Bank Recovery and Resolution Act (BaSAG; Sanierungs- und Abwicklungsgesetz)

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PART 1: GENERAL PROVISIONS

Subject matter and scope of application

Article 1. (1) This federal act shall apply to the recovery and resolution of the following entities:

1. institutions;
2. CRR-financial institutions, which are subsidiary of a CRR-credit institution or a CRR-investment firm or a company pursuant to nos. 3 or 4, and which are included in the scope of supervision of the parent undertaking pursuant to Articles 6 to 17 of Regulation (EU) No 575/2013 of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, OJ L 176, 27.06.2013, p. 1;
3. financial holding companies, mixed financial holding companies and mixed-activity holding companies;
4. parent financial holding companies in a Member State, EU parent financial holding companies, parent mixed financial holding companies in a Member State, EU parent mixed financial holding companies;
5. branches of institutions that are established outside the Union, in accordance with the specific conditions laid down in this act.

This federal act shall only apply to legal entities pursuant to nos. 2 to 4, if they belong to a group of credit institutions pursuant to Article 30 of the Banking Act (BWG; *Bankwesengesetz*), published in Federal Law Gazette no 532/1993.

(2) In the application of this federal act the resolution authority and the FMA shall take into consideration the following characteristics of an entity pursuant to para. 1 in accordance with the principle of proportionality:

1. the nature of its business activities,
2. its shareholding structure,
3. its legal form,
4. its risk profile,
5. its size and legal status,
6. its interconnectedness to other institutions or to the financial system in general,
7. the scope and complexity of its activities,
8. its membership of an institutional protection scheme (IPS) that meets the requirements of Article 113 (7) of Regulation (EU) No 575/2013, or other cooperative mutual solidarity systems pursuant to Article 113 (6) of Regulation (EU) No 575/2013, and
9. whether it exercises any investment services or activities as defined in point (2) of Article 4(1) of Directive 2014/65/EU.

(3) For those institutions and entities within a group, which pursuant to Article 2 of Regulation (EU) No 806/2014 establishing uniform rules and a uniform procedure for the resolution of credit

institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010, published in OJ L 225 of 30.07.2014, p. 1, that fall in the scope of application of that Regulation, the rules contained in this federal act shall only apply to the extent that the rules of the aforementioned Regulation shall not be applicable.

(4) This Federal Act shall not apply to entities which are also authorised pursuant to Article 14 of Regulation (EU) No. 648/2012.

Definition of Terms

Article 2. For the purposes of this federal act, the following definitions shall apply:

1. Resolution: application of a resolution tool, in order to achieve one or more of the resolution objectives pursuant to Article 48 para. 2;

1a. Single Resolution Mechanism: the Single Resolution Mechanism created by Regulation (EU) 806/2014, which prescribes uniform rules and a uniform procedure for the resolution of entities pursuant to Article 2 of Regulation (EU) no. 806/2014, and which is supported by a Single Resolution Fund;

1b. Single Resolution Fund: the fund established pursuant to Article 67 para. 1 of Regulation (EU) No 806/2014, and which will be filled during the transitional period pursuant to the arrangements set out in the agreement on transferring of funds collected on a national level pursuant to Article 8 of Implementing Regulation (EU) No. 2015/81, OJ L 15, 22.01.2015, p. 1;

2. CRR-credit institutions: credit institutions pursuant to point (2) of Article 4(1) of Regulation (EU) No 575/2013, with the exception of entities pursuant to Article 2 para. 5 of Directive 2013/36/EU of the European Parliament and the Council 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, OJ L 176, 27.06.2013 p. 338;

3. CRR investment firms: investment firms pursuant to Article 4 (1) (22) of Regulation (EU) 2019/2033 on prudential requirements for investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No. 806/2014, OJ L 314, 05.12.2019, p. 1, in the version of the corrigendum in OJ L 261, 22.07.2021, p. 60, which are subject to the initial capital requirements set forth in Article 13 no. 1 of the Investment Firms Act (WPFG; *Wertpapierfirmengesetz*) published in Federal Law Gazette I No. 237/2022;

3a. Certain investment firms: CRR-investment firms, which do not fall within the scope of application of Regulation (EU) No 806/2014;

3b. Existing certain investment firms: certain investment firms pursuant to Article 2 no. 3a that were already authorised in Austria as CRR investment firms prior to the WPFG entering into force.

4. CRR financial institution: a financial institution pursuant to point (26) of Article 4(1) of Regulation (EU) No 575/2013;
5. subsidiary: means:
   a. a subsidiary pursuant to point (16) of Article 4(1) of Regulation (EU) No 575/2013; and
   b. for the purpose of applying Articles 15, 16, 22, 23, 29 to 31, 70 to 72, 100 to 105d, 139 to 146, and 161 in the case of resolution groups pursuant to Article 2 no. 82b lit. b (affiliation of credit institutions) subsidiaries pursuant to lit. a including credit institutions that are permanently affiliated to a central body, the central body itself and its respective subsidiaries, with it being necessary to take into account whether and in what way these resolution groups comply Article 104 para. 3;

5a. significant subsidiary: a subsidiary pursuant to point 135 of Article 4(1) of Regulation (EU) No 575/2013;
6. parent undertaking: a parent undertaking pursuant to point (15) of Article 4(1) of Regulation (EU) No 575/2013;
7. consolidated basis: the basis of the consolidated situation pursuant to point 47 of Article 4(1) of Regulation (EU) No 575/2013;
8. institutional protection scheme 'IPS': an arrangement that meets the requirements laid down in Article 113(7) of Regulation (EU) No 575/2013;
9. financial holding company: a financial holding company pursuant to point (20) of Article 4(1) of Regulation (EU) No 575/2013;
10. mixed financial holding company: a mixed financial holding company pursuant to point (21) of Article 4(1) of Regulation (EU) No 575/2013;
11. mixed-activity holding company: a mixed-activity holding company pursuant to point (22) of Article 4(1) of Regulation (EU) No 575/2013;
12. parent financial holding company in a Member State: a parent financial holding company in a Member State pursuant to point (30) of Article 4(1) of Regulation (EU) No 575/2013;
13. EU parent financial holding company: an EU parent financial holding company pursuant to point (31) of Article 4(1) of Regulation (EU) No 575/2013;
14. parent mixed financial holding company in a Member State: a parent mixed financial holding company in a Member State pursuant to point (32) of Article 4(1) of Regulation (EU) No 575/2013;
15. EU parent mixed financial holding company: an EU parent mixed financial holding company pursuant to point (33) of Article 4(1) of Regulation (EU) No 575/2013;

15a. Global systemically important institution (G-SII): a global systemically important institution (G-SII) pursuant to Article 2 no. 23 BWG;

16. resolution objectives: the resolution objectives referred to in Article 48 para. 2;
17. branch: a branch pursuant to point (17) of Article 4(1) of Regulation (EU) No 575/2013;
18. resolution authority: the designated authority pursuant to Article 3 para 1;

18a. Board: the Single Resolution Board pursuant to Article 42 of Regulation (EU) No 806/2014;

19. resolution tool: a resolution tool referred to in Article 74 para. 2;
20. resolution power: one of the powers referred to in Articles 58 to 69;
21. competent authority: a competent authority pursuant to point (40) of Article 4(1) of Regulation (EU) No 575/2013 and the European Central Bank in performance of the tasks conferred on it by Regulation (EU) No 1024/2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, OJ L 287 of 29.10.2013 p. 63 for the specific (banking supervision) tasks conferred upon it or a competent authority pursuant to Article 2 no. 6 WPFG in the performance of duties in conjunction with the supervision of investment firms (securities supervision);
22. competent ministries: finance ministries or other ministries of the Member States which are responsible for economic, financial and budgetary decisions at the national level according to national competencies and which have been designated in accordance with Article 3(5) of Directive 2014/59/EU;
23. institution: a CRR-credit institution (no. 2) or a CRR-investment firm (no. 3);
24. management body: management body pursuant to Article 2 no. 1a BWG;
25. directors: directors pursuant to Article 2 no. 1 BWG;
26. supervisory board: supervisory board: or another competent supervisory body determined by law or articles of association;
27. senior management: the senior management pursuant Article 2 no. 1b BWG;
28. group: a parent undertaking and its subsidiaries;
29. cross-border group: group having group entities established in more than one Member State;
30. extraordinary public financial support: State aid pursuant to Article 107(1) TFEU, or any other public financial support at supra-national level, which, if provided for at national level, would constitute State aid, that is provided in order to preserve or restore the viability, liquidity or solvency of an institution or entity pursuant to Article 1 para. 1 nos. 2 to 4 or of a group of which such an institution or entity forms part;
31. emergency liquidity assistance: the provision by a central bank of central bank money, or any other assistance that may lead to an increase in central bank money, to a solvent institution or CRR-financial institution or a group of solvent institutions or CRR-financial institutions, facing temporary liquidity problems, without such an operation being part of monetary policy;
32. systemic crisis: a disruption in the financial system with the potential to have serious negative consequences for the internal market and the real economy. All types of financial intermediaries, financial markets and financial infrastructures may be potentially systemically important to some degree;
33. group entity: a legal person that is part of a group;
34. recovery plan: a recovery plan drawn up and maintained by an institution pursuant to Articles 8 and 9;
35. group recovery plan: a group recovery plan drawn up and maintained pursuant to Articles 15 and 16;

36. significant branch: a branch that would be considered as significant in a host Member State pursuant to Article 51(1) of Directive 2013/36/EU;
37. 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 market 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;
38. core business lines: business lines and associated services which represent material sources of revenue, profit or franchise value for an institution or for a group of which an institution forms part;
39. consolidating supervisor: a consolidating supervisor pursuant to point (41) of Article 4(1) of Regulation (EU) No 575/2013;
40. own funds: own funds pursuant to point (118) of Article 4(1) of Regulation (EU) No 575/2013;
41. conditions for resolution: conditions referred to in Article 49 and 52;
42. resolution action: the decision to place an institution or entity pursuant to Article 1 para. 1 nos. 2 to 4, the application of a resolution tool, or the exercise of one or more resolution powers;
43. resolution plan: a resolution plan for an institution drawn up in accordance with Articles 19 and 20;
44. group resolution:
    a. the taking of resolution action at the level of a parent undertaking or of an institution subject to consolidated supervision, or
    b. the coordination of the application of resolution tools and the exercise of resolution powers by resolution authorities in relation to group entities that meet the conditions for resolution;
45. group resolution plan. a plan for group resolution drawn up in accordance with Articles 22 to 26;
46. group-level resolution authority: the resolution authority in the Member State in which the consolidating supervisor is situated. If the ECB is the consolidating supervisor, then the group-level resolution authority is the resolution authority in the Member State in which the consolidating supervisor would be located in the event that Regulation (EU) No 1024/2013 were not to apply;
47. group resolution scheme: a plan drawn up for the purposes of group resolution in accordance with Article 142;
48. resolution college: a college established in accordance with Article 134 to carry out the tasks referred to in Article 134;
49. debt instruments pursuant to Article 58 para. 1 nos. 7 and 10: bonds and other forms of transferable debt instruments, instruments creating or acknowledging a debt, and instruments giving rights to acquire debt instruments;

49a. debt instrument pursuant to Article 131: bonds and other forms of transferable debt instruments and instruments creating or acknowledging a debt;

50. parent institution in a Member State: a parent institution in a Member State pursuant to point (28) of Article 4(1) of Regulation (EU) No 575/2013;

51. EU parent institution: an EU parent institution pursuant to point (29) of Article 4(1) of Regulation (EU) No 575/2013;

52. own funds requirements: the requirements laid down in Articles 92 to 98 of Regulation (EU) No 575/2013;

53. supervisory college: a supervisory college pursuant to Article 116 of Directive 2013/36/EU or pursuant to Article pursuant Article 77b BWG;

54. Union state aid framework: the framework established by Articles 107, 108 and 109 TFEU and regulations and all Union acts, including guidelines, communications and notices, made or adopted pursuant to Article 108(4) or Article 109 TFEU;

55. asset separation tool: the mechanism for effecting a transfer by a resolution authority of assets, rights or liabilities of an institution under resolution pursuant to Articles 82 and 83 by the resolution authority into a wind-down unit;

56. wind-down unit: a joint stock company that meets the requirements pursuant to Article 83 para. 1;

57. bail-in tool: the mechanism for effecting the exercise by a resolution authority of the write-down and conversion powers in relation to liabilities of an institution under resolution in accordance with Article 85;

58. sale of business tool: the mechanism for effecting a transfer by the resolution authority of shares or other instruments of ownership issued by an institution under resolution, or assets, rights or liabilities, of an institution under resolution to a purchaser that is not a bridge institution, pursuant to Article 75;

59. bridge institution: a legal person that meets the requirements pursuant to Article 78 para. 3;

60. bridge institution tool: the mechanism for transferring shares or other instruments of ownership issued by an institution under resolution or assets, rights or liabilities of an institution under resolution to a bridge institution, pursuant to Article 78;

61. instruments of ownership: shares, other instruments that confer ownership, instruments that are convertible into or give the right to acquire shares or other instruments of ownership, and instruments representing interests in shares or other instruments of ownership;

62. shareholders: shareholders or holders of other instruments of ownership;

63. transfer powers: the powers specified in Article 58 para. 1 nos. 3 or 4 to transfer shares, other instruments of ownership, debt instruments, assets, rights or liabilities, or any combination of those items from an institution under resolution to a recipient;

64. central counterparty: a central counterparty pursuant to Article 2 (1) of Regulation (EU) No 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories, OJ L 201, 27.07.2012 p. 1;

