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Committee on Economic and Monetary Affairs

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DRAFT REPORT

on the proposal for a directive of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directives 77/91/EEC and 82/891/EC, Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC and 2011/35/EC and Regulation (EU) No 1093/2010 (COM(2012)0280 – C7-0136/2012 – 2012/0150(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Gunnar Hökmark

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directives 77/91/EEC and 82/891/EC, Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC and 2011/35/EC and Regulation (EU) No 1093/2010 (COM(2012)0280 – C7-0136/2012 – 2012/0150(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2012)0280),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0136/2012),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of [...]¹,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs and the opinions of the Committee on Budgets and the Committee on Legal Affairs (A7-0000/2012),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ OJ C ... /Not yet published in the Official Journal.

Amendment 1
Proposal for a directive
Recital 1

Text proposed by the Commission

(1) The financial crisis that started in 2008 has shown that there is a significant lack of adequate tools at Union level to effectively deal with unsound or failing credit institutions. Such tools are, in particular, needed to prevent insolvency or, when insolvency occurs, to *minimize* negative repercussions by preserving the systemically important functions of the institution concerned. ***During the crisis, those challenges were a major factor that forced Member States to save credit institutions using public funds.***

Amendment

(1) The financial crisis that started in 2008 has shown that there is a significant lack of adequate tools at Union level to effectively deal with unsound or failing credit institutions *and investment firms*. Such tools are, in particular, needed to prevent insolvency or, when insolvency occurs, to *minimise* negative repercussions by preserving the systemically important functions of the *credit institution or investment firms* concerned.

Or. en

Amendment 2
Proposal for a directive
Recital 1 a (new)

Text proposed by the Commission

Amendment

(1 a) The financial crisis that started in 2008 was of systemic dimensions in the sense that it affected the access to funding of virtually all credit institutions. To avoid a systemic failure, with disastrous consequences for the overall economy, such a crisis must be met by measures aimed at securing access to funding. This was achieved by general liquidity support from central banks and guarantees from Member States for securities issued by solvent credit institutions. The crisis also revealed major credit losses and other weaknesses in individual credit institutions that were threatened by imminent failure. The lack of adequate

tools to deal with such insolvencies, in combination with the fragile funding situation facing the financial system as a whole, was a major factor that forced Member States to save such credit institutions using public funds.

Or. en

Amendment 3
Proposal for a directive
Recital 1 b (new)

Text proposed by the Commission

Amendment

(1 b) The ongoing review of the regulatory framework, in particular the strengthening of capital and liquidity buffers and better tools for macro-prudential policies, will reduce the likelihood of future systemic crises and enhance the resilience of credit institutions and investment firms to stress, whether caused by systemic disturbances or events specific to the individual credit institution or investment firm. It is neither possible nor desirable, however, to try to devise a regulatory and supervisory framework that can prevent credit institutions and investment firms from ever getting into difficulties. Member States therefore need to be prepared and have adequate tools to handle situations involving both systemic crises and failures of individual credit institutions and investment firms. Such tools include liquidity facilities provided by central banks to solvent credit institutions and investment firms in need of liquidity support, but also mechanisms that allow authorities to deal effectively with failing and insolvent credit institutions and investment firms.

Or. en

Amendment 4
Proposal for a directive
Recital 4 a (new)

Text proposed by the Commission

Amendment

(4 a) The exercise of such powers and the measures taken must take into account the circumstances in which the failure occurs. If the problem arises in an individual credit institution or investment firm and the rest of the financial system is in good condition, authorities should be able to exercise their resolution powers without much concern for contagion effects. In a fragile environment, on the other hand, greater care must be exercised to avoid destabilising financial markets. For example, it may not be possible to exercise the resolution tools on several systemically important credit institutions and investment firms at the same time without jeopardising financial stability. Similarly, the broader the crisis and the greater the concern for contagion effects, the more important it is that credit institutions and investment firms can be maintained as going concerns.

Or. en

Amendment 5
Proposal for a directive
Recital 4 b (new)

Text proposed by the Commission

Amendment

(4 b) Resolution of a credit institution or investment firm maintained as a going concern may, as a last resort, involve government financial stabilisation tools, including temporary public ownership. It is therefore essential to structure the resolution powers and the financing

arrangements for resolution in such a way that taxpayers are the beneficiaries of any surplus that may result from a restructuring of a credit institution or investment firm that is put back on a safe footing by the authorities. Responsibility and assumption of risk must be accompanied by reward. Where, upon termination of resolution, restructured credit institutions or investment firms are simply handed over to private owners, such as bondholders whose claims have been converted to equity, this requirement is not met .

Or. en

Amendment 6
Proposal for a directive
Recital 4 c (new)

Text proposed by the Commission

Amendment

(4 c) In light of the consequences that the failure of a credit institution or an investment firm may have on the financial system and the economy of a Member State as well as the possible need to use public funds to resolve a crisis, the Ministries of Finance or other relevant ministries in the Member States should be closely involved, at an early stage, in the process of crisis management and resolution.

Or. en

Justification

Moved from recital 12 to put it into proper context, i.e. when use of public funds is covered.

Amendment 7
Proposal for a directive
Recital 10

Text proposed by the Commission

(10) National *Authorities* should take into account the risk, size and interconnectedness of an institution in the context of recovery and resolution plans and when using the different tools at their disposal, making sure that the regime is applied in *an appropriate way*.

Amendment

(10) National *authorities* should take into account the risk, size and interconnectedness of *a credit institution or investment firm* in the context of recovery and resolution plans and when using the different ***powers and*** tools at their disposal, making sure that the regime is applied in ***such a way that the stability of financial markets is not jeopardised. In particular, in situations characterised by broader problems or even doubts about the resilience of many credit institutions and investment firms, it is essential that authorities consider the risk of contagion from the actions taken in relation to any individual credit institution or investment firm.***

Or. en

Amendment 8
Proposal for a directive
Recital 11 a (new)

Text proposed by the Commission

Amendment

(11 a) However, in order to safeguard legal certainty and avoid contradictory responsibilities and conflicts of interest, it is important to distinguish the roles and tasks of competent authorities responsible for financial supervision and of resolution authorities. Therefore, Member States should not be able to designate the national authorities responsible for the prudential supervision of credit institutions and investment firms as resolution authorities under this Directive. Member States should, however, ensure close cooperation between the national authorities responsible for prudential supervision and resolution.

Amendment 9
Proposal for a directive
Recital 12

Text proposed by the Commission

Amendment

(12) In light of the consequences that the failure of a credit institution or an investment firm may have on the financial system and the economy of a Member State as well as the possible need to use public funds to resolve a crisis, the Ministries of Finance or other relevant ministries in the Member States should be closely involved, at an early stage, in the process of crisis management and resolution.

deleted

Or. en

Justification

Moved to Recital 4c (new) to put it into proper context, i.e. when use of public funds is covered.

Amendment 10
Proposal for a directive
Recital 18

Text proposed by the Commission

Amendment

(18) Resolution **planning is an essential component of effective resolution.** Authorities should have all the information necessary in order to plan how the essential functions of an institution **or of a cross-border group may be isolated from the rest of the business and transferred in order to ensure the preservation and continuance of essential functions.** The requirement to prepare a resolution plan **should, however, be simplified, reflecting the systemic importance of the institution**

(18) **Although the key to effective and efficient resolution is giving the authorities appropriate powers and tools to deal with failing credit institutions and investment firms, preparation and planning are also important components.** Authorities should have all the information necessary in order to plan how the essential functions of a credit institution **or investment firm are to be maintained using the range of resolution powers and tools.** Member States should, however, be able

or group.

to allow competent authorities to waive the requirement to prepare a resolution plan based on an assessment that the credit institution, investment firm or group is not of systemic importance.

Or. en

Justification

It seems inappropriate to indicate a particular resolution solution in the context of a general argument about the need for planning.

Amendment 11 **Proposal for a directive** **Recital 19**

Text proposed by the Commission

(19) Resolution authorities should have the power to require changes to the structure and *organization* of institutions or groups in order to remove practical impediments to the application of resolution tools and ensure the resolvability of the entities concerned. Due to the potentially systemic nature of all institutions, it is crucial in order to maintain financial stability that authorities have the possibility to resolve any institution. In order to respect the right to conduct business laid down by Article 16 of the Charter of Fundamental Rights, the authorities' discretion should be limited to what is necessary in order to simplify the structure and operations of the institution solely to improve its resolvability. In addition, any measure imposed for such purposes should be consistent with Union law. Measures should be neither directly nor indirectly discriminatory on ground of nationality, and be justified by the overriding reason of being conducted in the public interest in financial stability. To determine whether an action was taken in the general public interest, resolution authorities, acting in the

Amendment

(19) Resolution authorities should have the power to require changes to the structure and *organisation* of *credit* institutions, *investment firms* or groups in order to remove practical impediments to the application of resolution tools and ensure the resolvability of the entities concerned. Due to the potentially systemic nature of all *credit* institutions *and investment firms* , it is crucial in order to maintain financial stability that authorities have the possibility to resolve any *credit* institution *or investment firm* . In order to respect the right to conduct business laid down by Article 16 of the Charter of Fundamental Rights, the authorities' discretion should be limited to what is necessary in order to simplify the structure and operations of the *credit* institution *or investment firm* solely to improve its resolvability. In addition, any measure imposed for such purposes should be consistent with Union law. Measures should be neither directly nor indirectly discriminatory on ground of nationality, and be justified by the overriding reason of being conducted in the public interest in financial stability. To

general public interest, should be able to achieve their resolution objectives without encountering impediments to the application of resolution tools or their ability to exercise the powers conferred to them. Furthermore, an action should not go beyond the minimum necessary to attain the objectives. When determining the measures to be taken, resolution authorities should take into account the warnings and recommendations of the European Systemic Risk Board established under Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board.

determine whether an action was taken in the general public interest, resolution authorities, acting in the general public interest, should be able to achieve their resolution objectives without encountering impediments to the application of resolution tools or their ability to exercise the powers conferred to them. Furthermore, an action should not go beyond the minimum necessary to attain the objectives. ***In particular, authorities should consider the broader impact of the changes they require the credit institutions and investment firms to implement on the costs and availability of critical financial functions to households and firms in normal circumstances.*** When determining the measures to be taken, resolution authorities should take into account the warnings and recommendations of the European Systemic Risk Board established under Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board.

Or. en

Amendment 12
Proposal for a directive
Recital 21

Text proposed by the Commission

(21) Recovery and resolution plans should not assume access to extraordinary public financial support or expose taxpayers to the risk of loss. Access to liquidity facilities provided by central banks, including emergency liquidity facilities, should not be considered as extraordinary public financial support ***provided that the institution is solvent at the moment of the***

Amendment

(21) Recovery and resolution plans should not assume access to extraordinary public financial support or expose taxpayers to the risk of loss. Access to liquidity facilities provided by central banks, including emergency liquidity facilities, should not be considered as extraordinary public financial support.

liquidity provision, and such liquidity provision is not part of a larger aid package; that the facility is fully secured by collateral to which haircuts are applied, in function of its quality and market value, that the central bank charges a penal interest rate to the beneficiary; and that the measure is taken at the central bank's own initiative and, in particular, is not backed by any counter-guarantee of the State.

Or. en

Justification

It would be strange to include in the conditions on plans things that can only be determined when liquidity support is actually given. Moreover, it seems inappropriate to try to delineate central bank support in this context, as central banks cannot be governed by a directive. They must presumably be able to set the detailed conditions for the measures they take independently.

Amendment 13
Proposal for a directive
Recital 22 a (new)

Text proposed by the Commission

Amendment

(22 a) For the sake of legal certainty and transparency it is vital to distinguish between the time when the shareholders of a credit institution or investment firm are still in full control of that institution or firm and the time when control is seized by the resolution authority. During the recovery and early intervention phases provided for under this Directive, shareholders should retain full responsibility and control of the institution or firm but they should no longer retain such responsibility once the institution or firm has been put under resolution.

Or. en

Amendment 14
Proposal for a directive
Recital 23

Text proposed by the Commission

(23) In order to preserve financial stability, it is important that competent authorities be able to remedy the deterioration of an institution's financial and economic situation before that institution reaches a point at which authorities have no other alternative than to resolve it. To this end, competent authorities should be granted early intervention powers, including the power to ***replace the management body of an institution with a special manager; this would serve as a means of exerting pressure on the institution in question to take measures to restore its financial soundness and/or to reorganise its business so as to ensure its viability at an early stage. The task of the special manager should be to take all measures necessary and promote solutions in order to redress the financial situation of the institution. The appointment of the special manager should not however derogate from any rights of the shareholders or owners or procedural obligations established under Union or national company law and should respect international obligations of the Union or Member States, relating to investment protection.*** The early intervention powers should include those already specified under Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions for circumstances other than those considered as early intervention as well as other situations considered necessary to restore the financial soundness of an institution.

Amendment

(23) In order to preserve financial stability, it is important that competent authorities be able to remedy the deterioration of *a credit institution's or an investment firm's* financial and economic situation before that institution *or firm* reaches a point at which authorities have no other alternative than to resolve it. To this end, competent authorities should be granted early intervention powers, including the power to ***request the replacement of the management body of an*** institution *or firm*. The early intervention powers should include those already specified under Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions for circumstances other than those considered as early intervention as well as other situations considered necessary to restore the financial soundness of an institution *or firm*.

Justification

There should be a clear distinction between a recovery phase, where the institution is under supervisory measures according to early intervention, and resolution. During recovery the owners should have full control over the institution while in resolution the control is in the hands of the resolution authority. The ability of the shareholders to fully control the institution is a fundamental part of the governance of the institution that should remain with the share holders in a recovery phase. Furthermore any wrong doing by a special manager will lead to very difficult issues concerning compensation of shareholder by the public authorities. Article 56 (b) and (m) are sufficient for full control by the resolution authority in resolution.

