 92.

The financing plan shall be agreed in accordance with the decision-making procedure referred to in Articles 91 and 92.

3. The financing plan shall include:

(a) a valuation in accordance with Article 36 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 Article 109(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 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 point (e);

(g) the amount that the national 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 financing arrangements of the Member States where the affected group entities are located, will contract from institutions, financial institutions and other third parties under Article 105;

(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 point (e) of paragraph 3 shall be consistent with paragraph 5 of this Article and with the principles set out in the group resolution plan in accordance with point (f) of Article 12(3), unless otherwise agreed in the financing plan.

5. Unless agreed otherwise in the financing plan, the basis for calculating the contribution of each national financing arrangement shall in particular have regard to:

(a) the proportion of the group's risk-weighted assets held at institutions and entities referred to in points (b), (c) and (d) of Article 1(1) established in the Member State of that resolution financing arrangement;

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(b) the proportion of the group's assets held at institutions and entities referred to in points (b), (c) and (d) of Article 1(1) 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 competent authorities in the Member State of that resolution financing arrangement; and

(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 resolution financing arrangement directly.

6. Member States shall establish rules and procedures in advance to ensure that each national financing arrangement can effect its contribution to the financing of group resolution immediately without prejudice to paragraph 2.

7. For the purpose of this Article, Member States shall ensure that group financing arrangements are allowed, under the conditions laid down in Article 105, to contract borrowings or other forms of support, from institutions, financial institutions or other third parties.

8. Member States shall ensure that national financing arrangements under their jurisdiction may guarantee any borrowing contracted by the group financing arrangements in accordance with paragraph 7.

9. Member States shall ensure that any proceeds or benefits that arise from the use of the group financing arrangements are allocated to national financing arrangements in accordance with their contributions to the financing of the resolution as established in paragraph 2.

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Airteagal 108

Rangú in ordlathas dócmhainneachta

1. Áiritheoidh na Ballstáit, ina ndlíthe náisiúnta lena rialaítear gnáthimeachtaí dócmhainneachta:

(a) go mbeidh an rangú tosaíochta céanna, arb airde é ná an rangú a sholáthraítear do na héilimh ghnáthchreidiúnaithe neamhurraithe, ag an méid seo a leanas:

(i) an chuid sin de thaiscí incháilithe ó dhaoine nadúrtha agus ó mhicreaghnóthais, gnóthais bheaga agus gnóthais mheánmhéide a sháraíonn an leibhéal cumhdaigh dá bhforáiltear in Airteagal 6 de Threoir 2014/49/AE;

(ii) taiscí a bheadh ina dtaiscí incháilithe ó dhaoine nadúrtha agus ó mhicreaghnóthais, gnóthais bheaga agus gnóthais mheánmhéide murach gur taisceadh iad trí bhrainsí a bhí suite lasmuigh den Aontas d'institiúidí atá suite laistigh den Aontas.

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(b) tá an rangú tosaíochtaí céanna, arb airde é ná an rangú dá bhforáiltear faoi phointe (a) ag an méid seo a leanas:

(i) taiscí cumhdaithe;

(ii) scéimeanna ráthaithe taiscí a dhéanann seachaíocht ar chearta agus oibleagáidí taisceoirí cumhdaithe i gcás dócmhainneachta.

2. Áiritheoidh na Ballstáit, i gcás eintitis dá dtagraítear i bpointe (a) go pointe (d) den chéad fhomhír d'Airteagal 1(1), gurb airde an rangú tosaíochta atá ag gnáthéilimh neamhurraithe, ina ndlíthe náisiúnta lena rialaítear gnáthimeachtaí dócmhainneachta, ná mar atá ag éilimh neamhurraithe de thairbhe ionstraimí fiachais lena gcomhlíontar na coinníollacha seo a leanas:

(a) 1 bhliain ar a laghad atá in aibíocht chonarthach bhunaidh na n-ionstraimí fiachais;

(b) níl díorthaigh leabaithe ag na hionstraimí fiachais agus ní díorthaigh iontu féin iad;

(c) tagraítear go sonrach sa doiciméadacht chonarthach ábhartha agus, i gcás inarb infheidhme, sa réamheolaire a bhaineann le heisiúint don rangú níos ísle faoin mír seo.