65. derivative: a derivative pursuant to Article 2 (5) of Regulation (EU) No 648/2012;
66. write-down and conversion powers: the powers referred to in Article 70 para. 1 and Article 58 para. 1 nos. 5 to 10;
67. secured liabilities: liabilities, for which a collateral was provided, particular where it is possible to exercise a segregation or separation right in insolvency proceedings, in particularly liabilities from covered debt securities, such as hypothecated mortgage bonds (*Hypothekenpfandbriefe*) in accordance with the Mortgage Bank Act (HypBG; *Hypothekenbankgesetz*) published in dRGBl. p. 375/1899, funded bank bonds in accordance with Act of 27 December 1905 regarding funds bank bonds (FBSchVG), published in RGBl. No. 213/1905, and mortgage bonds (*Pfandbriefe*) in accordance with the Mortgage Bond Act (PfandbriefG; *Pfandbriefgesetz*) published in dRGBl. I p. 492/1927, including covered derivative contracts in accordance with these federal acts, provided that the liabilities are at least secured or covered by the value of the guarantee provided for this purpose;
68. Common Equity Tier 1 instruments: capital instruments that meet the conditions laid down in Article 28(1) to (4), Article 29(1) to (5) or Article 31(1) of Regulation (EU) No 575/2013;
68a. Common Equity Tier 1 capital: Common Equity Tier 1 capital as calculated in accordance with Article 50 of Regulation (EU) No 575/2013;
69. Additional Tier 1 instruments: capital instruments fulfilling the requirements pursuant to Article 52(1) of Regulation (EU) No 575/2013.
70. aggregate amount: the aggregate amount by which the resolution authority has assessed that bail-inable liabilities are to be written down or converted, in accordance with Article 88 para. 1;
71. bail-inable liabilities: liabilities and other capital instruments other than those of Common Equity Tier 1, Additional Tier 1 or Tier 2 instruments of an institution or entity pursuant to Article 1 para. 1 nos. 2 to 4, that are not excluded from the scope of the bail-in tool on the basis of Article 86 para. 2;
71a. eligible liabilities: bail-inable liabilities, that meet the respective conditions laid out in Article 101 or Article 105 para. 8 no. 1, as well as Tier 2 instruments that meet the conditions laid down in point (b) of Article 72a(1) of Regulation (EU) No 575/2013;
71b. subordinated eligible instruments: instruments that meet all of the conditions referred to in Article 72a of Regulation (EU) No 575/2013 other than paragraphs (3) to (5) of Article 72b of that Regulation;
72. Deposit guarantee facility: a deposit guarantee scheme pursuant to Article 7 para. 1 no. 1 of the Deposit Guarantee Schemes and Investor Compensation Act (ESAEG; *Einlagensicherungs- und Anlegerentschädigungsgesetz*), published in Federal Law Gazette I No 117/2015;
73. Tier 2 instruments: capital instruments or subordinated loans that meet the conditions laid down in Article 63 of Regulation (EU) No 575/2013.
74. relevant capital instruments: for the purposes of Section 5 of Chapter V of Title V and Chapter IV of Title IV, Additional Tier 1 instruments and Tier 2 instruments;

74a. combined buffer requirement: combined capital buffer requirement pursuant to Article 22a BWG;

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

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

77. affected holder: means a holder of instruments of ownership whose instruments of ownership are cancelled by means of the power referred to in Article 58 para. 1 no. 8;

78. relevant parent institution: a parent institution in a Member State, a EU parent institution, a financial holding company, a mixed financial holding company, a mixed-activity holding company, a parent financial holding company in a Member State, a Union parent financial holding company, a parent mixed financial holding company in a Member State, or an EU parent mixed financial holding company, in relation to which the bail-in tool is applied;

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

80. business day: any day other than a Saturday, Sunday and public holidays in the Member State concerned;

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

82. institution under resolution: an institution, a CRR-financial institution, a financial holding company, a mixed financial holding company, a mixed-activity holding company, a parent financial holding company in a Member State, an EU parent financial holding company, a parent mixed financial holding company in a Member State, or an EU parent mixed financial holding company, in respect of which a resolution action is taken;

82a. resolution entity:

   a. a legal person established in the European Union which has been designated by the resolution authority pursuant to Article 23 as an undertaking for which resolution actions are stipulated in the resolution plan; or

   b. an institution that is not part of a group subject to consolidated supervision in accordance with Article 77b BWG, and for which a resolution action is stipulated in a resolution plan drawn up in accordance with Articles 19 and 20;

82b. resolution group:

   a. a resolution entity and its subsidiaries that are not:

      aa) resolution entities themselves;

bb) subsidiaries of other resolution entities; or

cc) undertakings established in a third country that are not included in the resolution group under the resolution plan, and their subsidiaries, or

b. a central body, credit institutions and their subsidiaries that are members of an affiliation of credit institutions pursuant to Article 30a BWG, if at least one of these credit institutions or undertakings or the central body is a resolution entity;

82c. liquidation entity: a legal person established in the Union in respect of which,

a. in the case of an entity that is part of a group, the group resolution plan pursuant to Article 22 provides that the entity is to be wound up under normal insolvency proceedings, or an entity within a resolution group other than a resolution entity, in respect of which the group resolution plan does not provide for the exercise of write-down and conversion powers, or

b. in the case of an entity that is not part of a group, the resolution plan pursuant to Article 19 provides that the entity is to be wound up under normal insolvency proceedings;

83. EU subsidiary: an institution which is established in a Member State and which is a subsidiary of a third-country institution or a third-country parent undertaking;

84. EU parent undertaking: an EU parent institution, an EU parent financial holding company or an EU parent mixed financial holding company;

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

86. third-country parent undertaking: a parent undertaking, a parent financial holding company or a parent mixed financial holding company, established in a third country;

87. third-country resolution proceedings: an action under the law of a third country to manage the failure of a third-country institution or a third-country undertaking that is comparable, in terms of objectives and anticipated results, to resolution actions under this federal act;

88. EU branch: a branch located in a Member State of a third-country institution;

89. relevant third-country authority: a third-country authority responsible for carrying out functions comparable to those of resolution authorities or competent authorities pursuant to this federal act;

90. group resolution financing arrangement: the resolution financing arrangement of the Member State of the group-level resolution authority;

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

92. intra-group guarantee: a contract by which one group entity guarantees the obligations of another group entity to a third party;

93. secured deposits: covered deposits pursuant to Article 7 para. 1 no. 5 ESAEG;

94. eligible deposits: eligible deposits pursuant to Article 7 para. 1 no. 4 ESAEG;
95. covered bond: a covered bond in accordance with Article 3 (1) of Directive (EU) 2019/2162 on the issue of covered bonds and covered bond public supervision and amending Directives 2009/65/EC and 2014/59/EU, OJ L 328, 18.12.2019, p. 29, or, where the instrument was issued before 08 July 2022, a covered bond in accordance with Article 52 (4) of Directive 02009/65/EC on the coordination of laws, regulations and administrative provisions relating to certain undertakings for collective investment in transferable securities (UCITS), OJ L 302, 17.11.2009, p. 32, in the version applicable on the day of issue;
96. title transfer financial collateral arrangement: financial collateral in the form of title transfer pursuant to Article 3 para. 1 no. 2 of the Financial Collateral Arrangements Act (FinSG; *Finanzsicherheit-Gesetz*), published in Federal Law Gazette I No 117/2003;
97. netting arrangement: an arrangement under which a number of claims or obligations can be converted into a single net claim, including close-out netting arrangements under which, on the occurrence of an enforcement event (however or wherever defined) the obligations of the parties are accelerated so as to become immediately due or are terminated, and in either case are converted into or replaced by a single net claim. This also includes set-off as a result of termination pursuant to Article 3 para. 1 no. 14 point a FinSG and set-off pursuant to Article 12 of the Finality Act (*Finalitätsgesetz*), published in Federal Law Gazette I No. 123/1999;
98. set-off arrangement: an arrangement under which two or more claims or obligations owed between the institution under resolution and a counterparty may be set off against each other;
99. Financial contracts: consist of the following contracts and agreements:
    a. a) securities contracts, including:
        aa) contracts relating to the purchase, sale or lending of a security, a group of securities or a securities index;
        bb) options on a security or group or index of securities;
        cc) repurchase or reverse repurchase transactions on any such security, a group of securities or securities index;
    b. commodity contracts, including:
        aa) contracts for the purchase, sale or loan of a commodity or group or index of commodities for future delivery;
        bb) options on a commodity, a group of commodities or index of commodities;
        cc) repurchase or reverse repurchase transactions on any such commodity, group of commodities or index of commodities;
    c. futures and forwards contracts (futures and forwards), including contracts (with the exception of commodity contracts) relating to the purchase, sale or transfer of a commodity or other good, service, right or shareholding at a fixed price at a future date;
    d. swap agreements that in particular cover the following:

aa) swaps and options relating to interest rates; spot or other foreign exchange agreements; currency; an equity index or equity; a debt index or debt; commodity indexes or commodities; weather; emissions or inflation;

bb) total return, credit spread or credit swaps;

cc) agreements or transactions that are similar to one of the type of agreements defined under aa) or bb) and which have a widespread presence on the swap or derivative markets;

e. borrowing arrangements between banks with a maturity of three months or shorter;

f. Framework agreements relating to the contracts or agreements referred to under (a) to (e);

100. crisis prevention measure: exercising of powers to direct removal of deficiencies or impediments to recoverability pursuant to Article 14 paras. 2 and 3, exercising of powers to address or remove impediments to resolvability pursuant to Article 29 or Articles 30 and 31, the application of an early intervention measure pursuant to Article 44, the appointment of a temporary administrator pursuant to Article 46 or the exercise of the write down or conversion powers pursuant to Article 70;

101. crisis management measure: a resolution action or the appointment of a resolution administrator pursuant to Article 68 or a person pursuant to Article 93 para. 2 or Article 68 para. 1;

102. recovery capacity: the capability of an institution to restore its financial position following a significant deterioration;

103. depositor: a depositor pursuant to Article 7 para. 1 no. 6 ESAEG;

104. investor: an investor pursuant to Article 44 no. 3 ESAEG;

105. designated national macroprudential authority: the authority entrusted with the conduct of macroprudential policy referred to in Recommendation B No. 1 of the Recommendation of the European Systemic Risk Board of 22 December 2011 on the macroprudential mandate of national authorities (ESRB/2011/3);

106. micro, small and medium-sized enterprises: micro, small and medium-sized enterprises as defined on the basis of annual turnover criterion referred to in Article 2(1) of the Annex to Commission Recommendation 2003/361/EC concerning the definition of micro, small and medium-sized enterprises; OJ L 124, 20.05.2003, p. 36;

107. regulated market: a regulated market pursuant to Article 1 no. 21 WAG 2018;

108. The European Banking Authority (EBA) as defined in 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 of the European Parliament and of the Council, OJ L 331, 15.12.2010, p. 12;

109. stabilisation measures: the public equity support tool (Article 99 para. 3) and the temporary public ownership tool (Article 99 para. 4);

110. the Agreement: the Agreement on the transfer and mutualisation of contributions to the Single Resolution Fund, upon the basis of which the contributions collected on a national basis are transferred to the Single Resolution Fund;
111. transitional period: the period of time commencing with the application of the Agreement pursuant to Article 12 (2) of the Agreement and ending at the time where the Single Resolution Fund has reached the target level stipulated in Article 69 of Regulation (EU) No 806/2014, at latest, however eight years after the commencement of the application of this Agreement;
112. annual national contribution: the annual contribution pursuant to Article 3 (3) of Implementing Regulation (EU) No 2015/81, to be collected in the contribution period pursuant to Article 3 (4) of Implementing Regulation (EU) No 2015/81 by the resolution authority from institutions and entities that lie within the scope of application of Regulation (EU) No 806/2014 and which shall be transferred to the Single Resolution Fund;
113. national extraordinary contributions: the extraordinary contributions collected ex post, to be collected pursuant to Article 71(1) of Regulation (EU) No 806/2014 from entities, that lie within the scope of application of Regulation (EU) No 806/2014 and transferred to the Single Resolution Fund;
114. available financial means: available financial means pursuant to point (34) of Article 3(1) of Regulation (EU) No 806/2014;
115. national compartment: compartment of a party to a contract, which was established on the basis of Article 4 of the Agreement.