Amendment 15 **Proposal for a directive** **Recital 24**

Text proposed by the Commission

(24) The resolution framework should provide for timely entry into resolution **before** a financial institution is **balance-sheet** insolvent **and** before all equity has been fully wiped out. Resolution should be initiated when a firm is no longer viable or likely to be no longer viable and other measures have proved insufficient to prevent failure. The fact that an institution does not meet the requirements for *authorization* should not justify per-se the entry into resolution, especially if the institution is still or likely to be still viable. An institution should be considered as failing or likely to fail when it is or is to be in breach of the capital requirements for continuing authorisation because it has incurred or is likely to incur in losses that are to deplete all or substantially all of its own funds, when the assets of the institution are or are to be less than its liabilities, when the institution is or is to be unable to pay its obligations as they fall due, or when the institution requires extraordinary public financial support. The need for emergency liquidity assistance

Amendment

(24) The resolution framework should provide for timely entry into resolution **when** a *credit institution or investment firm* is **close to becoming balance sheet** insolvent **but** before all equity has been fully wiped out. Resolution should be initiated when a firm is no longer viable or likely to be no longer viable and other measures have proved insufficient to prevent failure. The fact that an institution *or firm* does not meet the requirements for *authorisation* should not justify per-se the entry into resolution, especially if the institution *or firm* is still or likely to be still viable. An institution *or firm* should be considered as failing or likely to fail when it is or is to be in breach of the capital requirements for continuing authorisation because it has incurred or is likely to incur in losses that are to deplete all or substantially all of its own funds, when the assets of the institution *or firm* are or are to be less than its liabilities, when the institution *or firm* is or is to be unable to pay its obligations as they fall due, or when the institution *or firm* requires

from a central bank should not in itself be a condition that sufficiently demonstrates that an institution is or will be, in the near-term, unable to pay its liabilities as they fall due. In order to preserve financial stability, in particular in case of a systemic liquidity shortage, State guarantees on liquidity facilities provided by central banks or State guarantees on newly issued liabilities should not trigger the resolution framework provided that a number of conditions are met. In particular the State guarantee measures should to be approved under the State aid framework and should not be part of a larger aid package, and the use of the guarantee measures should be strictly limited in time. In both instances, the bank needs to be solvent.

extraordinary public financial support. The need for emergency liquidity assistance from a central bank should not in itself be a condition that sufficiently demonstrates that an institution *or firm* is or will be, in the near-term, unable to pay its liabilities as they fall due. In order to preserve financial stability, in particular in case of a systemic liquidity shortage, State guarantees on liquidity facilities provided by central banks or State guarantees on newly issued liabilities should not trigger the resolution framework provided that a number of conditions are met. In particular the State guarantee measures should to be approved under the State aid framework and should not be part of a larger aid package, and the use of the guarantee measures should be strictly limited in time. In both instances, the bank needs to be solvent.

Or. en

Amendment 16
Proposal for a directive
Recital 27

Text proposed by the Commission

(27) In order to avoid moral hazard, any insolvent institution should be able to exit the market, irrespective of its size and interconnectedness, without causing systemic disruption. A failing institution is in principle liquidated under normal insolvency proceedings. However, liquidation under normal insolvency proceedings might jeopardise financial stability, interrupt the provision of essential services, and affect the protection of depositors. In such case there is a public interest in applying resolution tools. The objectives of resolution should therefore be to ensure the continuity of essential financial services, to maintain the stability

Amendment

(27) In order to avoid moral hazard, any insolvent *credit* institution *or investment firm* should be able to exit the market, irrespective of its size and interconnectedness, without causing systemic disruption. A failing institution *or firm* is in principle liquidated under normal insolvency proceedings. However, liquidation under normal insolvency proceedings might jeopardise financial stability, interrupt the provision of essential services, and affect the protection of depositors. In such case there is a public interest in applying resolution tools. The objectives of resolution should therefore be to ensure the continuity of essential

of the financial system, *to* reduce moral hazard *by minimising reliance on* public financial support to failing institutions, *and to protect* depositors.

financial services *and* to maintain the stability of the financial system. *Effective resolution tools will also* reduce moral hazard *and the need for* public financial support to failing institutions *and firms, thereby protecting* depositors.

Or. en

Justification

It is essential to distinguish between the ultimate goals of resolution and positive side-effects.

Amendment 17 Proposal for a directive Recital 28 a (new)

Text proposed by the Commission

Amendment

(28 a) In order to ensure uniform application and implementation of the recovery and resolution powers provided for in this Directive, EBA should have a leading role at Union level.

Or. en

Amendment 18 Proposal for a directive Recital 29

Text proposed by the Commission

Amendment

(29) When applying resolutions tools and exercising resolution powers, resolution authorities should make sure that shareholders and creditors bear an appropriate share of the losses, that *the managers* are replaced, that the costs of the resolution of the institution are minimised, and that all creditors of an insolvent institution that are of the same class are treated in a similar manner. When the use of the resolution tools involves the granting

(29) When applying resolutions tools and exercising resolution powers, resolution authorities should make sure that shareholders and creditors bear an appropriate share of the losses, that *managers that have been involved in decisions leading to the imminent threat of failure of the credit institution or investment firm* are replaced, that the costs of the resolution of the institution *or firm* are minimised, and that all creditors of an

of State aid, interventions should have to be assessed in accordance with the relevant State aid provisions. State aid may be involved, inter alia, where resolution funds or deposit guarantee funds intervene to assist in the resolution of failing institutions.

insolvent institution *or firm* that are of the same class are treated in a similar manner. When the use of the resolution tools involves the granting of State aid, interventions should have to be assessed in accordance with the relevant State aid provisions. State aid may be involved, inter alia, where resolution funds or deposit guarantee funds intervene to assist in the resolution of failing institutions *and firms*.

Or. en

Amendment 19
Proposal for a directive
Recital 35

Text proposed by the Commission

(35) The resolution tools should be applied before any public sector injection of capital or equivalent extraordinary public financial support to an institution. This, however, should not impede the use, for the purpose of financing resolution, of funds from the deposit guarantee schemes or the resolution funds. In this respect, the use of extraordinary public financial support or resolution funds, including deposit guarantee funds, to assist in the resolution of failing institutions should be assessed in accordance with relevant State aid provisions.

Amendment

(35) The resolution tools should ***ordinarily*** be applied before any public sector injection of capital or equivalent extraordinary public financial support to a *credit institution or investment firm*. This, however, should not impede the use, for the purpose of financing resolution, of funds from the deposit guarantee schemes or the resolution funds. In this respect, the use of extraordinary public financial support or resolution funds, including deposit guarantee funds, to assist in the resolution of failing institutions *or firms* should be assessed in accordance with relevant State aid provisions.

Or. en

Amendment 20
Proposal for a directive
Recital 35 a (new)

Text proposed by the Commission

Amendment

(35 a) There is a fundamental difference

between an individual credit institution or investment firm in a crisis and a crisis which hits the banking or financial system as a whole as regards, inter alia, the character of the crisis, asset price developments and consequences for the overall economy. Hence, the treatment of an individual credit institution or investment firm in a crisis should be different from the treatment of a crisis which hits the financial system as a whole, and this applies in particular for the resolution of the crisis. Therefore, the resolution tools should be designed and suitable to counter a broad set of largely unpredictable scenarios.

Or. en

Amendment 21
Proposal for a directive
Recital 35 b (new)

Text proposed by the Commission

Amendment

(35 b) Where problems in financial markets in the Union arise from broader, system-wide events, this is certain to have an adverse effect on the Union economy and citizens throughout the Union.

Or. en

Amendment 22
Proposal for a directive
Recital 35 c (new)

Text proposed by the Commission

Amendment

(35 c) There are many and varying examples of banking crises in Member States and in third countries which have mainly been solved by some form of public intervention. Although taxpayers'

money has been put at risk in such crises, public intervention has often prevented a further economic deterioration and thereby protected taxpayers and the financial stability in the longer term.

Or. en

Amendment 23
Proposal for a directive
Recital 35 d (new)

Text proposed by the Commission

Amendment

(35 d) In accordance with this reasoning, and knowing that public intervention in systemic crises might be the only way to restore market confidence and stability and prevent further value destruction, it is important not to exclude public intervention from the future management of banking crises.

Or. en

Amendment 24
Proposal for a directive
Recital 35 e (new)

Text proposed by the Commission

Amendment

(35 e) In the event of a systemic crisis, Member States should have the power to intervene directly in order to protect financial stability. Member States should have the power to determine the existence of a systemic crisis. The Commission should, after consulting the ESRB, be able to question such a determination.

Or. en

Amendment 25
Proposal for a directive
Recital 35 f (new)

Text proposed by the Commission

Amendment

(35 f) Despite the availability of resolution powers, Member States may need temporarily to stabilise the credit institution or investment firm through guarantees, capital injections or, ultimately, temporary public ownership to prevent a disorderly insolvency. Public ownership is a more extreme measure than the other resolution tools, and should only be available as a last resort, where, in the view of the competent ministry of the Member State concerned, the application of other resolution tools would not suffice to avoid significant adverse effects on financial stability or to protect taxpayers' funds if a Member State has already provided extraordinary financial support to the institution or firm.

Or. en

Amendment 26
Proposal for a directive
Recital 35 g (new)

Text proposed by the Commission

Amendment

(35 g) Member States should be able to use these tools either at the level of a parent company or at the level of a subsidiary, while acting in accordance with Union State aid rules. They should first write down the existing capital instruments as far as possible to reduce the element of taxpayer subsidy for the failing bank. The rules in this Directive requiring that capital instruments be written down before any of the resolution tools is used and the rules on the bail-in

tool should exclude instruments taken into public ownership through the exercise of the public ownership tool (or taken into public ownership to preserve financial stability before the date of entry into force of this Directive). While compensation should also be provided, it should be based upon the net value of the credit institution or investment firm at the point of non-viability under normal insolvency proceedings.

Or. en

Amendment 27
Proposal for a directive
Recital 35 h (new)

Text proposed by the Commission

Amendment

(35 h) Member States should ensure that no public capital support is granted through the government financial stabilisation tools provided for in this Directive unless existing shareholders have faced losses to the full amount of their equity holdings and losses have been allocated to creditors to an appropriate extent. By seizing ownership, Member States also ensure that taxpayers benefit from the profits once the bank is re-privatised, which should be done as soon as commercial and financial circumstances allow. Member States should further ensure that a credit institution or investment firm under temporary public ownership is managed on a purely commercial and professional basis.

Or. en

Amendment 28
Proposal for a directive
Recital 44

Text proposed by the Commission

(44) An effective resolution regime should **minimise** the costs of the resolution of a failing institution borne by the taxpayers. **It should also ensure that also** large and systemic institutions **can be resolved** without jeopardising financial stability. The bail-in tool achieves **that objective** by ensuring that **shareholders and** creditors of the institution **suffer appropriate losses and bear an** appropriate **part of those costs**. To this end, the Financial Stability Board recommended that statutory debt-write down powers should be included in a framework for resolution, as an additional option in conjunction with other resolution tools.

Amendment

(44) An effective resolution regime should **ensure that not just shareholders but also creditors of failing credit institutions and investment firms suffer appropriate losses. This will give them a stronger incentive to monitor credit institutions in normal circumstances. It should also reduce** the costs of the resolution of a failing institution *or firm* borne by the taxpayers **and make it possible to resolve** large and systemic institutions *and firms* without jeopardising financial stability. The bail-in tool achieves **these objectives** by ensuring that **claims of** creditors of the institution *or firm* **can be written down or converted into equity as** appropriate **to restore the capital of the institution or firm**. To this end, the Financial Stability Board recommended that statutory debt-write down powers should be included in a framework for resolution, as an additional option in conjunction with other resolution tools. **The potential of the bail-in tool to affect the funding situation of other institutions or firms means that in a fragile environment it must be used with appropriate concern for the impact on financial stability.**

Or. en

Amendment 29
Proposal for a directive
Recital 46

Text proposed by the Commission

(46) Where the bail-in tool is applied with the objective of restoring the capital of the failing institution to enable it to continue to

Amendment

(46) Where the bail-in tool is applied with the objective of restoring the capital of the failing *credit institution or investment firm*

operate as a going concern, the resolution through bail-in should always be accompanied by **replacement of management and** a subsequent restructuring of the institution and its activities in a way that addresses the reasons for its failure. That restructuring should be achieved through the implementation of a business reorganisation plan. Where applicable, such plans should be compatible with the restructuring plan that the *institutions* is required to submit to the Commission under the Union State aid framework. In particular, in addition to measures aiming at restoring the long term viability of the institution, the plan should include measures limiting the aid to the minimum and burden sharing, and measures limiting distortions of competition.

to enable it to continue to operate as a going concern, the resolution through bail-in should always be accompanied by a subsequent restructuring of the institution *or firm* and its activities in a way that addresses the reasons for its failure. That restructuring should be achieved through the implementation of a business reorganisation plan. Where applicable, such plans should be compatible with the restructuring plan that the *institution or firm* is required to submit to the Commission under the Union State aid framework. In particular, in addition to measures aiming at restoring the long term viability of the institution *or firm*, the plan should include measures limiting the aid to the minimum and burden sharing, and measures limiting distortions of competition.

Or. en

Amendment 30
Proposal for a directive
Recital 50

Text proposed by the Commission

(50) To avoid institutions structuring their liabilities in a manner that impedes the effectiveness of the bail in tool it is appropriate to establish that the institutions should have at all times an aggregate amount of own funds, subordinated debt and senior liabilities subject to the *bail in* tool expressed as a percentage of the ***total liabilities of the institution, that do not qualify as own funds for the purposes of Directive 2006/48/EC or Directive 2006/49/EC. Resolution authorities should also be able to require that this percentage is totally or partially composed of own funds and subordinated debt.***

Amendment

(50) To avoid *credit institutions and investment firms* structuring their liabilities in a manner that impedes the effectiveness of the bail in tool it is appropriate to establish that the institutions *or firm* should have at all times an aggregate amount of own funds, subordinated debt and senior liabilities subject to the *bail-in* tool expressed as a percentage of the ***risk exposure amount.***

Or. en

Justification

*Regarding the first sentence, see justification below regarding article 38.2 and article 39.
Regarding the second sentence: If this proposal will be introduced it will give authorities the possibility to introduce a binding leverage ratio of whichever level they want to. This is totally opposite to the Basel III and CRD IV proposal where the level, if introduced, will be fixed and harmonized.*

Amendment 31 Proposal for a directive Recital 52 a (new)

Text proposed by the Commission

Amendment

(52 a) The bail-in tool should be designed and applied in a way that does not risk contagion to credit institutions or investment firms other than those subject to the bail-in tool, in order to avoid amplifying risks.