3. Áiritheoidh na Ballstáit gurb airde an rangú tosaíochta atá ina dlíthe náisiúnta lena rialaítear gnáthimeachtaí dócmhainneachta, ag éilimh neamhurraithe de thairbhe ionstraimí fiachais a chomhlíonann na coinníollacha a leagtar síos i bpointe (a), pointe (b) agus pointe (c) de mhír 2 den Airteagal seo, ná mar atá ag éilimh neamhurraithe de thairbhe ionstraimí dá dtagraítear i bpointe (a) go pointe (d) d'Airteagal 48(1).

4. Gan dochar do mhír 5 ná do mhír 7, áiritheoidh na Ballstáit go mbeidh feidhm ag a ndlíthe náisiúnta lena rialaítear gnáthimeachtaí dócmhainneachta, mar a glacadh ar an 31 Nollaig 2016 iad, maidir leis an rangú i ngnáthimeachtaí dócmhainneachta i dtaca le héilimh neamhurraithe de thairbhe ionstraimí fiachais arna n-eisiúint ag eintitis dá dtagraítear i bpointí (a) go (d) den chéad fhomhír d'Airteagal 1(1) den Treoir seo, roimh an dáta a dtiocfaidh bearta faoin dlí náisiúnta i bhfeidhm lena dtrasuítear Treoir (AE) 2017/2399 ó Pharlaimint na hEorpa agus ón gComhairle ([1]).

5. I gcás inar ghlac Ballstát, tar éis an 31 Nollaig 2016 agus roimh 28 Nollaig 2018,dlí náisiúnta lena rialaítear an rangú i ngnáthimeachtaí dócmhainneachta i dtaca le héilimh neamhurraithe de thairbhe ionstraimí fiachais arna n-eisiúint tar éis dháta theacht i bhfeidhm dlí náisiúnta den sórt sin, ní bheidh feidhm ag mír 4 den Airteagal seo maidir le héilimh de thairbhe ionstraimí fiachais arna n-eisiúint tar éis dháta theacht i bhfeidhm an dlí náisiúnta sin, ar choinníoll go gcomhlíontar an méid seo a leanas:

(a) faoin dlí náisiúnta sin, agus i gcás eintitis dá dtagraítear i bpointe (a) go pointe (d) den chéad fhomhír d'Airteagal 1(1), gurb airde an rangú tosaíochta a bhíonn ag gnáthéilimh neamhurraithe, i ngnáthimeachtaí dócmhainneachta, ná mar a bhíonn ag éilimh neamhurraithe de thairbhe ionstraimí fiachais a chomhlíonann na coinníollacha seo a leanas:

([1]) Treoir (AE) 2017/2399 ó Pharlaimint na hEorpa agus ón gComhairle an 12 Nollaig 2017 lena leasaítear Treoir 2014/59/AE maidir le hionstraimí fiachais neamhurraithe a rangú in ordlathas dócmhainneachta (IO L 345, 27.12.2017, lch. 96).

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(i) 1 bhliain ar a laghad atá in aibíocht chonarthach bhunaidh na n-ionstraimí fiachais;

(ii) níl díorthaigh leabaithe ag na hionstraimí fiachais agus ní díorthaigh iontu féin iad; agus

(iii) tagraítear go sonrach sa doiciméadacht chonarthach ábhartha agus, i gcás inarb infheidhme, sa réamheolaire a bhaineann le heisiúint, don rangú níos ísle faoin dlí náisiúnta;

(b) faoin dlí náisiúnta sin, is airde an rangú tosaíochta a bhíonn ag éilimh neamhurraithe de thairbhe ionstraimí fiachais a chomhlíonann na coinníollacha a leagtar síos i bpointe (a) den fhomhír seo, i ngnáthimeachtaí dócmhainneachta, ná mar a bhíonn ag éilimh de thairbhe ionstraimí dá dtagraítear i bpointe (a) go pointe (d) d'Airteagal 48(1).

Ar an dáta a dtiocfaidh bearta faoin dlí náisiúnta i bhfeidhm lena trasuítear Treoir (AE) 2017/2399 , beidh an rangú tosaíochta céanna ag na héilimh neamhurraithe de thairbhe ionstraimí fiachais dá dtagraítear i bpointe (b) den chéad fhomhír, agus atá ag an gceann dá dtagraítear i bpointe (a), pointe (b) agus pointe (c) de mhír 2 agus i mír 3 den Airteagal seo.

