

Law of 18 December 2015 on the failure of credit institutions and certain investment firms

Law of 18 December 2015 on the resolution, reorganisation and winding up measures of credit institutions and certain investment firms and on deposit guarantee and investor compensation schemes,

- 1. transposing 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;**
- 2. transposing Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on Deposit Guarantee Schemes;**
- 3. amending:**
 - a) the Law of 5 April 1993 on the financial sector, as amended;**
 - b) the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;**
 - c) the Law of 5 August 2005 on financial collateral arrangements:**
 - **transposing Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements;**
 - **amending the Commercial Code;**
 - **amending the Law of 1 August 2001 on the circulation of securities and other fungible instruments;**
 - **amending the Law of 5 April 1993 on the financial sector;**
 - **amending the Grand-ducal Regulation of 18 December 1981 on fungible deposits of precious metals and amending Article 1 of the Grand-ducal Regulation of 17 February 1971 on the circulation of securities;**
 - **repealing the Law of 21 December 1994 concerning repurchase agreements;**
 - **repealing the Law of 1 August 2001 on the transfer of ownership for security purposes;**
 - d) the Law of 19 May 2006 transposing Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids; and**
 - e) the Law of 24 May 2011 on the exercise of certain rights of shareholders in general meetings of listed companies**

(Mém. A 2015, No 246)

as amended by:

- the Law of 27 May 2016
amending, with the view of reforming the legal publication regime regarding companies and associations,
 - the Law of 19 December 2002 on the trade and companies register and the accounting practices and annual accounts of undertakings, as amended;
 - the Law of 10 August 1915 on commercial companies, as amended;
 - the Law of 21 April 1928 on non-profit organisations, as amended;
 - the Grand-ducal Decree of 24 May 1935 supplementing the legislation on suspension of payments, on composition with creditors to prevent bankruptcy by establishing a controlled management regime, as amended;
 - the Grand-ducal Decree of 17 September 1945 revising the Law of 27 March 1900 on the organisation of agricultural associations, as amended;
 - the Law of 24 March 1989 relating to Banque et Caisse d'Epargne de l'Etat, Luxembourg, as amended;
 - the Law of 25 March 1991 on economic interest groupings, as amended;
 - the Law of 25 March 1991 on diverse implementing measures of Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG), as amended;

- the Law of 17 June 1992 relating to the annual and consolidated accounts of credit institutions, as amended;
 - the Law of 8 December 1994 relating to: - the annual and consolidated accounts of insurance and reinsurance undertakings governed by the laws of Luxembourg - the obligations in relation to the drawing-up and publication of accounting documents of branches of insurance undertakings governed by foreign laws, as amended;
 - the Law of 31 May 1999 governing the domiciliation of companies, as amended;
 - the Law of 22 March 2004 on securitisation, as amended;
 - the Law of 15 June 2004 relating to the Investment company in risk capital (SICAR), as amended;
 - the Law of 13 July 2005 on institutions for occupational retirement provision in the form of a SEPCAV and an ASSEP, as amended;
 - the Law of 13 February 2007 relating to specialised investment funds, as amended;
 - the Law of 10 November 2009 on payment services, as amended;
 - the Law of 17 December 2010 relating to undertakings for collective investment, as amended;
 - the Law of 7 December 2015 on the insurance sector;
 - the Law of 18 December 2015 on the failure of credit institutions and certain investment firms;
(Mém. A 2016, No 94)
- the Law of 27 February 2018 implementing Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions, and amending:
 1. the Law of 5 April 1993 on the financial sector, as amended;
 2. the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;
 3. the Law of 5 August 2005 on financial collateral arrangements, as amended;
 4. the Law of 11 January 2008 on transparency requirements for issuers, as amended;
 5. the Law of 10 November 2009 on payment services, as amended;
 6. the Law of 17 December 2010 relating to undertakings for collective investment, as amended;
 7. the Law of 12 July 2013 on alternative investment fund managers, as amended;
 8. the Law of 7 December 2015 on the insurance sector, as amended;
 9. the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended, and
 10. the Law of 23 December 2016 on market abuse;
 (Mém. A 2018, No 150)
- the Law of 25 July 2018
 1. transposing Directive (EU) 2017/2399 of the European Parliament and of the Council of 12 December 2017 amending Directive 2014/59/EU as regards the ranking of unsecured debt instruments in insolvency hierarchy and amending the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended; and
 2. amending various provisions of the Law of 5 April 1993 on the financial sector, as amended;
 (Mém. A 2018, No 628)
- the Law of 20 May 2021
 1. transposing:
 - (a) Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures; and
 - (b) Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC;
 2. implementing Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012; and
 3. amending:
 - (a) the Law of 5 April 1993 on the financial sector, as amended;
 - (b) the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended;
 - (c) the Law of 24 March 1989 on the Banque et Caisse d'Epargne de l'Etat, Luxembourg, as amended;
 - (d) the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;

- (e) the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended;
- (f) the Law of 10 November 2009 on payment services, on the activity of electronic money institution and settlement finality in payment and securities settlement systems, as amended; and
- (g) the Law of 7 December 2015 on the insurance sector, as amended.

(Mém. A 2021, No 384)

– the Law of 21 July 2021

1° amending:

- a) the Law of 5 April 1993 on the financial sector, as amended;
- b) the Law of 23 December 1998 establishing a financial sector supervisory commission (“Commission de surveillance du secteur financier”), as amended;
- c) the Law of 17 December 2010 relating to undertakings for collective investment, as amended;
- d) the Law of 12 July 2013 on alternative investment fund managers, as amended;
- e) the Law of 7 December 2015 on the insurance sector, as amended;
- f) the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended; and
- g) the Law of 30 May 2018 on markets in financial instruments, as amended;

2° transposing:

- a) Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU;
- b) partially Directive (EU) 2019/2177 of the European Parliament and of the Council of 18 December 2019 amending Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), Directive 2014/65/EU on markets in financial instruments and Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money-laundering or terrorist financing;
- c) Directive (EU) 2020/1504 of the European Parliament and of the Council of 7 October 2020 amending Directive 2014/65/EU on markets in financial instruments; and
- d) Directive (EU) 2021/338 of the European Parliament and of the Council of 16 February 2021 amending Directive 2014/65/EU as regards information requirements, product governance and position limits, and Directives 2013/36/EU and (EU) 2019/878 as regards their application to investment firms, to help the recovery from the COVID-19 crisis; and

3° implementing:

- a) Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014;
- b) Article 4 of Regulation (EU) 2019/2175 of the European Parliament and of the Council of 18 December 2019 amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), Regulation (EU) No 600/2014 on markets in financial instruments, Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds, and Regulation (EU) 2015/847 on information accompanying transfers of funds.

(Mém. A 2021, No 566)

– the Law of 6 April 2022 on the granting of State guarantee for credit lines contracted by the Fonds de garantie des dépôts Luxembourg and amending the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended.

(Mém. A 2022, No 165)

– the Law of 8 December 2021 relating to the issue of covered bonds (*lettres de gage*), and:

- 1° transposing Directive (EU) 2019/2162 of the European Parliament and of the Council of 27 November 2019 on the issue of covered bonds and covered bond public supervision and amending Directives 2009/65/EC and 2014/59/EU;
- 2° implementing Regulation (EU) 2019/2160 of the European Parliament and of the Council of 27 November 2019 amending Regulation (EU) No 575/2013 as regards exposures in the form of

covered bonds; and

3° amending:

(a) the Law of 5 April 1993 on the financial sector, as amended;

(b) the Law of 23 December 1998 establishing a financial sector supervisory commission (“Commission de surveillance du secteur financier”), as amended;

(c) the Law of 17 December 2010 relating to undertakings for collective investment, as amended; and

(d) the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended.

(Mém. A 2021, No 845)

– the Law of 20 July 2022

1° amending:

(a) the Law of 15 March 2016 on OTC derivatives, central counterparties and trade repositories and amending different laws relating to financial services, as amended;

(b) the Law of 23 December 1998 establishing a financial sector supervisory commission (“Commission de surveillance du secteur financier”), as amended;

(c) the Law of 5 August 2005 on financial collateral arrangements, as amended;

(d) the Law of 19 May 2006 transposing Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids, as amended;

(e) the Law of 24 May 2011 on the exercise of certain rights of shareholders in listed companies, as amended;

(f) the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended; and

(g) Grand-ducal Regulation of 18 December 1981 on fungible deposits of precious metals and amending Article 1 of Grand-ducal Regulation of 17 February 1971 on the circulation of securities; and

2° implementing Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132

(Mém. A 2022, No 371)

TABLE OF CONTENTS

PART I RESOLUTION	12
TITLE I Definitions, scope and resolution authorities	12
Article 1. Definitions	12
Article 2. Scope	19
Article 3. Resolution authority and competent minister	20
Article 4. General provisions	21
Article 5. Simplified obligations for certain institutions	21
Article 6. Exemptions	21
TITLE II Resolution	22
Chapter I - Resolution planning	22
Section I - Resolution planning for an institution on an individual basis	22
Article 7. Resolution plans	22
Article 8. Information for the purpose of resolution plans and cooperation from the institution	22
Article 9. Contents of resolution plans	22
Article 10. Review of resolution plans	23
Article 11. Impediments to resolvability	24
Article 12. Records of financial contracts	24
Section II - Group resolution planning where the Resolution Board acts as the group-level resolution authority	24
Article 13. Scope	24
Article 14. Group resolution plans	24
Article 15. Contents of group resolution plans	24
Article 16. Information communication	25
Article 17. Adoption of group resolution plans	26
Article 18. Assessment of resolvability of the group	26
Article 19. Reassessment of group resolution plans	27
Section III - Group resolution planning where the Resolution Board acts as the resolution authority of a subsidiary or of a significant branch	27
Article 20. Scope	27
Article 21. Contribution to the drawing up of the resolution plan	27
Article 22. Participation in the adoption of the group resolution plan	27
Article 23. Adoption of an individual decision	28
Section IV - Transmission of resolution plans to the competent authorities	28
Article 24. Transmission of resolution plans to the competent authorities	28
Article 25. Transmission of group resolution plans to the competent authorities	28
Chapter II - Resolvability	28
Section I - Assessment of resolvability	28
Article 26. Assessment of resolvability for institutions	28
Article 27. Assessment of resolvability for groups where the Resolution Board acts as the group-level resolution authority	29
Article 28. Assessment of resolvability for groups where the Resolution Board acts as the resolution authority of a subsidiary or of a significant branch	29
Section II - Addressing or removing impediments to resolvability	30
Article 29. Powers to address or remove impediments to resolvability "of an entity"	30
Article 30. Powers to address or remove impediments to resolvability in relation to group treatment where the Resolution Board acts as group-level resolution authority	32
Article 31. Powers to address or remove impediments to resolvability where the Resolution Board acts as resolution authority of a subsidiary or a significant branch	34
"Article 31-1. Power to prohibit certain distributions	35
Chapter III - Objectives, conditions for resolution and general principles governing resolution	37
Article 32. Resolution objectives	37

Article 33. Conditions for resolution in relation to an institution	37
“Article 33-1. Conditions for resolution with regard to a central body and credit institutions permanently affiliated to a central body.....	38
Article 33-2. Insolvency proceedings in respect of institutions and entities that are not subject to resolution action	38
Article 34. Conditions for resolution in relation to financial institutions and holding companies.....	38
“Article 34-1. Power to suspend certain obligations	39
Article 35. General principles governing resolution	40
Chapter IV – Special management	41
Article 36. Special management.....	41
Chapter V - Valuation	42
Article 37. Valuation.....	42
Chapter VI Resolution tools	44
Section I - General principles.....	44
Article 38. General principles of resolution tools.....	44
Section II - The sale of business tool	45
Article 39. The sale of business tool	45
Article 40. Procedural requirements relating to the sale of business tool	47
Section III - The bridge institution tool	47
Article 41. Bridge institution tool.....	47
Article 42. Operation of a bridge institution	49
Section IV - The asset separation tool.....	50
Article 43. Asset separation tool	50
Section V - The bail-in tool	52
Subsection I - Objective and scope of the bail-in tool	52
Article 44. The bail-in tool.....	52
Article 45. Scope of bail-in tool.....	52
“Article 45-1. Selling of subordinated eligible liabilities to retail clients.....	55
Subsection II - Minimum requirement for own funds and eligible liabilities.....	55
“Article 46. Application and calculation of the minimum requirement for own funds and eligible liabilities	55
Article 46-1. Exemption from the minimum requirement for own funds and eligible liabilities	56
Article 46-2. Eligible liabilities for resolution entities.....	56
Article 46-3. Determination of the minimum requirement for own funds and eligible liabilities	59
Article 46-4. Determination of the minimum requirement for own funds and eligible liabilities for resolution entities of G-SIIs and EU material subsidiaries of non-EU G-SIIs.....	63
Article 46-5. Application of the minimum requirement for own funds and eligible liabilities to resolution entities.....	63
Article 46-6. Application of the minimum requirement for own funds and eligible liabilities to subsidiaries that are not themselves resolution entities.....	63
Article 46-7. Waiver for a central body and credit institutions permanently affiliated to a central body.....	66
Article 46-8. Procedure for determining the minimum requirement for own funds and eligible liabilities where the Resolution Board acts as group-level resolution authority.....	66
Article 46-9. Procedure for determining the minimum requirement for own funds and eligible liabilities where the Resolution Board acts as resolution authority of a resolution entity.....	67
Article 46-10. Procedure for determining the minimum requirement for own funds and eligible liabilities where the Resolution Board acts as resolution authority of a subsidiary which is not a resolution entity	69
Article 46-11. Supervisory reporting and public disclosure of the requirement	70
Article 46-12. Notification of the EBA.....	71
Article 46-13. Breaches of the minimum requirement for own funds and eligible liabilities	71

Article 46-14. Reports	72
Article 46-15. Transitional periods post-resolution or following the identification of a new G-SII	72
Subsection III - Implementation of the bail-in tool.....	72
Article 47. Assessment of amount of bail-in.....	72
Article 48. Treatment of shareholders in bail-in or write down or conversion of capital instruments.....	73
Article 49. Sequence of write down and conversion	74
Article 50. Derivatives	75
Article 51. Rate of conversion of debt to equity.....	75
Article 52. Recovery and reorganisation measures to accompany bail-in	75
Article 53. Business reorganisation plan.....	76
Subsection IV - Ancillary provisions regarding the bail-in tool.....	77
Article 54. Effect of bail-in.....	77
Article 55. Removal of procedural impediments to bail-in.....	77
Article 56. Contractual recognition of bail-in.....	78
Chapter VII - Write down of capital instruments “and eligible liabilities”	80
Article 57. Requirement to write down or convert “relevant capital instruments and eligible liabilities”	80
Article 58. Provisions governing the write down or conversion of “relevant capital instruments and eligible liabilities”	82
Article 59. Authorities responsible for determination.....	83
Article 60. Procedure for determination in case of consolidated application.....	83
1. the consolidating supervisor and, if different, the appropriate authority in the Member State where the consolidating supervisor is located;.....	83
Chapter VIII - Resolution powers	84
Article 61. General powers.....	84
Article 62. Ancillary powers.....	86
Article 63. Power to require the provision of services and facilities	86
Article 64. Application of crisis management measures or crisis prevention measures taken by other Member States.....	87
Article 65. Power in respect of assets, rights, liabilities, shares and other instruments of ownership located in a third country	88
Article 66. Exclusion of certain contractual terms in resolution.....	88
Article 67. Power to suspend certain obligations	89
Article 68. Power to restrict the enforcement of security interests.....	89
Article 69. Power to temporarily suspend termination rights.....	90
“Article 69-1. Contractual recognition of resolution stay powers.....	91
Article 70. Exercise of the resolution powers	91
Article 71. Power to require contacting potential purchasers.....	92
Article 72. Information-gathering and investigatory powers of the Resolution Board	92
Chapter IX - Safeguards	92
Article 73. Treatment of shareholders and creditors in the case of partial transfers and application of the bail-in tool	92
Article 74. Valuation of difference in treatment	92
Article 75. Safeguard for shareholders and creditors	93
Article 76. Safeguard for counterparties in partial transfers.....	93
Article 77. Protection for financial collateral, set-off and netting agreements	93
Article 78. Protection for physical collateral.....	94
Article 79. Protection for structured finance arrangements and covered bonds.....	94
Article 80. Protection of trading, clearing and settlement systems in case of partial transfers	94
Chapter X - Procedural obligations	95
Article 81. Notification requirements	95
Article 82. Decision of the resolution authority.....	95
Article 83. Procedural obligations of the Resolution Board	95
Article 84. Confidentiality.....	96
Chapter XI - Restrictions.....	98
Article 85. Restrictions on company law.....	98

Article 86. Restrictions on other proceedings	98
Chapter XII - Cross-border group resolution	98
Section I - General principles, colleges and information exchange	98
Article 87. General principles regarding decision-making involving more than one Member State	98
Article 88. Establishment of resolution colleges by the Resolution Board when it acts as group-level resolution authority	99
Article 89. Participation of the Resolution Board in a resolution college when it is not the group-level resolution authority	101
Article 90. European resolution colleges	101
Article 91. Information exchange	102
Section II - Group resolution where the Resolution Board acts as the group-level resolution authority	102
Article 92. Scope	102
Article 93. Group resolution involving a subsidiary of the group	102
Article 94. Group resolution	103
Section III - Group resolution where the Resolution Board acts as resolution authority of a subsidiary of an EU parent undertaking	104
Article 95. Scope	104
Article 96. Information notification	104
Article 97. Group resolution involving a subsidiary of the group	104
Chapter XIII - Relations with third countries	105
Article 98. Agreements with third countries	105
Article 99. Recognition and enforcement of third-country resolution proceedings	106
Article 100. Resolution of a parent undertaking that has a subsidiary in a third country	107
Article 101. Right to refuse recognition or enforcement of third-country resolution proceedings	107
Article 102. Resolution of EU branches	107
Article 103. Cooperation with third-country authorities	108
Article 104. Exchange of confidential information	108
Chapter XIV - Financing arrangements	109
Article 105. Resolution financing arrangements	109
Article 106. Use of the resolution financing arrangements	110
Article 107. Target level	111
Article 108. Ex-ante contributions	111
Article 109. Extraordinary ex-post contributions	112
Article 110. Alternative funding means	112
Article 111. Borrowing between financing arrangements	112
Article 112. Mutualisation of national financing arrangements in the case of a group resolution	113
Article 113. Use of the FGDL in the context of resolution	114
Chapter XV – Penalties	115
Article 114. Penalties and other administrative measures	115
Article 115. Publication of administrative penalties	116
Article 116. Effective application of penalties and exercise of powers to impose penalties by the Resolution Board	117
Article 117. Information on the administrative penalties transmitted to the EBA	117
Chapter XVI - Remedies	117
Article 118. Remedies	117
Article 119. Remedies in relation to administrative penalties	118
PART II REORGANISATION AND WINDING UP	118
TITLE I Definitions and scope	118
Article 120. Definitions	118
Article 121. Scope	119
TITLE II Suspension of payments	119
Chapter I - Provisions governing the start of the suspension of payments proceedings in institutions incorporated under Luxembourg law	119

Article 122. Start of the suspension of payments proceedings	119
Article 123. Competent jurisdiction and applicable law	121
Article 124. Information to be provided by the CSSF to the foreign competent authorities.....	121
Chapter II - Special provisions applicable to Luxembourg branches of EU institutions	121
Article 125. Competent jurisdiction and applicable law	121
Chapter III - Special provisions applicable to Luxembourg branches of third-country institutions	122
Article 126. Competent jurisdiction and applicable law	122
Article 127. Reorganisation measures concerning third-country credit institutions with multiple locations in the EU	122
TITLE III Winding up	122
Chapter I - Voluntary liquidation	122
Article 128. Voluntary liquidation	122
Chapter II - Provisions governing the judicial winding-up proceedings of institutions incorporated under Luxembourg law	123
Article 129. Winding-up proceedings	123
Article 130. Competent jurisdiction	125
Article 131. Applicable law	125
Article 132. Withdrawal of the authorisation of an institution	125
Article 133. Information to be provided to known creditors	125
Article 134. Lodging the claims	126
Chapter III - Special provisions applicable to Luxembourg branches of EU institutions	126
Article 135. Competent jurisdiction and applicable law	126
Chapter IV - Special provisions applicable to Luxembourg branches of third-country institutions	126
Article 136. Competent jurisdiction and applicable law	126
Article 137. Third-country credit institutions with multiple locations in the EU.....	126
TITLE IV Common provisions for reorganisation measures and winding-up proceedings.....	127
Article 138. Effects on certain contracts and rights	127
Article 139. Rights in rem of third parties.....	127
Article 140. Reservation of title.....	127
Article 141. Set-off	127
Article 142. Lex rei sitae	128
Article 143. Netting arrangements	128
Article 144. Repurchase agreements	128
Article 145. Regulated market	128
Article 146. Proof of appointment and powers of administrators or liquidators	128
Article 147. Registration in a public register	128
Article 148. Detrimental acts	128
Article 149. Protection of third parties	129
Article 150. Lawsuits pending	129
Article 151. Professional secrecy	129
Article 152. Ranking (...) in insolvency hierarchy	129
"Article 152-1. Criminal sanctions	130
"Title V Special provisions concerning credit institutions issuing covered bonds	130
Article 152-2. Separation of the issuing credit institution's assets following the judgement of suspension of payments or winding up and maintaining the authorisation for limited activity.....	130
Article 152-3. Administration of the patrimonial compartments of an issuing credit institution with limited business activity	131
Article 152-4. Suspension of payments of a patrimonial compartment	133
Article 152-5. Dissolution and winding up of a patrimonial compartment.....	133
PART III PROTECTION OF DEPOSITORS AND INVESTORS.....	134
TITLE I Definition and institutional framework	134
Article 153. Definitions	134
Article 154. Fonds de Garantie des Dépôts Luxembourg.....	134
Article 155. Institutional framework	136

Article 156. Système d'Indemnisation des Investisseurs Luxembourg	136
Article 157. Governance	136
Article 158. Website providing information to depositors and investors	136
Article 159. Professional secrecy	136
Article 160. Information exchange and cooperation	136
Article 161. Procedures relating to sharing information	137
TITLE II The protection of depositors.....	137
Chapter I - Purpose, scope and definitions	137
Article 162. Purpose and scope.....	137
Article 163. Definitions	137
Chapter II - Obligations of the Council for the Protection of Depositors and Investors	138
Article 164. Systems for the determination of liabilities.....	138
Article 165. Stress tests.....	138
Chapter III - Compulsory membership in the FGDL	139
Article 166. Compulsory membership in the FGDL.....	139
Article 167. Institutions not members of the FGDL	139
Article 168. Information to be disclosed to the CPDI.....	139
Article 169. Marking	139
Chapter IV - Deposit protection	139
Article 170. Unavailability of the deposits.....	139
Article 171. Coverage level and repayable amount	140
Article 172. Exclusions.....	140
Article 173. Arrangements applicable to joint accounts	141
Article 174. Depositor different from the persons absolutely entitled	141
Article 175. Set-off	141
Article 176. Repayment arrangements and periods	141
Article 177. Remedies.....	142
Article 178. Subrogation	143
Article 179. Target level and financial means.....	143
Article 180. Buffer of additional financial means.....	144
Article 181. Use of funds.....	144
Article 182. Calculation of contributions	144
Article 183. Cooperation within the European Union	144
Article 184. Luxembourg branches of credit institutions established in third countries	145
Article 185. Depositor information.....	145
Article 186. Use in advertising	145
Article 187. Conversion of a credit institution or branch	146
Article 188. Withdrawal or exclusion of a member institution from the FGDL	146
Article 189. Change of DGS.....	146
Article 190. Information by depositors using internet banking via electronic means	146
Chapter V - Non-compliance.....	146
Article 191. Non-compliance with the obligations of the member institutions	146
Chapter VI - Cooperation	147
Article 192. Cooperation between authorities.....	147
Article 193. Conclusion of cooperation agreements.....	147
TITLE III The protection of investors	147
Chapter I - Definitions	147
Article 194. Definitions	147
Chapter II - Cover of investors in credit institutions and investment firms incorporated under Luxembourg law, as well as in Luxembourg branches of credit institutions and investment firms that have their head office in a third country.....	147
Article 195. Purpose of the cover	147
Article 196. Coverage level and scope	148
Article 197. Compensation arrangements and periods	149
Article 198. Payment of contributions	150
Article 199. Obligation to inform the customer.....	150
Article 200. Non-compliance.....	151

Article 201. Supplementary cover for investors in branches of credit institutions or investment firms incorporated under Luxembourg law established in another Member State	151
Chapter III - Cover of investors in Luxembourg branches of credit institutions or investment firms governed by the laws of another Member State.....	151
Article 202. Purpose of the cover	151
Article 203. Principles governing supplementary cover.....	152
Article 204. Relations between the CPDI and the schemes instituted and recognised in other Member States.....	152
Article 205. Obligation to inform the customer.....	152
PART IV AMENDING, TRANSITIONAL AND FINAL PROVISIONS	153
Chapter I – Amending provisions	153
Chapter II - Transitional provisions	153
Article 211. Termination of the cover.....	153
Article 212. Time limit for repayment of the deposits covered by the Fonds de Garantie des Dépôts Luxembourg.....	153
“Article 212-1. Transitional period to comply with the minimum requirement	153
Chapter III - Final provisions	154
Article 213. Abbreviated designation	154
ANNEXES	155
ANNEX 1 on the resolution framework	155
<i>Section A - Information that the Resolution Board may request institutions to provide for the purposes of drawing up and maintaining resolution plans.....</i>	<i>155</i>
<i>Section B - Matters that the Resolution Board is to consider when assessing the resolvability of an institution or group.....</i>	<i>156</i>
ANNEX 2 Depositor information template.....	158

**PART I
RESOLUTION**

**TITLE I
Definitions, scope and resolution authorities**

Article 1. Definitions

Except where otherwise specified, the following definitions shall apply for the purposes of this part:

1. "netting arrangement" shall mean 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 of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements, hereinafter "Directive 2002/47/EC" and "netting" as defined in letter (k) of Article 2 of Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems, hereinafter "Directive 98/26/EC";
2. "set-off arrangement" shall mean 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;
3. "shareholders" shall mean shareholders or holders of other instruments of ownership;
4. "core business lines" shall mean 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;
5. "emergency liquidity assistance" shall mean 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;
6. "appropriate authority" shall mean authority of the Member State identified "in accordance with Article 61 of 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, hereinafter "Directive 2014/59/EU", "¹ that is responsible under the national law of that State for making the determinations "referred to in Article 59(3) of Directive 2014/59/EU"²;
7. "competent authority" shall mean a competent authority as defined in point (40) of Article 4(1) of 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, hereinafter referred to as "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 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, hereinafter referred to as "Regulation (EU) No 1024/2013";
8. "resolution authority" shall mean an authority designated by a Member State in accordance with Article 3 of Directive 2014/59/EU (...)³;
9. "group-level resolution authority" shall mean the resolution authority in the Member State in which the consolidating supervisor is situated;
10. "supervisory authority" shall mean the Commission de Surveillance du Secteur Financier created by the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier") (hereinafter the "CSSF") or,

¹ Law of 27 February 2018

² Law of 27 February 2018

³ Law of 27 February 2018

where applicable, the European Central Bank within the limits of its competences and missions pursuant to Regulation (EU) No 1024/2013;

11. "consolidating supervisor" shall mean consolidating supervisor as defined in point (41) of Article 4(1) of Regulation (EU) No 575/2013;
12. "relevant third-country authority" shall mean a third-country authority responsible for carrying out functions comparable to those of resolution authorities or competent authorities pursuant to Directive 2014/59/EU;
13. "designated national macroprudential authority" shall mean 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);
14. "consolidated basis" shall mean the basis of the consolidated situation as defined in point (47) of Article 4(1) of Regulation (EU) No 575/2013;
15. "EU State aid framework" shall mean the framework established by Articles 107, 108 and 109 TFEU and regulations and all EU acts, including guidelines, communications and notices, made or adopted pursuant to Article 108(4) or Article 109 TFEU;
16. "recovery capacity" shall mean the capability of an institution to restore its financial position following a significant deterioration;
17. "resolution college" shall mean a college established in accordance with Article 88 of Directive 2014/59/EU to carry out the tasks referred to in Article 88(1) of that directive;
18. "supervisory college" shall mean a college of supervisors established in accordance with Article 116 of Directive 2013/36/EU;
19. "financial holding company" shall mean a financial holding company as defined in point (20) of Article 4(1) of Regulation (EU) No 575/2013;
20. "Luxembourg parent financial holding company" shall mean a parent financial holding company in a Member State as defined in point (22) incorporated under Luxembourg law;
21. "EU parent financial holding company" shall mean an EU parent financial holding company as defined in point (31) of Article 4(1) of Regulation (EU) No 575/2013;
22. "parent financial holding company in a Member State" shall mean a parent financial holding company in a Member State as defined in point (30) of Article 4(1) of Regulation (EU) No 575/2013;
23. "mixed financial holding company" shall mean a mixed financial holding company as defined in point (21) of Article 4(1) of Regulation (EU) No 575/2013;
24. "Luxembourg parent mixed financial holding company" shall mean a parent mixed financial holding company in a Member State as defined in point (26) incorporated under Luxembourg law;
25. "EU parent mixed financial holding company" shall mean an EU parent mixed financial holding company as defined in point (33) of Article 4(1) of Regulation (EU) No 575/2013;
26. "parent mixed financial holding company in a Member State" shall mean 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;
27. "mixed-activity holding company" shall mean a mixed-activity holding company as defined in point (22) of Article 4(1) of Regulation (EU) No 575/2013;
28. "conditions for resolution" shall mean the conditions referred to in Article 33(1);
29. "title transfer financial collateral arrangement" shall mean a title transfer financial collateral arrangement as defined in letter (b) of Article 2(1) of Directive 2002/47/EC;
30. "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;
 - 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 for the purchase, sale or transfer, other than a commodities contract, 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 letters (a) to (e);
31. "central counterparty" shall mean a CCP as defined in point (1) of Article 2 of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, hereinafter referred to as "Regulation (EU) No 648/2012";
 32. "eligible claims" shall mean eligible claims for the purpose of Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes, hereinafter referred to as "Directive 97/9/EC";
 33. "affected creditor" shall mean 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;
 34. "systemic crisis" shall mean 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;
 35. "depositor" shall mean depositor within the meaning of Article 2(1), point (6), of Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes, hereinafter referred to as "Directive 2014/49/EU";
 36. "covered deposits" shall mean covered deposits as defined in point (5) of Article 2(1) of Directive 2014/49/EU;
 37. "eligible deposits" shall mean eligible deposits as defined in point (4) of Article 2(1) of Directive 2014/49/EU;
 38. "affected holder" shall mean a holder of instruments of ownership whose instruments of ownership are cancelled by means of the power referred to in point (9) of Article 61(1);
 39. "senior management" shall mean those natural persons who exercise executive functions within an institution and who are responsible, and accountable to the management body, for the day-to-day management of the institution;
 40. "group financing arrangement" shall mean the financing arrangement or arrangements of the Member State of the group-level resolution authority;
 41. "group resolution scheme" shall mean a plan drawn up for the purposes of group resolution in accordance with Article 91 of Directive 2014/59/EU;
 42. "termination right" shall mean 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;

43. "secured liability" shall mean 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;

44. "eligible liabilities" shall mean bail-inable liabilities that fulfil, as applicable, the conditions of Article 46-2 or point (1) of Article 46-6(2) of this law, and Tier 2 instruments that meet the conditions of letter (b) of Article 72a(1) of Regulation (EU) No 575/2013;⁴

(Law of 20 May 2021)

"44a. "bail-inable liabilities" shall mean the liabilities and capital instruments that do not qualify as Common Equity Tier 1, Additional Tier 1 or Common Equity Tier 2 instruments of an institution or entity referred to in point (2), (3) or (4) of Article 2(1) and that are not excluded from the scope of the bail-in tool pursuant to Article 45(2);"

(Law of 20 May 2021)

"44b. "resolution entity" shall mean

a) a legal person established in the European Union, which, in accordance with Article 12 of Directive 2014/59/EU, is identified by the resolution authority as an entity in respect of which the resolution plan provides for resolution action; or

b) an institution that is not part of a group that is subject to consolidated supervision pursuant to Articles 111 and 112 of Directive 2013/36/EU, in respect of which the resolution plan drawn up pursuant to Article 10 of Directive 2014/59/EU provides for resolution action;"

45. "group entity" shall mean a legal person that is part of a group;

46. "recipient" shall mean 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;

47. "investment firm" shall mean an investment firm as defined in "point (22) of Article 4(1) of Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014 (hereinafter "Regulation (EU) 2019/2033"), that is subject to the initial capital requirement laid down in Article 9(1) of Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU"⁵;

48. "parent undertaking" shall mean a parent undertaking as defined in point (15)(a) of Article 4(1) of Regulation (EU) No 575/2013;

49. "EU parent undertaking" shall mean an EU parent institution, an EU parent financial holding company or an EU parent mixed financial holding company;

50. "third-country parent undertaking" shall mean a parent undertaking, a parent financial holding company or a parent mixed financial holding company, established in a third country;

51. "institution" shall mean a credit institution or an investment firm;

52. "third-country institution" shall mean an entity, the head office of which is established in a third country, that would, if it were established within the EU, be covered by the definition of an institution;

53. "credit institution" shall mean 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;

(Law of 20 May 2021)

"53a. "global systemically important institution" or "G-SII" shall mean a G-SII as defined in point (133) of Article 4(1) of Regulation (EU) No 575/2013;"

54. "financial institution" shall mean a financial institution as defined in point (26) of Article 4(1) of Regulation (EU) No 575/2013;

⁴ Law of 20 May 2021

⁵ Law of 21 July 2021

55. "EU parent institution" shall mean an EU parent institution as defined in point (29) of Article 4(1) of Regulation (EU) No 575/2013;
56. "parent institution in a Member State" shall mean a parent institution in a Member State as defined in point (28) of Article 4(1) of Regulation (EU) No 575/2013;
57. "relevant parent institution" shall mean a parent institution in a Member State, an EU 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, an EU parent financial holding company, a parent mixed financial holding company in a Member State, or an EU parent mixed financial holding company, in relation to which the bail-in tool is applied;
58. "bridge institution" shall mean a legal person that meets the requirements laid down in Article 41(2);
59. "institution under resolution" shall mean 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 parent financial holding company in Luxembourg, an EU parent financial holding company, a parent mixed financial holding company in a Member State, a parent mixed financial holding company in Luxembourg or an EU parent mixed financial holding company, in respect of which a resolution action is taken;
60. "Member State" shall mean a Member State of the European Union. The States that are contracting parties to the European Economic Area Agreement other than the Member States of the European Union, within the limits set forth by this agreement and related acts are considered as equivalent to Member States of the European Union.
61. "own funds requirements" shall mean the requirements laid down in Articles 92 to 98 of Regulation (EU) No 575/2013;

(Law of 20 May 2021)

- "61a. "combined buffer requirement" shall mean combined buffer requirement as defined in point (6) of Article 59-2 of the Law of 5 April 1993 on the financial sector as amended;"
62. "subsidiary" shall mean a subsidiary as defined in point (16) of Article 4(1) of Regulation (EU) No 575/2013;

(Law of 20 May 2021)

- "62a. "material subsidiary" shall mean a material subsidiary as defined in point (135) of Article 4(1) of Regulation (EU) No 575/2013;"
63. "EU subsidiary" shall mean 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;
64. "critical functions" shall mean 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;
65. "own funds" shall mean own funds as defined in point (118) of Article 4(1) of Regulation (EU) No 575/2013;

(Law of 20 May 2021)

- "65a. "Common Equity Tier 1 capital" shall mean Common Equity Tier 1 capital as calculated in accordance with Article 50 of Regulation (EU) No 575/2013;"
66. "intra-group guarantee" shall mean a contract by which one group entity guarantees the obligations of another group entity to a third party;
67. "group" shall mean a parent undertaking and its subsidiaries;

(Law of 20 May 2021)

"67a. "resolution group" shall mean

- a) a resolution entity and its subsidiaries that are not:
- i) resolution entities themselves;
 - ii) subsidiaries of other resolution entities; or
 - iii) entities established in a third country that are not covered by the resolution plan and their subsidiaries; or

- b) credit institutions permanently affiliated to a central body and the central body itself when at least one of those credit institutions or the central body is a resolution entity, and their respective subsidiaries;"
68. "cross-border group" shall mean a group having group entities established in more than one Member State;
69. "sale of business tool" shall mean 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 39;
- "70 "debt instruments":
- b) for the purpose of points (8) and (11) of Article 61(1), shall mean bonds and other forms of transferable debt, instruments creating or acknowledging a debt, and instruments giving rights to acquire debt instruments; and
- c) for the purpose of Article 152, shall mean bonds and other forms of transferable debt and instruments creating or acknowledging a debt;"⁶
71. "Additional Tier 1 instruments" shall mean capital instruments that meet the conditions laid down in Article 52(1) of Regulation (EU) No 575/2013;
72. "Common Equity Tier 1 instruments" shall mean 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;
73. "Tier 2 instruments" shall mean 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 VI of Title II and Chapter VII of Title II, shall mean Additional Tier 1 instruments and Tier 2 instruments;
75. "bridge institution tool" shall mean 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 41;
76. "bail-in tool" shall mean 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 44;
77. "resolution tool" shall mean a resolution tool referred to in Article 38(2);
78. "asset separation tool" shall mean 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 43;
- (Law of 20 May 2021)*
- "79a. "subordinated eligible instruments" shall mean instruments that meet all of the conditions referred to in Article 72a of Regulation (EU) No 575/2013 other than Article 72b(3) to (5) of that regulation;"
79. "derivative" shall mean a derivative as defined in point (5) of Article 2 of Regulation (EU) No 648/2012;
80. "investor" shall mean an investor within the meaning of point (4) of Article 1 of Directive 97/9/EC;
81. "business day" shall mean a day other than a Saturday, a Sunday or a public holiday;
82. "winding up" shall mean the realisation of assets of an institution or entity referred to in point (2), (3) or (4) of Article 2(1);
83. "regulated market" shall mean a regulated market as defined in point (21) of Article 4(1) of 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, hereinafter referred to as "Directive 2014/65/EU";
84. "crisis management measure" shall mean a resolution action or the appointment of a special manager under Article 36 or a person under Article 52(2) or under Article 70(1);

⁶ Law of 25 July 2018

85. "crisis prevention measure" shall mean the exercise of powers to direct removal of deficiencies or impediments to recoverability under Article 6(6) of Directive 2014/59/EU, the exercise of powers to address or remove impediments to resolvability under Article 17 or 18 of that directive, the application of an early intervention measure under Article 27 of that directive, the appointment of a temporary administrator under Article 29 of that directive or the exercise of the write-down or conversion powers under Article 59 of that directive;
86. "resolution action" shall mean the decision to place an institution or entity referred to in point (2), (3) or (4) of Article 2(1) under resolution pursuant to Article 33 or 34, the application of a resolution tool, or the exercise of one or more resolution powers;
87. "micro, small and medium-sized enterprises" shall mean 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;
88. "competent ministries" shall mean finance ministries or other ministries of the Member States which are responsible for economic, financial and budgetary decisions at the national level according to national competencies and which have been designated in accordance with Article 3(5) of Directive 2014/59/EU;
89. "aggregate amount" shall mean the aggregate amount by which the resolution authority has assessed that "bail-inable"⁷ liabilities are to be written down or converted, in accordance with Article 47(1);
90. "resolution objectives" shall mean the resolution objectives referred to in Article 32(2);
91. "'covered bond (*obligation garantie*)"⁸ shall mean a covered bond as defined in point (1) of Article 3 of Directive (EU) 2019/2162 of the European Parliament and of the Council of 27 November 2019 on the issue of covered bonds and covered bond public supervision and amending Directives 2009/65/EC and 2014/59/EU, hereinafter referred to as "Directive (EU) 2019/2162", or, with regard to an instrument that was issued before 8 July 2022, a bond as referred to in Article 52(4) of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), hereinafter referred to as "Directive 2009/65/EC", as applicable on the date of its issue;"⁹
92. "management body" shall mean a management body as defined in point (23a) of Article 1 of the Law of 5 April 1993 on the financial sector, as amended;
93. "third country" shall mean a State that is not a Member State within the meaning of point (60);
94. "resolution plan" shall mean a resolution plan for an institution drawn up in accordance with Section 1 of Chapter I of Title II;
95. "group resolution plan" shall mean a plan for group resolution drawn up in accordance with Articles 12 and 13 of Directive 2014/59/EU;
96. "write-down and conversion powers" shall mean the powers referred to in Article 57(2) and in points (6) to (10) of Article 61(1);
97. "resolution power" shall mean a power referred to in Articles 61 to 70;
98. "transfer powers" shall mean the powers specified in point (4) or (5) of Article 61(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;
99. "third-country resolution proceedings" shall mean 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 Directive 2014/59/EU;
100. "normal insolvency proceedings" shall mean the insolvency proceedings described under Part II of this law;
101. "resolution" shall mean the application of a resolution tool in order to achieve one or more of the resolution objectives referred to in Article 32(2);

⁷ Law of 20 May 2021

⁸ Within the meaning of Directive 2019/2162

⁹ Law of 8 December 2021

102. "group resolution" shall mean 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;
103. "extraordinary public financial support" shall mean 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 (2), (3) or (4) of Article 2(1) or of a group of which such an institution or entity forms part;
104. "asset management vehicle" shall mean a legal person that meets the requirements laid down in Article 43(2);
105. "branch" shall mean a branch as defined in point (17) of Article 4(1) of Regulation (EU) No 575/2013;
106. "EU branch" shall mean a branch located in a Member State of a third-country institution;
107. "significant branch" shall mean 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;
108. "deposit guarantee scheme" shall mean a deposit guarantee scheme introduced and officially recognised by a Member State pursuant to Article 4 of Directive 2014/49/EU;
109. "institutional protection scheme" or "IPS" shall mean an arrangement that meets the requirements laid down in Article 113(7) of Regulation (EU) No 575/2013;
110. "conversion rate" shall mean 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;
111. "instruments of ownership" shall mean 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;
112. "back-to-back transaction" shall mean 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;

For the purposes of applying point (9), Regulation (EU) No 1024/2013 and the role played by the European Central Bank in the single resolution mechanism shall not be taken into account.

(Law of 20 May 2021)

"For the purpose of applying point (62) and Articles 14, 15, 18, 21, 29, 30, 31, 46 to 46-15, 57 to 60, 93, 94, 96 and 97 to resolution groups referred to in letter (b) of point (67a), "subsidiary" also includes, where and as appropriate, credit institutions that are permanently affiliated to a central body, the central body itself, and their respective subsidiaries, taking into account the way in which such resolution groups comply with Article 46-5(3) of this law."

Article 2. Scope

(1) This part lays down rules and procedures relating to the resolution of the following entities:

1. Luxembourg institutions as defined in point (51) of Article 1;
2. financial institutions incorporated under Luxembourg law that are subsidiaries of a credit institution or investment firm, or of a company referred to in letter (c) or (d) of Article 1(1) of Directive 2014/59/EU, and that are 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;
3. financial holding companies incorporated under Luxembourg law, mixed financial holding companies incorporated under Luxembourg law and mixed-activity holding companies incorporated under Luxembourg law;

4. Luxembourg parent financial holding companies, EU parent financial holding companies incorporated under Luxembourg law, Luxembourg parent mixed financial holding companies, EU parent mixed financial holding companies incorporated under Luxembourg law;
5. branches in Luxembourg of institutions that are established or located in a third country in accordance with the specific conditions laid down in this part.

(2) This part shall apply without prejudice to the specific rules introduced by Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010, hereinafter referred to as "Regulation (EU) No 806/2014";

This part and in particular the second subparagraph of Article 33(3) shall apply without prejudice to the rules of EU law relating to State aid.

(3) This part shall also apply to institutions and entities referred to in Article 1(1) of Directive 2014/59/EU which the CSSF will be supervising on a consolidated basis in accordance with a decision taken under letter (d) of Article 49(2) of the Law of 5 April 1993 on the financial sector, as amended.

(Law of 20 July 2022)

"(4) This part shall not apply to entities authorised in accordance with Article 14 of Regulation (EU) No 648/2012."

Article 3. Resolution authority and competent minister

(1) The CSSF is the resolution authority within the meaning of Article 3(1) of Directive 2014/59/EU in Luxembourg. For the purpose of Regulation (EU) No 806/2014, the CSSF is the national resolution authority in Luxembourg within the meaning of point (1) of Article 3(1) of that regulation.

The CSSF shall exercise the tasks and powers conferred on it as the resolution authority by this law through the Resolution Board referred to in Article 4 of the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended.

Any reference to the Resolution Board in this law shall be read as a reference to the CSSF in its capacity as resolution authority in Luxembourg.

(2) The Resolution Board and the Executive Board of the CSSF and the various services and departments reporting to these bodies shall closely cooperate when drawing up, planning and applying the resolution decisions.

To this same end, where applicable, the Resolution Board shall closely cooperate with the European Central Bank.

The Resolution Board shall carry out the resolution functions independently from the supervisory functions of the CSSF.

(3) The Minister responsible for the financial sector is the competent minister to exercise the functions assigned "to the competent ministry"¹⁰ in accordance with Directive 2014/59/EU.

The Resolution Board shall inform, without delay, the Minister responsible for the financial sector of draft decisions which lead, immediately or in the future, to a call for public support, irrespective of the form of support or which may have systemic consequences. These draft decisions shall be subject to prior approval by the Minister responsible for the financial sector.

Where such a decision has systemic implications, the Resolution Board shall inform the Comité du risque systémique (Systemic Risk Committee) thereof.

(4) The supervisory authority and the Resolution Board shall cooperate with the European Banking Authority (hereinafter referred to as the "EBA"), established by Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, hereinafter referred to as "Regulation (EU) No 1093/2010" for the purposes of this part in accordance with Regulation (EU) No 1093/2010.

The supervisory authority and the Resolution Board shall, without delay, provide the EBA with all the information necessary to carry out its duties in accordance with Article 35 of Regulation (EU) No 1093/2010.

¹⁰ Law of 27 February 2018

Article 4. General provisions

(1) When establishing and applying the requirements under this part and when using the different tools at its disposal in relation to an entity referred to in Article 2(1), the Resolution Board and the supervisory authority shall take into account 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.

(2) As regards decisions taken in accordance with this part, the supervisory authority and the Resolution Board 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.

Article 5. Simplified obligations for certain institutions

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(6) 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, the Resolution Board shall determine:

1. the contents and details of resolution plans provided for in Title II, Chapter I;
2. the date by which the first resolution plans are to be drawn up and the frequency for updating resolution plans which may be lower than that provided for in Article 10 and Article 19;
3. the contents and details of the information required from institutions as provided for in Article 8(1) and Article 15(4) and in Section A of Annex 1;
4. the level of detail for the assessment of resolvability provided for in Title II, Chapter II, Section I, and in Section B of Annex 1.

The Resolution Board shall make the assessment referred to in the first subparagraph after consulting, where appropriate, the Comité du risque systémique (Systemic Risk Committee).

Where simplified obligations are applied, the Resolution Board can impose unsimplified obligations at any time.

The application of simplified obligations shall not, per se, affect the Resolution Board powers to take a crisis prevention measure or a crisis management measure.

The Resolution Board shall inform the EBA of the way it applied the first subparagraph and Article 6 to institutions.

Article 6. Exemptions

(1) Subject to paragraphs 2 and 3, the Resolution Board may exempt 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 from the application of the requirements of Title II, Chapter I.

(2) Where a waiver pursuant to paragraph 1 is granted, the requirements of Title II, Chapter I, shall apply 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.

For that purpose, any reference in Title II, Chapter I, 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 shall include the central body.

(3) The possibility of waiver referred to in paragraphs 1 and 2 shall not apply to the 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 Luxembourg financial system.

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

1. the total value of its assets exceeds EUR 30,000,000,000; or
2. the ratio of its total assets over the GDP of Luxembourg exceeds 20%, unless the total value of its assets is below EUR 5,000,000,000.

TITLE II Resolution

Chapter I - Resolution planning

Section I - Resolution planning for an institution on an individual basis

Article 7. Resolution plans

(1) The Resolution Board, after consulting the supervisory 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 49(1) and 50-1(1) of the Law of 5 April 1993 on the financial sector, as amended.

(2) The Resolution Board may require institutions to assist it in the drawing up and updating of the plans.

Article 8. Information for the purpose of resolution plans and cooperation from the institution

(1) The Resolution Board shall have the power to require institutions to:

1. cooperate as much as necessary in the drawing up of resolution plans;
2. provide it, either directly or through the supervisory authority, with all of the information necessary to draw up and implement resolution plans.

In particular, the Resolution Board shall have the power to require, among other information, the information and analysis specified in Section A of Annex 1.

(2) The supervisory authority shall cooperate with the Resolution Board in order to determine whether it already has some or all of the information referred to in paragraph 1. Where such information is available, the supervisory authority shall provide that information to the Resolution Board.

Where this information is not communicated within the time limit it set, the Resolution Board shall require the institutions to provide it directly with this information.

Article 9. Contents of resolution plans

(1) The resolution plan referred to in Article 7 shall provide for the resolution actions which the Resolution Board may take where the institution meets the conditions for resolution. Information referred to in point (1) of paragraph 4 shall be disclosed to the institution concerned.

(2) 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 dismiss the following assumptions:

1. any extraordinary public financial support besides the use of the financing arrangements established in accordance with Article 105;
2. any central bank emergency liquidity assistance; or
3. any central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms.

(3) 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.

(4) Without prejudice to Articles 5 and 6, the resolution plan shall set out options for applying the resolution tools and resolution powers referred to in Chapters III to XI to the institution. It shall include, quantified whenever appropriate and possible:

1. a summary of the key elements of the plan;
2. a summary of the material changes to the institution that have occurred after the latest resolution information was filed;

3. 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;
4. an estimation of the timeframe for executing each material aspect of the plan;
5. a detailed description of the assessment of resolvability carried out in accordance with Article 11 and Article 26;
6. a description of any measures required pursuant to Article 29 to address or remove impediments to resolvability identified as a result of the assessment carried out in accordance with Article 26;
7. a description of the processes for determining the value and marketability of the critical functions, core business lines and assets of the institution;
8. a detailed description of the arrangements for ensuring that the information required pursuant to Article 8 is up to date and at the disposal of the Resolution Board at all times;
9. an explanation by the Resolution Board as to how the resolution options could be financed 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 105;
 - b) any central bank emergency liquidity assistance; or
 - c) any central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms;
10. a detailed description of the different resolution strategies that could be applied according to the different possible scenarios and the applicable timescales;
11. a description of critical interdependencies;
12. a description of options for preserving access to payments and clearing services and other infrastructures and, an assessment of the portability of client positions;
13. an analysis of the impact of the plan on the employees of the institution drawn up after consulting the representatives of the employees and the employer. This analysis shall include, among other, an assessment of any associated costs and a description of envisaged procedures to consult staff during the resolution process;
14. a plan for communicating with the media and the public;
15. the requirements referred to in Articles 46-5 and 46-6 and a deadline to reach that level in accordance with Articles 46-15 or 212-1;
16. where the Resolution Board applies Article 46-2(4), (5) or (7), a timeline for compliance by the resolution entity in accordance with Articles 46-15 or 212-1;¹¹
17. a description of essential operations and systems for maintaining the continuous functioning of the institution's operational processes;
18. where applicable, any opinion expressed by the institution in relation to the resolution plan.

Article 10. Review of resolution plans

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 supervisory authority shall promptly communicate to the Resolution Board any change that necessitates such a revision or update.

(Law of 20 May 2021)

"The review referred to in the first subparagraph shall be carried out after the implementation of resolution actions or the exercise of powers referred to in Article 57.

When setting the deadlines referred to in points (15) and (16) of Article 9(4) in the circumstances referred to in the third subparagraph of this article, the Resolution Board shall take into account the

¹¹ Law of 20 May 2021

deadline to comply with the requirement referred to in Article 53-4 of the Law of 5 April 1993 on the financial sector as amended.”

Article 11. Impediments to resolvability

When drawing up the resolution plan, the Resolution Board 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.

Article 12. Records of financial contracts

The Resolution Board shall have the power to require an institution and an entity referred to in point (2), (3) or (4) of Article 2(1) to maintain detailed records of financial contracts to which it is a party. The Resolution Board may specify a time limit within which the institution or entity referred to in point (2), (3) or (4) of Article 2(1) is to be capable of producing those records. The same time limit shall apply to all institutions and all entities referred to in points (2), (3) and (4) of Article 2(1). The Resolution Board may decide to set different time limits for different types of financial contracts as referred to in Article 1(30). This paragraph shall not affect the information gathering powers of the competent authority.