Or. en

Amendment 32 Proposal for a directive Recital 68

Text proposed by the Commission

Amendment

(68) There are circumstances when the effectiveness of the resolution tools applied may depend on the availability of short-term funding for the institution or a bridge institution, the provision of guarantees to potential purchasers, or the provision of capital to the bridge institution. Notwithstanding the role of central banks in providing liquidity to the financial system even in times of stress, it is important that Member States set up financing arrangements ***to avoid that the funds needed for such purposes come from the national budgets.*** It should be the financial industry, as a whole, that finances the stabilisation of the financial system.

(68) There are circumstances when the effectiveness of the resolution tools applied may depend on the availability of short-term funding for the *credit institution or investment firm*, or a bridge institution, the provision of guarantees to potential purchasers, or the provision of capital to the bridge institution. Notwithstanding the role of central banks in providing liquidity to the financial system even in times of stress, it is important that Member States set up financing arrangements ***that are able to provide additional funding guarantees, capital injections etc. as appropriate. Such arrangements need the full backing of the Member States to be credible as providers***

of guarantees and to be able to raise sufficient funds to finance resolution measures, including capital injections, as needed to handle the situation in accordance with the objectives of the resolution. Over time it should, however, be the financial industry, as a whole, that finances the stabilisation of the financial system.

Or. en

Amendment 33
Proposal for a directive
Recital 69

Text proposed by the Commission

(69) As a principle, contributions should be collected from the *industry* prior to and independently of any operation of resolution. *When prior funding is insufficient to cover the losses or costs incurred by the use of the financing arrangements, additional* contributions should be *collected to bear the additional cost or loss.*

Amendment

(69) As a principle, *annual ex-ante* contributions should be collected from the *credit institution or investment firm* prior to and independently of any operation of resolution. *In order to ensure a fair calculation of contributions to the national financing arrangements and to provide institutions and firms with incentives to operate under a less risky business model, contributions should take account of the degree of risk incurred by institutions and firms. This ensures that the contributions function like annual insurance premiums. The* contributions should be *charged irrespective of the accumulated size of the financing arrangements to preserve the incentive effects of contributions over time.*

Or. en

Amendment 34
Proposal for a directive
Recital 70

Text proposed by the Commission

Amendment

(70) In order to reach a critical mass and to avoid pro-cyclical effects which would arise if financing arrangements had to rely solely on ex post contributions in a systemic crisis, it is indispensable that the ex-ante available financial means of the national financing arrangements amount to a certain target level.

deleted

Or. en

**Amendment 35
Proposal for a directive
Recital 70 a (new)**

Text proposed by the Commission

Amendment

(70 a) The national financing arrangements should be controlled and owned by the Member State. The payments to and from the financing arrangements should be symmetrical: the revenues and recoveries from all resolution measures funded from the financing arrangements should be channelled back to the financing arrangements. Such revenues may include fees for guarantees. Similarly, shares in credit institutions or investment firms that have been recapitalised using the financing arrangements should be the property of the financing arrangements. When the resolution period is over and such shares are sold, the revenues should be channelled to the financing arrangements.

Or. en

Justification

We are aware that this is a non-trivial suggestion, both for political and practical reasons. As

an example from the latter category, it could affect the possibility to use DGS funds for resolution purposes considering that several MS have DGSs that are (at least notionally) private. However, a private DGS funding is an anomaly in the sense that it is not really able to deal with a major bank failure. Perpetuating this by pretending that resolution funding, where even bigger burdens may have to be shouldered, could realistically come entirely from private sources would be a grave mistake.

Amendment 36
Proposal for a directive
Recital 71

Text proposed by the Commission

Amendment

(71) In order to ensure a fair calculation of contributions and provide incentives to operate under a less risky model, contributions to national financing arrangements should take account of the degree of risk incurred by credit institutions.

deleted

Or. en

Justification

Merged with Recital 69.

Amendment 37
Proposal for a directive
Recital 71 a (new)

Text proposed by the Commission

Amendment

(71 a) A combination of annual ex-ante contributions from the credit institutions or investment firms, and financing arrangements without a target level that are the property of the Member States ensures that industry provides the basic financing for resolution while the Member States retain the upside from successful resolutions.

Or. en

Amendment 38
Proposal for a directive
Recital 73

Text proposed by the Commission

(73) In order to build up the resilience of the European System of Financing Arrangements, and in line with the objective requiring that financing should come primarily from the industry rather than from public budgets, national *arrangements* should ***be able to borrow from each other in case of need.***

Amendment

(73) In order to build up the resilience of the European System of Financing Arrangements, and in line with the objective requiring that financing should come primarily from the industry rather than from public budgets. ***However, to be able also to handle systemic crises credibly, a national financing arrangement should have the backing of the Member State in which it is set up.***

Or. en

Amendment 39
Proposal for a directive
Recital 83

Text proposed by the Commission

(83) The European Parliament and the Council should have ***two months*** from the date of notification to object to a delegated act. It should be possible for the European Parliament and the Council to inform the other institutions of their intention not to raise objections.

Amendment

(83) The European Parliament and the Council should have ***three months*** from the date of notification to object to a delegated act. It should be possible for the European Parliament and the Council to inform the other *Union* institutions of their intention not to raise objections.

Or. en

Amendment 40
Proposal for a directive
Article 2 – paragraph 1 – point 26 a (new)

Text proposed by the Commission

Amendment

(26 a) 'systemic crisis' means a situation

in which overall economic performance in a Member State or the Union as a whole is deteriorating rapidly, financial markets are under severe stress, new credit opportunities are much more closely restricted or the stability of the financial system as such is in peril;

Or. en

Amendment 41
Proposal for a directive
Article 2 – paragraph 1 – point 78

Text proposed by the Commission

(78) ‘*third country* resolution proceeding’ means an action under the law of a third country to manage the failure of a *third country* institution that is comparable, in terms of results, to resolution actions under this Directive;

Amendment

(78) ‘*third-country* resolution proceeding’ means an action under the law **or regulations** of a third country to manage the failure of a *third-country* institution that is comparable, in terms of results, to resolution actions under this Directive;

Or. en

Amendment 42
Proposal for a directive
Article 3 – paragraph 3

Text proposed by the Commission

3. Resolution authorities may be ***the competent authorities for supervision for the purposes of Directives 2006/48/EC and 2006/49/EC***, central banks, competent ministries or other public administrative authorities, ***provided that Member States adopt rules and arrangements necessary to avoid conflicts of interest between the functions of supervision pursuant to Directives 2006/48/EC and 2006/49/EC or the other functions of the relevant authority and the functions of resolution authorities pursuant to this Directive. In***

Amendment

3. Resolution authorities may be central banks, competent ministries or other public administrative authorities ***provided that they are not also competent authorities within the meaning of Article 4(4) of Directive 2006/48/EC and Article 3(3)(c) of Directive 2006/49/EC***. Member States shall ensure that, within the central banks, competent ministries or other public administrative authorities there is a separation between the resolution function and the supervisory or other functions of the relevant authority.

particular, Member States shall ensure that, within the *competent authorities*, central banks, competent ministries or other public administrative authorities there is a separation between the resolution function and the supervisory or other functions of the relevant authority.

Or. en

Amendment 43
Proposal for a directive
Article 3 – paragraph 4

Text proposed by the Commission

4. *Where the resolution authority and the competent authority pursuant to Directive 2006/48/EC are separate entities, Member States shall require that they cooperate closely* in the preparation, planning and application of resolution decisions.

Amendment

4. *Member States shall require that the resolution authority cooperates closely with the competent authorities for supervision for the purposes of Directives 2006/48/EC and 2006/49/EC* in the preparation, planning and application of resolution decisions.

Or. en

Amendment 44
Proposal for a directive
Article 5 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that each institution draws up and maintains a recovery plan providing, through measures taken by the management of the institution or by a group entity, for the restoration of its financial situation following significant deterioration. Recovery plans shall be considered as a governance arrangement within the meaning of Article 22 of Directive 2006/48/EC.

Amendment

1. Member States shall ensure that each institution *that is not part of a group* draws up and maintains a recovery plan providing, through measures taken by the management of the institution or by a group entity, for the restoration of its financial situation following significant deterioration. *The host competent authority may request a specific recovery plan to be drawn up for the subsidiary in that Member State if the operations of the institution's subsidiary constitute a*

significant share of that Member State's financial system. Recovery plans shall be considered as a governance arrangement within the meaning of Article 22 of Directive 2006/48/EC.

Or. en

Justification

It should be clear that the responsibility of a (cross-border) group to draw up recovery plans shall be drafted only in accordance with Article 7 and 8. Consequently, each institution within the group should not be required to draw up recovery plans in accordance with Article 5. An exception could be made for situations where the operations of a subsidiary constitute a significant share of the financial system in a particular Member State. Host competent authorities should then be able to request a specific recovery plan for that subsidiary.

Amendment 45
Proposal for a directive
Article 5 – paragraph 5

Text proposed by the Commission

5. The competent authorities shall ensure that institutions include in recovery plans appropriate conditions and procedures to ensure the timely implementation of recovery actions as well as a wide range of recovery options. Competent authorities shall ensure that **firms** test their recovery plans against **a range of** scenarios of financial distress, **varying in their severity including system wide events, legal-entity specific stress and group-wide stress.**

Amendment

5. The competent authorities shall ensure that institutions include in recovery plans appropriate conditions and procedures to ensure the timely implementation of recovery actions as well as a wide range of recovery options. Competent authorities shall ensure that **institutions** test their recovery plans against scenarios of financial distress **relevant to the institutions' specific conditions.**

Or. en

Justification

Scenario based crises planning is not necessarily effective. Earlier crises experience shows that scenario analyses might not be very helpful and that a more flexible approach is warranted. In order for scenarios to give a contribution to recovery plans they need to be adapted to the circumstances and context of each individual institution, depending on the institutions business profile, customer segments, geographical distribution, organisational structure etc. A scenario that is relevant to one institution might add limited value to other

institutions.

Amendment 46
Proposal for a directive
Article 5 – paragraph 6

Text proposed by the Commission

Amendment

6. EBA, in consultation with the European Systemic Risk Board (ESRB), shall develop draft technical standards specifying the range of scenarios to be used for the purposes of paragraph 5 of this Article in accordance with Article 25(3) of Regulation (EU) No 1093/2010.

deleted

EBA shall submit those draft regulatory technical standards to the Commission within twelve months from the date of entry into force of this Directive.

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

Or. en

Justification

See justification for Article 5, paragraph 5.

Amendment 47
Proposal for a directive
Article 6 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) the plan or specific options could be implemented effectively in situations of financial stress *and without causing any significant adverse effect on the financial system, including in the event that other institutions implemented recovery plans*

(b) the plan or specific options could be implemented effectively in situations of financial stress.

within the same time period.

Or. en

Justification

The requirement that a recovery plan could 'be implemented without causing significant adverse effect on the financial system' is unrealistic. Many measures an institution may take in a crisis situation might have adverse effects on the financial system in some cases but not others. The requirement may exclude some possible measures that could be effective tools in crisis management and that may reduce the likelihood that an institution will recover without public support.

Amendment 48
Proposal for a directive
Article 6 – paragraph 4 – introductory part

Text proposed by the Commission

4. If the institution fails to submit a revised recovery plan, or if the competent authority determines that the revised recovery plan does not adequately remedy the deficiencies or potential impediments identified in its original assessment, the competent authorities shall require the institution to take any measure it considers necessary to ensure that the deficiencies or impediments are removed. ***In addition to the measures that may be required in accordance with Article 136 of Directive 2006/48/EC, the competent authorities may, in particular, require the institution to take actions to:***

Amendment

4. If the institution fails to submit a revised recovery plan, or if the competent authority determines that the revised recovery plan does not adequately remedy the deficiencies or potential impediments identified in its original assessment, the competent authorities shall require the institution to take any measure it considers necessary to ensure that the deficiencies or impediments are removed. ***The measures available to the competent authorities shall include the measures set out in Article 136 of Directive 2006/48/EC.***

Or. en

Justification

It is unjustified that shortcomings in recovery planning should have more far reaching consequences for a bank than failure to comply with the capital requirements. It is reasonable that the authorities will be able to use the same set of supervisory measures that are available for failure to meet the rules on capital requirements. The more extensive measures suggested could be plausible in a situation where a bank is on its way to failure, but to address shortcomings in planning, it is not justified.

Amendment 49
Proposal for a directive
Article 6 – paragraph 4 – point a

Text proposed by the Commission

Amendment

(a) facilitate the reduction of the risk profile of the institution; ***deleted***

Or. en

Justification

See justification for Article 6, paragraph 4, introductory part.

Amendment 50
Proposal for a directive
Article 6 – paragraph 4 – point b

Text proposed by the Commission

Amendment

(b) enable timely recapitalisation measures; ***deleted***

Or. en

Justification

See justification for Article 6, paragraph 4, introductory part.

Amendment 51
Proposal for a directive
Article 6 – paragraph 4 – point c

Text proposed by the Commission

Amendment

(c) make changes to the firm strategy; ***deleted***

Or. en

Justification

See justification for Article 6, paragraph 4, introductory part.

Amendment 52
Proposal for a directive
Article 6 – paragraph 4 – point d

Text proposed by the Commission

Amendment

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

Or. en

Justification

See justification for Article 6, paragraph 4, introductory part.