The resolution authority and the competent ministry

Article 3. (1) The FMA is the resolution authority for the purpose of this federal act and the National Resolution Authority (Point (3) of Article 3(1) of Regulation (EU) No 806/2014) and the relevant national resolution authority Point (4) of Article 3(1) of Regulation (EU) No 806/2014) for the purposed of Regulation (EU) No 806/2014. Where duties, powers and obligations pertaining to a resolution authority have been conferred upon the FMA by this federal act or through Regulation (EU) No 806/2014, it shall perform them while fulfilling the requirements set out in paras. 3 and 4, and shall be designated as the "resolution authority".
(1a) The FMA is the national competent authority pursuant to Article 2(2) of Regulation (EU) No 1024/2013 (Article 3(1) point (1) of Regulation (EU) No 806/2014) and the competent authority as defined in point i of Article 4 (2) of Regulation (EU) No 1093/2010 (Article 3(1) point (2) of Regulation (EU) No 806/2014) for the purposed of Regulation (EU) No 806/2014, unless the ECB is competent.
(2) The Federal Ministry of Finance is the competent ministry for Austria pursuant to Article 3(5) of Directive 2014/59/EU and for the purposes of Regulation (EU) No 806/2014.
(3) The FMA shall form a separate organisational unit within its organisational structure for fulfilling its duties as the resolution authority pursuant to para. 1, which shall only be allowed to perform

duties in addition to the duties pursuant to para. 1 as the resolution authority pursuant to Article 2 para. 1a of the Central Counterparties and Trade Repositories Act (ZGVG; *Zentrale Gegenparteien-Vollzugsgesetz*), published in Federal Law Gazette I No. 97/2012. In so doing the FMA shall ensure in its structural organisation that this organisational unit is able to act in complete operational independence from all other organisational units within the FMA and so that conflicts of interest are not able to arise between resolution activities and the other activities of the FMA set out in the FMABG. The manager of the organisational unit responsible for resolution activities shall be directly subordinate to Executive Board of the FMA and shall only have a reporting obligation to the Executive Board. The FMA shall ensure that employees who are members of the organisational unit responsible for resolution activities do not simultaneously perform functions or tasks in relation to other activities of the FMA defined in the FMABG, except for the performance of functions and duties pursuant to Article 2 para. 1a ZGVG

(4) The FMA shall ensure that the organisational unit responsible for resolution activities and the organisational units that perform the other activities of the FMA defined in the FMABG, shall cooperate closely in the preparation, planning and application of resolution decisions. The *Oesterreichische Nationalbank* shall enable access at any time by automated means for the resolution authority to the common data bank prescribed pursuant to Article 79 para. 3 BWG. Furthermore, the *Oesterreichische Nationalbank* shall upon request make all analysis results and information available that is contained in their continuous analysis of individual banks pursuant to Article 79 para. 4a BWG.

(4a) Where the FMA issues internal rules in order to fulfil the rules set out in paras. 3 to 4, it shall publish them.

(5) The FMA, the resolution authority and the *Oesterreichische Nationalbank* shall cooperate closely to perform their respective tasks in accordance with this Federal Act, the BWG, Regulation (EU) No 575/2013, Regulation (EU) No. 806/2014, the WPFG and Regulation (EU) 2019/2033. Article 79 BWG shall apply with the proviso that the tasks defined therein in relation to banking supervision performed by the *Oesterreichische Nationalbank* shall be valid for the purposes of this federal act or Regulation (EU) No 806/2014 for the recovering and resolution of entities pursuant to Article 1 para. 1; Articles 54 to 79, 81 to 83, 85 to 92, 95 to 98, 114 to 131 and 152 to 159 of this federal act as well as Articles 20 to 22, 24 to 27 and 67 to 79 of Regulation (EU) No 806/2014 shall not apply. In exceptional circumstances, the resolution authority may also allow bank auditors, external auditors, external auditing companies and other experts to undertake all necessary audits, opinions and analyses; the provision of information by the resolution authority to those appointed parties shall be permissible provided that this is necessary to fulfil their engagement.

(6) The resolution authority shall inform the Federal Minister of Finance about decisions that it or the Board has taken. In the case of decisions that have a direct fiscal impact or systemic implications, the resolution authority shall obtain the consent of the Federal Minister of Finance prior to the execution of the decision.

(7) In the case of all decisions that are taken by the FMA or the resolution authority pursuant to this federal act, the potential impact of the decision in all the Member States where the institution or the group operate shall be taken into account and consideration taken to keep the negative effects on financial stability and negative economic and social effects in those Member States to an absolute minimum.

(8) The resolution authority shall inform the EBA that it has been designated as the resolution authority in Austria pursuant to Article 3 (1) of Directive 2014/59/EU. This notification shall also contain a description of the functions and competences to be exercised by the resolution authority.

(9) By way of derogation from Article 3 para. 1 of the Public Liability Act (AHG; *Amtshaftungsgesetz*) published in Federal Law Gazette No. 20/1949 the bodies and employees of the FMA, including the employees of the resolution authority, and the bodies and employees of the *Oesterreichische Nationalbank* that perform duties in accordance with this federal act, in accordance with Regulation (EU) No 806/2014 or on the basis of a delegated act issued on the basis of Directive 2014/59/EU or Regulation (EU) No. 806/2014, shall only demand damages, if they have intentionally committed such breaches of law.

(10) The FMA shall only perform the tasks, powers and obligations conferred upon it as competent authority by this federal act pursuant to Article 2 no. 21 to the extent that exercising these is not reserved to the European Central Bank under provisions set forth in Regulation (EU) No 1024/2013.

(Note: para. 11 was repealed in the amendment in Federal Law Gazette I No. 159/2015)

(12) The FMA shall in the enforcement of the provisions of this federal act, including the issuing and enforcement of national regulations passed on the basis thereof, and in the enforcement of the provisions of Regulation (EU) No 806/2014 and the delegated legal acts issued on the basis of that Regulation and on the basis of Directive 2014/59/EU, take into account European convergence in respect of supervisory tools and supervisory practices. To this end the FMA shall participate in the activities of the EBA, cooperate with the ESRB, follow the guidelines and recommendations and other measures passed by the EBA, as well as comply with the warnings and recommendations issued by the ESRB under Article 16 of Regulation (EU) No 1092/2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board, OJ L 331, 15.12.2010, p. 1. The FMA may deviate from those guidelines and recommendations in the event that justified grounds exist, in particular in the event of a conflict with provisions of federal law.

(13) The Federal Minister of Finance shall for the purposes of point (c) of Article 43(1) of Regulation (EU) No 806/2014 name a member and alternate at the proposal of the resolution authority, who shall represent the resolution authority in the Board.

Cooperation in the Single Resolution Mechanism

Article 3a. (1) The resolution authority shall perform the tasks, powers and obligations conferred upon it by this federal act only to the extent that exercising these is not reserved to the Board under provisions set forth in Regulation (EU) No 806/2014.

(2) The resolution authority shall be obliged for the purposes of this federal act pursuant to Regulation (EU) No 806/2014 to cooperate with the Board, the European Commission and the European Central Bank (ECB). In particular, the resolution authority shall make all information available to the Board, the European Commission and the ECB required for the performance of their duties in accordance with Regulation (EU) No 806/2014.

(3) The resolution authority shall take the necessary measures for the implementation of decisions by the Board.

(4) The resolution authority shall take into consideration all Guidelines issued on the basis of Regulation (EU) No 806/2014 and general instructions issued by the Board into account when conducting its duties. The resolution authority shall implement recommendations of the Board, or shall provide a justification in the event that it does not implement recommendations of the Board.

(5) The resolution authority supports the Board pursuant to the rules set out in Regulation (EU) No 806/2014 and may take recourse to official assistance itself pursuant to Article 21 paras. 1, 2 and 4 FMABG.

(6) To act on a European Commission decision addressed to the resolution authority pursuant to Article 19 (3) or (5) of Regulation (EU) No 806/2014 the resolution authority may request all necessary information from a beneficiary as defined in Article 19 of Regulation (EU) No 806/2014 as well as issuing instructions about measures pursuant to para. 7 by means of administrative decision, in order to ensure that the conditions and obligations set out in the European Commission decision are fulfilled.

(7) For the purposes of para. 6 the resolution authority may

1. demand by means of an administrative decision that the beneficiary repays the contributions with interest identified by the European Commission pursuant to Article 19(5) of Regulation (EU) No 806/2014 and transferred the received amounts to the Board;
2. instruct the beneficiary under the threat of a coercive penalty to comply with the European Commission decision in accordance with Article 19(3) of Regulation (EU) No 806/2014 within an appropriate timeframe;
3. appoint an attorney, an external auditor, an external auditing company or any other expert holding suitable professional qualifications to monitor the obligations imposed by the European Commission under Article 19(3) of Regulation (EU) No. 806/2014 as a trustee or other independent person. Such persons in this instance act as organs of the resolution authority.

PART 2: PREPARATION

CHAPTER 1: RECOVERY AND RESOLUTION PLANNING

Section 1: General provisions

Definition of the Content of Plans

Article 4. (1) The FMA with regard to recovery plans, and the resolution authority with regard to resolution plans, shall determine the following:

1. the contents and details of recovery and resolution plans to be drawn up;
2. the date by which the first recovery and resolution plans are to be drawn up and the frequency for updating recovery and resolution plans which may be lower than that provided for in Article 11 para. 1, Article 19 para. 2 and Article 22 para. 2 of this federal act;
3. the contents and details of the information to be submitted by the institutions pursuant to Article 9 para. 4, Articles 21 and 22 as well as in accordance with the Annex to Article 9 and the Annex to Article 21; and
4. the details for the assessment of resolvability pursuant to Articles 27 and 28 as well as in accordance with the Annex to Article 27.

In determining the contents of the plans, the FMA and the resolution authority shall take into account the criteria pursuant to Article 1 para. 2.

(2) The FMA and the resolution authority shall take the following into account in determining the contents and details pursuant to para. 1:

1. the effects that the default of an institution may have as a result of the nature of its business activities, its shareholding structure, its legal form, its risk profile, its size and legal status, its interconnectedness to other institutions or the financial system as a whole, the scope and complexity of its activities, its membership of an institutional protection scheme pursuant to Article 113(7) of Regulation (EU) No. 575/2013 or other common systems of mutual solidarity pursuant to Article 113(6) of Regulation (EU) No 575/2013 and the provision of investment services or the performing of investment activities pursuant to point 2) of Article 4(1) of Directive 2014/65/EU; and
2. the issue, whether the default and subsequent winding-up under an insolvency proceedings would probably have considerable disadvantageous effects on the financial markets, on other institutions and on funding or the economy as a whole.

(3) The FMA and the resolution authority shall request an expert opinion from the *Oesterreichische Nationalbank* for determining the contents and details pursuant to paras. 1 and 2. This obligation shall not exist in relation to CRR investment firms pursuant to Article 2 no. 3. For the purposes of determining the content and the details, the FMA pursuant to paras. 1 and 2 and the resolution authority pursuant to para. 1 no. 3 and para. 2, may issue a regulation, provided that the content and details determined apply for a large number of institutions.

(4) The FMA and the resolution authority shall inform EBA of the way they have applied paras. 1 and 2 of this article as well as Articles 6 and 7 to institutions in their jurisdiction.

Reporting

Article 4a. (1) The institutions pursuant to Article 1 para. 1 and where applicable the responsible undertakings (Article 30 para. 6 BWG) must submit reports to the resolution authority and the *Oesterreichische Nationalbank* pursuant to Article 105c and Article 12(2) of Regulation (EU) No 806/2014.

(2) The institutions pursuant to Article 1 para. 1 and where applicable responsible undertakings (Article 30 para. 6 BWG) shall make reports available to the resolution authority and the *Oesterreichische Nationalbank* on the drawing-up and revision of resolution plans pursuant to the Annex to Article 21 and shall submit them in accordance with the Regulation pursuant to para. 6.

(3) The institutions pursuant to Article 1 para. 1 and where applicable responsible undertakings (Article 30 para. 6 BWG) shall submit reports to the resolution authority

1. pursuant to para. 2 without delay following the end of each calendar year,
2. by way of derogation from no. 1 at an appropriate point in time, to fulfil the requirements stipulated by the Single Resolution Board (Article 2 no. 18a).

(4) Institutions pursuant to Article 1 para. 1 shall submit the reports pursuant to paras. 1 and 2 in their entirety. Responsible undertakings (Article 30 para. 6 BWG) shall submit these reports for the group of credit institutions pursuant to Article 30 BWG.

(5) The reports pursuant to paras. 1 and 2 must be submitted in a standardised format by electronic means. The submissions must meet certain minimum requirements to be announced by the resolution authority after consultation with the *Oesterreichische Nationalbank*.

(6) The FMA shall upon request of the resolution authority determine reporting dates, specific formats and contents of reports and the reporting frequencies pursuant to paras. 1 and 2 by means of a Regulation. The resolution authority shall take the following into account in doing so:

1. the contents of reports, frequencies and reporting dates of legal acts that have been harmonised throughout the European Union, that fall within the competence of the resolution authority and their scope of application;
2. the national economic interest of having a functioning banking sector and the effectiveness of resolution planning.
3. the type, extent and complexity of an institution’s transactions;
4. the reports pursuant to paras. 1 and 2 may be submitted exclusively to the *Oesterreichische Nationalbank*, provided that the resolution authority is not impeded in the performance of its duties in accordance with this or other federal acts by doing so;

The Regulation shall require the consent of the Federal Minister of Finance.

(6a) The resolution authority shall be authorised to exercise the powers conferred on it by Article 78a of Regulation (EU) No 575/2013 by way of a Regulation. In doing so, the resolution authority shall comply with the provisions contained in the Regulatory Technical Standards pursuant to

Article 78a(3) of Regulation (EU) No 575/2013. The FMA shall be consulted prior to the adoption of the Regulation.

(7) The FMA shall check whether the reporting circumstances, which shall be reported pursuant to paras. 1 and 2, are already contained in the existing reporting system on the basis of Articles 74 to 75 BWG or Articles 99, 100, 101, 394, 430 to 430b of Regulation (EU) No 575/2013. If such reports have already been mapped, then the resolution authority shall use them.

Revocation of simplified obligations

Article 5. (1) If the FMA or the resolution authority has determined that simplified obligations shall apply with regard to the contents of the plan pursuant to Article 4 para. 1, they may revoke these obligations at any time and shall determine full obligations, which are to be fulfilled by the institutions within an appropriate period of time.

(2) The FMA and the resolution authority shall ensure that the simplified obligations determined pursuant to Article 4 para. 1 with regard to the contents of the plans do not compromise their powers to apply crisis prevention measures or crisis management measures in accordance with this federal act.