Section II - Group resolution planning where the Resolution Board acts as the group-level resolution authority

Article 13. Scope

This section shall apply where the Resolution Board acts as group-level resolution authority as defined in Article 1(9).

Article 14. Group resolution plans

In the framework of resolution colleges, the Resolution Board shall, together with the resolution authorities referred to in Article 16(2) 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 keep up to date group resolution plans.

The Resolution Board may, at its discretion, and subject to meeting the confidentiality requirements laid down in Article 104, 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.

Article 15. Contents of group resolution plans

(1) (...) ¹² The group resolution plan “referred to in Article 14” ¹³ shall identify measures “with regard to” ¹⁴:

1. the EU parent undertaking;
2. the subsidiaries that are part of the group and that are located in the EU;
3. the entities referred to in points (3) and (4) of Article 2(1); and
4. subject to Chapter XIII, the subsidiaries that are part of the group and that are located outside the EU.

(Law of 20 May 2021)

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

(2) The group resolution plan shall:

- “1. set out the resolution actions that are to be taken for resolution entities in the scenarios referred to in Article 9(2), and the implications of those resolution actions in respect of other group entities referred to in points (2), (3) and (4) of Article 2(1), the parent undertaking and subsidiary institutions;” ¹⁵

(Law of 20 May 2021)

- “1a. where a group comprises more than one resolution group, set out the resolution actions that are to be taken for the resolution entities of each resolution group and the

¹² Law of 20 May 2021

¹³ Law of 20 May 2021

¹⁴ Law of 20 May 2021

¹⁵ Law of 20 May 2021

implications of those actions on both of the following:

- a) other group entities that belong to the same resolution group;
 - b) other resolution groups;"
2. examine the extent to which the resolution tools and powers could be applied and exercised in a coordinated way to "resolution entities"¹⁶ established in the EU, including measures to facilitate the purchase by a third party of the group as a whole, or separate business lines or activities that are delivered by a number of group entities, or particular group entities "or particular resolution groups"¹⁷, and identify any potential impediments to a coordinated resolution;
 3. 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 EU;
 4. 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;
 5. set out any additional actions, not referred to in this law "or in Directive 2014/59/EU, which the relevant resolution authorities intend to take in relation to the entities within each resolution group"¹⁸;
 6. 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. Those principles shall be set out on the basis of equitable and balanced criteria and shall take into account, in particular Article 112(5) and the impact on financial stability in all Member States concerned. The resolution plan shall dismiss the following assumptions:
 - a) any extraordinary public financial support besides the use of the financing arrangements established in accordance with Article 105;
 - b) any central bank emergency liquidity assistance; or
 - c) any central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms.
- (3) The group resolution plan shall not have a disproportionate impact on any Member State.
- (4) The group resolution plan shall be drawn up on the basis of the information provided pursuant to Article 8.

Article 16. Information communication

(1) Where the Resolution Board acts as the group-level resolution authority, the EU parent undertaking shall submit the information that may be required in accordance with Article 8 to the Resolution Board. That information shall concern the EU parent undertaking and to the extent required each of the group entities including entities referred to in points (3) and (4) of Article 2(1).

(2) The Resolution Board shall, provided that the receiving authority is subject to and complies with confidentiality requirements which are at least equivalent to those laid down in Article 104, transmit the information it received in accordance with paragraph 1 to:

1. the EBA;
2. the resolution authorities of subsidiaries;
3. the resolution authorities of the jurisdictions in which significant branches are located insofar as is relevant to the significant branch;
4. the relevant competent authorities referred to in Articles 115 and 116 of Directive 2013/36/EU; and
5. the resolution authorities of the Member States where the entities referred to in points (3) and (4) of Article 2(1) are established.

¹⁶ Law of 20 May 2021

¹⁷ Law of 20 May 2021

¹⁸ Law of 20 May 2021

(3) The information provided by the Resolution Board 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 the EBA shall include all information that is relevant to the role of the EBA in relation to group resolution plans.

The Resolution Board shall not be obliged to transmit information relating to third-country subsidiaries that it received from the third-country authorities concerned without the consent of the latter.

Article 17. Adoption of group resolution plans

(1) The adoption of the group resolution plan shall take the form of a joint decision of the Resolution Board and the resolution authorities of subsidiaries.

(Law of 20 May 2021)

“Where a group is composed of more than one resolution group, the planning of the resolution actions referred to in point (1a) of Article 15(2) shall be included in a joint decision as referred to in the first subparagraph.”

The joint decision shall be made within four months of the date of the transmission by the Resolution Board of the information referred to in Article 16.

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

(2) In the absence of a joint decision between the resolution authorities within four months, the Resolution Board 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 EU parent undertaking by the Resolution Board.

Subject to paragraph 5, if, before the adoption of a joint decision and before the end of the four-month period, any resolution authority has referred the matter to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the Resolution Board shall defer its decision and await any decision that the EBA may take in accordance with Article 19(3) of that regulation, and shall take its decision in accordance with the decision of the EBA. The four-month period shall be deemed to be the conciliation period within the meaning of that regulation. In the absence of an EBA decision within one month, the Resolution Board shall make its own decision which shall apply.

(3) The Resolution Board and the other resolution authorities which do not disagree under Article 13(6) of Directive 2014/59/EU may reach a joint decision on a group resolution plan covering group entities under their jurisdictions.

(4) The joint decisions referred to in paragraphs 1 and 3 and the decisions taken by the resolution authorities in the absence of a joint decision referred to in paragraph 2 and Article 13(6) of Directive 2014/59/EU shall be recognised as conclusive and applicable by the Resolution Board.

(5) In accordance with paragraph 2, the Resolution Board may request the EBA to 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.

(6) Where joint decisions are taken pursuant to paragraphs 1 and 3 and where a resolution authority assesses under Article 13(9) of Directive 2014/59/EU that the subject matter of a disagreement regarding group resolution plans impinges on the fiscal responsibilities of its Member State, the Resolution Board shall initiate a reassessment of the group resolution plan, including the minimum requirement for own funds and eligible liabilities.

Article 18. Assessment of resolvability of the group

The assessment of the resolvability of the group under Section I of Chapter II shall be carried out at the same time as the drawing up and updating of the group resolution plan in accordance with Article 15. A detailed description of the assessment of resolvability carried out in accordance with Section I of Chapter II shall be included in the group resolution plan.

Article 19. Reassessment of group resolution plans

Group resolution plans shall be 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.

Section III - Group resolution planning where the Resolution Board acts as the resolution authority of a subsidiary or of a significant branch

Article 20. Scope

This section shall apply where the Resolution Board acts as the resolution authority of a subsidiary that is covered by a group resolution plan or the resolution authority of a significant branch covered by a group resolution plan.

Article 21. Contribution to the drawing up of the resolution plan

(1) Where the Resolution Board acts as the resolution authority of a subsidiary covered by the group resolution plan, or the resolution authority of a significant branch covered by a group resolution plan, the Resolution Board shall contribute to the drawing up of these group resolution plans together with the group-level resolution authority.

(2) In the framework of resolution colleges, the Resolution Board shall contribute to the drawing up of and keep up to date the group resolution plans together with the group-level resolution authority and the other resolution authorities concerned and after consulting the supervisory authority.

(3) The Resolution Board shall ensure that the principles for sharing responsibility for the financing referred to in letter (f) of Article 12(3) of Directive 2014/59/EU between sources of funding in different Member States are set out on the basis of equitable and balanced criteria and shall take into account, in particular Article 112(5) and the impact on financial stability in all Member States concerned. The Resolution Board shall also ensure that the group resolution plan does not have a disproportionate impact on Luxembourg.

Article 22. Participation in the adoption of the group resolution plan

(1) The Resolution Board shall receive and analyse the information submitted to it in accordance with Article 13(1) of Directive 2014/59/EU.

(2) The Resolution Board shall attempt together with the group-level resolution authority and the other resolution authorities to adopt a group resolution plan by making a joint decision within four months of the date of the transmission by the group-level authority of the information referred to in Article 13(1) of Directive 2014/59/EU.

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

(3) During this four-month period, the Resolution Board may refer the matter to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, provided that no joint decision was adopted.

(4) The Resolution Board and the other resolution authorities which do not disagree under Article 13(6) of Directive 2014/59/EU may reach a joint decision on a group resolution plan covering group entities under their jurisdictions.

(5) The joint decisions referred to in paragraphs 2 and 4 shall be recognised as conclusive and applied by the Resolution Board.

(6) In accordance with paragraph 3, the Resolution Board may request the EBA to 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.

(7) Where joint decisions are taken pursuant to paragraphs 2 and 4 and where the Resolution Board assesses under paragraph 6 that the subject matter of a disagreement regarding group resolution plans impinges on the Luxembourg fiscal responsibilities, the Resolution Board shall request the initiation of a reassessment of the group resolution plan, including the minimum requirement for own funds and eligible liabilities.

Article 23. Adoption of an individual decision

(1) In the absence of a joint decision between the resolution authorities within four months, the Resolution Board shall make its own decision “and, where appropriate, identify the resolution entity”¹⁹ and shall draw up and maintain a resolution plan “for the resolution group composed of entities”²⁰ for which it is responsible.

This individual decision shall be fully reasoned, shall set out the reasons of disagreement with the proposed group resolution plan and shall take into account the views and reservations of the other competent authorities and resolution authorities. The Resolution Board shall notify its decision to the other members of the resolution college.

(2) If, before the adoption of a joint decision and before the end of the four-month period, any resolution authority, referred to in Article 13(4) of Directive 2014/59/EU, has referred the matter to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the Resolution Board shall defer its decision and await any decision that the EBA may take in accordance with Article 19(3) of that regulation, and shall take its decision in accordance with the decision of the EBA. The four-month period shall be deemed to be the conciliation period within the meaning of that regulation. In the absence of an EBA decision within one month, the Resolution Board shall make its decision which shall apply.

(3) Paragraph 2 shall not apply, where the Resolution Board assesses that the subject matter of disagreement may in any way impinge on the fiscal responsibilities of Luxembourg.

Section IV - Transmission of resolution plans to the competent authorities

Article 24. Transmission of resolution plans to the competent authorities

The Resolution Board shall transmit the resolution plans referred to in Article 7 and any changes thereto to the supervisory authority.

Article 25. Transmission of group resolution plans to the competent authorities

The Resolution Board, where it acts as the group-level resolution authority, shall transmit the group resolution plans referred to in Article 14 and any changes thereto to the supervisory authority and to the other relevant competent authorities.

Chapter II - Resolvability

Section I - Assessment of resolvability

Article 26. Assessment of resolvability for institutions

(1) The Resolution Board shall, after consulting the supervisory authority 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 an institution which is not part of a group is resolvable without the assumption of any of the following:

1. any extraordinary public financial support besides the use of the financing arrangements established in accordance with Article 105;
2. any central bank emergency liquidity assistance;
3. 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 may credibly be liquidated under normal insolvency proceedings or be resolved by applying the different resolution tools and powers that the Resolution Board has at its disposal. The Resolution Board shall avoid, as far as possible, any significant adverse effect on the financial system, including circumstances of broader financial instability or system-wide events, of Luxembourg, other Member States or the European Union as a whole with a view to ensuring the continuity of critical functions carried out by the institution. The Resolution Board shall notify the 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 Board shall, as a minimum, examine the matters specified in Section B of Annex 1.

(3) The resolvability assessment under this article shall be made by the Resolution Board at the same time as and for the purposes of the drawing up and updating of the resolution plan.

¹⁹ Law of 20 May 2021

²⁰ Law of 20 May 2021

Article 27. Assessment of resolvability for groups where the Resolution Board acts as the group-level resolution authority

(1) This article shall apply where the Resolution Board acts as the group-level resolution authority.

(2) The Resolution Board, shall together with the resolution authorities of subsidiaries, after consulting the supervisory authority 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:

1. any extraordinary public financial support besides the use of the financing arrangements established in accordance with Article 105;
2. any central bank emergency liquidity assistance;
3. any central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms.

A group shall be deemed to be resolvable if the group entities may credibly be liquidated under normal insolvency proceedings or be resolved by applying the different resolution tools and powers that the Resolution Board has at its disposal. The Resolution Board shall avoid, as far as possible, any significant adverse effect on the financial system, including in circumstances of broader financial instability or system-wide events, of Luxembourg, the Member States in which group entities "or branches"²¹ are established, or other Member States or the European Union with a view to ensuring the continuity of critical functions carried out by the group entities, where they can be easily separated in a timely manner or by other means. The Resolution Board shall notify the EBA in a timely manner whenever a group is deemed not to be resolvable.

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

(3) For the purposes of the assessment of group resolvability, the Resolution Board shall, as a minimum, examine the matters specified in Section B of Annex 1.

(4) The assessment of group resolvability under this article shall be made at the same time as, and for the purposes of the drawing up and updating of the group resolution plans. The assessment shall be made under the decision-making procedure laid down in Article 17.

(Law of 20 May 2021)

"(5) Where a group is composed of more than one resolution group, the Resolution Board, together with the other resolution authorities concerned, shall assess the resolvability of each resolution group in accordance with this article.

The assessment referred to in the first subparagraph shall be performed in addition to the assessment of the resolvability of the entire group and shall be made with the decision-making procedure laid down in Article 17(1)."

Article 28. Assessment of resolvability for groups where the Resolution Board acts as the resolution authority of a subsidiary or of a significant branch

(1) This article shall apply where the Resolution Board acts as the resolution authority of an institution that is a subsidiary or a significant branch of a group whose resolvability is assessed.

(2) The Resolution Board shall contribute jointly with the group-level authority to the assessment of the extent to which a group is resolvable after consulting the supervisory authority in accordance with the criteria set out in paragraphs 2 and 3 of Article 27.

(Law of 20 May 2021)

"(3) Where a group is composed of more than one resolution group, the Resolution Board shall assess the resolvability of each resolution group in accordance with the criteria laid down in Article 27(2) and (3).

The assessment referred to in the first subparagraph shall be performed in addition to the assessment of the resolvability of the entire group and shall be made with the decision-making procedure laid down in Article 22(2)."

²¹ Law of 20 May 2021

Section II - Addressing or removing impediments to resolvability

Article 29. Powers to address or remove impediments to resolvability “of an entity”²²

(1) When, pursuant to an assessment of resolvability “for an entity referred to in Article 2(1)²³ carried out in accordance with “Articles 26 and 27”²⁴, the Resolution Board after consulting the supervisory authority determines that there are substantive impediments to the resolvability of “that entity”²⁵, the Resolution Board shall notify in writing that determination to “the entity concerned”²⁶, to the supervisor and to the resolution authorities of the jurisdictions in which significant branches are located.

(2) The requirement for the Resolution Board to draw up resolution plans referred to in Article 7(1) shall be suspended following the notification referred to in paragraph 1, until the measures to remove the substantive impediments to resolvability have been accepted by the Resolution Board pursuant to paragraph 3 or decided pursuant to paragraph 4.

(3) Within four months of the date of receipt of a notification made in accordance with paragraph 1, “an entity referred to in Article 2(1)”²⁷ shall propose to the Resolution Board possible measures to address or remove the substantive impediments identified in the notification.

(Law of 20 May 2021)

“The entity concerned shall, within two weeks of the date of receipt of a notification made in accordance with paragraph 1 of this article, propose to the Resolution Board possible measures and the timeline for their implementation to ensure that the entity complies with Article 46-5 or 46-6 of this law and the combined buffer requirement, where a substantive impediment to resolvability is due to either of the following situations:

1. the entity meets the combined buffer requirement when considered in addition to each of the requirements referred to points (1), (2) and (3) of Article 59-13a of the Law of 5 April 1993 on the financial sector, as amended, but it does not meet the combined buffer requirement when considered in addition to the requirements referred to in Articles 46-3 and 46-4 of this law when calculated in accordance with point (1) of Article 46(2) of this law; or
2. the entity does not meet the requirements referred to in Articles 92a and 494 of Regulation (EU) No 575/2013 or the requirements referred to in Articles 46-3 and 46-4 of this law.

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

The Resolution Board, after consulting the supervisory authority, shall assess whether those measures sufficiently address or effectively remove the substantive impediments in question.

(4) Where the Resolution Board assesses that the measures proposed by an “entity”²⁸ in accordance with paragraph 3 sufficiently reduce or effectively remove the impediments in question, it shall require the “entity”²⁹ to implement these measures without undue delay.

Where the Resolution Board assesses that the measures proposed by an “entity”³⁰ in accordance with paragraph 3 do not sufficiently reduce or effectively remove the impediments in question, it shall, either directly or indirectly through the supervisory authority, require the “entity”³¹ to take alternative measures that may achieve that objective, and notify in writing those measures to the “entity”³². The “entity”³³ shall propose, within one month, a plan to comply with them.

In identifying alternative measures, the Resolution Board shall demonstrate how the measures proposed by the “entity”³⁴ would not be able to remove the impediments to resolvability and how the alternative measures proposed are proportionate in removing them. The Resolution Board shall take

²² Law of 20 May 2021

²³ Law of 20 May 2021

²⁴ Law of 20 May 2021

²⁵ Law of 20 May 2021

²⁶ Law of 20 May 2021

²⁷ Law of 20 May 2021

²⁸ Law of 20 May 2021

²⁹ Law of 20 May 2021

³⁰ Law of 20 May 2021

³¹ Law of 20 May 2021

³² Law of 20 May 2021

³³ Law of 20 May 2021

³⁴ Law of 20 May 2021

into account the threat to financial stability of those impediments to resolvability and the effect of the measures on the business of the “entity”³⁵, its stability and its ability to contribute to the economy.

(5) For the purposes of paragraph 4, the Resolution Board shall have the power to take any of the following measures:

1. require the “entity”³⁶ to revise any intra-group 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;
2. require the “entity”³⁷ to limit its maximum individual and aggregate exposures;
3. impose specific or regular additional information requirements relevant for resolution purposes;
4. require the “entity”³⁸ to divest specific assets;
5. require the “entity”³⁹ to limit or cease specific existing or proposed activities;
6. restrict or prevent the development of new or existing business lines or sale of new or existing products;
7. require changes to legal or operational structures of the “entity”⁴⁰ 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;
8. require an “entity”⁴¹ or a parent undertaking to set up a parent financial holding company in Luxembourg or an EU parent financial holding company incorporated under Luxembourg law;

(Law of 20 May 2021)

- “8a. require an institution or an entity referred to in point (2), (3) or (4) of Article 2(1) of this law to submit a plan to restore compliance with the requirements of Articles 46-5 or 46-6 of this law, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 and, where applicable, with the combined buffer requirement and with the requirements referred to in Article 46-5 or 46-6 of this law, expressed as a percentage of the total exposure measure referred to in Articles 429 and 429a of Regulation (EU) No 575/2013;”
9. require an institution or entity referred to in point (2), (3) or (4) of Article 2(1) to issue eligible liabilities to meet the requirements of “Article 46-5 or Article 46-6 of this law”⁴²;
 10. require an institution or entity referred to in point (2), (3) or (4) of Article 2(1), to take other steps to meet the minimum requirement for own funds and eligible liabilities under “Article 46-5 or Article 46-6”⁴³, including in particular to attempt to renegotiate any eligible liability, additional Tier 1 instrument or Tier 2 instrument it has issued, with a view to ensuring that any decision of the Resolution Board to write down or convert that liability or instrument would be effected under the Law of the jurisdiction governing that liability or instrument; and

(Law of 20 May 2021)

- “10a. for the purpose of ensuring ongoing compliance with Article 46-5 or Article 46-6, require an institution or entity referred to in point (2), (3) or (4) of Article 2(1) of this law, to change the maturity profile of:
- a) own funds instruments, after having obtained the agreement of the supervisory authority, and
 - b) eligible liabilities referred to in Article 46-2 and point (1) of Article 46-6(2);”

³⁵ Law of 20 May 2021

³⁶ Law of 20 May 2021

³⁷ Law of 20 May 2021

³⁸ Law of 20 May 2021

³⁹ Law of 20 May 2021

⁴⁰ Law of 20 May 2021

⁴¹ Law of 20 May 2021

⁴² Law of 20 May 2021

⁴³ Law of 20 May 2021

11. where an “entity”⁴⁴ is the subsidiary of a mixed-activity holding company, requiring that the mixed-activity holding company set up a separate financial holding company to control the “entity”⁴⁵, if necessary in order to facilitate the resolution of the “entity”⁴⁶ and to avoid the application of the resolution tools and powers referred to in Chapters III to XI having an adverse effect on the non-financial part of the group.

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

1. it shall be supported by reasons for the assessment or determination in question;
2. it shall indicate how that assessment or determination complies with the requirement for proportionate application laid down in paragraph 4; and
3. it may be subject to proceedings for annulment before the *Tribunal administratif* (Administrative Tribunal).

(7) Before identifying any measure referred to in paragraph 4, the Resolution Board, after consulting the supervisory authority and, if appropriate, the Comité du risque systémique (Systemic Risk Committee), shall duly consider the potential effect of those measures on the particular “entity”⁴⁷, on the internal market for financial services, on the financial stability in Luxembourg, in other Member States and in the European Union as a whole.

(8) If, within four months of the date of receipt of a notification made in accordance with paragraph 1, the “entity”⁴⁸ does not propose to the Resolution Board possible measures to address or remove the substantive impediments identified in the notification, the first sentence of the second subparagraph of paragraph 4 and paragraphs 5 to 7 shall apply.

Article 30. Powers to address or remove impediments to resolvability in relation to group treatment where the Resolution Board acts as group-level resolution authority

(1) This article shall apply where the Resolution Board acts as the group-level resolution authority.

(2) When, pursuant to the assessment of resolvability carried out in accordance with Article 27 the Resolution Board, after consulting the supervisory authority, determines that there are substantive impediments to the resolvability of the group, the Resolution Board shall, in cooperation with the supervisor and, pursuant to Article 25(1) of Regulation (EU) No 1093/2010 in cooperation with the EBA, prepare and submit a report to the EU parent undertaking and to the resolution authorities of subsidiaries which will provide it to the subsidiaries under their supervision, and to the resolution authorities of jurisdictions in which significant branches are located. The report shall analyse the substantive impediments to the effective application of the resolution tools and the exercising of the resolution powers in relation to the group”, and also in relation to resolution groups where a group is composed of more than one resolution group”⁴⁹. The report shall consider the impact on the business model and recommend any proportionate and targeted measures that, in the Resolution Board’s view, are necessary or appropriate to remove those impediments.

(Law of 20 May 2021)

“Where an impediment to the resolvability of the group is due to a situation referred to in the second subparagraph of Article 29(3), the Resolution Board shall notify its assessment of that impediment to the EU parent undertaking after consulting the resolution authority of the resolution entity, where the authority is different, and the resolution authorities of its subsidiary institutions.”

(3) Within four months of the date of receipt of the report, the EU parent undertaking may submit observations and propose to the Resolution Board alternative measures to remedy the impediments identified in the report.

(Law of 20 May 2021)

“Where the impediments identified in the report are due to a situation referred to in the second subparagraph of Article 29(3), the EU parent undertaking shall, within two weeks of the date of receipt of a notification made in accordance with the second subparagraph of paragraph 2 of this article, propose to the Resolution Board possible measures and the timeline for their implementation to ensure that the group entity complies with the requirements referred to in Article 46-5 or 46-6 of this law expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 and, where applicable, with the combined buffer

⁴⁴ Law of 20 May 2021

⁴⁵ Law of 20 May 2021

⁴⁶ Law of 20 May 2021

⁴⁷ Law of 20 May 2021

⁴⁸ Law of 20 May 2021

⁴⁹ Law of 20 May 2021

requirement, and with the requirements referred to in Article 46-5 and 46-6 of this law expressed as a percentage of the total exposure measure referred to in Articles 429 and 429a of Regulation (EU) No 575/2013.

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

(4) The Resolution Board shall communicate any measure proposed by the EU parent undertaking to the supervisory authority, the EBA, the resolution authorities of the subsidiaries and the resolution authorities of the jurisdictions in which significant branches are located insofar as is relevant to the significant branch.

(5) The Resolution Board and the resolution authorities of the subsidiaries, after consulting the supervisory authority and the other competent authorities concerned and the resolution authorities of jurisdictions in which significant branches are located, shall do everything within their power to reach a joint decision within the resolution college regarding the identification of the material impediments, and if necessary, the assessment of the measures proposed by the EU parent undertaking and, by taking into account the assessment required under Article 27 within the resolution college, the measures required by the authorities in order to address or remove the impediments, which shall take into account the potential impact of the measures in all the Member States where the group operates. This decision may provide that one or several measures within the meaning of Article 29(5) are taken at the level of “one or several resolution entities of the group, at the level of their subsidiaries which are entities referred to in Article 2(1) and are part of the group”⁵⁰ or at group-level as a whole.

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

The joint decision concerning the impediment to resolvability due to a situation referred to in the second subparagraph of Article 29(3) shall be reached within two weeks of the submission of any observations by the EU parent undertaking in accordance with paragraph 3 of this article.

The joint decision shall be reasoned and set out in a document which shall be provided by the Resolution Board to the EU parent undertaking.”⁵¹

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

(7) In the absence of a joint decision within the “relevant”⁵² period referred to in paragraph 6, the Resolution Board shall make its own decision on the appropriate measures to be taken in accordance with Article 29(4) at the group level.

The decision shall be fully reasoned and shall take into account the views and reservations of other resolution authorities. The decision shall be provided to the EU parent undertaking by the Resolution Board.

If, before the adoption of a joint decision and before the end of the “relevant period referred to in paragraph 6”⁵³, any resolution authority has referred the matter mentioned in paragraph 8 to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the Resolution Board shall defer its decision and await any decision that the EBA may take in accordance with Article 19(3) of that regulation, and shall take its decision in accordance with the decision of the EBA. The “relevant period referred to in paragraph 6”⁵⁴ shall be deemed to be the conciliation period within the meaning of that regulation. In the absence of an EBA decision within one month, the Resolution Board shall make a decision which shall apply.

(8) In the absence of a joint decision on the taking of any measures referred to in point (7), (8) or (11) of Article 29(5), the Resolution Board may request the EBA to assist the resolution authorities in reaching an agreement in accordance with Article 19(3) of Regulation (EU) No 1093/2010.

⁵⁰ Law of 20 May 2021

⁵¹ Law of 20 May 2021

⁵² Law of 20 May 2021

⁵³ Law of 20 May 2021

⁵⁴ Law of 20 May 2021

(9) The procedure of joint decision on group resolution plans referred to in Article 14 shall be suspended throughout the procedure referred to in paragraphs 2 to 8 until the substantive impediments to resolvability have been removed or at least addressed.

Article 31. Powers to address or remove impediments to resolvability where the Resolution Board acts as resolution authority of a subsidiary or a significant branch

(1) This article shall apply where the Resolution Board acts as resolution authority of a subsidiary which is part of a group whose resolvability is assessed or of a significant branch of such a group.

(2) The Resolution Board shall submit the report, analysing the substantive impediments to the effective application of the resolution tools and the exercising of the resolution powers in relation to the group, to the subsidiaries concerned referred to in paragraph 1.

(3) The Resolution Board shall do everything within its power to reach, together with the group-level resolution authority and the other resolution authorities within the resolution college, a joint decision regarding the identification of the material impediments, and if necessary, the assessment of the measures proposed by the EU parent undertaking and the measures required by the authorities in order to address or remove the impediments, which shall take into account the potential impact of the measures in all the Member States where the group operates.

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

(Law of 20 May 2021)

“(3a) This paragraph shall apply where the subsidiary is a resolution entity.

In the absence of a joint decision within the relevant period referred to in Article 18(5) of Directive 2014/59/EU, the Resolution Board shall make its own decision on the appropriate measures to be taken in accordance with Article 29(4) at the resolution group level.

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

If, before the adoption of a joint decision and before the end of the relevant period referred to in Article 18(5) of Directive 2014/59/EU, a resolution authority has referred the matter mentioned in Article 18(9) of Directive 2014/59/EU to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the Resolution Board shall defer its decision referred to in the second subparagraph and await any decision that the EBA may take in accordance with Article 19(3) of that regulation, and shall take its decision in accordance with the decision of the EBA. The relevant period referred to in paragraph 6 of this article shall be deemed to be the conciliation period within the meaning of Regulation (EU) No 1093/2010. In the absence of an EBA decision within one month, the Resolution Board shall make its decision which shall be applicable.”

(Law of 20 May 2021)

(4) “This paragraph shall apply where the subsidiary is not a resolution entity.”

In the absence of a joint decision, the Resolution Board shall make itself the decisions on the appropriate measures to be taken by the subsidiaries referred to in paragraph 1 “and which are not resolution entities”⁵⁵ at individual level. The decisions shall be fully reasoned and shall take into account the views and reservations of other resolution authorities. The decisions shall be provided to the subsidiaries concerned and “to the resolution entity of the same resolution group, to the resolution authority of that resolution entity and, where different,”⁵⁶ to the group-level resolution authority.

If, before the adoption of a joint decision and before the end of the “relevant period referred to in Article 18(5) of Directive 2014/59/EU”⁵⁷, any resolution authority has referred the matter mentioned in Article 18(9) of Directive 2014/59/EU to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the Resolution Board shall defer its decision and await any decision that the EBA may take in accordance with Article 19(3) of that regulation, and shall take its decision in accordance with the decision of the EBA. The “relevant period referred to in Article 18(5) of Directive 2014/59/EU”⁵⁸ shall be deemed to be the conciliation period within the meaning of that regulation. In the absence of

⁵⁵ Law of 20 May 2021

⁵⁶ Law of 20 May 2021

⁵⁷ Law of 20 May 2021

⁵⁸ Law of 20 May 2021

an EBA decision within one month, the Resolution Board shall make its decision which shall be applicable.

(5) In the absence of a joint decision on the taking of any measures referred to in point (7), (8) or (11) of Article 29(5), the Resolution Board may request the EBA, in accordance with paragraph 6 or 7 of Article 18 of Directive 2014/59/EU, to assist the resolution authorities in reaching an agreement in accordance with Article 19(3) of Regulation (EU) No 1093/2010.

(6) In the absence of a joint decision, the decision taken by the group-level resolution authority and the other resolution authorities in accordance with paragraphs 5 and 6 of Article 18 of Directive 2014/59/EU shall be deemed conclusive and applicable by the Resolution Board.

(7) The procedure of joint decision on group resolution plans shall be suspended throughout the procedure referred to in this article until the substantive impediments to resolvability have been removed or at least addressed.

(Law of 20 May 2021)

"Article 31-1. Power to prohibit certain distributions

(1) Where an entity is in a situation where it meets the combined buffer requirement when considered in addition to each of the requirements referred to in points (1), (2) and (3) of Article 59-13a of the Law of 5 April 1993 on the financial sector, as amended, but it fails to meet the combined buffer requirement when considered in addition to the requirements referred to in Articles 46-3 and 46-4 of this law, when calculated in accordance with point (1) of Article 46(2) of this law, the Resolution Board shall have the power, in accordance with paragraphs 2 and 3 of this article, to prohibit this entity from distributing more than the Maximum Distributable Amount related to the minimum requirement for own funds and eligible liabilities ("M-MDA"), calculated in accordance with paragraph 4 of this article, through any of the following actions:

1. make a distribution in connection with Common Equity Tier 1 capital;
2. create an obligation to pay variable remuneration or discretionary pension benefits, or to pay variable remuneration if the obligation to pay was created at a time when the entity failed to meet the combined buffer requirement; or
3. make payments on Additional Tier 1 instruments.

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

(2) In the situation referred to in paragraph 1, the Resolution Board, after consulting the supervisory authority, shall without unnecessary delay assess whether to exercise the power referred to in paragraph 1, taking into account all of the following elements:

1. the reason, duration and magnitude of the failure and its impact on resolvability;
2. the development of the entity's financial situation and the likelihood of it fulfilling, in the foreseeable future, the condition referred to in point (1) of Article 33(1); ;
3. the prospect that the entity will be able to ensure compliance with the requirements referred to in paragraph 1 within a reasonable timeframe;
4. where the entity is unable to replace liabilities that no longer meet the eligibility or maturity criteria laid down in Articles 72b and 72c of Regulation (EU) No 575/2013, or in Article 46-2 or 46-6(2) of this law, if that inability is idiosyncratic or is due to market-wide disturbance;
5. whether the exercise of the power referred to in paragraph 1 is the most adequate and proportionate means of addressing the situation of the entity, taking into account its potential impact on both the financing conditions and resolvability of the entity concerned.

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

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

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

2. the disturbance referred to in point (1) not only results in the increased price volatility of the own funds instruments and eligible liabilities instruments of the entity or increased costs for the entity, but also leads to a full or partial closure of markets which prevents the entity from issuing own funds instruments and eligible liabilities instruments on those markets;
3. the market closure referred to in point (2) is observed not only for the entity concerned, but also for several other entities;
4. the disturbance referred to in point (1) prevents the entity concerned from issuing own funds instruments and eligible liabilities instruments sufficient to remedy the failure; or
5. an exercise of the power referred to in paragraph 1 leads to negative spill-over effects for part of the banking sector, thereby potentially undermining financial stability.

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

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

(4) The M-MDA shall be calculated by multiplying the sum calculated in accordance with paragraph 5 by the factor determined in accordance with paragraph 6. The M-MDA shall be reduced by any amount resulting from any of the actions referred to in points (1), (2) or (3) of paragraph 1.

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

1. any interim profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of Regulation (EU) No 575/2013, net of any distribution of profits or any payment resulting from the actions referred to in points (1), (2) or (3) of paragraph 1 of this article; plus
2. any year-end profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of Regulation (EU) No 575/2013, net of any distribution of profits or any payment resulting from the actions referred to in points (1), (2) or (3) of paragraph 1 of this article; minus
3. amounts which would be payable by tax if the items specified in points (1) and (2) of this paragraph were to be retained.

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

1. where the Common Equity Tier 1 capital maintained by the entity which is not used to meet any of the requirements set out in Article 92a of Regulation (EU) No 575/2013 and in Articles 46-3 and 46-4 of this law, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, is within the first (that is, the lowest) quartile of the combined buffer requirement, the factor shall be 0;
2. where the Common Equity Tier 1 capital maintained by the entity which is not used to meet any of the requirements set out in Article 92a of Regulation (EU) No 575/2013 and in Articles 46-3 and 46-4 of this law, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, is within the second quartile of the combined buffer requirement, the factor shall be 0.2;
3. where the Common Equity Tier 1 capital maintained by the entity which is not used to meet the requirements set out in Article 92a of Regulation (EU) No 575/2013 and in Articles 46-3 and 46-4 of this law, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, is within the third quartile of the combined buffer requirement, the factor shall be 0.4;
4. where the Common Equity Tier 1 capital maintained by the entity which is not used to meet the requirements set out in Article 92a of Regulation (EU) No 575/2013 and in Articles 46-3 and 46-4 of this law, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, is within the fourth (that is, the highest) quartile of the combined buffer requirement, the factor shall be 0.6;

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

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

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

where "Q_n" = the ordinal number of the quartile concerned."

Chapter III - Objectives, conditions for resolution and general principles governing resolution

Article 32. Resolution objectives

(1) When the Resolution Board applies the resolution tools and exercises the resolution powers, it shall take into account 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:

1. to ensure the continuity of critical functions;
2. to avoid a significant adverse effect on the financial system, in particular by preventing contagion, including to market infrastructures, and by maintaining market discipline;
3. to protect public funds by minimising reliance on extraordinary public financial support;
4. to protect depositors covered by Title II of Part III and the investors covered by Title III of Part III; and
5. to protect client funds and client assets.

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

(3) Without prejudice to the specific provisions, the above-mentioned objectives are of equal significance and the Resolution Board shall balance these objectives as appropriate to the nature of each case.

Article 33. Conditions for resolution in relation to an institution

(1) The Resolution Board shall take a resolution action in relation to an institution referred to in point (1) of Article 2(1) only if it considers that all of the following conditions are met:

1. the supervisory authority, after consulting the Resolution Board, or the Resolution Board, after consulting the supervisor, determined that the institution is failing or is likely to fail;

The supervisory authority shall provide the Resolution Board with any relevant information that the latter requests in order to perform its assessment without delay.

2. having regard to timing and other relevant circumstances, there is no reasonable prospect that any alternative private sector measures, including measures by an IPS, or supervisory action, including early intervention measures or the write down or conversion of relevant capital instruments "and eligible liabilities"⁵⁹ in accordance with Article 57(2) taken in respect of the institution, would prevent the failure of the institution within a reasonable timeframe;
3. a resolution action is necessary in the public interest. 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 32 and winding up of the institution under normal insolvency proceedings would not meet those resolution objectives to the same extent.

(2) The previous adoption of an early intervention measure according to Article 59-43 of the Law of 5 April 1993 on the financial sector, as amended, is not a condition for adopting a resolution measure.

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

1. 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 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;
2. 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;

⁵⁹ Law of 20 May 2021

3. 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;
4. extraordinary public financial support is required except when, in order to remedy a serious disturbance in the national economy and preserve financial stability, the extraordinary public financial support takes any of the following forms:
 - a) a State guarantee or back liquidity facilities provided by the Banque Centrale du Luxembourg or the European Central Bank according to their respective conditions;
 - b) a State guarantee of newly issued liabilities; or
 - c) 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 (1), (2) or (3) nor the circumstances referred to in Article 57(3) are present at the time the public support is granted. These support measures shall be limited to injections necessary to address capital shortfall established in the national, EU or SSM-wide stress tests within the meaning of Article 2, point (9), of Regulation (EU) No 1024/2013 (hereinafter the "SSM"), asset quality reviews or equivalent exercises conducted by the European Central Bank, the EBA or national authorities and, where applicable, confirmed by the supervisory authority.

In each of the cases mentioned in point (4), letters (a), (b) and (c), the guarantee or equivalent measures referred to therein shall be confined to solvent institutions. 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.

(Law of 20 May 2021)

"Article 33-1. Conditions for resolution with regard to a central body and credit institutions permanently affiliated to a central body

The Resolution Board may take a resolution action in relation to a central body and all credit institutions permanently affiliated to it that are part of the same resolution group when that resolution group complies as a whole with the conditions established in Article 33(1).

Article 33-2. Insolvency proceedings in respect of institutions and entities that are not subject to resolution action

Where the Resolution Board considers in relation to an institution or an entity referred to in point (2), (3) or (4) of Article 2(1) that the conditions in points (1) and (2) of Article 33(1) are complied with but that a resolution action would not be in the public interest in accordance with point (3) of Article 33(1), it shall request the Tribunal that it be wound up according to normal insolvency proceedings or, where appropriate, in accordance with the provisions Book III of the Commercial Code."

Article 34. Conditions for resolution in relation to financial institutions and holding companies

(1) The Resolution Board may take a resolution action in relation to a financial institution referred to in point (2) of Article 2(1), when the conditions laid down in Article 33(1), are met with regard to both the financial institution and with regard to the parent undertaking subject to consolidated supervision.

"(2) The Resolution Board shall take a resolution action in relation to an entity referred to in point (3) or (4) of Article 2(1), when that entity meets the conditions laid down in Article 33(1)."⁶⁰

(3) Where the subsidiary institutions of a mixed-activity holding company are held directly or indirectly by an intermediate financial holding company, "the resolution plan shall provide that the intermediate financial holding company is identified as a resolution entity and"⁶¹ the resolution actions for the purposes of group resolution shall be taken in relation to the intermediate financial holding company, and shall not take resolution actions for the purposes of group resolution in relation to the mixed-activity holding company.

⁶⁰ Law of 20 May 2021

⁶¹ Law of 20 May 2021

“(4) Subject to paragraph 3 and notwithstanding the fact that an entity referred to in point (3) or (4) of Article 2(1) does not meet the conditions laid down in Article 33(1), the Resolution Board may take resolution action with regard to such an entity where all of the following conditions are fulfilled:

1. the entity is a resolution entity;
2. one or more of the subsidiaries of the entity that are institutions, but not resolution entities, comply with the conditions laid down in Article 33(1);
3. assets and liabilities of the subsidiaries referred to in point (2) are such that the failure of those subsidiaries threatens the resolution group as a whole, and resolution action with regard to the entity is necessary either for the resolution of such subsidiaries which are institutions or for the resolution of the relevant resolution group as a whole.”⁶²

(5) For the purposes of paragraphs 2 and 4, when assessing whether the conditions in Article 32(1) of Directive 2014/59/EU are met in respect of one or more subsidiaries which are institutions, the resolution authority of the institution and the Resolution Board acting as the resolution authority of the entity referred to in point (3) or (4) of Article 2(1) incorporated under Luxembourg law may by way of joint agreement disregard any intra-group capital or loss transfers between the entities, including the exercise of write-down or conversion powers.

(6) For the purposes of Article 33(2) and (4) of Directive 2014/59/EU, when assessing whether the conditions in Article 33(1) are met in respect of one or more subsidiaries which are Luxembourg institutions, the Resolution Board acting as the resolution authority of the institution and the resolution authority of the entity referred to in letter (c) or (d) of Article 1(1) of Directive 2014/59/EU may by way of joint agreement disregard any intra-group capital or loss transfers between the entities, including the exercise of write-down or conversion powers.

(Law of 20 May 2021)

“Article 34-1. Power to suspend certain obligations

(1) The Resolution Board, after consulting the supervisory authority, which shall reply in a timely manner, has the power to suspend any payment or delivery obligations pursuant to any contract to which an institution or an entity referred to in point (2), (3) or (4) of Article 2(1) is a party, where all of the following conditions are met:

1. a determination that the institution or entity is failing or likely to fail has been made under point (1) of Article 33(1);
2. there is no immediately available private sector measure referred to in point (2) of Article 32(1) that would prevent the failure of the institution or entity;
3. the exercise of the power to suspend is deemed necessary to avoid the further deterioration of the financial conditions of the institution or entity; and
4. the exercise of the power to suspend is either:
 - a) necessary to reach the determination provided for in point (3) of Article 33(1); or
 - b) necessary to choose the appropriate resolution actions or to ensure the effective application of one or more resolution tools.

(2) The power referred to in paragraph 1 shall not apply to payment or delivery obligations to the following:

1. systems and operators of systems designated in accordance with Directive 98/26/EC;
2. central counterparties (“CCPs”) authorised in the European Union pursuant to Article 14 of Regulation (EU) No 648/2012 and third-country CCPs recognised by ESMA pursuant to Article 25 of that regulation;
3. central banks.

The Resolution Board shall take the decisions referred to in paragraph 1 according to the circumstances of each case. In particular, the Resolution Board shall carefully assess the appropriateness of extending the suspension to eligible deposits as defined in point (7) of Article 163.

(3) Where the power to suspend payment or delivery obligations is exercised in respect of eligible deposits, the Resolution Board shall ensure that depositors have access to a daily amount of EUR 250 from those deposits.

⁶² Law of 20 May 2021

(4) The period of the suspension pursuant to paragraph 1 shall be as short as possible and shall not exceed the minimum period of time that the Resolution Board considers necessary for the purposes indicated in points (3) and (4) of paragraph 1. In any event it shall not last longer than the period from the publication of a notice of suspension pursuant to paragraph 8 to midnight in Luxembourg at the end of the business day following the day of the publication.

At the expiry of the period of suspension referred to in the first subparagraph, the suspension shall cease to have effect.

(5) When exercising the power referred to in paragraph 1, the Resolution Board shall have regard to the impact the exercise of that power might have on the orderly functioning of financial markets and shall ensure to safeguard the creditors' rights and equal treatment of creditors in normal insolvency proceedings. The Resolution Board shall in particular have regard to the potential application of national insolvency proceedings to the institution or entity as a result of the determination in point (3) of Article 33(1) and shall make the arrangements it deems appropriate to ensure adequate coordination with the administrative or judicial authorities.

(6) When payment or delivery obligations under a contract are suspended pursuant to paragraph 1, the payment or delivery obligations of any counterparties to that contract shall be suspended for the same period of time.

(7) A payment or delivery obligation that would have been due during the period of the suspension shall be due immediately upon expiry of that period.

(8) The Resolution Board shall notify the institution or the entity referred to in point (2), (3) or (4) of Article 2(1) and the authorities referred to in points (1) to (8) of Article 83(2) without delay when exercising the power referred to in paragraph 1 of this article after a determination has been made that the institution or entity is failing or likely to fail pursuant to point (1) of Article 33(1) and before the resolution decision is taken.

The Resolution Board shall publish the decision by which obligations are suspended under this article and the terms and period of suspension, by the means referred to in Article 83(4).

(9) Where the Resolution Board exercises the power to suspend payment or delivery obligations with respect to an institution or an entity referred to in point (2), (3) or (4) of Article 2(1) pursuant to paragraph 1 of this article, the Resolution Board is also able, for the duration of that suspension, to exercise the power to:

1. restrict secured creditors of that institution or entity from enforcing security interests in relation to any of the assets of that institution or entity for the same duration, in which case Article 68(2), (3) and (4) shall apply; and
2. suspend the termination rights of any party to a contract with that institution or entity for the same duration, in which case Article 69(2) to (8) shall apply.

(10) In the event that, after making a determination that an institution or entity is failing or likely to fail pursuant to point (1) of Article 33(1), the Resolution Board has exercised the power to suspend payment or delivery obligations in the circumstances set out in paragraph 1 or 9 of this article, and if resolution action is subsequently taken with respect to that institution or entity, the Resolution Board shall not exercise its powers under Article 67(1), 68(1) or 69(1) with respect to that institution or entity."

Article 35. General principles governing resolution

(1) When applying the resolution tools and exercising the resolution powers, the Resolution Board shall take all appropriate measures to ensure that the resolution action is taken in accordance with the following principles:

1. the shareholders of the institution under resolution bear first losses;
2. 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 part;
3. 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;
4. the management body and senior management of the institution under resolution shall provide all necessary assistance for the achievement of the resolution objectives;

5. natural and legal persons may be made liable, subject to common law, under civil or criminal law for their responsibility for the failure of the institution;
6. creditors of the same class are treated in an equitable manner, except where otherwise provided in this part;
7. no creditor shall incur greater losses than would have been incurred if the institution or entity referred to in point (2), (3) or (4) of Article 2(1) had been wound up under normal insolvency proceedings in accordance with the safeguards in Articles 73 to 75;
8. covered deposits are fully protected; (...) ⁶³
9. resolution action is taken in accordance with the safeguards in this part “; and” ⁶⁴

(Law of 8 December 2021)

“10. the resolution action shall not result in automatic acceleration as defined in point (7a) of the second subparagraph of Article 120 in respect of the covered bonds and the other claims eligible for the preferential right referred to in Article 5 of the Law of 8 December 2021 relating to the issue of covered bonds.”

(2) Where an institution is a group entity, resolution authorities shall, without prejudice to Article 32, 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 EU, in Luxembourg and in other Member States, in particular, in the countries where the group operates.

(3) 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 (2), (3) or (4) of Article 2(1), that institution or entity shall be considered to be the subject of bankruptcy proceedings or analogous insolvency proceedings for the purposes of Article L.127-5 of the Labour Code.

(4) When applying the resolution tools and exercising the resolution powers, the Resolution Board shall inform or consult employee representatives where appropriate.

(5) The Resolution Board shall apply resolution tools and exercise resolution powers without prejudice to provisions on the representation of employees in management bodies.

Chapter IV – Special management

Article 36. Special management

(1) The Resolution Board may appoint a special manager to replace the management body of the institution under resolution.

The special manager shall have the qualifications, ability and knowledge required to carry out his or her functions.

The Resolution Board shall make public the appointment of a special manager and the costs shall be borne by the institution under resolution. The appointment shall at least be published on the CSSF's website and on the website of the institution under resolution.

(2) The special manager shall have all the powers of the shareholders and the management body of the institution. The special manager shall exercise such powers under the control of the Resolution Board.

(3) The special manager shall have the duty to take all the measures necessary to promote the resolution objectives referred to in Article 32 and implement resolution actions according to the decision of the Resolution Board. Where necessary, that duty shall override any other duty of management in accordance with the statutes of the institution or the 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 VI.

(4) The Resolution Board may set limits to the action of a special manager or require that certain acts of the special manager be subject to its prior consent. The Resolution Board may remove the special manager at any time.

(5) The special manager shall draw up reports for the appointing Resolution Board on the economic and financial situation of the institution and on the acts performed in the conduct of his or her duties,

⁶³ Law of 8 December 2021

⁶⁴ Law of 8 December 2021

at regular intervals set by the Resolution Board and at the beginning and the end of his or her mandate.

(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 Board determines that the conditions for appointment of a special manager continue to be met.

(7) Where more than one resolution authority, among which the Resolution Board, intends to appoint a special manager in relation to an entity affiliated to a group, the Resolution Board, together with the other resolution authorities, 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) The appointment of an administrator by way of a judgment recognising a suspension of payments in accordance with Article 122(14) or the appointment of an official receiver (*juge-commissaire*) as well as a liquidator by the Court in accordance with Article 129(7) may be deemed as an appointment of a special manager as referred to in this article.

(9) The special manager shall only be held liable in case of serious violation. Actions against the special manager, in his or her capacity as special manager, for acts committed in the exercise of his or her duties shall be time-barred after five years as of these acts, or if fraudulently concealed, as of the discovery of these acts.

(10) The Resolution Board shall decide on the charges and fees of the special managers. It may grant advances. The fees of the special managers as well as all the other costs incurred by the exercise of their mandate shall be charged to the institution in question. The fees and charges shall be considered as administrative expenses and shall be deducted from the assets before any monies.

(11) A special manager appointed in accordance with this article shall not be considered as a shadow director.

Chapter V - Valuation

Article 37. Valuation

(1) Before taking resolution action or exercising the power to write down or convert relevant capital instruments “and eligible liabilities in accordance with Article 57”⁶⁵ the Resolution Board shall ensure that a fair, prudent and realistic valuation of the assets and liabilities of the institution or entity referred to in point (2), (3) or (4) of Article 2(1) is carried out by a person independent from any public authority, including the CSSF, and the institution or entity referred to in point (2), (3) or (4) of Article 2(1). Subject to paragraph 13 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, the Resolution Board may carry out or may have a provisional valuation of the assets and liabilities of the institution or entity referred to in point (2), (3) or (4) of Article 2(1) carried out, in accordance with paragraph 9.

(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 (2), (3) or (4) of Article 2(1) that meets the conditions for resolution of Articles 33 and 34.

(4) The purposes of the valuation shall be:

1. to inform the determination of whether the conditions for resolution or the conditions for the write down or conversion of capital instruments “and eligible liabilities in accordance with Article 57”⁶⁶ are met;
2. 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 (2), (3) or (4) of Article 2(1);
3. when the power to write down or convert relevant capital instruments “and eligible liabilities in accordance with Article 57”⁶⁷ is applied, to inform the decision on the extent of the cancellation or dilution of shares or other instruments of ownership, and the extent of the write down or conversion of relevant capital instruments “and eligible liabilities in accordance with Article 57”⁶⁸;

⁶⁵ Law of 20 May 2021

⁶⁶ Law of 20 May 2021

⁶⁷ Law of 20 May 2021

⁶⁸ Law of 20 May 2021

4. when the bail-in tool is applied, to inform the decision on the extent of the write down or conversion of "bail-inable"⁶⁹ liabilities;
5. 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;
6. 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 Board's understanding of what constitutes commercial terms for the purposes of Article 39;
7. in all cases, to ensure that any losses on the assets of the institution or entity referred to in point (2), (3) or (4) of Article 2(1) are fully recognised at the moment the resolution tools are applied or the power to write down or convert relevant capital instruments "and eligible liabilities in accordance with Article 57"⁷⁰ is exercised.

(5) The valuation shall be based on prudent assumptions, including as to rates of default and severity losses. The valuation shall rule out the assumption of 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 (2), (3) or (4) of Article 2(1) from the point at which resolution action is taken or the power to write down or convert relevant capital instruments "and eligible liabilities in accordance with Article 57"⁷¹ is exercised. Furthermore, the valuation shall take account of the fact that, if any resolution tool is applied:

1. the Resolution Board and the Fonds de Résolution Luxembourg referred to in Article 105 (hereinafter the "FRL") acting pursuant to Article 106 may recover any reasonable expenses properly incurred from the institution under resolution, in accordance with Article 38(5);
2. the FRL may charge interest or fees in respect of any loans or guarantees provided to the institution under resolution, in accordance with Article 106.

(6) The valuation shall be supplemented by the following information as appearing in the accounting documents of the institution or entity referred to in point (2), (3) or (4) of Article 2(1).

1. an updated balance sheet and a report on the financial situation of the institution or entity referred to in point (2), (3) or (4) of Article 2(1);
2. an analysis and an estimate of the accounting value of the assets;
3. the list of outstanding on balance sheet and off balance sheet liabilities shown in the accounting documents of the institution or entity referred to in point (2), (3) or (4) of Article 2(1), with an indication of the respective credits and priority levels.

(7) Where appropriate, to inform the decisions referred to in points (5) and (6) of paragraph 4, the information in point (2) 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 (2), (3) or (4) of Article 2(1) on a market value basis.