Amendment 53
Proposal for a directive
Article 6 – paragraph 4 – point e

Text proposed by the Commission

Amendment

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

Or. en

Justification

See justification for Article 6, paragraph 4, introductory part.

Amendment 54
Proposal for a directive
Article 7 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall ensure that parent undertakings or institutions that are subject to consolidated supervision pursuant to

1. Member States shall ensure that parent undertakings or institutions that are subject to consolidated supervision pursuant to

Articles 125 and 126 of Directive 2006/48/EC draw up and submit to the consolidating supervisor a group recovery plan that includes a recovery plan for the whole group, including for the companies referred to in points (c) and (d) of Article 1, as well as a recovery plan for **each institution that is** part of the group.

Articles 125 and 126 of Directive 2006/48/EC draw up and submit to the consolidating supervisor a group recovery plan that includes a recovery plan for the whole group, including for the companies referred to in points (c) and (d) of Article 1, as well as a recovery plan for **institutions that are** part of the group **when this is necessary for the plan to be operational, taking into account the financial stability of Member States.**

Or. en

Justification

For a financial group the basis for the recovery plan should be the group and unnecessary administrative burdens should be avoided. Banking groups may be consisting of a large number of legal entities. It seems inefficient and unduly burdensome to produce individual recovery plans for each legal entity. When a banking group gets into financial difficulties the problems in virtually all possible scenarios need to be addressed centrally for the group as a whole. It is then more efficient to put resources into creating a credible and realistic recovery plan for the group as a whole rather than for each individual subsidiary.

Amendment 55 **Proposal for a directive** **Article 7 – paragraph 4**

Text proposed by the Commission

4. The group recovery plan shall include for the whole group and for **each of its** entities the elements and arrangements provided in Article 5. It shall also include, where applicable, arrangements for possible intra-group financial support adopted in accordance with any agreement for group financial support that has been concluded in accordance with Article 16.

Amendment

4. The group recovery plan shall include for the whole group and for **relevant** entities the elements and arrangements provided in Article 5. It shall also include, where applicable, arrangements for possible intra-group financial support adopted in accordance with any agreement for group financial support that has been concluded in accordance with Article 16.

Or. en

Justification

See justification for Article 7, paragraph 1.

Amendment 56
Proposal for a directive
Article 9 – paragraph 2

Text proposed by the Commission

2. The resolution plan shall take into consideration ***a range of*** scenarios including that the event of failure may be idiosyncratic or may occur at a time of broader financial instability or system wide events. The resolution plan shall not assume any extraordinary public financial support besides the use of the financing arrangements established in accordance with Article 91.

Amendment

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 not assume any extraordinary public financial support besides the use of the financing arrangements established in accordance with Article 91.

Or. en

Justification

See justification for Article 5, paragraph 5.

Amendment 57
Proposal for a directive
Article 9 – paragraph 5 – subparagraph 1

Text proposed by the Commission

5. EBA, in consultation with the ESRB, shall develop draft regulatory technical standards specifying ***a range of scenarios for the event of failure for the purposes of paragraph 2.***

Amendment

5. EBA, in consultation with the ESRB, shall develop draft regulatory technical standards specifying ***the contents of the resolution plan.***

Or. en

Justification

See justification for Article 5, paragraph 5.

Amendment 58
Proposal for a directive
Article 11 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that resolution authorities draw up group resolution plans. Group resolution plans shall include both a plan for resolution at the level of the parent undertaking or institution subject to consolidated supervision pursuant to Article 125 and 126 of Directive 2006/48/EC and the resolution plans for the individual subsidiary institutions drawn up in accordance with Article 9 of this Directive. The group resolution plans shall also include plans for the resolution of the companies referred to in points (c) and (d) of Article 1 and plans for the resolution of institutions with branches in other Member States in compliance with the provisions of Directive 2001/24/EC.

Amendment

1. Member States shall ensure that resolution authorities draw up group resolution plans. Group resolution plans shall include both a plan for resolution at the level of the parent undertaking or institution subject to consolidated supervision pursuant to Article 125 and 126 of Directive 2006/48/EC and, **where relevant**, the resolution plans for the individual subsidiary institutions drawn up in accordance with Article 9 of this Directive. The group resolution plans shall also include plans for the resolution of the companies referred to in points (c) and (d) of Article 1 and plans for the resolution of institutions with branches in other Member States in compliance with the provisions of Directive 2001/24/EC.

Or. en

Justification

Group resolution planning would be based on the banking group structure and thus similar considerations would apply as to the requirements for drawing up group recovery plans. It must be considered in each case whether it would be relevant to include separate resolution plans on each institution that is part of a group.

Amendment 59
Proposal for a directive
Article 14 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that when, pursuant to an assessment of resolvability carried out in accordance with Article 13, a resolution authority determines that there are **potential** substantive impediments to the resolvability of an institution, the

Amendment

1. Member States shall ensure that when, pursuant to an assessment of resolvability carried out in accordance with Article 13, a resolution authority determines that there are substantive impediments to the resolvability of an institution, the

resolution authority shall notify in writing that determination to the institution.

resolution authority shall notify in writing that determination to the **competent authority**. **The competent authority shall notify the institution of those substantive impediments.**

Or. en

Justification

The powers given to resolution authorities, in order to remove possible impediments to resolution, would represent a far reaching interference with property rights in banks. The resolution authority would become involved in detailed business issues such as strategy, organisational structure, product development and business development of healthy banks. To the extent that these questions are issues, they should be taken care of in the supervisory process and through ordinary banking regulation. This is also already being done through extensive regulation and through article 6.3 and 6.4 of this directive. The current proposal gives power to resolution authorities to go far beyond the purpose of other regulations regarding issues like large exposures, internal governance and legal structure.

Amendment 60 **Proposal for a directive** **Article 14 – paragraph 2**

Text proposed by the Commission

2. Within four months of the date of receipt of a notification made in accordance with paragraph 1, the institution shall propose to the **resolution** authority measures to address **or remove** the impediments identified in the notification. The **resolution authority**, in consultation with the **competent** authorities, shall assess whether those measures effectively address or remove the impediments in question.

Amendment

2. Within four months of the date of receipt of a notification made in accordance with paragraph 1, the institution shall propose to the **competent** authority **possible** measures to address the **substantive** impediments identified in the notification. The **competent authorities**, in consultation with the **resolution** authorities, shall assess whether those measures effectively address or remove the **substantive** impediments in question.

Or. en

Justification

See justification for Article 14, paragraph 1.

Amendment 61
Proposal for a directive
Article 14 – paragraph 3

Text proposed by the Commission

3. Where the **resolution** authority assesses that the measures proposed by an institution in accordance with paragraph 2 do not effectively reduce or remove the impediments in question, it shall, in consultation with the **competent authorities**, identify alternative measures that may achieve that objective, and notify in writing those measures to the institution.

Amendment

3. Where the **competent** authority assesses that the measures proposed by an institution in accordance with paragraph 2 do not effectively reduce or remove the impediments in question, it shall, in consultation with the **resolution authority**, identify alternative measures that may achieve that objective, and notify in writing those measures to the institution.

Or. en

Justification

See justification for Article 14, paragraph 1.

Amendment 62
Proposal for a directive
Article 14 – paragraph 4 – introductory part

Text proposed by the Commission

4. For the purposes of paragraph 3, measures identified **by a resolution authority** may, where necessary and proportionate to reduce or remove the impediments to resolvability in question, include the following:

Amendment

4. For the purposes of paragraph 3, measures identified may, where necessary and proportionate to reduce or remove the **substantive** impediments to resolvability in question, include the following:

Or. en

Justification

See justification for Article 14, paragraph 1.

Amendment 63
Proposal for a directive
Article 14 – paragraph 4 – point b

Text proposed by the Commission

Amendment

(b) requiring the institution to limit its maximum individual and aggregate exposures; ***deleted***

Or. en

Justification

See justification for Article 14, paragraph 1.

Amendment 64
Proposal for a directive
Article 14 – paragraph 4 – point d

Text proposed by the Commission

Amendment

(d) requiring the institution to divest specific assets; ***deleted***

Or. en

Justification

See justification for Article 14, paragraph 1.

Amendment 65
Proposal for a directive
Article 14 – paragraph 4 – point e

Text proposed by the Commission

Amendment

(e) requiring the institution to limit or cease specific existing or proposed activities; ***deleted***

Or. en

Justification

See justification for Article 14, paragraph 1.

Amendment 66
Proposal for a directive
Article 14 – paragraph 4 – point f

Text proposed by the Commission

Amendment

(f) restricting or preventing the development or sale of new business lines or products; ***deleted***

Or. en

Justification

See justification for Article 14, paragraph 1.

Amendment 67
Proposal for a directive
Article 14 – paragraph 4 – point g

Text proposed by the Commission

Amendment

(g) requiring changes to legal or operational structures of the institution so as to reduce complexity in order to ensure that critical functions may be legally and economically separated from other functions through the application of the resolution tools; ***deleted***

Or. en

Justification

See justification for Article 14, paragraph 1.

Amendment 68
Proposal for a directive
Article 14 – paragraph 4 – point h

Text proposed by the Commission

Amendment

(h) requiring a parent undertaking to set up a parent financial holding company in a Member State or a Union parent ***deleted***

financial holding company;

Or. en

Justification

See justification for Article 14, paragraph 1.

Amendment 69
Proposal for a directive
Article 14 – paragraph 4 – point i

Text proposed by the Commission

Amendment

(i) requiring a parent undertaking, or a company referred to in points (c) and (d) of Article 1 to issue the debt instruments or loans referred to in Article 39(2); *deleted*

Or. en

Justification

See justification for Article 14, paragraph 1.

Amendment 70
Proposal for a directive
Article 14 – paragraph 6 – introductory part

Text proposed by the Commission

Amendment

6. A notification made pursuant to paragraph 1 or 3 shall meet the following requirements:

6. A notification, **by the competent authority to the institution**, made pursuant to paragraph 1 or 3 shall meet the following requirements:

Or. en

Justification

See justification for Article 14, paragraph 1.

Amendment 71
Proposal for a directive
Article 15 – paragraph 2

Text proposed by the Commission

2. The group level resolution authority, in cooperation with the consolidating supervisor and EBA in accordance with Article 25(1) of Regulation (EU) No 1093/2010, shall prepare and submit a report to the parent undertakings or institution subject to consolidated supervision and to the resolution authorities of the subsidiaries. The report shall be prepared in consultation with the competent authorities, and shall analyse the substantive impediments to the effective application of the resolution tools and the exercising of the resolution powers in relation to the group. The report shall *also* recommend any measures that, in the authorities' view, are necessary or appropriate to remove those impediments.

Amendment

2. The group level resolution authority, in cooperation with the consolidating supervisor and EBA in accordance with Article 25(1) of Regulation (EU) No 1093/2010, shall prepare and submit a report to the parent undertakings or institution subject to consolidated supervision and to the resolution authorities of the subsidiaries. The report shall be prepared in consultation with the competent authorities, and shall analyse the substantive impediments to the effective application of the resolution tools and the exercising of the resolution powers in relation to the group. The report shall recommend any ***proportionate and targeted*** measures that, in the authorities' view, are necessary or appropriate to remove those impediments.

Or. en

Justification

The group level resolution authority should be required to act in a proportionate and targeted manner and take into account the impact on the group's business model of any changes that it proposes to remove impediments to resolution. It should be recognised that at the review stage the group will not be experiencing problems.

Amendment 72
Proposal for a directive
Article 16 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that a parent institution in a Member State, or a Union parent institution, or a company referred to in points (c) and (d) of Article 1 and its subsidiaries that are institutions or financial

Amendment

1. ***In order to overcome potential legal impediments to providing financial support within a group of institutions,*** Member States shall ensure that a parent institution in a Member State, or a Union

institutions covered by the supervision of the parent undertaking, may enter into an agreement to provide financial support to any other party to the agreement that experiences financial difficulties, provided that the conditions laid down in this chapter are satisfied.

parent institution, or a company referred to in points (c) and (d) of Article 1 and its subsidiaries that are institutions or financial institutions covered by the supervision of the parent undertaking, may enter into an agreement to provide financial support to any other party to the agreement that experiences financial difficulties, provided that the conditions laid down in this chapter are satisfied. ***The provisions in this chapter shall not restrict the operation of centralised funding within a group of institutions in normal circumstances.***

Or. en

Justification

Many modern banking groups organise their funding centrally, where funding is managed out of a central function, and where one or a few legal entities issue debt that is distributed throughout the organisation. This is an important way to reduce liquidity risk for the institution and the financial system. In many jurisdictions, this is the normal way to operate a banking group, and no legal obstacles exist to provide intra group financial support. In order to make sure that the provisions in the chapter do not become an impediment to the normal funding model of many banking groups, it should be explicitly stated that the requirements of the chapter do not prevent banks from funding themselves centrally, and that the requirements only applies to overcome obstacles of financial support, not to restrict it when no impediments for support exists.

Amendment 73

Proposal for a directive

Article 23 – paragraph 1 – introductory part

Text proposed by the Commission

1. Where an institution does not meet or is likely to breach the requirements ***of Directive 2006/48/EC***, Member States shall ensure that competent authorities, , have at their disposal, in addition to the measures referred to in Article 136 of Directive 2006/48/EC where applicable, in particular, the following measures:

Amendment

1. Where an institution does not meet or is likely to breach the ***own funds*** requirements ***provided for in Article 87(1) of Regulation (EU) No .../2012 of the European Parliament and of the Council of ... [on prudential requirements for credit institutions and investment firms] plus 1,25 %***, Member States shall ensure that competent authorities, have at their disposal, in addition to the measures referred to in Article 136 of Directive

2006/48/EC where applicable, in particular, the following measures:

Or. en

Justification

In order to avoid uncertainty for investors and to promote financial stability the trigger point for early intervention needs to be clearly defined and tied to a harmonised capital level in CRR/CRD IV. It is important to ensure that early intervention measures will not be taken against an institution as soon as it enters into a buffer, i.e. institutions must be allowed to draw on the buffer without triggering early intervention.