Easing of conditions for members of groups of affiliated credit institutions and institutional protection schemes

Article 6. (1) The conditions in sections 2 and 3 shall not apply to institutions, which pursuant to Article 10 of Regulation (EU) No 575/2013 are affiliated to a central body and are either partially or completely exempted from compliance with supervisory requirements on an individual institution basis. The conditions in sections 2 and 3 are to be complied with by the central body on the basis of the consolidated situation as a whole of the central body and the institutions affiliated to it pursuant to Article 10 of Regulation (EU) No 575/2013. Sections 2 and 3 shall apply with the proviso, that the term “group” also encompasses a central body, the institutions affiliated to it pursuant to Article 10 of Regulation (EU) No 575/2013 and their subsidiaries, and the terms “parent undertakings”, “EU parent undertakings” or “institutions subject to supervision on a consolidated basis pursuant to Article 111 of Directive 2013/36/EU” also include the central body.

(2) The conditions of Section 2 shall not apply to institutions, which belong to an institutional protection scheme. The conditions of Section 2 shall be complied with by the central body of the institutional protection scheme including those institutions, which belong to the institutional protection scheme. Section 2 shall apply with the proviso that the term “group” also includes a central institution, the institutions that are members of the institutional protection scheme and their subsidiaries, and the terms “parent undertaking”, “EU parent undertaking” or “institutions subject to supervision on a consolidated basis pursuant to Article 111 of Directive 2013/36/EU” also include the central institution.

(3) The FMA may however request that institutions, even in the event that the conditions pursuant to para. 1 or 2 exist, draw up their own recovery plans in accordance with Section 2, while the

resolution authority may request that such institutions draw up resolution plans at any time in accordance with Section 3.

Obligations to draw up plans for members of groups of affiliated credit institutions and institutional protection schemes

Article 7. (1) By derogation from Article 6 para. 1, institutions, which pursuant to Article 10 of Regulation (EU) No 575/2013 are affiliated to a central body, shall draw up separate recovery plans in accordance with Section 2, and are subject to separate resolution plans in accordance with Section 3, if they

1. are directly supervised by the European Central Bank pursuant to Article 6(4) of Regulation (EU) No 1024/2013, or
2. hold a significant share in the Austrian financial system.

(2) By derogation from Article 6 para. 2, institutions, which belong to an institutional protection scheme, shall draw up separate recovery plans in accordance with Section 2, if they

1. are directly supervised by the European Central Bank pursuant to Article 6(4) of Regulation (EU) No 1024/2013, or
2. hold a significant share in the Austrian financial system.

(3) For the purposes of paras. 1 and 2, an institution shall be deemed to hold a considerable share in the financial system, if the institution fulfils one of the following conditions:

1. the total value of the assets of the institution exceed EUR 30 billion; or
2. the ratio of the total assets of the institution to the Gross Domestic Product of Austria exceeds 20 %, and the total value of these assets is not less than EUR 5 billion.

Section 2: Recovery planning

Recovery plan

Article 8. (1) Every institution which is incorporated in Austria, which is not part of a group that is subject to supervision on a consolidated basis pursuant to Articles 111 and 112 of Directive 2013/36/EU, shall draw up and maintain a recovery plan.

(2) The recovery plan shall explain with which instruments, which shall be used by the institution so that financial stability may be restored, in the event of a considerable deterioration of the financial situation of the institute occurs.

(3) The recovery plan shall not assume any possibility of access to or receipt of extraordinary public financial support. However, the recovery plan must analyse as necessary, how and when the institution may apply to use central bank facilities in accordance with the conditions defined in the plan. For this purpose assets are to be listed, which may be expected to serve as collateral.

(4) The directors shall inform the supervisory board about the recovery plan, before the plan is submitted to the FMA.

Content of recovery plan

Article 9. (1) The recovery plan shall contain appropriate conditions and procedures to ensure that the recovery measures may be implemented on time and to ensure that a broad range of recovery options is available;

(2) The recovery plan shall take into account various scenarios of considerable macroeconomic and financial stress in relation to the specific conditions pertaining to the institution. This shall include systemic events as well as stress scenarios that are limited to specific legal persons or groups.

(3) The recovery plan shall also include measures which could be taken by the institution, where the conditions for early intervention pursuant to Article 44 are met.

(4) Without prejudice to the provisions in Section 1 the recovery plan shall in particular contain information listed in the Annex to Article 9. The FMA may call on the institution to include additional information. Additionally, the FMA may call on the institution to keep detailed records of financial contracts in which the institution is listed as a party to the contract.

Recovery Plan Indicators

Article 10. (1) All recovery plans in accordance with this section, shall contain a framework of indicators drawn up by the institution, in which it is determined from which thresholds the suitable measures named in the plan may be taken. These indicators shall be checked by the FMA as part of the evaluation process pursuant to Article 12 or Articles 17 and 18, where applicable in cooperation with the other competent authorities.

(2) The indicators may be of a qualitative or quantitative nature. They must refer to the financial situation and risk-bearing capacity of the institution and must be easy to monitor. The institution must have suitable procedures available, in order to be able to monitor the indicators on a regular basis.

(3) Institutions may also deploy measures listed in the recovery plan, where the requirements of the respective indicators are not fulfilled, if the director of the institution believes them to be appropriate in light of the specific prevailing circumstances. Institutes may also refrain in the event that the conditions for the respective indicators are fulfilled from taking the measures prescribed in the recovery plan for this purpose, if the directors of the institution deem that taking these measures in the specific prevailing circumstances is inappropriate.

(4) The institution shall notify the FMA without delay in writing of the decision to take a measure listed in the recovery plan or to refrain from taking a measure listed in the recovery plan.

Updating the recovery plan

Article 11. (1) The recovery plan shall be updated by the institution at least once a year. The FMA may request that this updating process be carried out by the institution at a shorter interval.

(2) The recovery plan shall be updated without delay and submitted to the FMA following any change to the institution’s legal or organisational structure, its business activities or its financial position, if such a change could have a material impact on the recovery plan.

Evaluation of the recovery plan

Article 12. (1) An institution that is obliged to draw up a recovery plan pursuant to Article 8 or 15, shall submit the recovery plan to the FMA. The institution shall demonstrate to the satisfaction of the FMA, that the recovery plan fulfils the criteria pursuant to para. 2 nos. 1 to 3.

(2) The FMA shall check the recovery plan within six months of its submission, and to access following consultation with the competent authorities of those Member States, in which significant branches affected by the recovery plan are located, whether

1. the requirements pursuant to Articles 8, 9 and 11 are fulfilled,
2. the implementation of the proposed arrangements is reasonably likely to maintain or restore the viability and financial position of the institution or of the group of institutions, taking into account the preparatory measures that the institution has taken or has planned to take, and
3. the plan and specific recovery options within the plan are reasonably likely to be implemented quickly and effectively in situations of financial stress and avoiding to the maximum extent possible any significant adverse effect on the financial system, including in scenarios which would lead other institutions to implement recovery plans within the same period.

(3) When assessing the appropriateness of the recovery plan, the FMA shall take into consideration the appropriateness of the institution’s capital and funding structure to the level of complexity of the organisational structure and the risk profile of the institution.

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

Improvement of the recovery plan

Article 13. (1) In the event that the checking of the recovery plan highlights significant shortcomings in the recovery plan, or that there are significant impediments stand in the way of its execution, the FMA shall request that the institution or the EU parent undertaking in the group makes improvements to the recovery plan. Article 13 para. 3 of the Code of Administrative Procedure (AVG; *Allgemeines Verwaltungsverfahrensgesetz*), Federal Law Gazette No. 51/1991, shall apply accordingly. In the order for improvement, the FMA shall communicate to the institution, which parts of the recovery plan are inadequate.

(2) The deadline for the submission of the improvement is two months, the FMA may extend the deadline by an additional month.

(3) Prior to issuing an order for improvement, the FMA shall give the institution or the EU parent undertaking the option to issue an opinion on the provisional assessment.

Procedure for remedying a shortcoming or a potential impediment

Article 14. (1) If the checking of the improved recovery plan finds that shortcomings or potential impediment have not been remedied in an appropriate manner, then the FMA may instruct the institution to make specific changes in the plan.

(2) The FMA shall instruct the institution to list and make amendments in relation to its business activities within an appropriate timeframe, in order to remedy shortcomings or potential impediment in the implementation of the recovery plan,

1. if the institution does not comply with an order for improvement pursuant to Article 13 on time or
2. if the FMA, when checking the improved recovery plan, concludes, that the shortcomings or potential impediments notified pursuant to Article 13 para. 1 have not been remedied in an appropriate manner, and they have not been remedied by means of an instruction pursuant to para. 1.

(3) If an institution does not implement an order pursuant to para. 2 within the ordered timeframe, or if the FMA assesses that the shortcomings or potential impediments cannot be remedied using the measures proposed by the institution in an appropriate manner, the FMA may instruct the institution to take measures, which it considers to be necessary and proportional taking into consideration the graveness of the deficiencies and impediments as well as the effects of the measures on the institution's business activities. The FMA may instruct, without prejudice to Article 70 paras. 4a to 4c BWG, the institution to take the following measures:

1. reduction of the risk profile of the institution, including liquidity risk;
2. facilitation of timely recapitalisation measures;
3. checking of its strategy and organisational structure;
4. making changes to the funding strategy, with the effect of improving the resilience of the core business lines and critical functions;
5. amending of the institution's governance structure;

These measures shall be instructed by means of an administrative decision. The proportionality of the instructed measures shall in particular be explained in the explanatory notes in the administrative decision.

Group recovery plan

Article 15. (1) EU parent undertakings incorporated in Austria, which are subject to consolidated supervision by the FMA, shall draw up a group recovery plan and submit it to the FMA. Article 11 is applicable in this context. The directors of the EU parent undertaking are responsible for drawing up the group recovery plan; the supervisory board of the EU parent undertaking shall check and approve the group recovery plan, before it is transmitted to the FMA by the EU parent undertaking.

(2) The group recovery plan shall consist of a recovery plan for the group as a whole headed by the EU parent undertaking. It shall list measures that may be required to be implemented at the level of the EU parent undertaking and each individual subsidiary.

(3) The FMA as the consolidating supervisory authority shall transmit the group recovery plan to the following authorities, if the confidentiality requirements pursuant to Articles 120 to 122 are ensured:

1. the relevant competent authorities referred to in Articles 115 and 116 of Directive 2013/36/EU;

2. the competent authorities of the Member States, in which significant branches are located, in so far as these branches are affected by the group recovery plan;
3. the resolution authority;
4. the resolution authorities of subsidiaries.

Content of the group recovery plan

Article 16. (1) The group recovery plan shall list using which measures, in the event of a stress situation, that

1. the group as a whole or its individual institutions could be stabilised,
2. the causes for the deterioration of the financial situation could be addressed, and
3. the healthy financial situation of the group as a whole or its individual institutions could be restored.

When drafting the group recovery plan, the financial situation of other entities in the group shall also be taken into account.

(2) The group recovery plan shall prescribe arrangements, to ensure the coordination and consistency of measures to be taken at the level of the EU parent undertaking, at the level of the entities pursuant to Article 1 para. 1 nos. 3 and 4 referred to in points (c) and (d) of Article 1(1) as well as measures to be taken at the level of subsidiaries and at the level of significant branches.

(3) The group recovery plan in addition to the recovery plans, which are to be drawn up for individual subsidiaries within the group, shall fulfil the conditions for a recovery plan pursuant to Articles 8 and 9 as well as, where applicable, containing the arrangements for group financial support, which are prescribed on the basis of the arrangement on group financial support as defined in Chapter Three.

(4) For each of the scenarios pursuant to Article 9 para. 2, the group recovery plan shall identify whether there are obstacles to the implementation of recovery measures within the group, including at the level of individual entities covered by the plan, and whether there are substantial practical or legal impediments to the prompt transfer of own funds or the repayment of liabilities or assets within the group.

Evaluation of the group recovery plan by means of a joint decision, where the FMA is the consolidating supervisor

Article 17. (1) The FMA as the consolidating supervisor shall review and evaluate the group recovery plan with the competent authorities of the subsidiaries pursuant to para. 2. During the evaluation of the group recovery plan, it shall be necessary to proceed in accordance with Articles 12 to 16 and to take into account the potential effects of recovery measures on the financial stability of all Members States, in which the group operates. In reviewing and evaluating the group recovery plan, the competent authorities pursuant to Article 116 of Directive 2013/36/EU and the competent authorities of the material branches covered by the group recovery plan shall be consulted.

(2) The FMA as the consolidating supervisor shall endeavour to reach a joint decision with the competent authority of the subsidiaries within four months of submission of the group recovery plan pursuant to Article 15 para. 3 on:

1. the review and assessment of the group recovery plan;
2. whether a recovery plan on an individual basis shall be drawn up for institutions that are part of a group; and
3. whether the remedying of a shortcoming or a potential impediment, shall take place following the procedures pursuant to Articles 13 and 14.

The FMA as the consolidating supervisory authority may apply to the EBA to assist in reaching a joint decision in accordance with Article 31(c) of Regulation (EU) No 1093/2010.

(3) In the event that no joint decision pursuant to para. 2 no. 1 exists within four months of submission of the group recovery plan pursuant to Article 15 para. 3, or no measures to be taken by the EU parent undertaking pursuant to Articles 13 and 14 exist, then the FMA as the consolidating supervisory authority shall reach a decision on its own over such matters subject to the provisions of para. 4. In this case, the FMA shall make its decision having taken into account the views and reservations of the other competent authorities expressed during the four-month period. The FMA as consolidating supervisor shall notify its decision to EU parent undertaking and the other competent authorities.

