

The Bank Recovery and Resolution Regime in the EU

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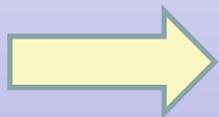
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A. Introductory remarks

A. Introductory remarks:

1. Recent international developments

■ A significant development in addressing the risks for the global financial system deriving from Systemically Important Financial Institutions (SIFIs) was taken by the **G20 at the 2011 Cannes Summit**, when the comprehensive policy framework prepared by the Financial Stability Board (FSB) and the Basel Committee on Banking Supervision (BCBS) was endorsed:



FSB (2011): *Key Attributes of Effective Resolution Regimes for Financial Institutions*

- ✓ **new international standard**
- ✓ aimed at the convergence of national resolution regimes
- ✓ aimed at the coordination of resolution of financial institutions active in multiple countries.
- ✓ provides for specific tools and powers

A. Introductory remarks

2. Legislative reactions in the EU- Harmonization of rules

A. Report of the high-level Group on Financial Supervision in the EU (*Larosiere Report*) (2009):

“The absence, therefore, of a sound framework for crisis management and resolution (with sufficiently clear principles on burden sharing, customers' protection, assets transferability and winding up) complicates the introduction of an effective and efficient supervisory system to avoid financial crises in the first place...”



“Recommendation 13: The Group calls for a coherent and workable regulatory framework for crisis management in the EU ...”



BRRD Proposal - 6 June 2012



Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms - 15 May 2014

A. Introductory remarks

2. Legislative reactions in the EU- Harmonization of rules

- The BRRD lays down a **complete framework** that allows authorities to cope with unsound or failing credit institutions. The framework provides, in particular, the **necessary tools and powers** needed to prevent insolvency or, when insolvency occurs, to minimize negative repercussions through the **preservation of the systemically important functions** of the institution concerned
- National resolution authorities (NRAs) are equipped with a common framework for the recovery and resolution of credit institutions and investment firms in order to achieve the **resolution in an orderly manner** of the failing financial institutions, safeguarding the financial stability and **minimizing the public expenditure**

A. Introductory remarks

2. Legislative reactions in the EU – Banking Union

The current fiscal crisis in the euro area triggered, furthermore, a new debate on the need to set up supranational supervisory authorities for the European financial system. The debate took on a broader focus, with a view to creating a **‘European Banking Union’**, which would lead to setting up at Union level:

- a **Single Supervisory Authority** exclusively for the banking sector, under the auspices of the ECB, in the framework of a Single Supervisory Mechanism,
- a **Single Resolution Authority** for unviable credit institutions in the framework of a Single Resolution Mechanism as well as a Single Resolution Fund,
- a *Single Deposit Guarantee Scheme*, and
- a **Single Rulebook that will cover all the above aspects, on the basis of a ‘harmonisation approach’**.

The BRRD is part of the Single Rulebook which is applicable to all 28 Member States of the European Union

The main legal sources of the European Banking Union

	Prudential supervision and prudential regulation of credit institutions	Resolution of unviable credit institutions	Operation of deposit guarantee schemes
European bodies (EU 18+)	Single Supervisory Mechanism <ul style="list-style-type: none"> • Council Regulation 1024/2013 • ECB Framework Regulation (25 April 2014) 	Single Resolution Mechanism and Single Bank Resolution Fund <ul style="list-style-type: none"> • Regulation of the European Parliament and of the Council - adopted in April 2014 • Inter-Governmental Agreement on the transfer and mutualisation of contributions to the Single Resolution Fund 	No legislative proposal yet
Harmonisation of rules – Single Rulebook (EU 28+)	<ul style="list-style-type: none"> • Regulation 575/2013 of the European Parliament and of the Council (CRR) • Directive 2013/36/EU of the European Parliament and of the Council (CRD IV) • EBA Technical Standards adopted by the Commission - Delegated and Implementing Regulations 	<ul style="list-style-type: none"> • Directive 2014/59/EU of the European Parliament and of the Council (BRRD) – 15 May 2014 • EBA Technical Standards adopted by the Commission - Delegated and Implementing Regulations 	<ul style="list-style-type: none"> • Directive 2014/49/EU of the European Parliament and of the Council (DGSD) • EBA Technical Standards adopted by the Commission - Delegated Regulations

European Banking Law: Elements of change and continuity
(italics denote new or potentially new elements since 2013)

Financial policy instruments	Authorities/rules
Authorisation and micro-prudential supervision of credit institutions	<i>Single Supervisory Mechanism</i> <i>Harmonisation of rules - Single Rulebook</i>
Micro- and macro-prudential regulation of credit institutions	<i>Harmonisation of rules - Single Rulebook</i>
Macro-prudential oversight of the financial system	European Systemic Risk Board
Reorganisation and winding-up of credit institutions	National authorities and mutual recognition between Member States
Resolution of credit institutions	<i>Single Resolution Mechanism</i> <i>Single Resolution Fund</i> <i>Harmonisation of rules - Single Rulebook</i>
Operation of deposit guarantee schemes	<i>Single European Deposit Guarantee Scheme (pending)</i> <i>Harmonisation of rules - Single Rulebook</i>
Last resort lending	Emergency Liquidity Assistance (ELA): national central banks <i>or the ECB?</i>
Recapitalisation of systemically important institutions by public funds	National governments - <i>Potentially the ESM</i>

B. The Bank Recovery and Resolution Regime in the EU

1. General overview of the BRRD

1. General overview of the BRRD

- Title I “Scope, Definitions and Authorities”
- Title II “Preparation”
 - a. Chapter I: Recovery and resolution planning (art. 4- 14)
 - i. Section 1: General provisions
 - ii. Section 2: Recovery planning
 - iii. Section 3: Resolution planning
 - b. Chapter II: Resolvability (art. 15-18)
 - c. Chapter III: Intra group financial support (art. 19-26)
- Title III “Early intervention” (art. 27- 30)

1. General overview of the BRRD

■ Title IV “Resolution”

- a. Chapter I: Objectives, conditions and general principles (art. 31-34)
- b. Chapter II: Special management (art. 35)
- c. Chapter III: Valuation (art. 36)
- d. Chapter IV: Resolution tools (art. 37- 58)
 - i. Section 1: General principles
 - ii. Section 2: The sale of business tool
 - iii. Section 3: The bridge institution tool
 - iv. Section 4: The asset separation tool
 - v. Section 5: The bail-in tool
- e. Chapter V: Write down of capital instruments (art. 59-62)
- f. Chapter VI: Resolution powers (art. 63-72)
- g. Chapter VII: Safeguards (art. 73-80)
- h. Chapter VIII: Procedural obligations (art. 81-84)
- i. Chapter IX: Right of appeal and exclusion of other actions (art. 85-86)

1. General overview of the BRRD

- Title V “Cross-border group resolution” (art. 87- 92)
- Title VI “Relations with third countries” (art. 93)
- Title VII “Financing arrangements” (art. 99- 109)
- Title VIII “Penalties” (art. 110-114)
- Title IX “Powers of Execution” (art.115)
- Title X - Amendments to Directives and Regulations (art. 116- 126)
- Title XI “Final provisions”(art. 127- 132)

Annex:



- Section A: Information to be included in recovery plans
- Section B: Information that resolution authorities may request for the purposes of drawing up and maintaining resolution plans
- Section C: Matters that the resolution authority is required to consider when assessing the resolvability of an institution or group



- Commission’s delegated acts: articles 2, 44(11), 76(4), 103 (7) and (8), 104(4)