(8) The valuation shall indicate the subdivision of the creditors in classes in accordance with their priority levels 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 (2), (3) or (4) of Article 2(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 insofar as reasonably practicable in the circumstances with the requirements of paragraphs 1, 6 and 8.

⁶⁹ Law of 20 May 2021

⁷⁰ Law of 20 May 2021

⁷¹ Law of 20 May 2021

The provisional valuation referred to in the first subparagraph 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 that valuation 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:

1. to ensure that any losses on the assets of the institution or entity referred to in point (2), (3) or (4) of Article 2(1) are fully recognised in the books of accounts of the institution or entity referred to in point (2), (3) or (4) of Article 2(1);
2. to inform a decision to write back creditors' claims against the institution 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 (2), (3) or (4) of Article 2(1) is higher than the provisional valuation's estimate of the net asset value of the institution or entity referred to in point (2), (3) or (4) of Article 2(1), the Resolution Board may:

1. 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;
2. 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.

(12) Notwithstanding paragraph 1, a provisional valuation conducted in accordance with paragraphs 9 and 10 shall be a valid basis for the Resolution Board to take resolution actions, including taking control of a failing institution or entity referred to in point (2), (3) or (4) of Article 2(1), or to exercise the write-down or conversion power of capital instruments "and eligible liabilities in accordance with Article 57" ⁷².

(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 capital instruments "and eligible liabilities in accordance with Article 57" ⁷³. The valuation itself shall not be subject to a separate action but may be, together with the decision in question, subject to remedies in accordance with Article 118.

Chapter VI Resolution tools

Section I - General principles

Article 38. General principles of resolution tools

(1) The Resolution Board shall have the necessary powers to apply the resolution tools to institutions and to entities referred to in point (2), (3) or (4) of Article 2(1) that meet the applicable conditions for resolution.

Where the Resolution Board decides to apply a resolution tool to such institution or such entity, and that resolution action would result in losses being borne by creditors or their claims being converted, the Resolution Board shall exercise the power to write down and convert capital instruments "and eligible liabilities" ⁷⁴ in accordance with Article 57 immediately before or together with the application of the resolution tool.

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

1. the sale of business tool;
2. the bridge institution tool;
3. the asset separation tool;
4. the bail-in tool.

⁷² Law of 20 May 2021

⁷³ Law of 20 May 2021

⁷⁴ Law of 20 May 2021

(3) The Resolution Board may apply the resolution tools individually or in any combination, except for the asset separation tool which shall be applied simultaneously with another resolution tool.

(4) Where only the resolution tools referred to in point (1) or (2) of paragraph 2 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 (2), (3) or (4) of Article 2(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 to provide services or support pursuant to Article 63 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 is necessary to achieve the resolution objectives or comply with the principles referred to in Article 35.

(5) The Resolution Board and the FRL acting pursuant to Article 106 may recover any reasonable expenses properly incurred in connection with the use of the resolution tools or the exercise of resolution powers in one or more of the following ways:

1. 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;
2. from the institution under resolution, as a preferred creditor; or
3. from any proceeds generated as a result of the termination of the operation of the bridge institution or the asset management vehicle, as a preferred creditor.

(6) The rules under insolvency law relating to the voidability or unenforceability of legal acts detrimental to creditors may not be applied 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.

Section II - The sale of business tool

Article 39. The sale of business tool

(1) The Resolution Board shall have the power to transfer to a purchaser that is not a bridge institution:

1. shares or other instruments of ownership issued by an institution under resolution;
2. all or any assets, rights or liabilities of an institution under resolution.

Subject to paragraphs 7 and 8 and to Article 118, 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 40.

(2) A transfer made pursuant to paragraph 1 shall be made on commercial terms adapted to circumstances. The Resolution Board shall take all reasonable steps to obtain commercial terms for the transfer that conform with the valuation conducted in accordance with Article 37, having regard to the circumstances of the case.

(3) Subject to Article 38(5), any consideration paid by the purchaser shall benefit:

1. 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;
2. 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.

(4) When applying the sale of business tool the Resolution Board 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.

(5) Following an application of the sale of business tool, the Resolution Board 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. 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.

(6) A purchaser shall have the appropriate authorisation to carry out the business it acquires when the transfer is made pursuant to paragraph 1. The application for authorisation, in conjunction with the transfer, shall be considered in a timely manner.

(7) By way of derogation from Article 6, paragraphs 5, 6, 7, 8, 9, letters (b) and (d), 10, 11, 12, 13, 14, 15, 16, 17 of the Law of 5 April 1993 on the financial sector, as amended, and Article 18, paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18 of that law, 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 Articles 6(5) and 18(5) of that law, the supervisory authority 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.

(8) If the supervisory authority has not completed the assessment referred to in paragraph 7 from the date of transfer of shares or other instruments of ownership in the application of the sale of business tool by the Resolution Board, the following provisions shall apply:

1. such a transfer of shares or other instruments of ownership to the acquirer shall have immediate legal effect;
2. during the assessment period and during any divestment period provided by point (6), the acquirer's voting rights attached to such shares or other instruments of ownership shall be suspended and vested solely in the Resolution Board, 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;
3. during the assessment period and during any divestment period provided by point (6), the penalties and other measures for infringing the requirements for acquisitions or disposals of qualifying holdings contemplated by Articles 63-1, 59(1) and (2)(b), 63-2 and 63-3 of the Law of 5 April 1993 on the financial sector, as amended, shall not apply to such a transfer of shares or other instruments of ownership;
4. promptly upon completion of the assessment by the supervisory authority, the supervisory authority shall notify the Resolution Board and the acquirer in writing of whether it approves or, in accordance with Articles 6(11) and 18(11) of the Law of 5 April 1993 on the financial sector, as amended, opposes such a transfer of shares or other instruments of ownership to the acquirer;
5. if the supervisory 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 Board and the acquirer of such an approval notice referred to in point (4);
6. if the supervisory authority opposes such a transfer of shares or other instruments of ownership to the acquirer, then:
 - a) the voting rights attached to such shares or other instruments of ownership as provided by point (2) shall remain in full force and effect;
 - b) the Resolution Board may require the acquirer to divest such shares or other instruments of ownership within a divestment period determined by the Resolution Board having taken into account prevailing market conditions; and
 - c) if the acquirer does not complete such a divestment within the divestment period established by the Resolution Board, then the supervisory authority, with the consent of the Resolution Board, may impose on the acquirer penalties and other measures for infringing the requirements for acquisitions or disposals of qualifying holdings contemplated by Articles 63-1, 59(1) and (2)(b), 63-2 and 63-3 of the Law of 5 April 1993 on the financial sector, as amended.

(9) Transfers made by virtue of the sale of business tool shall be subject to the safeguards referred to in Chapter IX.

(10) For the purposes of exercising the rights to provide services or to establish itself in another Member State in accordance with the Law of 5 April 1993 on the financial sector, as amended, 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 such institution in respect of the assets, rights or liabilities transferred.

(11) 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 scheme of the institution under resolution, provided that it meets the membership and participation criteria for participation in such systems.

However, access shall not be 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.

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 Board, not exceeding 24 months, renewable on application by the purchaser to the Resolution Board.

(12) Without prejudice to Chapter IX, 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.

Article 40. Procedural requirements relating to the sale of business tool

(1) Subject to paragraph 3, when applying the sale of business tool to an institution or entity referred to in point (2), (3) or (4) of Article 2(1), the Resolution Board shall market, or make arrangements for the marketing of the assets, rights, liabilities, shares or other instruments of ownership of that institution that it intends to transfer. Pools of rights, assets, and liabilities may be marketed separately.

(2) Where applicable, the marketing referred to in paragraph 1 shall be carried out in accordance with the following criteria:

1. 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 Resolution Board intends to transfer, having regard to the circumstances and in particular the need to maintain financial stability;
2. it shall not unduly favour or discriminate between potential purchasers;
3. it shall be free from any conflict of interest;
4. it shall not confer any unfair advantage on a potential purchaser;
5. it shall take account of the need to effect a rapid resolution action;
6. 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 (2), the principles referred to in the first subparagraph shall not prevent the Resolution Board from soliciting particular potential purchasers.

Any public disclosure of the marketing of the institution or entity referred to in point (2), (3) or (4) of Article 2(1) that would otherwise be required in accordance with Article 17(1) of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC may be delayed in accordance with Article 17(4) or (5) of that regulation.

(3) The Resolution Board 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:

1. the Resolution Board 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
2. the Resolution Board 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 (2) of Article 32(2).

Section III - The bridge institution tool

Article 41. Bridge institution tool

(1) In order to give effect to the bridge institution tool and to maintain critical functions in the bridge institution, the Resolution Board shall have the power to transfer to a bridge institution:

1. shares or other instruments of ownership issued by one or more institutions under resolution;
2. all or any assets, rights or liabilities of one or more institutions under resolution.

Subject to Article 118, 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:

1. it is wholly or partially owned by one or more public authorities which may include the FRL;
2. 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 or entity referred to in point (2), (3) or (4) of Article 2(1) 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 (2), (3) or (4) of Article 2(1);
3. it is controlled by the Resolution Board.

The application of the bail-in tool for the purpose referred to in point (2) of Article 44(2) shall not interfere with the ability of the Resolution Board to control the bridge institution.

For the purposes of the control referred to in point (3) of the first subparagraph and notwithstanding the company or securities law, the instruments of incorporation of the bridge institution may, notably, lay down that the powers for nominating and revoking the management body lie with the Resolution Board and that the powers of the meeting of shareholders or members shall be exercised by the Resolution Board.

(3) When applying the bridge institution tool, the Resolution Board 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 38(5), any consideration paid by the bridge institution shall benefit:

1. 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;
2. 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 Board 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 Board may:

1. 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;
2. transfer, shares or other instruments of ownership, or assets, rights or liabilities from the bridge institution to a third party.

(7) The Resolution Board may transfer shares or other instruments of ownership, or assets, rights or liabilities back from the bridge institution to the institution under resolution in one of the following circumstances:

1. 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;
2. 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 described in Chapter IX.

(9) For the purposes of exercising the rights to provide services or to establish itself in another Member State in accordance with the Law of 5 April 1993 on the financial sector, as amended, the 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 such institution in respect of the assets, rights or liabilities transferred.

For other purposes, the Resolution Board 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) 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 scheme of the institution under resolution, provided that it meets the membership and participation criteria for participation in such systems.

However, access shall not be 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.

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 Board, not exceeding 24 months, renewable on application by the bridge institution to the Resolution Board.

(11) Without prejudice to Chapter IX, 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 serious violation which directly affects rights of such shareholders or creditors.

Article 42. Operation of a bridge institution

(1) The operation of a bridge institution respects the following requirements:

1. the contents of the bridge institution's constitutional documents are approved by the Resolution Board;
2. subject to the bridge institution's ownership structure, the Resolution Board either appoints or approves the bridge institution's management body;
3. the Resolution Board approves the remuneration of the members of the management body and determines their appropriate responsibilities;
4. the Resolution Board approves the strategy and risk profile of the bridge institution;
5. the bridge institution is authorised in accordance with the Law of 5 April 1993 on the financial sector, as amended, and has the necessary authorisation under that law to carry out the activities or services that it acquires by virtue of a transfer made pursuant to Article 61;
6. the bridge institution complies with the requirements of, and is subject to supervision in accordance with Regulation (EU) No 575/2013 and with the Law of 5 April 1993 on the financial sector, as amended, as well as with the implementing measures;
7. the Resolution Board may specify restrictions on the bridge institution's operations.

Notwithstanding the provision referred to in points (5) and (6) of the first subparagraph, and where necessary to meet the resolution objectives, the bridge institution may be established and authorised without complying with the Law of 5 April 1993 on the financial sector, as amended, for a short period of time at the beginning of its operation. To that end, the Resolution Board shall submit a request in

that sense to the CSSF. If the authorisation is granted, the supervisory authority shall indicate the period for which the bridge institution is waived from complying with the requirements of the Law of 5 April 1993 on the financial sector, as amended.

(2) 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 (2), (3) or (4) of Article 2(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 or, where applicable, paragraph 6.

(3) The Resolution Board shall take a decision that the bridge institution is no longer a bridge institution within the meaning of Article 41(2) in any of the following cases, whichever occurs first:

1. the bridge institution merges with another entity;
2. the bridge institution ceases to meet the requirements of Article 41(2);
3. the sale of all or substantially all of the bridge institution's assets, rights or liabilities to a third party;
4. the expiry of the period specified in paragraph 5 or, where applicable, paragraph 6;
5. the bridge institution's assets are completely wound down and its liabilities are completely discharged.

(4) In cases when the Resolution Board seeks to sell the bridge institution or its assets, rights or liabilities, the bridge institution or the relevant assets or liabilities are marketed openly and transparently, and the sale is not materially misrepresented or does not unduly favour or discriminate between potential purchasers.

Any such sale shall be made on commercial terms adapted to the circumstances.

(5) If none of the outcomes referred to in points (1), (2), (3) and (5) of paragraph 3 applies, the Resolution Board 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.

(6) The Resolution Board may extend the period referred to in paragraph 5 for one or more additional one-year periods where such an extension:

1. supports the outcomes referred to in point (1), (2), (3) or (5) of paragraph 3; or
2. is necessary to ensure the continuity of essential banking or financial services.

(7) Any decision of the Resolution Board 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 (3) or (4) of paragraph 3, the bridge institution shall be wound up under normal insolvency proceedings.

Subject to Article 38(5), 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 the second subparagraph of 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 IV - The asset separation tool

Article 43. Asset separation tool

(1) In order to give effect to the asset separation tool, the Resolution Board shall 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 118, 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:

1. it is wholly or partially owned by one or more public authorities which may include the FRL;
2. 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;
3. it is controlled by the Resolution Board.

For the purposes of the control referred to in point (3) and notwithstanding the company or securities law, the instruments of incorporation of the asset management vehicle may, notably, lay down that the powers for nominating and revoking the management body lie with the Resolution Board and that the powers of the meeting of shareholders or members shall be exercised by the Resolution Board.

(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) The operation of an asset management vehicle respects the following provisions:

1. the contents of the asset management vehicle's constitutional documents are approved by the Resolution Board;
2. subject to the asset management vehicle's ownership structure, the Resolution Board either appoints or approves the asset management vehicle's management body;
3. the Resolution Board approves the remuneration of the members of the management body and determines their appropriate responsibilities;
4. the Resolution Board approves the strategy and risk profile of the asset management vehicle.

(5) The Resolution Board may exercise the power specified in paragraph 1 to transfer assets, rights or liabilities only if:

1. 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;
2. such a transfer is necessary to ensure the proper functioning of the institution under resolution or bridge institution; or
3. such a transfer is necessary to maximise liquidation proceeds.

(6) When applying the asset separation tool, the Resolution Board 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 37. This paragraph does not prevent the consideration having nominal or negative value.

(7) Subject to Article 38(5), 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 that institution. 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.

(9) The Resolution Board 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) The Resolution Board may transfer rights, assets or liabilities back from the asset management vehicle to the institution under resolution in one of the following circumstances:

1. 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;
2. 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 the cases referred in points (1) and (2), 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 IX.

(12) Without prejudice to Chapter IX, 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 serious violation which directly affects rights of such shareholders or creditors.

Section V - The bail-in tool
Subsection I - Objective and scope of the bail-in tool

Article 44. The bail-in tool

(1) The Resolution Board shall have the resolution powers specified in Article 61(1) and shall use these powers to optimise the effectiveness of the bail-in tool.

(2) The Resolution Board may apply the bail-in tool to meet the resolution objectives specified in Article 32, in accordance with the resolution principles specified in Article 35 for any of the following purposes:

1. to recapitalise an institution or an entity referred to in point (2), (3) or (4) of Article 2(1) 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, where applicable, authorised under the Law of 5 April 1993 on the financial sector, as amended, and to sustain sufficient market confidence in the institution or entity;
2. to convert to equity or reduce the principal amount of claims or debt instruments that are transferred:
 - a) to a bridge institution with a view to providing capital for that bridge institution; or
 - b) under the sale of business tool or the asset separation tool.

(3) The Resolution Board may only apply the bail-in tool for the purpose referred to in point (1) of paragraph 2 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 53 will, in addition to achieving relevant resolution objectives, restore the financial situation and long-term viability of the institution or entity referred to in point (2), (3) or (4) of Article 2(1).

Where the conditions laid down in the first subparagraph are not met, the Resolution Board may apply any of the resolution tools referred to in points (1), (2) and (3) of Article 38(2) and the bail-in tool referred to in point (2) of paragraph 2.

(4) The Resolution Board may apply the bail-in tool to all institutions or entities referred to in point (2), (3) or (4) of Article 2(1) while respecting in each case the legal form of the institution or entity concerned.

The Resolution Board may also change the legal form of the institution or entity referred to in point (2), (3) or (4) of Article 2(1) and may exercise the powers of all the internal bodies and notwithstanding any contrary contractual terms regardless of the applicable law.

Article 45. Scope of bail-in tool

(1) The Resolution Board may apply the bail-in tool to all liabilities of an institution or entity referred to in point (2), (3) or (4) of Article 2(1) that are not excluded from the scope of that tool pursuant to paragraphs 2 or 3.

(2) The Resolution Board shall not exercise the write-down or conversion powers in relation to the following liabilities irrespective of their applicable law:

1. covered deposits;
2. 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 are secured in a way similar to covered bonds;

3. any liability that arises by virtue of the holding by the institution or entity referred to in point (2), (3) or (4) of Article 2(1) 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 AIFs as defined in point (a) of Article 4(1) of 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;
4. any liability that arises by virtue of a fiduciary relationship between the institution or entity referred to in point (2), (3) or (4) of Article 2 as fiduciary and a beneficiary;
5. liabilities to institutions, excluding entities that are part of the same group, with an original maturity of less than seven days;
6. liabilities with a remaining maturity of less than seven days, owed to systems or operators of systems designated according to Directive 98/26/EC or their participants and arising from the participation in such a system", or to CCPs authorised in the European Union pursuant to Article 14 of Regulation (EU) No 648/2012 and third-country CCPs recognised by ESMA pursuant to Article 25 of that Regulation"⁷⁵;
7. a liability to any one of the following:
 - a) 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 and except for the variable component of the remuneration of material risk takers as identified in Article 38-5 "and in Article 38-20"⁷⁶ of the Law of 5 April 1993 on the financial sector, as amended;
 - b) a commercial or trade creditor arising from the provision to the institution or entity referred to in point (2), (3) or (4) of Article 2 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;
 - c) Luxembourg tax and social security authorities with respect to their preferred claims;
 - d) deposit guarantee schemes arising from contributions due in accordance with Directive 2014/49/EU;

Law of 20 May 2021

- "8. liabilities to institutions or entities referred to in point (2), (3) or (4) of Article 2(1) that are part of the same resolution group without being themselves resolution entities, regardless of their maturities."

All secured assets relating to a covered bond cover pool shall remain unaffected, segregated and with enough funding. Neither that requirement nor point (2) of the first subparagraph shall prevent the Resolution Board, 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 (1) of the first subparagraph shall not prevent the Resolution Board, where appropriate, from exercising those powers in relation to any amount of a deposit that exceeds the coverage level provided for in Article 171.

Without prejudice to the large exposure rules in Regulation (EU) No 575/2013 and Directive 2013/36/EU, the Resolution Board shall, in order to provide for the resolvability of institutions and groups, limit, if necessary, in accordance with point (2) of Article 29(5), the extent to which other institutions hold "bail-inable liabilities"⁷⁷, 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 Board may exclude or partially exclude certain liabilities from the application of the write-down or conversion powers where:

1. it is not possible to bail-in that liability within a reasonable time notwithstanding the good faith efforts of the Resolution Board;

⁷⁵ Law of 20 May 2021

⁷⁶ Law of 21 July 2021

⁷⁷ Law of 20 May 2021

2. 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;
3. the exclusion is strictly necessary and proportionate to avoid giving rise to widespread contagion, in particular as regards “bail-inable”⁷⁸ 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 national economy, the economy of a Member State or of the European Union; or
4. 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.

Where the Resolution Board decides to exclude or partially exclude a “bail-inable”⁷⁹ liability or class of “bail-inable”⁸⁰ liabilities under this paragraph, the level of write down or conversion applied to other “bail-inable”⁸¹ liabilities may be increased to take account of such exclusions, provided that the level of write down and conversion applied to other “bail-inable”⁸² liabilities complies with the principle in point (7) of Article 35(1).

Before exercising the discretion to exclude a liability under this paragraph, the Resolution Board shall notify the European Commission.

(4) Where the Resolution Board decides to exclude or partially exclude a “bail-inable liability or class of bail-inable liabilities”⁸³ pursuant to this article, and the losses that would have been borne by those liabilities have not been passed on fully to other creditors, the FRL may make a contribution to the institution under resolution to do at least one of the following:

1. cover any losses which have not been absorbed by “bail-inable liabilities”⁸⁴ and restore the net asset value of the institution under resolution to zero in accordance with point (1) of Article 47(1);
2. purchase shares or other instruments of ownership or capital instruments in the institution under resolution, in order to recapitalise the institution in accordance with point (2) of Article 47(1).

(5) The FRL may make a contribution referred to in paragraph 4 only where:

1. 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 37, has been made by the shareholders and the holders of other instruments of ownership, the holders of relevant capital instruments and other “bail-inable liabilities”⁸⁵ through write down, conversion or otherwise; and
2. 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 37.

(6) The contribution of the FRL for resolution referred to in paragraph 4 may be financed by:

1. the amount available to the FRL which has been raised through contributions by institutions and EU branches in accordance with Article 108;
2. the amount that can be raised through ex-post contributions in accordance with Article 109 within three years; and
3. where the amounts referred to in points (1) and (2) are insufficient, amounts raised from alternative financing sources in accordance with Article 110.

⁷⁸ Law of 20 May 2021

⁷⁹ Law of 20 May 2021

⁸⁰ Law of 20 May 2021

⁸¹ Law of 20 May 2021

⁸² Law of 20 May 2021

⁸³ Law of 20 May 2021

⁸⁴ Law of 20 May 2021

⁸⁵ Law of 20 May 2021

(7) In extraordinary circumstances, the Resolution Board may seek further funding from alternative financing sources after:

1. the 5% limit specified in paragraph 5(2) has been reached; and
2. 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 FRL may make a contribution from resources which have been raised through ex-ante contributions in accordance with Article 108 and which have not yet been used.

(8) By way of derogation from paragraph 5(1), the resolution financing arrangement may also make a contribution as referred to in paragraph 4 provided that:

1. the contribution to loss absorption and recapitalisation referred to in point (1) of paragraph 5 is equal to an amount not less than 20% of the risk weighted assets of the institution concerned;
2. the FRL has at its disposal, by way of ex-ante contributions raised in accordance with Article 108, an amount which is at least equal to 3% of covered deposits of all credit institutions authorised in Luxembourg; and
3. the institution concerned has assets below EUR 900,000,000,000 on a consolidated basis.

(9) When exercising the discretions under paragraph 3, the Resolution Board shall give due consideration to:

1. 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;
2. the level of loss absorbing capacity that would remain in the institution under resolution if the liability or class of liabilities were excluded; and
3. 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.

(Law of 20 May 2021)

"Article 45-1. Selling of subordinated eligible liabilities to retail clients

Eligible liabilities which meet all conditions referred to in Article 72a of Regulation (EU) No 575/2013 except for letter (b) of Article 72a(1) and paragraphs 3 to 5 of Article 72b of that regulation shall not be sold to a retail client, as defined in point 6 of Article 1 of the Law of 30 May 2018 on markets in financial instruments, as amended, if their nominal amount is below EUR 50,000."

Subsection II - Minimum requirement for own funds and eligible liabilities

"Article 46. Application and calculation of the minimum requirement for own funds and eligible liabilities

(1) Institutions and entities referred to in points (2), (3) and (4) of Article 2(1) shall meet, at all times, a minimum requirement for own funds and eligible liabilities where required by and in accordance with this article and Articles 46-1 to 46-11.

(2) The requirement referred to in paragraph 1 of this article shall be calculated in accordance with Article 46-3(3), (4) or (6), as applicable, as the amount of own funds and eligible liabilities and expressed as percentages of:

1. the total risk exposure amount of the relevant entity referred to in paragraph 1, calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013; and
2. the total exposure measure of the relevant entity referred to in paragraph 1, calculated in accordance with Articles 429 and 429a of Regulation (EU) No 575/2013.

(Law of 21 July 2021)

"(3) References to Article 92 of Regulation (EU) No 575/2013 as regards the own funds requirements on an individual basis of investment firms referred to in point 47 of the first subparagraph of Article 1, and which are not investment firms referred to in Article 1(2) or 1(5) of Regulation (EU) 2019/2033 in this part shall be construed as follows:

1. references to Article 92(1)(c) of Regulation (EU) No 575/2013 as regards the total capital ratio requirement in this part shall refer to Article 11(1) of Regulation (EU) 2019/2033;

2. references to Article 92(3) of Regulation (EU) No 575/2013 as regards the total risk exposure amount in this part shall refer to the applicable requirement in Article 11(1) of Regulation (EU) 2019/2033, multiplied by 12,5.

References in this part to Article 53-3 of the Law of 5 April 1993 on the financial sector, as amended, as regards additional own funds requirements of investment firms referred to in point 47 of the first subparagraph of Article 1 of this law and which are not investment firms referred to in Article 1(2) or 1(5) of Regulation (EU) 2019/2033 shall be construed as referring to Article 53-54 of the Law of 5 April 1993 on the financial sector, as amended."

Article 46-1. Exemption from the minimum requirement for own funds and eligible liabilities

(1) Notwithstanding Article 46, the Resolution Board shall exempt from the requirement laid down in Article 46(1) mortgage credit institutions financed by covered bonds which are not allowed to receive deposits, provided that all of the following conditions are met:

1. those institutions will be wound up in normal insolvency proceedings referred to in Part II, or in other types of proceedings laid down for those institutions and implemented in accordance with Article 39, 41 or 43; and
2. the proceedings referred to in point (1) ensure that creditors of those institutions, including holders of covered bonds, where relevant, bear losses in a way that meets the resolution objectives.

(2) Institutions exempted from the requirement laid down in Article 46(1) shall not be part of the consolidation referred to in Article 46-5(1).

Article 46-2. Eligible liabilities for resolution entities

(1) Liabilities shall be included in the amount of own funds and eligible liabilities of resolution entities only where they satisfy the conditions referred to in the following articles of Regulation (EU) No 575/2013:

1. Article 72a;
2. Article 72b, with the exception of letter (d) of paragraph 2; and
3. Article 72c.

By way of derogation from the first subparagraph, where this law refers to the requirements in Article 92a or Article 92b of Regulation (EU) No 575/2013, for the purpose of those articles, eligible liabilities shall consist of eligible liabilities as defined in Article 72k of that Regulation and determined in accordance with Chapter 5a of Title I of Part Two of that regulation.

(2) Liabilities that arise from debt instruments with embedded derivatives, such as structured notes, that meet the conditions of the first subparagraph of paragraph 1 of this article, except for letter (l) of Article 72a(2) of Regulation (EU) No 575/2013, shall be included in the amount of own funds and eligible liabilities only where one of the following conditions is met:

1. the principal amount of the liability arising from the debt instrument is known at the time of issue, is fixed or increasing, and is not affected by an embedded derivative feature, and the total amount of the liability arising from the debt instrument, including the embedded derivative, can be valued on a daily basis by reference to an active and liquid two-way market for an equivalent instrument without credit risk, in accordance with Articles 104 and 105 of Regulation (EU) No 575/2013; or
2. the debt instrument includes a contractual term that specifies that the value of the claim in cases of the insolvency of the issuer and of the resolution of the issuer is fixed or increasing, and does not exceed the initially paid-up amount of the liability.

Debt instruments referred to in the first subparagraph, including their embedded derivatives, shall not be subject to any netting agreement and the valuation of such instruments shall not be subject to point (2) of Article 50.

The liabilities referred to in the first subparagraph shall only be included in the amount of own funds and eligible liabilities with respect to the part of the liability that corresponds to the principal amount referred to in point (1) of that subparagraph or to the fixed or increasing amount referred to in point (2) of that subparagraph.

(3) Where liabilities are issued by a subsidiary established in the European Union to an existing shareholder that is not part of the same resolution group, and that subsidiary is part of the same resolution group as the resolution entity, those liabilities shall be included in the amount of own funds and eligible liabilities of that resolution entity, provided that all of the following conditions are met:

1. they are issued in accordance with point (1) of Article 46-6(2);
2. the exercise of the write down or conversion power in relation to those liabilities in accordance with Articles 57 or 60 does not affect the control of the subsidiary by the resolution entity;
3. those liabilities do not exceed an amount determined by subtracting:
 - a) the sum of the liabilities issued to and bought by the resolution entity either directly or indirectly through other entities in the same resolution group and the amount of own funds issued in accordance with point (2) of Article 46-6(2) from;
 - b) the amount required in accordance with Article 46-6(1).

(4) Without prejudice to the minimum requirement in Article 46-3(4) and point (1) of Article 46-4(1), the Resolution Board shall ensure that a part of the requirement referred to in Article 46-5 equal to 8 % of the total liabilities, including own funds, shall be met by resolution entities that are G-SIIs or resolution entities that are subject to Article 46-3(4) or (5) using own funds, subordinated eligible instruments, or liabilities as referred to in paragraph 3 of this article. The Resolution Board may permit that a level lower than 8 % of the total liabilities, including own funds, but greater than the amount resulting from the application of the formula $(1 - (X1/X2)) \times 8\%$ of the total liabilities, including own funds, shall be met by resolution entities that are G-SIIs or resolution entities that are subject to Article 46-3(4) or (5) using own funds, subordinated eligible instruments, or liabilities as referred in paragraph 3 of this article, provided that all the conditions set out in Article 72b(3) of Regulation (EU) No 575/2013 are met, where, in light of the reduction that is possible under Article 72b(3) of that Regulation;

X1 = 3.5 % of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013; and

X2 = the sum of 18 % of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 and the amount of the combined buffer requirement.

For resolution entities that are subject to Article 46-3(4), where the application of the first subparagraph of this paragraph leads to a requirement greater than 27 % of the total risk exposure amount, for the resolution entity concerned, the Resolution Board shall limit the part of the requirement referred to in Article 46-5 which is to be met using own funds, subordinated eligible instruments, or liabilities as referred to in paragraph 3 of this article, to an amount equal to 27 % of the total risk exposure amount, if the Resolution Board has assessed that:

1. access to the FRL or the Single Resolution Fund is not considered to be an option for resolving that resolution entity in the resolution plan; and
2. where point (1) does not apply, the requirement referred to in Article 46-5 allows that resolution entity to meet the requirements referred to in Article 45(5) or (8) as applicable.

In carrying out the assessment referred to in the second subparagraph, the Resolution Board shall also take into account the risk of disproportionate impact on the business model of the resolution entity concerned.

For resolution entities that are subject to Article 46-3(5), the second subparagraph of this paragraph does not apply.

(5) For resolution entities that are neither G-SIIs nor resolution entities that are subject to Article 46-3(4) or (5), the Resolution Board may decide that a part of the requirement referred to in Article 46-5 up to the greater of 8 % of the total liabilities, including own funds, of the entity and the formula referred to in paragraph 7 of this article, shall be met using own funds, subordinated eligible instruments, or liabilities as referred to in paragraph 3 of this article, provided that the following conditions are met:

1. non-subordinated liabilities referred to in paragraphs 1 and 2 of this article have the same priority ranking in the national insolvency hierarchy as certain liabilities that are excluded from the application of write down and conversion powers in accordance with Article 45(2) or (3);
2. there is a risk that, as a result of a planned application of write-down and conversion powers to non-subordinated liabilities that are not excluded from the application of write down and conversion powers in accordance with Article 45(2) or (3), creditors whose claims arise from those liabilities incur greater losses than they would incur in a winding up under normal insolvency proceedings;
3. the amount of own funds and other subordinated liabilities does not exceed the amount necessary to ensure that the creditors referred to in point (2) do not incur losses above the level of losses that they would otherwise have incurred in the winding up under normal insolvency proceedings.

Where the Resolution Board determines that, within a class of liabilities which includes eligible liabilities, the amount of the liabilities that are excluded or reasonably likely to be excluded from the application of write down and conversion powers in accordance with Article 45(2) or (3) totals more than 10 % of that class, the Resolution Board shall assess the risk referred to in point (2) of the first subparagraph of this paragraph.

(6) For the purposes of paragraphs 4, 5 and 7, derivative liabilities shall be included in total liabilities on the basis that full recognition is given to counterparty netting rights.

The own funds of a resolution entity that are used to comply with the combined buffer requirement shall be eligible to comply with the requirements referred to in paragraphs 4, 5 and 7.

(7) By derogation from paragraph 4 of this article, the Resolution Board may decide that the requirement referred to in Article 46-5 shall be met by resolution entities that are G-SIIs or resolution entities that are subject to Article 46-3(4) or (5) of this law, using own funds, subordinated eligible instruments, or liabilities as referred to in paragraph 3 of this article, to the extent that, due to the obligation of the resolution entity to comply with the combined buffer requirement and the requirements referred to in Article 92a of Regulation (EU) No 575/2013, Article 46-3(4) and Article 46-5 of this law, the sum of those own funds, instruments and liabilities does not exceed the greater of:

1. 8 % of total liabilities, including own funds, of the entity; or
2. the amount resulting from the application of the formula $A \times 2 + B \times 2 + C$, where A, B and C are the following amounts:
 - A = the amount resulting from the requirement referred to in letter (c) of Article 92(1) of Regulation (EU) No 575/2013;
 - B = the amount resulting from the requirement referred to in Article 53-3 of the Law of 5 April 1993 on the financial sector, as amended;
 - C = the amount resulting from the combined buffer requirement.

(8) The Resolution Board may exercise the power referred to in paragraph 7 of this article with respect to resolution entities that are G-SIIs or that are subject to Article 46-3(4) or (5), and that meet one of the conditions set out in the second subparagraph, up to a limit of 30 % of the total number of all resolution entities that are G-SIIs or that are subject to Article 46-3(4) or (5) for which the Resolution Board determines the requirement referred to in Article 46-5.

The Resolution Board shall take into consideration the following factors:

1. substantive impediments to resolvability have been identified in the preceding resolvability assessment and either:
 - a) no remedial action has been taken following the application of the measures referred to in Article 29(5) in the timeline required by the Resolution Board, or
 - b) the identified substantive impediments cannot be addressed using any of the measures referred to in Article 29(5), and the exercise of the power referred to in paragraph 7 of this article would partially or fully compensate for the negative impact of the substantive impediments on resolvability;
2. the Resolution Board considers that the feasibility and credibility of the resolution entity's preferred resolution strategy is limited, taking into account the entity's size, its interconnectedness, the nature, scope, risk and complexity of its activities, its legal status and its shareholding structure; or
3. the requirement referred to in Article 53-3 of the Law of 5 April 1993 on the financial sector, as amended, reflects the fact that the resolution entity that is a G-SII or that is subject to Article 46-3(4) or (5) of this law is, in terms of riskiness, among the top 20 % of institutions for which the Resolution Board determines the requirement referred to in Article 46(1).

For the purposes of the percentages referred to in the first and second subparagraphs, the Resolution Board shall round the number resulting from the calculation up to the closest whole number.

(9) The Resolution Board shall only take the decisions referred to in paragraph 5 or 7 after consulting the supervisory authority.

When taking those decisions, the Resolution Board shall also take into account:

1. the depth of the market for the resolution entity's own funds instruments and subordinated eligible instruments, the pricing of such instruments, where they exist, and the time needed to execute any transactions necessary for the purpose of complying with the decision;
2. the amount of eligible liabilities instruments that meet all of the conditions referred to in Article 72a of Regulation (EU) No 575/2013 that have a residual maturity below one year as of the date of the decision, with a view to making quantitative adjustments to the requirements referred to in paragraphs 5 and 7 of this article;
3. the availability and the amount of instruments that meet all of the conditions referred to in Article 72a of Regulation (EU) No 575/2013 other than letter (d) of Article 72b(2) of that regulation;
4. whether the amount of liabilities that are excluded from the application of write down and conversion powers in accordance with Article 45(2) or (3) and that, in normal insolvency proceedings, rank equally with or below the highest ranking eligible liabilities is significant in comparison to the own funds and eligible liabilities of the resolution entity. Where the amount of excluded liabilities does not exceed 5 % of the amount of the own funds and eligible liabilities of the resolution entity, the excluded amount shall be considered as not being significant. Above that threshold, the significance of the excluded liabilities shall be assessed by the Resolution Board;
5. the resolution entity's business model, funding model, and risk profile, as well as its stability and ability to contribute to the economy; and
6. the impact of possible restructuring costs on the resolution entity's recapitalisation.

Article 46-3. Determination of the minimum requirement for own funds and eligible liabilities

(1) The requirement referred to in Article 46(1) shall be determined by the Resolution Board, after consulting the supervisory authority, on the basis of the following criteria:

1. the need to ensure that the resolution group can be resolved by the application of the resolution tools to the resolution entity, including, where appropriate, the bail-in tool, in a way that meets the resolution objectives;
2. the need to ensure, where appropriate, that the resolution entity and its subsidiaries that are institutions or entities referred to in points (2), (3) and (4) of Article 2(1) but are not resolution entities have sufficient own funds and eligible liabilities to ensure that, if the bail-in tool or write down and conversion powers, respectively, were to be applied to them, losses could be absorbed and that it is possible to restore the total capital ratio and, as applicable, the leverage ratio, of the relevant entities to a level necessary to enable them to continue to comply with the conditions for authorisation and to carry on the activities for which they are authorised;
3. the need to ensure, if the resolution plan anticipates the possibility for certain classes of eligible liabilities to be excluded from bail-in pursuant to Article 45(3) of this law or to be transferred in full to a recipient under a partial transfer, that the resolution entity has sufficient own funds and other eligible liabilities to absorb losses and to restore its total capital ratio and, as applicable, its leverage ratio, to the level necessary to enable it to continue to comply with the conditions for authorisation and to carry on the activities for which it is authorised;
4. the size, the business model, the funding model and the risk profile of the entity;
5. the extent to which the failure of the entity would have an adverse effect on financial stability, including through contagion to other institutions or entities, due to the interconnectedness of the entity with those other institutions or entities or with the rest of the financial system.

(2) Where the resolution plan provides that resolution action is to be taken or that the power to write down and convert relevant capital instruments and eligible liabilities in accordance with Article 57 is to be exercised in accordance with the relevant scenario referred to in Article 9(2), the requirement referred to in Article 46(1) shall equal an amount sufficient to ensure that:

1. the losses that are expected to be incurred by the entity are fully absorbed;
2. the resolution entity and its subsidiaries that are institutions or entities referred to points (2), (3) and (4) of Article 2(1) but are not resolution entities are recapitalised to a level necessary to enable them to continue to comply with the conditions for authorisation, and to carry on the activities for which they are authorised for an appropriate period not longer than one year.

Where the resolution plan provides that the entity is to be wound up under normal insolvency proceedings, the Resolution Board shall assess whether it is justified to limit the requirement referred

to in Article 46(1) for that entity, so that it does not exceed an amount sufficient to absorb losses in accordance with point (1) of the first subparagraph.

The assessment by the Resolution Board shall, in particular, evaluate the limit referred to in the second subparagraph as regards any possible impact on financial stability and on the risk of contagion to the financial system.

(3) For resolution entities, the amount referred to in the first subparagraph of paragraph 2 shall be the following:

1. for the purpose of calculating the requirement referred to in Article 46(1), in accordance with point (1) of Article 46(2), the sum of:
 - a) the amount of the losses to be absorbed in resolution that corresponds to the requirements referred to in letter (c) of Article 92(1) of Regulation (EU) No 575/2013 and Article 53-3 of the Law of 5 April 1993 on the financial sector, as amended, of the resolution entity at the consolidated resolution group level; and
 - b) a recapitalisation amount that allows the resolution group resulting from resolution to restore compliance with its total capital ratio requirement referred to in letter (c) of Article 92(1) of Regulation (EU) No 575/2013 and its requirement referred to in Article 53-3 of the Law of 5 April 1993 on the financial sector, as amended, at the consolidated resolution group level after the implementation of the preferred resolution strategy; and
2. for the purpose of calculating the requirement referred to in Article 46(1), in accordance with point (2) of Article 46(2), the sum of:
 - a) the amount of the losses to be absorbed in resolution that corresponds to the resolution entity's leverage ratio requirement referred to in letter (d) of Article 92(1) of Regulation (EU) No 575/2013 at the consolidated resolution group level; and
 - b) a recapitalisation amount that allows the resolution group resulting from resolution to restore compliance with the leverage ratio requirement referred to in letter (d) of Article 92(1) of Regulation (EU) No 575/2013 at the consolidated resolution group level after the implementation of the preferred resolution strategy.

For the purposes of point (1) of Article 46(2), the requirement referred to in Article 46(1) shall be expressed in percentage terms as the amount calculated in accordance with point (1) of the first subparagraph of this paragraph, divided by the total risk exposure amount.

For the purposes of point (2) of Article 46(2), the requirement referred to in Article 46(1) shall be expressed in percentage terms as the amount calculated in accordance with point (2) of the first subparagraph of this paragraph, divided by the total exposure measure.

When setting the individual requirement provided in point (2) of the first subparagraph of this paragraph, the Resolution Board shall take into account the requirements referred to in Article 45(5) and (8).

When setting the recapitalisation amounts referred to in the first to the fourth subparagraphs, the Resolution Board shall:

1. use the most recently reported values for the relevant total risk exposure amount or total exposure measure, adjusted for any changes resulting from resolution actions set out in the resolution plan; and
2. after consulting the supervisory authority, adjust the amount corresponding to the current requirement referred to in Article 53-3 of the Law of 5 April 1993 on the financial sector, as amended, downwards or upwards to determine the requirement that is to apply to the resolution entity after the implementation of the preferred resolution strategy.

The Resolution Board shall be able to increase the requirement provided in letter (b) of point (1) of the first subparagraph by an appropriate amount necessary to ensure that, following resolution, the entity is able to sustain sufficient market confidence for an appropriate period, which shall not exceed one year.

Where the sixth subparagraph of this paragraph applies, the amount referred to in the sixth subparagraph shall be equal to the combined buffer requirement that is to apply after the application of the resolution tools, less the amount referred to in letter (a) of point (6) of Article 59-2 of the Law of 5 April 1993 on the financial sector, as amended.

The amount referred to in the sixth subparagraph of this paragraph shall be adjusted downwards if, after consulting the supervisory authority, the Resolution Board determines that it would be feasible

and credible for a lower amount to be sufficient to sustain market confidence and to ensure both the continued provision of critical economic functions by the institution or entity referred to in points (2), (3) and (4) of Article 2(1) and its access to funding without recourse to extraordinary public financial support other than contributions from the FRL or the Single Resolution Fund, in accordance with Article 45(5) and (8) and Article 106(2), after implementation of the resolution strategy. That amount shall be adjusted upwards if, after consulting the supervisory authority, the Resolution Board determines that a higher amount is necessary to sustain sufficient market confidence and to ensure both the continued provision of critical economic functions by the institution or entity referred to in points (2), (3) and (4) of Article 2(1) and its access to funding without recourse to extraordinary public financial support other than contributions from the FRL or the Single Resolution Fund, in accordance with Article 45(5) and (8) and Article 106(2), for an appropriate period which shall not exceed one year.

(4) For resolution entities that are not subject to Article 92a of Regulation (EU) No 575/2013 and that are part of a resolution group the total assets of which exceed EUR 100 billion, the level of the requirement referred to in paragraph 3 of this article shall be at least equal to:

1. 13.5 % when calculated in accordance with point (1) of Article 46(2); and
2. 5 % when calculated in accordance with point (2) of Article 46(2).

By way of derogation from Article 46-2, the resolution entities referred to in the first subparagraph of this paragraph shall meet a level of the requirement referred to in the first subparagraph of this paragraph that is equal to 13.5 % when calculated in accordance with point (1) of Article 46(2) and to 5 % when calculated in accordance with point (2) of Article 46(2) using own funds, subordinated eligible instruments, or liabilities as referred to in Article 46-2(3).

(5) The Resolution Board may, after consulting the supervisory authority, decide to apply the requirements laid down in paragraph 4 of this article to a resolution entity which is not subject to Article 92a of Regulation (EU) No 575/2013 and which is part of a resolution group the total assets of which are lower than EUR 100 billion and which the Resolution Board has assessed as reasonably likely to pose a systemic risk in the event of its failure.

When taking a decision as referred to in the first subparagraph of this paragraph, the Resolution Board shall take into account:

1. the prevalence of deposits and the absence of debt instruments in the funding model;
2. the extent to which access to the capital markets for eligible liabilities is limited;
3. the extent to which the resolution entity relies on Common Equity Tier 1 capital to meet the requirement referred to in Article 46-5.

The absence of a decision pursuant to the first subparagraph of this paragraph is without prejudice to any decision under Article 46-2(5).

(6) For entities that are not themselves resolution entities, the amount referred to in the first subparagraph of paragraph 2 shall be the following:

1. for the purpose of calculating the requirement referred to in Article 46(1), in accordance with point (1) of Article 46(2), the sum of:
 - a) the amount of the losses to be absorbed that corresponds to the requirements referred to in letter (c) of Article 92(1) of Regulation (EU) No 575/2013 and Article 53-3 of the Law of 5 April 1993 on the financial sector, as amended, of the entity; and
 - b) a recapitalisation amount that allows the entity to restore compliance with its total capital ratio requirement referred in letter (c) of Article 92(1) of Regulation (EU) No 575/2013 and its requirement referred to in Article 53-3 of the Law of 5 April 1993 on the financial sector, as amended, after the exercise of the power to write down or convert relevant capital instruments and eligible liabilities in accordance with Article 57 of this law or after the resolution of the resolution group; and
2. for the purpose of calculating the requirement referred to in Article 46(1), in accordance with point (2) of Article 46(2), the sum of:
 - a) the amount of the losses to be absorbed that corresponds to the entity's leverage ratio requirement referred to in letter (d) of Article 92(1) of Regulation (EU) No 575/2013; and
 - b) a recapitalisation amount that allows the entity to restore compliance with its leverage ratio requirement referred to in letter (d) of Article 92(1) of Regulation (EU) No 575/2013 after the exercise of the power to write down or convert relevant capital instruments and eligible

liabilities in accordance with Article 57 of this law or after the resolution of the resolution group.

For the purposes of point (1) of Article 46(2), the requirement referred to in Article 46(1) shall be expressed in percentage terms as the amount calculated in accordance with point (1) of the first subparagraph of this paragraph, divided by the total risk exposure amount.

For the purposes of point (2) of Article 46(2), the requirement referred to in Article 46(1) shall be expressed in percentage terms as the amount calculated in accordance with point (2) of the first subparagraph of this paragraph, divided by the total exposure measure.

When setting the individual requirement provided in point (2) of the first subparagraph of this paragraph, the Resolution Board shall take into account the requirements referred to in Article 45(5) and (8).

When setting the recapitalisation amounts referred to in the preceding subparagraphs, the Resolution Board shall:

1. use the most recently reported values for the relevant total risk exposure amount or total exposure measure, adjusted for any changes resulting from actions set out in the resolution plan; and
2. after consulting the supervisory authority, adjust the amount corresponding to the current requirement referred to in Article 53-3 of the Law of 5 April 1993 on the financial sector, as amended, downwards or upwards to determine the requirement that is to apply to the relevant entity after the exercise of the power to write down or convert relevant capital instruments and eligible liabilities in accordance with Article 57 of this law or after the resolution of the resolution group.

The Resolution Board shall be able to increase the requirement provided in letter (b) of point (1) of the first subparagraph of this paragraph by an appropriate amount necessary to ensure that, following the exercise of the power to write down or convert relevant capital instruments and eligible liabilities in accordance with Article 57, the entity is able to sustain sufficient market confidence for an appropriate period which shall not exceed one year.

Where the sixth subparagraph of this paragraph applies, the amount referred to in the sixth subparagraph shall be equal to the combined buffer requirement that is to apply after the exercise of the power referred to in Article 57 of this law or after the resolution of the resolution group, less the amount referred to in letter (a) of point (6) of Article 59-2 of the Law of 5 April 1993 on the financial sector, as amended.

The amount referred to in the sixth subparagraph of this paragraph shall be adjusted downwards if, after consulting the supervisory authority, the Resolution Board determines that it would be feasible and credible for a lower amount to be sufficient to ensure market confidence and to ensure both the continued provision of critical economic functions by the institution or entity referred to in point (2), (3) or (4) of Article 2(1) and its access to funding without recourse to extraordinary public financial support other than contributions from the FRL or the Single Resolution Fund, in accordance with Article 45(5) and (8) and Article 106(2), after exercise of the power referred to in Article 57 or after the resolution of the resolution group. That amount shall be adjusted upwards if, after consulting the supervisory authority, the Resolution Board determines that a higher amount is necessary to sustain sufficient market confidence and to ensure both the continued provision of critical economic functions by the institution or entity referred to in point (2), (3) or (4) of Article 2(1) and its access to funding without recourse to extraordinary public financial support other than contributions from the FRL or the Single Resolution Fund, in accordance with Article 45(5) and (8) and Article 106(2), for an appropriate period which shall not exceed one year.

(7) Where the Resolution Board expects that certain classes of eligible liabilities are reasonably likely to be fully or partially excluded from bail-in pursuant to Article 45(3) or might be transferred in full to a recipient under a partial transfer, the requirement referred to in Article 46(1) shall be met using own funds or other eligible liabilities that are sufficient to:

1. cover the amount of excluded liabilities identified in accordance with Article 45(3);
2. ensure that the conditions referred to in paragraph 2 are fulfilled.

(8) Any decision by the Resolution Board to impose a minimum requirement of own funds and eligible liabilities under this article shall contain the reasons for that decision, including a full assessment of the elements referred to in paragraphs 2 to 7 of this article, and shall be reviewed by the Resolution Board without undue delay to reflect any changes in the level of the requirement referred to in Article 53-3 of the Law of 5 April 1993 on the financial sector, as amended.

(9) For the purposes of paragraphs 3 and 6 of this article, capital requirements shall be interpreted in accordance with the supervisory authority's application of the transitional provisions laid down in Chapters 1, 2 and 4 of Title I of Part Ten of Regulation (EU) No 575/2013.

Article 46-4. Determination of the minimum requirement for own funds and eligible liabilities for resolution entities of G-SIIs and EU material subsidiaries of non-EU G-SIIs

(1) The requirement referred to in Article 46(1) for a resolution entity that is a G-SII or part of a G-SII shall consist of the following:

1. the requirements referred to in Articles 92a and 494 of Regulation (EU) No 575/2013; and
2. any additional requirement for own funds and eligible liabilities that has been determined by the Resolution Board specifically in relation to that entity in accordance with paragraph 3 of this article.

(2) The requirement referred to in Article 46(1) for a Luxembourg material subsidiary of a non-EU G-SII shall consist of the following:

1. the requirements referred to in Articles 92a and 494 of Regulation (EU) No 575/2013; and
2. any additional requirement for own funds and eligible liabilities that has been determined by the Resolution Board specifically in relation to that material subsidiary in accordance with paragraph 3 of this article, which is to be met using own funds and liabilities that meet the conditions of Articles 46-6 and 90(2).

(3) The Resolution Board shall impose an additional requirement for own funds and eligible liabilities referred to in point (2) of paragraph 1 and point (2) of paragraph 2 only:

1. where the requirement referred to in point (1) of paragraph 1 or point (1) of paragraph 2 of this article is not sufficient to fulfil the conditions set out in Article 46-3; and
2. to an extent that ensures that the conditions set out in Article 46-3 are fulfilled.

(4) For the purposes of Articles 46-8(2) and 46-9(2), where more than one G-SII entity belonging to the same G-SII are resolution entities, the Resolution Board shall calculate the amount referred to in paragraph 3:

1. for each Luxembourg resolution entity;
2. for the EU parent entity, where established in Luxembourg, as if it was the only resolution entity of the G-SII.

(5) Any decision by the Resolution Board to impose an additional requirement for own funds and eligible liabilities under point (2) of paragraph 1 of this article or point (2) of paragraph 2 of this article shall contain the reasons for that decision, including a full assessment of the elements referred to in paragraph 3 of this article, and shall be reviewed by the Resolution Board without undue delay to reflect any changes in the level of the requirement referred to in Article 53-3 of the Law of 5 April 1993 on the financial sector, as amended, that applies to the resolution group or the Luxembourg material subsidiary of a non-EU G-SII.

Article 46-5. Application of the minimum requirement for own funds and eligible liabilities to resolution entities

(1) Resolution entities shall comply with the requirements laid down in Articles 46-2 to 46-4 on a consolidated basis at the level of the resolution group.