(4) If one of the competent authorities named in para. 2 has consulted the EBA within four months of the submission of the group recovery plan as defined in Article 19 of Regulation (EU) No 1093/2010 about one of the issues defined in para. 2 no. 1 or Article 15 para. 3 nos. 1, 2 or 4, then the FMA as the consolidating supervisory authority shall defer its decision pursuant to para. 3 until a decision has been received from the EBA. As soon as a decision has been delivered by the EBA, the FMA shall make its decision pursuant to para. 3 in accordance with the decision by the EBA. The four-month period following the submission of the group recovery plan pursuant to Article 15 para. 3 shall serve as a conciliation period in this procedure pursuant to Article 19 para. 2 of Regulation (EU) No 1093/2010. In the event that the EBA does not issue a decision within one month of expiry of this conciliation period, then the FMA shall reach a decision on its own as the consolidating supervisor pursuant to para. 3. Once the four-month period has expired following the submission of the group recovery plan to the competent authorities pursuant to Article 15 para. 3 or if a joint decision has been made, then the EBA may no longer be consulted pursuant to Article 19 of Regulation (EU) No 1093/2010.

(5) The FMA shall recognise and apply joint decisions pursuant to para. 2 or Article 8(4) of Directive 2014/59/EU as well as decisions pursuant to Article 8(5) of Directive 2014/59/EU as being final.

Evaluation of the group recovery plan by means of a joint decision, where the FMA is not the consolidating supervisor

Article 18. (1) If the FMA receives, as the competent authority pursuant to Article 116 of Directive 2013/36/EU, or as the competent authority for a significant branch in Austria, a group recovery plan from the consolidating supervisory authority, it shall submit an opinion to the consolidating supervisory authority about the group recovery plan within four months of its submission.

(2) If the FMA receives a group recovery plan from the consolidating supervisor as the competent authority of a subsidiary established in Austria, it must endeavour, within four months of the group recovery plan being submitted, to reach a joint decision with the consolidating supervisor and the competent authorities of the other subsidiaries in the group about:

1. the review and assessment of the group recovery plan;
2. whether a recovery plan on an individual basis shall be drawn up for institutions that are part of a group; and
3. whether the remedying of a shortcoming or a potential impediment, shall take place following the procedures pursuant to Articles 13 and 14.

(3) The FMA as the competent authority of a subsidiary incorporated in Austria may apply to the EBA, to assist in reaching a joint decision pursuant to para. 2 in accordance with point c) of Article 31 of Regulation (EU) No 1093/2010. The FMA may also, within four months of the submission of the group recovery plan, or until a joint decision by the EBA has been issued, to address in accordance with Article 19 of Regulation (EU) No 1093/2010 one of the issues defined in para. 2 no. 1 or Article 14 para. 3 nos. 1, 2 or 4 of this federal act.

(4) If within four months of submission of the group recovery plan to the FMA, as the competent authority for a subsidiary established in Austria, there is no joint decision by the competent authorities with regard to the question of whether a recovery plan should be drawn up on an individual basis for institutions, which are within the FMA's remit, or with regard to the question, of whether measures should apply for the remedying of a shortcoming or a potential impediment on the level of the subsidiary established in Austria pursuant to Articles 13 and 14, the FMA shall decide upon such issues on its own, subject to the provisions of para. 5.

(5) If the FMA as the competent authority of a subsidiary established in Austria or one of the competent authorities pursuant to para. 2 has consulted the EBA within four months of the submission of the group recovery plan as defined in Article 19 of Regulation (EU) No 1093/2010 about one of the issues defined in para. 2 no. 1 or Article 14 para. 3 nos. 1, 2 or 4, then the FMA as the competent authority for subsidiaries incorporated in Austria shall defer its decision pursuant to para. 4 until a decision has been received from the EBA. As soon as a decision has been delivered by the EBA, the FMA shall make its decision pursuant to para. 4 in accordance with the decision by the EBA. The four-month period following the submission of the group recovery plan to the FMA shall serve as a conciliation period in this procedure pursuant to Article 19 para. 2 of Regulation (EU) No 1093/2010. In the event that the EBA does not reach a decision within one month of the expiry of this conciliation period, the FMA shall make a decision on its own pursuant to para. 4 as the competent authority for subsidiaries established in Austria, and this decision shall become effective for the subsidiary established in Austria.

(6) The FMA may reach a joint decision with other competent authorities which do not pursuant to para. 4, about a group recovery plan covering group entities under their jurisdictions.

(7) The FMA shall recognise and apply joint decisions pursuant to para. 2 or 6 of this federal act as well as decisions pursuant to Article 8(3) and (4) of Directive 2014/59/EU as being final.

Section 3: Resolution planning

Resolution Plans

Article 19. (1) The resolution authority shall draw up a resolution plan for every institution which is incorporated in Austria, which is not part of a group that is subject to supervision on a consolidated basis pursuant to Articles 111 and 112 of Directive 2013/36/EU, in accordance with the provisions of Section 1. Before drawing up the resolution plan, the resolution authority shall hold a hearing with the FMA and the resolution authorities of those states in which the significant branches of the institution concerned that are affected by the resolution plan are located. The institutions in question shall cooperate upon request by the resolution authority in the drawing up and maintaining of the resolution plans.

(2) Resolution plans shall be reviewed, and where appropriate updated, at least annually and after any material changes to the legal or organisational structure of the institution or to its business or its financial position that could have a material effect on the effectiveness of the plan or otherwise necessitates a revision of the resolution plan. For this purpose, institutions and the FMA shall promptly communicate to the resolution authority any change that necessitates such a revision or update. In any case, a review of the resolution plan must be conducted following resolution measures having been implemented or the powers set out in Article 70 having been exercised.

(3) The resolution authority shall always communicate the resolution plans in their current form to the competent authorities.

(4) When determining the reporting dates pursuant to Article 20 para. 5 nos. 15 and 16 under the circumstances set out in the final sentence of Article 19 para. 2, the resolution authority shall take into account the deadlines for fulfilling the requirements pursuant to Article 70c BWG.

Content of resolution plans

Article 20. (1) When drawing up the resolution plan, the resolution authority shall identify any material impediments to resolvability and, where necessary and proportionate, outline relevant actions for how those impediments could be addressed, according to Chapter 2.

(2) Regardless of the provisions of Section 1, options are to be set out in the resolution plan regarding the application of the resolution tools and powers set out in Chapters 3, 4 and 5 of Part 4 of this Federal Act upon the respective institution.

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

(1) any extraordinary public financial support besides the use of the resolution financing arrangements established in accordance with Article 123, or

(2) emergency liquidity assistance from the central bank, or

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

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

(5) The resolution plan shall consist in any case, where possible with quantifying information, of:

1. a summary of the plan's main components;
2. a summary of any material changes within the institution that have arisen since submission of the last resolution plan;
3. a demonstration of how critical functions and core business lines could be legally and economically separated, to the extent necessary, from other functions so as to ensure continuity and the digital operational resilience following the failure of the institution;
4. an estimation of the timeframe for executing each material aspect of the plan;
5. a detailed description of the assessment of resolvability carried out in accordance with paragraph 1 of this Article and with Article 27;
6. a description of any measures required pursuant to Article 29 to address or remove impediments to resolvability identified as a result of the assessment carried out in accordance with Article 27;
7. a description of the processes to determine the value and marketability of the institution's critical functions, core business lines and assets;
8. A detailed description of the arrangements for ensuring that the information required pursuant to Article 21 is up-to-date and at the disposal of the resolution authorities at all times;
9. an explanation by the resolution authority as to how the resolution options could be financed without the assumption of any of the following:

a) any extraordinary public financial support besides the use of the resolution financing arrangements established in accordance with Article 123, or
b) any central bank emergency liquidity assistance; or
c) any central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms;

10. a detailed description of the different resolution strategies that could be applied according to the different possible scenarios and the applicable timescales;
11. a description of critical interdependencies;
12. a description of options for preserving access to payments and clearing services and other infrastructures and, an assessment of the portability of client positions;
13. an analysis of the impact of the plan on the employees of the institution, 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;
14. a plan for communicating with the media and the public;

15. the requirements pursuant to Article 104 and Article 105 as well as a cut-off point for reaching this level pursuant to Article 161 paras. 5 to 14;
16. where a resolution authority applies Article 101 paras. 6 to 10 and 12, a schedule for compliance by the resolution entity pursuant to Article 161 paras. 5 to 14;
17. a description of essential operations and systems for continuing the institution's business operations, including the network and information systems pursuant to Regulation (EU) 2022/2554;
18. where applicable, any opinion expressed by the institution in relation to the resolution plan;

The information pursuant to no. 1 shall be disclosed to the affected institution.

(6) The resolution authority may demand from an institution or an entity pursuant to Article 1 para. 1 nos. 2 to 4 that detailed records are maintained about financial contracts to which it is a party. The resolution authority may set a time-limit, within which the institution or the entity pursuant to Article 1 para 1 nos. 2 to 4 must be in the position to provide the records; in this instance the same time-limits shall apply to all institutions and entities pursuant to Article 1 para. 1 nos. 2 to 4. The resolution authority may decide to set different time-limits for different types of financial contracts as referred to in Article 2 no. 99. This paragraph shall apply irrespective of the other rights of information of the FMA.

Cooperation in the drawing-up of resolution plans

Article 21. (1) The resolution authority may request the institutions to co-operate to the extent necessary in the drawing-up of resolution plans, and to submit all information required for the drawing up and execution of resolution plans either directly to the resolution authority or via the FMA. The resolution authority may in addition to other information in particular request the information and analyses listed in the Annex to Article 21 from the institutions.

(2) The FMA in its cooperation with the resolution authority shall verify whether some or all of the information referred to in para. 1 is already available. Provided that such information is already available, the FMA shall make this information available to the resolution authority.

Group resolution plan

Article 22. (1) If the resolution authority is the competent group-level resolution authority, it shall, together with the resolution authorities listed in Article 24 para. 2 nos. 2, 3 and 5, within resolution colleges in accordance with the procedure pursuant to Articles 24 and 25 – after a hearing with the respective competent authorities, including the competent authorities in Member States, in which the material subsidiaries that are affected by the group resolution plan are incorporated, draw up and maintain a group resolution plan on the basis of the information received pursuant to Article 21. The resolution authority that is competent as the group-level resolution authority may, at its own discretion, and subject to them meeting the confidentiality requirements laid down in Article 98 of Directive 2014/59/EU, involve third-country resolution authorities in the drawing up and maintenance of group resolution plans from those jurisdictions in which the group has established subsidiaries or financial holding companies or significant branches pursuant to Article 51 of Directive 2013/36/EU.

(2) If the resolution authority is the competent group-level resolution authority, it shall ensure that the group resolution plans are reviewed and maintained on an at least annual basis. Furthermore, the group resolution plan must also be updated in the event that there is a change to the legal or organisational structure, the business activities or the financial position of the entire group or of an individual entity within the group, if such a change could have a material impact on the group resolution plan.
(3) The resolution authority as the competent group-level resolution authority shall always communicate the group resolution plan in its current form to the competent authorities.

Content of the group recovery plan

Article 23. (1) Group resolution plans shall include a plan for resolution of the group headed by the EU parent undertaking as a whole, either through resolution at the level of the EU parent undertaking or through the breaking up of and resolution of the subsidiaries. The group resolution plan shall identify measures for the resolution of:

1. the EU parent undertaking,
2. the subsidiaries that are part of the group and that are located in the European Union,
3. the entities pursuant to Article 1 para. 1 nos. 2 to 4,
4. the subsidiaries that are part of the group and that are located outside the European Union, subject to Article 122 and Part 7 of this federal act.

(2) The group resolution plan shall, as a minimum, cover the following content:

1. resolution actions,
    a. to be taken in accordance with the scenarios referred to in Article 20 para. 3 relating to the resolution units and the impact of these resolution actions on the other group entities, the parent undertaking and the subsidiary institutions referred to in Article 1 para. 1 nos. 2 to 4;
    b. to be taken for the resolution entities of each resolution group, provided that a group listed in para. 1 comprises of more than one resolution group, including the impact of those actions on other entities in the group that belong to the same resolution group, and other resolution groups;
2. an analysis about the extent to which the resolution tools could be applied, and the resolution powers exercised, with respect to resolution entities established in the European Union in a coordinated manner, including measures to facilitate the purchase by a third party of the group as a whole, of separate business lines or activities that are provided by a number of group entities, or of particular group entities or resolution groups, as well as any potential impediments to a coordinated resolution;
3. a statement of appropriate arrangements for cooperation and coordination with the relevant authorities of those third countries and the implications for resolution within the European Union, where the group includes entities incorporated in third countries;

4. a statement of the measures that are necessary to facilitate group resolution where the conditions for resolution are met, including the legal and economic separation of particular functions or business lines;
5. a description of any additional actions that are not listed in this Federal Act and in Directive 2014/59/EU that the resolution authority intends to apply in relation to the entities within each resolution group in accordance with its respective competence.
6. information about the possible financing of group resolution actions, and where the resolution financing arrangement would be required, a statement of the principles for sharing responsibility for that financing between sources of funding in several Member States; the resolution plan shall not assume any of the following measures:
   a. any extraordinary public financial support besides the use of the resolution financing arrangements established in accordance with Article 123,
   b. any central bank emergency liquidity assistance; or
   c. any central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms.