Amendment 74
Proposal for a directive
Article 23 – paragraph 1 – point c

Text proposed by the Commission

(c) require the management of the institution to convene, *or* if the management fails to comply with this requirement convene directly, the shareholders meeting of the institution, propose the agenda and the adoption of certain decisions;

Amendment

(c) require the management of the institution to convene, *and* if the management fails to comply with this requirement convene directly, the shareholders meeting of the institution, propose the agenda and the adoption of certain decisions;

Or. en

Justification

Necessary clarification since the measure is taken when the institution is still considered as an institution in business and not in resolution.

Amendment 75
Proposal for a directive
Article 23 – paragraph 1 – point d

Text proposed by the Commission

(d) require the management of the institution to remove and replace one or more board members or managing directors if these persons are found unfit to perform their duties pursuant to Article 11

Amendment

(d) require the management of the institution, *after consulting the shareholders*, to remove and replace one or more board members or managing directors if these persons are found unfit to

of Directive 2006/48/EC;

perform their duties pursuant to Article 11
of Directive 2006/48/EC;

Or. en

Amendment 76
Proposal for a directive
Article 23 – paragraph 1 – point g

Text proposed by the Commission

Amendment

(g) contact potential purchasers in order to prepare for the resolution of the institution, subject to the conditions laid down in article 33(2) and the confidentiality provisions laid down in Article 77.

deleted

Or. en

Justification

Any contacts by supervisors to sell an institution could seriously damage any attempt by the institutions and its owner to perform a recovery and could also risk the institutions possibilities for short term survival and thus lead to resolution. This type of actions should during early intervention lie with the institution and its owners.

Amendment 77
Proposal for a directive
Article 24

Text proposed by the Commission

Amendment

Article 24

deleted

Special management

1. Where there is a significant deterioration in the financial situation of an institution or where there are serious violations of law, regulations or bylaws or serious administrative irregularities, and other measures taken in accordance with Article 23 are not sufficient to reverse that deterioration, Member States shall ensure

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

2. The special manager shall have all the powers of the management of the institution under the statutes of the institution and under national law, including the power to exercise all the administrative functions of the management of the institution. However, the special manager may only exercise the power to convene the general meeting of the shareholders of the institution and to set the agenda with the prior consent of the competent authority.

3. The special manager shall have the statutory duty to take all the measures necessary and to promote solutions in order to redress the financial situation of the institution and restore the sound and prudent management of its business and organization. Where necessary, that duty shall override any other duty of management in accordance with the statutes of the institution or national law, insofar as they are inconsistent. Those solutions may include an increase of capital, reorganisation of the ownership structure of the institution or takeovers by institutions that are financially and organisationally sound.

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

5. Member States shall require that a special manager draw up reports for the appointing competent authority on the

economic and financial situation of the institution and on the acts performed in the conduct of his duties, at regular intervals set by the competent authority and at the beginning and the end of its mandate.

6. Special management shall not last more than one year. This period can be exceptionally renewed if the conditions for appointing a special manager continue to be met. The competent authority shall be responsible for determining whether conditions are appropriate to maintain a special manager and justifying any such decision to shareholders.

7. Subject to the provisions in paragraphs 1 to 6 the appointment of the special manager shall not prejudice the rights of the shareholders or owners provided for in accordance Union or national company law.

Or. en

Justification

Special Management is moved to the resolution phase as Article 57 a (new) since there should be a clear distinction between a recovery phase, where the institution is under supervisory measures according to early intervention, and resolution. During recovery the owners should have full control over the institution while in resolution the control is in the hands of the resolution authority. The ability of the shareholders to fully control the institution is a fundamental part of the governance of the institution that should remain with the shareholders in a recovery phase.

Amendment 78
Proposal for a directive
Article 25 – title

Text proposed by the Commission

Coordination of early intervention measures *and appointment of special manager* in relation to groups

Amendment

Coordination of early intervention measures in relation to groups

Justification

See justification for Article 24.

Amendment 79
Proposal for a directive
Article 25 – paragraph 1

Text proposed by the Commission

1. Where the conditions for the imposition of requirements under Article 23 of this Directive **or the appointment of a special manager in accordance with Article 24 of this Directive** are met in relation to a parent undertaking or an institution subject to consolidated supervision pursuant to Articles 125 and 126 of Directive 2006/48/EC or any of its subsidiaries, the competent authority that intends to take a measure in accordance with **those Articles** shall notify other relevant competent authorities within the supervisory college and EBA of its intention.

Amendment

1. Where the conditions for the imposition of requirements under Article 23 of this Directive are met in relation to a parent undertaking or an institution subject to consolidated supervision pursuant to Articles 125 and 126 of Directive 2006/48/EC or any of its subsidiaries, the competent authority that intends to take a measure in accordance with **that Article** shall notify other relevant competent authorities within the supervisory college and EBA of its intention.

Justification

See justification for Article 24.

Amendment 80
Proposal for a directive
Article 25 – paragraph 2 – subparagraph 1

Text proposed by the Commission

The consolidating supervisor and the other relevant competent authorities shall consider whether it is necessary to take measures in accordance with Article 23 **or appoint a special manager in accordance with Article 24** in relation to other group

Amendment

The consolidating supervisor and the other relevant competent authorities shall consider whether it is necessary to take measures in accordance with Article 23 in relation to other group entities and whether the coordination of the measures to be

entities and whether the coordination of the measures to be taken is desirable. The consolidating supervisor and other relevant authorities shall consider whether any alternative measure would be more likely to restore the viability of the individual entities and preserve the financial soundness of the group as a whole. ***Where more than one competent authority intends to appoint a special manager in relation to an entity affiliated to a group, authorities shall consider whether it is more appropriate to appoint the same special manager for all the entities concerned or for the whole group in order to facilitate solutions redressing the financial soundness of the group as a whole.***

taken is desirable. The consolidating supervisor and other relevant authorities shall consider whether any alternative measure would be more likely to restore the viability of the individual entities and preserve the financial soundness of the group as a whole.

Or. en

Justification

See justification for Article 24.

Amendment 81
Proposal for a directive
Article 26 – paragraph 2 – point b

Text proposed by the Commission

(b) to avoid ***significant*** adverse effects on financial stability, including by preventing contagion, and maintaining market discipline;

Amendment

(b) to avoid adverse effects on financial stability, including by preventing contagion, and maintaining market discipline;

Or. en

Amendment 82
Proposal for a directive
Article 26 – paragraph 3

Text proposed by the Commission

Amendment

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

3. While pursuing the objectives set out in paragraph 2, resolution authorities shall endeavour to protect public funds and to ensure that, as far as circumstances permit, the public sector is compensated for costs and risks assumed by the national financing arrangements set up in accordance with Article 91.

Or. en

Amendment 83
Proposal for a directive
Article 27 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) the competent authority or resolution authority determines that the institution is failing or likely to fail;

(a) the competent authority or resolution authority determines that the institution is ***no longer viable to operate within its authorisation based on the own funds requirements provided for in Article 87 of Regulation (EU) No .../2012 of the European Parliament and of the Council of ... [on prudential requirements for credit institutions and investment firms]*** and is failing or likely to fail;

Or. en

Justification

Resolution measures opens up for a far reaching intrusion in the property rights of the owners of a bank. It must be clear that resolution will only be used in a situation where a bank is very close to insolvency, which is actually discussed in the Impact assessment, but not really reflected in the Directive. The term 'fail' is vague, not least because it might include liquidity problems, not only solvency (see comments on Article 27.2 as well). If it is not clear that resolution can only be used when a bank is very close to insolvency, this will cause great uncertainty for shareholders and debt investors. This will significantly increase systemic risk.

Amendment 84
Proposal for a directive
Article 27 – paragraph 2 – subparagraph 1 – point c

Text proposed by the Commission

Amendment

(c) the institution is or there are objective elements to support a determination that the institution will be, in the near future, unable to pay its obligations as they fall due; ***deleted***

Or. en

Justification

Liquidity related triggers for resolution should be avoided due to the impact on systemic risk. The mere expectation that an institution could end up in resolution could trigger a liquidity crisis and thus be self-fulfilling. Liquidity related triggers are also unnecessary since severe liquidity problems often rapidly develop into loss and capital related problems and then fulfils the trigger in article 27.2 (a).

Amendment 85
Proposal for a directive
Article 27 – paragraph 2 – point d – point i

Text proposed by the Commission

Amendment

(i) a State guarantee to back liquidity facilities provided by central banks according to the banks' standard conditions (the facility is fully secured by collateral to which haircuts are applied, in function of its quality and market value, and the central bank charges a penal interest rate to the beneficiary); or

(i) liquidity facilities provided by central banks according to the banks' standard conditions (the facility is fully secured by collateral to which haircuts are applied, in function of its quality and market value **also when the liquidity facilities are backed by a State guarantee** and the central bank charges a penal interest rate to the beneficiary); or

Or. en

Justification

This section seems to be excluding banks from resolution that has got a state guarantee for their funding. However, it is possible that a central bank will extend ELA (emergency liquidity assistance) without a guarantee from the government. ELA in this context will normally be

provided only if the central bank deems the institution to be solvent. In order not to make ELA from the central bank in itself to be a circumstance where resolution should be introduced, it should explicitly be stated in the Directive that central bank ELA in itself is not a circumstance that suggests that resolution measures may be necessary. In cases of broader systemic disturbances beyond the control of individual banks even solvent institutions could end up in situations where they need governmental funding guarantees. In such cases it will promote financial stability if, when deemed necessary, guarantees may be longer than three months.

Amendment 86
Proposal for a directive
Article 27 – paragraph 2 – subparagraph 2

Text proposed by the Commission

In both cases mentioned in points (i) and (ii), the guarantee measures shall be confined to solvent financial institutions, shall not be part of a larger aid package, shall be conditional to approval under State aid rules, ***and shall be used for a maximum duration of three months.***

Amendment

In both cases mentioned in points (i) and (ii), the guarantee measures shall be confined to solvent financial institutions, shall not be part of a larger aid package, shall be conditional to approval under State aid rules.

Or. en

Justification

See justification for Article 27, paragraph 2, subparagraph 1, point d, point i.

Amendment 87
Proposal for a directive
Article 27 – paragraph 4

Text proposed by the Commission

4. EBA shall issue guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010 to promote the convergence of supervisory and resolution practices regarding the interpretation of the different circumstances when an institution shall be considered as failing or likely to fail. EBA shall develop these guidelines at the latest by the date provided for in the first subparagraph of

Amendment

deleted

Article 115(1) of this Directive.

Or. en

Justification

As discussed earlier, resolution is a far reaching measure that intrudes on property rights. It is not appropriate to give EBA authority to give guidance in such an important part of any country's civil law. This should only be done in the form of Directives on EU level and in the form of laws on the national level.

Amendment 88
Proposal for a directive
Article 30 – paragraph 3 – point d

Text proposed by the Commission

Amendment

***(d) the list of assets held by the institution
for account of third parties who have
ownership rights on those assets.*** ***deleted***

Or. en

Justification

Major banks that are involved in asset management normally have a huge number of customers (third parties) for whom they have records or accounts of their securities holdings. To list all these assets in a global bank is an enormous task, while at the same time, it does not have any value for the assessment of the value of the problem institution, since it is the customers own holdings. To include this in any valuation exercise is just a waste of resources in a situation which is typically highly stressed.

Amendment 89
Proposal for a directive
Article 31 – paragraph 2 – point d a (new)

Text proposed by the Commission

Amendment

***(da) government financial stabilisation
tools.***

Or. en

Amendment 90
Proposal for a directive
Article 37 – paragraph 2 – introductory part

Text proposed by the Commission

2. Member States shall ensure that resolution authorities may apply the bail-in tool for either of the following purposes:

Amendment

2. Member States shall ensure that resolution authorities may apply the bail-in tool ***to meet the resolution objectives specified in Article 26*** for either of the following purposes:

Or. en

Justification

Bail-in is a resolution tool and given its consequences for creditors must not be used until after the Point of Non-Viability as specified by Article 27 and only in conjunction with the safeguards specified in Section 5. It should therefore be clarified that bail-in may only be used to meet the objectives of resolution as specified by Article 26.

Amendment 91
Proposal for a directive
Article 37 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. Member States shall ensure that a proper assessment of the potential impact on the stability of the financial system in the Member States concerned and in the rest of the Union has been carried out before resolution authorities apply the bail-in tool. The resolution authority may decide to make only partial use of the bail-in tool, or not to apply it, according to the overall economic and financial context.

Or. en

Amendment 92
Proposal for a directive
Article 38 – paragraph 2 – subparagraph 1 – point a

Text proposed by the Commission

Amendment

(a) deposits that are guaranteed in accordance with Directive 94/19/EC;

deleted

Or. en

Justification

See justification for Recital 48.

Amendment 93

Proposal for a directive

Article 38 – paragraph 2 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) secured liabilities,

(b) secured liabilities, ***such as covered bonds in a covered pool or register;***

Or. en

Justification

In order to keep covered bonds workable also after the implementation of the directive, it must include a provision ensuring that the whole package of a covered bond arrangement remains intact during the resolution process and until the covered bonds mature in accordance with the relevant covered bonds legislation. This means that all assets, including over collateralization, the covered bonds and all derivatives should stay together throughout the process.

Amendment 94

Proposal for a directive

Article 38 – paragraph 2 – subparagraph 1 – point d

Text proposed by the Commission

Amendment

(d) liabilities with an original maturity of less than ***one month;***

(d) liabilities with an original maturity of less than ***six months;***

Or. en

Justification

An inclusion of unsecured short term debt in bail in would increase systemic risk and give market participant incentives to start a bank run. This threatens to affect not only banks that face large risks but also healthy banks. The short term debt also has a very limited value as bail in debt since it will erode rapidly in stress. An exclusion of debt with an original maturity up to six months decrease systemic risk and increase healthy banks' possibilities to fulfil LCR-requirements also in times of stress.