1. General overview of the BRRD

Some key elements

- **minimum level of harmonization**

- **Administrative nature of the procedure**

“...Resolution authorities may be national central banks, competent ministries or other public administrative authorities or authorities entrusted with public administrative powers. Member States may exceptionally provide for the resolution authority to be the competent authorities for supervision for the purposes of Regulation (EU) No 575/2013...” (art. 3(3))

- **Definition of resolution**

✓ “Resolution” means the application of a resolution tool or a tool referred to in article 37(9) in order to achieve one or more of the resolution objectives referred to in article 31(2)

1. Overview of the BRRD- Definition of resolution (cont.)

application of a resolution tool or a tool referred to in article 37(9)	In pursuit of one or more objectives in art.31(2)
<p>Resolution tools (art. 37(3)):</p> <ul style="list-style-type: none"> <input type="checkbox"/> Sale of business <input type="checkbox"/> Bridge institution <input type="checkbox"/> Asset separation <input type="checkbox"/> Bail-in 	<ol style="list-style-type: none"> 1. continuity of critical functions 2. avoidance of a significant adverse effect on the financial system, in particular by preventing contagion and by maintaining market discipline
<p>Tools of art. 37(9): “Member States <i>may confer upon resolution authorities additional tools</i> and powers... provided that:</p> <ol style="list-style-type: none"> a) when applied to a cross-border group, those additional powers do not pose obstacle to effective group resolution, and b) they are consistent with the resolution objectives and the general principles in art. 31 and 34.” 	<ol style="list-style-type: none"> 3. protection of public funds by minimising reliance on extraordinary public financial support 4. protection of depositors covered by Directive 2014/49/EU and investors covered by Directive 97/9/EC, 5. protection of client funds and client assets <p><i>In pursuit of the above, the resolution authority shall seek to:</i></p> <ul style="list-style-type: none"> ✓ <i>minimise the cost of resolution and</i> ✓ <i>avoid destruction of value unless necessary to achieve the resolution objectives.</i>

1. General overview of the BRRD

Some key elements (cont.)

■ **Scope of application (Art.1):**

- (a) **Credit institutions and investment firms** established in the Union,
- (b) **financial institutions** established in the Union when the financial institution is a subsidiary of a credit institution or investment firm, or of a company referred to in point (c) or (d), and is **covered by the supervision of the parent undertaking on a consolidated basis**,
- (c) financial holding companies, mixed financial holding companies and mixed-activity holding companies that are established in the Union,
- (d) parent financial holding companies in a Member State, Union parent financial holding companies, parent mixed financial holding companies in a Member State, Union parent mixed financial holding companies, and
- (e) branches of institutions that are established outside the Union

1. General overview of the BRRD

The prevention and crisis management continuum set out in the BRRD comprises measures falling under the following three (3) stages:

- a. **preparation,**
- b. **early intervention, and**
- c. **resolution**

<p>Preparation</p>	<ul style="list-style-type: none"> • recovery plans • resolution plans • measures aimed to ensure resolvability • Group financing arrangements 	
<p>Early intervention</p>	<ul style="list-style-type: none"> • measures of art. 27 (<i>inter alia</i> implementation of recovery plan, replacement of management, specify and require adoption of decision by the shareholder's meeting e.t.c.) • removal of management (art. 28) • temporary administrator to replace or work with management (art 29) 	
<p>Resolution</p>	<p>Tools (art. 37(3))</p>	<p>Powers (art. 35, 63- 72)</p>
	<p>Sale of business (art. 38) Bridge institution (art 39) Asset separation (art.42) Bail-in (art. 43- 58)</p>	<ul style="list-style-type: none"> • to appoint a special manager with all the powers of shareholders and management body (art. 35) • general powers under art. 63 • ancillary powers under art 64 • to require provision of services and facilities • in respect of assets, rights and liabilities located in third countries (art. 67) • exclusion of certain contractual terms (art. 68) • suspension of certain obligations (art. 69) • restriction of enforcement of security interests (art. 70) • temporary suspension of termination rights (art. 71)

1. General overview of the BRRD

■ *Definition of crisis management and prevention measures (art. 2 (101) & (102)):*

Crisis prevention measures (art. 2 (101)):

- ✓ removal of deficiencies or impediments to recoverability under Art. 6(6),
- ✓ address or remove impediments to resolvability under Article 17 or 18,
- ✓ apply an **early intervention** measure under Art. 27,
- ✓ appoint a temporary administrator under Art. 29, or
- ✓ **exercise the write down or conversion powers under Article 59**

Crisis management measures (art. 2 (102)) means:

- ✓ a **resolution action**, or
- ✓ the **appointment of:**
 - a special manager under art. 35,
 - another person tasked to:
 - i. *draw up and implement the business reorganization plan* that accompanies bail in aimed at recapitalization (art. 51(2)), or
 - ii. *to operate the institution* under resolution with all the powers of its shareholders and management and *manage and dispose of its assets* (art. 72 (1))

B. The Bank Recovery and Resolution Regime in the EU

2. The stage of preparation

2. Preparation: recovery and resolution planning

(a) Simplified obligations for certain (not systemically significant) institutions (art. 4)

- ❑ Having regard to the institution's systemic importance, competent authorities may determine simplified obligations as regards the recovery and resolution plans of certain institutions.
- ❑ Simplified obligations may be determine with regard to the following elements:
 - the contents and details of recovery & resolution plans,
 - the date by which the first plans are to be drawn up,
 - the frequency for their update,
 - the contents and details of the information required from institutions, and
 - the level of detail for the assessment of resolvability
- ❑ Institutions subject to the **direct supervision of the ECB** or constituting a **significant share** in the financial system of a member state shall be the subject of **individual recovery & resolution** plans = **subject to full obligations**

2. Preparation: recovery and resolution planning

(b) Recovery plans (Art. 5-9)

- drawn up and maintained by credit institutions,
- **group recovery plans** drawn up by the parent undertaking and submitted to the consolidating supervisor (art. 7) – assessment (art. 8)
- **updated at least annually** or after a change to the legal or organizational structure of the institution, its business or its financial situation,
- **shall not assume any access to extraordinary public financial support** and shall include, where applicable, an analysis of how and when an institution may apply for the use of central bank facilities and identify those assets which would be expected to qualify as collateral
- submitted to competent authorities for review (art. 6),
- set out **measures to be taken by the institution to restore** its financial position following a significant deterioration and possible measures that could be taken if **conditions of early intervention are met** under art. 27
- include a **range of scenarios** of severe macroeconomic and financial stress, system-wide events and stress specific to individual persons & groups

2. Preparation: recovery and resolution planning

(b) Recovery plans – Information to be included (Section A of Annex)

1. summary of the key elements of the plan and of overall recovery capacity
2. summary of the material changes to the institution since the most recently filed recovery plan
3. a communication and disclosure plan outlining how any potentially negative market reactions will be managed
4. a range of capital and liquidity actions to maintain or restore the viability and financial position of the institution
5. an estimation of the timeframe for executing each material aspect of the plan
6. a detailed description of any material impediment to the effective and timely execution of the plan, including consideration of impact on the rest of the group, customers and counterparties,
7. identification of critical functions,
8. a detailed description of the processes for determining the value and marketability of the core business lines, operations and assets of the institution, ²³

2. Preparation: recovery and resolution planning

b) Recovery plans – Information to be included (cont.)