(2) The Resolution Board shall determine the requirement referred to in Article 46(1) for a resolution entity at the consolidated resolution group level in accordance with Article 46-9, on the basis of the requirements laid down in Articles 46-2 to 46-4 and on the basis of whether the third-country subsidiaries of the group are to be resolved separately under the resolution plan.

(3) For resolution groups identified in accordance with letter (b) of point (67a) of Article 1, the Resolution Board shall decide, depending on the features of the solidarity mechanism and of the preferred resolution strategy, which entities in the resolution group are to be required to comply with Article 46-3(3) and (4) and Article 46-4(1), in order to ensure that the resolution group as a whole complies with paragraphs 1 and 2 of this article, and how such entities are to do so in conformity with the resolution plan.

Article 46-6. Application of the minimum requirement for own funds and eligible liabilities to subsidiaries that are not themselves resolution entities

(1) Institutions that are subsidiaries of a resolution entity or of a third-country entity, but are not themselves resolution entities, shall comply with the requirements laid down in Article 46-3 on an

individual basis.

The Resolution Board, after consulting the supervisory authority, may decide to apply the requirement laid down in this article to an entity referred to in point (2), (3) or (4) of Article 2(1) that is a subsidiary of a resolution entity but is not itself a resolution entity.

By way of derogation from the first subparagraph of this paragraph, EU parent undertakings that are not themselves resolution entities, but are subsidiaries of third-country entities, shall comply with the requirements laid down in Articles 46-3 and 46-4 on a consolidated basis.

For resolution groups identified in accordance with letter (b) of point (67a) of Article 1, those credit institutions which are permanently affiliated to a central body, but are not themselves resolution entities, a central body which is not itself a resolution entity, and any resolution entities that are not subject to a requirement under Article 46-5(3), shall comply with Article 46-3(6) on an individual basis.

The requirement referred to in Article 46(1) for an entity referred to in this paragraph shall be determined in accordance with Articles 46-10 and 90, where applicable, and on the basis of the requirements laid down in Article 46-3.

(2) The requirement referred to in Article 46(1) for entities referred to in paragraph 1 of this article shall be met using one or more of the following:

1. liabilities:

- a) that are issued to and bought by the resolution entity, either directly or indirectly through other entities in the same resolution group that bought the liabilities from the entity that is subject to this article, or are issued to and bought by an existing shareholder that is not part of the same resolution group as long as the exercise of write down or conversion powers in accordance with Articles 57 to 60 does not affect the control of the subsidiary by the resolution entity;
- b) that fulfil the eligibility criteria referred to in Article 72a of Regulation (EU) No 575/2013, except for letters (b), (c), (k), (l) and (m) of Article 72b(2) and Article 72b(3) to (5) of that regulation;
- c) that rank, in normal insolvency proceedings, below liabilities that do not meet the condition referred to in letter (a) and that are not eligible for own funds requirements;
- d) that are subject to write down or conversion powers in accordance with Articles 57 to 60 in a manner that is consistent with the resolution strategy of the resolution group, in particular by not affecting the control of the subsidiary by the resolution entity;
- e) the acquisition of ownership of which is not funded directly or indirectly by the entity that is subject to this article;
- f) the provisions governing which do not indicate explicitly or implicitly that the liabilities would be called, redeemed, repaid or repurchased early, as applicable, by the entity that is subject to this article, other than in the case of the insolvency or liquidation of that entity, and that entity does not otherwise provide such an indication;
- g) the provisions governing which do not give the holder the right to accelerate the future scheduled payment of interest or principal, other than in the case of the insolvency or liquidation of the entity that is subject to this article;
- h) the level of interest or dividend payments, as applicable, due thereon is not amended on the basis of the credit standing of the entity that is subject to this article or its parent undertaking;

2. own funds, as follows:

- a) Common Equity Tier 1 capital, and
- b) other own funds that are issued to and bought by entities that are included in the same resolution group, or issued to and bought by entities that are not included in the same resolution group as long as the exercise of write down or conversion powers in accordance with Articles 57 to 60 does not affect the control of the subsidiary by the resolution entity.

(3) The Resolution Board of a subsidiary that is not a resolution entity may waive the application of this article to that subsidiary where:

1. both the subsidiary and the resolution entity are established in Luxembourg and are part of the same resolution group;
2. the resolution entity complies with the requirement referred to in Article 46-5;

3. there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities by the resolution entity to the subsidiary in respect of which a determination has been made in accordance with Article 57(3), in particular where resolution action or powers referred to in Article 57(1) are taken in respect of the resolution entity;
4. the resolution entity satisfies the supervisory authority regarding the prudent management of the subsidiary and has declared, with the consent of the supervisory authority, that it guarantees the commitments entered into by the subsidiary, or the risks in the subsidiary are of no significance;
5. the risk evaluation, measurement and control procedures of the resolution entity cover the subsidiary;
6. the resolution entity holds more than 50 % of the voting rights attached to shares in the capital of the subsidiary or has the right to appoint or remove a majority of the members of the management body of the subsidiary.

(4) The Resolution Board of a subsidiary that is not a resolution entity may also waive the application of this article to that subsidiary where:

1. both the subsidiary and its parent undertaking are established in Luxembourg and are part of the same resolution group;
2. the parent undertaking complies on a consolidated basis with the requirement referred to in Article 46(1);
3. there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities by the parent undertaking to the subsidiary in respect of which a determination has been made in accordance with Article 57(3), in particular where resolution action or powers referred to in Article 57(1) are taken in respect of the parent undertaking;
4. either the parent undertaking satisfies the supervisory authority regarding the prudent management of the subsidiary and has declared, with the consent of the supervisory authority, that it guarantees the commitments entered into by the subsidiary, or the risks in the subsidiary are of no significance;
5. the risk evaluation, measurement and control procedures of the parent undertaking cover the subsidiary;
6. the parent undertaking holds more than 50 % of the voting rights attached to shares in the capital of the subsidiary or has the right to appoint or remove a majority of the members of the management body of the subsidiary.

(5) Where the conditions laid down in points (1) and (2) of paragraph 3 are met, the Resolution Board may permit the requirement referred to in Article 46(1) to be met in full or in part with a guarantee provided by the resolution entity, which fulfils the following conditions:

1. the guarantee is provided for at least an amount that is equivalent to the amount of the requirement for which it substitutes;
2. the guarantee is triggered when the subsidiary is unable to pay its debts or other liabilities as they fall due, or a determination has been made in accordance with Article 57(3) in respect of the subsidiary, whichever is the earliest;
3. the guarantee is collateralised through a financial collateral arrangement as defined in point (4) of Article 1 of the Law of 5 August 2005 on financial collateral arrangements, as amended, for at least 50 % of its amount;
4. the collateral backing the guarantee fulfils the requirements of Article 197 of Regulation (EU) No 575/2013, which, following appropriately conservative haircuts, is sufficient to cover the amount collateralised as referred to in point (3);
5. the collateral backing the guarantee is unencumbered and, in particular, is not used as collateral to back any other guarantee;
6. the collateral has an effective maturity that fulfils the same maturity condition as that referred to in Article 72c(1) of Regulation (EU) No 575/2013; and
7. there are no legal, regulatory or operational barriers to the transfer of the collateral from the resolution entity to the relevant subsidiary, including where resolution action is taken in respect of the resolution entity.

For the purposes of point (7) of the first subparagraph, at the request of the Resolution Board, the resolution entity shall provide an independent written and reasoned legal opinion or shall otherwise satisfactorily demonstrate that there are no legal, regulatory or operational barriers to the transfer of collateral from the resolution entity to the relevant subsidiary.

(6) Where a subsidiary holds liabilities referred to in letter (h) of Article 44(2) of Directive 2014/59/EU that rank below ordinary unsecured liabilities under the law of the Member State governing normal insolvency proceedings applicable to the entity of the group that issued these liabilities, the Resolution Board shall assess whether the amount of items complying with paragraph 2 is sufficient to support the implementation of the preferred resolution strategy.

Where the Resolution Board determines that, considering the holding of liabilities referred to in the first subparagraph, the amount of the items issued by the subsidiary complying with paragraph 2 is not sufficient to support the implementation of the preferred resolution strategy, it shall adjust this amount in order to cover this insufficiency.

Article 46-7. Waiver for a central body and credit institutions permanently affiliated to a central body

The Resolution Board may partially or fully waive the application of Article 46-6 in respect of a central body or of a credit institution which is permanently affiliated to a central body, where all of the following conditions are met:

1. the credit institution and the central body fall under the competence of the supervisory authority, are established in Luxembourg and are part of the same resolution group;
2. the commitments of the central body and its permanently affiliated credit institutions are joint and several liabilities, or the commitments of its permanently affiliated credit institutions are entirely guaranteed by the central body;
3. the minimum requirement for own funds and eligible liabilities, and the solvency and liquidity of the central body and of all of the permanently affiliated credit institutions, are monitored as a whole on the basis of the consolidated accounts of those institutions;
4. in the case of a waiver for a credit institution which is permanently affiliated to a central body, the management of the central body is empowered to issue instructions to the management of the permanently affiliated institutions;
5. the relevant resolution group complies with the requirement referred to in Article 46-5(3); and
6. there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities between the central body and the permanently affiliated credit institutions in the event of resolution.

Article 46-8. Procedure for determining the minimum requirement for own funds and eligible liabilities where the Resolution Board acts as group-level resolution authority

(1) This article shall apply where the Resolution Board acts as the group-level resolution authority.

(2) The Resolution Board shall do everything within its power to reach a joint decision with the other resolution authorities on:

1. the amount of the requirement applied at the consolidated resolution group level for each resolution entity; and
2. the amount of the requirement applied on an individual basis to each entity of a resolution group which is not a resolution entity.

The joint decision shall ensure compliance with Articles 46e and 46f of Directive 2014/59/EU and it shall be fully reasoned.

The joint decision taken in accordance with this article may provide that, where consistent with the resolution strategy and sufficient instruments complying with Article 45f(2) of Directive 2014/59/EU have not been bought directly or indirectly by the resolution entity, the requirements referred to in Article 45c(7) of Directive 2014/59/EU are partially met by the subsidiary in compliance with Article 45f(2) with instruments issued to and bought by entities not belonging to the resolution group.

(3) Where more than one G-SII entity belonging to the same G-SII are resolution entities, the Resolution Board shall discuss and, where appropriate and consistent with the G-SII's resolution strategy, agree with the other resolution authorities on the application of Article 72e of Regulation (EU) No 575/2013 and any adjustment to minimise or eliminate the difference between the sum of the amounts referred to in letter (a) of Article 45d(4) of Directive 2014/59/EU and Article 12 of

Regulation (EU) No 575/2013 for individual resolution entities and the sum of the amounts referred to in letter (b) of Article 45d(4) of Directive 2014/59/EU and Article 12 of Regulation (EU) No 575/2013.

Such an adjustment may be applied subject to the following:

1. the adjustment may be applied in respect of differences in the calculation of the total risk exposure amounts between the relevant Member States by adjusting the level of the requirement;
2. the adjustment shall not be applied to eliminate differences resulting from exposures between resolution groups.

The sum of the amounts referred to in letter (a) of Article 45d(4) of Directive 2014/59/EU and Article 12 of Regulation (EU) No 575/2013 for individual resolution entities shall not be lower than the sum of the amounts referred to in letter (b) of Article 45d(4) of Directive 2014/59/EU and Article 12 of Regulation (EU) No 575/2013.

(4) In the absence of such a joint decision within four months, a decision shall be taken in accordance with paragraphs 5 to 7.

(5) Where a joint decision is not taken within four months because of a disagreement concerning a consolidated resolution group requirement referred to in Article 45e of Directive 2014/59/EU, the Resolution Board shall communicate its opinion to the resolution authority of the resolution entity and may refer the matter to the EBA in accordance with Article 19 of Regulation No 1093/2010.

In the absence of an EBA decision within one month of the referral of the matter, the decision of the resolution authority of the resolution entity, adopted in accordance with Article 45h(4) of Directive 2014/59/EU, shall apply.

(6) Where a joint decision is not taken within four months because of a disagreement concerning the level of the requirement referred to in Article 46f to be applied to any entity of a resolution group on an individual basis, the Resolution Board shall express and communicate in writing its views and reservations to the resolution authority of the resolution entity concerned. It may also refer the matter to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, but shall not refer the matter to the EBA for binding mediation where the level set by the resolution authority of the subsidiary:

1. is within 2 % of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 of the requirement referred to in Article 46-5 of this law; and
2. complies with Article 46-3(6) of this law.

In the absence of an EBA decision within one month of the referral of the matter, the decision of the resolution authority of the subsidiary concerned, adopted in accordance with Article 45h(5) of Directive 2014/59/EU, shall apply.

(7) Where a joint decision is not taken within four months because of a disagreement concerning the level of the consolidated resolution group requirement and the level of the requirement to be applied to the resolution group's entities on an individual basis, the following shall apply:

1. paragraph 6 shall apply as regards the level of the requirement to be applied to the resolution group's subsidiaries on an individual basis;
2. paragraph 5 shall apply as regards the level of the consolidated resolution group.

(8) The Resolution Board shall be bound by any joint decision referred to in paragraph 2 and by any decision taken by the resolution authorities referred to in Article 45h(4), (5) and (6) of Directive 2014/59/EU in the absence of a joint decision.

The joint decision and any decision taken in the absence of a joint decision shall be reviewed and where relevant updated on a regular basis.

(9) The Resolution Board, in coordination with resolution authorities and competent authorities, shall require and verify that the entities meet the requirement referred to in Article 45(1) of Directive 2014/59/EU and participate in any decision taken in accordance with Article 45h of Directive 2014/59/EU in parallel with the development and the maintenance of resolution plans.

Article 46-9. Procedure for determining the minimum requirement for own funds and eligible liabilities where the Resolution Board acts as resolution authority of a resolution entity

(1) This article shall apply where the Resolution Board acts as resolution authority of a resolution entity.

(2) The Resolution Board shall do everything within its power to reach a joint decision with the other resolution authorities on:

1. the amount of the requirement applied at the consolidated resolution group level for each resolution entity; and
2. the amount of the requirement applied on an individual basis to each entity of a resolution group which is not a resolution entity.

The joint decision shall ensure compliance with Article 46-5 of this law and of Article 45f of Directive 2014/59/EU, shall be fully reasoned and be provided by the Resolution Board:

1. to the resolution entity under its competence;
2. to the EU parent undertaking of the group, where this EU parent undertaking is not itself a resolution entity of the same resolution group as the resolution entity referred to in point (1).

The joint decision taken in accordance with this article may provide that, where consistent with the resolution strategy and sufficient instruments complying with Article 45f(2) of Directive 2014/59/EU have not been bought directly or indirectly by the resolution entity, the requirements referred to in Article 45c(7) of Directive 2014/59/EU are partially met by the subsidiary in compliance with Article 45f(2) with instruments issued to and bought by entities not belonging to the resolution group.

(3) Where more than one G-SII entity belonging to the same G-SII are resolution entities, the Resolution Board shall discuss and, where appropriate and consistent with the G-SII's resolution strategy, agree with the other resolution authorities on the application of Article 72e of Regulation (EU) No 575/2013 and any adjustment to minimise or eliminate the difference between the sum of the amounts referred to in letter (a) of Article 45d(4) of Directive 2014/59/EU and Article 12 of Regulation (EU) No 575/2013 for individual resolution entities and the sum of the amounts referred to in letter (b) of Article 45d(4) of Directive 2014/59/EU and Article 12 of Regulation (EU) No 575/2013.

Such an adjustment may be applied subject to the following:

1. the adjustment may be applied in respect of differences in the calculation of the total risk exposure amounts between the relevant Member States by adjusting the level of the requirement;
2. the adjustment shall not be applied to eliminate differences resulting from exposures between resolution groups.

The sum of the amounts referred to in point (1) of Article 46-4(4) of this law and Article 12 of Regulation (EU) No 575/2013 for individual resolution entities shall not be lower than the sum of the amounts referred to in letter (b) of Article 45d(4) of Directive 2014/59/EU and Article 12 of Regulation (EU) No 575/2013.

(4) In the absence of such a joint decision within four months, a decision shall be taken in accordance with paragraphs 5 to 7.

(5) Where a joint decision is not taken within four months because of a disagreement concerning a consolidated resolution group requirement referred to in Article 46-5, a decision shall be taken on that requirement by the Resolution Board after having duly taken into account:

1. the assessment of entities of the resolution group that are not a resolution entity, performed by the relevant resolution authorities;
2. the opinion of the group-level resolution authority if it is a different authority.

Where, at the end of the four-month period, any of the resolution authorities concerned has referred the matter to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the Resolution Board shall defer its decision and await any decision that the EBA may take in accordance with Article 19(3) of that regulation, and shall take its decision in accordance with the decision of the EBA. The four-month period shall be deemed to be the conciliation period within the meaning of that regulation. In the absence of an EBA decision within one month of the referral of the matter, the decision of the Resolution Board referred to in the first subparagraph shall apply.

(6) Where a joint decision is not taken within four months because of a disagreement concerning the level of the requirement referred to in Article 46f of Directive 2014/59/EU to be applied to any entity of a resolution group on an individual basis, the Resolution Board shall express and communicate in writing its views and reservations to the resolution authority of the entity concerned. It may also refer the matter to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, but shall not refer the matter to the EBA for binding mediation where the level set by the resolution

authority of the subsidiary:

1. is within 2 % of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 of the requirement referred to in Article 46-5 of this law; and
2. complies with Article 46-3(6) of this law.

In the absence of an EBA decision within one month of the referral of the matter, the decision of the resolution authority of the subsidiary concerned, adopted in accordance with Article 45h(5) of Directive 2014/59/EU, shall apply.

(7) Where a joint decision is not taken within four months because of a disagreement concerning the level of the consolidated resolution group requirement and the level of the requirement to be applied to the resolution group's entities on an individual basis, the following shall apply:

1. paragraph 6 shall apply as regards the level of the requirement to be applied to the resolution group's subsidiaries on an individual basis;
2. a decision shall be taken on the level of the consolidated resolution group requirement in accordance with paragraph 5.

(8) The Resolution Board shall be bound by any joint decision referred to in paragraph 2 and by any decision taken by the resolution authorities referred to in Article 45h(4), (5) and (6) of Directive 2014/59/EU in the absence of a joint decision.

The joint decision and any decisions taken in the absence of a joint decision shall be reviewed and where relevant updated on a regular basis.

(9) The Resolution Board, in cooperation with the other resolution authorities and the competent authorities, shall require and verify that the entities meet the requirement referred to in Article 45(1) of Directive 2014/59/EU and participate in any decision taken in accordance with this article in parallel with the development and the maintenance of resolution plans.

Article 46-10. Procedure for determining the minimum requirement for own funds and eligible liabilities where the Resolution Board acts as resolution authority of a subsidiary which is not a resolution entity

(1) This article shall apply where the Resolution Board acts as a resolution authority of a subsidiary that is not a resolution entity.

(2) The Resolution Board shall do everything within its power to reach a joint decision with the other resolution authorities on:

1. the amount of the requirement applied at the consolidated resolution group level for each resolution entity; and
2. the amount of the requirement applied on an individual basis to each entity of a resolution group which is not a resolution entity.

The joint decision shall ensure compliance with Article 46e of Directive 2014/59/EU and Article 46-6 of this law, shall be fully reasoned and be provided by the Resolution Board to the entities of a resolution group that are not resolution entities and that are under its competence.

The joint decision taken in accordance with this article may provide that, where consistent with the resolution strategy and sufficient instruments complying with Article 46-6(2) have not been bought directly or indirectly by the resolution entity, the requirements referred to in Article 46-3(6) are partially met by the subsidiary in compliance with Article 46-6(2) with instruments issued to and bought by entities not belonging to the resolution group.

(3) Where more than one G-SII entity belonging to the same G-SII are resolution entities, the Resolution Board shall discuss and, where appropriate and consistent with the G-SII's resolution strategy, agree with the other resolution authorities on the application of Article 72e of Regulation (EU) No 575/2013 and any adjustment to minimise or eliminate the difference between the sum of the amounts referred to in letter (a) of Article 45d(4) of Directive 2014/59/EU and Article 12 of Regulation (EU) No 575/2013 for individual resolution entities and the sum of the amounts referred to in letter (b) of Article 45d(4) of Directive 2014/59/EU and Article 12 of Regulation (EU) No 575/2013.

Such an adjustment may be applied subject to the following:

1. the adjustment may be applied in respect of differences in the calculation of the total risk exposure amounts between the relevant Member States by adjusting the level of the requirement;

2. the adjustment shall not be applied to eliminate differences resulting from exposures between resolution groups.

The sum of the amounts referred to in letter (a) of Article 45d(4) of Directive 2014/59/EU and Article 12 of Regulation (EU) No 575/2013 for individual resolution entities shall not be lower than the sum of the amounts referred to in letter (b) of Article 45d(4) of Directive 2014/59/EU and Article 12 of Regulation (EU) No 575/2013.

(4) In the absence of such a joint decision within four months, a decision shall be taken in accordance with paragraphs 5 to 7.

(5) Where a joint decision is not taken within four months because of a disagreement concerning a consolidated resolution group requirement referred to in Article 45e of Directive 2014/59/EU, the Resolution Board shall perform and communicate its assessment to the resolution authority of the resolution entity. It may also refer the matter to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010.

In the absence of an EBA decision within one month of the referral of the matter, the decision of the resolution authority of the resolution entity, adopted in accordance with Article 45h(4) of Directive 2014/59/EU, shall apply.

(6) Where a joint decision is not taken within four months because of a disagreement concerning the level of the requirement referred to in Article 46-6 to be applied to any subsidiary of a resolution group on an individual basis, the decision shall be taken by the Resolution Board, where all of the following conditions are fulfilled:

1. the views and reservations expressed in writing by the resolution authority of the resolution entity have been duly taken into account; and
2. where the group-level resolution authority is different from the resolution authority of the resolution entity, the views and reservations expressed in writing by the group-level resolution authority have been duly taken into account.

Where, at the end of the four-month period, the resolution authority of the resolution entity or the group-level resolution authority has referred the matter to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the Resolution Board shall defer its decision and await any decision that the EBA may take in accordance with Article 19(3) of that regulation, and shall take its decision in accordance with the decision of the EBA. The four-month period shall be deemed to be the conciliation period within the meaning of Regulation (EU) No 1093/2010.

In the absence of an EBA decision within one month of the referral of the matter, the decision of the Resolution Board referred to in the first subparagraph shall apply.

(7) Where a joint decision is not taken within four months because of a disagreement concerning the level of the consolidated resolution group requirement and the level of the requirement to be applied to the resolution group's entities on an individual basis, the following shall apply:

1. a decision shall be taken on the level of the requirement to be applied to the resolution group's subsidiaries on an individual basis in accordance with paragraph 6;
2. paragraph 5 shall apply as regards the level of the consolidated resolution group.

(8) The Resolution Board shall be bound by any joint decision referred to in paragraph 2 and by any decision taken by the resolution authorities referred to in Article 45h(4), (5) and (6) of Directive 2014/59/EU in the absence of a joint decision.

The joint decision and any decision taken in the absence of a joint decision shall be reviewed and where relevant updated on a regular basis.

(9) The Resolution Board, in cooperation with the other resolution authorities and the competent authorities, shall require and verify that the entities meet the requirement referred to in Article 45(1) of Directive 2014/59/EU and participate in any decision taken in accordance with this article in parallel with the development and the maintenance of resolution plans.

Article 46-11. Supervisory reporting and public disclosure of the requirement

(1) Entities referred to in Article 2(1) that are subject to the requirement referred to in Article 46(1) shall report to the supervisory authority and to the Resolution Board on the following:

1. the amounts of own funds that, where applicable, meet the conditions of point (2) of Article 46-6(2), and the amounts of eligible liabilities, and the expression of those amounts in accordance with Article 46(2) after any applicable deductions in accordance with Articles 72e to 72j of Regulation (EU) No 575/2013;

2. the amounts of other bail-inable liabilities;
3. for the items referred to in points (1) and (2):
 - a) their composition, including their maturity profile;
 - b) their ranking in normal insolvency proceedings; and
 - c) whether they are governed by the laws of a third country and, if so, which third country and whether they contain the contractual terms referred to in Article 56(1) of this law, letters (p) and (q) of Article 52(1) and letters (n) and (o) of Article 63 of Regulation (EU) No 575/2013.

The obligation to report on the amounts of other bail-inable liabilities referred to in point (2) of the first subparagraph of this paragraph shall not apply to entities that, at the date of the reporting of that information, hold amounts of own funds and eligible liabilities of at least 150 % of the requirement referred to in Article 46(1) as calculated in accordance with point (1) of the first subparagraph of this paragraph.

(2) The entities referred to in paragraph 1 shall report:

1. on at least a semi-annual basis the information referred to in point (1) of paragraph 1; and
2. on at least an annual basis the information referred to in points (2) and (3) of paragraph 1.

However, at the request of the supervisory authority or Resolution Board, the entities referred to in paragraph 1 shall report the information referred to in that paragraph on a more frequent basis.

(3) Entities referred to in paragraph 1 shall make the following information publicly available on at least an annual basis:

1. the amounts of own funds that, where applicable, meet the conditions of point (2) of Article 46-6(2) and eligible liabilities;
2. the composition of the items referred to in point (1), including their maturity profile and ranking in normal insolvency proceedings;
3. the applicable requirement referred to in Article 46-5 or Article 46-6 expressed in accordance with Article 46(2).

(4) Paragraphs 1 and 3 of this article shall not apply to entities whose resolution plan provides that the entity is to be wound up under normal insolvency proceedings.

(5) Where resolution actions have been implemented or the write-down or conversion power referred to in Article 57 have been exercised, public disclosure requirements referred to in paragraph 3 of this article shall apply from the date of the deadline to comply with the requirements of Article 46-5 or Article 46-6 referred to in Articles 46-15 and 212-1.

Article 46-12. Notification of the EBA

The Resolution Board shall inform the EBA of the minimum requirement for own funds and eligible liabilities that has been set, in accordance with Article 46-5 or Article 46-6, for each entity under its jurisdiction.

Article 46-13. Breaches of the minimum requirement for own funds and eligible liabilities

(1) Any breach of the minimum requirement for own funds and eligible liabilities referred to in Article 46-5 or Article 46-6 shall be addressed by the Resolution Board and the supervisory authority on the basis of at least one of the following:

1. powers to address or remove impediments to resolvability in accordance with Articles 29, 30 and 31;
2. powers referred to in Article 31-1;
3. measures referred to in Article 53-1 of the Law of 5 April 1993 on the financial sector, as amended;
4. early intervention measures in accordance with Article 59-43 of the Law of 5 April 1993 on the financial sector, as amended;
5. administrative penalties and other administrative measures in accordance with Article 114 of this law and Article 59-49 of the Law of 5 April 1993 on the financial sector, as amended.

The Resolution Board and the supervisory authority may also carry out an assessment of whether the institution or entity referred to in point (2), (3) or (4) of Article 2(1) is failing or is likely to fail, in accordance with Article 33, 33-1 or Article 34, as applicable.

(2) The Resolution Board and the supervisory authorities shall consult each other when they exercise their respective powers referred to in paragraph 1.

Article 46-14. Reports

The Resolution Board and the supervisory authority shall cooperate with the EBA for the purpose of drawing up the report referred to in Article 45I(1) of Directive 2014/59/EU.

Article 46-15. Transitional periods post-resolution or following the identification of a new G-SII

(1) The minimum levels of the requirements referred to in Article 46-3(4) and (5) shall not apply within the two-year period following the date:

1. on which the Resolution Board has applied the bail-in tool;
2. on which the resolution entity has put in place an alternative private sector measure as referred to in point (2) of Article 33(1) by which capital instruments and other liabilities have been written down or converted into Common Equity Tier 1 instruments, or on which write down or conversion powers, in accordance with Article 57, have been exercised in respect of that resolution entity, in order to recapitalise the resolution entity without the application of resolution tools.

(2) By way of derogation from Article 46(1), the Resolution Board shall determine an appropriate transitional period within which to comply with the requirements of Articles 46-5 or 46-6, or a requirement resulting from the application of Article 46-2(4), (5) or (7), as appropriate, for institutions or entities referred to in points (2), (3) and (4) of Article 2(1) to which resolution tools or the write-down or conversion power referred to in Article 57 have been applied.

(3) The requirements referred to in Article 46-2(4) and (7) as well as Article 46-3(4) and (5), as applicable, shall not apply within the three-year period following the date on which the resolution entity or the group of which the resolution entity is part has been identified as a G-SII, or the resolution entity starts to be in the situation referred to in Article 46-3(4) or (5).

(4) For the purposes of paragraphs 1 to 3, the Resolution Board shall communicate to the institution or entity referred to in point (2), (3) or (4) of Article 2(1) a planned minimum requirement for own funds and eligible liabilities for each 12-month period during the transitional period, with a view to facilitating a gradual build-up of its loss-absorbing and recapitalisation capacity. At the end of the transitional period, the minimum requirement for own funds and eligible liabilities shall be equal to the amount determined under Article 46-2(4), (5) or (7), Article 46-3(4) or (5), Article 46-5 or Article 46-6, as applicable.

(5) When determining the transitional periods, the Resolution Board shall take into account:

1. the prevalence of deposits and the absence of debt instruments in the funding model;
2. the access to the capital markets for eligible liabilities;
3. the extent to which the resolution entity relies on Common Equity Tier 1 capital to meet the requirement referred to in Article 46-5."

Subsection III - Implementation of the bail-in tool

Article 47. Assessment of amount of bail-in

(1) When applying the bail-in tool, the Resolution Board shall assess on the basis of a valuation that complies with Article 37 the aggregate of:

1. where relevant, the amount by which "bail-inable"⁸⁶ liabilities must be written down in order to ensure that the net asset value of the institution under resolution is equal to zero; and
2. where relevant, the amount by which "bail-inable"⁸⁷ liabilities must be converted into shares or other types of capital instruments in order to restore the Common Equity Tier 1 capital ratio of either the institution under resolution or the bridge institution.

(2) The assessment referred to in paragraph 1 shall establish the amount by which "bail-inable"⁸⁸ liabilities need to be written down or converted in order to:

1. restore the Common Equity Tier 1 capital ratio of the institution under resolution; or where applicable

⁸⁶ Law of 20 May 2021

⁸⁷ Law of 20 May 2021

⁸⁸ Law of 20 May 2021

2. establish the ratio of the bridge institution taking into account any contribution of capital by the FRL pursuant to point (4) of Article 106(1);

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 the Law of 5 April 1993 on the financial sector, as amended.

Where the Resolution Board intends to use the asset separation tool referred to in Article 43, the amount by which “bail-inable”⁸⁹ liabilities need to be reduced shall take into account a prudent estimate of the capital needs of the asset management vehicle as appropriate.

(3) Where capital has been written down in accordance with Articles 57 to 60 and bail-in has been applied pursuant to Article 44(2) and the level of write down based on the preliminary valuation according to Article 37 is found to exceed requirements when assessed against the definitive valuation according to Article 37(10), the Resolution Board may apply a write-up mechanism to reimburse creditors and then shareholders to the extent necessary.

(4) The Resolution Board 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 48. Treatment of shareholders in bail-in or write down or conversion of capital instruments

(1) When applying the bail-in tool in Article 44(2) or the write down or conversion of capital instruments in Article 57, the Resolution Board shall take in respect of shareholders and holders of other instruments of ownership one of the following actions:

1. cancel existing shares or other instruments of ownership or transfer them to bailed-in creditors;
2. provided that, in accordance to the valuation carried out under Article 37, the institution under resolution has a positive net asset 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:
 - a) relevant capital instruments issued by the institution pursuant to the power referred to in Article 57(2); or
 - b) “bail-inable”⁹⁰ liabilities issued by the institution under resolution pursuant to the power referred to in point (7) of Article 61(1).

With regard to letter (b), 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:

1. 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 Board that the institution or entity referred to in point (2), (3) or (4) of Article 2(1) met the conditions for resolution;
2. pursuant to the conversion of relevant capital instruments to Common Equity Tier 1 instruments pursuant to Article 58.

(3) When considering which action to take in accordance with paragraph 1, the Resolution Board shall have regard to:

1. the valuation carried out in accordance with Article 37;
2. the amount of which the Common Equity Tier 1 items must be reduced and the relevant capital instruments must be written down or converted pursuant to Article 58(1) in accordance with the Resolution Board's assessment; and
3. the aggregate amount assessed by the Resolution Board pursuant to Article 47.

⁸⁹ Law of 20 May 2021

⁹⁰ Law of 20 May 2021

(4) By way of derogation from Article 6, paragraphs 5, 6, 7, 8, 9, letters (b) and (d), 10, 11, 12, 13, 14, 15, 16, 17 of the Law of 5 April 1993 on the financial sector, as amended, and Article 18, paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18 of that law, 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 Articles 6(5) and 18(5) of that law, the supervisory authority 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 the resolution action from achieving the relevant resolution objectives.

(5) If the supervisory authority 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 39(8) 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.

Article 49. Sequence of write down and conversion

(1) When applying the bail-in tool, the Resolution Board shall exercise the write-down and conversion powers, subject to any exclusions under Article 45(2) and (3), meeting the following requirements:

1. Common Equity Tier 1 items are reduced in accordance with point (1) of Article 58(1);
2. if, and only if, the total reduction pursuant to point (1) is less than the sum of the amounts referred to in points (2) and (3) of Article 48(3), the Resolution Board shall reduce the principal amount of Additional Tier 1 instruments to the extent required and to the extent of their capacity;
3. if, and only if, the total reduction pursuant to points (1) and (2) is less than the sum of the amounts referred to in points (2) and (3) of Article 48(3), the Resolution Board shall reduce the principal amount of Tier 2 instruments to the extent required and to the extent of their capacity;
4. if, and only if, the total reduction of shares or other instruments of ownership and relevant capital instruments pursuant to points (1), (2) and (3) is less than the sum of the amounts referred to in points (2) and (3) of Article 48(3), the Resolution Board shall reduce to the extent required the principal amount of subordinated debt that is not Additional Tier 1 or Tier 2 capital in accordance with the hierarchy of claims in normal insolvency proceedings, in conjunction with the write down pursuant to points (1), (2) and (3) to produce the sum of the amounts referred to in points (2) and (3) of Article 48(3);
5. if, and only if, the total reduction of shares or other instruments of ownership, relevant capital instruments and "bail-inable"⁹¹ liabilities pursuant to points (1), (2), (3) and (4) is less than the sum of the amounts referred to in points (2) and (3) of Article 48(3), the Resolution Board shall reduce to the extent required the principal amount of, or outstanding amount payable in respect of, the rest of "bail-inable"⁹² liabilities "including debt instruments referred to in the second subparagraph of Article 152(3)"⁹³ in accordance with the hierarchy of claims in normal insolvency proceedings, including the ranking of deposits provided for in Article 152, pursuant to Article 45, in conjunction with the write down pursuant to points (1), (2), (3) and (4) of this paragraph to produce the sum of the amounts referred to in points (2) and (3) of Article 48(3).

(2) When applying the write-down or conversion powers, the Resolution Board shall allocate the losses represented by the sum of the amounts referred to in points (2) and (3) of Article 48(3) equally between shares or other instruments of ownership and "bail-inable"⁹⁴ liabilities 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 "bail-inable"⁹⁵ liabilities 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 45(3).

This paragraph shall not prevent liabilities which have been excluded from bail-in in accordance with Article 45(2) and (3) from receiving more favourable treatment than "bail-inable"⁹⁶ liabilities which are of the same rank in normal insolvency proceedings.

⁹¹ Law of 20 May 2021

⁹² Law of 20 May 2021

⁹³ Law of 20 May 2021

⁹⁴ Law of 20 May 2021

⁹⁵ Law of 20 May 2021

⁹⁶ Law of 20 May 2021

(3) Before applying the write down or conversion referred to in point (5) of paragraph 1, the Resolution Board shall convert or reduce the principal amount on instruments referred to in points (2), (3) and (4) of paragraph 1 when those instruments contain the following terms and have not already been converted:

1. 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 (2), (3) or (4) of Article 2(1);
2. terms that provide for the conversion of the instruments to shares or other instruments of ownership on the occurrence of any event as described in point (1).

(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 (1) of paragraph 3 before the application of the bail-in pursuant to paragraph 1, the Resolution Board 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, the Resolution Board 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 45(2) and (3).

Article 50. Derivatives

When the Resolution Board applies the write-down and conversion powers to liabilities arising from derivatives, it shall comply with the following principles:

1. The Resolution Board 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, the Resolution Board 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 45(3), the Resolution Board shall not be obliged to terminate or close out the derivative contract.

2. Where derivative transactions are subject to a netting agreement, the Resolution Board or an independent valuer shall determine as part of the valuation under Article 37 the liability arising from those transactions on a net basis in accordance with the terms of the agreement.
3. The Resolution Board 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
 - 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.

Article 51. Rate of conversion of debt to equity

(1) When the Resolution Board exercises the powers specified in Article 57(3) and point (7) of Article 61(1), it may apply a different conversion rate to different classes of capital instruments and liabilities in accordance with at least one of the principles referred to in paragraphs 2 and 3.

(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 non-subordinated liabilities shall be higher than the conversion rate applicable to subordinated liabilities.

Article 52. Recovery and reorganisation measures to accompany bail-in

(1) Where the Resolution Board applies the bail-in tool to recapitalise an institution or entity referred to in point (2), (3) or (4) of Article 2(1), in accordance with point (2) of Article 44(2), a business reorganisation plan for that institution or entity shall be drawn up and implemented in accordance with Article 53.

(2) The Resolution Board may, in particular, appoint one or several persons in accordance with Article 70(1) in charge of drawing up and implementing the business reorganisation plan required by Article 53.

Article 53. Business reorganisation plan

(1) Within one month after the application of the bail-in tool to an institution or entity referred to in point (2), (3) or (4) of Article 2(1) in accordance with point (1) of Article 44(2), the management body or the person or persons appointed in accordance with Article 70(1) shall draw up and submit to the Resolution Board, a business reorganisation plan that satisfies the requirements of paragraphs 4 and 5.

(2) When the bail-in tool in point (1) of Article 44(2) is applied to two or more group entities, the business reorganisation plan shall be prepared by the EU parent institution incorporated under Luxembourg law and cover all of the institutions in the group in accordance with the procedure specified in Articles 59-20 and 59-23 of the Law of 5 April 1993 on the financial sector, as amended. The parent institution shall submit the business reorganisation plan to the Resolution Board, which in turn shall communicate it to the other resolution authorities concerned and to the EBA.

(3) In exceptional circumstances, and if it is necessary for achieving the resolution objectives, the Resolution Board 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 State aid framework, the Resolution Board 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 State aid framework, whichever occurs earlier.

(4) The business reorganisation plan shall set out measures aiming to restore the long-term viability of the institution or entity referred to in point (2), (3) or (4) of Article 2(1) or parts of its business within a reasonable timescale. Those measures shall be based on realistic assumptions as to the economic condition and financial market situation under which the institution or entity referred to in point (2), (3) or (4) of Article 2(1) will operate.

The business reorganisation plan shall take account, in particular, of the current state of the financial markets and their future prospects, reflecting best-case and worst-case assumptions, including a combination of events allowing the identification of the main vulnerabilities of the institution or entity referred to in point (2), (3) or (4) of Article 2(1). Assumptions shall be compared with appropriate sector-wide benchmarks.

(5) A business reorganisation plan shall include at least the following elements:

1. a detailed diagnosis of the factors and problems that caused the institution or entity referred to in point (2), (3) or (4) of Article 2(1) to fail or to be likely to fail, and the circumstances that led to its difficulties;
2. a description of the measures aiming to restore the long-term viability of the institution or entity referred to in point (2), (3) or (4) of Article 2(1) that are to be adopted;
3. 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 (2), (3) or (4) of Article 2(1) may include:

1. the reorganisation of the activities;
2. changes to the operational systems and infrastructure;
3. the withdrawal from loss-making activities;
4. the restructuring of existing activities that can be made competitive;
5. the sale of assets or of business lines.

(7) Within one month of the date of submission of the business reorganisation plan, the Resolution Board shall assess the likelihood that the plan, if implemented, will restore the long-term viability of the institution or entity referred to in point (2), (3) or (4) of Article 2(1). The assessment shall be completed in agreement with the supervisory authority.

If the Resolution Board and the supervisory authority are satisfied that the plan would achieve that objective, the Resolution Board shall approve the plan.

(8) If the Resolution Board is not satisfied that the plan would achieve the objective referred to in paragraph 7, the Resolution Board, in agreement with the supervisory authority, shall notify the

management body or the person or persons appointed in accordance with Article 70(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 70(1) shall submit an amended plan to the Resolution Board for approval. The Resolution Board shall assess the amended plan, and shall notify the management body or the person or persons appointed in accordance with Article 70(1) within one week whether it is satisfied that the plan, as amended, addresses the concerns notified and allows the Resolution Board to withdraw its reservations or whether further amendment is required.

(10) The management body or the person or persons appointed in accordance with Article 70(1) shall implement the reorganisation plan as agreed by the Resolution Board pursuant to paragraph 7 and 9, and shall submit a report to the Resolution Board at least every six months on progress in the implementation of the plan.

(11) The management body or the person or persons appointed in accordance with Article 70(1) shall revise the plan if, in the opinion of the Resolution Board with the agreement of the supervisory authority, it is necessary to achieve the aim referred to in paragraph 4, and shall submit any such revision to the Resolution Board for approval.

Subsection IV - Ancillary provisions regarding the bail-in tool

Article 54. Effect of bail-in

(1) Where the Resolution Board exercises a power referred to in Article 57(2) and in points (6) to (10) of Article 61(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) The Resolution Board 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 the powers referred to in paragraph 1, including:

1. the amendment of all relevant registers;
2. the delisting or removal from trading of shares or other instruments of ownership or debt instruments;
3. the listing or admission to trading of new shares or other instruments of ownership;
4. the relisting or readmission of any debt instruments which have been written down, without the requirement for the issuing of a prospectus pursuant to Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC.

(3) Where the Resolution Board 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 (6) of Article 61(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"⁹⁷ winding up.

(4) Where the Resolution Board 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 (6) of Article 61(1) :

1. the liability shall be discharged to the extent of the amount reduced;
2. 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 Board might make by means of the power referred to in point (11) of Article 61(1).

Article 55. Removal of procedural impediments to bail-in

(1) Without prejudice to point (10) of Article 61(1), the institutions and entities referred to in points (2), (3) and (4) of Article 2(1) shall maintain at all times a sufficient amount of authorised

⁹⁷ Law of 27 February 2018

share capital or of other Common Equity Tier 1 instruments, so that, in the event that the Resolution Board exercises the powers referred to in points (6) and (7) of Article 61(1) in relation to an institution or an entity referred to in point (2), (3) or (4) of Article 2(1) or any of its subsidiaries, the institution or entity referred to in point (2), (3) or (4) of Article 2(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.

(2) The Resolution Board 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 (2), (3) or (4) of Article 2(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, the Resolution Board 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 (2) and (3) of Article 48(3).

(3) The statutory or contractual provisions which impede the conversion of liabilities to shares or other instruments of ownership, including pre-emption rights for shareholders or requirements for the consent of shareholders to an increase in capital, shall not apply in the event of the implementation of a resolution action.

Article 56. Contractual recognition of bail-in

(1) The institutions and entities referred to in point (2), (3) or (4) of Article 2(1) shall include a contractual term by which the creditor or party to the agreement "or to the instrument"⁹⁸ creating the liability recognises that liability may be subject to the write-down and conversion powers and agrees to be bound by any reduction of the principal or outstanding amount due, conversion or cancellation that is effected by the exercise of those powers by the Resolution Board, provided that such liability is:

1. not excluded under Article 45(2);
2. not a deposit referred to in Article 152(2);
3. governed by the law of a third country; and
4. issued or entered into after 1 January 2016.

(Law of 20 May 2021)

"The Resolution Board may decide that the obligation in the first subparagraph of this paragraph shall not apply to institutions or entities in respect of which the requirement under Article 46(1) equals the loss-absorption amount as defined under point (1) of Article 46-3(2), provided that liabilities that meet the conditions referred to in points (1) to (4) of the first subparagraph and which do not include the contractual term referred to in that subparagraph are not counted towards that requirement."

The first subparagraph shall not apply where the Resolution Board determines that the liabilities or instruments referred to in the first subparagraph can be subject to write-down and conversion powers by the Resolution Board pursuant to the law of the third country or to a binding agreement concluded with that third country.

The Resolution Board may require institutions and entities referred to in point (2), (3) or (4) of Article 2(1) to provide it with a legal opinion relating to the legal enforceability and effectiveness of such a term.

(Law of 20 May 2021)

"(1a) Where an institution or entity referred to in point (2), (3) or (4) of Article 2(1) reaches the determination that it is impracticable to include in the contractual provisions governing a relevant liability a term required in accordance with paragraph 1, such institution or entity shall notify its determination, including the designation of the class of the liability and the justification of that determination, to the Resolution Board. The institution or entity shall provide the Resolution Board with all information that the resolution authority requests, within a reasonable timeframe following the receipt of the notification, in order for the Resolution Board to assess the effect of such notification on the resolvability of that institution or entity.

In the case of a notification under the first subparagraph of this paragraph, the obligation to include in the contractual provisions a term required in accordance with paragraph 1 shall be automatically suspended from the moment of receipt by the Resolution Board of the notification.

In the event that the Resolution Board concludes that it is not impracticable to include in the contractual provisions a term required in accordance with paragraph 1, taking into account the need

⁹⁸ Law of 20 May 2021

to ensure the resolvability of the institution or entity, it shall require, within a reasonable timeframe after the notification pursuant to the first subparagraph of this paragraph, the inclusion of such contractual term. The Resolution Board may, in addition, require the institution or entity to amend its practices concerning the application of the exemption from contractual recognition of bail-in.

The liabilities referred to in the first subparagraph of this paragraph shall not include Additional Tier 1 instruments, Tier 2 instruments and debt instruments referred to in letter (b) of Article 1(70), where those instruments are unsecured liabilities.

The liabilities referred to in the first subparagraph of this paragraph shall be senior to the liabilities referred to in points (1), (2) and (3) of Article 152(3) and in Article 152(4).

Where the Resolution Board, in the context of the assessment of the resolvability of an institution or entity referred to in point (2), (3) or (4) of Article 2(1) in accordance with Articles 26, 27 and 28, or at any other time, determines that, within a class of liabilities which includes eligible liabilities, the amount of liabilities that, in accordance with the first subparagraph of this paragraph, do not include the contractual term referred to in paragraph 1, together with the liabilities which are excluded from the application of the bail-in tool in accordance with Article 45(2) or which are likely to be excluded in accordance with Article 45(3) amounts to more than 10 % of that class, it shall immediately assess the impact of that particular fact on the resolvability of that institution or entity, including the impact on the resolvability resulting from the risk of breaching the creditor safeguards provided in Article 73 when applying write-down and conversion powers to eligible liabilities.

Where the Resolution Board concludes, on the basis of the assessment referred to in the sixth subparagraph, that the liabilities which, in accordance with the first subparagraph, do not include the contractual term referred to in paragraph 1, create a substantive impediment to resolvability, it may apply the powers provided in Article 29 to remove that impediment to resolvability.

Liabilities for which the institution or entity referred to in point (2), (3) or (4) of Article 2(1) fails to include in the contractual provisions the term required by paragraph 1 of this article or for which, in accordance with this paragraph, that requirement does not apply, shall not be counted towards the minimum requirement for own funds and eligible liabilities."

(2) The non-compliance by the institution or entity referred to in point (2), (3) or (4) of Article 2(1) with their obligations under paragraph 1 shall not prevent the Resolution Board from exercising the write-down and conversion powers in relation to that liability.

(3) The Resolution Board may exercise its write-down and conversion powers in relation the liabilities resulting from an agreement entered into before 1 January 2016.

(Law of 20 May 2021)

"(4) A regulation of the Resolution Board may specify categories of liabilities for which an institution or an entity referred to in point (2), (3) or (4) of Article 2(1) may reach the determination that it is impracticable to include the contractual term referred to in paragraph 1 of this article. These categories of liabilities shall meet at least one of the following conditions:

1. the integration of the contractual term referred to in paragraph 1 is prohibited by the third country's law governing the liability concerned;
2. the integration of the contractual term is prohibited by an explicit and binding instruction of an authority of the third country concerned;
3. the liability concerned is based on instruments or agreements complying with international protocols or based on internationally agreed standard terms and whose terms can in practice not be modified by the institution or entity referred to in point (2), (3) or (4) of Article 2(1);
4. the liability concerned is subject to contractual terms that the institution or entity referred to in point (2), (3) or (4) of Article 2(1) must accept in order to be able to participate or use the services of a body established in a third country, including the financial market infrastructures or other providers of similar services, and the terms of which can in practice not be modified by this institution or entity;
5. the liability concerned gives rise to a debt towards a commercial creditor and relates to goods and services which, although non critical, are used for the daily operational functioning and the institution or entity referred to in point (2), (3) or (4) of Article 2(1) is in practice incapable to modify the terms of the agreement underlying this liability."

Chapter VII - Write down of capital instruments “and eligible liabilities”⁹⁹

Article 57. Requirement to write down or convert “relevant capital instruments and eligible liabilities”¹⁰⁰

(1) The power to write down or convert relevant capital instruments “and eligible liabilities”¹⁰¹ may be exercised either:

1. independently of resolution action; or
2. in combination with a resolution action, where the conditions for resolution specified in Articles 33”, 33-1 or”¹⁰² 34 are met.

(Law of 20 May 2021)

“Where relevant capital instruments and eligible liabilities have been purchased by the resolution entity indirectly through other entities in the same resolution group, the power to write down or convert those relevant capital instruments and eligible liabilities shall be exercised together with the exercise of the same power at the level of the parent undertaking of the entity concerned or at the level of other parent undertakings that are not resolution entities, so that the losses are effectively passed on to, and the entity concerned is recapitalised by, the resolution entity.

After the exercise of the power to write down or convert relevant capital instruments and eligible liabilities independently of resolution action, the valuation provided for in Article 74 shall be carried out, and Article 75 shall apply.”

(Law of 20 May 2021)

“(1a) The power to write down or convert eligible liabilities independently of resolution action may be exercised only in relation to eligible liabilities that meet the conditions referred to in point (1) of Article 46-6(2), except the condition related to the remaining maturity of liabilities as set out in Article 72c(1) of Regulation (EU) No 575/2013.

When that power is exercised, the write-down or conversion shall be done in accordance with the principle referred to in point (7) of Article 35(1).

(1b) Where a resolution action is taken in relation to a resolution entity or, in exceptional circumstances in deviation from the resolution plan, in relation to an entity that is not a resolution entity, the amount that is reduced, written down or converted in accordance with Article 58(1) at the level of such an entity shall count towards the thresholds laid down in point (1) of Article 45(5) or in point (1) of Article 45(8) that apply to the entity concerned.”

(2) The Resolution Board shall have the power to write down or convert relevant capital instruments “and eligible liabilities”¹⁰³ into shares or other instruments of ownership of institutions and entities referred to in point (2), (3) or (4) of Article 2(1).

(3) The Resolution Board shall exercise the write-down or conversion power, in accordance with Article 58 and without delay, in relation to relevant capital instruments”, and eligible liabilities as referred to in paragraph 1a”¹⁰⁴ issued by an institution or an entity referred to in point (2), (3) or (4) of Article 2(1) when one or more of the following circumstances apply:

1. where the determination has been made that conditions for resolution specified in Articles 33”, 33-1 or”¹⁰⁵ 34 have been met, before any resolution action is taken;
2. the Resolution Board determines that unless that power is exercised in relation to the relevant capital instruments”, and eligible liabilities as referred to in paragraph 1a”¹⁰⁶, the institution or the entity referred to in point (2), (3) or (4) of Article 2(1) will no longer be viable;
3. 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 Resolution Board acting as group-level resolution authority 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 94 that unless the

⁹⁹ Law of 20 May 2021

¹⁰⁰ Law of 20 May 2021

¹⁰¹ Law of 20 May 2021

¹⁰² Law of 20 May 2021

¹⁰³ Law of 20 May 2021

¹⁰⁴ Law of 20 May 2021

¹⁰⁵ Law of 20 May 2021

¹⁰⁶ Law of 20 May 2021

write-down or conversion power is exercised in relation to those instruments, the group will no longer be viable;

4. in the case of relevant capital instruments issued by a subsidiary for which the Resolution Board acts as resolution authority 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 Resolution Board make a joint determination taking the form of a joint decision in accordance with Article 92(3) and (4) of Directive 2014/59/EU that unless the write-down or conversion power is exercised in relation to those instruments, the group will no longer be viable;
5. 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 Resolution Board acting as group-level resolution authority 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;
6. extraordinary public financial support is required by the institution or the entity referred to in point (2), (3) or (4) of Article 2(1) except in any of the circumstances set out in letter (c) of point (4) of Article 33(3).