Amendment 95

Proposal for a directive

Article 38 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Points (a) and (b) of paragraph 2 shall not prevent resolution authorities, where appropriate, from exercising those powers in relation to any part of a secured liability or a liability for which collateral has been pledged that exceeds the value of the assets, pledge, lien or collateral against which it is secured. Member States *may* exempt from this provision covered bonds as defined in Article 22(4) of Council Directive 86/611/EEC.

Amendment

Points (a) and (b) of paragraph 2 shall not prevent resolution authorities, where appropriate, from exercising those powers in relation to any part of a secured liability or a liability for which collateral has been pledged that exceeds the value of the assets, pledge, lien or collateral against which it is secured. Member States *shall* exempt from this provision covered bonds as defined in Article 22(4) of Council Directive 86/611/EEC.

Or. en

Justification

See justification for Article 38, paragraph 2, subparagraph 1, point b.

Amendment 96

Proposal for a directive

Article 39 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that the institutions maintain, at all times, a sufficient aggregate amount of own funds and eligible liabilities expressed as a percentage of the total *liabilities* of the institution *that do not qualify as own funds under Section 1 of Chapter 2 of*

Amendment

1. Member States shall ensure that the institutions maintain, at all times, a sufficient aggregate amount of own funds and eligible liabilities expressed as a percentage of the total *risk exposure amount* of the institution *calculated in accordance with Article 87(3) of*

Title V of Directive 2006/48/EC or under Chapter IV of Directive 2006/49/EC.

Regulation (EU) No .../2012 of the European Parliament and of the Council of ... [on prudential requirements for credit institutions and investment firms].

Or. en

Justification

The current proposal to relate eligible liabilities to total assets introduces a totally new capital requirement which corresponds to a leverage ratio. As a consequence institutions having low risks will be required to carry the same amount of bail in capital and debt as an institution carrying higher risks. This will give false incentives and punish low risk banking, reward higher risks and stimulate shadow banking. The requirement for bail in debt should instead be proportionate to risk weighted assets, and added to the sum of the minimum capital requirement in Pillar I (CRR) and the buffer requirements in CRD IV.

Amendment 97

Proposal for a directive

Article 40 – paragraph 1 – point a

Text proposed by the Commission

(a) the percentage referred to in Article 39(1) is calculated on the basis of the consolidated **level of the liabilities and of the own funds** held by the group;

Amendment

(a) the percentage referred to in Article 39(1) is calculated on the basis of the consolidated **total risk exposure amount as referred to in Article 39(1)** held by the group;

Or. en

Justification

See justification in Article 39, paragraph 1.

Amendment 98

Proposal for a directive

Article 40 – paragraph 1 – point c

Text proposed by the Commission

(c) the parent undertaking or the company referred to in points (c) or (d) of Article 1 **distributes adequately and proportionately, in the form of credit**, the

Amendment

(c) the parent undertaking or the company referred to in points (c) or (d) of Article 1 **does not distribute, in such a way so as to threaten the payment capacity of any of**

funds collected through the issuance of the debt instruments or loans referred to in Article 39 (2), among the institutions which are subsidiaries;

the subsidiaries, the funds collected through the issuance of the debt instruments or loans referred to in Article 39 (2), among the institutions which are subsidiaries;

Or. en

Justification

Banks do not manage their liquidity in a way that makes it appropriate to distribute liquidity proportionately between subsidiaries. Depending on each subsidiary's own funding capacity, needs of funds from the parent may vary between different subsidiaries, and over time. A requirement that funds should be proportionately distributed is too rigid. The interest of the resolution authority should not be to create such rigidity, rather to make sure that the parent is providing liquidity to all subsidiaries to an extent that all subsidiaries continue to make good on their payments, in essence that the parent can't let go of a subsidiary.

Amendment 99 **Proposal for a directive** **Article 41 – paragraph 2**

Text proposed by the Commission

2. Where resolution authorities apply the bail-in tool for the purpose referred to in point (a) of Article 37(2), the assessment referred to in paragraph 1 of this Article shall establish the amount by which eligible liabilities need to be reduced in order to restore the Common Equity Tier 1 capital ratio of the institution under resolution and ***the amount that the resolution authority considers necessary to sustain sufficient market confidence in the institution and*** enable it to continue to comply with the conditions for authorisation and to carry on the activities for which is authorised under Directive 2006/48/EC or Directive 2004/39/EC.

Amendment

2. Where resolution authorities apply the bail-in tool for the purpose referred to in point (a) of Article 37(2), the assessment referred to in paragraph 1 of this Article shall establish the amount by which eligible liabilities need to be reduced in order to restore the Common Equity Tier 1 capital ratio of the institution under resolution and enable it to continue to comply with the conditions for authorisation and to carry on the activities for which is authorised under Directive 2006/48/EC or Directive 2004/39/EC.

Or. en

Justification

Bail-in creates a major uncertainty for investors of bank debt, uncertainty that may lead to significantly increased bank funding costs. For shareholders, bail-in is a serious intrusion to property rights. In order to strike a balance between these interests on the one hand, and the need for creating capital for a bank under resolution on the other, it is important that the bail-in amount is not bigger than necessary, and also that the risk for excessive write downs is diminished as much as possible. The assessment of how much is needed in order 'to sustain sufficient market confidence' is necessarily a quite arbitrary assessment. Moreover, in a crisis situation, the level needed may be extensively high over a potentially fairly brief period. It seems more appropriate that the level of restoration should only cover any gap in regulatory requirement, not topping up with additional buffer capital that quite arbitrarily may be assessed to be needed to restore confidence.

Amendment 100
Proposal for a directive
Article 43 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4 a. When deciding on whether liabilities are to be written down or converted into equity, resolution authorities shall not write down the principal of one class of liabilities, while a class of liabilities that is subordinated to that class is converted into equities.

Or. en

Justification

It is important that the hierarchy of claims is respected when bail-in is applied, and also that investors beforehand can be certain that it will be respected. Without such certainty, investors will require a significant premium for the risk of becoming in fact subordinated to liabilities or equity lower in the hierarchy. When debt is converted to equity, there is always an upside to the position, where the value of the instrument may increase significantly over time if the bank survives. No such upside gain exist if debt is written down. Therefore, a conversion to equity may be superior to a write down.

Amendment 101
Proposal for a directive
Article 47 – paragraph 2 – subparagraph 2

Text proposed by the Commission

The business reorganisation plan shall take account, inter alia, of the current state and future prospects of the financial markets, reflecting best-case and worst-case assumptions. Stress-testing shall consider a *ranged* of scenarios, including a combination of events of stress **and a protracted global recession**. Assumptions shall be compared with appropriate sector-wide benchmarks.

Amendment

The business reorganisation plan shall take account, inter alia, of the current state and future prospects of the financial markets, reflecting best-case and worst-case assumptions. Stress-testing shall consider a *range* of scenarios, including a combination of events of stress **which are chosen to identify the institution's main vulnerabilities**. Assumptions shall be compared with appropriate sector-wide benchmarks.

Or. en

Justification

It is awkward to prescribe that stress events shall cover a specific event such as 'a protracted global recession'. For many banks, a global recession in itself may not be a particularly stressful event, while there may be other scenarios that are much more severe, if they for instance have large exposures to a particular industry or geographic area. As stated earlier, it is more appropriate to use a more general wording, that also focus on the bank's vulnerabilities, rather than a specific scenario.

Amendment 102
Proposal for a directive
Article 50

Text proposed by the Commission

Article 50

Contractual recognition of bail-in

1. Member States shall require institutions to include in the contractual provisions governing any eligible liability, Additional Tier 1 instrument or Tier 2 instrument that is governed by the law of a jurisdiction that is not a Member State a term by which the creditor or party to the agreement creating the liability recognises that the liability may be subject to the write down and conversion powers and agrees to be bound by any reduction of

Amendment

deleted

principal or outstanding amount due, conversion or cancellation that is effected by the exercise of the those powers by a resolution authority.

2. If an institution fails to include in the contractual provisions governing a relevant liability a term required in accordance paragraph 1, that failure shall not prevent the resolution authority from exercising the write down and conversion powers in relation to that liability.

3. The Commission may, by means of delegated acts adopted in accordance with Article 103, adopt measures to specify further the contents of the term required by paragraph 1 of this Article.

Or. en

Justification

It is hard to find any motivation to why there should be a specific reference in the Directive that banks must contractually recognise the risk for bail-in in capital instruments. The Directive will regardless of any contractual provision apply to all capital and debt instruments. It might only lead to confusion and uncertainty to whether the scope for bail-in differs between different liabilities – which they should not.

Amendment 103
Proposal for a directive
Title IV – Chapter III – Section 5 a (new)

Text proposed by the Commission

Amendment

Government financial stabilisation tools

Or. en

Amendment 104
Proposal for a directive
Article 50 a (new)

Article 50a

***General principles of government
financial stabilisation tools***

- 1. In order to give effect to the government financial stabilisation tools, Member States shall ensure that their competent ministries have the resolution powers specified in Articles 56 to 63.***
- 2. In times of systemic crisis Member States shall have the possibility, without prejudice to the use of other resolution tools and in accordance with State aid rules, to participate in the resolution of a credit institution or investment firm or to intervene directly in order to avoid its winding up through certain financial stabilisation tools, with a view to avoid contagion effects and maintaining financial stability in the Member State as well as in the Union as a whole. Such action shall be carried out in close cooperation between the competent ministry and the resolution authority.***
- 3. A Member State may determine the existence of a systemic crisis for the purpose of this Directive.***
- 4. The Commission may, after consulting the ESRB, question the Member State's assessment of the systemic crisis precondition.***
- 5. When applying the government financial stabilisation tools, Member States shall ensure that competent ministries and the resolution authority apply the tools only if all the conditions in Article 27(1) are met, capital has been written down in accordance with Article 51 and either of the following conditions is also met:***
 - (a) the competent ministry and the resolution authority, in consultation with the central bank and the competent***

authority, determine that the application of other resolution tools would not suffice to avoid significant adverse effects on financial stability;

(b) the competent ministry and the resolution authority determine that the application of other resolution tools would not suffice to protect the public interest, where extraordinary public support as well as extraordinary liquidity assistance from the central bank has previously been given to the institution.

6. The financial stabilisation tools shall consist of the following:

(a) a guarantee tool as referred to in Article 50b;

(b) an equity support tool as referred to in Article 50c;

(c) a temporary public ownership tool as referred to in Article 50d.

Or. en

Amendment 105
Proposal for a directive
Article 50 b (new)

Text proposed by the Commission

Amendment

Article 50 b

Guarantee tool

1. Member States may provide guarantees for liabilities or assets of institutions under resolution. Guarantees for equity claims are prohibited.

2. When providing a guarantee under paragraph 1, Member States shall ensure that the guarantee is sufficiently remunerated by the credit institution or investment firm.

Or. en

Amendment 106
Proposal for a directive
Article 50 c (new)

Text proposed by the Commission

Amendment

Article 50 c

Equity support tool

1. Member States may, while respecting the provisions set out by national company law, participate in the recapitalisation of a credit institution by providing capital to the latter in exchange for the following instruments, subject to the requirements of Regulation (EU) No .../2012 of the European Parliament and of the Council of ... [on prudential requirements for credit institutions and investment firms]:

(a) core equity;

(b) other tier 1 or total capital instruments;

(c) other forms of capital which satisfies the requirements for the capital conservation buffer and contra cyclical buffer.

2. Member States shall, to the extent its share holding permits, ensure that institutions subject to the equity support tool are managed on a commercial and professional basis.

3. Having exercised the equity support tool, Member States shall ensure that its stake in the institution is sold off as soon as commercial and financial circumstances allow.

Or. en

Amendment 107
Proposal for a directive
Article 50 d (new)

Text proposed by the Commission

Amendment

Article 50 d

Temporary public ownership tool

- 1. Member States may take a credit institution in its entirety into temporary public ownership.***
- 2. For that purpose the Member State may make one or more share transfer orders in which the transferee is:***
 - (a) a nominee of the Member State; or***
 - (b) a company wholly owned by the Member State.***
- 3. Member States shall ensure that institutions subject to the temporary public ownership tool are managed on commercial and professional basis.***
- 4. Having exercised the temporary public ownership tool, Member States shall ensure that the institution is transferred back to the private sector as soon as commercial and financial circumstances allow.***

Or. en

Amendment 108
Proposal for a directive
Article 52 – paragraph 5

Text proposed by the Commission

Amendment

5. Member States shall require institutions to ensure that the exercise by resolution authorities of the write down power in compliance with Article 51(1) does not constitute an event of default or credit event under the relevant capital instruments.

deleted

Justification

The requirement that bank's must ensure that the exercise of write-down is not an event of default is strange. It is hard to imagine that a write-down for any type of instrument would not be an event of default.

Amendment 109
Proposal for a directive
Article 57 a (new)

Text proposed by the Commission

Amendment

Article 57 a

Special management

- 1. Where there are serious violations of law, regulations or bylaws or serious administrative irregularities, in addition to other powers provided for in this Chapter, Member States shall ensure that resolution authorities may appoint a special manager to replace the management of the institution. Resolution authorities shall make public the appointment of a special manager. Member States shall further ensure that the special manager has the qualifications, ability and knowledge required to carry out his or her functions.*
- 2. The special manager shall have all the powers of the management of the institution under the statutes of the institution and under national law, including the power to exercise all the administrative functions of the management of the institution. However, the special manager may only exercise the power to convene the general meeting of the shareholders of the institution and to set the agenda with the prior consent of the resolution authority.*
- 3. The special manager shall have the statutory duty to take all the measures necessary and to promote solutions in*

order to redress the financial situation of the institution and restore the sound and prudent management of its business and organisation. Where necessary, that duty shall override any other duty of management in accordance with the statutes of the institution or national law, insofar as they are inconsistent. Those solutions 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 defined in Chapter III.

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

5. Member States shall require that a special manager draw up reports for the appointing resolution authority on the economic and financial situation of the institution and on the acts performed in the conduct of his duties, at regular intervals set by the resolution authority and at the beginning and the end of its 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 authority determines that the conditions for appointment of a special manager continue to be met. The resolution authority shall justify such a determination to the shareholders.