9. a detailed description of how recovery planning is integrated into the corporate governance structure as well as the procedures governing its approval & identification of the persons responsible for preparing and implementing the plan,

10-16: Arrangements and measures to:

- conserve or restore the institution's own funds
- ensure that the institution has adequate access to contingency funding sources, including potential liquidity sources, an assessment of available collateral and an assessment of the possibility to transfer liquidity across group entities and business lines, to ensure that it can continue to carry out its operations and meet its obligations as they fall due
- reduce risk and leverage
- restructure liabilities
- restructure business lines
- maintain continuous access to financial markets infrastructures
- maintain the continuous functioning of the institution's operational processes, including infrastructure and IT services

2. Preparation: recovery and resolution planning

b) Recovery plans – Information to be included (cont.)

17. preparatory arrangements to facilitate the sale of assets or business lines in a timeframe appropriate for the restoration of financial soundness,

18. other management actions or strategies to restore financial soundness and their anticipated financial effect

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

20. a framework of indicators which identify the points at which appropriate actions referred to in the plan may be taken.

2. Preparation: recovery and resolution planning

(b) Recovery plans – review and assessment (art. 6)

- ❑ Recovery plans are assessed by the competent authority within 6 months after their submission as regards the following:
 - ✓ that the proposed measures are deemed reasonably likely to maintain or restore viability
 - ✓ that the proposed option is deemed reasonably likely to be implemented quickly and effectively
- ❑ If material deficiencies are identified by the authority → the institution is required to submit a revised plan within 2 months (extendable by 1m.)
- ❑ If the institution fails to remedy any deficiencies within the specified timeframe (art. 6 (6)), the competent authority may direct the institution to:

- ✓ reduce its risk profile of the institution, including liquidity risk
- ✓ undertake timely recapitalization measures
- ✓ review its strategy and structure

- ✓ change its funding strategy so as to improve the resilience of the core business lines and critical functions
- ✓ change its governance structure of the institution
- ✓ take any additional measures provided by national law

2. Preparation: recovery and resolution planning

b) Recovery plans - Indicators (art. 9)

For the purpose of Articles 5 to 8, competent authorities shall require that each recovery plan includes a **framework of indicators established by the institution which:**

- identifies the points at which appropriate actions referred to in the plan may be taken
- are agreed by competent authorities when making the assessment of recovery plans
- may be of a qualitative or quantitative nature relating to the institution's financial position and shall be capable of being monitored easily

2. Preparation: recovery and resolution planning

b) Recovery plans - Indicators (cont.)

❑ **Art.9 subparagraph 2:**

The management body of the institution may take or refrain from taking an action under the recovery plan, irrespective of the indicators, where it considers it to be appropriate in the circumstances, notifying the decision to the competent authority without delay.

- ❑ The EBA shall by 3 July 2015 issue guidelines to specify the minimum list of qualitative and quantitative indicators

2. Preparation: recovery and resolution planning

(c) Resolution plans (Art. 10-14)

- drawn up by NRAs and reviewed at least annually,
- provide for the resolution actions which the NRA may take where the institution meets the conditions for resolution
- 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,
- **shall not assume** any of the following:
 - **extraordinary public financial support** besides the use of the financing arrangements established in accordance with Article 100;
 - any **central bank emergency liquidity assistance**, or
 - any central bank liquidity assistance provided under non-standard collateralization, tenor and interest rate terms
- NRAs **may require the institution's assistance** in the drawing up and updating of the plan

2. Preparation: recovery and resolution planning

(c) Resolution plans- Content (Art.10 (7))

The resolution plan shall **set out options for applying the resolution tools and resolution powers** under Title IV.

It shall include, quantified whenever possible, the following:

- a+b) a summary of the key elements of the plan & of the material changes to the institution that have occurred since the latest resolution information was filed,
- c) a demonstration of how critical functions and core business lines could be legally and economically separated, to the extent necessary, from other functions so as to ensure continuity upon failure,
- d) an estimation of the timeframe for executing each material aspect of the plan
- e) a detailed description of the assessment of resolvability carried out in accordance with par.2 of the present article and with art. 15

2. Preparation: recovery and resolution planning

(c) Resolution plans-Content (Art.10(7) cont.)

...the resolution plans shall include:

- f) a description of any measures under art. 17 required to address or **remove impediments to resolvability** identified as a result of the assessment carried out in accordance with art. 15
- g) a description of the processes for **determining the value and marketability of the critical functions**, core business lines and assets of the institution
- h) a detailed description of the arrangements for ensuring that the information required pursuant to Art. 11 is up to date and at the disposal of the resolution authorities at all times

2. Preparation: recovery and resolution planning

(c) Resolution plans-Content (Art.10(7) cont.)

...the resolution plans shall include:

- i) an explanation by the resolution authority as to how the resolution options could be financed without the assumption of any of the following:
 - i. any extraordinary public financial support besides the use of the financing arrangements established in accordance with Art. 100
 - ii. any central bank emergency liquidity assistance, or
 - iii. any central bank liquidity assistance provided under non-standard collateralization, tenor and interest rate terms

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

- k+l) a description of critical interdependencies & of options for preserving access to payments and clearing services and other infrastructures and, an assessment of the portability of client positions

2. Preparation: recovery and resolution planning

...the resolution plans shall include:

- m) an analysis of the impact of the plan on the employees of the institution, including an assessment of any associated costs, and a description of envisaged procedures to consult staff during the resolution process, taking into account national systems for dialogue with social partners where applicable
- n) a plan for communicating with the media and the public
- o) the minimum requirement for own funds and eligible liabilities required under Art. 45(1) and a deadline to reach that level, where applicable
- q) a description of essential operations and systems for maintaining the continuous functioning of the institution's operational processes
- r) where applicable, any opinion expressed by the institution in relation to the resolution plan.

Furthermore, NRAs will have the power to require the maintenance of detailed records of financial contracts to which the institution is a party, and specify a time-limit for their submission.

2. Preparation: recovery and resolution planning

(c) Resolution plans- Content and cooperation from institutions (art. 11 & Section B of Annex)

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

- (a) **cooperate** as much as necessary in the drawing up of resolution plans
 - (b) **provide them with all of the information necessary** to draw up and implement resolution plans.
- In particular the resolution authorities shall have the power to require, among other information, the information and analysis specified in **Section B of the Annex**.

EBA shall submit draft implementing technical standards to specify procedures and a minimum set of standard forms and templates for the provision of information by 3 July 2015.

2. Preparation: recovery and resolution planning

(c) Resolution plans- Content (Section B of Annex)

Resolution authorities may request institutions to provide for the purposes of drawing up and maintaining resolution plans at least the following information:

1. a detailed description of the institution's organisational structure including a list of all legal persons
2. identification of the direct holders and the percentage of voting and non-voting rights of each legal person
3. the location, jurisdiction of incorporation, licensing and key management associated with each legal person
4. a mapping of the institution's critical operations and core business lines including material asset holdings and liabilities relating to such operations and business lines, by reference to legal persons
5. a detailed description of the components of the institution's and all its legal entities' liabilities, separating, at a minimum by types and amounts of short term and long-term debt, secured, unsecured and subordinated liabilities

2. Preparation: recovery and resolution planning

(c) Resolution plans- Content (Annex cont.)