6. Chun críocha phointe (b) de mhír 2 agus phointe (a)(ii) den chéad fhomhír de mhír 5, ionstraimí fiachais a bhfuil ús athraitheach acu, a dhíorthaítear ó ráta tagartha a úsáidtear go forleathan agus ionstraimí fiachais nach bhfuil ainmnithe in airgeadra intíre an eisitheora, ní mheasfar, díreach mar gheall ar na gnéithe sin amháin, gur ionstraimí fiachais iad a bhfuil díorthaigh leabaithe acu, ar choinníoll go ndéantar an bunairgead, an aisíocaíocht agus an t-ús a ainmniú san airgeadra céanna.

7. I gcás na mBallstát inar glacadh roimh an 31 Nollaig 2016 dlí náisiúnta lena rialaítear gnáthimeachtaí dócmhainneachta, ina ndéantar gnáthéilimh neamhurraithe de thairbhe ionstraimí fiachais arna n-eisiúint ag eintitis dá dtagraítear i bpointe (a) go pointe (d) den chéad fhomhír d'Airteagal 1(1) a roinnt ina dhá rangú tosaíochta éagsúla nó níos mó, nó i gcás ina n-athraítear an rangú tosaíochta maidir le gnáthéilimh neamhurraithe de thairbhe ionstraimí fiachais den chineál sin i dtaca le gach gnáthéileamh neamhurraithe eile den rangú céanna, féadfaidh siad foráil a dhéanamh go bhfuil an rangú céanna ag ionstraimí fiachais ag a bhfuil an rangú tosaíochta is ísle i measc na n-éileamh neamhurraithe agus atá ag na héilimh a chomhlíonann coinníollacha phointe (a), pointe (b) agus pointe (c) de mhír 2 agus mhír 3 den Airteagal seo.

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Article 109

Use of deposit guarantee schemes in the context of resolution

1. Member States shall ensure that, where the resolution authorities take resolution action, and provided that that action ensures that depositors continue to have access to their deposits, the deposit guarantee scheme to which the institution is affiliated is liable for:

(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 point (a) of Article 46(1), had

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covered deposits been included within the scope of bail-in and been written down to the same extent as creditors with the same level of priority under the national law governing normal insolvency proceedings; or

(b) when one or more resolution tools other than the bail-in tool is applied, the amount of losses that covered depositors would have suffered, had covered depositors suffered losses in proportion to the losses suffered by creditors with the same level of priority under the national law governing normal insolvency proceedings.

In all cases, the liability of the deposit guarantee scheme shall not be greater than the amount of losses that it would have had to bear had the institution been wound up under normal insolvency proceedings.

When the bail-in tool is applied, the deposit guarantee scheme shall not be required to make any contribution towards the costs of recapitalising the institution or bridge institution pursuant to point (b) of Article 46(1).

Where it is determined by a valuation under Article 74 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 resolution financing arrangement in accordance with Article 75.

2. Member States shall ensure that the determination of the amount by which the deposit guarantee scheme is liable in accordance with paragraph 1 of this Article complies with the conditions referred to in Article 36.

3. The contribution from the deposit guarantee scheme for the purpose of paragraph 1 shall be made in cash.

4. 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 of Directive 2014/49/EU.

5. Notwithstanding paragraphs 1 to 4, if the available financial means of a deposit guarantee scheme are used in accordance therewith and are subsequently reduced to less than two thirds of the target level of the deposit guarantee scheme, the regular contribution to the deposit guarantee scheme shall be set at a level allowing for reaching the target level within six years.

In all cases, the liability of a deposit guarantee scheme shall not be greater than the amount equal to 50 % of its target level pursuant to Article 10 of Directive 2014/49/EU. Member States, may, by taking into account the specificities of their national banking sector, set a percentage which is higher than 50 %.

In any circumstances, the deposit guarantee scheme's participation under this Directive shall not exceed the losses it would have incurred in a winding up under normal insolvency proceedings.

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TITLE VIII

PENALTIES

Article 110

Administrative penalties and other administrative measures

1. Without prejudice to the right of Member States to provide for and impose criminal penalties, Member States shall lay down rules on administrative penalties and other administrative measures applicable where the national provisions transposing this Directive have not been complied with, and shall take all measures necessary to ensure that they are implemented. Where Member States decide not to lay down rules for administrative penalties for infringements which are subject to national criminal law they shall communicate to the Commission the relevant criminal law provisions. The administrative penalties and other administrative measures shall be effective, proportionate and dissuasive.