(4) For the purposes of paragraph 3, an institution or an entity referred to in point (2), (3) or (4) of Article 2(1) or a group shall be deemed to be no longer viable only if both of the following conditions are met:

1. the institution or the entity referred to in point (2), (3) or (4) of Article 2(1) or the group is failing or likely to fail;
2. having regard to timing and other relevant circumstances, there is no reasonable prospect that any measure, including an alternative private sector measure or supervisory measure (including early intervention measures), other than the write down or conversion of capital instruments "or eligible liabilities as referred to in paragraph 1a"¹⁰⁷, independently or in combination with a resolution action, would prevent the failure of the institution or the entity referred to in point (2), (3) or (4) of Article 2(1) or the group within a reasonable timeframe.

(5) For the purposes of point (1) of paragraph 4, an institution or an entity referred to in point (2), (3) or (4) of Article 2(1) shall be deemed to be failing or likely to fail where one or more of the circumstances set out in Article 33(3) occurs.

(6) For the purposes of point (1) 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 measures by the supervisory 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 (3) or (4) of paragraph 3 than equally ranked capital instruments at the level of the parent undertaking which have been written down or converted.

(8) Before making a determination referred to in point (3) of paragraph 3 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 Resolution Board shall comply with the notification and consultation requirements laid down in Article 60.

(9) Before exercising the power to write down or convert relevant capital instruments "or eligible liabilities as referred to in paragraph 1a"¹⁰⁸, the Resolution Board shall ensure that a valuation of the assets and liabilities of the institution or the entity referred to in point (2), (3) or (4) of Article 2(1) is carried out in accordance with Article 37. That valuation shall form the basis of the calculation of the write down to be applied to the relevant capital instruments "or eligible liabilities as referred to in paragraph 1a"¹⁰⁹ in order to absorb losses and the level of conversion to be applied to relevant capital instruments "or eligible liabilities as referred to in paragraph 1a"¹¹⁰ in order to recapitalise the institution or the entity referred to in point (2), (3) or (4) of Article 2(1).

¹⁰⁷ Law of 20 May 2021

¹⁰⁸ Law of 20 May 2021

¹⁰⁹ Law of 20 May 2021

¹¹⁰ Law of 20 May 2021

Article 58. Provisions governing the write down or conversion of “relevant capital instruments and eligible liabilities”¹¹¹

(1) When complying with the requirement laid down in Article 57, the Resolution Board 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:

1. Common Equity Tier 1 items are reduced first in proportion to the losses and to the extent of their capacity. The Resolution Board shall take at least one of the actions specified in Article 48 in respect of holders of Common Equity Tier 1 instruments;
2. 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 32 or to the extent of the capacity of the relevant capital instruments, whichever is lower;
3. the principal amount of Additional 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 32 or to the extent of the capacity of the relevant capital instruments, whichever is lower;

(Law of 20 May 2021)

“4. the principal amount of eligible liabilities referred to in Article 57(1a) 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 32 or to the extent of the capacity of the relevant eligible liabilities, whichever is lower.”

(2) Where the principal amount of a relevant capital instrument “or of the eligible liability as referred to in Article 57(1a)”¹¹² is written down:

1. the reduction of that principal amount shall be permanent, subject to any write up in accordance with the reimbursement mechanism in Article 47(3);
2. no liability to the holder of the relevant capital instrument “or of the eligible liability as referred to in Article 57(1a)”¹¹³ shall remain under or in connection with that amount of the instrument, which has been written down, except for any liability already accrued, and any liability for damages that may arise as a result of an action challenging the legality of the exercise of the write-down power. Nevertheless, a holder of relevant capital instruments “or of eligible liabilities as referred to in Article 57(1a)”¹¹⁴ may be provided with Common Equity Tier 1 instruments in accordance with paragraph 3;
3. no compensation is paid to any holder of the relevant capital instruments “or of the eligible liabilities as referred to in Article 57(1a)”¹¹⁵ other than in accordance with paragraph 3.

(3) In order to effect a conversion of relevant capital instruments “and of eligible liabilities as referred to in Article 57(1a)”¹¹⁶ under “points (2), (3) and (4)”¹¹⁷ of paragraph 1, the Resolution Board may require institutions and entities referred to in point (2), (3) or (4) of Article 2(1) to issue Common Equity Tier 1 instruments to the holders of the relevant capital instruments “and of such liabilities”¹¹⁸. Relevant capital instruments “and the aforementioned liabilities”¹¹⁹ may only be converted where the following conditions are met:

1. those Common Equity Tier 1 instruments are issued by the institution or the entity referred to in point (2), (3) or (4) of Article 2(1) or by a parent undertaking of the institution or the entity referred to in point (2), (3) or (4) of Article 2(1), with the agreement of the Resolution Board or, where relevant, of the resolution authority of the parent undertaking if different from the Resolution Board;
2. 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 (2), (3) or (4)

¹¹¹ Law of 20 May 2021

¹¹² Law of 20 May 2021

¹¹³ Law of 20 May 2021

¹¹⁴ Law of 20 May 2021

¹¹⁵ Law of 20 May 2021

¹¹⁶ Law of 20 May 2021

¹¹⁷ Law of 20 May 2021

¹¹⁸ Law of 20 May 2021

¹¹⁹ Law of 20 May 2021

of Article 2(1) for the purposes of provision of own funds by the Luxembourg State, the FRL or any other government entity;

3. those Common Equity Tier 1 instruments are awarded and transferred without delay following the exercise of the conversion power;
4. the conversion rate that determines the number of Common Equity Tier 1 instruments that are provided in respect of each relevant capital instrument "or each eligible liability as referred to in Article 57(1a)"¹²⁰ complies with the principles set out in Article 51 and their implementing measures.

(4) For the purposes of the provision of Common Equity Tier 1 instruments in accordance with paragraph 3, the Resolution Board may require institutions and entities referred to in point (2), (3) or (4) of Article 2(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 Board decides to apply a resolution tool to that institution, the Resolution Board shall comply with the requirement laid down in Article 57(3) before applying the resolution tool.

Article 59. Authorities responsible for determination

(1) The CSSF acting via the Resolution Board is the appropriate authority referred to in Article 61(2) of Directive 2014/59/EU in charge of making determinations pursuant to Article 57.

(2) The Resolution Board shall make the determination pursuant to Article 57 in respect of relevant capital instruments 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 by an institution or entity referred to in point (2), (3) or (4) of Article 2(1) that was authorised in accordance with the Law of 5 April 1993 on the financial sector, as amended.

(Law of 20 May 2021)

"The Resolution Board shall make the determination pursuant to Article 57 in respect of relevant capital instruments or eligible liabilities referred to in Article 57(1a) recognised for the purposes of meeting the requirement referred to in Article 46-6(1) by an institution or entity referred to in point (2), (3) or (4) of Article 2 that was authorised in accordance with the Law of 5 April 1993 on the financial sector, as amended."

(3) The Resolution Board shall make the determination pursuant to point (2) of Article 57(3) in respect of a subsidiary that is an institution or entity referred to in point (2), (3) or (4) of Article 2 and that issued relevant capital instruments recognised for the purposes of meeting the own funds requirements on an individual and consolidated basis.

(4) The Resolution Board acting as group-level resolution authority and the appropriate authority of the Member State where the institution or entity referred to in letter (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU that issued relevant capital instruments recognised for the purposes of meeting the own funds requirements on an individual and consolidated basis has been established shall make a joint determination taking the form of a joint decision referred to in point (3) of Article 57(3).

(5) The Resolution Board acting as the resolution authority of the institution or entity referred to in point (2), (3) or (4) of Article 2(1) that issued relevant capital instruments recognised for the purposes of meeting the own funds requirements on an individual and consolidated basis and the appropriate authority of the Member State of the consolidating supervisor shall make a joint determination taking the form of a joint decision referred to in point (4) of Article 57(3).

Article 60. Procedure for determination in case of consolidated application

"(1) When considering making a determination referred to in point (2), (3), (4), (5) or (6) of Article 57(3) in relation to a subsidiary that issues relevant capital instruments, or eligible liabilities as referred to in Article 57(1a), for the purposes of meeting the requirement referred to in Article 45f of Directive 2014/59/EU on an individual basis or relevant capital instruments that are recognised for the purposes of meeting the own funds requirements on an individual or consolidated basis, after consulting the resolution authority of the relevant resolution entity, the Resolution Board shall notify, within 24 hours of consulting that resolution authority:

1. the consolidating supervisor and, if different, the appropriate authority in the Member State where the consolidating supervisor is located;

¹²⁰ Law of 20 May 2021

2. resolution authorities of other entities within the same resolution group that directly or indirectly purchased liabilities referred to in Article 46-6(2) from the above-mentioned subsidiary.”¹²¹ .

(2) Where the Resolution Board acting as group-level resolution authority is considering whether to make a determination referred to in point (3) of Article 57(3), the Resolution Board shall notify, without delay, the competent authority responsible for each institution or entity referred to in letter (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU that has issued the relevant capital instruments in relation to which the write-down or conversion power is to be exercised if that determination were made, and, if different, the appropriate authorities in the Member States where those competent authorities are located.

(3) When making a determination referred to in point (3), (4), (5) or (6) of Article 57(3) in the case of an institution or of a group with cross-border activity, the Resolution Board shall take into account the potential impact of the resolution in all the Member States where the institution or the group operate.

(4) The Resolution Board shall accompany a notification made pursuant to paragraph 1 or 2 with an explanation of the reasons why it is considering making the determination in question.

(5) Where a notification has been made pursuant to paragraph 1 or 2, the Resolution Board, after consulting the authorities “notified in accordance with points (1) and (2) of paragraph 1”¹²², shall assess the following matters:

1. whether an alternative measure to the exercise of the write-down or conversion power in accordance with Article 57(3) is available;
2. if such an alternative measure is available, whether it can feasibly be applied;
3. 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 57(3) to be made.

(6) Alternative measures shall mean early intervention measures referred to in Article 27 of Directive 2014/59/EU, measures referred to in Article 104(1) of Directive 2013/36/EU or a transfer of funds or capital from the parent undertaking.

(7) Where, pursuant to paragraph 5, the Resolution Board, 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 (3) of that paragraph, it shall ensure that those measures are applied.

(8) Where, in a case referred to in paragraph 1, and pursuant to paragraph 5, the Resolution Board, after consulting the notified authorities, assesses that no alternative measures are available that would deliver the outcome referred to in point (3) of paragraph 5, the Resolution Board shall decide whether the determination referred to in Article 57(3) under consideration is appropriate.

(9) Where the Resolution Board decides to make a determination under point (3) of Article 57(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 94. In the absence of a joint decision no determination under point (3) of Article 57(3) shall be made.

(10) The Resolution Board acting as the resolution authority of an affected subsidiary shall promptly implement a decision to write down or convert capital instruments properly made in accordance with Article 62 of Directive 2014/59/EU having due regard to the urgency of the circumstances.

Chapter VIII - Resolution powers

Article 61. General powers

(1) For the purposes of this part, the Resolution Board shall have the necessary powers in respect to an institution or entity referred to in point (2), (3) or (4) of Article 2(1) that meets the applicable conditions for resolution. In particular, the Resolution Board shall have the following resolution powers, which it may exercise individually or in any combination:

¹²¹ Law of 20 May 2021

¹²² Law of 20 May 2021

1. the power to require any person to provide any information required for the Resolution Board to decide upon and prepare a resolution action, including updates and supplements of information provided in the resolution plans;
2. the power to require information to be provided through on-site checks carried out at institutions and entities referred to in point (2), (3) or (4) of Article 2(1) by the authorities authorised to do so, or to carry out itself on-site checks to gather that information;
3. 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 that institution under resolution;
4. the power to transfer shares or other instruments of ownership issued by an institution under resolution;
5. the power to transfer to another entity, with the consent of that entity, rights, assets or liabilities of an institution under resolution;
6. the power to reduce, including to reduce to zero, the principal amount of or outstanding amount due in respect of "bail-inable"¹²³ liabilities, of an institution under resolution;
7. the power to convert "bail-inable"¹²⁴ liabilities of an institution under resolution into ordinary shares or other instruments of ownership of that institution or that entity, a relevant parent institution or a bridge institution to which assets, rights or liabilities of an institution under resolution are transferred;
8. the power to cancel debt instruments issued by an institution under resolution except for secured liabilities subject to Article 45(2);
9. 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;
10. 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;
11. the power to amend or alter the maturity of debt instruments and other "bail-inable"¹²⁵ liabilities issued by an institution under resolution or amend the amount of interest payable under such instruments and other "bail-inable"¹²⁶ liabilities, or the date on which the interest becomes payable, including by suspending payment for a temporary period, except for secured liabilities subject to Article 45(2);
12. the power to close out or terminate financial contracts or derivatives contracts for the purposes of applying Article 50;
13. the power to remove or replace the management body and senior management of an institution under resolution;
14. the power to require the supervisory 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 6(5), (7), (8), (11), (12), (13) and Article 18(5), (7), (8), (11), (12), (13) of the Law of 5 April 1993 on the financial sector, as amended.

(2) When applying a resolution tool or exercising resolution power, the Resolution Board is not subject to any of the following requirements whether they apply by virtue of the law, contracts or otherwise:

1. requirements to obtain approval or consent from any person either public or private, including the shareholders or creditors of the institution under resolution, subject to Article 3(3);
2. prior to the exercise of the resolution 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 without prejudice to Articles 81 and 83.

¹²³ Law of 20 May 2021

¹²⁴ Law of 20 May 2021

¹²⁵ Law of 20 May 2021

¹²⁶ Law of 20 May 2021

In particular, the Resolution Board 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.

(3) The Resolution Board shall adapt the application of the powers under paragraph 1 to the specific legal form of the institution or entity referred to in point (2), (3) or (4) of Article 2(1), if required to implement the resolution scheme and achieve the resolution objectives.

In such case, the safeguards provided in Chapter IX shall apply.

Article 62. Ancillary powers

(1) When exercising a resolution power, the Resolution Board shall have the power to:

1. provide for a transfer to take effect free from any liability or encumbrance affecting the financial instruments rights, assets or liabilities transferred, subject to Article 75. For that purpose, any right of compensation in accordance with this law shall not be considered to be a liability or an encumbrance;
2. remove rights to acquire further shares or other instruments of ownership;
3. 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 of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities;
4. provide for the recipient to be treated as if it were the institution under resolution for the purposes of any rights or obligations of the institution under resolution, or actions taken by the recipient or institution, including, subject to Articles 39 and 41, any rights or obligations relating to participation in a market infrastructure;
5. require the institution under resolution and the recipient to provide each other with all information and assistance; and
6. 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) The Resolution Board shall exercise the powers specified in paragraph 1 where it considers the exercise of these powers to be appropriate to help to ensure that a resolution action is effective or to achieve one or more resolution objectives.

(3) When exercising a resolution power, the Resolution Board shall 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:

1. 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;
2. the substitution of the recipient for the institution under resolution in any contentious or non contentious proceedings relating to any financial instrument, right, asset or liability that has been transferred.

(4) The powers in point (4) of paragraph 1 and point (2) of paragraph 3 shall not affect the following:

1. the right of a person to terminate his/her contract of employment with the institution under resolution;
2. subject to Articles 67, 68 and 69, 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 63. Power to require the provision of services and facilities

(1) The Resolution Board shall 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 Resolution Board shall also have this power in respect of an institution or entity referred to in point (2), (3) or (4) of Article 2(1) that has entered into normal insolvency proceedings, so as to allow the recipient to carry on business.

(2) The Resolution Board shall have the power to enforce obligations imposed pursuant to Article 65(1) of Directive 2014/59/EU by the resolution authority of another Member State on entities incorporated under Luxembourg law that are part of the group of the institution under resolution and that fall within the remit of this resolution authority.

(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.

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

1. where the services and facilities were provided to the institution under resolution under an agreement and for the duration of the latter immediately before the resolution action was taken, on the same terms;
2. where there is no agreement or where the agreement has expired, on reasonable terms.

Article 64. Application of crisis management measures or crisis prevention measures taken by other Member States

(1) Where a transfer of shares, other instruments of ownership, or assets, rights or liabilities carried out pursuant to Directive 2014/59/EU by the resolution authority of another Member State includes assets that are located in Luxembourg or rights or liabilities subject to Luxembourg law, this transfer has effect in Luxembourg.

(2) The Resolution Board shall provide the resolution authority of another Member State referred to in paragraph 1 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.

(3) The 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 cannot prevent, challenge or set aside the transfer under Luxembourg law or the law applicable to these shares, other instruments of ownership, rights or liabilities without prejudice to Chapter IX of Title IV of Directive 2014/59/EU.

(4) Where the resolution authority of another Member State exercises the write-down or conversion powers, including in relation to capital instruments in accordance with Article 59 of Directive 2014/59/EU, and the “bail-inable”¹²⁷ liabilities or relevant capital instruments of the institution under resolution include instruments or liabilities that are governed by Luxembourg law or liabilities owed to creditors located in Luxembourg, the principal amount of those liabilities or instruments shall be reduced, or liabilities or instruments converted, in accordance with the exercise of the write-down or conversion powers by the resolution authority of the other Member State.

(5) Creditors that are affected by the exercise of write-down or conversion powers referred to in paragraph 4 are not entitled, under any provision of Luxembourg law, to challenge the reduction of the principal amount of the instrument or liability or its conversion, as the case may be, without prejudice to Chapter IX of Title IV of Directive 2014/59/EU.

(6) In the event of a transfer of shares, other instruments of ownership or assets, rights or liabilities that include assets that are located in another Member State or rights or liabilities subject to the law of another Member State, or when exercising the write-down or conversion powers, including in relation to capital instruments in accordance with Article 57, and the eligible liabilities or relevant capital instruments of the institution under resolution include instruments or liabilities that are governed by law of another Member State or liabilities owed to creditors located in another Member State, the following are determined in accordance in Luxembourg law:

1. the right for shareholders, creditors and third parties to challenge a transfer of shares, other instruments of ownership, assets, rights or liabilities, referred to above, by way of remedies pursuant to Article 118;
2. the right for creditors to challenge the reduction of the principal amount, or the conversion, of an instrument or liability, referred to in paragraph 4, by way of remedies pursuant to Article 118;

¹²⁷ Law of 20 May 2021

3. the safeguards for partial transfers, as referred to in Chapter IX, in relation to assets, rights or liabilities mentioned above.

Article 65. Power in respect of assets, rights, liabilities, shares and other instruments of ownership located in a third country

(1) 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, the Resolution Board may require that:

1. 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;
2. 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;
3. the "reasonable expenses of the recipient properly incurred"¹²⁸ in carrying out any action required under points (1) and (2) are met in any of the ways referred to in Article 38(5).

(2) Where the Resolution Board assesses that, in spite of all the necessary steps taken by the administrator, receiver or other person in accordance with point (1) of paragraph 1, 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 Board 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 66. Exclusion of certain contractual terms in resolution

(1) A crisis management measure taken in relation to an entity referred to in Article 2, 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 Article 1 of the Law of 5 August 2005 on financial collateral arrangements, as amended, or as insolvency proceedings within the meaning of Article 107 of the Law of 10 November 2009 on payment services, as amended, provided that the substantive obligations under the contract, including payment and delivery obligations and the provision of collateral, continue to be performed.

A crisis management measure shall not, per se, be deemed as an enforcement event or insolvency proceedings under a contract entered into by:

1. a subsidiary of the entity referred to in Article 2, the obligations under which are guaranteed or otherwise supported by the parent undertaking or by any group entity;
2. any entity of the same group as the entity referred to in Article 2 which includes cross-default provisions.

(2) Where third-country resolution proceedings are recognised pursuant to Article 99, or otherwise where the Resolution Board so decides, such proceedings shall for the purposes of this article constitute a crisis management measure.

(3) Provided that the substantive obligations under the contract, including payment and delivery obligations, and provision of collateral, continue to be performed, "a suspension of obligation under Article 34-1 or"¹²⁹ a crisis management measure, including the occurrence of any event directly linked to the application of such a measure, shall not, per se, make it possible for anyone to:

1. exercise any termination, suspension, modification, netting or set-off rights, including in relation to a contract entered into by:
 - a) a subsidiary, the obligations under which are guaranteed or otherwise supported by a group entity;
 - b) any group entity which includes cross-default provisions;
2. obtain possession, exercise control or enforce any security over any property of the institution or the entity referred to in point (2), (3) or (4) of Article 2(1) concerned or any group entity in relation to a contract which includes cross-default provisions;

¹²⁸ Law of 27 February 2018

¹²⁹ Law of 20 May 2021

3. affect any contractual rights of the institution or the entity referred to in point (2), (3) or (4) of Article 2(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.

(5) A suspension or restriction under Article "34-1, 67 or 68"¹³⁰ shall not constitute non-performance of a contractual obligation for the purposes of paragraphs 1 "and 3 of this article and of Article 69(1)"¹³¹.

(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 of 17 June 2008 on the law applicable to contractual obligations (Rome I) and shall apply irrespective of the law applicable to the contract. They shall apply to the outstanding contracts.

Article 67. Power to suspend certain obligations

(1) The Resolution Board shall 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 (Luxembourg time) 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.

"(4) Any suspension under paragraph 1 shall not apply to payment and delivery obligations owed to the following:

1. systems and operators of systems designated in accordance with Directive 98/26/EC;
2. CCPs authorised in the European Union pursuant to Article 14 of Regulation (EU) No 648/2012 and third-country CCPs recognised by ESMA pursuant to Article 25 of that regulation;
3. central banks."¹³²

(5) When exercising a power under this article, the Resolution Board shall have regard to the impact the exercise of that power might have on the orderly functioning of financial markets.

(Law of 20 May 2021)

"The Resolution Board shall set the scope of that power having regard to the circumstances of each case. In particular, the Resolution Board shall carefully assess the appropriateness of extending the suspension to eligible deposits as defined in point (7) of Article 163.

Where the power to suspend payment or delivery obligations is exercised in respect of eligible deposits, the Resolution Board shall ensure that depositors have access to a daily amount of EUR 250 from those deposits."

(6) The provisions of this article shall apply irrespective of the law applicable to the contact. They shall apply to the outstanding contracts.

Article 68. Power to restrict the enforcement of security interests

(1) The Resolution Board shall 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 (Luxembourg time) at the end of the business day following that publication.

"(2) The Resolution Board shall not exercise the power referred to in paragraph 1 in relation to any of the following:

¹³⁰ Law of 20 May 2021

¹³¹ Law of 20 May 2021

¹³² Law of 20 May 2021

1. security interest of systems or operators of systems designated for the purposes of Directive 98/26/EC;
2. CCPs authorised in the European Union pursuant to Article 14 of Regulation (EU) No 648/2012 and third-country CCPs recognised by ESMA pursuant to Article 25 of that regulation;
3. central banks, over assets pledged or provided by way of margin or collateral by the institution under resolution;¹³³

(3) Where Article 80 applies, the Resolution Board shall ensure that any restrictions imposed pursuant to the power referred to in paragraph 1 are consistent for all group entities in relation to which a resolution action is taken.

(4) When exercising a power under this article, the Resolution Board shall have regard to the impact the exercise of that power might have on the orderly functioning of financial markets.

(5) The provisions of this article shall apply irrespective of the law applicable to the contract. They shall apply to the outstanding contracts.

Article 69. Power to temporarily suspend termination rights

(1) The Resolution Board shall 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 in accordance with Article 83(4) until midnight (Luxembourg time) 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) The Resolution Board shall have the power to suspend the termination rights of any party to a contract with a subsidiary of an institution under resolution where:

1. the obligations under that contract are guaranteed or are otherwise supported by the institution under resolution;
2. the termination rights under that contract are based solely on the insolvency or financial condition of the institution under resolution; and
3. in the case of a transfer power that has been or may be exercised in relation to the institution under resolution:
 - a) 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
 - b) the Resolution Board provides in any other way adequate protection for such obligations.

The suspension shall take effect from the publication of the notice of suspension in accordance with Article 83(4) until midnight (Luxembourg time) at the end of the business day following that publication.

“(3) Any suspension under paragraph 1 or 2 shall not apply to:

1. systems or operators of systems designated for the purposes of Directive 98/26/EC;
2. CCPs authorised in the European Union pursuant to Article 14 of Regulation (EU) No 648/2012 and third-country CCPs recognised by ESMA pursuant to Article 25 of that regulation;
3. central banks;¹³⁴

(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 Board that the rights and liabilities covered by the contract shall not be:

1. transferred to a recipient; or
2. subject to write down or conversion on the application of the bail-in tool in accordance with point (1) of Article 44(2).

(5) Where the Resolution Board exercises the power referred to in paragraph 1 or 2 to suspend termination rights, and where no notice has been given pursuant to paragraph 4, those rights may be exercised on the expiry of the period of suspension, subject to Article 66, as follows:

¹³³ Law of 20 May 2021

¹³⁴ Law of 20 May 2021

1. 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;
2. if the rights and liabilities covered by the contract remain with the institution under resolution and the Resolution Board has not applied the bail-in tool in accordance with Article 44(2)(1) 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, the Resolution Board shall have regard to the impact the exercise of that power might have on the orderly functioning of financial markets.

(7) The provisions of this article shall apply irrespective of the law applicable to the contract. They shall apply to the outstanding contracts.

(8) The supervisory authority or the Resolution Board may require an institution or an entity referred to in point (2), (3) or (4) of Article 2(1) to maintain detailed records of financial contracts.

Upon the request of the supervisory authority or the Resolution Board, a trade repository shall make the necessary information available to the supervisory authority or Resolution Board to enable them to fulfil their respective responsibilities and mandates in accordance with Article 81 of Regulation (EU) No 648/2012.

(Law of 20 May 2021)

"Article 69-1. Contractual recognition of resolution stay powers

(1) Institutions and entities referred to in points (2), (3) and (4) of Article 2(1) shall include in any financial contract which they enter into and which is governed by third-country law, terms by which the parties recognise that the financial contract may be subject to the exercise of powers by the Resolution Board to suspend or restrict rights and obligations under Articles 34-1, 67, 68, and 69 and recognise that they are bound by the requirements of Article 66.

(2) EU parent undertakings established in Luxembourg shall ensure that their third-country subsidiaries include, in the financial contracts referred to in paragraph 1, terms to exclude that the exercise of the power of the Resolution Board to suspend or restrict rights and obligations of the EU parent undertaking, in accordance with paragraph 1, constitutes a valid ground for early termination, suspension, modification, netting, exercise of set-off rights or enforcement of security interests on those contracts.

The requirement in the first subparagraph may apply in respect of third-country subsidiaries which are:

1. credit institutions;
2. investment firms (or which would be investment firms if they had a head office in Luxembourg); or
3. financial institutions.

(3) Paragraph 1 shall apply to any financial contract which:

1. creates a new obligation, or materially amends an existing obligation after 25 May 2021.
2. provides for the exercise of one or more termination rights or rights to enforce security interests to which Article 34-1, 66, 67, 68 or 69 would apply if the financial contract were governed by Luxembourg law.

(4) Where an institution or entity does not include the contractual term required in accordance with paragraph 1 of this article, that shall not prevent the Resolution Board from applying the powers referred to in Articles 34-1, 66, 67, 68 or 69 in relation to that financial contract."

Article 70. Exercise of the resolution powers

(1) When initiating a resolution measure, the Resolution Board may take the control over an institution under resolution so as to:

1. operate this institution by exercising all the powers of its shareholders, holders of other instruments of ownership of this institution and its management body and conduct its activities and provide its services;
2. manage and dispose of the assets and property of this institution.

This control may be exercised directly by the Resolution Board or indirectly by a special manager within the meaning of Article 36.

The shareholders and holders of other instruments of ownership of the institution under resolution shall not exercise their voting rights for as long as the Resolution Board exercises control over this institution.

(2) The Resolution Board may take a resolution action without exercising control over the institution under resolution.

(3) The Resolution Board 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) The Resolution Board shall not be deemed director de facto.

Article 71. Power to require contacting potential purchasers

When the conditions laid down in Article 59-43(1) of the Law of 5 April 1993 on the financial sector, as amended, have been met in relation to an institution, the Resolution Board shall have 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 40(2) and the confidentiality provisions laid down in Article 84.

Article 72. Information-gathering and investigatory powers of the Resolution Board

For the purposes of this part and without prejudice to Article 61, the Resolution Board shall have the following information-gathering and investigatory powers in respect of institutions or entities referred to in points (2), (3) and (4) of Article 2(1):

1. to summon any person and hear him/her in order to obtain information;
2. to require existing telephone and existing data traffic records;
3. to record telephone conversations in which an agent of the Resolution Board participates after informing the interlocutor;
4. to request the *réviseurs d'entreprises* (statutory auditors) of the institutions or entities referred to in paragraph 1 to provide the Resolution Board with information;
5. to request the freezing and/or sequestration of assets with the President of the *Tribunal d'arrondissement* (District Court) of Luxembourg deciding on request;
6. to refer information to the State Prosecutor for criminal prosecution;
7. to adopt any type of measure necessary to ensure that the institutions or entities referred to in paragraph 1 continue to comply with the requirements of this law and its implementing measures;

Chapter IX - Safeguards

Article 73. Treatment of shareholders and creditors in the case of partial transfers and application of the bail-in tool

The following principles shall be complied with, where one or more resolution tools have been applied and, in particular for the purposes of Article 75:

1. subject to point (2), where the Resolution Board transfers 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;
2. where the Resolution Board applies the bail-in tool, the shareholders and creditors whose claims have been written down or converted to equity do not incur greater losses than they would have incurred if the institution under resolution had been wound up under normal insolvency proceedings immediately at the time when the decision referred to in Article 82 was taken.

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, a valuation shall be 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 37.

(2) The valuation in paragraph 1 shall determine:

1. the treatment that shareholders and creditors, or the FGDL, 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;
2. the actual treatment that shareholders and creditors and, where applicable, the FGDL have received, in the resolution of the institution under resolution; and
3. if there is any difference between the treatment referred to in point (1) and the treatment referred to in point (2).

(3) The valuation shall:

1. be based on the assumption 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;
2. be based on the assumption that the resolution action or actions had not been effected;
3. disregard any provision of extraordinary public financial support to the institution under resolution.

Article 75. Safeguard for shareholders and creditors

If the valuation carried out under Article 74 determines that any shareholder or creditor referred to in Article 73, or the FGDL, 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 FRL.

Article 76. Safeguard for counterparties in partial transfers

(1) The protection measures referred to in paragraph 2 shall apply in the following circumstances:

1. the Resolution Board 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;
2. the Resolution Board exercises the powers referred to in point (6) of Article 62(1).

(2) The following arrangements and counterparties to these arrangements benefit from appropriate protection under Articles 77 to 80 subject to the restrictions referred to in Articles 66 to 69:

1. the physical collateral created by agreement or any other similar arrangement relating to assets or rights subject to a transfer;
2. title transfer financial collateral arrangements;
3. set-off arrangements;
4. netting arrangements;
5. covered bonds;
6. structured finance arrangements, including securitisations and instruments used for hedging purposes which form an integral part of the cover pool and which according to the applicable law are secured in a way similar to the covered bonds, which involve the granting and holding of collateral by a party to the agreement or a trustee, an agent or any other intermediary holding securities on behalf of others.

(3) The requirement under paragraph 2 applies irrespective of the number of parties involved in the arrangements and of whether the arrangements:

1. are created by agreement, including trusts or other means, or arise automatically by operation of law; or
2. arise under or are governed in whole or in part by the law of another Member State or of a third country.

Article 77. Protection for financial collateral, set-off and netting agreements

(1) Only a transfer of all and not some of the rights and liabilities that are protected under a title transfer financial collateral arrangement, including by way of a fiduciary or any other similar arrangement to which Luxembourg law or a foreign law applies, as well as the rights and liabilities that are protected under a netting arrangement or a set-off arrangement between the institution under resolution and another person, is allowed.

No modification or termination of the rights and liabilities that are protected under a title transfer financial collateral arrangement, including by way of a fiduciary or any other similar arrangement to which Luxembourg law or a foreign law applies, as well as the rights and liabilities that are protected under a netting arrangement or a set-off arrangement by exercising ancillary powers, is allowed.

For the purposes of the first and second subparagraphs, rights and liabilities are to be treated as protected under a netting arrangement or a set-off arrangement if the parties to these arrangements 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 Board may:

1. transfer covered deposits which are part of any of the agreement mentioned in paragraph 1 without transferring other assets, rights or liabilities that are part of the same agreement; and
2. transfer, modify or terminate those assets, rights or liabilities without transferring the covered deposits.

Article 78. Protection for physical collateral

(1) In order to ensure appropriate protection of physical collateral created by agreement or any other similar arrangement, it is not allowed to:

1. transfer encumbered assets through a physical collateral without transferring also the liability and benefit of the security;
2. transfer a secured liability without also transferring the benefit of the security;
3. transfer the benefit of the security without transferring also the secured liability;
4. modify or terminate the collateral 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 Board may:

1. transfer covered deposits which are part of any of the agreement mentioned in paragraph 1 without transferring other assets, rights or liabilities that are part of the same agreement; and
2. 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) In order to ensure appropriate protection for structures finance arrangement and covered bonds:

1. Only all, not some, of the assets, rights and liabilities which constitution or form part of a structures finance arrangement or a covered bond to which the institution under resolution is party, can be transferred.
2. The termination or modification through the use of ancillary powers, of the assets, rights and liabilities which constitution or form part of a structures finance arrangement or a covered bond to which the institution under resolution is party, can be transferred is not permitted.

(2) Notwithstanding paragraph 1, where necessary in order to ensure availability of the covered deposits the Resolution Board may:

1. transfer covered deposits which are part of any of the agreement mentioned in paragraph 1 without transferring other assets, rights or liabilities that are part of the same agreement; and
2. transfer, modify or terminate those assets, rights or liabilities without transferring the covered deposits.

Article 80. Protection of trading, clearing and settlement systems in case of partial transfers

(1) The application of a resolution tool shall not affect the operation of systems and rules of systems covered by Directive 98/26/EC, where the Resolution Board:

1. transfers some but not all of the assets, rights or liabilities of an institution under resolution to another entity; or
2. uses powers under Article 62 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 may not revoke a transfer order in contravention of Article 5 of Directive 98/26/EC; and may not modify or jeopardise 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 in accordance with Article 4 thereof or protection of collateral security in accordance with Article 9 thereof.

Chapter X - Procedural obligations

Article 81. Notification requirements

(1) The management body of an institution or an entity referred to in point (2), (3) or (4) of Article 2(1) shall notify the supervisory authority where they consider that the institution or the entity referred to in point (2), (3) or (4) of Article 2(1) is failing or likely to fail, within the meaning specified in Article 33(3).

(2) The supervisory authority shall inform the Resolution Board of any notifications received under paragraph 1 and of any crisis prevention measures or any actions referred to in Article 53-1 of the Law of 5 April 1993 on the financial sector, as amended, and its implementing measures they require an institution or an entity referred to in point (2), (3) or (4) of Article 2 to take.

(3) Where the supervisory authority or the Resolution Board determines that the conditions referred to in points (1) and (2) of Article 33(1) are met in relation to an institution or an entity referred to in point (2), (3) or (4) of Article 2(1), it shall communicate that determination without delay to the following authorities, if different:

1. where applicable, the supervisory authority or the Resolution Board;
2. the competent authority of any branch of that institution or entity referred to in point (2), (3) or (4) of Article 2(1);
3. the resolution authority of any branch of that institution or entity referred to in point (2), (3) or (4) of Article 2(1);
4. the Banque Centrale du Luxembourg;
5. the FGDL, where necessary to enable its functions to be discharged;
6. the FRL, where necessary to enable its functions to be discharged;
7. where applicable, the group-level resolution authority;
8. the Minister responsible for the financial sector;
9. where the institution or the entity referred to in point (2), (3) or (4) of Article 2 is subject to supervision on consolidated basis under Chapter 3 of Title VII of Directive 2013/36/EU, the consolidating supervisor; and
10. the Comité du risque systémique (Systemic Risk Committee) and the European Systemic Risk Board (hereinafter the "ESRB").

(4) The supervisory authority and the Resolution Board shall establish communication procedures for the transmission of information referred to in points (5) and (6) of paragraph 3 that achieve an appropriate level of confidentiality.

Article 82. Decision of the resolution authority

(1) On receiving a communication from the supervisory authority pursuant to paragraph 3 of Article 81, or on its own initiative, the Resolution Board shall determine, in accordance with Article 33(1) and Article 34, whether the conditions of Article 33(1) are met in respect of the institution or the entity referred to in point (2), (3) or (4) of Article 2(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 (2), (3) or (4) of Article 2(1) shall contain the following information:

1. the reasons for that decision, including the determination that the institution or entity referred to in point (2), (3) or (4) of Article 2(1) meets or does not meet the conditions for resolution;
2. the action that the Resolution Board 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.

Article 83. Procedural obligations of the Resolution Board

(1) As soon as reasonably practicable, the Resolution Board shall, after taking resolution action, comply with the requirements laid down in paragraph 2, 3 and 4.

(2) The Resolution Board shall notify the institution under resolution and the following authorities, if different:

1. the supervisory authority;
2. the competent authority of any branch of the institution under resolution;
3. the Banque Centrale du Luxembourg;
4. the FGDL;
5. the FRL;
6. where applicable, the group-level resolution authority;
7. the Minister responsible for the financial sector;
8. where the institution under resolution is subject to supervision on a consolidated basis, the consolidating supervisor;
9. the Comité du risque systémique (Systemic Risk Committee) and the ESRB;
10. the European Commission, the European Central Bank, the European Securities and Markets Authority (hereinafter "ESMA") established by Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC, hereinafter referred to as "Regulation (EU) No 1095/2010", the European Insurance and Occupational Pensions Authority (hereinafter "EIOPA") established by Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC, and the EBA;
11. 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 Board 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 67, 68 and 69, by the following means:

1. on its official website;
2. on the website of the supervisory authority and of the website of the EBA;
3. on the website of the institution under resolution;
4. 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 20(1) of the Law of 11 January 2008 on transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.

(5) If the shares, instruments of ownership or debt instruments are not admitted to trading on a regulated market, the Resolution Board shall ensure that the documents 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 Board.

Article 84. Confidentiality

(1) This article shall apply to the following persons:

1. the Resolution Board;
2. the CPDI;
3. the supervisory authority;
4. the Minister responsible for the financial sector;
5. the special managers appointed in accordance with this law;

6. potential acquirers that are solicited by the Resolution Board, irrespective of whether that solicitation was made as preparation for the use of the sale of business tool, and irrespective of whether the solicitation resulted in an acquisition;
7. the auditors, accountants, legal advisers, professional advisers, valuers and other experts hired directly or indirectly by the Resolution Board, the supervisory authority or the Minister responsible for the financial sector or by potential acquirers referred to in point (6);
8. the FGDL;
9. the FRL;
10. the Banque Centrale du Luxembourg;
11. the other authorities involved in the resolution process;
12. a bridge institution or an asset management vehicle;
13. any other persons who provide or have provided services directly or indirectly, permanently or occasionally, to persons referred to in points (1) to (12);
14. senior management, members of the management body, and employees of the bodies or entities referred to in points (1) to (12) before, during and after their appointment.

(2) The persons referred to in paragraph 1 are bound by the obligation of professional secrecy.

In particular, the persons in question shall be prohibited from disclosing confidential information received during the course of or in relation to their professional activities or from the supervisory authority or the Resolution Board in connection with its functions under this law, to any person unless it is in the exercise of their functions under this law or in summary or collective form such that individual institutions or entities referred to in point (2), (3) or (4) of Article 2(1) cannot be identified or with the express and prior consent of the authority or the institution or the entity referred to in point (2), (3) or (4) of Article 2(1) which provided the information.

No confidential information shall be disclosed by the persons referred to in paragraph 1.

The Resolution Board shall assess 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.

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 resolution plan and the result of any assessment of resolvability.

Any person referred to in paragraph 1 shall be subject to civil liability in the event of an infringement of this article.

(3) With a view to ensuring that the confidentiality requirements laid down in paragraph 2 are complied with, the persons in points (1), (2), (3), (4), (8), (10), (11) and (12) 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.

(4) This article shall not prevent:

1. employees and experts of the bodies or entities referred to in points (1) to (11) of paragraph 1 from sharing information among themselves within each body or entity; or
2. the Resolution Board, the supervisory authority and the CSSF acting pursuant to its other functions, including their employees and experts, from sharing information with each other and with other EU resolution authorities, other EU 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, the Comité du risque systémique (Systemic Risk Committee), persons charged with carrying out statutory audits of accounts, the EBA, or, subject to Article 104, third-country authorities that carry out equivalent functions to the Resolution Board, or, subject to strict confidentiality requirements, to a potential acquirer for the purposes of planning or carrying out a resolution action.

(5) This article shall be without prejudice to the rules applicable to the disclosure of information for the purpose of legal proceedings in criminal or civil cases.

Chapter XI - Restrictions

Article 85. Restrictions on company law

By way of derogation from the Law of 10 August 1915 on commercial companies, as amended

1. the second to fourth subparagraphs of Article 26-1, Article 32, second and third sentence of the fifth subparagraph of Article 32-1, Article 32-3, the reference to Article 32-3 in Article 32-4, Article 68, the first to third subparagraphs of Article 69, Article 69-2 and Article 100 of that law shall not apply in the case of the use of resolution tools, powers and mechanisms provided for in Chapters III to XI, and
2. Articles 257 to 284 of that law, except where these provisions govern the formation of a European company through merger in accordance with the first subparagraph of Article 26a of that law or the formation of a European Cooperative Society through merger in accordance with Articles 137-15 to 137-18 of that law, and Articles 285 to 305 of that law, shall not apply to companies subject to the use of resolution tools, powers and mechanisms provided for in Chapters III to XI unless, in those cases, the Resolution Board deems necessary to apply one of these provisions during the practical implementation of a resolution mechanism.

Article 86. Restrictions on other proceedings

(1) Without prejudice to point (2) of Article 82(2), normal insolvency proceedings shall not be commenced, with respect to an institution or an entity referred to in point (2), (3) or (4) of Article 2(1) in relation to which the conditions for resolution have been determined to be met or which is under resolution, except at the initiative of the Resolution Board and a decision placing an institution or an entity referred to in point (2), (3) or (4) of Article 2(1) into normal insolvency proceedings shall be taken only with the consent of the Resolution Board.

(2) For the purposes of paragraph 1:

1. the supervisory authority and the Resolution Board shall be 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 (2), (3) or (4) of Article 2(1), irrespective of whether the institution or the entity referred to in point (2), (3) or (4) of Article 2(1) is under resolution or a decision has been made public in accordance with Article 83(4) and (5);
2. the application is not determined unless the notifications referred to in point (1) have been made and either of the following occurs:
 - a) the Resolution Board has notified the *Tribunal d'arrondissement* (District Court), sitting in commercial matters, that it does not intend to take any resolution action in relation to the institution or the entity referred to in point (2), (3) or (4) of Article 2(1);
 - b) a period of seven days beginning with the date on which the notifications referred to in point (1) were made has expired.

(3) Without prejudice to any restriction on the enforcement of security interests imposed pursuant to Article 68, the Resolution Board may, if necessary for the effective application of the resolution tools and powers, 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 or an entity referred to in point (2), (3) or (4) of Article 2(1) which is under resolution is or becomes a party.

Chapter XII - Cross-border group resolution

Section I - General principles, colleges and information exchange

Article 87. General principles regarding decision-making involving more than one Member State

(1) When making decisions or taking action pursuant to this part which may have an impact in one or more other Member States, the Resolution Board shall have regard to the following general principles:

1. the imperatives of efficacy of decision-making and of keeping resolution costs as low as possible when taking resolution action;
2. that decisions are made and action is taken in a timely manner and with due urgency when required;
3. that the authorities involved cooperate with each other to ensure that decisions are made and action is taken in a coordinated and efficient manner;
4. that the roles and responsibilities of relevant authorities within each Member State are defined clearly;

5. that due consideration is given to the interests of the Member States where the EU 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;
6. 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;
7. 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;
8. 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;
9. that the group resolution plans are taken into account and followed, unless it assesses, 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;
10. 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
11. efficient coordination and cooperation is required.

(2) Any obligation under this part to consult an authority before any decision or action is taken implies at least an obligation to consult that authority on those elements of the proposed decision or action which have or which are likely to have an impact on:

1. the EU parent undertaking, the subsidiary or the branch; and
2. the stability of the Member State where the EU parent undertaking, the subsidiary or the branch, is established or located;

Article 88. Establishment of resolution colleges by the Resolution Board when it acts as group-level resolution authority

(1) This article shall apply where the Resolution Board acts as the group-level resolution authority.

(2) "Subject to Article 90, the"¹³⁵ Resolution Board together with the other resolution authorities shall establish resolution colleges to carry out the tasks referred to in Articles 27, 30, 46 "to 46-10"¹³⁶, 93 and 94 of Section II of Chapter I, and, where appropriate, to ensure cooperation and coordination with third-country resolution authorities.

The resolution colleges provide a framework for the Resolution Board, other resolution authorities and, where appropriate, supervisory authority and other competent authorities to perform the following tasks, by following the procedures, in particular the procedures for joint decision laid down in this part:

1. exchanging information relevant for the development of group resolution plans, for the application to groups of preparatory and preventative powers and for group resolution;
2. developing group resolution plans;
3. assessing the resolvability of groups;
4. exercising powers to address or remove impediments to resolvability of groups;
5. deciding on the need to establish a group resolution scheme;
6. reaching the agreement on a group resolution scheme;
7. coordinating public communication of group resolution strategies and schemes;
8. coordinating the use of financing arrangements;
9. setting the minimum requirements for groups at consolidated and subsidiary level "under Articles 46 to 46-10"¹³⁷.

¹³⁵ Law of 20 May 2021

¹³⁶ Law of 20 May 2021

¹³⁷ Law of 20 May 2021

In addition, resolution colleges may be used as a forum to discuss any issues relating to cross-border group resolution.

(3) The following shall be members of the resolution college:

1. the Resolution Board as the group-level resolution authority;
2. the resolution authorities of each Member State in which a subsidiary covered by consolidated supervision is established;
3. the resolution authorities of Member States where an entity referred to in point (4) of Article 2(1), that is a parent undertaking of one or more institutions of the group, is established;
4. the resolution authorities of Member States in which significant branches are located;
5. the supervisory authority;
6. the Banque Centrale du Luxembourg;
7. 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;
8. a representative delegated by the Minister responsible for the financial sector;
9. the competent ministries of other Member States, where they are not resolution authorities members of the resolution college and where the resolution authority of that Member State is member of the resolution college;
10. the CPDI;
11. the authority that is responsible for the deposit guarantee scheme of another Member State, where the resolution authority of that Member State is a member of a resolution college;
12. the EBA, subject to paragraph 5.

The resolution authorities of third countries where a parent undertaking or an institution established in the EU has a subsidiary institution or a branch that would be considered to be significant were it located in the EU may, at their request, be invited to participate in the resolution college as observers. In such case, they shall be subject to confidentiality requirements equivalent, in the opinion of the Resolution Board, to those established by Article 104.

(5) The Resolution Board shall invite the EBA to attend the meetings of the resolution college as member without voting rights so that the EBA may promote and monitor the efficient, effective and consistent functioning of resolution colleges, taking into account international standards.

(6) The Resolution Board shall be the chair of the resolution college. In that capacity it shall:

1. establish written arrangements and procedures for the functioning of the resolution college, after consulting the other members of the resolution college;
2. coordinate all activities of the resolution college;
3. 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;
4. notify the members of the resolution college of any planned meetings so that they can request to participate;
5. 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; However, 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. keep all of the members of the college informed, in a timely manner, of the decisions and outcomes of those meetings.

The Resolution Board shall closely cooperate with the members participating in the resolution college.

(7) The Resolution Board is 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 91. In such a case, all references to resolution colleges in this part shall also be understood as references to those other groups or colleges.

Article 89. Participation of the Resolution Board in a resolution college when it is not the group-level resolution authority

(1) Where the Resolution Board participates in a resolution college without it being the group-level resolution authority, it shall contribute as member of the resolution college to the implementation of a framework as described in the second subparagraph of Article 88(2).

(2) The Resolution Board and the supervisory authority shall closely cooperate with the other members participating in the resolution college.

(3) The Resolution Board and the supervisory authority shall participate in resolution college meetings whenever matters subject to joint decision-making or relating to a group entity located in Luxembourg are on the agenda. The Minister responsible for the financial sector may decide to send a representative to these meetings.

(4) The CSSF may decide to be accompanied by the Banque Centrale du Luxembourg to the resolution college meetings referred to in this article.

Article 90. European resolution colleges

(1) Where a third-country institution or third-country parent undertaking has “subsidiaries established in the European Union or EU parent undertakings”¹³⁸ established in two or more Member States, or two or more EU branches that are regarded as significant by two or more Member States, and if at least one of these “parent undertakings,”¹³⁹ subsidiaries or branches is established or located in Luxembourg the Resolution Board and the resolution authorities of Member States where those EU “entities”¹⁴⁰ are established or where those significant branches are located shall establish a European resolution college.

(2) The European resolution college “referred to in paragraph 1”¹⁴¹ shall perform the functions and carry out the tasks specified in Article 88 of Directive 2014/59/EU with respect to the “entities referred to in paragraph 1”¹⁴² and, insofar as those tasks are relevant, to “their”¹⁴³ branches.

(Law of 20 May 2021)

“The tasks referred to in the first subparagraph shall include the setting of the requirement referred to in Articles 46 to 46-10.

When setting the requirement referred to in Articles 46 to 46-10, the Resolution Board shall ensure that the members of the European resolution college take into consideration the global resolution strategy, if any, adopted by third-country authorities.

Where, in accordance with the global resolution strategy, subsidiaries established in the European Union or an EU parent undertaking and its subsidiary institutions are not resolution entities and the members of the European resolution college agree with that strategy, subsidiaries established in Luxembourg or, on a consolidated basis, the EU parent undertaking established in Luxembourg shall comply with the requirement of Article 46-6(1) by issuing instruments referred to in points (1) and (2) of Article 46-6(2) to their ultimate parent undertaking established in a third country, or to the subsidiaries of that ultimate parent undertaking that are established in the same third country or to other entities under the conditions set out in letter (a) of point (1) and letter (b) of point (2) of Article 46-6(2).”

“(3) Where only one EU parent undertaking established in Luxembourg holds all EU subsidiaries of a third-country institution or third-country parent undertaking, the European resolution college shall be chaired by the Resolution Board.

Where the first subparagraph of Article 89(3) of Directive 2014/59/EU does not apply, the Resolution Board shall chair the European resolution college where the Resolution Board is the resolution authority of the EU parent undertaking or of the EU subsidiary with the highest value of total on-balance sheet assets.”¹⁴⁴

¹³⁸ Law of 20 May 2021

¹³⁹ Law of 20 May 2021

¹⁴⁰ Law of 20 May 2021

¹⁴¹ Law of 20 May 2021

¹⁴² Law of 20 May 2021

¹⁴³ Law of 20 May 2021

¹⁴⁴ Law of 20 May 2021

(4) The Resolution Board may agree to waive the requirement to establish a European resolution college if other groups or colleges (...) ¹⁴⁵ 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 European resolution colleges, established in this article and in Article 91. In such a case, all references to European resolution colleges in this part shall also be understood as references to those other groups or colleges.

(5) Subject to paragraphs 3 and 4, the European resolution college shall otherwise function in accordance with Articles 88 and 89.

Article 91. Information exchange

(1) Subject to Article 84, the Resolution Board, the supervisory authority, the resolution authorities of the other Member States concerned and the competent authorities of the other Member States concerned shall, where material, provide one another on request with all the information relevant for the exercise of the other authorities' tasks under Directive 2014/59/EU.

(2) The Resolution Board, when acting as group-level resolution authority, shall coordinate the flow of all relevant information between resolution authorities. In particular, the Resolution Board 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 (2) to (9) of the second subparagraph of Article 88(2).

(3) Upon a request to access information which has been provided by a third-country resolution authority, the Resolution Board 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.

The Resolution Board 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) The Resolution Board shall share information with the Minister responsible for the financial sector when it relates to a decision or matter which requires notification, consultation or consent of the competent minister or which may have implications for public funds.

Section II - Group resolution where the Resolution Board acts as the group-level resolution authority

Article 92. Scope

This section shall apply where the Resolution Board acts as the group-level resolution authority.

Article 93. Group resolution involving a subsidiary of the group

(1) On receiving a notification as provided for under Article 91(1) of Directive 2014/59/EU, the Resolution Board, after consulting the other members of the relevant resolution college, shall assess the likely impact of the notified resolution actions or other measures, 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.