6. details of those liabilities of the institution that are eligible liabilities
7. an identification of the processes needed to determine to whom the institution has pledged collateral, the person that holds the collateral and the jurisdiction in which the collateral is located
8. a description of the off balance sheet exposures of the institution and its legal entities, including a mapping to its critical operations and core business lines
9. the material hedges of the institution including a mapping to legal persons
10. identification of the major or most critical counterparties of the institution as well as an analysis of the impact of the failure of major counterparties in the institution's financial situation
11. each system on which the institution conducts a material number or value amount of trades, including a mapping to the institution's legal persons, critical operations and core business lines

2. Preparation: recovery and resolution planning

(c) Resolution plans- *Content (Annex cont.)*

12. each payment, clearing or settlement system of which the institution is directly or indirectly a member, including a mapping to the institution's legal persons, critical operations and core business lines
13. a detailed inventory and description of the key management information systems, including those for risk management, accounting and financial and regulatory reporting used by the institution including a mapping to the institution's legal persons, critical operations and core business lines
14. an identification of the owners of the systems identified in point (13), service level agreements related thereto, and any software and systems or licenses, including a mapping to their legal entities, critical operations and core business lines

2. Preparation: recovery and resolution planning

(c) Resolution plans- Content (Annex cont.)

15. an identification and mapping of the legal persons and the interconnections and interdependencies among the different legal persons such as:

- common or shared personnel, facilities and systems
- capital, funding or liquidity arrangements
- existing or contingent credit exposures
- cross guarantee agreements, cross-collateral arrangements, cross-default provisions and cross-affiliate netting arrangements
- risks transfers and back-to-back trading arrangements, service level agreements

16. the competent and resolution authority for each legal person

17. the member of the management body responsible for providing the information necessary to prepare the resolution plan of the institution as well as those responsible, if different, for the different legal persons, critical operations and core business lines

2. Preparation: recovery and resolution planning

(c) Resolution plans- Content (Annex cont.)

18. a description of the arrangements that the institution has in place to ensure that, in the event of resolution, the resolution authority will have all the necessary information, as determined by the resolution authority, for applying the resolution tools and powers
19. all the agreements entered into by the institutions and their legal entities with third parties the termination of which may be triggered by a decision of the authorities to apply a resolution tool and whether the consequences of termination may affect the application of the resolution tool;
20. a description of possible liquidity sources for supporting resolution
21. information on asset encumbrance, liquid assets, off-balance sheet activities, hedging strategies and booking practices

2. Preparation: recovery and resolution planning

(d) Assessment of credit institutions' resolvability (Art. 15-18 & Section C of Annex)

□ an institution shall be **deemed resolvable if** it is feasible and credible for the NRA to:

- **either liquidate** it under normal insolvency proceedings, **or**
- **to resolve** it by applying the different resolution tools and powers, while avoiding to the maximum extent possible any significant adverse effect on the financial system and with a view to ensuring the continuity of critical functions



within 4 months after receipt of a notification under this article, the institution is required to propose measures to address the impediments identified therein (art. 17 (3))

- NRAs have far-reaching powers to remove substantive impediments to a credit institution's resolvability under art. 17

2. Preparation: recovery and resolution planning

(d) resolvability assessment

□ *criteria under consideration by the NRAs*

 ***at a minimum*** the matters specified in Section C of the Annex which include the following:

- the extent to which the institution is able to map core business lines and critical operations to legal persons & legal and corporate structures are aligned with core business lines and critical operations
- provision for essential staff, infrastructure, funding, liquidity and capital to support and maintain the core business lines and the critical operations
- the extent to which the service agreements are fully enforceable in the event of resolution & the process for transitioning the services provided under service level agreements to third parties in the event of the separation of critical functions or of core business lines
- contingency plans and measures in place to ensure continuity in access to payment and settlement systems

2. Preparation: recovery and resolution planning

(d) resolvability assessment – criteria under consideration (cont.)

The NRAs *at a minimum* examine...

- the adequacy of the management information systems in ensuring that the resolution authorities are able to gather accurate and complete information regarding the core business lines and critical operations so as to facilitate rapid decision making
- the extent to which the institution has tested its MIS under stress scenarios as defined by the resolution authority
- where the group uses intra-group guarantees & back-to-back transactions, the extent to which they are provided at market conditions and the risk management systems concerning these are robust
- the extent to which the legal structure of the group inhibits the application of the resolution tools as a result of the number of legal persons, the complexity of the group structure or the difficulty in aligning business lines to group entities
- the amount and type of eligible liabilities of the institution

2. Preparation: recovery and resolution planning

(d) resolvability assessment – criteria under consideration (cont.)

The NRAs *at a minimum* examine...

- the feasibility of using resolution tools in such a way which meets the resolution objectives, given the tools available and the institution's structure
- the credibility of using resolution tools in such a way which meets the resolution objectives, given possible impacts on creditors, counterparties, customers and employees and possible actions that third-country authorities may take
- the extent to which the resolution of the institution could have:
 - ✓ a significant direct or indirect adverse effect on the financial system, market confidence or the economy
 - ✓ a significant effect on the operation of payment and settlement systems
- the extent to which contagion to other institutions or to the financial markets could be contained through the application of the resolution tools and powers &

2. Preparation: recovery and resolution planning

(d) resolvability assessment

❑ *powers to remove impediments (art. 17 par. 5)*

NRAs shall have the power to take any of the following measures:

- ✓ require the institution to **revise any intragroup financing agreements** or review the absence thereof, or draw up service agreements to cover the provision of critical functions
- ✓ require the institution to **limit its maximum individual and aggregate exposures**
- ✓ require the institution to **divest specific assets**
- ✓ require the institution to **limit or cease** specific existing or proposed **activities** & restrict or prevent the development of new or existing **business lines** or sale of new or **existing products**

2. Preparation: recovery and resolution planning

(d) resolvability assessment – powers to remove impediments (cont.)

NRAs have the power to:

- ✓ require **changes to legal or operational structures** of the institution or any group entity, either directly or indirectly under its control, so as to reduce complexity
- ✓ require to set up a parent financial holding company in a Member State or a Union parent financial holding company
- ✓ require an institution to issue eligible liabilities to meet the requirements of Art. 45 or to take other steps to meet the minimum requirement for own funds and eligible liabilities,
- ✓ where an institution is the subsidiary of a mixed-activity holding company, requiring that the mixed-activity holding company set up a separate financial holding company to control the institution

2. Preparation: recovery and resolution planning

(d) resolvability assessment – powers to remove impediments (cont.)

Decisions taken by the NRAs to remove impediments to resolvability shall meet the following requirements (art. 17 (6)):

- be supported by reasons
- indicate how the assessment or determination complies with the requirement for proportionate application
- **shall be subject to a right of appeal**

2. Preparation (cont.)

(e) Intra group financial support (Art. 19- 26)

- **voluntary agreements** between the parent entity and the subsidiaries of a group
- to be authorized by the competent authorities, and
- approved by the shareholders of every group entity concerned

Financial support under the agreement is to be provided:

- ✓ **to any party of the agreement that meets the conditions for early intervention under art. 27**
- ✓ **for consideration** set at the time of the provision of said support

2. Preparation (cont.)

(e) Intra group financial support (Art. 19(5))

The group financial support agreement may:

- (a) cover one or more subsidiaries of the group, and be provided:
 - from the parent undertaking to subsidiaries,
 - from subsidiaries to the parent undertaking,
 - between subsidiaries of the group, if both are party to the agreement,
 - any combination of those entities

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

B. The Bank Recovery and Resolution Regime in the EU

3. The stage of early intervention

3. The stage of early intervention

(a) Trigger (Art. 27 (1))

Early intervention measures may be taken where a credit institution **infringes** any of the requirements of CRR and CRD IV ***or is likely in the near future to infringe*** said requirements.