2. Member States shall ensure that, where obligations referred to in the first paragraph apply to institutions, financial institutions and Union parent undertakings, in the event of an infringement, administrative penalties can be applied, subject to the conditions laid down in national law, to the members of the management body, and to other natural persons who under national law are responsible for the infringement.

3. The powers to impose administrative penalties provided for in this Directive shall be attributed to resolution authorities or, where different, to competent authorities, depending on the type of infringement. Resolution authorities and competent authorities shall have all information-gathering and investigatory powers that are necessary for the exercise of their respective functions. In the exercise of their powers to impose penalties, resolution authorities and competent authorities shall cooperate closely to ensure that administrative penalties or other administrative measures produce the desired results and coordinate their action when dealing with cross-border cases.

4. Resolution authorities and competent authorities shall exercise their administrative powers to impose penalties in accordance with this Directive and national law in any of the following ways:

(a) directly;

(b) in collaboration with other authorities;

(c) under their responsibility by delegation to such authorities;

(d) by application to the competent judicial authorities.

Article 111

Specific provisions

1. Member States shall ensure that their laws, regulations and administrative provisions provide for penalties and other administrative measures at least in respect of the following situations:

(a) failure to draw up, maintain and update recovery plans and group recovery plans, infringing Article 5 or 7;

(b) failure to notify an intention to provide group financial support to the competent authority infringing Article 25;

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(c) failure to provide all the information necessary for the development of resolution plans infringing Article 11;

(d) failure of the management body of an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) to notify the competent authority when the institution or entity referred to in point (b), (c) or (d) of Article 1(1) is failing or likely to fail, infringing Article 81(1).

2. Member States shall ensure that, in the cases referred to in paragraph 1, the administrative penalties and other administrative measures that can be applied include at least the following:

(a) a public statement which indicates the natural person, institution, financial institution, Union parent undertaking or other legal person responsible and the nature of the infringement;

(b) an order requiring the natural or legal person responsible to cease the conduct and to desist from a repetition of that conduct;

(c) a temporary ban against any member of the management body or senior management of the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) or any other natural person, who is held responsible, to exercise functions in institutions or entities referred to in point (b), (c) or (d) of Article 1(1);

(d) in the case of a legal person, administrative fines of up to 10 % of the total annual net turnover of that legal person in the preceding business year. Where the legal person is a subsidiary of a parent undertaking, the relevant turnover shall be turnover resulting from the consolidated accounts of the ultimate parent undertaking in the preceding business year;

(e) in the case of a natural person, administrative fines of up to EUR 5 000 000, or in the Member States where the Euro is not the official currency, the corresponding value in the national currency on 2 July 2014;

(f) administrative fines of up to twice the amount of the benefit derived from the infringement where that benefit can be determined.

Article 112

Publication of administrative penalties

1. Member States shall ensure that resolution authorities and competent authorities publish on their official website at least any administrative penalties imposed by them for infringing the national provisions transposing this Directive where such penalties have not been the subject of an appeal or where the right of appeal has been exhausted. Such publication shall be made without undue delay after the natural or legal person is informed of that penalty including information on the type and nature of the infringement and the identity of the natural or legal person on whom the penalty is imposed.

Where Member States permit publication of penalties against which there is an appeal, resolution authorities and competent authorities shall, without undue delay, publish on their official websites information on the status of that appeal and the outcome thereof.

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2. Resolution authorities and competent authorities shall publish the penalties imposed by them on an anonymous basis, in a manner which is in accordance with national law, in any of the following circumstances:

(a) where the penalty is imposed on a natural person and publication of personal data is shown to be disproportionate by an obligatory prior assessment of the proportionality of such publication;

(b) where publication would jeopardise the stability of financial markets or an ongoing criminal investigation;

(c) where publication would cause, insofar as it can be determined, disproportionate damage to the institutions or entities referred to in point (b), (c) or (d) of Article 1(1) or natural persons involved.