(2) If, after having consulted the other members of the resolution college, the Resolution Board assesses that the resolution actions or other measures notified in accordance with paragraph 1, would not imply that the conditions defined in Article 32 or 33 of Directive 2014/59/EU would be satisfied in relation to a group entity in a Member State other than that of the resolution authority which notified the resolution action, the Resolution Board shall inform the resolution authority which notified the resolution action so that the latter may take the resolution actions or other measures that it notified in accordance with paragraph 1.

(3) If, after having consulted the other members of the resolution college, the Resolution Board assesses that the resolution actions or other measures notified in accordance with paragraph 1, would imply that the conditions defined in Article 31 or 32 of Directive 2014/59/EU would be satisfied in relation to a group entity in a Member State other than that of the resolution authority which notified the resolution action, the Resolution Board 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.

(4) A group resolution scheme required under paragraph 3 shall:

¹⁴⁵ Law of 20 May 2021

1. take into account and follow the group resolution plans unless the Resolution Board and the resolution authorities of other Member States 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;
2. outline the resolution actions that should be taken by the Resolution Board and by the relevant resolution authorities from other Member States in relation to the EU parent undertaking or particular group entities with the aim of meeting the resolution objectives and principles referred to in Articles 30 and 33 or Articles 31 and 34 of Directive 2014/59/EU;
3. specify how those resolution actions should be coordinated;
4. establish a financing plan which takes into account the group resolution plan, principles for sharing responsibility as established in accordance with point (6) of Article 15(2) and the mutualisation as referred to in Article 112.

(5) Subject to Article 91(8) of Directive 2014/59/EU, the group resolution scheme shall take the form of a joint decision of the Resolution Board and the resolution authorities responsible for the subsidiaries that are covered by the group resolution scheme.

The Resolution Board may request the EBA to assist the resolution authorities in reaching a joint decision in accordance with Article 31(c) of Regulation (EU) No 1093/2010.

(6) In case of absence of a joint decision in accordance with paragraph 5, the Resolution Board and the resolution authorities which did not disagree pursuant to Article 91(8) of Directive 2014/59/EU shall, where applicable, take a joint decision on a group resolution scheme covering the group entities in their Member State.

(7) The joint decision referred to in paragraph 5 or 6 and the decisions taken by the resolution authorities in the absence of a joint decision shall be recognised as conclusive and applied by the Resolution Board.

(8) The Resolution Board shall perform all actions under this article without delay, and with due regard to the urgency of the situation.

(9) When taking any resolution action in relation to any group entity, the Resolution Board shall inform the members of the resolution college regularly and fully about those actions or measures and their on-going progress.

(10) In any case where a group resolution scheme is not implemented and a resolution authority takes resolution actions in relation to any group entity, the Resolution Board shall cooperate closely with that authority 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.

Article 94. Group resolution

(1) Where the Resolution Board decides that an EU parent undertaking for which it is responsible meets the conditions referred to in Article 33 or 34, it shall notify the information referred to in Article 96 without delay to the supervisory authority and to the other members of the resolution college of the group in question.

The actions for the purposes of point (2) of Article 96 may include the implementation of a group resolution scheme drawn up in accordance with paragraphs 3 and 4 of Article 93 in any of the following circumstances:

1. resolution actions or other measures at parent level notified in accordance with point (2) of Article 96 imply the likelihood that the conditions laid down in Article 33 or 34 will be fulfilled in relation to a group entity in another Member State;
2. 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;
3. one or more subsidiaries meet the conditions referred to in Article 33 or 34 according to a determination by the resolution authorities responsible for those subsidiaries; or
4. 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 Resolution Board under paragraph 1 do not include a group resolution scheme, the Resolution Board shall take its decision after consulting the members of the resolution college.

The decision of the Resolution Board shall take into account:

1. and follow the resolution plan unless the Resolution Board assesses, 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 plan;
2. the financial stability in Luxembourg and in the other relevant Member States.

(3) Where the actions proposed by the Resolution Board under paragraph 1 include a group resolution scheme, the group resolution scheme shall take the form of a joint decision of the Resolution Board and the resolution authorities responsible for the subsidiaries that are covered by the group resolution scheme.

The Resolution Board may request the EBA to assist the resolution authorities in reaching a joint decision in accordance with Article 31(c) of Regulation (EU) No 1093/2010.

(4) In case of absence of a joint decision in accordance with paragraph 3, the Resolution Board and the resolution authorities which did not disagree to the group resolution scheme pursuant to Article 92(4) of Directive 2014/59/EU may take a joint decision on a group resolution scheme covering the group entities in their Member State.

(5) The joint decision referred to in paragraph 3 or 4 and the decisions taken by the resolution authorities in the absence of a joint decision shall be recognised as conclusive and applied by the Resolution Board.

(6) The Resolution Board shall perform all actions under this article without delay, and with due regard to the urgency of the situation.

When taking resolution actions in relation to any group entity, the Resolution Board shall inform the members of the resolution college regularly and fully about those actions or measures and their on-going progress.

(7) In any case where a group resolution scheme is not implemented and a resolution authority takes resolution actions in relation to any group entity, the Resolution Board shall cooperate closely with that authority 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.

Section III - Group resolution where the Resolution Board acts as resolution authority of a subsidiary of an EU parent undertaking

Article 95. Scope

This section shall apply where the Resolution Board acts as resolution authority of a subsidiary of an EU parent undertaking.

Article 96. Information notification

Where the Resolution Board decides that an institution or any entity referred to in point (2), (3) or (4) of Article 2(1) that is a subsidiary in a group meets the conditions referred to in Article 33 or 34, it 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:

1. the decision that the institution or entity referred to in point (2), (3) or (4) of Article 2(1) meets the conditions referred to in Article 33 or 34; and
2. the resolution actions that the Resolution Board considers to be appropriate for that institution or that entity referred to in point (2), (3) or (4) of Article 2(1), or if it considers to be appropriate to start normal insolvency proceedings.

Article 97. Group resolution involving a subsidiary of the group

(1) The Resolution Board may take any resolution actions or other measures that it notified in accordance with point (2) of Article 96 :

1. 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 (2) of Article 96 will not imply that the conditions laid down in Article 33 or 34 are satisfied in relation to a group entity in another Member State; or
2. in the absence of an assessment by the group-level resolution authority within 24 hours, or a longer period that has been agreed with the Resolution Board, after receiving from the group-level resolution authority notification in accordance with Article 96.

(2) Paragraphs 3 to 9 shall apply:

1. in case of a group resolution scheme proposed by the resolution authority at group level following a notification from the Resolution Board in accordance with paragraph 1;
2. in case of a group resolution scheme proposed by the group-level resolution authority following a notification in accordance with Article 91(1) of Directive 2014/59/EU from a resolution authority of another Member State regarding a group subsidiary; and
3. in case of a group resolution scheme proposed by the group-level resolution authority following a notification in accordance with Article 92 of Directive 2014/59/EU regarding an EU parent undertaking.

(3) The Resolution Board shall endeavour to reach a joint decision on the group resolution scheme with the group-level resolution authority and the other resolution authorities responsible for the subsidiaries that are covered by the group resolution scheme.

The Resolution Board may request the EBA to assist the resolution authorities in reaching a joint decision in accordance with Article 31(c) of Regulation (EU) No 1093/2010.

(4) If the Resolution Board disagrees to the group resolution scheme proposed by the group-level resolution authority, it may depart from the group resolution scheme. If the Resolution Board 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 (2), (3) or (4) of Article 2(1) for reasons of financial stability, it shall decide on the actions or measures in question.

In the cases referred to in the first subparagraph, the Resolution Board 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, the Resolution Board shall give consideration to the group resolution plans, 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.

(5) If the Resolution Board agrees to the group resolution scheme proposed by the resolution authority at group level but the resolution authority of another subsidiary disagrees to that scheme, the Resolution Board may take a joint decision with the other resolution authorities which did not disagree to the group resolution scheme that covers the Luxembourg subsidiary and the group entities in the Member States of the other resolution authorities participating in the joint decision.

(6) The joint decision referred to in paragraph 3 or 5 shall be recognised as conclusive and applied by the Resolution Board.

(7) The Resolution Board shall perform all actions under this article without delay, and with due regard to the urgency of the situation.

(8) In any case where a group resolution scheme is not implemented and the Resolution Board takes resolution actions in relation to any group entity, the Resolution Board shall cooperate closely with the other resolution authorities 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.

(9) When taking any resolution action in relation to any group entity, the Resolution Board shall inform the members of the resolution college regularly and fully about those actions or measures and their on-going progress.

Chapter XIII - Relations with third countries

Article 98. Agreements with third countries

(1) The Resolution Board may enter bilateral agreements with third-country authorities 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.

(2) The agreements referred to in paragraph 1 shall, in particular, seek to ensure the establishment of processes and arrangements between the Resolution Board and the relevant third-country authorities for cooperation in carrying out some or all of the tasks and exercising some or all of the powers indicated in Article 103.

(3) The Resolution Board shall ensure that these agreements are consistent with the provisions of this part.

(4) These agreements shall remain into force until the European Commission negotiates an agreement with the third-country authorities in question in accordance with Article 93(1) of Directive 2014/59/EU.

(5) In any case, specific agreements concerning an entity or a group in particular may be entered into by the Resolution Board provided that these agreements are consistent with the provisions of this part.

Article 99. Recognition and enforcement of third-country resolution proceedings

(1) Where no international agreement as referred to in Article 93(1) of Directive 2014/59/EU has entered into force in the relevant third country, this article shall apply in respect of the relevant third-country resolution proceedings.

This article shall also apply following the entry into force of an international agreement as referred to in Article 93(1) of Directive 2014/59/EU with the relevant third country to the extent that recognition and enforcement of third-country resolution proceedings are not governed by that agreement.

(2) Where the Resolution Board shall chair a European resolution college established in accordance with Article 90, it shall ensure that this college takes a joint decision on whether to recognise, except as provided for in Article 101, third-country resolution proceedings relating to a third-country institution or a parent undertaking that:

1. has EU subsidiaries established in Luxembourg and in at least one other Member State or EU branches located in Luxembourg and in at least one other Member State and regarded as significant by them; or
2. has assets, rights or liabilities located in Luxembourg and in at least one other Member State or governed by the law of those Member States.

Where a positive decision on the recognition is reached, the Resolution Board shall seek the enforcement of the recognised third-country resolution proceedings in accordance with this law.

(3) In the absence of a joint decision between the resolution authorities participating in the European resolution college, chaired by the Resolution Board, the Resolution Board shall make a decision on whether to recognise and enforce, except as provided for in Article 101, third-country resolution proceedings relating to a third-country institution or a parent undertaking. The Resolution Board shall also make a decision in the absence of the European resolution college.

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) The Resolution Board shall be empowered to do the following:

1. exercise the resolution powers in relation to the following:
 - a) assets of a third-country institution or parent undertaking that are located in Luxembourg or governed by Luxembourg law;
 - b) rights or liabilities of a third-country institution that are booked by the EU branch in Luxembourg or governed by Luxembourg law, or where claims in relation to such rights and liabilities are enforceable in Luxembourg;
2. perfect, including to require another person to take action to perfect, a transfer of shares or other instruments of ownership in an EU subsidiary established in Luxembourg;
3. exercise the powers in Articles 67, 68 and 69 in relation to the rights of any party to a contract with an entity referred to in paragraph 2, where such powers are necessary in order to enforce third-country resolution proceedings; and
4. render ineffective any right to terminate, liquidate or accelerate contracts, and
5. 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 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.

The recognition and enforcement of third-country resolution proceedings shall be without prejudice to any normal insolvency proceedings.

Article 100. Resolution of a parent undertaking that has a subsidiary in a third country

The Resolution Board may take, where necessary in the public interest, resolution action with respect to a parent undertaking incorporated under Luxembourg law 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, the Resolution Board is empowered to use any resolution power in respect of that parent undertaking. In that case, Article 66 shall apply.

Article 101. Right to refuse recognition or enforcement of third-country resolution proceedings

The Resolution Board, after consulting other resolution authorities of the European resolution college established under Article 90, may refuse to recognise or to enforce third-country resolution proceedings pursuant to Article 99(2) if it considers:

1. that the third-country resolution proceedings would have adverse effects on financial stability in Luxembourg or that the proceedings would have adverse effects on financial stability in another Member State;
2. that independent resolution action under Article 102 in relation to an EU branch is necessary to achieve one or more of the resolution objectives;
3. that creditors, including in particular depositors located in a Member State and credits, including in particular deposits outstanding 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;
4. that recognition or enforcement of the third-country resolution proceedings would have material fiscal implications for Luxembourg; or
5. that the effects of such recognition or enforcement would be contrary to the law.

Article 102. Resolution of EU branches

The Resolution Board shall have the powers and be able to apply instruments provided for in this part in order to act in relation to an EU 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 101 applies.

Article 66 shall apply to the exercise of such powers.

The powers required in paragraph 1 may be exercised by the Resolution Board where it considers that action is necessary in the public interest and one or more of the following conditions are met:

1. the EU branch no longer meets, or is likely not to meet, the conditions imposed by the Law of 5 April 1993 on the financial sector, as amended, for its authorisation and operation 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;
2. the third-country institution is, in the opinion of the Resolution Board, unable or unwilling, or is likely to be unable, to pay its obligations to creditors located in a Member State, 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;
3. the relevant third-country authority has initiated or intends to initiate resolution proceedings in relation to the third-country institution.

(3) Where the Resolution Board takes an independent action in relation to an EU 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:

1. the principles set out in Article 35;
2. the requirements relating to the application of the resolution tools in Article 37.

Article 103. 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) of Directive 2014/59/EU 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) of Directive 2014/59/EU with the relevant third country to the extent that the subject matter of this article is not governed by that agreement.

(2) The supervisory authority or the Resolution Board, where appropriate, may conclude non-binding cooperation arrangements in line with the EBA framework arrangement with the relevant third-country authorities indicated in Article 97(2) of Directive 2014/59/EU without prejudice to the bilateral or multilateral arrangements with third countries in accordance with Article 33 of Regulation (EU) No 1093/2010.

(3) Cooperation arrangements concluded between the Resolution Board and the resolution authorities of third countries in accordance with this article may include provisions on the following matters:

1. the exchange of information necessary for the preparation and maintenance of resolution plans;
2. consultation and cooperation in the development of resolution plans, including principles for the exercise of powers under Articles 99 and 102 and similar powers under the law of the relevant third countries;
3. 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;
4. early warning to or consultation of parties to the cooperation arrangement before taking any significant action under this part or Part IV of the Law of 5 April 1993 on the financial sector, as amended, or relevant third-country law affecting the institution or group to which the arrangement relates;
5. the coordination of public communication in the case of joint resolution actions;
6. procedures and arrangements for the exchange of information and cooperation under points (1) to (5), including, where appropriate, through the establishment and operation of crisis management groups.

(4) The Resolution Board shall notify the EBA of any cooperation arrangements concluded in accordance with this article.

Article 104. Exchange of confidential information

(1) The Resolution Board, the supervisory authority and the Minister responsible for the financial sector shall exchange confidential information, under this part, with relevant third-country authorities only if the following conditions are met:

1. 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.

Insofar 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 EU and Luxembourg data protection law.

2. 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 part and, subject to point (1), is not used for any other purposes.

(2) Where confidential information originates in another Member State, the Resolution Board, the supervisory authority and the Minister responsible for the financial sector shall not disclose that information to relevant third-country authorities unless the following conditions are met:

1. the relevant authority of the Member State where the information originated agrees to that disclosure;
2. the information is disclosed only for the purposes permitted by that authority.

(3) For the purposes of this Article, information is deemed to be confidential if it is subject to confidentiality requirements under EU law.

Chapter XIV - Financing arrangements

Article 105. Resolution financing arrangements

(1) A resolution fund that has the legal status of *établissement public* (public body) and is called Fonds de Résolution Luxembourg (hereinafter the "FRL") is created. It is vested with legal personality and acting under the control of the Minister responsible for the financial sector.

The head office of the FRL is in Luxembourg.

(2) The purpose of the FRL is to collect contributions due under this part by the institutions authorised in accordance with the Law of 5 April 1993 on the financial sector, as amended, including EU branches, to manage the financial means and participate in the financing of the institution's resolution upon request from the Resolution Board.

(3) The body of the FRL is the Executive Board. The Executive Board is composed of the following members:

1. the Resolution Director in accordance with Article 12-7 of the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;
2. the Director of the Treasury;
3. the Director General of the Banque Centrale du Luxembourg;
4. the Director of the CSSF responsible for banking supervision; and
5. the magistrate in the Resolution Board appointed by the Grand Duke on the proposal of the Government in Council in accordance with Article 12-2 of the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de Surveillance du Secteur Financier"), as amended.

The Grand Duke on proposal of the Government in Council shall appoint a substitute for the member referred to in point (5). Every member referred to in points (1) to (4) shall designate a substitute within its authority who will replace that member if s/he is prevented from attending. The substitute of the Resolution Director shall come from the resolution department referred to in Article 12-6 of the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier") (hereinafter the "Resolution Department");

In case a member or the Chairman is replaced by its substitute, the latter shall be considered as member and exercise the voting right of the member.

The Chairman of the Executive Board is the Resolution Director and, if s/he is unable to chair, the Director of the Treasury.

If a seat of a member or substitute of the Executive Board becomes vacant for any reason whatsoever, that member or substitute shall be replaced for the remaining term of the office.

A member of the Executive Board or his/her substitute may be dismissed in the same way as his/her appointment.

(4) The Executive Board may only discuss when the majority of the members are present. Its decisions shall be taken by a majority of the votes cast. Each member shall have one vote. In the event of a tie vote, the chairman shall have a casting vote.

Besides the information that the Executive Board decides to make official, the member of the Executive Board, their substitutes and any person taking part in the meetings are subject to secrecy of the deliberations.

(5) An agent of the Resolution Department shall exercise the activities of the secretariat of the Executive Board.

The Resolution Department of the CSSF assists the Executive Board in the exercise of its duties and carries out the operational tasks incumbent on the FRL.

(6) The Executive Board shall decide the investment policy of the FRL in accordance with the sound and prudent management principles. The Executive Board shall ensure that, in the framework of the investment policy, the investments of assets of the FRL are sufficiently diversified and low risk.

The Executive Board shall transmit every year, by 30 April at the latest, an annual report of the preceding year to the Government in Council and the Chambre des Députés (Luxembourg chamber of deputies).

(7) The Executive Board shall have internal rules subject to approval by the Minister responsible for the financial sector.

(8) The FRL may only be bound through the joint signature of the Resolution Director and the Director of the Treasury in their capacity as members of the Executive Board.

(9) A member who, in the discharge of his/her duties, is called upon to decide on a matter in which s/he has direct or indirect personal interests that would jeopardise his/her independence, shall inform the body to which s/he belongs and shall not take part in the discussions or decisions in question.

For the FRL to assume civil liability for individual damages, it must be demonstrated that the damage suffered was caused through gross negligence in the choice and application of the means implemented to fulfil the public service remit of the FRL.

The second subparagraph shall also apply to members of the Executive Board, who are only collectively responsible, when they carry out public services by representing the FRL.

(10) The FRL shall be exempt from all tax and fee duties to the State and municipalities, except for the value added tax.

(11) Without prejudice to Article 106, the rights of the creditors are limited to the financial means referred to in paragraph 14.

(12) The FRL is the financing arrangement within the meaning of Article 100(1) of Directive 2014/59/EU in Luxembourg.

(13) The roles and duties of the FRL and the Resolution Board under this chapter are without prejudice to those of the Single Resolution Fund in accordance with Regulation (EU) No 806/2014 and the Intergovernmental agreement on the transfer and mutualisation of contributions to the Single Resolution Fund.

(14) The FRL shall have adequate financial means.

To this end, the FRL shall in particular have the power to:

1. raise ex-ante contributions as referred to in Article 108 with a view to reaching the target level specified in Article 107;
2. raise ex-post extraordinary contributions as referred to in Article 109 where the contributions specified in point (1) are insufficient; and
3. contract borrowings and other forms of support as referred to in Article 110.

(15) The Resolution Board is the only one empowered to trigger the use of the FRL.

The financial means of the FRL shall be used only in accordance with the resolution objectives and the principles set out in Articles 32 and 35.

(16) The FRL is authorised to collect an administrative contribution from institutions authorised in accordance with the Law of 5 April 1993 on the financial sector, as amended, including from EU branches, in order to cover the operating costs.

Article 106. Use of the resolution financing arrangements

(1) The financial means of the FRL may be used by the Resolution Board only to the extent necessary to ensure the effective application of the resolution tools, for the following purposes:

1. to guarantee the assets or the liabilities of the institution under resolution, its subsidiaries, a bridge institution or an asset management vehicle;
2. to make loans to the institution under resolution, its subsidiaries, a bridge institution or an asset management vehicle;
3. to purchase assets of the institution under resolution;
4. to make contributions to a bridge institution and an asset management vehicle;
5. to pay compensation to shareholders or creditors in accordance with Article 75;
6. 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 Board decides to exclude certain creditors from the scope of bail-in in accordance with Article 45(3) to (8);
7. to lend to other financing arrangements on a voluntary basis in accordance with Article 111;
8. to take any combination of the actions referred to in points (1) to (7).

The financial means of the FRL may be used by the Resolution Board 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 financial means of the FRL shall not be used directly to absorb the losses of an institution or an entity referred to in point (2), (3) or (4) of Article 2(1) or to recapitalise such an institution or an entity.

In the event that the use of the financial means of the FRL for the purposes in paragraph 1 indirectly results in part of the losses of an institution or an entity referred to in point (2), (3) or (4) of Article 2(1) being passed on to the FRL, the principles governing the use of the financial means of the FRL set out in Article 45 shall apply.

Article 107. Target level

(1) The financial means of the FRL shall reach, by 31 December 2024, at least 1% of the amount of covered deposits of all the institutions authorised in accordance with the Law of 5 April 1993 on the financial sector, as amended.

(2) During the initial period of time referred to in paragraph 1, contributions to the FRL raised in accordance with Article 108 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 institutions contributing to the FRL.

The Resolution Board may extend the initial period of time for a maximum of four years if the FRL have made cumulative disbursements in excess of 0.5% of covered deposits of all institutions authorised in accordance with the Law of 5 April 1993 on the financial sector, as amended, which are guaranteed under Title II of Part III.

The Resolution Board shall set the annual contribution to be collected from the institutions. To this end, it shall draw up a method to set the individual contributions for each institution by taking into account the criteria under Article 108(2).

(3) If, after the initial period of time referred to in paragraph 1, the available financial means of the FRL diminish below the target level specified in that paragraph, the regular contributions raised in accordance with Article 108 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 of the FRL have subsequently been reduced to less than two thirds of the target level, the Resolution Board shall set those contributions 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) The institutions that pay a contribution to the Single Resolution Fund in accordance with Regulation (EU) No 806/2014 and the Intergovernmental agreement on the transfer and mutualisation of contributions to the Single Resolution Fund shall be exempted from raising contributions in accordance with this article insofar as they pay a contribution under Articles 67 to 71 of Regulation (EU) No 806/2014. The target level of the FRL shall not take into account the institutions that pay a contribution to the Single Resolution Fund.

(5) The institutions shall pay the first annual contribution to the FRL pursuant to this article for the year 2015.

Article 108. Ex-ante contributions

(1) In order to reach the target level specified in Article 107, the FRL shall raise annually the contributions referred to in the third subparagraph of Article 107(2) from institutions authorised in accordance with the Law of 5 April 1993 on the financial sector, as amended, including from EU branches.

(2) The contribution of each institution is pro rata to the ratio of:

1. the amounts of the liabilities of the institution concerned, excluding own funds, and less covered deposits; and
2. the aggregate liabilities, excluding own funds, of all the institutions authorised in accordance with the Law of 5 April 1993 on the financial sector, as amended, and contributing to the FRL, less covered deposits of these institutions.

Those contributions shall be adjusted in proportion to the risk profile of institutions, where appropriate, in accordance with Commission Delegated Regulation (EU) No 2015/63 of 21 October 2014 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard

to ex-ante contributions to resolution financing arrangements for institutions falling within the scope of that regulation.

Without prejudice to Article 10 of Commission Delegated Regulation (EU) 2015/63, during the initial period referred to in Article 69(1) of Regulation (EU) No 806/2014, the Resolution Board may allow institutions falling within the scope of Commission Delegated Regulation (EU) 2015/63 and whose total assets are equal to or less than EUR 3,000,000,000 to pay a lump-sum of EUR 50,000 for the first EUR 300,000,000 of total liabilities, less funds and covered deposits. For the total liabilities less own funds and covered deposits above EUR 300,000,000, those institutions shall contribute in accordance with Articles 4 to 9 of the above-mentioned Commission delegated regulation.

(3) The Resolution Board shall decide whether it is appropriate to use 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 Board for the purposes specified in Article 106(1). The Resolution Board shall determine, where appropriate, the share of such payment commitments to be included in the available financial means of the FRL to be taken into account in order to reach the target level specified in Article 107. The share of irrevocable payment commitments shall not, in any case, exceed 30% of the total amount of contributions raised in accordance with this article.

(4) The Resolution Board shall ensure that due contributions are fully paid. To this end, it shall set up appropriate regulatory, accounting, reporting and other obligations to ensure that due contributions are fully paid; it shall ensure measures for the proper verification of whether the contributions have been paid correctly; and it shall ensure measure to prevent evasion, avoidance and abuse.

(5) Subject to Articles 38, 39, 41, 42 and 43, 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 FRL.

(6) The amounts raised in accordance with this article shall only be used for the purposes specified in Article 106(1).

Article 109. Extraordinary ex-post contributions

(1) Where the available financial means of the FRL are not sufficient to cover the losses, costs or other expenses incurred by the use of the financial means of the FRL, the Resolution Board may raise extraordinary ex-post contributions from institutions authorised in accordance with the Law of 5 April 1993 on the financial sector, as amended, 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 108(2).

Extraordinary ex-post contributions shall not exceed three times the annual amount of contributions determined in accordance with Article 108 per calendar year.

(2) Article 108(4), (5) and (6) shall be applicable to the contributions raised under this article.

(3) The Resolution Board may defer, in whole or in part, an institution's payment of extraordinary ex-post contributions to the FRL 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 the first subparagraph shall be paid when such a payment no longer jeopardises the institution's liquidity or solvency.

Article 110. Alternative funding means

The FRL may 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 108 are not sufficient to cover the losses, costs or other expenses incurred by the use of the FRL, and the extraordinary ex-post contributions provided for in Article 109 are not immediately accessible or sufficient.

Article 111. Borrowing between financing arrangements

(1) The FRL may make a request to borrow from all other financing arrangements within the EU, in the event that:

1. the amounts raised under Article 108 are not sufficient to cover the losses, costs or other expenses incurred by the use of the financial means of the FRL;
2. the extraordinary ex-post contributions provided for in Article 109 are not immediately accessible; and

3. the alternative funding means provided for in Article 110 are not immediately accessible on reasonable terms.

The rate of interest, repayment period and other terms and conditions of the loans shall be agreed with 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.

The amount borrowed by the FRL from the other financing arrangements shall be pro rata to the amount of covered deposits in the Member State of that 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.

(2) The FRL may lend to other financing arrangements of the EU in the circumstances specified under paragraph 1.

Following a request by a financing arrangement from another Member States pursuant to paragraph 1, the FRL shall decide on a case-by-case basis whether to lend to the financing arrangement which has made the request. The decision shall be taken with due urgency.

The rate of interest, repayment period and other terms and conditions of the loans shall be agreed with 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.

The amount lent by the FRL shall be pro rata to the amount of covered deposits in Luxembourg, 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.

An outstanding loan to a resolution financing arrangement of another Member State under this article shall be treated as an asset of the FRL and may be counted towards the FRL's target level.

Article 112. Mutualisation of national financing arrangements in the case of a group resolution

(1) In the case of a group resolution as referred to in Article 91 or 92 of Directive 2014/59/EU, where an institution contributing to the FRL is part of the group concerned, the FRL shall contribute to the financing of the group resolution in accordance with this article.

(2) Where the Resolution Board acts as the group-level resolution authority, it shall propose for the purposes of paragraph 1 and after consulting the resolution authorities of the institutions that are part of the group, if necessary before taking any resolution action, a financing plan as part of the group resolution scheme provided for in Articles 93 and 94.

The financing plan shall be agreed in accordance with the decision-making procedure referred to in Articles 93 and 94.

Where the Resolution Board acts as resolution authority of a subsidiary institution without acting as group-level resolution authority, it shall participate in the procedure of joint decision relating to the financing plan drawn up by the group-level resolution authority referred to in Article 107 of Directive 2014/59/EU.

(3) The financing plan referred to in the first subparagraph of paragraph 2 shall include:

1. a valuation in accordance with Article 37 in respect of the affected group entities;
2. the losses to be recognised by each affected group entity at the moment the resolution tools are exercised;
3. for each affected group entity, the losses that would be suffered by each class of shareholders and creditors;
4. any contribution that deposit guarantee schemes would be required to make in accordance with Article 113(1);
5. the total contribution by resolution financing arrangements and the purpose and form of the contribution;
6. 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 (5);

7. 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;
8. 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 110;
9. 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 (5) of paragraph 3 shall be consistent with paragraph 5 and with the principles set out in the group resolution plan in accordance with point (6) of Article 15(2), 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:

1. the proportion of the group's risk-weighted assets held at institutions and entities referred to in point (2), (3) or (4) of Article 2(1) established in the Member State of that resolution financing arrangement;
2. the proportion of the group's assets held at institutions and entities referred to in point (2), (3) or (4) of Article 2(1) established in the Member State of that resolution financing arrangement;
3. 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
4. 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) The Resolution Board shall put in place rules and procedures to ensure that the FRL can effect its contribution to the financing of group resolution immediately without prejudice to Article 107 of Directive 2014/59/EU.

(7) For the purpose of this article, where the Resolution Board acts as group-level resolution authority, the FRL shall be allowed, under the conditions laid down in Article 110, to contract borrowings or other forms of support, from institutions, financial institutions or other third parties.

(8) Where the Resolution Board acts as resolution authority of a subsidiary institution without acting as group-level resolution authority, the FRL may guarantee any borrowing contracted by the group financing arrangements in accordance with paragraph 7.

(9) Any proceeds or benefits that arise from the use of the group financing arrangements shall be allocated to national financing arrangements, including the FRL, in accordance with their contributions to the financing of the resolution as established in paragraph 2.

Article 113. Use of the FGDL in the context of resolution

(1) Where the Resolution Board takes resolution action, and provided that that action ensures that depositors continue to have access to their deposits, the FGDL shall be liable for:

1. 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 (1) of Article 47(1), had covered deposits been included within the scope of bail-in and been written down to the same extent as creditors with the same level of priority; or
2. 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 depositors covered under Title II of Part III suffered losses in proportion to the losses suffered by creditors with the same level of priority.

In all cases, the liability of the FGDL 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 FGDL shall not be required to make any contribution towards the costs of recapitalising the institution or bridge institution pursuant to point (1) of Article 47(1).

Where it is determined by a valuation under Article 74 that the FGDL'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 FGDL shall be entitled to the payment of the difference from the FRL in accordance with Article 75.

(2) The determination of the amount by which the FGDL is liable in accordance with paragraph 1 shall comply with the conditions referred to in Article 37.

(3) The contribution from the FGDL for the purpose of paragraph 1 shall be made in cash.

(4) Where eligible deposits at an institution under resolution are transferred to a recipient through the sale of business tool or the bridge institution tool, the depositors have no claim under Title II of Part III against the FGDL 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 171.

(5) Notwithstanding paragraphs 1 to 4, if the available financial means of the FGDL are used in accordance therewith and are subsequently reduced to less than two thirds of the target level of the FGDL, the regular contribution to the FGDL shall be set by the CPDI at a level allowing for reaching the target level within six years.

In all cases, the liability of the FGDL shall not be greater than the amount equal to 50% of its target level pursuant to Article 179.

In any circumstances, the FGDL's participation under this part shall not exceed the losses it would have incurred in a winding up under normal insolvency proceedings.

Chapter XV – Penalties

Article 114. Penalties and other administrative measures

(1) As part of its remit, the Resolution Board may impose administrative penalties and other administrative measures referred to in paragraph 2 to institutions and entities referred to in points (2), (3) and (4) of Article 2(1), members of the management body as well as other natural persons who are responsible for the infringement in the following situations:

1. failure to cooperate or provide all the information necessary for the development or review of resolution plans infringing Articles 8, 10 or 16;
2. failure to comply with the requirements to maintain detailed records of financial contracts to which the entity concerned is part infringing Article 12;
3. failure to comply with the measures taken by the Resolution Board in accordance with Article 29(5);
4. failure to meet, at all times, a minimum requirement for own funds and eligible liabilities infringing Article 46(1);
5. failure to draw up, communicate, review or implement a business reorganisation plan or failure to submit a report on the progress achieved in implementing it infringing Article 53;
6. failure to maintain at all times a sufficient amount of authorised share capital or of other Common Equity Tier 1 instruments infringing Article 55(1);
7. failure to include the contractual term required in accordance with Article 56(1) or failure to comply with the requirement to provide legal opinion in accordance with the third subparagraph of Article 56(1);
8. failure to comply with the requirements imposed by the Resolution Board in accordance with Article 58(3) or (4);
9. failure to comply with the measures imposed by the Resolution Board in the exercise of its resolution powers referred to in Chapters VI and VII;
10. failure of the management body of an institution or an entity referred to in points (2), (3) and (4) of Article 2(1) to notify the competent authority when the institution or entity referred to in points (2), (3) and (4) of Article 2(1) is failing or likely to fail, infringing Article 81(1);
11. refusal to provide accounting documents or other information requested by the Resolution Board or the transmission of documents or other information proving to be incomplete, incorrect or false;
12. where the exercise of resolution powers, collection of information and investigation by the Resolution Board are prevented;
13. failure to comply with an order or other measures pronounced by the Resolution Board;

14. the conduct of the entity or the institution jeopardises the resolution objectives or the efficient application of the resolution procedure;
15. non-compliance with the provisions of this law and their implementing measures.

(2) In the cases referred to in paragraph 1, the Resolution Board may issue one or several of the following penalties or measures:

1. a warning or a reprimand;
2. a public statement which indicates the natural person, institution, financial institution, EU parent undertaking or other legal person responsible and the nature of the infringement;
3. an order requiring the natural or legal person responsible to cease the conduct and to desist from a repetition of that conduct;
4. a temporary or permanent ban against any member of the management body or senior management of the institution or the entity referred to in points (2), (3) and (4) of Article 2(1) or any other natural person, who is held responsible, from exercising functions in institutions or entities referred to in points (2), (3) and (4) of Article 2(1);
5. a ban of 1 to 20 years from carrying out one or several types of transactions or activities of the financial sector or a permanent ban from carrying out one or several types of transactions or activities of the financial sector;
6. the suspension of the exercise of the voting rights attached to shares or units held by shareholders or members responsible for the infringements referred to in paragraph 1;
7. 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 the turnover resulting from the consolidated accounts of the ultimate parent undertaking in the preceding business year;
8. in the case of a natural person, administrative fines of up to EUR 5,000,000;
9. administrative fines of up to twice the amount of the benefit derived from the infringement where that benefit can be determined.

(3) Without prejudice to paragraph 2 and without prejudice to the power of the Resolution Board to appoint a special manager in accordance with Article 36, where entities or institutions referred to in paragraph 1 do not comply with the provisions of this law and its implementing measures, where their management is likely to jeopardise the resolvability or the efficient application of the resolution procedure or the management structures, where their administrative or accounting organisation or their internal audit have deficiencies, the Resolution Board may:

1. suspend for a specified and renewable period the members of the management body or any other persons working in the entities or institutions concerned, who, by their actions, negligence or their lack of prudence brought about the situation found to exist or whose continued exercise of functions may prejudice the application of resolution action;
2. suspend for a specified and renewable period the exercise of voting rights attached to shares or units held by shareholders or members whose influence is likely to operate to the detriment of the sound and prudent management of the institution;
3. suspend for a specified and renewable period the pursuit of part or all business activities of the entities or institutions concerned.

The persons, entities or institutions referred to in the first subparagraph that take actions or decisions thereby breaching a suspension are jointly and severally liable towards the entities or institutions concerned or towards third parties for the prejudice resulting thereof.

Where, on account of a suspension ordered pursuant to this paragraph, an administrative, executive or management body no longer has the minimum number of members prescribed by law or by the articles of association, the Resolution Board shall fix, by registered letter, the period within which the entities or institutions concerned have to provide for the replacement of the suspended persons.

If, by the end of that period, the suspended persons have not been replaced, the Resolution Board may appoint a special manager in accordance with Article 36.

Article 115. Publication of administrative penalties

(1) The Resolution Board shall publish on its website the administrative penalties against which action can no longer be brought in courts and that were imposed for infringing provisions of this law

or its implementing measures, including information on the type and nature of the infringement and the identity of the natural or legal person on whom the penalty was imposed. The publication shall be made without undue delay after the natural or legal person is informed of that penalty.

(2) By way of derogation from paragraph 1, the Resolution Board shall publish the penalties on an anonymous basis in any of the following circumstances:

1. 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;
2. where publication would jeopardise the stability of financial markets or an ongoing criminal investigation;
3. where publication would cause, insofar as it can be determined, disproportionate damage to the institutions or entities referred to in points (2), (3) and (4) of Article 2(1) or natural persons involved.

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

(3) Any information published in accordance with paragraph 1 and 2 shall remain on the website of the Resolution Board for five years.

Article 116. Effective application of penalties and exercise of powers to impose penalties by the Resolution Board

When determining the type of administrative penalties or other administrative measures and the level of administrative fines, the Resolution Board shall take into account all relevant circumstances, including where appropriate:

1. the gravity and the duration of the infringement;
2. the degree of responsibility of the natural or legal person responsible for the breach;
3. 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 incomes of the responsible natural person;
4. the amount of profits gained or losses avoided by the natural or legal person responsible, insofar as they can be determined;
5. the losses for third parties caused by the infringement, insofar as they can be determined;
6. the level of cooperation of the natural or legal person responsible with the Resolution Board;
7. previous infringements by the natural or legal person responsible;
8. any potential systemic consequences of the infringement.

Article 117. Information on the administrative penalties transmitted to the EBA

Subject to the professional secrecy requirements referred to in Article 84, the Resolution Board shall inform the European Banking Authority of all administrative penalties imposed by it under Article 114 and of the status of that action and outcome thereof.

Chapter XVI - Remedies

Article 118. Remedies

(1) Any decision taken under this part may be subject to proceedings for annulment before the *Tribunal administratif* (Administrative Tribunal) within one month from the date of notification of the decision or, where applicable, of its publication as referred to in Article 83(4), or else shall be time-barred.

It shall be carried out in accordance with the Law of 21 June 1999 laying down the rules of procedure of administrative courts, as amended, except the derogations laid down in this article.

The action shall not have suspensive effect.

(2) 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 a resolution tool or exercise of a resolution power by the Resolution Board, the annulment of a decision of the Resolution Board shall not affect any subsequent administrative acts or transactions concluded by the Resolution Board which were based on the annulled decision. In that case, remedies for a wrongful decision or action by the Resolution Board

shall be limited to compensation for the loss suffered by the applicant as a result of the decision or act.

(3) Within two days from the publication referred to in Article 83(4), a stay of execution or safeguards may be filed with the President of the *Tribunal administratif* (Administrative Tribunal) under the conditions of Article 11 and 12 of the Law of 21 June 1999 laying down the rules of procedure of administrative courts. The referral to the President of the *Tribunal administratif* (Administrative Tribunal) shall not have suspensive effect.

Any decision taken in accordance with this part shall appear in the form of a mere presumption according to which the suspension of enforcement of the decision would be against the public interest.

(4) The courts hearing the case shall adjudicate urgently by taking into account the circumstances surrounding the decision taken and, in particular, complex economic assessments of the facts carried out by the Resolution Board or, where applicable, by the supervisory authority.

Article 119. Remedies in relation to administrative penalties

The decision to issue an administrative penalty or to take any other administrative measure in accordance with Article 114 may be referred to the *Tribunal administratif* (Administrative Tribunal) which deals with the substance of the case. The action shall be filed within one month, or else shall be time-barred.

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PART II REORGANISATION AND WINDING UP

TITLE I Definitions and scope

Article 120. Definitions

Unless otherwise defined in this part, the terms defined in the Part I shall have the same meaning in this part.

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

1. "administrator" shall mean any person or body appointed by the administrative or judicial authorities whose task is to administer reorganisation measures;

(Law of 8 December 2021)

"1a. "special administrator" shall mean the person or entity designated pursuant to the judgement referred to in Article 152-2(1) to administer one or several compartments of an issuing credit institution with limited business activity in accordance with Article 152-3;"

2. "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;
3. "competent authority" shall mean a competent authority as defined in Article 4(1)(40) of Regulation (EU) No 575/2013 or a resolution authority in respect of reorganisation measures taken pursuant to Directive 2014/59/EU;
4. "investment firm" shall mean an investment firm as defined in point (2) of Article 4(1) of Regulation (EU) No 575/2013;
5. "institution" shall mean any entity included within the scope of this part, as defined in Article 121;
6. "host Member State" shall mean a host Member State as defined in Article 4(1)(44) of Regulation (EU) No 575/2013;
7. "home Member State" shall mean a home Member State as defined in Article 4(1)(43) of Regulation (EU) No 575/2013;

(Law of 8 December 2021)

"7a. "automatic acceleration" shall mean a situation in which a covered bond automatically becomes immediately due and payable upon the insolvency or resolution of the issuing credit institution and in respect of which the covered bond investors have an enforceable claim for repayment at a time earlier than the original maturity date;"

8. "instrument" shall mean a financial instrument as defined in Article 4(1), point (50)(b) of Regulation (EU) No 575/2013;

9. "liquidator" shall mean any person or body appointed by the administrative or judicial authorities whose task is to administer winding-up proceedings;
10. "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, where applicable, the application of the resolution tools and the exercise of resolution powers provided for in Directive 2014/59/EU;
11. "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;
12. "professional of the financial sector" shall mean a professional of the financial sector within the Law of 5 April 1993 on the financial sector, as amended;
13. "branch" shall mean a branch as defined in Article 4(1)(17) of Regulation (EU) No 575/2013. For the purpose of this part, several places of business created in the same State by an institution having its head office in another State shall be considered as one single branch;
14. "Tribunal" shall mean the *Tribunal d'arrondissement* (District Court) of Luxembourg sitting in commercial matters.

Article 121. Scope

(1) This part shall apply to credit institutions and their branches created in Member States other than those in which they have their head offices, and to investment firms and their branches located in Member States other than those in which they have their head offices.

This part shall also apply to professionals of the financial sector managing third-party funds.

(2) It shall also apply to financial institutions, undertakings and parent undertakings which fall within the scope of Part I, in the event of application of the resolution tools and exercise of the resolution powers laid down in Part I.

(3) Article 124 shall not apply where Article 83 applies.

Article 151 shall not apply where Article 84 applies.

TITLE II Suspension of payments

Chapter I - Provisions governing the start of the suspension of payments proceedings in institutions incorporated under Luxembourg law

Article 122. Start of the suspension of payments proceedings

(1) The suspension of payments may take place when:

1. the credit of the institution is shaken or when it reached an impasse regarding liquidity, whether there is suspension of payments or not;
2. the execution of the institution's commitments is compromised;
3. the authorisation of the institution was withdrawn and this decision is not yet final.

(2) Only the CSSF or the institution may apply to the Tribunal for the suspension of payments.

(3) The reasoned application, duly supported by documentary evidence, shall be lodged with the registry of the Tribunal.

(4) Where the application is made by the institution, it shall, under penalty of inadmissibility of the application, inform the CSSF prior to bringing the matter before the Tribunal. The registry certifies the day and time when the application is lodged and immediately informs the CSSF thereof.

(5) Where the application is made by the CSSF, it shall serve it on the institution by writ of a bailiff. The writ of a bailiff is exempt from stamp duty and registration fees and from the formality of registration.

(6) The lodgement of the application by the institution, or, where it is brought by the CSSF, the service thereof shall automatically bring about, in favour of the institution and pending a final decision on the application, a suspension of all payments by that institution and a prohibition, under penalty

of nullification, of all acts other than precautionary measures unless authorised by the CSSF or by any contrary legal provision.

(7) Except in case of contrary legal provision, payments, transactions and other acts, including those relating to the furnishing by an institution of collateral and the realisation of such collateral, shall be valid and enforceable as against third parties, as against the institution and as against the managers, provided they were effected prior to the lodgement or, where applicable, the service of the application or were effected without the beneficiary being aware of such lodgement or service.

(8) The Tribunal shall adjudicate speedily on the application, at a hearing in open court taking place on a date and at a time previously communicated to the parties. If the Tribunal receives observations from the CSSF, and if it considers that it has sufficient information, it shall give its ruling forthwith in open court without hearing the CSSF or the institution. If the CSSF has not submitted observations and the Tribunal considers it necessary, it shall call upon the CSSF and the institution, through the registry, to appear before it no later than three days after lodgement of the application. It shall hear them in chambers and shall deliver its ruling in open court. The judgment shall state the time at which it was delivered.

(9) The registry shall forthwith inform the CSSF and the Banque Centrale du Luxembourg of the essential content of the judgment. It shall notify the judgment to the CSSF, the Banque Centrale du Luxembourg and to the institution by registered post.

(10) The judgment shall determine, for a period of time not exceeding six months, the conditions and arrangements of the suspension of payments

(11) No application may be brought by any of the parties or by any third party to set aside the judgment on the grounds of its having been given in default or in the absence of any party, even where it is delivered without any hearing of the parties or any of them. It shall be immediately enforceable on the authority of the original thereof, prior to registration and without the furnishing of any security, notwithstanding the bringing of any appeal.

(12) The CSSF and the institution may appeal against the judgment within fifteen days from notification thereof in accordance with paragraph 9, by notice of appeal lodged with the registry of the Tribunal. Any such appeal shall be determined as a matter of urgency by one of the chambers of the *Cour Supérieure de Justice* dealing with civil and commercial matters. The parties to the appeal shall not be required to appear through counsel. The parties shall be called upon, by the registry of the *Cour Supérieure de Justice*, to appear before it within a period not exceeding eight days. The parties shall be heard in chambers. The *Cour Supérieure de Justice* shall adjudicate on the opposition, at a hearing in open court taking place on a date and at a time previously communicated to the parties. This decision shall not be appealable in cassation (*pourvoi en cassation*).

(13) Where any party fails to appear, no opposition may be brought to set aside the appellate judgment.

(14) The judgment recognising the suspension of payments shall appoint one or several administrators who shall be in charge of the management of the institution's wealth.

(15) The written authorisation by the administrators is required for all actions and decisions of the institution; failure to do so shall render the actions and decisions void. The Tribunal may, however, limit the scope of transactions which are subject to authorisation. The administrators can submit for deliberation by the bodies of the institution any proposal which they deem expedient. They may be present during the discussions in the general meeting of shareholders, of administrative, executive, management or supervisory bodies of the institution.

(16) Any dispute arising between the bodies of the institution and the administrators shall be determined by the Tribunal upon application by one of the parties. The parties shall be heard in chambers. The decision of the Tribunal shall not be subject to any remedies.

(17) The CSSF shall automatically act as administrator until the delivery of the first-instance judgment on the application laid down in paragraph (3).

(18) The Tribunal shall decide of the charges and fees of the administrators; it may grant them advances.

(19) Upon request by the CSSF, the institution or the administrators, the Tribunal may alter the detailed terms of any first-instance judgment delivered pursuant to this article.

(20) Within eight days of its delivery, the judgment recognising the suspension of payments and appointing one or several administrators as well as the amending judgments shall be published in excerpts by the administrators at the expense of the institution in the *Mémorial* and in at least two

Luxembourg newspapers and one foreign newspaper with appropriate circulation, designated by the Tribunal.

The judgment recognising the suspension of payments as well as the amending judgments shall, in addition, be published in excerpts in two national newspapers of each host Member State. Where the branches of credit institutions are located in other Member States, the publication shall also be made in the Official Journal of the European Union. To this end, the administrators shall send within eight days of the delivery of the judgment, the judgment recognising the suspension of payments as well as the amending judgments in excerpts to the Publications Office of the European Union.

The publications in the newspapers shall indicate, in one of the official languages of Luxembourg and, for the publication in the host Member States, in the official language(s) of the host Member States, notably the purpose and legal basis of the action taken and the remedies.

(21) The decision amending the judgment referred to in the preceding paragraph shall be published, without delay, in excerpts, by the CSSF at the expense of the unsuccessful party in the "Recueil électronique des sociétés et associations"¹⁴⁶ pursuant to the provisions of Title I, Chapter Va of the Law of 19 December 2002 on the trade and companies register and the accounting practices and annual accounts of undertakings, as amended,¹⁴⁷ and in the same newspapers as those in which the judgment was published.

(22) Any deeds or documents which may enlighten the Tribunal in its consideration of the application may be produced or lodged without needing first to be endorsed with an official stamp and without needing to undergo the formality of registration. Orders and judgments given in proceedings for the suspension of payments shall be exempt from stamp duties and registration fees.

The fees of the administrators as well as all the other costs incurred by the proceedings for the suspension of payments shall be charged to the institution in question. The fees and charges shall be considered as administrative expenses and shall be deducted from the assets before any monies.

(24) All actions against the administrators taken in that capacity shall be prescribed after five years as of the publication of the end of the operations of suspension of payments.

Actions against the administrators for acts committed in the exercise of their duties shall be time-barred after five years as of these acts, or if fraudulently concealed, as of the discovery of these acts.

Article 123. Competent jurisdiction and applicable law

(1) The Tribunal has sole competence to order the suspension of payments of an institution incorporated under Luxembourg law, including of branches established abroad.

(2) The suspension of payments shall be applied in accordance with the laws, regulations and procedures applicable in Luxembourg, insofar as this part does not provide otherwise.

(3) The suspension of payments has universal effect; it shall apply to branches and assets of the institution located abroad.

Article 124. Information to be provided by the CSSF to the foreign competent authorities

The CSSF shall inform without delay and by any means the competent authorities of the host Member States of the lodgement of the application or notification to the institution. This information shall be disclosed, if possible, before the lodgement of the application or notification to the institution or immediately after, to the competent authorities of the States concerned. It shall include in particular the effects of the measure.

Chapter II - Special provisions applicable to Luxembourg branches of EU institutions

Article 125. Competent jurisdiction and applicable law

(1) The administrative and judicial authorities of the home Member State have sole competence to decide on the implementation of one or several reorganisation measures in an institution, including for branches of this institution in Luxembourg.

(2) The law applicable to these reorganisation measures is that of the home Member State, insofar as this part does not provide otherwise.

(3) The reorganisation measures shall be, without any other formality, fully effective in Luxembourg according to the law of the home Member State. This rule shall also apply where Luxembourg law does not provide for such measures or subject their implementation to conditions which are not complied with.

¹⁴⁶ Electronic digest of companies and associations

¹⁴⁷ Law of 27 May 2016

The reorganisation measures shall be effective in Luxembourg as soon as they are effective in the Member State where they were taken.

The reorganisation measures shall apply irrespective of the legal requirements of the home Member State in relation to the publication and they shall be effective in respect to creditors unless the administrative or judicial authorities or the law of the home Member State provide otherwise.

(4) If the CSSF deems it necessary to implement reorganisation measures in Luxembourg in respect of a branch of an EU institution, it shall inform without delay the competent authority of the home Member State.

Chapter III - Special provisions applicable to Luxembourg branches of third-country institutions

Article 126. Competent jurisdiction and applicable law

(1) The reorganisation measures that were decided by the administrative or judicial authorities of the State where the institution has its head office and that have, according to the law of this State, an effect in Luxembourg shall be, without any other formality, fully effective in Luxembourg according to the law of the home Member State. This rule shall also apply where Luxembourg law does not provide for such measures or subject their implementation to conditions which are not complied with.

The reorganisation measures shall be effective in Luxembourg as soon as they are effective in the State where they were taken.

(2) Notwithstanding paragraph 1, the Tribunal shall be competent to order, upon the CSSF's request, the suspension of payments in respect of the Luxembourg branch of a third-country institution. Only the CSSF is competent to request the Tribunal to order the suspension of payments, if it deems it necessary in order to protect the interests of the creditors of the Luxembourg branch.

The suspension of payments ordered by the Tribunal shall be governed by Luxembourg law and is carried out in accordance with the procedures applicable in Luxembourg, insofar as this part does not provide otherwise.

Article 127. Reorganisation measures concerning third-country credit institutions with multiple locations in the EU

(1) In case of third-country credit institutions with multiple locations in the EU, the CSSF shall inform, without delay and by any means, the competent authorities of the EU host Member State where the credit institution has branches listed as credit institutions authorised in the EU published in the Official Journal of the European Union, of the lodgement of an application or its notification to the institution. This information shall be disclosed, if possible, before the lodgement of the application or notification to the institution or immediately after, to the competent authorities of the other host Member States concerned. It shall include in particular the effects of the measure.