An institution is likely to infringe the above requirements in the near future, *inter alia*, due to a rapidly deteriorating financial condition, including:

- deteriorating liquidity situation,
- increasing level of leverage,
- non-performing loans or concentration of exposures,

as assessed on the basis of a set of triggers, which may include the institution's own funds requirement plus 1,5 percentage points

3. The stage of early intervention

(b) Early intervention measures (art. 27)

NCAs have to power to require the management body of the institution to:

- measures under art. 104 CRD IV
- **implement one or more of the arrangements and measures set out in the recovery plan,**
- examine the situation, identify measures and **draw up an action program to overcome** any problems identified and a timetable for its implementation,
- convene, or if the management body fails to comply with this requirement **convene directly, a meeting of shareholders** of the institution, and in both cases **set the agenda** and require certain decisions to be considered for adoption,

3. The stage of early intervention

(b) Early intervention measures (cont.)

... the NCAs have to power to require:

- require **one or more members** of the management body or senior **management to be removed or replaced** if these persons are found unfit to perform their duties,
- the management body of the institution to draw up a plan for **negotiation on restructuring of debt** with some or all of its creditors according to the recovery plan, where applicable,
- **changes to the institution's business strategy** or to the legal or operational structures of the institution, and
- to acquire all the **information necessary in order to update the resolution plan** and prepare for the possible resolution of the institution and for valuation of the assets and liabilities of the institution

3. The stage of early intervention

(b) Early intervention measures (cont.)

Removal of senior management and management body (art. 28)

When?

- ✓ Significant deterioration in the financial situation of an institution, **or**
- ✓ Serious infringements of law, regulations or of the statutes of the institution, or serious administrative irregularities

AND

- ✓ **the above measures (under art. 27) are not sufficient to reverse that deterioration**

Result:



- **removal of the senior management or management body in its entirety or with regard to individuals**
- the appointment of the new management shall be done in accordance with national and Union law and be subject to approval by the competent authority

3. The stage of early intervention

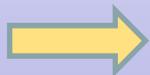
(b) Early intervention measures (cont.)

Temporary administrator (art. 29)

When?

- ✓ Where the above replacement of management under art. 28 is deemed insufficient to remedy the situation

Result:



- ***competent authorities may appoint one or more temporary administrators***
- to replace or to work temporarily with the management body
- role and functions of the temporary administrator are specified by the competent authority

B. The Bank Recovery and Resolution Regime in the EU

4. The stage of resolution

4. The stage of resolution

(a) Objectives of resolution (Art. 31)

- to ensure the continuity of *critical functions*,
- to avoid significant adverse effects on financial stability, in particular by preventing contagion, including to market infrastructures, and by maintaining market discipline,
- to protect public funds by minimising reliance on extraordinary public financial support,
- to protect depositors covered by Directive 2014/49/EU and investors covered by Directive 97/9/EC, and
- to protect client funds and client assets

4. The stage of resolution

(a) Objectives of resolution (cont.)

When pursuing the above objectives, the NRA shall seek:

- ✓ to **minimise the cost** of resolution and **avoid any unnecessary destruction of value**, and
- ✓ apply **equal significance to the above resolution objectives**, subject to the provisions of the Directive

Definition of critical functions

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

4. The stage of resolution

(b) Conditions for resolution (Art. 32)

A resolution action may be taken **only if** the NRA considers that **all of the following conditions are met**:

- (a) the institution is ***failing or is likely to fail*** (*determined by the competent authority*),
- (b) having regard to timing and other relevant circumstances, there is **no reasonable prospect that any alternative private sector measures or supervisory action** or the write down or conversion of relevant capital instruments in accordance with Article 59(2), would prevent the failure of the credit institution within a reasonable timeframe, and
- (c) the resolution action is **necessary in the public interest**

4. The stage of resolution

(b) Conditions for resolution - *The “failing or likely to fail” test (art. 32 (4))*

- ❑ An institution shall be deemed to be failing or likely to fail **in one or more** of the following circumstances:
 - ✓ the institution infringes or [...] will, in the near future, ***infringe the requirements for continuing authorisation*** in a way that would justify the withdrawal of the authorisation by the NCA, including but not limited to, because the institution has incurred or is likely to incur **losses that will deplete** all or a significant amount of its own funds,
 - ✓ the **assets** of the institution are or [...] will, in the near future, be **less than its liabilities**,
 - ✓ the institution is or [...] will, in the near future, be **unable to pay its debts or other liabilities as they fall due**,
 - ✓ **extraordinary public financial support is required** except in certain cases when the relevant measures are addressed to solvent credit institutions and in accordance with the Union State aid framework

4. The stage of resolution

(b) Conditions for resolution - *The “failing or likely to fail” test (cont.)*

□ The provision of **extraordinary public financial support is not deemed to render the institution failing or likely to fail** under the following conditions:

- ✓ aims to remedy a serious disturbance in the economy of a Member State and preserve financial stability, and
- ✓ takes any of the following forms:
 - a State guarantee to back liquidity facilities provided by central banks according to the central banks’ conditions
 - a State guarantee of newly issued liabilities
 - support measures necessary to address capital shortfall arising from stress-tests, AQR
- ✓ is addressed to solvent institutions
- ✓ prior and final approval under the EU State Aid framework has been given

4. The stage of resolution

(b) Conditions for resolution (cont.)

The public interest determination (art. 32(5))

A resolution action shall be treated as in the public interest if:

- it is necessary for the achievement of, and
- is proportionate to one or more of the resolution objectives referred to in Art. 31, and
- winding up of the institution under normal insolvency proceedings would not meet those resolution objectives to the same extent.

4. The stage of resolution

(c) Principles of resolution (*Art. 34*)

- covered deposits (€100.000) are fully protected,
- losses should be borne first by shareholders and next by creditors of the institution under resolution with the order of priority of their claims under normal insolvency proceedings,
- no creditor should incur greater losses than under normal insolvency proceedings, in accordance with the no creditor worse off principle,
- equal treatment of creditors in the same class,
- natural and legal persons to be held liable under national civil or criminal law for their responsibility in the institution's failure
- resolution actions to be taken in accordance with the Directive's safeguards

4. The stage of resolution

(d) Resolution tools

- the **sale of business** – as a whole or in parts (assets),
- the **bridge institution** - created by public authorities for a limited period of time,
- the **asset separation** tool - transfer of assets to an asset management vehicle, and
- **bail-in and write-down** of capital instruments

4. The stage of resolution

(d) Resolution tools (cont.)

- ✓ NRAs may apply the resolution tools individually or in any combination
- ✓ *Asset separation tool must be applied **only together with another resolution tool***
- ✓ if the sale-of-business or the bridge bank tool are used to transfer only part of the assets, rights or liabilities of the institution under resolution, the ***residual institution from which the assets, rights or liabilities have been transferred, shall be wound up under normal insolvency proceedings*** (art. 37 (6))
- ✓ **Where** the application of a resolution tool would result in losses being borne by creditors or their claims being converted, the resolution authority shall exercise the power to **write down and convert capital instruments** in accordance with Art. 59 **immediately before or together with the resolution tool** (art. 37 (2))

4. The stage of resolution

(d) Resolution tools - **The sale of business tool (Art. 38-39)**

Definition

NRAs have the power to transfer to a purchaser that is not a bridge institution:

- shares or other instruments of ownership issued by the credit institution under resolution,
- all or any assets, rights or liabilities of the credit institution under resolution

The transfer shall take place:

- *without obtaining the consent of the shareholders* or any third party other than the purchaser, and
- without complying with any procedural requirements under company or securities law other than those included in Article 39
- on commercial terms, having regard to the circumstances, and in accordance with the Union State aid framework.