7. Subject to the provisions in paragraphs 1 to 6 the appointment of the special manager shall not prejudice the rights of the shareholders or owners provided for in accordance with Union or national company law.

8. The appointment of a special manager shall not be recognised as an enforcement event within the meaning of Directive 2002/47/EC of the European Parliament and of the Council¹ or as insolvency proceedings within the meaning of Directive 98/26/EC of the European Parliament and of the Council².

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

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

¹ OJ L 168, 27.6.2002, p. 43.

² OJ L 166, 11.6.1998, p. 45.

Or. en

Justification

See justification for Article 24.

Amendment 110
Proposal for a directive
Article 84 – paragraph 1 – point b

Text proposed by the Commission

(b) in cases where a third country institution operates a **significant** branch in the Member States;

Amendment

(b) in cases where a third country institution operates a branch in the Member States;

Or. en

Justification

The incorporation of the qualification that a branch must be ‘significant’ is unnecessarily restrictive. The Commission should be afforded the discretion to determine whether it would be appropriate in the circumstances to enter into a cooperation agreement with a third country resolution authority in cases involving EEA and foreign branches without having to meet a significance hurdle.

Amendment 111
Proposal for a directive
Article 84 – paragraph 2

Text proposed by the Commission

2. The agreements referred to in paragraph 1 shall, in particular, seek to ensure the establishment of processes and arrangements between resolution authorities for cooperation in carrying out some or all of the tasks and exercising some or all of the powers indicated in **Article 89**.

Amendment

2. The agreements referred to in paragraph 1 shall, in particular, seek to ensure the establishment of processes and arrangements between resolution authorities for cooperation in carrying out some or all of the tasks and exercising some or all of the powers indicated in **Article 88**.

Or. en

Justification

Might this be a typographical error? One would expect that the intention was to cross refer to Article 88 “Cooperation with third country authorities” rather than Article 89 “Confidentiality”.

Amendment 112
Proposal for a directive
Article 85 – paragraph 2 – point b

Text proposed by the Commission

(b) otherwise has assets, rights or liabilities located in or governed by the law of a Member State.

Amendment

(b) otherwise has assets, **subsidiaries**, rights or liabilities located in or governed by the law of a Member State.

Or. en

Amendment 113
Proposal for a directive
Article 85 – paragraph 4 – point a – indent 1 a (new)

Text proposed by the Commission

Amendment

- subsidiaries of a third-country institution located in the territory of a Member State;

Or. en

Amendment 114
Proposal for a directive
Article 89 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. Member States shall ensure that resolution authorities, competent authorities and competent ministries exchange confidential information with relevant third country authorities only if the following conditions are met:

1. Member States shall ensure that resolution authorities, competent authorities and competent ministries exchange confidential information, **including recovery plans**, with relevant third country authorities only if the following conditions are met:

Or. en

Justification

It is important that recovery plans, which are potentially highly commercially sensitive are included in the scope of the confidentiality requirement.

Amendment 115
Proposal for a directive
Article 91 – paragraph 3 – introductory part

Text proposed by the Commission

Amendment

3. For the purpose provided for in paragraph 2, financing arrangements shall **in particular have:**

3. For the purpose provided for in paragraph 2, financing arrangements shall **have the power to raise annual ex-ante contributions as specified in Article 94.**

Justification

Resolution should be funded by the industry ex-ante, since requiring large contributions ex-post in the event of a systemic crisis might destabilise the situation further. Also, it would imply that the still viable banks, i.e. those who have proven to be the most properly managed, will have to make up for the mistakes of others. This would be a form of collective punishment otherwise not accepted in our societies and would pose a significant moral hazard risk if others are to mop up the mess one self's excessive risks have created. Further, an ex-ante scheme must not imply a resolution fund in the literal meaning of the word. Considering the investment strategy problem arising from the fact that this fund in many Member States would be very big, even if the Commission's proposal of one per cent of eligible deposits was to be kept, an alternative could be to pay down public debt instead of piling the contributions into a fund then investing in specific assets (which would have to be of outmost quality and, at the same time, truly liquid in case of urgently having to draw on them). The logic would then be that of an insurance scheme whereby the industry makes annual contributions and that the State provides the funds needed for resolution when so warranted. Since these funds would only be available for banks in resolution, i.e. as gone concerns where shareholders and creditors take the first hit, eventual moral hazard risks should be mitigated. A specific target level would then be irrelevant.

Amendment 116**Proposal for a directive****Article 91 – paragraph 3 – point a***Text proposed by the Commission**Amendment*

(a) the power to raise ex ante contributions as specified in Article 94 with a view to reaching the target level specified in Article 93;

*deleted**Justification*

See justification for Article 91, paragraph 3, introductory part.

Amendment 117**Proposal for a directive****Article 91 – paragraph 3 – point b**

Text proposed by the Commission

Amendment

***(b) the power to raise ex post
extraordinary contributions as specified
in Article 95, and*** ***deleted***

Or. en

Justification

See justification for Article 91, paragraph 3, introductory part.

Amendment 118
Proposal for a directive
Article 91 – paragraph 3 – point c

Text proposed by the Commission

Amendment

***(c) the power to contract borrowings and
other forms of support as specified in
Article 96.*** ***deleted***

Or. en

Justification

See justification for Article 91, paragraph 3, introductory part.

Amendment 119
Proposal for a directive
Article 93

Text proposed by the Commission

Amendment

Article 93 ***deleted***

Target funding level

***1. Member States shall ensure that, in a
period no longer than 10 years after the
entry into force of this directive, the
available financial means of their
financing arrangements reach at least 1%
of the amount of deposits of all the credit
institutions authorised in their territory***

which are guaranteed under Directive 94/19/EC.

2. During the initial period of time referred to in paragraph 1, contributions to the financing arrangements raised in accordance with Article 94 shall be spread out in time as evenly as possible until the target level is reached.

Member States may extend the initial period of time for a maximum of four years in case the financing arrangements make cumulated disbursements superior to 0.5% of covered deposits.

3. If, after the initial period of time referred to in paragraph 1, the available financial means diminish below the target level specified in paragraph 2, contributions raised in accordance with Article 94 shall resume until the target level is reached. Where the available financial means amount to less than half of the target level, the annual contributions shall not be less than 0.25% of covered deposits.

Or. en

Justification

See justification for Article 91, paragraph 3, introductory part.

Amendment 120
Proposal for a directive
Article 94 – paragraph 2 – point b

Text proposed by the Commission

(b) if a Member State has not availed itself of the option provided for in Article 99(5) to use the funds of the Deposit Guarantee Scheme for the purposes of Article 92, the contribution from each institution shall be pro-rata to the total amount of its liabilities, excluding own funds, with respect to the total liabilities,

Amendment

(b) the contribution from each institution shall be pro-rata to the total amount of its liabilities, excluding own funds, with respect to the total liabilities, excluding own funds, of all the institutions authorised in the territory of the Member State.

excluding own funds, of all the institutions authorised in the territory of the Member State.

Or. en

Justification

See justification for Article 99, paragraph 5.

Amendment 121
Proposal for a directive
Article 94 – paragraph 2 – point c a (new)

Text proposed by the Commission

Amendment

(c a) the annual contributions may be used to reduce the sovereign debt burden of the Member State, thereby strengthening its ability to guarantee the financing arrangement.

Or. en

Justification

See justification for Article 91, paragraph 3, introductory part.

Amendment 122
Proposal for a directive
Article 95

Text proposed by the Commission

Amendment

Article 95

deleted

Extraordinary ex post contributions

1. Where the available financial means are not sufficient to cover the losses, costs or other expenses incurred by the use of the financing arrangements, Member States shall ensure that extraordinary ex post contributions are raised from the institutions authorised in their territory, in order to cover the additional amounts.

These extraordinary contributions shall be allocated between institutions in accordance with the rules set out in Article 94(2).

2. The provisions of Article 94(4) to (8) shall be applicable to the contributions raised under this article.

Or. en

Justification

The right to require ex post contributions is no longer relevant as the financing arrangement is turned into an annual contribution to be paid by the institutions, irrespective of the amount of funds previously accumulated. See further justification for Article 91, paragraph 3, introductory part.

Amendment 123 **Proposal for a directive** **Article 96**

Text proposed by the Commission

Member States shall ensure that financing arrangements under their jurisdiction ***are enabled to contract borrowings or other forms of support from financial institutions, the central bank, or other third parties***, in the event that the amounts raised in accordance with Article 94 are not sufficient ***to cover the losses, costs or other expenses incurred by the use of the financing arrangements, and the extraordinary contributions provided for in Article 95 are not immediately accessible.***

Amendment

Member States shall ensure that financing arrangements under their jurisdiction ***have the full backing of the Member State and can finance resolution measures also*** in the event that the amounts raised in accordance with Article 94 are not sufficient ***and ex-post contributions are not deemed possible due to the risk to overall financial stability which such ex post contributions would create.***

Or. en

Amendment 124 **Proposal for a directive** **Article 97 – paragraph 1**

Text proposed by the Commission

Amendment

1. Member States shall ensure that financing arrangements under their jurisdiction shall have the **right** to borrow from all other financing arrangements within the Union, in the event that the amounts raised under Article 94 are not sufficient to cover the losses, costs or other expense incurred by the use of the financing arrangements, **and the extraordinary contributions foreseen in Article 95** are not immediately accessible.

1. Member States shall ensure that financing arrangements under their jurisdiction shall have the **opportunity** to borrow from all other financing arrangements within the Union, in the event that the amounts raised under Article 94 are not sufficient to cover the losses, costs or other expense incurred by the use of the financing arrangements are not immediately accessible.

Or. en

Justification

An automatic right to borrow from other Member State's resolution funds would pose a non-neglectable moral hazard risk. Whilst burden-sharing will be needed for cross-border institutions, it should be clarified that for standard resolution, i.e. not a cross-border institution, there should be no obligation for one Member State to lend to another, but rather an opportunity to do so if the former Member State so concurs.

Amendment 125
Proposal for a directive
Article 97 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Amendment

2. Member States shall ensure that financing arrangements under their jurisdiction **are obliged** to lend to other financing arrangements within the Union in the circumstances specified under paragraph 1.

2. Member States shall ensure that financing arrangements under their jurisdiction **can be authorised by the resolution authority of that Member State** to lend to other financing arrangements within the Union in the circumstances specified under paragraph 1.

Or. en

Justification

See justification for Article 97, paragraph 1.

Amendment 126
Proposal for a directive
Article 97 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Subject to the first subparagraph, national financing arrangements shall not be ***obliged*** to lend to another national financing arrangement in those *circumstances* when the resolution authority of the Member State of the financing arrangement considers that it would not have sufficient funds to finance any foreseeable resolution in the near future. In any case they should not be ***obliged*** to lend more than half of the funds that the national financing arrangement has available at the moment when the borrowing request is formalised.

Amendment

Subject to the first subparagraph, national financing arrangements shall not be ***authorised*** to lend to another national financing arrangement in those *circumstances* when the resolution authority of the Member State of the financing arrangement considers that it would not have sufficient funds to finance any foreseeable resolution in the near future. In any case they should not be ***authorised*** to lend more than half of the funds that the national financing arrangement has available at the moment when the borrowing request is formalised.

Or. en

Justification

See justification for Article 97, paragraph 1.

Amendment 127
Proposal for a directive
Article 99 – paragraph 5

Text proposed by the Commission

5. Member States may also provide that the available financial means of deposit guarantee schemes established in their territory may be used for the purposes of Article 92(1), provided that the deposit guarantee schemes comply, where applicable, with the provisions laid down in Articles 93 to 98.

Amendment

deleted

Or. en

Justification

In order to safeguard the credibility of the deposit guarantee scheme, Member States shall not be allowed to use the funds of the deposit guarantee scheme for resolution purposes (other than through a potential bail-in of the DGS).

Amendment 128
Proposal for a directive
Article 99 – paragraph 6

Text proposed by the Commission

Amendment

6. Member States shall ensure that the deposit guarantee scheme has arrangements in place to ensure that, following a contribution made by the deposit guarantee scheme under paragraphs 1 or 5 and where the depositors of the institution under resolution need to be reimbursed, the members of the scheme can immediately provide the scheme with the amounts that have to be paid.

deleted

Or. en

Justification

See justification for Article 99, paragraph 5.

Amendment 129
Proposal for a directive
Article 99 – paragraph 7

Text proposed by the Commission

Amendment

7. Where Member States avail themselves of the option provided for under paragraph 5 of this Article, the deposit guarantee schemes shall be considered as financing arrangements for the purpose of Article 91. In that case Member States may abstain from establishing separate funding arrangements.

deleted

Justification

See justification for Article 99, paragraph 5.

Amendment 130
Proposal for a directive
Article 99 – paragraph 8

Text proposed by the Commission

Amendment

8. Where a Member State avails itself of the option provided for in paragraph 5, the following priority rule shall apply to the use of available financial means of the deposit guarantee scheme. **deleted**

If the deposit guarantee scheme is, at the same time, requested to use its available financial means for the purposes specified in Article 92 or for the purpose of the first paragraph of this Article, and for the repayment of depositors under Directive 94/19/EC, and the available financial means are insufficient to satisfy all these requests, priority shall be given to the repayment of depositors under Directive 94/19/EC and to the actions specified under paragraph 1 of this Article, over the payments for the purposes provided for in Article 92 of this Directive.

Justification

See justification for Article 99, paragraph 5.

Amendment 131
Proposal for a directive
Article 99 – paragraph 9

Text proposed by the Commission

Amendment

9. Where eligible deposits with an institution under resolution are transferred to another entity through the sale of business tool or the bridge institution tool, the depositors have no claim under Directive 94/19/EC against the deposit guarantee scheme in relation to any part of their deposits with 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 laid down in Article 7 of Directive 94/19/EC.

deleted

Or. en

Justification

See justification for Article 99, paragraph 5.