(2) The Tribunal shall contact the administrative or judicial authorities of the other host Member States concerned in order to coordinate their actions.

TITLE III Winding up

Chapter I - Voluntary liquidation

Article 128. Voluntary liquidation

(1) A credit institution or a professional of the financial sector may place themselves in voluntary liquidation only after notifying the CSSF of their intention to do so, at least one month before the calling of the general meeting which shall decide on such winding up. The notice calling such meeting shall contain the agenda and shall be given by means of advertisements published twice, on dates at least eight days apart and no later than eight days before the meeting, in the "Recueil électronique des sociétés et associations pursuant to the provisions of Title I, Chapter Va of the Law of 19 December 2002 on the trade and companies register and the accounting practices and annual accounts of undertakings, as amended,"¹⁴⁸ and in at least two Luxembourg newspapers and one foreign newspaper with appropriate circulation; the failure to comply with these provisions shall render such notice null and void.

A report on the completion shall be drawn up and transmitted to the CSSF. The arrangements of a voluntary liquidation shall also be transmitted to the CSSF.

¹⁴⁸ Law of 27 May 2016

(2) A voluntary liquidation decision shall not preclude the CSSF or the State prosecutor from applying to the Tribunal for an order declaring applicable the judicial winding-up proceedings as provided for in Chapter II.

Chapter II - Provisions governing the judicial winding-up proceedings of institutions incorporated under Luxembourg law

Article 129. Winding-up proceedings

(1) The dissolution and winding up may take place where:

1. it is apparent that the suspension of payments scheme provided for in Title II, as previously decided upon, is not able to rectify the situation which caused it;
2. the financial situation of the institution is shaken to such an extent that the institution will no longer be able to comply with the commitments with respect to the rights to claim or participate;
3. the authorisation of the institution was withdrawn and this decision became final.

(2) Only the CSSF or the State Prosecutor, with the CSSF being duly joined as a party to the proceedings, may apply to the Tribunal to order the dissolution and winding up of an institution.

(3) The reasoned application, duly supported by documentary evidence, shall be lodged with the registry of the Tribunal and notified to the institution by the requesting party.

(4) The CSSF or the State Prosecutor shall notify the lodgement of the request to the institution by writ of a bailiff. The writ of a bailiff is exempt from stamp duty and registration fees and from the formality of registration.

(5) The Tribunal shall adjudicate speedily on the application, at a hearing in open court taking place on a date and at a time previously communicated to the parties. It shall call upon the institution and the CSSF or the State Prosecutor, within three days of the lodgement of the request at the latest, through the registry. It shall hear them in chambers and shall deliver its ruling in open court. The judgment shall state the time at which it was delivered.

(6) The registry shall forthwith inform the CSSF and the Banque Centrale du Luxembourg of the essential content of the judgment. It shall notify the judgment to the CSSF, the Banque Centrale du Luxembourg and to the institution by registered post.

(7) When ordering the winding up, the Tribunal shall appoint an official receiver (*juge-commissaire*) and one or more liquidators. It shall determine the winding up method. It may make applicable, to the extent that it shall determine, the rules governing bankruptcy. In that case, it may set the period when the payments were suspended to a date preceding up to six months of the lodgement of the request referred to in Article 122(3). The winding up method may be modified subsequently, either automatically or upon request of the liquidators or the CSSF.

(8) Except in case of contrary legal provisions, payments, transactions and other acts, including those relating to the furnishing by an institution of collateral and the realisation of such collateral granted by an institution, shall be valid and enforceable as against third parties and as against the liquidators, provided that such payments, transactions and acts were effected prior to the delivery of the judgment or were effected without knowledge of the winding up.

(9) No opposition may be brought by any of the parties or by any third party to set aside the judgment declaring the dissolution or ordering the winding up. It shall be immediately enforceable on the authority of the original thereof, prior to registration and without the furnishing of any security, notwithstanding any appeal.

(10) Only the CSSF or State Prosecutor and the institution can appeal by notice of appeal lodged with the registry of the Tribunal. The time limit for an appeal is 15 days from the notification of the judgment in accordance with paragraph 6. Any such appeal shall be determined as a matter of urgency by one of the chambers of the *Cour Supérieure de Justice* dealing with civil and commercial matters. The parties to the appeal shall not be required to appear through counsel. The parties shall be called upon, by the registry of the *Cour Supérieure de Justice*, to appear before it within a period not exceeding eight days. The parties shall be heard in chambers. The *Cour Supérieure de Justice* shall adjudicate on the opposition, at a hearing in open court taking place on a date and at a time previously communicated to the parties.

(11) Where any party fails to appear, no opposition may be brought to set aside the appellate judgment.

(12) Within eight days of its delivery, the judgment declaring the dissolution and ordering the winding up of an institution and appointing an official receiver (*juge-commissaire*) and one or several

liquidators as well as the amending judgments shall be published in excerpts by the liquidators at the expense of the institution in the "Recueil électronique des sociétés et associations pursuant to the provisions of Title I, Chapter Va of the Law of 19 December 2002 on the trade and companies register and the accounting practices and annual accounts of undertakings, as amended,"¹⁴⁹ and in at least two Luxembourg newspapers or one foreign newspaper with appropriate circulation, designated by the Tribunal.

The judgment declaring the dissolution and ordering the winding up of an institution and appointing an official receiver (*juge-commissaire*) and one or several liquidators, as well as the amending judgments shall also be published in excerpts in two national newspapers of each host Member State. Where the branches of credit institutions are located in other Member States, the publication shall also be made in the Official Journal of the European Union. To this end, the liquidators shall send within eight days of the delivery of the judgment, the judgment declaring the dissolution and ordering the winding up of an institution and appointing an official receiver (*juge-commissaire*) and one or several liquidators, as well as the amending judgments in excerpts to the Publications Office of the European Union.

The publications in the newspapers shall indicate, in the official language(s) of Luxembourg and host Member States, notably the purpose and legal basis of the action taken and the remedies.

(13) The Tribunal shall decide of the charges and fees of the liquidators; it may grant them advances. In case of absence or insufficiency of assets noted by the official receiver (*juge-commissaire*), the procedural documents shall be exempt from registry and registration charges and charges and fees of the liquidators are to be paid by the Treasury.

(14) The liquidators shall inform the creditors annually and in an appropriate form notably on the progress of the winding up.

(15) The amounts or values due to the creditors and members who were not present when the winding up operations were completed shall be deposited with the *caisse de consignation* (deposit and consignment office) to be held for the benefit of the persons entitled thereto.

(16) Where the liquidation has ended, the liquidators shall report to the Tribunal the use of the values of the institution and submit the accounts and supporting documents. The Tribunal shall appoint one or several commissioners to examine the documents. A decision on the management by the liquidators and on the completion of the winding up shall be taken after the commissioners' report has been issued. The decision shall be published in accordance with paragraph 12.

This publication shall also include:

1. The place designated by the Tribunal where the books and company documents shall be deposited for five years at least.
2. The measures taken in accordance with paragraph 15 in order to deposit the sums and values which the creditors and shareholders are entitled to but could not be distributed to them.

(17) All actions against the liquidators taken in that capacity shall be prescribed after five years as of the publication of the end of the winding up operations.

Actions against the liquidators for acts committed in the exercise of their duties shall be time-barred after five years as of these acts, or if fraudulently concealed, as of the discovery of these acts.

(18) Without prejudice to the provisions of paragraph 7, Book III of the Commercial Code, the provisions of the Law of 4 April 1886 on court-approved compositions and arrangements with creditors aimed at preventing bankruptcy as well as the provision of the Grand-ducal Decree of 24 May 1935 supplementing the legislation relating to suspension of payments, compositions and arrangements with creditors aimed at preventing bankruptcy and bankruptcy following on from the setting-up of a controlled management scheme shall be applicable to the institutions.

(19) Any deeds or documents which may enlighten the Tribunal in its consideration of the application may be produced or lodged without needing first to be endorsed with an official stamp and without needing to undergo the formality of registration. Orders and judgments given in winding-up proceedings shall be exempt from stamp duties and registration fees.

(20) The fees of the liquidators as well as all the other costs incurred by the winding-up proceedings shall be charged to the institution in question. The fees and charges shall be considered as administrative expenses and shall be deducted from the assets before any monies.

¹⁴⁹ Law of 27 May 2016

Article 130. Competent jurisdiction

(1) The Tribunal has sole competence to order the dissolution and winding up of an institution incorporated under Luxembourg law, including of branches established abroad.

(2) The CSSF shall inform without delay and by any means the competent authorities of the host Member States of the lodgement of the application or notification to the institution. This information shall be disclosed, if possible, before the lodgement of the application or notification to the institution or immediately after, to the competent authorities of the States concerned. It shall indicate in particular the effects of the judgment declaring the dissolution and ordering the winding up.

Article 131. Applicable law

(1) The institution shall be wound up in accordance with Luxembourg laws and regulations and the procedures applicable in Luxembourg, insofar as this part does not provide otherwise.

(2) The Luxembourg law shall determine, in particular:

1. the assets which form part of the property and the treatment of assets acquired by the institution after the opening the winding-up proceedings;
2. the respective powers of the institution and the liquidator;
3. the conditions under which set-off may be invoked;
4. the effects of the winding-up proceedings on current contracts to which the institution is party
5. the effects of the winding-up proceedings on proceedings brought by individual creditors, with the exception of lawsuits pending as laid down in Article 150;
6. the claims which are to be lodged against the property of the institution and the treatment of claims arising after the opening of winding-up proceedings;
7. the rules governing the lodging, verification and admission of claims;
8. the rules governing the distribution of proceeds from the realisation of assets, the ranking of claims, and the rights of creditors who have obtained partial satisfaction after the opening of winding-up proceedings by virtue of a right in rem or through a set-off;
9. the conditions for and the effects of closure of winding-up proceedings;
10. rights of the creditors after the closure of winding-up proceedings;
11. the costs and expenses incurred in the winding-up proceedings;
12. the rules relating to the nullity, voidability or unenforceability of legal acts detrimental to the creditors subject to Article 148.

Article 132. Withdrawal of the authorisation of an institution

(1) In case of winding up of an institution, its authorisation shall be withdrawn. If the authorisation is withdrawn, the CSSF shall inform the competent authorities of the States in which the institution has branches.

(2) The withdrawal of authorisation provided for in paragraph 1 shall not prevent the liquidator(s) from carrying on some of the institution's activities insofar as that is necessary or appropriate for the purposes of winding up. Such activities shall be carried on with the consent and under the control of the CSSF.

Article 133. Information to be provided to known creditors

(1) The liquidator(s) shall inform rapidly, by registered letter, the known creditors who have their domicile, of usual residence or head office abroad of the judgment declaring the dissolution and ordering the winding up.

(2) the registered letter shall specify that the registry of the Tribunal is competent to receive the declaration of claims with their securities. This communication shall cover notably the time limits to observe, the sanctions laid down in relation to these time limits, as well as other prescribed measures. It shall also indicate that the creditors whose claims are preferential or secured in rem need to lodge their claims.

(3) The information to creditors shall be in one of the official languages in Luxembourg. A form titled, in all official languages of the European Union, *Invitation to lodge a claim; time limits to be observed* shall be used for that purpose.

Article 134. Lodging the claims

(1) Any creditor, including the public authorities, shall have the right and obligation to deposit with the registry of the Tribunal the declaration of his/her claims within a time limit set in a judgment ordering the winding up. The registry shall keep record and provide a receipt thereof.

(2) Any creditor domiciled or usually residing or having its head office abroad may lodge a claim in the official language or one of the official languages of the home country. In that case, the lodging of his/her claim shall at least be titled *Lodging a claim* in one of the official languages in Luxembourg. In addition, the Tribunal may require from the creditor, at the latter's expense, a translation of the lodgement of the claim in one of the official languages in Luxembourg.

(3) The claims of all creditors domiciled, usually residing or having their head office abroad shall undergo the same treatment and have same ranking as equivalent claims likely to be lodged by creditors domiciled, usually residing or having their head office in Luxembourg.

(4) The creditor shall send copies of any supporting evidence and indicate the nature of the claim, the date on which the claim arose and the amount of the claim; s/he shall also indicate whether s/he alleges preference, security in rem or reservation of title in respect of the claim and what assets are covered by his/her security.

Chapter III - Special provisions applicable to Luxembourg branches of EU institutions

Article 135. Competent jurisdiction and applicable law

(1) The administrative and judicial authorities of the home Member State have sole competence to decide on the opening of winding-up proceedings with respect to an institution, including for branches of this institution in Luxembourg.

(2) The Luxembourg branch shall be wound up in accordance with the laws, regulations and procedures applicable in the home Member State, insofar as this part does not provide otherwise.

(3) The decision to open winding-up proceedings taken by the administrative or legal authority of the home Member State, shall be recognised, without any other formality, on Luxembourg territory and be enforced as soon as enforced in the State opening the winding-up proceedings.

(4) The CSSF is the competent authority to receive from a foreign competent authority the notification of the decision to open winding-up proceedings taken by the administrative or legal authority of this State with respect to an institution that has one or several branches in Luxembourg.

Chapter IV - Special provisions applicable to Luxembourg branches of third-country institutions

Article 136. Competent jurisdiction and applicable law

(1) The administrative and judicial authorities of the State where the institution has its head office shall be competent to declare the winding up of an institution, including for branches of this institution in Luxembourg.

The Luxembourg branch shall be wound up in accordance with the laws, regulations and procedures applicable in this State, unless otherwise provided by Luxembourg law.

The decision ordering the winding up and being, according to the law of this home Member State, enforced in Luxembourg, shall without any other formality, be enforced in Luxembourg pursuant to the laws and regulations of the home Member State.

(2) Notwithstanding paragraph 1, the Tribunal shall be competent to order, upon the CSSF's request, the dissolution and winding up in respect of the Luxembourg branch of a third-country institution. Only the CSSF is competent to request the Tribunal to order the dissolution and winding up, if it deems it necessary in order to protect the interests of the creditors of the Luxembourg branch.

In that case, the Luxembourg branch shall be wound up in accordance with Luxembourg laws and regulations and the procedures applicable in Luxembourg, insofar as this part does not provide otherwise.

Article 137. Third-country credit institutions with multiple locations in the EU

(1) In case of third-country credit institutions with multiple locations in the EU, the CSSF shall inform, without delay and by any means, the competent authorities of the host Member State where the credit institution has branches listed as credit institutions authorised in the EU published in the Official Journal of the European Union, of the decision to open winding-up proceedings with respect to the Luxembourg branch of a third-country credit institution. This information shall be disclosed, if possible, before the opening of winding-up proceedings or immediately after, to the competent

authorities of the other host Member States concerned. It shall indicate in particular the effects of the judgment declaring the dissolution and ordering the winding up.

(2) The Tribunal shall contact the administrative or judicial authorities of the other host Member States concerned in order to coordinate their actions.

TITLE IV

Common provisions for reorganisation measures and winding-up proceedings

Article 138. Effects on certain contracts and rights

The effects of the suspension of payments or winding-up proceedings on:

1. employment contracts and employment relationships, shall be exclusively governed by the law of the State applicable to the employment contract;
2. contracts conferring the right to make use of or acquire immovable property shall be exclusively governed by the law of the State where the immovable property is situated. This law shall determine whether a property is movable or immovable;
3. rights with respect to immovable property, a ship or an aircraft subject to registration in a public register shall be exclusively governed by the law of the State under the authority of which the register is kept.

Article 139. Rights in rem of third parties

(1) The opening of the procedure of suspension of payments or winding-up proceedings shall not affect the rights in rem of creditors or third parties in respect of tangible or intangible, movable or immovable assets - both specific assets and collections of indefinite assets as a whole which change from time to time - which belong to the institution and which are situated abroad at the time of the opening of such procedure or proceedings.

(2) The rights in rem referred to in the preceding paragraph shall particularly include:

1. the right to dispose of assets or have them disposed of and to obtain satisfaction from the proceeds of or income from those assets, in particular by virtue of a lien or a mortgage;
2. the exclusive right to have a claim met, in particular a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of a guarantee;
3. the right to demand the assets from or to require restitution by anyone having possession or use of them contrary to the wishes of the party so entitled;
4. the right to the beneficial use of assets.

(3) The right, recorded in a public register and enforceable against third parties, under which a right in rem within the meaning of paragraph 1 may be obtained, shall be considered to be a right in rem.

(4) Paragraph 1 shall not preclude actions for nullity, annulment or unenforceability referred to in Article 131(2)(1).

Article 140. Reservation of title

(1) The opening of the suspension of payments proceedings or winding-up proceedings against an institution purchasing an asset shall not affect the rights of a seller which are based on a reservation of title where at the time of the opening of such proceedings the asset is situated abroad.

(2) The opening of the suspension of payments proceedings or winding-up proceedings against an institution which is selling an asset shall not constitute grounds for rescinding or terminating the sale and shall not prevent the purchaser from acquiring title where at the time of the opening of such proceedings the asset sold is situated abroad.

(3) Paragraphs 1 and 2 shall not preclude actions for nullity, annulment or unenforceability referred to in Article 131(2)(1).

(4) Where the asset referred to in paragraphs 1 and 2 is situated in Luxembourg at the time of the opening of the proceedings, Article 567-1 of the Commercial Code shall apply.

Article 141. Set-off

(1) The opening of suspension of payments proceedings or winding-up proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the institution, where such a set-off is permitted by the law applicable to the claim of the institution.

(2) Paragraph 1 shall not preclude actions for nullity, annulment or unenforceability referred to in Article 131(2)(1).

Article 142. Lex rei sitae

Exercising property rights on instruments or other rights on such instruments, the existence or transfer of which presupposes entry in a register, in an account or in a central deposit system shall be governed by the law of the State where the register, account or deposit system in which these rights are recorded is held or situated.

Article 143. Netting arrangements

Without prejudice to Articles 66 and 69, netting agreements shall be governed solely by the law of the contract which governs such agreements.

Article 144. Repurchase agreements

Without prejudice to Articles 66, 69 and 142, repurchase agreements shall be governed solely by the law of the contract which governs such agreements.

Article 145. Regulated market

The transactions carried out in the framework of a regulated market shall be governed solely by the law of the contract which governs such transactions, without prejudice to Article 142.

Article 146. Proof of appointment and powers of administrators or liquidators

(1) The appointment of the administrator of the liquidator shall be evidenced by a certified copy of the original decision of appointment or by any other certificate issued by the administrative or judicial authority of the host Member State.

This certification shall be translated into one of the official languages of Luxembourg where the liquidator wishes to act in Luxembourg. No legalisation or other similar formality is required.

(2) Subject to compatibility with public policy and subject to provisions of paragraph 3, the administrators and liquidators shall be entitled to exercise in Luxembourg all the powers that they are entitled to exercise on the territory of the home Member State. Moreover, they may designate persons to assist or, where applicable, to represent in the process of the reorganisation measures or liquidation proceedings and, in particular, in order to help overcome possible difficulties encountered by the creditors in Luxembourg.

(3) In exercising their powers, the actions taken by administrators or liquidators shall comply with Luxembourg law when acting in Luxembourg, in particular with regard to the arrangements for the realisation of assets and the informing of employees. These powers shall not include the use of force of the right to rule on legal proceedings or disputes.

Article 147. Registration in a public register

(1) The administrator, liquidator or any other administrative or judicial authority of the home Member State shall request that a reorganisation measure or the decision to open winding-up proceedings be registered in the Commercial and Companies Registry in Luxembourg and published in the "Recueil électronique des sociétés et associations pursuant to the provisions of Title I, Chapter Va of the Law of 19 December 2002 on the trade and companies register and the accounting practices and annual accounts of undertakings, as amended"¹⁵⁰.

The provisions of the law on the Commercial and Companies Registry shall apply.

(2) Where the laws or proceedings of the State in which the Luxembourg institution has branches or assets provides for mandatory registration, the administrator or liquidator appointed by the Tribunal shall take all the measures necessary to ensure such registration.

The costs of registration shall be regarded as costs and expenses incurred in the proceedings.

Article 148. Detrimental acts

(1) Article 131 shall not apply with regard to the rules on nullity, annulment or unenforceability of acts detrimental to all the creditors where the person who has benefited from these acts provides proof:

- that the acts detrimental to all the creditors are subject to a law other than Luxembourg law, and

¹⁵⁰ Law of 27 May 2016

- that this foreign law does not provide for any means challenging these acts in the relevant case.

(2) Where the decision of the Tribunal ordering the suspension of payments defines the rules on nullity, annulment or unenforceability of the acts detrimental to all creditors realised prior to the application of the request at the registry of the Tribunal or the notification to the institution, Article 123(2) shall not apply in the cases laid down in paragraph 1.

Article 149. Protection of third parties

Where, by an act concluded after the opening of the suspension of payments proceedings or winding-up proceedings, the institution has, for consideration:

- immovable assets;
- ships or aircraft subject to registration in a public register; or
- instruments or rights on such instruments, the existence or transfer of which presupposes entry in a register, account or central deposit system, the validity and enforceability of this act shall be governed by the law of the State where this immovable asset is located or under the authority of which this register, account or deposit system is kept.

Article 150. Lawsuits pending

The effects of reorganisation measure or winding-up proceedings on a pending lawsuit concerning an asset or a right of which the institution has been divested shall be governed solely by the law of the State in which this lawsuit is pending.

Article 151. Professional secrecy

All persons required to receive or divulge information in connection with the information or consultation procedures laid down in Articles 124, 125(4), 127, 129(18), 130, 135 and 137 shall be bound by the professional secrecy, in accordance with the rules and conditions provided for in Article 44 of the Law of 5 April 1993 on the financial sector, as amended, with the exception of the judicial authorities to which existing national provisions apply.

Article 152. Ranking (...) ¹⁵¹ in insolvency hierarchy

(1) In normal insolvency proceedings, the following have the same priority ranking which are directly below the preferential right of the Treasury:

1. covered deposits;
2. the Fonds de Garantie des Dépôts Luxembourg "subrogated, in case of insolvency, to the rights"¹⁵² and obligations of depositors covered by Part III, Title II.

(2) In normal insolvency proceedings, the following have the same priority ranking which are directly below the preferential right referred to in Article 2101(1)(4) of the Civil Code:

1. that part of eligible deposits from natural persons and micro, small and medium-sized enterprises which exceeds the coverage level provided for in Article 171;
2. deposits that would be eligible deposits from natural persons, micro, small and medium-sized enterprises were they not made through branches located outside the European Union of institutions established within the European Union.

(Law of 25 July 2018)

"(3) For entities referred to in points (1) to (4) of Article 2(1), unsecured claims resulting from debt instruments referred to in the second subparagraph shall have a lower priority ranking in insolvency hierarchy than that of claims of unsecured creditors.

Debt instruments that meet the following conditions are referred to for the purposes of the first subparagraph:

1. the original contractual maturity of these debt instruments is of at least one year;
2. the debt instruments contain no embedded derivatives and are not derivatives themselves;
and

¹⁵¹ Law of 25 July 2018

¹⁵² Law of 25 July 2018

3. the relevant contractual documentation and, where applicable, the prospectus related to the issuance explicitly refer to their lower ranking in insolvency hierarchy under this paragraph.

Unsecured claims resulting from debt instruments that meet the conditions laid down in points (1), (2) and (3) of the second subparagraph shall have a higher priority ranking in insolvency hierarchy than the priority ranking of claims resulting from instruments referred to in points (1) to (4) of Article 49(1).

For the purposes of point (2) of the second subparagraph, debt instruments with variable interest derived from a broadly used reference rate and debt instruments not denominated in euros, provided that principal, repayment and interest are denominated in the same currency, shall not be considered to be debt instruments containing embedded derivatives solely because of those features."

(Law of 20 May 2021)

"(4) For entities referred to in points (1) to (4) of Article 2(1), all claims resulting from own funds items shall have a lower priority ranking than any claim that does not result from an own funds item.

For the purposes of the first subparagraph, to the extent that an instrument is only partly recognised as an own funds item, the whole instrument shall be treated as a claim resulting from an own funds item and shall rank lower than any claim that does not result from an own funds item."

(Law of 27 February 2018)

"Article 152-1. Criminal sanctions

The members of the management body of the institutions who:

1. made payments without being authorised to do so by the judgment, notwithstanding the provisions of Article 122(6);
2. performed acts other than precautionary and protective measures, without being authorised to do so by the CSSF, notwithstanding the provisions of Article 122(6); or
3. in the case referred to in Article 122(15), carried out acts of disposal, administration or management or took decisions, without being authorised to do so by the judgment;

shall incur a term of imprisonment of between eight days and five years and/or a fine of between EUR 5,000 and EUR 125,000 or only one of these sanctions."

(Law of 8 December 2021)

"Title V

Special provisions concerning credit institutions issuing covered bonds

Article 152-2. Separation of the issuing credit institution's assets following the judgement of suspension of payments or winding up and maintaining the authorisation for limited activity

(1) An issuing credit institution with limited business activity shall be an issuing credit institution within the meaning of point (15) of Article 1 of the Law of 8 December 2021 relating to the issue of covered bonds for which the judgement of the Tribunal decides pursuant to Article 122 or Article 129 either the suspension of payments or the winding up, the purpose of which is to ensure the management of the patrimonial compartments referred to in point (1) of the second subparagraph of this paragraph, as well as the full execution at maturity of the liabilities arising from the covered bonds.

The judgement of the Tribunal pursuant to Article 122 or Article 129 of either the suspension of payments or winding up, shall result *ipso jure* in the separation of the issuing credit institution's assets as follows:

1. the different categories of covered bonds with their cover assets and the related reserves deposited with the central bank, forming as many pools pursuant to Article 7(1) of the Law of 8 December 2021 relating to the issue of covered bonds, constitute as many separate and different patrimonial compartments. The assets of the issuing credit institution with limited business activity includes also all the amounts coming from the recovery, repayment or payment of assets or the realisation of cover assets registered in the register referred to in Article 15 of the Law of 8 December 2021 relating to the issue of covered bonds or of guarantees which, irrespective of the form or denomination, were provided in relation to the cover assets. These separate patrimonial compartments shall not have a legal personality distinct from that of the issuing credit institution with limited business activity. The guarantees and preferential rights of the covered bond investors and counterparties of derivative contracts

that comply with the conditions of Article 7(3) of the Law of 8 December 2021 relating to the issue of covered bonds shall apply to the patrimonial compartments. Titles II and III of this part shall not apply to the patrimonial compartments of the issuing credit institution with limited business activity;

2. the remaining assets of an issuing credit institution referred to in point (2) of Article 2 of the Law of 8 December 2021 relating to the issue of covered bonds, related to the activity other than the activity of covered bond issue or, for banks issuing covered bonds referred to in point (2b-1) of Article 1 of the Law of 5 April 1993 on the financial sector, as amended, the ancillary activities referred to in Article 12-2 of the Law of 5 April 1993 on the financial sector, as amended. Titles II and III of this part shall not apply to these remaining assets.

The liquidation of the remaining assets of the issuing credit institution may, where applicable, not be closed as long as the winding up of the patrimonial compartment(s) has not been completed.

(2) No cover asset linked to any patrimonial compartment shall be part of the remaining assets of the issuing credit institution referred to in point (2) of the second subparagraph of paragraph 1 until the preferential claims referred to in Article 5 of the Law of 8 December 2021 relating to the issue of covered bonds have been satisfied, within the limit of the full payment obligations attached to the covered bonds.

(3) Notwithstanding the provisions of Article 450 of the Commercial Code, the judgement referred to in paragraph 1 shall not have the effect of causing an automatic acceleration of covered bonds and the other claims eligible for the preferential right referred to in Article 5 of the Law of 8 December 2021 relating to the issue of covered bonds, unless the patrimonial compartment is subject to a liquidation procedure under Article 152-5.

The provisions of the second subparagraph of Articles 444 and Article 445 of the Commercial Code shall not apply to contracts concluded by or with the issuing credit institution or to any legal acts performed by the issuing credit institution or for its benefit where such contracts or acts are linked directly to the operations provided for in Article 3 of the Law of 8 December 2021 relating to the issue of covered bonds and to the derivative contracts relating thereto.

(4) Unless the European Central Bank decides otherwise, the initial authorisation of the issuing credit institution granted in accordance with Article 2 of the Law of 5 April 1993 on the financial sector, as amended, shall be maintained *ipso jure* for the issuing credit institution with limited business activity for the execution of its purpose defined in the first subparagraph of paragraph 1. Issuing credit institutions with limited business activity shall remain subject to the compliance with the legal and regulatory requirements applicable to issuing credit institutions.

(5) Where the Tribunal, pursuant to Article 152-4 or 152-5, initiates proceedings for the suspension of payments or winding up of a patrimonial compartment, the issuing credit institution with limited business activity shall continue its activity with the remaining patrimonial compartments.

Article 152-3. Administration of the patrimonial compartments of an issuing credit institution with limited business activity

(1) The decision referred to in Article 152-2(1) shall appoint, for the issuing credit institution with limited business activity, one or several special administrators acting collectively, in order to ensure that the rights and interests of the covered bond investors are preserved, to perform the transactions necessary for the proper administration and to ensure the continuous and sound management of the patrimonial compartment(s) of the issuing credit institution with limited business activity, and to execute the requirements resulting from covered bonds at their respective maturity. The function of special administrator shall be carried out as long as the reorganisation or winding up procedures implemented following the decision referred to in Article 152-2(1) are in force.

(2) Upon request by the CSSF, the decision may provide for a list of functions and technical or human resources which are essential and necessary for the administration of the patrimonial compartment(s) of the issuing credit institution with limited business activity and which the special administrator may use.

(3) The special administrator shall carry out the management of the patrimonial compartments of the issuing credit institution with limited business activity referred to in point (1) of the second subparagraph of Article 152-2(1) that are not subject to a measure under Article 152-4 or 152-5. The special administrator shall represent the issuing credit institution with limited business activity and its patrimonial compartments in and out of court including with respect to the administrator or liquidator of the pool referred to in point (2) of the second subparagraph of Article 152-2(1).

(4) The special administrator shall present all the guarantees of good repute and professional qualification. The Tribunal shall appoint the special administrator referred to in paragraph 1 after

having heard the CSSF with respect to the guarantees of good repute and professional qualification of the special administrator. The Tribunal shall revoke the special administrator upon request by the CSSF. The remuneration of the special administrator shall be determined by the Tribunal. The remuneration of the special administrator and the fees other than in relation to the administration shall be guaranteed by a privilege preceding the other claims, including that of covered bond investors. The liability of the special administrator shall be governed by the provisions relating to the liability of the administrators. The remuneration for the services provided by the special administrator in accordance with paragraph 2, as well as the fees other than in relation to the administration shall be borne by the issuing credit institution with limited business activity.

The special administrator shall inform the CSSF and the Tribunal regularly, and at least every six months or upon their request, of the state of their mission. The special administrator shall make an assessment of the situation when taking up his duties. The special administrator shall assess and write a report on the situation of the issuing credit institution with limited business activity as well as on the patrimonial compartments on a yearly basis.

(5) The management of a patrimonial compartment shall be carried out independently and distinctly in the sole interest of the covered bond investors. The special administrator shall manage the cover assets, enforce as they reach maturity the rights of the covered bond investors on the cover assets in the name of the covered bond investors and of the issuing credit institution, in the name or on behalf of which these assets are held by third parties or registered or recorded with third parties or in public registers.

(6) Without prejudice to the arrangements provided for in the decision which appoints them and to the CSSF's powers, the special administrator shall perform all the acts with respect to the issuing credit institution with limited business activity provided that these acts are necessary for the management of the patrimonial compartments and that they benefit the full payment of the covered bonds at the respective maturity.

The special administrator may issue new covered bonds on behalf of the issuing credit institution with limited business activity.

The special administrator may initiate proceedings in order to bring assets back into the cover pools.

The special administrator may transfer the remaining cover assets to the remaining assets of the issuing credit institution with limited business activity, after all covered bond liabilities have been discharged.

(7) The special administrator may conclude with a credit institution that is subject to public supervision of covered bonds (*obligations garanties*), as provided for in point (18) of Article 3 of Directive (EU) 2019/2162, by a competent authority of a Member State of the European Union or of the European Economic Area, a service contract regarding the management of covered bonds and the realisation of cover assets as covered bonds reach maturity. The validity of this service contract shall be subject to prior written approval by the CSSF.

The special administrator may transfer the entirety composed of the covered bonds and cover assets to such a credit institution. This transfer shall be subject to prior and written authorisation of the CSSF.

Upon request by the special administrator and prior to the transfer, the Tribunal must ratify the transfer after hearing the CSSF and the special administrator. The Tribunal shall adjudicate speedily.

The contract drawn up and certified in due legal form, concluded in the name and on behalf of the issuing credit institution with limited business activity by the special administrator and the institution to which the patrimonial compartments are transferred shall at least include the following items:

1. the name, registered office and address of the transferors and transferees;
2. the agreement with respect to the transfer of all the assets registered in the register as well as the liabilities arising from the covered bonds as well as their counterparties, where appropriate;
3. a detailed description of the assets to be transferred and the liabilities arising from the covered bonds.

The special administrator and the representative of the credit institution-transferee shall register the transfer in the commercial and companies register of the country in which the transferor and transferee have their registered office. An authentic copy of the transfer agreement shall be attached to the registration. The transfer shall be registered first in the commercial and companies register of the transferee and then in the register of the transferor. The registration shall be published in the Recueil électronique des sociétés et associations.

The registration of the transfer in the commercial and companies register of the registered office of the transferor involves the transfer of assets and liabilities contained in the transfer agreement.

(8) The CSSF shall continue exercising its supervisory mission as well as the full powers it has with respect to issuing credit institutions pursuant to the Law of 5 April 1993 on the financial sector, as amended, and the Law of 8 December 2021 relating to the issue of covered bonds as regards the issuing credit institution with limited business activity and the special administrator.

(9) The CSSF may exchange all information it deems useful with the special administrator for the purposes of performing their respective duties.

Article 152-4. Suspension of payments of a patrimonial compartment

(1) If a patrimonial compartment of an issuing credit institution with limited business activity is in a situation where its liquidity is jeopardised, its commitment to the covered bond investors are compromised or the execution of the duties of the special administrator referred to in Article 152-3 is jeopardised due to the economic situation of the patrimonial compartment, the Tribunal may order, upon the request of the CSSF, of the special administrator appointed under Article 152-3 or of the Prosecutor's Office, the CSSF being informed beforehand, the suspension of payments with respect to the patrimonial compartment.

(2) The judgment referred to in paragraph 1 shall appoint an administrator, within the meaning of Article 122(14), for this patrimonial compartment. The judgment may also indicate a renewable period for the suspension of payments, as well as the conditions and arrangements of the suspension of payments.

(3) The administrator may extend the date of the maturity that was initially set for the payment of the principal and the interest of the covered bonds for a maximum period of one month, if the original maturity was within the period of one month from the appointment of the administrator pursuant to the judgment referred to in paragraph 1.

The administrator may extend the date of the original maturity of the payment of the principal for a maximum period of twelve months, by taking into account, where applicable, the extension of one month provided for in the first subparagraph, provided that:

1. the maturity extension allows avoiding insolvency of the patrimonial compartment concerned; and
2. there are objective reasons likely to demonstrate that the maturity extension allows observing the new maturity.

Any maturity extension provided for in this paragraph must be authorised beforehand by the Tribunal which shall adjudicate speedily on the request of the administrator, the CSSF and the administrator having been heard beforehand.

The length of the extension of the maturity date shall depend on the period of time necessary to meet the objectives referred to in points (1) and (2) of the second subparagraph.

The extension of the original maturity date shall not affect the ranking of covered bond investors and shall not invert the sequencing of the covered bond issue programme's original maturity schedule. In order to maintain the ranking of covered bond investors or the sequencing of the maturity schedule, the administrator shall extend in the same proportion the covered bonds that mature during the period of extension.

The extension of a maturity shall not affect the structural characteristics of the covered bonds as regards the dual recourse referred to in Article 5 of the Law of 8 December 2021 relating to the issue of covered bonds and the absence of an automatic acceleration.

Where the administrator extends the date of the original maturity of the payment of the principal in accordance with the provisions of this paragraph, the new maturity shall be taken into account for the purpose of the calculation referred to in Article 9.

(4) Without prejudice to the provisions of this article, the provisions provided for in Articles 122-2(2) to (24), except for paragraph 10, Articles 123 and 124 shall apply for the suspension of payments of a patrimonial compartment.

Article 152-5. Dissolution and winding up of a patrimonial compartment

(1) The dissolution and winding up of a patrimonial compartment of an issuing credit institution with limited business activity may occur when:

1. it is apparent that the suspension of payments scheme provided for in Article 152-4, as previously decided upon, is not able to rectify the situation which caused it; or

2. its liquidity is irreparably threatened; or
3. its commitments to the covered bond investors may not be fulfilled.

(2) Only the CSSF or the State Prosecutor's Office, with the CSSF duly joining as a party to the proceedings, may apply to the Tribunal for an order for the dissolution and winding up referred to in paragraph 1.

(3) Without prejudice to the provisions of this article, Article 129(2) to (20) shall be applicable for the winding up of a patrimonial compartment of an issuing credit institution with limited business activity.

(4) Where the preferential claim referred to in Article 5 of the Law of 8 December 2021 relating to the issue of covered bonds cannot be fully satisfied in the framework of the winding-up proceedings referred to in paragraphs 2 and 3 of this article, covered bond investors and counterparties of derivative contracts complying with Article 7(3) of the Law of 8 December 2021 relating to the issue of covered bonds shall have a claim against the remaining assets referred to in point (2) of the second subparagraph of Article 152-2(1) which ranks *pari passu* with the claims of the credit institution's ordinary unsecured creditors."

PART III PROTECTION OF DEPOSITORS AND INVESTORS

TITLE I Definition and institutional framework

Article 153. Definitions

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

1. "credit institution" shall mean a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013;
2. "Member State" shall mean a Member State of the European Union. The States that are contracting parties to the European Economic Area Agreement other than the Member States of the European Union, within the limits set forth by this agreement and related acts are considered as equivalent to Member States of the European Union;
3. "host Member State" shall mean a host Member State within the meaning of point (44) of Article 4(1) of Regulation (EU) No 575/2013;
4. "home Member State" shall mean a home Member State within the meaning of point (43) of Article 4(1) of Regulation (EU) No 575/2013;
5. "branch" shall mean a place of business in a Member State which forms a legally dependent part of a credit institution and which carries out directly all or some of the transactions inherent in the business of credit institutions.

Article 154. Fonds de Garantie des Dépôts Luxembourg

(1) A deposit guarantee fund, denominated Fonds de Garantie des Dépôts Luxembourg (hereinafter, the "FGDL") that has the legal status of *établissement public* (public body) is created and credit institutions incorporated under Luxembourg law and Luxembourg branches of credit institutions having their head office in a third country shall become members thereof. The FGDL shall be vested with legal personality and placed under the authority of the Minister responsible for the financial sector. The head office of the FGDL is in Luxembourg.

(2) The FGDL is the deposit guarantee scheme within the meaning of Article 4(1) of Directive 2014/49/EU in Luxembourg. The main purpose of the FGDL is to ensure compensation of depositors in case of unavailability of their deposits. The FGDL shall collect the contributions due by the member institutions pursuant to Title II, manage the financial means referred to in Article 179 and 180 and repay the depositors in accordance with the arrangements laid down in Title II.

The FGDL shall also participate, upon the Resolution Board's request, in the bail-in in the context of the resolution of this credit institution by substituting itself for covered depositors.

(3) The body of the FGDL is the Management Committee.

The Management Committee is composed of the following members:

1. the Director in charge of the department referred to in Article 12-15 of the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;
2. the Director of the Treasury;
3. the Director General of the Banque Centrale du Luxembourg;
4. the Director of the CSSF in charge of banking supervision if different from the Director referred to in point 1;
5. (...) ¹⁵³
6. the magistrate in the CPDI appointed by the Grand Duke on the proposal of the Government in Council in accordance with Article 12-11 of the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended.

The Grand Duke on proposal of the Government in Council appoints a substitute for "the member referred to in point (6)" ¹⁵⁴. Every member referred to in points (1) to (4) shall designate a substitute within its authority who will replace that member if s/he is prevented from attending.

In case a member or the Chairman is replaced by its substitute, the latter shall be considered as member and exercise the voting right of the member. The Chairman of the Management Committee is the Director of the CSSF referred to in point (1) and, if s/he is unable to chair, the Director of the Treasury.

If a seat of a member or substitute of the Management Committee becomes vacant for any reason whatsoever, that member or substitute shall be replaced for the remaining term of the office.

A member of the Management Committee or his/her substitute may be dismissed in the same way as his/her appointment.

(4) The Management Committee may only discuss when three members at least are present. Its decisions shall be taken by a majority of the votes cast. Each member shall have one vote. In the event of a tie vote, the chairman shall have a casting vote. A CSSF agent, to be designated by the CPDI, shall carry out the tasks of the secretariat.

The CSSF department referred to in Article 12-15 of the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended shall assist the Management Committee in the exercise of its duties and carry out the operational tasks of the FGDL.

(5) The Management Committee shall decide the investment policy of the FGDL in accordance with the sound and prudent management principles. To this end, it may be assisted by an Investment Committee whose members shall, where applicable, be compensated with an amount to be laid down in a grand-ducal regulation. The Management Committee shall ensure that, in the context of the investment policy, the financial means referred to in Articles 179 and 180 are invested in a low-risk and sufficiently diversified manner.

(6) The Management Committee shall transmit every year, by 30 April at the latest, an annual report of the preceding year to the Government in Council and the Chambre des Députés (Luxembourg chamber of deputies).

(7) The Management Committee shall have internal rules subject to approval by the Minister responsible for the financial sector.

(8) The FGDL may only be bound through the joint signature of the CSSF Director referred to in point (1) of paragraph 3 and the Director of the Treasury in their capacity as members of the Management Committee.

(9) A member who, in the discharge of his/her duties, is called upon to decide on a matter in which s/he has direct or indirect personal interests that would jeopardise his/her independence, shall inform the body to which s/he belongs and shall not take part in the discussions or decisions in question.

For the FGDL to assume civil liability for individual damages, it must be demonstrated that the damage suffered was caused through gross negligence in the choice and application of the means implemented to fulfil the public service remit of the FGDL.

¹⁵³ Law of 20 May 2021

¹⁵⁴ Law of 20 May 2021

The second subparagraph shall also apply to members of the Management Committee, who are only collectively responsible, when they carry out public services by representing the FGDL.

(10) "The FGDL shall be exempted from any duties, taxes and fees payable to the State and municipalities, with the exception of value added tax"¹⁵⁵.

(11) Without prejudice to Article 171 and 181, the rights of the creditors are limited to the financial means referred to in Article 179 and, where applicable to Article 180.

(12) The FGDL may collect an administrative contribution from the member institutions referred to in Article 163 in order to cover the operating costs.

Article 155. Institutional framework

(1) The FGDL is the deposit guarantee scheme within the meaning of Article 4(1) of Directive 2014/49/EU in Luxembourg.

The CPDI is the Luxembourg authority referred to in point (18) of Article 2(1) of Directive 2014/49/EU.

The CSSF is the Luxembourg administrative authority concerned, referred to in Article 3(1) of Directive 2014/49/EU authorised to make the determination referred to in Article 170(1)(1).

(2) The cash assets of the FGDL referred to in Article 179 and 180 shall be deposited on separate accounts opened in the name of the FGDL at the Banque Centrale du Luxembourg.

Article 156. Système d'Indemnisation des Investisseurs Luxembourg

The Système d'Indemnisation des Investisseurs Luxembourg (hereinafter "SIIL") is created which is the investor compensation scheme referred to in Article 2(1) of Directive 97/9/EC in Luxembourg. The SIIL is chaired by the CSSF.

The CPDI shall manage and administer the SIIL. The CSSF department referred to in Article "12-15"¹⁵⁶ of the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended, shall carry out the operational tasks of the SIIL.

Article 157. Governance

The CPDI and FGDL shall have rules ensuring sound and transparent governance practices.

Article 158. Website providing information to depositors and investors

The CPDI shall set up a website providing information to depositors and investors.

The section dedicated to the protection of depositors of this website shall contain the necessary information for depositors concerning the provisions regarding the process for and conditions of deposit guarantee laid down in Title II.

The section dedicated to the protection of investors of this website shall contain the necessary information for investors concerning the provisions regarding the process and conditions of guarantee for claims resulting from investment transactions laid down in Title III.

Article 159. Professional secrecy

Besides the information that the CPDI and FGDL decide to make official, the members of the Management Committee of the FGDL, their substitutes and any person taking part in the meetings of the CPDI are subject to secrecy of the deliberations.

Article 160. Information exchange and cooperation

Information exchange and cooperation of the CPDI shall be governed by Article 12-17 of the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended.

The FGDL may exchange information and cooperate with the CPDI, the Resolution Board and the CSSF departments concerned in accordance with the arrangements of Article 12-9 and 12-17 of the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended.

The FGDL may also exchange information and cooperate with the supervisory authorities of credit institutions and investment firms, the resolution authorities, the deposit guarantee schemes, the

¹⁵⁵ Law of 27 February 2018

¹⁵⁶ Law of 27 February 2018

investor compensation schemes of the other Member States and third countries, the Single Resolution Board, the European Central Bank and the European Banking Authority, where necessary to fulfil their respective duties.

Where the FGDL communicates information to the aforementioned authorities or bodies, it may indicate at the time of communication that such information must not be disclosed without its express consent, in which case such information may be exchanged solely for the purposes for which the FGDL gave its consent.

The FGDL may not disclose the information received in accordance with this article or use it for other purposes than those to which the authorities and bodies gave their consent, where the authorities or bodies indicated it at the time of communication of the information.

Article 161. Procedures relating to sharing information

For the purposes of Title II, the CPDI shall put in place appropriate procedures that enable sharing information and communicating efficiently with the deposit guarantee schemes as defined in Article 163, the member institutions, as defined in Article 163, and the relevant competent and designated authorities in Luxembourg, as well as, where applicable, in the European Union.

TITLE II

The protection of depositors

Chapter I - Purpose, scope and definitions

Article 162. Purpose and scope

(1) This title lays down the rules and procedures relating to the functioning of the FGDL.

(2) This title shall apply to the FGDL, to the credit institutions incorporated under Luxembourg law, to the public institution *Entreprise des postes et télécommunications*, but only for its "provisions"¹⁵⁷ of financial postal services "as defined in Article 1 of the Law of 15 December 2000 on postal financial services, as amended,"¹⁵⁸ and to the Luxembourg branches of credit institutions having their head office in a third country.

Entreprise des postes et télécommunications shall in all respects be considered as a credit institution.

(3) Without prejudice to Articles 186 and 188 the following are not covered by this title:

1. any schemes other than the FGDL, including the systems providing additional protection beyond the coverage level laid down in Article 171(1);
2. institutional protection schemes, as defined in point (14) of Article 163.

The schemes referred to in the first subparagraph of points (1) and (2) shall register themselves with the CSSF which has an up to date list of these schemes. The CSSF shall verify that these schemes have sufficient financial means or appropriate finance arrangements to fulfil their obligations.

Article 163. Definitions

For the purposes of this title, the following definitions shall apply:

1. "low-risk assets" shall mean items falling into the first or second category referred to in Table 1 of Article 336 of Regulation (EU) No 575/2013 or any assets which are considered to be similarly safe and liquid by the CPDI;
2. "competent authority" shall mean a national competent authority as defined in point (40) of Article 4(1) of Regulation (EU) No 575/2013;
3. "designated authority" shall mean a body which administers a DGS pursuant to Directive 2014/49/EU, or, where the operation of the DGS is administered by a private entity, a public authority designated by the Member State concerned for supervising that scheme pursuant to that directive;
4. "joint account" shall mean an account opened in the name of two or more persons or over which two or more persons have rights that are exercised by means of the signature of one or more of those persons acting in a capacity other than proxy;

¹⁵⁷ Law of 27 February 2018

¹⁵⁸ Law of 27 February 2018

5. "depositor" shall mean the holder or, in the case of a joint account, each of the holders, of a deposit. The beneficial owners, as defined in Article 174 shall be considered, where applicable, as depositors;
6. "deposit" shall mean a credit balance which results from funds left in an account or from temporary situations deriving from normal banking transactions and which a credit institution is required to repay under the legal and contractual conditions applicable, including a fixed-term deposit and a savings deposit, but excluding a credit balance where:
 - a) its existence can only be proven by a financial instrument as defined in point (17) of Article 4(1) of Directive 2004/39/EC, unless it is a savings product which is evidenced by a certificate of deposit made out to a named person and which exists in a Member State on 2 July 2014;
 - b) its principal is not repayable at par; or
 - c) its principal is only repayable at par under a particular guarantee or agreement provided by the credit institution or a third party;
7. "eligible deposits" shall mean deposits that are not excluded from protection pursuant to Article 172;
8. "covered deposits" shall mean the part of eligible deposits that does not exceed the coverage level laid down in Article 171;
9. "payment commitments" shall mean payment commitments of a credit institution towards the FGDL which are fully collateralised providing that the collateral:
 - a) consists of low-risk assets;
 - b) is unencumbered by any third-party rights and is at the disposal of the FGDL;
10. "member institution" shall mean a credit institution incorporated under Luxembourg law or a Luxembourg branch of a credit institution having its head office in a third country that has to be member of the FGDL pursuant to this title;
11. "available financial means" shall mean cash, deposits and low-risk assets which can be liquidated within a period of seven working days as from the determination or decision referred to in Article 170(1) and possible payment commitments authorised, where applicable, in accordance with Article 179(5);
12. "target level" shall mean the target level as defined in Article 179(1);
13. "deposit guarantee scheme" or "DGS" shall mean a scheme established in a Member State that is one of the following:
 - a) a DGS created by the law;
 - b) a contractual DGS that is officially recognised as DGS within the meaning of Article 4(2) of Directive 2014/49/EU; or
 - c) an institutional protection scheme that is officially recognised as DGS in accordance with Article 4(2) of Directive 2014/49/EU;
14. "institutional protection schemes" or "IPS" shall mean institutional protection schemes as referred to in Article 113(7) of Regulation (EU) No 575/2013.

Chapter II - Obligations of the Council for the Protection of Depositors and Investors

Article 164. Systems for the determination of liabilities

The CPDI shall ensure that the FGDL has in place adequate systems to determine their potential liabilities which may notably derive from Articles 171, 181 and 184.

Article 165. Stress tests

For the purposes of this title, the CPDI shall perform stress tests of the FGDL's systems at least every three years and more frequently where appropriate. The first test shall take place by 3 July 2017.

The CPDI shall use the information necessary to perform stress tests only for that purpose and shall keep such information no longer than is necessary for the performance of those tests.

The CPDI shall transmit to the EBA the results of the stress tests. When exchanging this information with the EBA, the CPDI shall be subject to the requirements of professional secrecy in accordance with Article 70 of Regulation (EU) No 1093/2010.

Chapter III - Compulsory membership in the FGDL

Article 166. Compulsory membership in the FGDL

(1) In accordance with Article 10-1 of the Law of 5 April 1993 on the financial sector, as amended, all credit institutions, including, subject to Article 184, the Luxembourg branches of credit institutions having their "registered"¹⁵⁹ office in a third country, shall be members of the FGDL.

Entreprise des postes et télécommunications shall also be member of the FGDL but only with respect to the provisions of financial postal services "as defined in Article 1 of the Law of 15 December 2000 on postal financial services, as amended"¹⁶⁰.

(2) To this end, the member institutions shall pay the contributions referred to in Articles 179 and 180 on the accounts referred to in Article 155(2).

Article 167. Institutions not members of the FGDL

The credit institutions and Luxembourg branches of credit institutions having their "registered"¹⁶¹ office in a third country authorised in accordance with the Law of 5 April 1993 on the financial sector, as amended, shall not take deposits if they are not members of the FGDL.

Article 168. Information to be disclosed to the CPDI

(1) The member institutions shall provide the CPDI, at any time and upon request, with all information necessary to prepare for a repayment of the depositors, determine the potential liabilities of the FGDL or prepare for stress tests, including in particular:

1. markings under Article 169;
2. information on the deposits and depositors necessary for the repayment of the repayable amount without any prior request from the depositor being required;
3. the aggregated amount of eligible deposits of every depositor on an anonymous basis.

In the event of deposits being unavailable determined in accordance with Article 170, the member institution concerned shall also provide the CPDI with the aggregated amount of eligible deposits of every depositor by name in order to repay these depositors.

(2) the CPDI shall use the information referred to in paragraph 1 solely for the purposes of this title and of Article 113 and shall keep this information no longer than is necessary for that purpose.

The CPDI shall ensure the confidentiality and the protection of the data pertaining to depositors' accounts. The processing of these data shall be carried out in accordance with Luxembourg law on the processing of personal data.