{βλέπε και άρθρο 141 «Εντολή μεταβίβασης» του Ν. 4261/2014}

4. The stage of resolution

(d) Resolution tools - **The bridge institution tool (Art. 40-41)**

□ Definition

Bridge institution = a legal person that meets all of the following requirements:

- is wholly or partially **owned by one or more public authorities** which may include the resolution authority or the resolution financing arrangement and is controlled by the NRA, and
- is **created for the purpose of receiving and holding** some or all of the shares or other instruments of ownership, or the assets, rights and liabilities of one or more credit **institutions under resolution** with a view to **maintaining access to critical functions and selling** the credit institution under resolution

Transfer of shares, instruments of ownership e.t.c. same as in sale of business tool

{βλέπε και άρθρο 142 «Μεταβατικό πιστωτικό ίδρυμα» του Ν. 4261/2014}

4. The stage of resolution

(d) Resolution tools - **The asset separation tool (Art. 42)**

□ Definition:

- transfer of assets, rights or liabilities of a credit institution under resolution or a bridge institution,
- to an asset management vehicle
- without obtaining the consent of the shareholders of the institution, and
- without complying with any procedural requirements under company or securities law

□ **“asset management vehicle”** = a legal person that meets all of the following requirements:

- is wholly or partially **owned by one or more public authorities** which may include the NRA or the resolution financing arrangement and is controlled by the NRA,
- has been created for the **purpose of receiving** some or all of the assets, rights and liabilities of one or more institutions under resolution **or a bridge** institution, and
- **managing the assets** transferred to it with a view to **maximizing their value through eventual sale or orderly wind down**

4. The stage of resolution

(d) Resolution tools - **The bail-in tool (Art. 43-55)**

□ **Definition (art 2 (57)):**

*“ the mechanism for **effecting the exercise by a resolution authority of the write down and conversion powers in relation to liabilities of an institution under resolution in accordance with art. 43**”*

Art. 43 → Art. 63 (1) points (e)- (i) & Art. 2 (66): the write down or conversion powers of bail-in

- reduce (up to zero) the principal amount of or outstanding amount due in respect of eligible liabilities
- Convert eligible liabilities into ordinary shares or other instruments of ownership
- Cancel debt instruments issued by the institutions except if explicitly excluded from bail in under art. 44 (2)
- Reduce (up to zero) the nominal amount of and cancel shares or other instruments of ownership of the institution
- Require the institution to issue new shares or other capital instruments, including preference shares and contingent convertible instruments

4. The stage of resolution

(d) The bail-in tool - *Objectives pursued (art. 43(2))*

1. General resolution objectives specified in art. 31

2. Recapitalization of an institution under resolution to the extent sufficient to restore its ability to comply with the conditions for authorization and to sustain sufficient market confidence in the institution

 **only if** there is a reasonable prospect that the application of that tool **together with other relevant measures** including measures implemented in accordance with the business reorganisation plan will, **in addition to achieving relevant resolution objectives, restore the institution** in question to financial soundness and long-term viability (art. 43(3)).

3. **If the above conditions (under 2) are not met**, resolution tools & bail-in are applied in order to convert to equity or to reduce the principal amount of claims or debt instruments that are transferred to:

- a **bridge institution** with a view to providing capital for that institution, or
- under the **sale of business** or the **asset separation tool**

4. The stage of resolution

(d) Resolution tools - **The bail-in tool (cont.)**

❑ **Scope:** Bail-in is a resolution tool and may be **applied to all liabilities** of an institution that are **not explicitly excluded** from its scope

❑ **Comparison with the write-down or conversion** of capital instruments under art. 59 (1):

The power to write-down or convert “relevant capital instruments” may be exercised:

- ✓ independently of resolution actions, or
- ✓ in combination with a resolution action, provided that the conditions for resolution under art. 32 and 33 are met, and
- ✓ **only in regard to Additional Tier 1 and Tier 2 instruments (art. 2 (74))**

4. The stage of resolution

(d) Resolution tools - **The bail-in tool (cont.)**

The sequence of write down and conversion (art. 48)

1. Common Equity Tier 1,
2. If not enough, Additional Tier 1 are reduced to the extent required,
3. If not enough, Tier 2 instruments are reduced to the extent required,
4. If not enough, subordinated debt is reduced in accordance with the hierarchy of claims in normal insolvency proceedings,
5. If not enough, the remaining eligible liabilities are reduced in accordance with the hierarchy of claims in normal insolvency proceedings

4. The stage of resolution

(d) Resolution tools - **The bail-in tool (cont.)**

- ❑ **Permanently excluded liabilities (art. 44(2))** comprise, *inter alia*, the following assets:
 - covered deposits,
 - secured liabilities, including covered bonds, and similar liabilities used for hedging purposes (under national law),
 - client assets and money held on behalf of protected clients (under national insolvency law),
 - liabilities to credit institutions & investment firms (not members of the same group) with an original maturity of less than seven days,
 - contributions owed to the DGS, and
 - liabilities to employees, providers of daily goods and services and towards tax and social authorities

4. The stage of resolution

(d) Resolution tools - The bail-in tool (cont.)

□ *Discretionary exemptions from bail-in (art. 43(3))*

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

- it is not possible to effect bail-in within a reasonable time notwithstanding the good faith efforts of the resolution authority,
- it is necessary to achieve the continuity of critical functions and core business lines,
- it is necessary to avoid giving rise to widespread contagion, *in particular as regards eligible deposits held by natural persons and micro, small and medium sized enterprises*, or
- to avoid a destruction in value such that the losses borne by other creditors would be higher than if those liabilities were excluded from bail-in.

4. The stage of resolution

(d) Resolution tools - **The bail-in tool**

□ ***Discretionary exemptions from bail-in (cont.)***

If the NRA excludes or partially excludes certain liabilities from bail-in, the resolution financing arrangement may make a contribution **only where:**

- i. a contribution to loss absorption and recapitalisation equal to an amount not less than **8% of the total liabilities** including own funds of the institution under resolution, measured at the time of resolution action in accordance with the valuation, has been made by shareholders and the holders of other instruments of ownership, the holders of relevant capital instruments and other eligible liabilities through write down, conversion or otherwise, **or** under special circumstances **20% of an institution's RWAs** where the resolution financing arrangement has at its disposal ex-ante contributions equal at least to 3% of covered deposits, **and**
- ii. the contribution of the resolution financing arrangement does not exceed 5% of the total liabilities including own funds of the institution under resolution

4. The stage of resolution

(e) Treatment of deposits

□ Ranking of deposits in insolvency hierarchy (Art. 108)

1. **The part** of eligible deposits from natural persons and micro, small and medium-sized enterprises **which exceeds the coverage level** provided for in Article 6 of Directive 2014/49/EU (**€100.000**) **has higher priority ranking than** the ranking provided for the claims of **ordinary unsecured, non-preferred creditors**.

2. **The following have the same priority ranking** which is **higher** than the ranking provided for under point (a):
 - (i) covered deposits,
 - (ii) deposit guarantee schemes (DGS) subrogating to the rights and obligations of covered depositors in insolvency.