Amendment 132
Proposal for a directive
Article 103 – paragraph 5

Text proposed by the Commission

Amendment

5. A delegated act adopted pursuant to Articles 2, 4, 28, 37, 39, 43, 86, 94, 97 and 98 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of **two months** of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by **two months** at the initiative of the European Parliament or the Council.

5. A delegated act adopted pursuant to Articles 2, 4, 28, 37, 39, 43, 86, 94, 97 and 98 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of **three months** of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by **three months** at the initiative of the European Parliament or the Council.

Or. en

Amendment 133
Proposal for a directive
Article 113 a (new)

Text proposed by the Commission

Amendment

Article 113 a

Cooperation with EBA

The competent authorities shall cooperate with the EBA for the purposes of this Directive in accordance with Regulation (EU) No 1093/2010.

The competent authorities shall, without delay, provide EBA , , the with all the information necessary to carry out its duties in accordance with Regulation (EU) No 1093/2010.

Or. en

Amendment 134
Proposal for a directive
Article 113 b (new)

Text proposed by the Commission

Amendment

Article 113 b

Staff and resources of EBA

By ..., EBA shall assess the staffing and resources needs arising from the assumption of its powers and duties in accordance with this Directive and submit a report to the European Parliament, the Council and the Commission.

Or. en

Amendment 135
Proposal for a directive
Article 115 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Member States shall adopt and publish by 31 December 2014 at the latest the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

Amendment

Member States shall adopt and publish by 31 December 2014 at the latest the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions **and a correlation table between those provisions and this Directive.**

Or. en

Amendment 136
Proposal for a directive
Annex 1 – section 1 – paragraph 1 – point 5

Text proposed by the Commission

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

Amendment

(5) an estimation of the timeframe for executing each material **measure**;

Or. en

Justification

The recovery plan needs to include a number of well analysed measures. However these measures will need to be evaluated in light of the specific institution and implemented based on the specific crises. Therefore the recovery plan needs to be viewed in a toolbox perspective.

Amendment 137
Proposal for a directive
Annex 1 – section 1 – paragraph 1 – point 6

Text proposed by the Commission

(6) a **detailed** description of any material impediment to the effective and timely execution of the plan, including consideration of impact on the rest of the group, customers and counterparties;

Amendment

(6) a description of any material impediment to the effective and timely execution of **measures in** the plan, including consideration of impact on the rest of the group, customers and counterparties;

Justification

See justification for Annex 1, section 1, paragraph 1, point 5.

Amendment 138
Proposal for a directive
Annex 1 – section 1 – paragraph 1 – point 8

Text proposed by the Commission

(8) a **detailed** description of the **processes** for determining the value and marketability of the core business lines, operations and assets of the institution;

Amendment

(8) a description of the **strategy** for determining the value and marketability of the core business lines, operations and assets of the institution;

Justification

See justification for Annex 1, section 1, paragraph 1, point 5.

Amendment 139
Proposal for a directive
Annex 1 – section 1 – paragraph 1 – point 9

Text proposed by the Commission

(9) a **detailed** description of how recovery planning is integrated into the corporate governance structure of the institution as well as the policies and procedures governing the approval of the recovery plan and identification of the persons in the organisation responsible for preparing and implementing the plan;

Amendment

(9) a description of how recovery planning is integrated into the corporate governance structure of the institution as well as the policies and procedures governing the approval of the recovery plan and identification of the persons in the organisation responsible for preparing and implementing the plan;

Justification

See justification for Annex 1, section 1, paragraph 1, point 5.

Amendment 140
Proposal for a directive
Annex 1 – section 1 – paragraph 1 – point 19

Text proposed by the Commission

(19) preparatory measures that the institution has taken or plans to take in order to facilitate the implementation of the recovery plan, including those necessary to enable the timely recapitalisation of the institution.

Amendment

(19) preparatory measures that the institution has taken or plans to take in order to facilitate the implementation of **measures in** the recovery plan, including those necessary to enable the timely recapitalisation of the institution.

Or. en

Justification

See justification for Annex 1, section 1, paragraph 1, point 5.

EXPLANATORY STATEMENT

Introduction

In this draft report, your rapporteur has had three main points of departure for his proposals.

First of all, legislation for financial markets and banks must aim to create a solid and stable system which minimises the risk of a financial crisis occurring and, when a crisis nevertheless comes about, ensures that the situation can be resolved as soon as possible. That is why the Single Rulebook is of fundamental importance, by laying the foundation for legislation covering the whole of the European Union and, thereby, the world's largest financial market. In order to mobilise all its strengths and advantages, the Union must be kept together and not divided as fragmentation would threaten our opportunities. This is why your rapporteur underlines the need to get this legislation, alongside CRD4 and DGS, in place before a discussion on further means and actions is commenced since that would risk splitting rather than uniting the Union.

Second, a precondition for a vital and dynamic banking industry is sensitivity and responsibility in individual banks and financial institutions. This requires that the fundamental rule of capitalism saying that owners shall not only be entitled to profits but also bear losses is revived in the banking sector in the same way that it applies to owners of all other companies.

Being too big or too interconnected to fail must not be perceived as an insurance guaranteeing survival. The true insurance for survival must only be the institution's ability to responsibly generate profits through proper risk management, which will only be achieved if shareholders face the full responsibility for future losses as well as profits. From this perspective, your rapporteur welcomes the bail-in tool as one of a number of means to enforce the full responsibility of shareholders and, not the least, creditors who must carry out robust credit assessments before lending money; also in this regard has moral hazard proven to be a major problem.

Thirdly, however, allocating losses to shareholders and creditors might not be enough for safeguarding financial stability. As past and present experience tells us, there is an archetypical difference between a single bank in a crisis and a banking crisis. In the former case the crisis is most often the result of improper risk taking, bad management, flawed business models or other firm-specific reasons based upon decisions which have exposed the institution to excessive risks. The latter case, on the other hand, is characterised by problems stemming from macroeconomic imbalances exposing all banks to bigger risks than what could reasonably have been foreseen. Some banks will be better prepared than others, but the cause of the crisis is exogenous. In the first case, values are most probably lost forever but in the second case, the systemic crisis, asset and collateral values will recover as time elapses and the overall economy returns to growth.

Then, the main problem in the systemic crisis is not forever falling asset values but rather fear and lack of confidence which such falls might trigger. In order to fight fear and restore confidence the state has means comparable to no other institution in society. A systemic crisis will pose significant risks to society and its citizens and must therefore be handled with all available means. Even though public intervention might put tax-payers' money at risk in the

short term it must, for the sake of safeguarding financial stability, be a last-hand opportunity. Thereby could it be avoided that even bigger costs are inflicted upon the very same taxpayers, which a further financial as well as overall economic deterioration would imply. If government intervention could limit those costs, it would be a mistake and a deprivation to the tax-payers one seeks to protect to exclude, as the very last resort, public money being used for the purpose of bank resolution. Finally, to state what to my mind is obvious: a non-negotiable prerequisite for any kind of public capital support shall be that shareholders are fully wiped out and creditors faced by adequate losses.

Designation of supervisory and resolution authorities

Competent authorities responsible for supervision shall not be the same as those for resolution as it might risk conflicts of interest and blurring the respective tasks. For those Member States where this for practical reasons would be a problem, the possibility to draw on the resources of the competent ministry is retained, e.g. to set up the resolution authority under the auspices of that ministry.

Recovery and resolution plans

The level of ambition for recovery and resolution plans is exceedingly high. Although dearly desirable indeed, it is questionable whether the current outline of detail is practically feasible and it could be questioned what is the marginal benefit of all provisions to be taken into account given that the occurrence of a systemic crisis will alter the rules of the game anyhow; it is simply not feasible to plan for a systemic crisis as one almost by definition will not know what that might be until you face it. Therefore, your rapporteur suggests scaling down the scope for general scenario-based planning and rather focusing on issues specific to each institution.

Early intervention and property rights

It is warranted that authorities can intervene at an early stage and uphold an intense dialogue with institutions starting to show weaknesses. However, it should be remembered that the institution at this stage still is viable and operating at capital levels well above the minimum levels. Hence, for sake of legal certainty and transparency it is vital to distinguish between the phases where the shareholders of an institution are still in full control of the institution and the phase where control is seized by the resolution authority. During the recovery and early intervention phases under this Directive, shareholders should still have full responsibility and control of the institution whereas this should no longer be the case once the institution has been put under resolution.

Your rapporteur has sought to further clarify this difference, e.g. by moving the Special Manager, which is given far-reaching powers including some otherwise foreseen only in resolution, to the resolution phase. Also, the powers given to resolution authorities in Articles 6 and 14 to remove possible impediments to resolution would represent a far reaching interference with property rights in banks. The resolution authority would become involved in detailed business issues such as strategy, organisational structure, product development and business development of healthy banks. To the extent that these questions are issues, they should be taken care of in the supervisory process and through ordinary banking regulation. This is also already being done through extensive regulation and through article 6.3 and 6.4 of

this directive. The current proposal gives power to resolution authorities to go far beyond the purpose of other regulations regarding issues like large exposures, internal governance and legal structure.

And in order to avoid uncertainty for investors and to promote financial stability, the trigger point for early intervention needs to be clearly defined and tied to a harmonised capital level in CRR/CRD IV. It is important to ensure that early intervention measures will not be taken against an institution as soon as it enters into a buffer, i.e. institutions must be allowed to draw on the buffer without triggering early intervention.

Entry into resolution

Resolution measures opens up for a far reaching intrusion in the property rights of the owners of a bank - and reasonably so. It must, however, be clear that resolution will only be used in a situation where a bank is very close to insolvency, which is actually discussed in the Impact assessment, but not really reflected in the Directive. The term 'fail' currently used by the Commission is very vague, not least because it might include liquidity problems – not only solvency – and liquidity related triggers for resolution should be avoided due to the impact on systemic risk (the mere expectation that an institution could end up in resolution could trigger a liquidity crisis and thus be self-fulfilling). If it is not clear that resolution can only be used when a bank is very close to insolvency, this will cause great uncertainty for shareholders and debt investors. This will significantly increase systemic risk.

The bail-in tool

The bail-in tool is to be warmly welcomed as it will instil discipline on banks' creditors. Member States shall though ensure that before resolution authorities apply the bail-in tool, a proper assessment of the potential impact on the stability of the financial system in the Member States concerned but also in the rest of the European Union has been carried out. The resolution authority shall, when deemed appropriate, have the possibility to make partial use of the bail-in tool, or to decide not to apply it, in accordance with the economic and financial context overall.

Further, an inclusion of unsecured short term debt in bail-in would increase systemic risk and give market participant incentives to start a bank run. This threatens to affect not only banks that face large risks but also healthy banks. The short term debt also has a very limited value as bail-in debt since it will erode rapidly in stress. An exclusion of debt with an original maturity up to six months, instead of one as currently suggested, would decrease systemic risk and increase healthy banks' possibilities to fulfil LCR-requirements also in times of stress.

Regarding the calculation of minimum bail-inable debt, the current proposal to relate eligible liabilities to total assets introduces a totally new capital requirement which corresponds to a leverage ratio. As a consequence institutions having low risks will be required to carry the same amount of bail-in capital and debt as an institution carrying higher risks. This will give false incentives and punish low risk banking, reward higher risks and stimulate shadow banking. The requirement for bail-in debt should instead be proportionate to risk weighted assets, and added to the sum of the minimum capital requirement in Pillar I (CRR) and the buffer requirements in CRD IV.

Government financial stabilisation tools (GFSTs)

Against the background of the introduction above, your rapporteur is introducing three additional tools in the resolution toolbox: first, a guarantee of bank liabilities to be used for one or more banks in resolution in order to restore confidence and a manageable funding situation; second, capital injections to be used to participate in a recapitalisation of the institution; and third, taking the institution in its entirety into temporary public ownership.

It should though be stressed once more: no public capital support is to be granted unless existing shareholders have faced losses to the full amount of their equity holdings and losses have been allocated to creditors to an appropriate extent. The fact that this is a resolution tool will make sure this is the case. Also, by seizing ownership it is ensured that there is an upside to taxpayers as they will receive the profits once the bank is reprivatized, which it should be as soon as commercial circumstances allow. Whilst the institution is under temporary public ownership, Member States must ensure it is managed on purely commercial and professional basis.

GFSTs are to be applied in accordance with Union State aid rules and without prejudice to other resolution tools, i.e. it should be up to the Member State's discretion whether to apply it or not.

Resolution funding

The funding issues are delicate. The initial view of your rapporteur is that resolution should be funded by the industry ex-ante, since ex-post solutions probably will not be feasible when all banks are hit by a systemic crisis; requiring large contributions at that stage might destabilise the situation further. Also, it would imply that the still viable banks, i.e. those who have proven to be the most properly managed, will have to make up for the mistakes of others. This would be wrong for two reasons; first, it is a form of collective punishment otherwise not accepted in our societies; and two, it would indeed pose a significant moral hazard risk if others are to mop up the mess one self's excessive risks have created.

An ex-ante scheme does not, however, imply that there must be a resolution fund in the true meaning of the word. Considering the investment strategy problem arising from the fact that this fund in many Member States would be very big, even if the Commission's proposal of one per cent of eligible deposits was to be kept, an alternative could be to pay down public debt instead of piling the contributions into a fund then investing in specific assets (which would have to be of outmost quality and, at the same time, truly liquid in case of urgently having to draw on them). The logic would then be that of an insurance scheme whereby the industry makes annual contributions and that the State provides the funds needed for resolution when so warranted. Since these funds would only be available for banks in resolution, i.e. as gone concerns where shareholders and creditors take the first hit, eventual moral hazard risks should be mitigated. A specific target level would then be irrelevant.

What would pose a moral hazard risk, on the other hand, is an automatic right to borrow from other Member State's resolution funds. Whilst burden-sharing will be needed for cross-border institutions, your rapporteur is clarifying that for standard resolution, i.e. not a cross-border institution, there should be no obligation for one Member State to lend to another, but rather an opportunity to do so if the former Member State so concurs.