   Those principles shall be set out on the basis of equitable and balanced criteria and shall take into account, in particular Article 130 para. 5 and the impact on financial stability in all Member States concerned.
7. in accordance with the measures referred to in para. 1, the determination of the resolution units and the resolution groups for each group.

(3) The assessment of the resolvability of the group pursuant to Article 28 shall be carried out at the same time as the drawing up and updating of the group resolution plan pursuant to Article 22. A detailed description of the assessment of resolvability carried out pursuant to Article 28 shall be included in the group resolution plan. The group resolution plan shall not have a disproportionate impact on any Member State.

Procedure for drawing up group resolution plans

Article 24. (1) EU parent undertakings, which are established in Austria, shall submit the information that is required pursuant to Article 21, to the resolution authority that is the competent group-level resolution authority. This information shall be made available with regard to the EU parent undertaking and where necessary, for every entity in the group, including the entities pursuant to Article 1 para. 1 nos. 2 to 4.

(2) If the resolution authority is the group-level resolution authority, it shall submit the information pursuant to para. 1 to the following authorities, if the confidentiality requirements pursuant to Articles 120 to 122 are ensured:

1. the EBA;
2. the resolution authorities of subsidiaries;
3. the resolution authorities of Member States and third countries, in which the material subsidiaries that are affected by the information pursuant to para. 1 are located;

4. the relevant competent authorities referred to in Articles 115 and 116 of Directive 2013/36/EU;
5. the resolution authorities of the Member States where the entities referred to in Article 1 para. 1 nos. 2 to 4 are established.

The information provided by the group-level resolution to the authorities pursuant to nos. 2 to 4, shall include at a minimum all information that that is relevant to the subsidiary or significant branch. The information provided to EBA shall include all information that is relevant to the role of EBA in relation to the group resolution plans. In the case of information relating to third-country subsidiaries, the resolution authority as the group-level resolution authority may make the transmission of that information dependent on consent of the relevant third-country supervisory authority or resolution authority.

Procedure for group resolution plans if the resolution authority is the competent group-level resolution authority

Article 25. (1) If the resolution authority is the competent group-level resolution authority, it shall endeavour to reach a joint decision about the acceptance of the group resolution plan, with the competent resolution authorities for the subsidiaries within four months of submission of the information pursuant to Article 24 para. 2, following a hearing with the respective competent authorities, including the competent authorities in Member States, in which material subsidiaries are located. The resolution authority and the other competent resolution authorities may request support from the EBA to assist in reaching a joint decision in accordance with Article 31 (c) of Regulation (EU) No. 1093/2010. If a group consists of more than one resolution group, the resolution authority must include the planning of resolution measures provided for in Article 23 para. 2 no. 1 lit. b in the joint decision.

(2) In the event that there is no joint decision by the resolution authority within four months following the time of submission of the information pursuant to Article 24 para. 2 by the resolution authority that is the competent group-level resolution authority, the resolution authority that is competent for the group-level resolution authority, may decide, subject to the procedure pursuant to para. 3 or 4, decide on its own about the acceptance of the group resolution plan. The decision shall be justified and shall take into account the views and reservations of other resolution authorities. The resolution authority that is the competent group-level resolution authority shall communicate this decision to the EU parent undertaking.

(3) If one of the resolution authorities has consulted the EBA about the matter pursuant to Article 19 of Regulation (EU) No 1093/2010 within four months of the information pursuant to Article 24 para. 2 being received, then the resolution authority competent as the group-level resolution authority shall defer its decision pursuant to para. 2 until a decision has been received from the EBA. As soon as a decision has been delivered by the EBA, the resolution authority that is competent for the group-level resolution authority shall make its decision pursuant to para. 2 in accordance with the decision by the EBA. The four-month period following the submission of the information pursuant to Article 24 para. 2 shall serve as a conciliation period in this procedure pursuant to Article 19 (2) of

Regulation (EU) No 1093/2010. In the event that the EBA does not issue a decision within one month of expiry of this conciliation period, then the resolution authority that is the competent group-level resolution authority shall reach a decision on its own as the consolidating supervisor pursuant to para. 2.
(4) In the event that one of the competent resolution authorities reaches the conclusion that the subject matter, about which the disagreement arises, may in any way impinge on its Member States' fiscal responsibilities, then the EBA may not be consulted pursuant to para. 3. The resolution authority as the competent group-level resolution authority shall in such an instance initiate a reassessment of the group resolution plan including the minimum requirement for own funds and eligible liabilities.
(5) The resolution authority shall recognise joint decisions pursuant to para. 1 of this federal act as well as decisions pursuant to Article 13(6) and (7) of Directive 2014/59/EU as being final and apply them.

Procedure for group resolution plans if the resolution authority is not the competent group-level resolution authority

Article 26. (1) If the FMA is requested to deliver an opinion in accordance with Article 13(2) of Directive 2014/59/EU before drawing up a group resolution plan as the consolidating supervisory authority or as the competent authority for a subsidiary established in Austria or a significant branch, it shall follow this request.
(2) If the resolution authority is the competent resolution authority for a subsidiary established in Austria, it shall endeavour to reach a joint decision about the acceptance of the group resolution plan within four months of submission of the information pursuant to Article 13 (1) of Directive 2014/59/EU in cooperation with the other resolution authorities. The resolution authority and the other competent resolution authorities may request support from the EBA to assist in reaching a joint decision in accordance with Article 31 (c) of Regulation (EU) No. 1093/2010.
(3) The resolution authority may consult the resolution authority or the EBA about the issues in accordance with Article 19(3) of Regulation (EU) No 1093/2010 until a joint decision has been reached within four months of submission of the information pursuant to Article 13 (1) of Directive 2014/59/EU. This shall not apply if the resolution authority or one of the other affected resolution authorities reaches the conclusion that the subject matter under disagreement may in any way impinge on its Member States' fiscal responsibilities.
(4) If, no joint decision pursuant to para. 2 within four months of the transmission of the information pursuant to Article 13 (1) of Directive 2014/59/EU to the resolution authority no joint decision has been reached pursuant to para. 2, and the resolution authority does not agree with the group resolution plan, the resolution authority shall, subject to para. 5, decide on its own, and as necessary to designate the resolution entity, for the resolution group that is made up of the entities within its scope of competence, draw up a resolution plan and keep it up-to-date. In this case the decision taken by the resolution authority shall contain a list of the reasons that can be viewed as arguments

against the suggested group resolution plan and shall take into account the views and reservations mentioned by the competent authorities and the resolution authorities. The resolution authority shall notify its decision to the members of the resolution college.

(5) If one of the affected resolution authorities has consulted the EBA about the matter in accordance with Article 19 of Regulation (EU) No 1093/2010 within four months of the information pursuant to Article 13(1) of Directive 2014/59/EU having been received, the resolution shall defer its decision pursuant to para. 4 until a decision has been received from the EBA, unless one of the affected competent authorities has reached the conclusion that the subject matter under disagreement may in any way impinge on its Member States' fiscal responsibilities. As soon as a decision has been delivered by the EBA, the resolution authority shall make its decision pursuant to para. 4 in accordance with the decision by the EBA. The four month period following the submission of the information pursuant to Article 13 para. 1 of Directive 2014/59/EU shall serve as a conciliation period in this procedure pursuant to Article 19 (2) of Regulation (EU) No 1093/2010. In the event that the EBA does not issue a decision within one month of expiry of this conciliation period, then the resolution authority shall reach a decision on its own pursuant to para. 4. Once the four month period has expired following the submission of the information pursuant to Article 13 (1) of Directive 2014/59/EU or if a joint decision has been reached, then the EBA may no longer be consulted pursuant to Article 19 of Regulation (EU) No 1093/2010.

(6) The resolution authority may reach a joint decision with other affected resolution authorities which do not disagree pursuant to paras. 4 or 5, about a group recovery plan covering group entities under their jurisdictions.

(7) The resolution authority shall recognise joint decisions pursuant to paras. 2 and 6 of this federal act as well as decisions pursuant to Article 13(5) and (6) of Directive 2014/59/EU as being final and apply them.

Chapter 2: Resolvability

Assessment of resolvability for institutions

Article 27. The resolution authority shall assess, following consultation with the FMA and the resolution authorities in the territories, in which the affected significant branches are located, to what extent an institution that does not belong to a group, is resolvable. In the assessment it shall not be allowed to assume any provision of

1. any extraordinary public financial support besides the use of the resolution financing arrangements established in accordance with Article 123;
2. any central bank emergency liquidity assistance; or
3. any central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms.

An institution shall be deemed to be resolvable if the resolution authority believes it to be feasible and credible to either liquidate it under bankruptcy proceedings or to resolve it by applying the

different resolution tools and powers to the institution while avoiding to the maximum extent possible any significant adverse effect on the financial system of Austria, including in circumstances of broader financial instability or system-wide events, or other Member States or the Union and with a view to ensuring the continuity of critical functions carried out by the institution. The resolution authority shall notify EBA in a timely manner whenever it reaches the conclusion that an institution is not resolvable.
(2) For the purposes of the assessment of resolvability referred to in para. 1, the resolution authority shall, as a minimum, examine the matters specified in Annex to Article 27.
(3) The resolution authority shall make the resolvability assessment pursuant to paras. 1 and 2 at the time as drawing up and updating the resolution plan pursuant to Articles and 20 and shall conduct it for these purposes. Article 21 para. 1 shall be applicable.

Assessment of resolvability for groups

Article 28. (1) If the resolution authority is the group-level resolution authority, it shall assess jointly with the resolution authorities of subsidiaries that are subject to consolidated supervision, and following consultation with the FMA and the competent authorities for the subsidiaries and the resolution authorities in the territories, in which the affected significant branches are located, to what extent groups that are lie within their competence are resolvable. Where such a group exists that is composed of more than one resolution group, the resolution authority must assess the resolvability of each resolution group in addition to the assessment of the resolvability of the group as a whole. In the assessment it shall not be allowed to assume any provision of

1. any extraordinary public financial support besides the use of the resolution financing arrangements established in accordance with Article 123;
2. central bank emergency liquidity assistance; or
3. central bank liquidity assistance provided under non-standard conditions regarding collateralisation, tenor and interest rate terms.

A group shall be considered resolvable if, from the point of view of the resolution authorities concerned, it is feasible and credible to liquidate the group’s entities by means of bankruptcy proceedings or to resolve the group by applying resolution tools and exercising resolution powers to resolution entities in that group, while as far as possible avoiding significant adverse effects on the financial systems of the Member States in which the entities or branches of the group are established or operate, of other Member States or of the European Union, including general financial instability or any other system-wide events and with a view to ensuring the continuation of critical functions performed by the entities in that group where they can be easily separated in a timely manner, or through other measures. The resolution authority as the competent group-level resolution authority shall notify EBA in a timely manner, if it reaches the conclusion that a group is deemed not to be resolvable.

(2) For the purposes of the assessment of resolvability of groups, the resolution authority shall in consultation with the other affected resolution authorities, as a minimum, examine the matters specified in Annex to Article 27.
(3) The resolution authority shall conduct the resolvability assessment at the same time as and during the procedure of drawing up, updating and assessing the group resolution plan pursuant to Articles 22 to 25. The assessment of group resolvability shall be taken into consideration by the resolution colleges referred to in Article 134.

Restrictions on distributions

Article 28a. (1) An entity that meets the combined buffer requirement if it is considered in addition to any of the requirements set out in Article 24b nos. 1, 2 and 3 BWG, but does not however meet the combined buffer requirement if considered in addition to the requirements pursuant to Articles 102 and 103 — provided if calculated in pursuant to Article 100 para. 2 no. 1 — the resolution authority may, in accordance with the conditions set out in paras. 2 and 3, prohibit it from distributing a higher amount than the maximum distributable amount in relation to the minimum amount of own funds and eligible liabilities calculated in accordance with the Annex to Article 28a by means of one of the following measures:
1. distributions in connection with Common Equity Tier 1 capital;
2. obligations to pay variable remuneration or discretionary pension benefits, or to pay variable remuneration if the obligation has been created at a time when the credit institution has failed to meet the combined capital buffer requirement;
3. making payments in conjunction with Additional Tier 1 instruments.

The entity shall notify the resolution authority without delay in the event of non-compliance with the requirement set out in the first sentence.
(2) After consulting the FMA and taking into account the following aspects, the resolution authority shall assess without delay whether the power pursuant to para. 1 is to be exercised:
1. the reason, duration and magnitude of the non-compliance and its impact on resolvability;
2. the development of the entity's financial situation and the likelihood of it fulfilling the condition pursuant to Article 49 para. 1 no. 1, in the foreseeable future;
3. the prospect that the entity will be able to ensure compliance with the requirements pursuant to para. 1 within a reasonable timeframe;
4. in the case that the entity is unable to replace liabilities that no longer meet the eligibility or maturity criteria laid down in Articles 72b and 72c of Regulation (EU) No 575/2013, Articles 101 or 105 para. 8, the question of whether that inability is of an idiosyncratic nature or is due to market-wide disturbance;
5. the issue of whether exercising the power pursuant to para. 1 is the most suitable and appropriate means for managing the entity’s situation, taking into account the possible

impact on both the financing conditions as well as the resolvability of the undertaking concerned.

The resolution authority shall repeat its assessment of whether the power pursuant to para. 1 is to be exercised, on at least a monthly basis during the period of non-compliance and as long as the undertaking remains in the situation described in para. 1.