4. The stage of resolution

(e) Treatment of deposits

□ Liability of the Deposit Guarantee Scheme in the context of resolution (Art. 109)

- when the **bail-in** is applied, for the amount by which **covered deposits** would have been **written down** in order to absorb the losses and ensure that the **net asset value of the institution under resolution is equal to zero** (point (a) of Article 46(1)), had covered deposits been included within the scope of bail-in and been written down to the same extent as creditors with the same level of priority under the national law governing normal insolvency proceedings, **or**
- when **one or more resolution tools other than bail-in** is applied, for the amount of losses that covered depositors would have suffered, had covered depositors suffered losses in proportion to the losses suffered by creditors with the same level of priority under the national law governing normal insolvency proceedings

4. The stage of resolution

□ Liability of the Deposit Guarantee Scheme in the context of resolution (Art. 109)

- When the **bail-in tool** is applied, DGS shall not be required to make any **contribution towards the costs of recapitalising** the institution or bridge institution pursuant to point (b) of Article 46(1)



art. 46 (1) point (b): *the amount by which eligible liabilities must be converted into shares or other types of capital instruments in order to restore the Common Equity Tier 1 capital ratio of either:*

- (i) the institution under resolution; or*
- (ii) the bridge institution*

- In all cases, the **liability of a DGS shall not be greater than the amount equal to 50 % of its target level** pursuant to Article 10 of Directive 2014/49/EU. Member States, may, by taking into account the specificities of their national banking sector, set a percentage which is higher than 50 %.

4. The stage of resolution

(f) Write down of capital instruments (Art. 59-62)

Trigger

NRAs exercise the write down or conversion power **in relation to relevant capital instruments** (*Additional Tier 1 and Tier 2*) issued by an institution, when **one or more** of the following circumstances apply (art. 59 (3)):

- a. where the determination has been made that conditions for resolution have been met, **before any resolution action is taken**
- b. the **appropriate authority** (*competent authority or resolution authority*) determines that unless that power is exercised in relation to the relevant capital instruments, the institution will **no longer be viable**
- c. **extraordinary public financial support** is required by the institution (except for support measures necessary to address capital shortfall arising from stress-tests, AQR)

4. The stage of resolution

(f) Write down of capital instruments (cont.)

Determination of non viability under art. 59 (4)

An institution is deemed **no longer viable** only if **both** of the following conditions are met:

- the institution is **failing or is likely to fail** (same as above),
 - having regard to timing and other relevant circumstances, there is **no reasonable prospect that any action**, including alternative private sector measures or supervisory action (including early intervention measures), other than the write down or conversion of capital instruments, independently or in combination with a resolution action, **would prevent the failure of the institution** or the group within a reasonable timeframe.
- #### Performance of “failing or likely to fail” test in accordance with art. 32 (4)

4. The stage of resolution

(g) Minimum requirement for own funds and eligible liabilities (Art. 44)

Institutions shall meet (both on individual and on consolidated basis) at all times a minimum requirement for own funds and eligible liabilities (MREL)

$$\text{MREL} = \frac{\textit{eligible liabilities and own funds}}{\textit{total liabilities and own funds}}$$

4. The stage of resolution

(g) Minimum requirement for own funds and eligible liabilities (Art. 44)

□ Definition of eligible liabilities

To be considered eligible, liabilities should meet the following conditions:

- the instrument is issued and fully paid up
- the liability is not owed to, secured by or guaranteed by the institution itself
- the purchase of the instrument was not funded directly or indirectly by the institution
- **the liability has a remaining maturity of at least one year**
- the liability does not arise from a derivative
- the liability does not arise from a deposit, which benefits from preference in the national insolvency hierarchy in accordance with article 108 of BRRD

4. The stage of resolution

(g) Minimum requirement for own funds and eligible liabilities (cont.)

Determination of the MREL

The resolution authority determines the MREL of each institution, after consulting the competent authority, ***at least on the basis of the following criteria:***

- a. the need to **ensure that the institution can be resolved** by the application of the resolution tools including, where appropriate, the bail-in tool, in a way that meets the resolution objectives
- b. the need to ensure, in appropriate cases, that the institution has sufficient eligible liabilities to ensure that, **if the bail-in tool were to be applied, losses could be absorbed and the Common Equity Tier 1 ratio of the institution could be restored** to a level necessary to enable it to continue to comply with the conditions for authorisation and to continue to carry out the activities for which it is authorised under Directive 2013/36/EU or Directive 2014/65/EU and to sustain sufficient market confidence in the institution or entity

4. The stage of resolution

(g) Minimum requirement for own funds and eligible liabilities- assessment criteria (cont.)

- c. the need to ensure that, **if** the resolution plan anticipates that certain classes of eligible **liabilities might be excluded** from bail-in under Article 44(3) or that certain classes of eligible liabilities might be transferred to a recipient in full under a partial transfer, that the institution has sufficient other eligible liabilities to ensure that losses could be absorbed and the Common Equity Tier 1 ratio of the institution could be restored to a level necessary to enable it to continue to comply with the conditions for authorisation and to continue to carry out the activities for which it is authorised
- d. the size, the business model, the funding model and the risk profile of the institution

4. The stage of resolution

(g) Minimum requirement for own funds and eligible liabilities-assessment criteria (cont.)

- e. the extent to which the **Deposit Guarantee Scheme** could contribute to the financing of resolution in accordance with BRRD 109
- f. the extent to which the failure of the institution would have adverse **effects on financial stability**, including, due to its interconnectedness with other institutions or with the rest of the financial system through contagion to other institutions

EBA shall submit draft regulatory technical standards to the Commission by 3 July 2015 specifying the abovementioned assessment criteria.

4. The stage of resolution

(h) Resolution powers of NRAs (Art. 63-72)

NRAs may exercise **individually or in any combination** all the powers necessary to apply the resolution tools to credit institutions, which, *inter alia*, comprise the following:

- the power to require any **information** necessary for resolution purposes,
- the power to **take control** of an institution under resolution and exercise all the rights and powers conferred upon the shareholders, other owners and the management body,
- the power to **transfer shares** and other instruments of ownership issued by an institution under resolution,
- the power to transfer to another consenting entity, rights, assets or liabilities of an institution under resolution,
- the power to reduce, including to **reduce to zero**, the principal amount of or outstanding **amount due in respect of eligible liabilities**,

4. The stage of resolution

(h) Resolution powers of NRAs (cont.)

- the power to **convert eligible liabilities** of an institution under resolution into ordinary shares or other instruments of ownership of that institution, a relevant parent institution or a bridge institution to which assets, rights or liabilities of the institution are transferred,
- the power to **cancel debt** instruments issued by an institution under resolution,
- the power to **reduce, including to reduce to zero, the nominal amount of shares** or other instruments of ownership **and to cancel** such shares or other instruments of ownership,
- the power to require an institution under resolution or a relevant parent institution to **issue new shares**, or other instruments of ownership, or other capital instruments, including preference shares and contingent convertible instruments,

4. The stage of resolution

(h) Resolution powers of NRAs (cont.)

- the power to **amend or alter the maturity** of or the amount of interest payable under debt instruments and other eligible liabilities or the date on which the interest becomes payable, including by suspending payment for a temporary period, and
- the power to **close out and terminate financial contracts or derivative contracts**

B. The Bank Recovery and Resolution Regime in the EU

5. Government stabilization tools within resolution

5. Government stabilization tools within resolution

*In the very **extraordinary situation of a systemic crisis and under strict conditions**, the NRA may seek funding from alternative financing sources through the use of the government stabilisation tools provided for in Articles 56 to 58:*

- public equity support - participation of the Member State in the recapitalization of the credit institution (Art. 57),
- temporary public ownership - by a nominee of or a company wholly owned by the Member State (Art. 58).