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

3. Resolution authorities and competent authorities shall ensure that any publication in accordance with this Article shall remain on their official website for a period of at least five years. Personal data contained in the publication shall only be kept on the official website of the resolution authority or the competent authority for the period which is necessary in accordance with applicable data protection rules.

4. By 3 July 2016, EBA shall submit a report to the Commission on the publication of penalties by Member States on an anonymous basis as provided for under paragraph 2 and in particular whether there have been significant divergences between Member States in that respect. That report shall also address any significant divergences in the duration of publication of penalties under national law for Member States for publication of penalties.

Article 113

Maintenance of central database by EBA

1. Subject to the professional secrecy requirements referred to in Article 84, resolution authorities and competent authorities shall inform EBA of all administrative penalties imposed by them under Article 111 and of the status of that appeal and outcome thereof. EBA shall maintain a central database of penalties reported to it solely for the purpose of exchange of information between resolution authorities which shall be accessible to resolution authorities only and shall be updated on the basis of the information provided by resolution authorities. EBA shall maintain a central database of penalties reported to it solely for the purpose of exchange of information between competent authorities which shall be accessible to competent authorities only and shall be updated on the basis of the information provided by competent authorities.

2. EBA shall maintain a webpage with links to each resolution authority's publication of penalties and each competent authority's publication of penalties under Article 112 and indicate the period for which each Member State publishes penalties.

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Article 114

Effective application of penalties and exercise of powers to impose penalties by competent authorities and resolution authorities

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

(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, for example, 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.

TITLE IX

POWERS OF EXECUTION

Article 115

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in the second paragraph of Article 2, Article 44(11), Article 76(4), Article 103(7) and (8) and Article 104(4) shall be conferred on the Commission for an indeterminate period of time from 2 July 2014.

3. The delegation of power referred to in the second paragraph of Article 2, Article 44(11), Article 76(4), Article 103(7) and (8) and Article 104(4) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the

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delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to in the second paragraph of Article 2, Article 44(11), Article 76(4), Article 103(7) and (8) or Article 104(4) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or the Council.

6. The Commission shall not adopt delegated acts where the scrutiny time of the European Parliament is reduced through recess to less than five months, including any extension.

TITLE X

AMENDMENTS TO DIRECTIVES 82/891/EEC, 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 TO REGULATIONS (EU) NO 1093/2010 AND (EU) NO 648/2012

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Article 117

Amendments to Directive 2001/24/EC

Directive 2001/24/EC is amended as follows:

(1) In Article 1, the following paragraphs are added:

‘3. This Directive shall also apply to 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 (*) and their branches located in Member States other than those in which they have their head offices.

4. In the event of application of the resolution tools and exercise of the resolution powers provided for in Directive 2014/59/EU of the European Parliament and of the Council (**), this Directive shall also apply to the financial institutions, firms and parent undertakings falling within the scope of Directive 2014/59/EU.

5. Articles 4 and 7 of this Directive shall not apply where Article 83 of Directive 2014/59/EU applies.

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6. Article 33 of this Directive shall not apply where Article 84 of Directive 2014/59/EU applies.

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

(**) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014. p. 190).';

(2) Article 2 is replaced by the following:

'Article 2

Definitions

For the purposes of this Directive:

— 'home Member State' shall mean a home Member State as defined in Article 4(1)(43) of Regulation (EU) No 575/2013;

— 'host Member State' shall mean a host Member State as defined in Article 4(1)(44) of Regulation (EU) No 575/2013;

— 'branch' shall mean a branch as defined in Article 4(1)(17) of Regulation (EU) No 575/2013;

— 'competent authority' shall mean a competent authority as defined in Article 4(1)(40) of Regulation (EU) No 575/2013 or a resolution authority within the meaning of Article 2(1)(18) of Directive 2014/59/EU in respect of reorganisation measures taken pursuant to that Directive;

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

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

— 'reorganisation measures' shall mean measures which are intended to preserve or restore the financial situation of a credit institution or an investment firm as defined in Article 4(1), point (2) of Regulation (EU) No 575/2013 and which could affect third parties' pre-existing rights, including measures involving the possibility of a suspension of payments, suspension of enforcement measures or reduction of claims; those measures include the application of the resolution tools and the exercise of resolution powers provided for in Directive 2014/59/EU;

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

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

— ‘regulated market’ shall mean a regulated market as defined in Article 4(1), point (21) of Directive 2014/65/EU of the European Parliament and of the Council (*);

— ‘instrument’ shall mean a financial instrument as defined in Article 4(1), point (50)(b) of Regulation (EU) No 575/2013.