(3) Where the resolution authority determines that the undertaking is still not complying with this requirement nine months after its notification of non-compliance with the requirement described in para. 1, after consulting the FMA it shall exercise the power set out in para. 1, unless it determines that at least two of the following conditions are met:

1. the failure is due to a serious disturbance to the functioning of financial markets which leads to broad-based financial market stress across several segments of financial markets;
2. the disturbance pursuant to no. 1 not only results in the increased price volatility of the own funds instruments and eligible liabilities instruments of the entity or increased costs for the entity, but also leads to a full or partial closure of markets which prevents the entity from issuing own funds instruments and eligible liabilities instruments on those markets;
3. the market closure pursuant to no. 2 is observed not only for the concerned entity, but also for several other entities;
4. the disturbance pursuant to no. 1 prevents the concerned entity from issuing own funds instruments and eligible liabilities instruments sufficient to remedy the failure or
5. an exercise of the power pursuant to para. 1 leads to negative spill-over effects for part of the banking sector, thereby potentially undermining financial market stability.

Where the exception pursuant to the first sentence applies, then the resolution authority must notify the FMA of its decision and explain it in writing. The resolution authority must repeat the assessment of whether the exception is applicable on a monthly basis.

Powers to address and remove impediments to resolvability

Article 29. (1) If the resolution authority identifies on the basis of an assessment conducted pursuant to Article 27 that material impediments exist to the resolvability of the entity, it shall notify the entity in question, the FMA and the resolution authorities in the territories in which the significant branches are located, of this fact in writing.

(2) Upon receipt of the notification pursuant to para. 1, the undertaking shall comment on the impediments identified in the notification to the undertaking's competent resolution authority and propose the following:

1. within four months: suitable measures intended to overcome or at least reduce the material impediments referred to in the notification pursuant to para. 1;
2. within two weeks: suitable measures and a timetable for their implementation that ensure that the reasons for the material impediment are taken into account and that the undertaking

complies with Articles 104 and 105 and the combined buffer requirement, in the case that a material impediment to resolvability is due to any of the following situations:

a. although the undertaking fulfils the combined buffer requirement if it is considered in addition to any of the requirements referred to in Article 24b nos. 1, 2 and 3 BWG, it does not however meet the combined buffer requirement, if it is considered in addition to the requirements set out in Articles 102 and 103 — if calculated pursuant to Article 100 para. 2 no. 1 — or
b. the undertaking does not meet the requirements set out in Articles 92a and 494 of Regulation (EU) No 575/2013 or Articles 102 and 103 of this Federal Act.

(3) The resolution authority shall assess, following consultation with the FMA, whether the measures proposed by the undertaking are suitable in order to effectively address or remove the material impediments.

(4) If the resolution comes to the conclusion in its assessment pursuant to para. 3 that the measures proposed by the undertaking are suitable to effectively address or remove the material impediments, then the resolution authority shall instruct the undertaking to implement those measures without delay. If the resolution authority comes to the conclusion in its assessment pursuant to para. 3 that the measures proposed by the undertaking are not suitable to effectively address or remove the material impediments, the resolution authority, after consulting the FMA, shall specify one or more alternative measures to address or remove the material impediments in accordance with paras. 5 and 6 and notify the undertaking thereof in writing. Within one month of receipt of that notification, the undertaking shall submit a plan to the resolution authority setting out how the measures defined by the resolution authority are intended to be implemented.

(5) The alternative measures shall be proportionate and suitable for effectively removing or overcoming the material impediments, taking into account the possible threats that material impediments to financial stability may pose and the impact of the alternative measures on the business of the undertaking, its stability and its ability to contribute positively to the economy.

(5a) Where the resolution authority finds that the alternative measures pursuant to para. 4 might constitute a circumstance relevant to financial stability pursuant to Article 13 para. 3 FMABG, or have a potential significant impact on financial stability pursuant to Article 48 para. 2 no. 2 of this Federal Act or Article 14 (2) (b) of Regulation (EU) No 806/2014, it shall notify the FMA and the Financial Market Stability Board and consult them.

(6) The following shall apply as alternative measures pursuant to para. 4 second sentence:

1. the instruction to an undertaking to revise any intragroup financing agreements or review the absence thereof, or draw up service agreements, whether intra-group or with third parties, to cover the provision of critical functions;
2. the instruction to an undertaking to limit its maximum individual and aggregated exposures; this shall also apply, irrespective of the rules on large exposures, for bail-inable liabilities pursuant to Article 86 para. 1 that exist towards other institutions, unless they are liabilities towards entities belonging to the same group;

3. the application of special or regular additional information obligations relevant to purposes relevant to resolution;
4. the instruction to an undertaking to dispose of certain assets by sale;
5. the instruction to an undertaking to limit or cease specific existing or proposed activities;
6. the restriction, or prohibition of development of new or existing business lines or the restriction or prohibition of the sale of new or existing products;
7. the instruction to an undertaking to carry out changes to legal or operational structures of the undertaking or any group entity, either directly or indirectly under its control, so as to reduce complexity in order to ensure that critical functions may be legally and operationally separated from other functions through the application of the resolution tools;
8. the instruction to an undertaking or a parent undertaking to set up a parent financial holding company in a Member State or an EU parent financial holding company;
9. the instruction to an entity pursuant to Article 1 para. 1 nos. 1 to 4 to issue eligible liabilities to meet the requirements to Articles 104 and 105;
10. the instruction to an entity pursuant to Article 1 para. 1 nos. 1 to 4 to take other steps to meet the minimum requirement for own funds and eligible liabilities pursuant to Articles 104 and 105, including in particular to attempt to renegotiate eligible liabilities, additional Tier 1 instruments or Tier 2 instruments it has issued, with a view to ensuring that any decision of the resolution authority to write down or convert that liability or instrument would be effected under the law of the jurisdiction governing that liability or instrument;
11. where an entity is the subsidiary of a mixed-activity holding company, the instruction that the mixed-activity holding company set up a separate financial holding company to control the institution, if necessary in order to facilitate the resolution of the entity and to avoid the application of the resolution tools and powers referred to in Chapter 5 having an adverse effect on the parts of the group that do not operate in the financial sector;
12. to request an entity pursuant to Article 1 para. 1 nos. 1 to 4 to submit a plan to restore compliance with the requirements set out in Articles 104 and 105, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, and, where applicable, the combined buffer requirement and the requirements set out in Articles 104 and 105, expressed as a percentage of the total exposure measure referred to in Articles 429 and 429a of Regulation (EU) No 575/2013;
13. to request an entity pursuant to Article 1 para. 1 nos. 1 to 4 to change the maturity profile of the following instruments to ensure compliance with Articles 104 and 105:
    a. own funds instruments, having obtained the FMA's consent;
    b. the eligible liabilities pursuant to Articles 101 and 105 para. 8 no. 1.

(7) The notification pursuant to para. 1 or 4, second sentence shall be made by means of an administrative decision. The reasoning contained in the administrative decision shall in particular contain the reasons for the respective evaluation or finding as well as explanations about their proportionality pursuant to para. 5, first sentence.

(8) A notification pursuant to para. 1 shall release the resolution authority from the obligation to draw up a resolution plan pursuant to Article 19 para. 1 or to work towards a joint decision regarding the acceptance of a group resolution plan, until such a point that the measures for removing significant impediments pursuant to para. 4 first sentence have been accepted by the resolution authority or the resolution authority has identified alternative measures pursuant to para. 4 second sentence.

Addressing or removing of impediments to resolution of groups

Article 30. (1) Where the resolution authority is the group-level resolution authority, it shall, in cooperation with the resolution authorities of subsidiaries, and after consulting the competent supervisory college pursuant to Article 77b BWG and, where appropriate, resolution authorities responsible for significant branches, consider the assessment of a group's resolvability pursuant to Article 28 and take all necessary steps to achieve a joint decision on alternative measures pursuant to Article 29 para. 6 that should be taken for resolution entities and their subsidiaries which are entities and part of the group.

(2) The resolution authority that is the group-level resolution authority shall produce a report in cooperation with the FMA, as the consolidating supervisory authority pursuant to Article 77b BWG, and EBA in accordance with Article 25 (1) of Regulation (EU) No. 1093/2010 after consulting the competent supervisory authorities. The resolution authority shall send this report to the EU parent undertaking, the resolution authorities responsible for the subsidiaries and the resolution authorities responsible for significant branches. The report shall:

1. analyse material impediments to an effective application of resolution tools and the exercising of resolution powers in relation to the group, and in cases where the group consists of more than one resolution group, also in relation to resolution groups;
2. assess the effects on the group's business model; and
3. recommend appropriate and targeted measures for resolution entities and their subsidiaries that are entities and parts of the group, which the resolution authority considers necessary or appropriate to remove impediments pursuant to no. 1.

Where an impediment to the resolvability of the group is due to a situation of a group entity described in Article 29 para. 2 no. 2, the resolution authority shall notify its assessment of that impediment to the EU parent undertaking after consulting the resolution authority of the resolution entity and the resolution authorities of its subsidiary institutions.

(3) Within four months of receipt of the report pursuant to para. 2, the EU parent undertaking may submit an opinion to the group-level resolution authority, and, where applicable, propose measures other than those stated in para. 2 no. 3, which are suitable for overcoming the impediments to resolution identified in the report. If the impediments identified in the report are due to a situation of a group entity as described in Article 29 para. 2 no. 2, within two weeks of receipt of the notification referred to in the last subparagraph of para. 2, the EU parent undertaking shall submit

measures and a timetable for its implementation to the resolution authority as the group-level resolution authority that are appropriate to ensure that the group entity again complies with the requirements set out in Articles 104 and 105, expressed as a total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 and, where applicable, the combined buffer requirement and the requirements set out in Articles 104 and 105, expressed as a percentage of the total exposure measure pursuant to Articles 429 and 429a of Regulation (EU) No 575/2013. The timeline for the implementation of such measures shall take into account the reasons for the material impediments in question. The resolution authority shall assess, following consultation with the FMA, whether the measures proposed by the EU parent undertaking are suitable to effectively address or remove material impediments identified in the report.

(4) The resolution authority as the group-level resolution authority shall inform the FMA, in its role as consolidating supervisor pursuant to Article 77b BWG, EBA, the competent resolution authorities for the subsidiaries and the resolution authorities competent for significant branches about the measures proposed by an EU parent undertaking pursuant to para. 3 or of the fact that the EU parent undertaking has not proposed any measures within the respective deadlines. The resolution authority, as the group-level resolution authority, shall endeavour to reach a joint decision with the resolution authorities of subsidiaries and after consulting the supervisory authorities responsible for the group and the resolution authorities responsible for significant branches, in the resolution college pursuant to Article 134, regarding:

1. the identification of the material impediments;
2. the assessment of the measures proposed by the EU parent undertaking pursuant to para. 3; and
3. the alternative measures requested by the authorities to address or remove the identified impediments to resolution;

taking due account of the possible impact of these measures in the Member States in which the group operates.

(5) The joint decision pursuant to para. 4 shall be taken no later than four months after the receipt of an opinion from the EU parent undertaking. If no opinion has been received from the EU parent undertaking in the relevant period, the joint decision shall be taken within one month of expiry of the four-month period laid down in the first sentence of para. 3. If, following an impediment to resolution having been determined pursuant to Article 29 para. 2 no. 2, no opinion is received from the EU parent undertaking, the joint decision shall be taken within two weeks of the expiry of the two-week period laid down in the second sentence of para. 3. The resolution authority that is the competent group-level resolution authority shall communicate the decision to the EU parent undertaking. The resolution authority as the group-level resolution authority may request support in reaching an agreement from EBA pursuant to Article 31 para. 2 point (c) of Directive (EU) No. 1093/2010.

(6) If there is no joint decision pursuant to para. 4 within the respective deadlines stated in para. 5, the resolution authority as the group-level resolution authority shall, subject to the procedure

pursuant to para. 7, decide on its own about alternative measures pursuant to Article 29 para. 6. The decision shall be reasoned and shall take into account the views and reservations of other competent resolution authorities. The resolution authority that is the competent group-level resolution authority shall communicate this decision to the EU parent undertaking.
(7) If one of the other competent resolution authorities has consulted EBA prior to the expiry the deadlines stipulated in para. 5 pursuant to Article 19 of Regulation (EU) No. 1093/2010 about one of the issues listed in Article 29 para. 6 nos. 7, 8 or 11 and no joint decision has been taken, the resolution authority as the group-level resolution authority shall defer its decision pursuant to para. 6 until a potential decision has been taken by EBA. As soon as a decision has been delivered by EBA, the resolution authority that is competent for the group-level resolution authority shall make its decision pursuant to para. 6 in accordance with EBA's decision. In this procedure, the deadlines stipulated in para. 5 shall pursuant to para. 4 shall serve as a conciliation period pursuant to Art. 19 (2) of Regulation (EU) No 1093/2010. In the event that EBA does not take a decision within one month of expiry of this mediation phase, the decision of the resolution authority as the competent authority for group resolution shall take effect.
(8) The resolution authority as the group-level resolution authority shall recognise joint decisions pursuant to Article 18 (7) of Directive 2014/59/EU as being final and apply them.