As a result, in order to effect a public recapitalization in a resolution scenario the following conditions should apply:

- ✓ *Institution deemed “failing or likely to fail”*
- ✓ *prior due participation of shareholders and creditors*

5. Government stabilization tools within resolution

Conditions for the application of government stabilization tools (Art. 56 with reference to art. 32(1)& 37(10))

- i. art. 56(3)* → used as a **last resort** after having assessed and exploited the other resolution tools to the maximum extent practicable whilst maintaining financial stability
- ii. art. 37 (10)* → a contribution to loss absorption and recapitalisation equal to an amount not less than **8 % of total liabilities** including own funds of the institution under resolution has been made by shareholders and the holders of other instruments of ownership, the holders of relevant capital instruments and other eligible liabilities through **write down, conversion or otherwise**,
- iii.* prior and final approval under the Union **State aid** framework,

5. Government stabilization tools within resolution

Conditions for the application of government stabilization tools (cont.)

*iv. Art. 56 (4) → **All** conditions for resolution under art. 32(1) are met*

- ✓ institution is failing or likely to fail
- ✓ there is no reasonable prospect that any alternative private sector measure, supervisory action or the exercise of write down or conversion of capital instruments will prevent failure
- ✓ Resolution action is necessary in the public interest

AND

*v. Art. 56 (4) → **One of the following conditions also applies** →*

Government determines that the application of resolution tools would not suffice to either:

- (a) avoid significant adverse effects on financial stability, **or**
- (b) protect the public interest, where the central bank has already provided extraordinary liquidity assistance, **or**
- (c) in respect of the temporary public ownership tool, protect the public interest where public equity support has already been given

B. The Bank Recovery and Resolution Regime in the EU

6. Financing arrangements

6. Financing arrangements

(a) European system of financing arrangements (Art. 99)

A European system of financing arrangements shall be established and shall consist of:

- national financing arrangements (resolution funds),
 - the borrowing on a voluntary basis between national financing arrangements,
 - the mutualisation of national financing arrangements in the case of a group resolution
-
- ✓ Member States shall establish one or more financing arrangements for the purpose of ensuring the effective application by the resolution authority of the resolution tools and powers
 - ✓ Financing arrangements can raise *ex-ante* contributions from credit institutions, as well as *ex-post*

6. Financing arrangements

(b) Target level (Art. 102)

- ✓ Member States shall ensure that, by 31 December 2024, the available financial means of national financing arrangements should reach at least 1% of the amount of covered deposits of all the institutions authorised in their territory
- ✓ Member States may set target levels in excess of that amount
- ✓ During the initial built-up period, contributions shall be spread out in time as evenly as possible until the target level is reached
- ✓ After the target level has been reached for the first time and where the available financial means have subsequently been reduced to less than two thirds of the target level, those contributions shall be set at a level allowing for reaching the target level within six years

6. Financing arrangements

(c) Ex- ante contributions (Art. 103)

- ✓ Member States shall ensure that contributions are raised at least annually from the institutions authorised in their territory including Union branches
- ✓ the contribution of each institution shall be *pro rata to the amount of its liabilities (excluding own funds) less covered deposits, with respect to the aggregate liabilities (excluding own funds) less covered deposits of all the institutions authorised in the territory of the Member State*
- ✓ contributions shall be adjusted in proportion to the risk profile of institutions, in accordance with delegated acts to be adopted by the Commission

6. Financing arrangements

(d) Extraordinary ex- post contributions (Art. 104)

- 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
- extraordinary ex-post contributions shall not exceed three times the annual amount of contributions determined in accordance with Article 103 (ex-ante contributions)

6. Financing arrangements

(e) Alternative funding means (Art. 105)

Financing arrangements are enabled to **contract borrowings or other forms of support** from institutions, financial institutions, or other third parties **in the event that the ex ante amounts raised are not sufficient** to cover the losses, costs or other expenses incurred by the use of the financing arrangements, **and the extraordinary ex-post contributions provided for in Article 104 are not immediately accessible or sufficient.**

□ When?

Art. 44 (7): In extraordinary circumstances, the resolution authority may seek further funding from alternative financing sources after:

- a. the 5 % limit of the contribution of the financing arrangement has been reached, and
- b. all unsecured, non-preferred liabilities, other than eligible deposits, have been written down or converted in full.

6. Financing arrangements

(e) Mutualisation of financing arrangements (Art. 107)

- in case of a group resolution,
- the national financing arrangement of each institution that is part of a group contributes to the financing of the group resolution

The **basis for calculating the contribution of each** national financing arrangement shall in particular have regard to:

- the proportion of the group's assets and risk-weighted assets held at institutions established in the Member State of that resolution financing arrangement,
- the proportion of the losses, which have given rise to the need for group resolution, which originated in group entities supervised in the Member State of that resolution financing arrangement, and
- the proportion of the resources of the group financing arrangements which, under the financing plan, are expected to be used to benefit group entities established in the Member State of that resolution financing arrangement directly

B. The Bank Recovery and Resolution Regime in the EU

7. Other important provisions

7. Other important provisions

(a) Right of appeal (Art. 85)

- ✓ All persons affected by a decision to take a crisis management measure, shall have the right to appeal against that decision
- ✓ Member States shall ensure that the review is expeditious and that national courts use the complex economic assessments carried out by the resolution authority as a basis for their own assessment
- ✓ The **right to appeal** shall be subject to the following provisions:
 - the lodging of an appeal shall not entail any automatic suspension of the effects of the challenged decision,
 - the **decision of the resolution authority shall be immediately enforceable** and it shall give rise to a **rebuttable presumption that a suspension of its enforcement would be against the public interest**

7. Other important provisions

(b) Provisions on cross-border group resolution (Art. 87- 98)

- ✓ establishment of resolution colleges by the group-level resolution authority and other competent authorities and consolidating supervisors,
- ✓ European resolution colleges where a third country institution has Union subsidiaries or significant branches established in two or more Member States,
- ✓ information exchange and cooperation with third-country authorities,
- ✓ recognition and enforcement of third-country resolution proceedings by the NRA and right to refuse any such recognition

7. Other important provisions

(c) Amendments to the following Union legislation (Art. 116-126)

- Directive 82/891/EEC concerning the division of public limited liability companies,
- Directive 2001/24/EC on the reorganisation and winding up of credit institutions,
- Directive 2002/47/EC on financial collateral arrangements,
- Directive 2007/36/EC on the exercise of certain rights of shareholders in listed companies,
- Directive 2011/35/EU concerning mergers of public limited liability companies,
- Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC,

7. Other important provisions

(c) Amendments to the following Union legislation (cont.)

- Directive 2012/30/EU on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the TFEU, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent,
- Regulation (EU) no 1093/2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, and
- Regulation (EU) no 648/2012 on OTC derivatives, central counterparties and trade repositories

B. The Bank Recovery and Resolution Regime in the EU

8. Entry into force

8. Entry into force

Member States shall apply the provisions of the Directive from 1 January 2015, except for the provisions concerning bail-in which shall apply at the latest from 1 January 2016

Delegated acts

- ✓ The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in the Directive
- ✓ A delegated act adopted pursuant to Art. 2 (2), Art. 44(11), Art. 76(4), Art. 103(7) and (8) or Art. 104(4) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within three months of notification of that act to the European Parliament and the Council. That period shall be extended by three months at the initiative of the European Parliament or the Council