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(*) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).’;

(3) Article 25 is replaced by the following:

‘Article 25

Netting agreements

Without prejudice to Articles 68 and 71 of Directive 2014/59/EU, netting agreements shall be governed solely by the law of the contract which governs such agreements.’;

(4) Article 26 is replaced by the following:

‘Article 26

Repurchase agreements

Without prejudice to Articles 68 and 71 of Directive 2014/59/EU and Article 24 of this Directive, repurchase agreements shall be governed solely by the law of the contract which governs such agreements.’.

Article 118

Amendment to Directive 2002/47/EC

Directive 2002/47/EC is amended as follows:

(1) In Article 1, the following paragraph is added:

‘6. Articles 4 to 7 of this Directive 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, any close out netting or set-off provision that is imposed by virtue of Title IV, Chapter V or VI of Directive 2014/59/EU of the European Parliament and of the Council (*), or

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to any suchrestriction that is imposed by virtue of similar powers in the law of a Member State to facilitate the orderly resolution of any entity referred to in points (c)(iv) and (d) of paragraph 2 which is subject to safeguards at least equivalent to those set out in Title IV, Chapter VII of Directive 2014/59/EU.

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(*) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).';

(2) Article 9a is replaced by the following:

'Article 9a

Directives 2008/48/EC and 2014/59/EU

This Directive shall be without prejudice to Directives 2008/48/EC and 2014/59/EU.'.

Article 119

Amendment to Directive 2004/25/EC

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

'Member States shall ensure that Article 5(1) of this Directive does not apply in the case of use of resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU of the European Parliament and of the Council (*).

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(*) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).'.

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Article 121

Amendments to Directive 2007/36/EC

Directive 2007/36/EC is amended as follows:

(1) in Article 1, the following paragraph is added:

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‘4. Member States shall ensure that this Directive does not apply in the case 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 Council (*).

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(*) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).’;

(2) in Article 5, the following paragraphs are added:

‘5. Member States shall ensure that for the purposes of Directive 2014/59/EU the general meeting may, by a majority of two-thirds of the votes validly cast, issue a convocation to a general meeting, or modify the statutes to prescribe that a convocation to a general meeting is issued, at shorter notice than as laid down in paragraph 1 of this Article, to decide on a capital increase, provided that that meeting does not take place within ten calendar days of the convocation, that the conditions of Article 27 or 29 of Directive 2014/59/EU are met, and that the capital increase is necessary to avoid the conditions for resolution laid down in Articles 32 and 33 of that Directive.

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

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Article 124

Amendment to Directive 2013/36/EU

In Article 74 of Directive 2013/36/EU, paragraph 4 is deleted.

Article 125

Amendment to Regulation (EU) No 1093/2010

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

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

‘(2) ‘competent authority’ means:

(i) competent authority as defined in Article 4(1)(40) of Regulation (EU) No 575/2013, and within the meaning of Directives 2007/64/EC and 2009/110/EC;

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(ii) with regard to Directives 2002/65/EC and 2005/60/EC, the authorities competent for ensuring compliance with the requirements of those Directives by credit and financial institutions;

(iii) with regard to Directive 2014/49/EU of the European Parliament and of the Council (*), a designated authority as defined in Article 2(1)(18) of that Directive;

(iv) with regard to Directive 2014/59/EU of the European Parliament and of the Council (**), a resolution authority as defined in Article 2(1)(18) of that Directive.

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(*) Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on Deposit Guarantee Schemes (OJ L 173, 12.6.2014, p. 149).

(**) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).';

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

'For the purpose of acting within the scope of Directive 2014/59/EU, the member of the Board of Supervisors referred to in point (b) of paragraph 1 may, where appropriate, be accompanied by a representative from the resolution authority in each Member State, who shall be non-voting.'.

Article 126

Amendment to Regulation (EU) No 648/2012

In Article 81(3) of Regulation (EU) No 648/2012, the following point is added:

'(k) the resolution authorities designated under Article 3 of Directive 2014/59/EU of the European Parliament and the Council (*).

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(*) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).'.