Article 169. Marking

The member institutions shall mark the eligible deposits in a way that allows an immediate identification of such deposits.

To this end, member institutions shall notably put in place and keep up to date a system for creating at any time a file that provides a single and consistent overview of the aggregate deposits in a given member institution of a depositor eligible to be covered by the deposit guarantee. This file is called *Single Customer View*.

Chapter IV - Deposit protection

Article 170. Unavailability of the deposits

(1) A deposit shall be unavailable when it is due and payable but has not been paid by a member institution under the legal or contractual conditions applicable thereto, where either:

1. the CSSF has determined that in its view the member institution concerned appears to be unable for the time being, for reasons which are directly related to its financial circumstances, to repay the deposit and the institution has no current prospect of being able to do so; or
2. the *Tribunal d'arrondissement* (District Court) in Luxembourg sitting in commercial matter has ordered the suspension of payments or winding up of the member institution, for reasons which are directly related to the member institution's financial circumstances.

¹⁵⁹ Law of 27 February 2018

¹⁶⁰ Law of 27 February 2018

¹⁶¹ Law of 27 February 2018

(2) As soon as problems that are likely to give rise to the intervention of the FGDL are detected in a member institution, the CSSF or, where applicable, the Resolution Board shall inform the CPDI and FGDL thereof as soon as possible.

(3) The CSSF shall make the determination referred to in point (1) of paragraph 1 as soon as possible and in any event no later than five working days after first becoming satisfied that a member institution has failed to repay deposits which are due and payable.

Article 171. Coverage level and repayable amount

(1) Subject to Article 172, in the event of deposits being unavailable, the FGDL shall cover all the eligible deposits of each depositor up to EUR 100,000, irrespective of the amount, of the currency in which they are denominated and their location in the European Union.

This limit shall apply to all the deposits of a depositor in the same member institution.

(2) By way of derogation from paragraph 1, the protection of the following deposits may exceed an amount of EUR 100,000 but cannot exceed an amount of EUR 2,500,000 for twelve months after the amount has been credited or from the moment when such deposits become legally transferable:

1. deposits resulting from real estate transactions relating to private residential properties, as well as compensations received following claims incurred in respect of a private residential property;
2. deposits that serve social purposes and are linked to particular life events of a depositor such as marriage, divorce, retirement, dismissal, redundancy, invalidity or death;
3. deposits that are based on the payment of insurance benefits or compensation for criminal injuries or wrongful conviction.

Where several of the events listed in points (1), (2) or (3) of the first subparagraph occurred, the amount of EUR 2,500,000 referred to in the first subparagraph cannot be exceeded.

The arrangements made to implement this paragraph are laid down by way of a grand-ducal regulation.

(3) Where a member institution carries out its activities under different trade marks within the meaning of Article 2 of Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member State relating to trade marks, hereinafter referred as Directive 2008/95/EC, the coverage level referred to in paragraphs 1 and 2 shall apply to the aggregated deposits the depositor holds with the member institution.

(4) The reference date for the calculation of the repayable amount shall be the date of the determination or decision referred to in Article 170.

(5) Interest on deposits which has accrued until, but has not been credited at, the date of the determination or decision referred to in Article 170 shall be included in the repayable amount. The limit referred to in paragraphs 1 and 2 shall not be exceeded.

(6) Subject to Article 175, liabilities of the depositor against the member institution shall not be taken into account when calculating the repayable amount.

(7) The CPDI shall determine the repayable amount due by the FGDL to each depositor concerned.

Article 172. Exclusions

(1) The following shall be excluded from any repayment by the FGDL:

1. subject to Article 174, deposits made by other credit institutions on their own behalf and for their own account;
2. own funds as defined in point (118) of Article 4(1) of Regulation (EU) No 575/2013;
3. deposits arising out of transactions in connection with which there has been a criminal conviction related to money laundering as defined in Article 1(2) of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, hereinafter referred as "Directive 2005/60/EC", or related to the financing of terrorism as defined in Article 1(4) of Directive 2005/60/EC;
4. deposits by financial institutions as defined in point (26) of Article 4(1) of Regulation (EU) No 575/2013;
5. deposits by investment firms as defined in point (1) of Article 4(1) of Directive 2004/39/EC;

6. deposits the holder of which has never been identified pursuant to Article 9(1) of Directive 2005/60/EC, at the time they have become unavailable;
7. deposits by insurance and reinsurance undertakings as defined in points (1) to (6) of Article 13 of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II);
8. deposits by undertakings for collective investment;
9. deposits by pension and retirement funds;
10. deposits by public authorities;
11. debt securities issued by a credit institution and liabilities arising out of own acceptances and promissory notes.

(2) By way of derogation from paragraph 1, deposits held by personal pension schemes and occupational pension schemes of small or medium-sized enterprises shall be covered under the coverage level laid down in Article 171(1).

Article 173. Arrangements applicable to joint accounts

(1) The share of each depositor in a joint account shall be taken into account in calculating the limit provided for in Article 171(1).

In the absence of special provisions, such an account shall be divided equally among the depositors.

(2) However, where two people or more persons are entitled as members of a business partnership, association or grouping of a similar nature, without legal personality, the deposit shall be treated, for the purpose of calculating the amount to pay under the coverage, as if made by a single depositor and only one single compensation is due under the coverage.

Article 174. Depositor different from the persons absolutely entitled

(1) Where a depositor is not absolutely entitled to the sums deposited on an account, the person who is absolutely entitled shall be covered, provided that that person has been or can be identified before the date of the determination or ruling referred to in Article 170.

(2) Where several persons are absolutely entitled, the share of each under the arrangements subject to which the sums are managed shall be taken into account when the limit provided for in Article 171(1) is calculated.

Unless otherwise provided, the deposit shall be held equally by the persons absolutely entitled.

(Law of 27 February 2018)

"(3) The provisions of this article shall also apply to the deposits of mutual savings funds referred to in Article 28-7 of the Law of 5 April 1993 on the financial sector, as amended."¹⁶²

Article 175. Set-off

(1) Liabilities of the depositor to the member institution shall be taken into account when calculating the repayable amount where they have fallen due on or before the date of the determination or decision referred to in Article 170, to the extent the set-off is possible under the statutory and contractual provisions governing the contract between the credit institution and the depositor.

(2) For the purpose of calculating the repayable amount, the rules and regulations relating to set-off and counterclaims shall apply according to the legal and contractual conditions applicable to a deposit.

Article 176. Repayment arrangements and periods

(1) In the event of deposits being unavailable, the FGDL shall have seven working days as from the date of the determination of decision referred to in Article 170 to repay the depositors' covered deposits as referred to in Article 171(1).

(2) However, the repayment period is of:

1. three months as from the date of the determination or decision referred to in Article 170 in the cases laid down in Article 174;

¹⁶² Law of 27 February 2018

2. three months, in the cases laid down in Article 171(2) as from the moment the depositor provided the CPDI with information necessary to determine the repayable amount as referred to in paragraph 4 for the fraction of the deposits exceeding the coverage level provided for in Article 171(1).

(3) The amount to be repaid under paragraph 1 shall be made available without prior request to the FGDL being necessary.

The repayment is made via bank transfer.

Repayment shall mean making the repayable amounts available within the prescribed time. The availability shall mean the mobilisation of the repayable amount, so that the latter can be repaid as soon as the depositor undertook the necessary steps for an actual repayment of that amount, by giving the banking data for the transfer of the repayable amount on the banking account of the depositor's choice.

(4) In order to repay the repayable amount under Article 171(2) according to the arrangements laid down in point (2) of paragraph 1 of this article, the FGDL shall inform the depositors whose amount of eligible deposits exceeds the level set in Article 171(1), of the existence of additional coverage under Article 171(2) and direct them, if they deem that they fall within one or several categories laid down in Article 171(2), to provide the CPDI with the information necessary to assess whether they fulfil the conditions for additional coverage of all or part of the fraction of their deposit that exceeds the level set in Article 171(1).

(5) The repayment is made in euro.

If the accounts were maintained in a currency other than the euro, the exchange rate used shall be that of the European Central Bank, published in the Official Journal of the European Union and into force at the time of the determination or decision referred to in Article 170.

(6) Repayment as referred to in paragraphs 1 and 2 may be deferred where:

1. it is uncertain whether a person is entitled to receive repayment;
2. the deposit is subject to legal dispute;
3. the deposit is subject to restrictive measures imposed by national governments or international bodies;
4. (...) ¹⁶³ there has been no transaction relating to the deposit within the last 24 months, unless the repayment causes administrative costs that are higher than the value of the deposit in which case no repayment will be made;
5. the amount to be repaid is to be paid out by the FGDL to the DGS of the home Member State in accordance with Article 183(2).

(7) Notwithstanding the time limits laid down in paragraphs 1 and 2, the CPDI may decide, pending the judgment of the court, to suspend any payment to a depositor or any person entitled or interested in the sums held in an account, where that depositor or person has been charged with an offence in relation to money laundering within the meaning of Article 1(2) of Directive 2005/60/EC or in relation to the financing of terrorism within the meaning of Article 1(4) of Directive 2005/60/EC.

(8) The depositors whose deposits were not repaid or acknowledged by the FGDL within the deadlines set out in paragraphs 1 and 2 have 10 years following the date of the determination or decision referred to in Article 170 to claim the repayment of their deposits.

(9) Correspondence between the CPDI, the FGDL and the depositor shall be in an official language of the EU institutions used by the member institution holding covered deposits when communicating in writing with the depositor or in one of the official languages in Luxembourg. If a member institution operates directly in another Member State without having established branches, the information shall be provided in the language that was chosen by the depositor when the account was opened.

(10) Neither the State nor the CSSF shall guarantee the deposits. The responsibility of the State and the CSSF shall be limited to ensuring the establishment of the FGDL for the depositors.

Article 177. Remedies

The decision on the compensation of depositors shall be subject to an action by way of a complaint with the CPDI. The complaint, duly reasoned, shall be filed in writing with the CPDI within a period of three months as from the notification of the decision of the CPDI. In the event of a partial or total rejection of the complaint, an action for reversal of the CPDI's decision may be lodged with the *Tribunal*

¹⁶³ Law of 27 February 2018

administratif (Administrative Tribunal) within three months as from the notification of the CPDI's decision.

Article 178. Subrogation

(1) Where the FGDL makes payments under Article 176 it shall be subrogated to the rights of depositors in winding up or reorganisation proceedings referred to in Part II for an amount equal to the payments to the depositors.

Where the FGDL makes payments in the context of resolution proceedings, including the application of resolution tools or the exercise of resolution powers in accordance with Article 181, the FGDL shall have a claim against the relevant member institution for an amount equal to its payments. This claim shall be ranked at the same level as the covered deposits as laid down in Article 152.

Article 179. Target level and financial means

(1) The target level of the financial means available to the FGDL is set at 0.8% of the amount of the covered deposits of the member institutions.

(2) The FGDL shall have adequate financial means available.

To this end, the FGDL shall raise its financial means available via contributions that the member institutions pay at least annually. This shall not prevent additional financing from other sources, in particular debt financing.

Moreover, the FGDL shall have in place adequate alternative funding arrangements to enable them to obtain short-term funding to meet claims against the FGDL. "To this end, the FGDL may notably contract credit lines."¹⁶⁴

(4) The FGDL shall reach the target level set in paragraph 1 for the first time on 31 December 2018, at the latest.

Where the financing capacity falls short of the target level, the payment of contributions shall resume at least until the target level is reached again "and the commitments of the FGDL are met"¹⁶⁵.

If, after the target level has been reached for the first time, the available financial means have been reduced to less than two-thirds of the target level, the regular contribution shall be set at a level allowing the target level to be reached 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.

(5) The CPDI shall decide whether to use payment commitments and determine, where appropriate, the share of the payment commitments to be included in the available financial means to be taken into account in order to reach the target level defined in paragraph 1. The payment commitments may in no case exceed 30% of the total amount of available financial means raised.

(6) Contributions to the FRL under Part I, Title II, Chapter XIV, including available financial means to be taken into account in order to reach the target level of the FRL under Article 107 shall not count towards the target level.

(7) If the available financial means of the FGDL are insufficient to repay depositors when deposits become unavailable, the member institutions shall pay extraordinary contributions not exceeding 0.5% of their covered deposits per calendar year.

The CPDI may in exceptional circumstances and with the consent of the CSSF decide to require higher contributions.

The CSSF may defer, in whole or in part, a member institution's payment of extraordinary ex-post contributions to the FGDL, if the contributions would jeopardise the liquidity or solvency of the member institution. Such deferral shall not be granted for a longer period than six months but may be renewed upon the request of the member institution.

The contributions deferred pursuant to the aforementioned subparagraph shall be paid when the CSSF deems that such payment no longer jeopardises the liquidity or solvency of the member institution.

¹⁶⁴ Law of 6 April 2022

¹⁶⁵ Law of 6 April 2022

Article 180. Buffer of additional financial means

(1) When the target level set in Article 179(1) is reached, the member institutions shall continue their contributions so as to build up a buffer of additional financial means of 0.8% of the covered deposits within eight years.

A grand-ducal regulation may extend the time limit by taking into account the phase of the business cycle, and the impact procyclical contributions may have when setting annual contributions.

The payment of the contributions shall be made in accordance with the arrangements laid down in Article 179.

(2) This buffer of additional financial means may only serve to pay off the depositors in the event their deposits become unavailable. This buffer is different and separate from the available financial means paid in order to reach the target level referred to in Article 179(1).

(3) No contribution is requested under paragraph 1 if the available financial means under the target level laid down in Article 179(1) are lower than the target level laid down in Article 179(1).

Article 181. Use of funds

The available financial means referred to in Article 179 shall be primarily used in order to repay depositors pursuant to this title.

Only the available financial means of the FGDL referred to in Article 179 shall be used to finance the resolution of member institutions in accordance with Article 113. The Resolution Board shall determine, after consulting the CPDI, the amount by which the FGDL is liable.

The financial means referred to in Articles 179 and 180 may also be used to finance measures to preserve the access of depositors to covered deposits, including transfer of assets and liabilities and deposit book transfer, in the context of the winding up or reorganisation proceedings referred to in Part II, provided that the costs borne by the FGDL do not exceed the net amount of compensating covered depositors at the member institution concerned.

Article 182. Calculation of contributions

(1) The contributions to the FGDL referred to in Articles 179(2) and 180 shall be based on the amount of covered deposits and the degree of risk incurred by the respective member institution.

(2) The central body and all credit institutions permanently affiliated to the central body as referred to in Article 10(1) of Regulation (EU) No 575/2013 shall be subject as a whole to the risk weight determined for the central body and its affiliated institutions on a consolidated basis.

(3) The CPDI with the consent of the CSSF may use its own risk-based methods for determining and calculating the risk-based contributions due to the FGDL by the member institutions. The calculation of contributions shall be proportional to the risk of the member institutions and shall take due account of the risk profiles of the various business models.

This method may also take into account the asset side of the balance sheet and risk indicators, such as capital adequacy, asset quality and liquidity.

The CPDI shall inform the EBA of the method used.

Article 183. Cooperation within the European Union

(1) The FGDL shall repay the depositors at Luxembourg branches set up by credit institutions from other Member States on behalf of the DGS of the home Member State of the credit institution.

The FGDL shall make repayments in accordance with the instructions of the DGS of the home Member State of the credit institution as soon as it is provided with the necessary funding by the DGS of the home Member State of the credit institution. The FGDL shall inform the depositors concerned on behalf of the DGS of the home Member State of the credit institution and shall be entitled to receive correspondence from those depositors.

The FGDL shall not bear any liability with regard to acts done in accordance with the instructions given by the DGS of the home Member State.

(2) The FGDL shall cover the depositors at branches set up by a member institution in other Member States.

Where a DGS of another Member State repays the depositors at branches set up in its Member State by a member institution on behalf of the FGDL, the CPDI shall exchange the information referred to in point (1) of Article 168(1) and in Article 170(2) with the DGS of the host Member State. The restrictions set out in these articles shall apply.

Where the DGS of another Member State repays the depositors at branches set up in its Member State by a member institution, the FGDL shall provide the necessary funding prior to payout and shall compensate the DGS for the costs incurred.

Article 184. Luxembourg branches of credit institutions established in third countries

(1) The CSSF shall check that branches established in Luxembourg by a credit institution which has its head office in a third country have protection equivalent to that prescribed in this title.

The CSSF shall at least check that depositors benefit from the same coverage level and scope of protection as provided for in this title.

(2) If the CSSF deems that the protection is not equivalent, the Luxembourg branches of credit institutions which have their head office in a third country, subject to the second sentence of Article 43(2) of the Law of 5 April 1993 on the financial sector, as amended, shall become members of the FGDL in order to ensure protection as laid down in this title for the depositors of these branches.

(3) The Luxembourg branches of credit institutions which have their head office in a third country and which are not members of the FGDL shall provide the CPDI and the depositors with all relevant information concerning the guarantee arrangements for the deposits of actual and intending depositors at that branch.

This information shall be drawn up in a clear and comprehensive manner and shall be made available either in the language that was agreed by the depositor and the credit institution when the account was opened or in one of the official languages of Luxembourg.

Article 185. Depositor information

(1) Member institutions shall make available to actual and intending depositors the information necessary for the identification of the DGS of which the institution and its branches are members within the European Union.

(2) Member institutions shall inform actual and intending depositors of the applicable exclusions from DGS protection.

(3) Member institutions shall inform the depositors, before entering into a contract, of the fact that, according to Article 175, their overdue debts with the member institution are taken into account when calculating the repayable amount.

(4) Member institutions shall inform the depositors of the fact that the repayment will be made in euro, in accordance with Article 176(5).

(2) Where a member institution carries out its activities under different trade marks within the meaning of Article 2 of Directive 2008/95/EC, it shall inform its depositors clearly that it carries out its activities under different trade marks and that the coverage level laid down in Article 171(1) and (2) applies to all the deposits that the depositor holds with the member institution as a whole.

(6) The information referred to under paragraphs 1, 2, 4 and 5 shall be communicated via a template, as described in Annex 2, to the depositors before entering into a contract on deposit-taking, in the language that was agreed by the depositor and the member institution when the account was opened or in one of the official languages of Luxembourg. In addition, the branches that member institutions established in another Member State shall make this information available to depositors in the official language or languages of the Member State in which the branch is established in the manner prescribed by national law.

The depositors shall acknowledge the receipt of the information communicated to them before entering in a contract on deposit-taking under the first subparagraph.

The template shall also include a reference to the competent DGS' website.

The template with the information shall be provided to the depositors at least once a year.

(7) Member institutions shall provide the depositors on their statements of account, where appropriate, confirmation that their deposits are eligible including a reference to the template with the information described in paragraph 6.

Article 186. Use in advertising

The use in advertising of the information referred to in Article 185 shall be limited to a factual reference to the DGS guaranteeing the product to which the advertisement refers.

Such information may extend to the factual description of the functioning of the DGS but shall not, in any case, contain a reference to unlimited coverage of deposits.

Article 187. Conversion of a credit institution or branch

(1) In the case of a merger, conversion of a subsidiary into a branch or any similar operation, depositors shall be informed via mail from the credit institution concerned at least one month before the operation takes legal effect unless the CSSF allows a shorter deadline on the grounds of commercial secrecy or financial stability.

Following this information, the depositors shall be given a three-month period to withdraw or transfer to another credit institution, without incurring any penalty, their eligible deposits including all accrued interest and benefits in so far as they exceed the coverage level pursuant to Article 171 at the time of the operation.

(2) If some of the activities of a member institution are transferred to another Member State and thus become subject to another DGS, the FGDL shall transfer the contributions paid under Article 179 by that member institution during the 12 months preceding the transfer to another DGS in proportion to the amount of covered deposits transferred with the exception of the extraordinary contributions paid under Article 179(7).

Article 188. Withdrawal or exclusion of a member institution from the FGDL

In case of exclusion or withdrawal of a member institution from the FGDL, this institution shall inform its depositors within one month.

Article 189. Change of DGS

(1) If a member institution intends to change from the FGDL to another DGS, it shall inform the FGDL and the CPDI of its intention at least six months prior to the change. During this period, the credit institution concerned shall remain under the obligation to contribute to the FGDL in accordance with Article 179 or, where appropriate, in accordance with Article 180.

(2) If a member institution leaves the FGDL for another DGS, the FGDL shall transfer the contributions paid by this institution under Article 179 during the twelve months preceding the end of its FGDL membership to the other DGS with the exception of the extraordinary contributions paid under Article 179(7). This paragraph shall not apply if a member institution has been excluded from the FGDL pursuant to Article 191.

(3) Where a member institution leaves the FGDL for another DGS, the CPDI shall exchange the information referred to in point (1) of Article 168(1) and in Article 170(2) with the DGS of the host Member State. The restrictions set out in these articles shall apply.

Article 190. Information by depositors using internet banking via electronic means

If a depositor uses internet banking, the information required to be disclosed by this title may be communicated by electronic means.

Where the depositor so requests, it shall be communicated on paper.

Chapter V - Non-compliance

Article 191. Non-compliance with the obligations of the member institutions

If a member institution does not comply with its obligations incumbent on it under this title, the FGDL shall notify the CPDI and the CSSF immediately. The CPDI shall also notify the CSSF if it directly identifies non-compliance with the obligations of the member institutions.

In these cases, the CSSF in cooperation with the CPDI, shall promptly take all appropriate measures including if necessary the imposition of penalties as laid down in Article 63(2) of the Law of 5 April 1993 on the financial sector, as amended, or take suspension measures as referred to in Article 59(2) of that law in order to ensure that the member institution complies with its obligations.

In the event of failure of the measures referred to in the first subparagraph, the CPDI may, with the consent of the CSSF, give not less than one month's notice to the member institution of its intention to exclude the member institution from the FGDL and withdraw its authorisation and orders the member institution to remedy the situation identified within the period set.

Deposits made before the expiry of that notice period shall continue to be fully covered by the FGDL.

If, on expiry of that notice period, the member institution has not complied with its obligations, the CPDI shall exclude the member institution from the FGDL and withdraw its authorisation.

The deposits held by the member institution at the time of the exclusion shall remain covered by the FGDL.

Chapter VI - Cooperation

Article 192. Cooperation between authorities

For the purposes of this title, the CPDI and the CSSF shall cooperate with each other and with the EBA.

Article 193. Conclusion of cooperation agreements

In order to facilitate an efficient cooperation between the DGSs, with particular regard to Articles 183, 187(2) and 189, the FGDL and the CPDI may conclude with the DGSs or designated authorities of other Member States written cooperation agreements. Such agreements shall take into account the requirements laid down in the second subparagraph of Article 168(2). The FGDL shall notify without undue delay the CPDI of the conclusion of such agreements.

The CPDI shall inform the EBA of the existence and content of such agreements. If designated authorities or the DGSs cannot reach an agreement or if there is a dispute about the interpretation of an agreement, either party may refer the matter to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010.

The absence of such agreements shall not affect the claims of depositors under Article 177 or of credit institutions under Articles 187(2) and 189(2).

TITLE III

The protection of investors

Chapter I - Definitions

Article 194. Definitions

For the purposes of this title, the following definitions shall apply:

1. "investment firm" shall mean an investment firm as defined in point (9) of Article 1 of the Law of 5 April 1993 on the financial sector, as amended;
2. "instrument" shall mean any instrument listed in Annex II, Section B of the Law of 5 April 1993 on the financial sector, as amended;
3. "investor" shall mean any person who has entrusted money or instruments to a credit institution or an investment firm in connection with investment business;
4. "investment business" shall mean any investment service referred to in Annex II, Section A of the Law of 5 April 1993 on the financial sector, as amended, and investment service referred to in point (1) of Annex II, Section C of this law on an instrument referred to in Annex II, Section B of this law;
5. "joint investment business" shall mean investment business carried out for the account of two or more persons or over which two or more persons have rights that may be exercised by means of the signature of one or more of those persons;

Chapter II - Cover of investors in credit institutions and investment firms incorporated under Luxembourg law, as well as in Luxembourg branches of credit institutions and investment firms that have their head office in a third country

Article 195. Purpose of the cover

(1) The SIIL shall ensure coverage for the claims resulting from the incapacity of a credit institution or an investment firm to:

1. repay money owed to or belonging to investors and held on their behalf in connection with investment business under the legal and contractual conditions applicable; or
2. return to investors any instruments belonging to them and held, administered or managed on their behalf in connection with investment business under the legal and contractual conditions applicable.

The SIIL shall cover the investors, natural or legal persons, in credit institutions or investment firms incorporated under Luxembourg law, branches in another Member State of credit institutions or investment firms incorporated under Luxembourg law, or Luxembourg branches of credit institutions or investment firms which have their head office in a third country, within the limits, under the conditions and according to the arrangements set out in this title.

The amount of an investor's claim shall be calculated in accordance with the legal and contractual conditions, in particular those concerning set off and counterclaims, that are applicable to the assessment, on the date of the determination or judgment referred to in Article 197, of the amount of the money or the value, determined where possible by reference to the market value, of the

instruments belonging to the investor which the credit institution or investment firm is unable to repay or return.

(2) The claims listed below which result from investment business shall be excluded from any coverage under the SIIL:

1. claims of investment firms;
2. subject to Article 196(5), claims of credit institutions on their own behalf and for their own account;
3. claims of financial institutions;
4. claims of insurance undertakings;
5. claims of undertakings for collective investment;
6. claims of pension and retirement funds, irrespective of their nature, their form or the nationality of the creditor;
7. claims of other professional or institutional investors;
8. claims of supranational institutions, States and central administrations;
9. claims of provincial, regional, local and municipal authorities from Luxembourg or abroad as well as claims of all Luxembourg or foreign public interest entities subject to these authorities and the associations established between them;
10. claims:
 - a) of members of the administrative and management bodies of the credit institution or investment firm;
 - b) of members personally liable for the credit institution or investment firm;
 - c) of natural or legal persons which hold at least 5% of the credit institution's or investment firm's capital; and
 - d) of natural and legal persons which have similar status in other companies belonging to the group to which the credit institution or investment firm belongs;
11. claims of the spouse or claims of the relatives and connections up to the third degree inclusive of creditors referred to in point (10) as well as claims of third parties acting on behalf of the investors referred to in point (10);
12. claims of other undertakings of the group to which the credit institution or investment firm belongs;
13. claims of investors who have any responsibility for or have taken advantage of certain facts relating to a credit institution or an investment firm which gave rise to financial difficulties or contributed to the deterioration of the financial situation;
14. claims arising out of transactions in connection with which there has been a criminal conviction related to money laundering as defined in Article 1(2) of Directive 2005/60/EC or related to the financing of terrorism as defined in Article 1(4) of Directive 2005/60/EC;
15. claims of companies other than those likely to be authorised to draw up abridged balance sheets pursuant to the Law of 19 December 2002 on the trade and companies register as well as those of comparable size subject to the law of another Member State.

(3) The cover laid down in paragraph 1 shall continue to be ensured, after the authorisation of the credit institution or investment firm has been withdrawn, for investment business carried out up to that withdrawal.

The credit institution or investment firm from which the authorisation was withdrawn, shall continue to participate in the SIIL and to comply with the obligations towards the SIIL as long as the investment business of that credit institution or investment firm is covered by the SIIL. In particular, the credit institution or investment firm shall continue to pay fees to the SIIL and to pay contributions in the event the cover of the SIIL has to be used.

Article 196. Coverage level and scope

(1) The total of claims within the meaning of Article 195(1) shall be taken into account when calculating the amount of compensation to be paid to investors of the same investment firm or credit institution subject to paragraphs 3 and 4.

(2) Subject to Article 195(2), the SIIIL shall cover the whole investment business of each investor, irrespective of the amount of accounts, currency and location in the European Union up to EUR 20,000.

(3) Each investor's share in joint investment business shall be taken into account in calculating the cover provided for in the preceding paragraphs.

In the absence of special provisions, claims shall be divided equally amongst investors.

(4) The claims relating to joint investment business to which two or more persons are entitled as members of a business partnership, association or grouping of a similar nature which has no legal personality may, for the purpose of calculating the limits provided for in the preceding paragraphs, be aggregated and treated as if arising from an investment made by a single investor and only one single compensation is due under the coverage.

(5) Where the investor is not the person absolutely entitled to the sums or securities held, the person who is absolutely entitled shall be covered, provided that that person has been identified or is identifiable before the date of the determination referred to in Article 197(1) or before the date when the *Tribunal d'arrondissement* (District Court) in Luxembourg sitting in commercial matters ordered the suspension of payments or the winding up of the credit institution or investment firm, if the judgment is issued before the determination of the CSSF. The persons absolutely entitled shall be deemed identifiable only if the investor informs the credit institution or investment firm that s/he acts on behalf of third parties and communicates the number of persons absolutely entitled and the share attributable to each person absolutely entitled in the account. The payment of compensation under the guarantee shall be subject to communication of the identity of the persons absolutely entitled.

Where there are several persons absolutely entitled, the share attributable to each person absolutely entitled shall be taken into account when calculating the amount to be paid under the guarantee.

In the absence of special provisions, investment business shall be carried out equally by the persons absolutely entitled.

This paragraph shall not apply to undertakings for collective investment.

(6) Any claim that results from a deposit within the meaning of Article 163(6) shall be imputed to the FGDL. No claim shall be eligible for compensation more than once under those systems.

Article 197. Compensation arrangements and periods

(1) The SIIIL shall cover the investors in accordance with Article 196 where the CSSF determined, in its view, that at the moment and for reasons directly related to the financial situation, a credit institution or an investment firm does not seem to be able to fulfil its obligations resulting from claims of investors and that there is no current prospect of being able to do so or where the *Tribunal d'arrondissement* (District Court) in Luxembourg sitting in commercial matter ordered the suspension of payments or the winding up of the credit institution or investment firm, depending on whether the determination or order is the earliest.

(2) The SIIIL shall take appropriate measures to inform investors of the determination or judgment referred to in paragraph 1 and, if they are to be compensated, to compensate them as soon as possible. The investors shall present their requests within ten years as from the date of the above-mentioned determination or judgment or from the date on which this determination or judgment is made public.

(3) The investor that was not able to assert his/her claim to pay compensation under the SIIIL within the time limit set in the preceding paragraphs, retains his/her claim notwithstanding the expiry of the time limit.

(4) The scheme shall be in a position to pay an investor's claim as soon as possible and at the latest within three months of the establishment of the eligibility and the amount of the claim.

(5) The CPDI shall decide of the extension of the time limit within which the amount due under the guarantee shall be paid to investors. This extension shall not exceed three months. It may only be decided within very exceptional circumstances and in specific cases.

(6) The time limits set in the preceding paragraphs shall not affect the right of the SIIIL to check the right to compensation of investors and persons absolutely entitled, as well as the claims made in accordance with the standards and proceedings they defined before paying the compensation due under the SIIIL.

(7) The documents relating to the conditions to be fulfilled and the formalities to be completed to be eligible for a payment under the SIIIL shall be drawn up in detail in one of the official languages in Luxembourg. Moreover, these documents are available in the official language or languages of the

Member States where the credit institutions or investment firms incorporated under Luxembourg law have branches, of the manner prescribed by the law of the Member State where the branch is established.

(8) Notwithstanding the time limits set in the preceding paragraphs, the SIIL may suspend any payment, pending the judgment of the court, where an investor or any other person entitled to or having an interest in investment business is prosecuted for money laundering or terrorist financing offences.

(9) The SIIL that carries out payments under investor compensation shall be subrogated up to an amount equal to its payments under the right of investors and persons absolutely entitled that received payment. The reimbursement of the SIIL shall be given priority compared to these investors and persons absolutely entitled.

(10) The CPDI shall receive all information necessary for the implementation of the SIIL from the credit institutions and investment firms.

(11) The liquidators of a credit institution or an investment firm must collaborate with the SIIL and the CPDI so that they are able to fulfil their obligation within the time limit.

(12) The right to compensation of investors and, where appropriate, of persons absolutely entitled may be subject to action in the *Tribunal d'administratif* (Administrative Tribunal) by investors or persons absolutely entitled against the CPDI's decision.

Article 198. Payment of contributions

(1) Where the SIIL has to cover investors in accordance with Article 197(1), the credit institutions and investment firms shall pay a contribution.

As for the claims covered in relation to investment business, each credit institution and each investment firm shall contribute in proportion to the amount of the guarantee arising from covered claims of which it is debtor compared to the total amount of the guarantee arising from all the covered claims relating to investment business of which all credit institutions and investment firms are debtors, as these debts existed as at 31 December of the year preceding the date of determination laid down in Article 197(1).

(2) The amount of contribution that a credit institution or an investment firm shall pay to the SIIL may not exceed on an annual basis 5% of own funds as defined in Regulation (EU) No 575/2013 or, where appropriate, by the CSSF pursuant to Article 56 of the Law of 5 April 1993 on the financial sector, as amended.

(3) Neither the State nor the CSSF shall guarantee investment business. The responsibility of the State and the CSSF shall be limited to ensuring the implementation of the SIIL for the investors.

Article 199. Obligation to inform the customer

(1) Credit institutions and investment firms incorporated under Luxembourg law, their branches established in other Member States and Luxembourg branches of credit institutions or investment firms which have their head office in a third country shall inform the actual and intending investors, upon request, that they are covered by an investor compensation scheme. Investors shall be informed about the amount and extent of the coverage offered by this scheme, as well as about the conditions for compensation and formalities to be completed in order to be compensated.

Moreover, investors shall be informed about the rules established in relation to the absence of double compensation.

(2) Credit institutions and investment firms incorporated under Luxembourg law, their branches established in other Member States and Luxembourg branches of credit institutions or investment firms which have their head office in a third country shall make the information referred to in paragraph 1 available for investors in one of the official languages of Luxembourg. In addition, the branches that credit institutions or investment firms incorporated under Luxembourg law established in another Member State shall make this information available to investors in the official language or languages of the Member State in which the branch is established in the manner prescribed by national law.

(3) Credit institutions and investment firms incorporated under Luxembourg law, their branches established in other Member States and Luxembourg branches of credit institutions or investment firms which have their head office in a third country shall inform the actual investors when they become member of another investor compensation scheme. Where the level and extent of coverage offered by the scheme of which the credit institution or investment firm is member does not reach the

level or extent of coverage proposed by the scheme that the credit institution or investment firm left, the investors with this credit institution or investment firm shall not benefit from acquired rights.

(4) Credit institutions and investment firms incorporated under Luxembourg law, their branches established in other Member States and Luxembourg branches of credit institutions or investment firms which have their head office in a third country shall not be authorised to advertise the amount and extent of coverage and the functioning arrangements of the SIIL. A factual reference by a credit institution or investment firm to the SIIL shall not be considered as advertising.

Article 200. Non-compliance

(1) If a credit institution or an investment firm incorporated under Luxembourg law, a branch in another EU country of a credit institution or an investment firm incorporated under Luxembourg law or a Luxembourg branch of a credit institution or investment firm which has its head office in a third country does not fulfil its obligations towards the SIIL, the CPDI shall inform the CSSF thereof. The CSSF orders, in writing, the credit institution or investment firm to remedy the situation identified within a period it sets.

(2) If after the end of the period set by the CSSF the credit institution or the investment firm did not rectify the situation, the CSSF in cooperation with the CPDI may issue administrative fines as laid down in Article 63(2) of the Law of 5 April 1993 on the financial sector, as amended, or take the suspension measures referred to in Article 59(2) of that law.

(3) If failing to rectify the situation following the measures taken in accordance with paragraphs 1 and 2, the CPDI may, upon prior consent of the CSSF, notify in writing the credit institution or the investment firm of its intention to exclude it from the SIIL at the end of a notice period of six months.

If, on expiry of that notice period, the credit institution or investment firm has not complied with its obligations, the CPDI shall exclude it from the SIIL. However, the scheme shall continue to provide cover under Article 195(1) in respect of investment business transacted during that period.

Article 201. Supplementary cover for investors in branches of credit institutions or investment firms incorporated under Luxembourg law established in another Member State

(1) Branches that the credit institutions or investment firms incorporated under Luxembourg law established in other Member States may voluntarily become member of official investor compensation schemes instituted in the Member State where the branch is established for the purposes of completing the coverage from which investors benefit in accordance with Article 195(1).

Branches of credit institutions or investment firms incorporated under Luxembourg law shall comply with the membership conditions laid down by the compensation scheme of the host Member State and in particular pay all the contributions and other fees.

(2) Where the CSSF is informed that the branch of a credit institution or an investment firm incorporated under Luxembourg law that made use of the option laid down in paragraph 1 does not fulfil its obligations towards the investor compensation schemes of the host Member State, it shall take, after consulting the CPDI and in cooperation with the compensation scheme of the host Member State all appropriate measures to ensure compliance with those obligations.

(3) If failing to rectify the situation following the measures taken, the CSSF after consulting the CPDI may authorise the investor compensation scheme of the host Member State to exclude the branch at the end of a notice period of twelve months.

Chapter III - Cover of investors in Luxembourg branches of credit institutions or investment firms governed by the laws of another Member State

Article 202. Purpose of the cover

(1) The investors, natural or legal persons, in Luxembourg branches of credit institutions or investment firms governed by the laws of another Member State shall be protected by an official investor compensation scheme of the Member State which granted authorisation to the credit institution or investment firm of the Luxembourg branch.

(2) Where the level or extent of the coverage that the investors in Luxembourg branches of credit institutions or investment firms governed by the law of another Member State benefit from does not reach the level or extent of coverage offered by the SIIL, the Luxembourg branches of credit institutions or investment firms governed by the laws of another Member State may become member of the SIIL in order to complete coverage that their investors benefit from in accordance with paragraph 1.

Article 203. Principles governing supplementary cover

(1) The SIIL shall take the measure and arrangements necessary to allow the Luxembourg branches of credit institutions or investment firms governed by the laws of another Member State to become member in order to complete the coverage that their investors benefit from in accordance with Article 202. It shall define in particular the objective and generally applied conditions for the membership of these branches.

The admission of Luxembourg branches of credit institutions or investment firms governed by the laws of another Member State is conditional upon compliance with the membership conditions defined by the SIIL and in particular the payment of all contributions and other fees. The membership of the branches in the SIIL shall be governed by the guiding principles laid down in Article 204.

(2) If the Luxembourg branch of a credit institution or investment firm governed by the laws of another Member State that made use of the option laid down in Article 202(2) does not fulfil its obligations towards the SIIL, the CPDI shall refer the matter to the prudential supervisory authority of the Member State which granted authorisation to the credit institution or investment firm of the Luxembourg branch. The CPDI in cooperation with the prudential supervisory authority of the home Member State shall take all the appropriate measures to ensure compliance with these obligations.

If failing to rectify the situation, the CPDI may, with the consent of the prudential supervisory authority of the home Member State, exclude the branch at the end of a notice period of twelve months. The investment business carried out before the date of the exclusion shall remain covered by the SIIL until their maturity.

The investors in Luxembourg branches shall be informed by the latter or, if failing to do so, by the CPDI of the end of supplementary cover and the date when it takes effect.

Article 204. Relations between the CPDI and the schemes instituted and recognised in other Member States

(1) For the purposes of application of Article 203, the CPDI shall establish bilaterally with the investor compensation scheme of the home Member State appropriate rules and procedures for paying compensation to investors of the Luxembourg branch. The establishment of these procedures and the setting of membership conditions of a Luxembourg branch of a credit institution or an investment firm governed by the laws of another Member State, shall comply with the guiding principles laid down in paragraphs 2 to 5.

(2) The CSSF and the CPDI shall retain full rights to impose their objective and generally applied rules on branches of credit institutions or investment firms governed by the laws of another Member State. They may request the branches all information deemed relevant and they have the right to check this information with the prudential supervisory authorities of the Member State that granted authorisation to the credit institution or investment firm of the Luxembourg branch.

(3) The SIIL shall meet the claims for supplementary compensation upon a declaration from the prudential supervisory authority of the home Member State determining the incapacity of a credit institution or an investment firm to repay the funds due to investors or to return to the investors the instruments belonging to them in accordance with Article 195(1). The CPDI shall retain full rights to verify the right to compensate the investors and the claims made in accordance with the standards and proceedings before paying the supplementary compensation.

(4) The CPDI and the investor compensation schemes of the home Member State shall cooperate fully with each other to ensure that investors receive promptly the compensation due. In particular, they will agree on how the existence of a counterclaim which may give rise to set-off under either scheme will affect the compensation paid to the investor by each scheme.

(5) The SIIL may claim contributions and fees from Luxembourg branches of credit institutions or investment firms governed by the laws of another Member State for the supplementary cover on an appropriate basis which takes into account the guarantee funded by the home Member scheme. To facilitate charging, the SIIL shall be entitled to assume that its liability will in all circumstances be limited to the excess of the guarantee it has offered over the guarantee offered by the investor compensation scheme of the home Member State regardless of whether the home Member State actually pays any compensation in respect of investments made with Luxembourg branches.

Article 205. Obligation to inform the customer

(1) The Luxembourg branches of credit institutions or investment firms governed by the laws of another Member State shall provide the actual and intending investors, upon request, with information on the amount and scope of the cover offered by the investor compensation scheme of the home Member State and, where appropriate, the amount and scope of the supplementary cover offered by

the SIIL and the conditions for compensation and formalities which must be completed to obtain compensation. This information is provided in one of the official languages in Luxembourg.

(2) The Luxembourg branches of credit institutions or investment firms governed by the laws of another Member State shall not be authorised to advertise the amount and extent of coverage and the functioning arrangements of the investor compensation scheme to which they belong. A mere reference by the branch to the investor compensation scheme it is covered by shall not be considered as advertising.

PART IV AMENDING, TRANSITIONAL AND FINAL PROVISIONS

Chapter I – Amending provisions¹⁶⁶

Chapter II - Transitional provisions

Article 211. Termination of the cover

Where the deposits or certain categories of deposits or other instruments which were covered by a deposit guarantee scheme established in Luxembourg and recognised by the CSSF pursuant to Part IVa of the Law of 5 April 1993 on the financial sector, as amended, before the entry into force of this law, are no longer covered wholly or partially by the Fonds de Garantie des Dépôts Luxembourg after the entry into force of this law, the deposits and other instruments which have an initial maturity date shall be covered until their initial maturity date if they were paid in or issued before 2 July 2014.

The CPDI shall inform, via the website set up in accordance with Article 158, the depositors of deposits or categories of deposits or other instruments who will no longer be covered by the FGDL as from the date of the entry into force of this law. To this end, the deposit guarantee schemes established in Luxembourg and recognised by the CSSF pursuant to Part IVa of the Law of 5 April 1993 on the financial sector, as amended, before the entry into force of this law, shall provide the CPDI with any information necessary to identify the deposits or categories of deposits which will no longer be covered as from the date of the entry into force of this law.

Article 212. Time limit for repayment of the deposits covered by the Fonds de Garantie des Dépôts Luxembourg

The time limit for the repayment laid down in Article 176(1) shall apply as from 1 June 2016. Until 31 May 2016, the time limit for the repayment shall be set at 20 business days.

(Law of 20 May 2021)

“Article 212-1. Transitional period to comply with the minimum requirement

(1) The Resolution Board shall determine appropriate transitional periods for institutions or entities referred to in point (2), (3) or (4) of Article 2(1) to comply with the requirements in Articles 46-5 or 46-6 or with requirements that result from the application of Article 46-2(4), (5) or (7), as appropriate. Institutions and entities shall comply with the requirements in Articles 46-5 or 46-6 or the requirements that result from the application of Article 46-2(4), (5) or (7) by 1 January 2024 at the latest.

The Resolution Board may set a transitional period that ends after 1 January 2024 where duly justified and appropriate on the basis of the criteria referred to in paragraph 4, taking into consideration:

1. the development of the entity's financial situation;
2. the prospect that the entity will be able to ensure in a reasonable timeframe compliance with the requirements in Article 46-5 or 46-6 or with a requirement that results from the application of Article 46-2(4), (5) or (7); and
3. whether the entity is able to replace liabilities that no longer meet the eligibility or maturity criteria laid down in Articles 72b and 72c of Regulation (EU) No 575/2013, and Article 46-2 or Article 46-6(2), and if not, whether that inability is of an idiosyncratic nature or is due to market-wide disturbance.

The Resolution Board shall determine intermediate target levels for the requirements in Articles 46-5 or 46-6 or for requirements that result from the application of Article 46-2(4), (5) or (7), as appropriate, that institutions or entities referred to in point (2), (3) or (4) of Article 2(1) shall comply

¹⁶⁶ These provisions are not included in this version.

with at 1 January 2022. The intermediate target levels, as a rule, shall ensure a linear build-up of own funds and eligible liabilities towards the requirement.

(2) Resolution entities shall comply with the minimum level of the requirements referred to in Article 46-3(4) or (5) by 1 January 2022 at the latest.

(3) For the purposes of paragraphs 1 and 2, the Resolution Board shall communicate to the institution or entity referred to in point (2), (3) or (4) of Article 2(1) a planned minimum requirement for own funds and eligible liabilities for each 12-month period during the transitional period, with a view to facilitating a gradual build-up of its loss-absorbing and recapitalisation capacity. At the end of the transitional period, the minimum requirement for own funds and eligible liabilities shall be equal to the amount determined under Article 46-2(4), (5) or (7), Article 46-3(4) or (5), Article 46-5 or Article 46-6, as applicable.

(4) When determining the transitional periods, the Resolution Board shall take into account:

1. the prevalence of deposits and the absence of debt instruments in the funding model;
2. the access to the capital markets for eligible liabilities;
3. the extent to which the resolution entity relies on Common Equity Tier 1 capital to meet the requirement referred to in Article 46-5.

(5) Subject to paragraph 1, the Resolution Board may subsequently revise either the transitional period or any planned minimum requirement for own funds and eligible liabilities communicated under paragraph 3.

(6) Public disclosure requirements referred to in Article 46-11(3) shall apply as from 1 January 2024. Where, in accordance with the second subparagraph of paragraph 1, the Resolution Board has set a compliance deadline that ends after 1 January 2024, the public disclosure requirements referred to in Article 46-11(3) shall only apply as from the compliance deadline set in accordance with the second subparagraph of paragraph 1.

(7) Any decision taken under this article may be subject to proceedings for annulment in accordance with Article 118."

Chapter III - Final provisions

Article 213. Abbreviated designation

Reference to this law may be made under a shortened name by referring to the following title:

"Law of 18 December 2015 on the failure of credit institutions and certain investment firms".

We instruct and order that this law be inserted in the Mémorial in order to be implemented and complied with by all the persons concerned.

ANNEXES

ANNEX 1 on the resolution framework

Section A - Information that the Resolution Board may request institutions to provide for the purposes of drawing up and maintaining resolution plans

The Resolution Board 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 "bail-inable"¹⁶⁷ liabilities;
7. an identification of the processes needed to determine to whom the institution has pledged collateral, the person that holds the collateral and the jurisdiction in which the collateral is located;
8. a description of the off balance sheet exposures of the institution and its legal entities, including a mapping to its critical operations and core business lines;
9. the material hedges of the institution including a mapping to legal persons;
10. identification of the major or most critical counterparties of the institution as well as an analysis of the impact of the failure of major counterparties in the institution's financial situation;
11. each system on which the institution conducts a material number or value amount of trades, including a mapping to the institution's legal persons, critical operations and core business lines;
12. each payment, clearing or settlement system of which the institution is directly or indirectly a member, including a mapping to the institution's legal persons, critical operations and core business lines;
13. a detailed inventory and description of the key management information systems, including those for risk management, accounting and financial and regulatory reporting used by the institution including a mapping to the institution's legal persons, critical operations and core business lines;
14. an identification of the owners of the systems identified in 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;

¹⁶⁷ Law of 20 May 2021

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 Board will have all the necessary information, as determined by the Resolution Board, 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 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 B - Matters that the Resolution Board is to consider when assessing the resolvability of an institution or group

When assessing the resolvability of an institution or group, the Resolution Board shall consider the following:

1. the extent to which the institution is able to map core business lines and critical operations to legal persons;
2. the extent to which legal and corporate structures are aligned with core business lines and critical operations;
3. the extent to which there are arrangements in place to provide for essential staff, infrastructure, funding, liquidity and capital to support and maintain the core business lines and the critical operations;
4. the extent to which the service agreements that the institution maintains are fully enforceable in the event of resolution of the institution;
5. the extent to which the governance structure of the institution is adequate for managing and ensuring compliance with the institution's internal policies with respect to its service level agreements;
6. the extent to which the institution has a process for transitioning the services provided under service level agreements to third parties in the event of the separation of critical functions or of core business lines;
7. the extent to which there are contingency plans and measures in place to ensure continuity in access to payment and settlement systems;
8. the adequacy of the management information systems in ensuring that the Resolution Board is 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 Board;
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 Board with the information necessary to identify depositors and the amounts covered by the deposit guarantee schemes;
13. where the group uses intra-group guarantees, the extent to which those guarantees are provided at market conditions and the risk management systems concerning those guarantees are robust;
14. where the group engages in back-to-back transactions, the extent to which those transactions are performed at market conditions and the risk management systems concerning those transactions practices are robust;

15. the extent to which the use of intra-group guarantees or back-to-back booking transactions increases contagion across the group;
16. the extent to which the legal structure of the group inhibits the application of the resolution tools as a result of the number of legal persons, the complexity of the group structure or the difficulty in aligning business lines to group entities;
17. the amount and type of “bail-inable”¹⁶⁸ liabilities of the institution;
18. where the assessment involves a mixed activity holding company, the extent to which the resolution of group entities that are institutions or financial institutions could have a negative impact on the non-financial part of the group;
19. the existence and robustness of service level agreements;
20. whether third-country authorities have the resolution tools necessary to support resolution actions by the Resolution Board, and the scope for coordinated action between Luxembourg authorities and those from another country;
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 Board 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.

When assessing the resolvability of a group, references to an institution shall be deemed to include any institution or entity referred to in point (3) or (4) of Article 2 within a group.

*

¹⁶⁸ Law of 20 May 2021

ANNEX 2 Depositor information template

Basic information about the protection of deposit

Deposits in [name of credit institution] are protected by:	[insert the name of the relevant DGS] ⁽¹⁾
Limit of protection:	EUR 100,000 per depositor per credit institution ⁽²⁾ [where applicable:] The following trademarks are part of your credit institution [insert all trademarks which operate under the same licence]
If you have more deposits at the same credit institution:	All your deposits at the same credit institution are 'aggregated' and the total is subject to the limit of EUR 100,000 ⁽²⁾
If you have a joint account with other person(s):	The limit of EUR 100,000 applies to each depositor separately ⁽³⁾
Reimbursement period in case of credit institution's failure:	7 working days ⁽⁴⁾ 20 working days until 31 May 2016
Currency of reimbursement:	euro
Contact:	[insert the contact data of the relevant DGS (address, telephone, e-mail, etc.)]
More information:	[insert the website of the relevant DGS]
Acknowledgement of receipt by the depositor:	
Additional information (all or some of the below)	

(1) Scheme responsible for the protection of your deposit

(2) General limit of protection

If a deposit is unavailable because a credit institution is unable to meet its financial obligations, depositors are repaid by a Deposit Guarantee Scheme. The repayment covers at maximum EUR 100,000 per credit institution. This means that all deposits at the same credit institution are added up in order to determine the coverage level. If, for instance a depositor holds a savings account with EUR 90,000 and a current account with EUR 20,000, he or she will only be repaid EUR 100,000.

In the cases referred to in Article 171(2) of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, deposits are protected above EUR 100,000, i.e. up to EUR 2,500,000. More information: [insert the website of the relevant DGS].

[Only where applicable:] This method will also be applied if a credit institution operates under different trademarks. The [insert name of the account-holding credit institution] also trades under [insert all other trademarks of the same credit institution]. This means that all deposits with one or more of these trademarks are in total covered up to EUR 100,000.

(3) Limit of protection for joint accounts

In case of joint accounts, the limit of EUR 100,000 applies to each depositor.

However, deposits in an account to which two or more persons are entitled as members of a business partnership, association or grouping of a similar nature, without legal personality, are aggregated and treated as if made by a single depositor for the purpose of calculating the limit of EUR 100,000.

(4) Reimbursement

The responsible Deposit Guarantee Scheme is [insert name and address, telephone, e-mail and website]. It will repay your deposits (up to EUR 100,000) within a maximum period of 20 working days until 31 May 2016. This period will be reduced to 7 working days as from 1 June 2016.

If you have not been repaid within these deadlines, you should contact the Deposit Guarantee Scheme since the time to claim reimbursement may be time-barred after a certain time limit. More information: [insert the website of the relevant DGS].

Other important information

In general, all retail depositors and businesses are covered by Deposit Guarantee Schemes. Exceptions for certain deposits are stated on the website of the responsible Deposit Guarantee Scheme. Your credit institution will also inform you on request whether certain products are covered or not. If deposits are covered, the credit institution shall also confirm this on the statement of account.