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TITLE XI

FINAL PROVISIONS

Article 127

EBA Resolution Committee

EBA shall create a permanent internal committee pursuant to Article 41 of Regulation (EU) No 1093/2010 for the purpose of preparing EBA decisions to be taken in accordance with Article 44 thereof, including decisions relating to draft regulatory technical standards and draft implementing technical standards, relating to tasks that have been conferred on resolution authorities as provided for in this Directive. In particular, in accordance with Article 38(1) of Regulation (EU) No 1093/2010, EBA shall ensure that no decision referred to in that article impinges in any way on the fiscal responsibilities of Member States. That internal committee shall be composed of the resolution authorities referred to in Article 3 of this Directive.

For the purposes of this Directive, EBA shall cooperate with EIOPA and ESMA within the framework of the Joint Committee of the European Supervisory Authorities established in Article 54 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010.

For the purposes of this Directive, EBA shall ensure structural separation between the resolution committee and other functions referred to in Regulation (EU) No 1093/2010. The resolution committee shall promote the development and coordination of resolution plans and develop methods for the resolution of failing financial institutions.

Article 128

Cooperation with EBA

The competent and resolution authorities shall cooperate with EBA for the purposes of this Directive in accordance with Regulation (EU) No 1093/2010.

The competent and resolution authorities shall, without delay, provide EBA with all the information necessary to carry out its duties in accordance with Article 35 of Regulation (EU) No 1093/2010.

Article 129

Review

By 1 June 2018, the Commission shall review the implementation of this Directive and shall submit a report thereon to the European Parliament and to the Council. It shall assess in particular the following:

(a) on the basis of the report from EBA referred to in Article 4(7), the need for any amendments with regard to minimising divergences at national level;

(b) on the basis of the report from EBA referred to in Article 45(19), the need for any amendments with regard to minimising divergences at national level;

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(c) the functioning and efficiency of the role conferred on EBA in this Directive, including carrying out of mediation.

Where appropriate, that report shall be accompanied by a legislative proposal.

Notwithstanding the review provided for in the first subparagraph, the Commission shall, by 3 July 2017, specifically review the application of Articles 13, 18 and 45 as regards EBA's powers to conduct binding mediation to take account of future developments in financial services law. That report and any accompanying proposals, as appropriate, shall be forwarded to the European Parliament and to the Council.

Article 130

Transposition

1. Member States shall adopt and publish by 31 December 2014 the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those measures.

Member States shall apply those measures from 1 January 2015.

However, Member States shall apply provisions adopted in order to comply with Section 5 of Chapter IV of Title IV from 1 January 2016 at the latest.

2. When Member States adopt the measures referred to in paragraph 1, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such a reference is to be made.

3. Member States shall communicate to the Commission and to EBA the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 131

Entry into force

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

Article 124 shall enter into force on 1 January 2015.

Article 132

Addressees

This Directive is addressed to the Member States.

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ANNEX

SECTION A

Information to be included in recovery plans

The recovery plan shall include the following information:

(1) A summary of the key elements of the plan and 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;

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(18) other management actions or strategies to restore financial soundness and the anticipated financial effect of those actions or strategies;

(19) preparatory measures that the institution has taken or plans to take in order to facilitate the implementation of the recovery plan, including those necessary to enable the timely recapitalisation of the institution;

(20) a framework of indicators which identifies the points at which appropriate actions referred to in the plan may be taken.

SECTION B

Information that resolution authorities may request institutions to provide for the purposes of drawing up and maintaining resolution plans

Resolution authorities may request institutions to provide for the purposes of drawing up and maintaining resolution plans at least the following information:

(1) a detailed description of the institution's organisational structure including a list of all legal 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;

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(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 point (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:

— common or shared personnel, facilities and systems;

— capital, funding or liquidity arrangements;

— existing or contingent credit exposures;

— cross guarantee agreements, cross-collateral arrangements, cross-default provisions and cross-affiliate netting arrangements;

— risks transfers and back-to-back trading arrangements; service level agreements;

(16) the competent and resolution authority for each legal 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.

SECTION C

Matters that the resolution authority is to consider when assessing the resolvability of an institution or group

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

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When assessing the resolvability of a group, references to an institution shall be deemed to include any institution or entity referred to in point (c) or (d) of Article 1(1) within a group:

(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;

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(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 ►M3 dliteanais in-fhortharrthála ◄ 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.