Addressing or removing of impediments to resolution in resolution entities and subsidiaries

Article 31. (1) Where the resolution authority is the group-level resolution authority for a resolution entity or a subsidiary that is not a resolution entity, then it shall endeavour within the time limits set out in Article 30 para. 5 to reach a joint decision with the group-level resolution authority and the other competent resolution authorities following consultation of the other authorities concerned regarding the points listed in Article 30 para. 4. The resolution authority shall notify the resolution entities and subsidiaries that are not resolution entities, and which fall within its competence about the joint decision.
(2) Within the respective time period pursuant to Article 30 para. 5, the resolution authority may consult EBA about one of the matters referred to Article 29 para. 6 nos. 7, 8 or 11 in accordance with Article 19 of Regulation (EU) No 1093/2010.
(3) In the event that no joint decision is reached within the time frame pursuant to Article 30 para. 5, the resolution authority as the competent authority for the resolution entity shall, subject to the procedure in para. 4 make its own decision about alternative measures pursuant to Article 29 para. 4 that shall be applied by that resolution entity at resolution group level. This decision shall be reasoned and take into account the views and reservations of the other resolution authorities of other entities in the resolution group and the group-level resolution authority. The resolution authority shall communicate its decision to the resolution entities and subsidiaries of the group that are not resolution entities that are established in Austria, to the competent resolution authority for the superordinated resolution entity and, where appropriate, to the group-level resolution

authority. Once the deadlines pursuant to Article 30 para. 5 have expired, or if a joint decision has been reached, then EBA may no longer be consulted pursuant to Article 19 of Regulation (EU) No 1093/2010.
(4) If, prior to the expiry of the respective relevant deadline pursuant to Article 30 para. 5, one of the resolution authorities has consulted EBA in accordance with Article 19 of Regulation (EU) No 1093/2010 about one of the matters referred to in Article 29 para. 6 nos. 7, 8 or 11, then the resolution authority as the competent authority for the resolution entity shall defer its decision in accordance with para. 3 until EBA has reached a decision. As soon as a decision has been delivered by EBA, the resolution authority that is competent for the resolution entity shall make its decision in compliance with EBA's decision. The deadlines pursuant to Article 30 para. 5 shall serve as a conciliation period in this procedure pursuant to Article 19 (2) of Regulation (EU) No 1093/2010. Where EBA fails to reach a decision within one month of the end of this conciliation period, the resolution authority, as the competent authority of the resolution entity, shall take its decision, which shall become effective.
(5) In the event that no joint decision is reached within the deadlines pursuant to Article 30 para. 5, the resolution authority as the competent authority for the subsidiaries that are not resolution entities shall, subject to the procedure in para. 6 shall decide exclusively to make its own decision about alternative measures pursuant to Article 29 para. 4 that shall be applied on an individual level by subsidiaries established in Austria which are not resolution entities. The decision shall be justified and shall take into account the views and reservations of the other resolution authorities. The resolution authority shall communicate its decision to the subsidiaries established in Austria that are not resolution entities, where applicable to other resolution entities established in Austria from the same resolution group, where applicable to the competent resolution authority for a superordinated resolution entity, as well as to the group-level resolution authority. Once the deadlines pursuant to Article 30 para. 5 have expired, or if a joint decision has been reached, then EBA may no longer be consulted pursuant to Article 19 of Regulation (EU) No 1093/2010.
(6) If, prior to the expiry of the respective relevant deadline pursuant to Article 30 para. 5, one of the resolution authorities has consulted EBA in accordance with Article 19 of Regulation (EU) No 1093/2010 about one of the matters referred to in Article 29 para. 6 nos. 7, 8 or 11, then the resolution authority as the competent authority for the subsidiaries that are not resolution entities, shall defer its decision in accordance with para. 5 until EBA has reached a decision. As soon as a decision has been delivered by EBA, the resolution authority shall make its decision pursuant in accordance with the decision by EBA. The deadlines pursuant to Article 30 para. 5 shall serve as a conciliation period in this procedure pursuant to Article 19 (2) of Regulation (EU) No 1093/2010. In the event that the EBA does not issue a decision within one month of expiry of this conciliation period, then the resolution authority shall reach a decision on its own.
(7) The resolution authority shall recognise joint decisions pursuant to para. 1 of this federal act as well as decisions pursuant to Article 30 paras. 6 and 7 as being final and apply them

Chapter 3: Intra group financial support

Group financial support agreement

Article 32. (1) Parent institutions established in Austria, EU parent institutions or institutions pursuant to Article 1 para. 1 nos. 2 to 4, with their EU parent institutions subsidiaries in other Member States or third countries that are institutions or CRR-financial institutions, which are incorporated into the supervision of the parent undertaking on a consolidated basis, may enter into an agreement to provide financial support to any other party to the agreement that meets the conditions for early intervention pursuant to Article 44, provided that the conditions laid down in this Chapter are also met.

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

(3) A group financial support agreement pursuant to para. 1 shall not constitute a prerequisite:

1. to provide group financial support to any group entity that experiences financial difficulties if the institution decides to do so, on a case-by-case basis and according to the group policies if it does not represent a risk for the whole group; or
2. to operate in a Member State.

(4) In the case of transactions, which are executed in accordance with provisions contained in this Chapter, the provisions in this Chapter shall take precedence over provisions to the contrary set out under federal law, unless the restriction of transactions for providing intragroup financial support is based on provisions set out under federal law,

1. which exercise the options provided for in Regulation (EU) No 575/2013, transpose Directive 2013/36/EU, or
2. according to which, parts of a group or activities carried out within a group are required to be separated for reasons of financial stability.

Reliability and content of a group financial support agreement

Article 33. (1) The group financial support agreement may prescribe financial support from the parent undertaking or the EU parent institution for the subsidiary, for the parent undertaking from the subsidiary, for the EU parent institution from the parent undertaking or the subsidiary or between subsidiaries of the group that are party to the agreement, or any combination of those entities. It may include providing financial support in the form of a loan, the provision of guarantees, the provision of assets for use as collateral, or any combination of those forms of financial support, in one or more transactions, including between the beneficiary of the support and a third party.

(2) Where, in accordance with the terms of the group financial support agreement, a group entity agrees to provide financial support to another group entity, the agreement may include a reciprocal

agreement by the group entity receiving the support to provide financial support to the group entity providing the support.

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

1. each party must be acting freely in entering into the agreement;
2. in entering into the agreement and in determining the consideration for the provision of financial support, each party must be acting in its own best interests which may take account of any direct or any indirect benefit that may accrue to a party as a result of provision of the financial support;
3. each party providing financial support must have full disclosure of relevant information from any party receiving financial support prior to determination of the consideration for the provision of financial support and prior to any decision to provide financial support;
4. the consideration for the provision of financial support may take account of information in the possession of the party providing financial support based on it being in the same group as the party receiving financial support and which is not available to the market;
5. the principles for the calculation of the consideration for the provision of financial support are not obliged to take account of any anticipated temporary impact on market prices arising from events external to the group.

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

(5) Claims and other rights arising from the group financial support agreement may not be assigned. Third parties may not derive any rights from a group financial support agreement.

Review procedure regarding the proposed group financial support agreement, where the FMA is the consolidating supervisor

Article 34. (1) If the EU parent institution has its place of incorporation in Austria, it shall submit an application to the FMA for the approval of a planned group financial support agreement pursuant to Articles 32 and 33. The application shall contain the text of the proposed agreement and identify the group entities that propose to be parties.

(2) The FMA shall grant approval depending on the outcome of the procedure pursuant to paras. 3 to 6, provided that the planned agreement corresponds to the requirements lists in Article 38 on the granting of group financial support, or shall prohibit the agreement, if it appears to be incompatible with the requirements set out in Article 38 for group financial support. The approval or prohibition of the agreement shall be notified to the applicant including the written reasoning set out in para. 4 or 5.

(3) The FMA shall forward the application pursuant to para. 1 without delay to the respective competent authorities of each subsidiary that proposes to be a party to the agreement, with a view to reaching a joint decision.

(4) The FMA shall endeavour to reach a joint decision, taking into account the potential impact, including any fiscal consequences, of the execution of the agreement in all the Member States where the group operates, on whether the terms of the proposed agreement are consistent with the conditions for financial support laid down in Article 38 within four months of the date of receipt of the application by the FMA. The joint decision shall require detailed reasoning, and the reasoning shall be given in written. The FMA and the other competent authorities may request support from the EBA to assist in reaching a joint decision in accordance with Article 31 (c) of Regulation (EU) No. 1093/2010.

(5) In the event that no joint decision is reached within the four month timeframe pursuant to para. 4, the FMA shall decide upon the application on its own subject to the provisions of para. 6. In this case the decision must take the views and reservations expressed by other competent authorities during the period pursuant to para. 4 into account, and must contain a full reasoning, with the reasoning to be determined in writing. The FMA shall transmit its decision to the other competent authorities.

(6) If one of the affected competent authorities has consulted the EBA during the four month period pursuant to Article 19 of Regulation (EU) No 1093/2010 about this issue, the FMA shall defer its decision pursuant to para. 5 until a decision has been received from the EBA. As soon as a decision has been delivered by the EBA, the FMA shall make its decision pursuant to para. 5 in accordance with the decision by the EBA. The timeframe pursuant to para. 4 shall serve as a conciliation period in this procedure pursuant to Article 19 (2) of Regulation (EU) No 1093/2010. In the event that the EBA does not issue a decision within one month of expiry of this conciliation period, then the FMA shall reach a decision on its own pursuant to para. 5.

Review procedure regarding the proposed group financial support agreement, where the FMA is not the consolidating supervisor

Article 35. (1) If the FMA receives an application for approval of group financial support agreement from the consolidating supervisor pursuant to Article 20 para. 2 of Directive 2014/59/EU, then it shall endeavour to reach a joint decision with the other competent authorities within the four month period, about whether the rules contained in the planned agreement correspond to the requirements set out in Article 38 on the granting of financial support. In so doing, the FMA shall take the potential effect of the execution of the agreement in all Member States in which the group is active into account, including any financial and fiscal consequences. The FMA and the other competent authorities may request support from the EBA to assist in reaching a joint decision in accordance with Article 31 (c) of Regulation (EU) No. 1093/2010.

(2) The FMA may consult the EBA about the issue during the four month period or until a joint decision pursuant to Article 20 para. 5 of Directive 2014/59/EU in accordance with Article 19 of Regulation (EU) No. 1093/2010.

Approval of proposed agreement by shareholders

Article 36. (1) An agreement that has been approved by the competent authorities pursuant to Article 34 of this federal act or Article 20 (3) of Directive 2014/59/EU shall be submitted for approval to all the shareholders of every group entity that proposes to enter into the agreement. A group financial support agreement shall only become effective commensurate to those parties whose shareholders have voted in favour of the agreement, by authorised the executive directors to conclude such an agreement, and such an authorisation has not subsequently been revoked by the shareholders. In the event that the shareholders reach decisions based on the legal form of the institution or of the CRR-financial institution during a general meeting, the approval of the general meeting shall apply instead of the approval of the shareholders.
(2) The executive directors of each entity that is party to a group financial support agreement shall report each year to the shareholders about the status of the execution of the agreement and the implementation of all decisions taken pursuant to the agreement.

Forwarding to resolution authorities

Article 37. The FMA shall forward group financial support agreements that it has approved pursuant to Article 34 as well as amendments to such agreements, to those resolution authorities that are competent for the parties to the agreement.

Conditions for the granting of group financial support

Article 38. Financial support shall only be granted by a group entity on the basis of a group financial support agreement in accordance with Articles 39 to 43, if the following requirements are cumulatively fulfilled:
1. reasonable prospects exist that the support provided significantly redresses the financial difficulties of the group entity receiving the support;
2. the provision of financial support has the objective of preserving or restoring the financial stability of the group as a whole or any of the entities of the group and is in the interests of the group entity providing the support;
3. the financial support is provided on certain terms, including a consideration in accordance pursuant to Article 33 para. 3;
4. there is a reasonable prospect, on the basis of the information available to the executive directors of the group entity providing financial support at the time when the decision to grant financial support is taken, that the consideration for the support will be paid and, if the support is given in the form of a loan, that the loan will be reimbursed, by the group entity receiving the support. If the support is given in the form of a guarantee or any form of security, the same condition shall apply to the liability arising for the recipient if the guarantee or the security is enforced;

5. the provision of the financial support would not jeopardise the liquidity or solvency of the group entity providing the support;
6. the provision of the financial support would not create a threat to financial stability, in particular in the Member State of the group entity providing support;
7. the group entity providing the support complies at the time the support is provided with the requirements of Directive 2013/36/EU relating to capital or liquidity and any requirements imposed pursuant to Article 104(2) of Directive 2013/36/EU and the provision of the financial support shall not cause the group entity to infringe those requirements, unless authorised by the competent authority responsible for the supervision on an individual basis of the entity providing the support;
8. the group entity providing the support complies, at the time when the support is provided, with the requirements relating to large exposures laid down in Regulation (EU) No 575/2013 and in Directive 2013/36/EU including any national legislation exercising the options provided therein, and the provision of the financial support shall not cause the group entity to infringe those requirements, unless authorised by the competent authority responsible for the supervision on an individual basis of the group entity providing the support;
9. the provision of the financial support would not undermine the resolvability of the group entity providing the support.

Decision to provide financial support

Article 39. (1) The executive directors of the group entity providing financial support shall decide to provide group financial support in accordance with the agreement taking into account the standards set out in Article 40. The decision shall in particular indicate to what extent the provision of the financial support corresponds to the conditions set out in Article 38.
(2) The executive directors of the group entity receiving financial support shall decide to receive group financial support in accordance with the agreement.

Notification of the intended provision of group financial support

Article 40. (1) If the executive directors of a group entity incorporated in Austria have decided to provide group financial support, prior to providing this support, they shall notify the following authorities in writing:
1. the FMA;
2. where different from the authorities named in nos. 1 or 3, and where applicable, the consolidating supervisor;
3. where different from the authority named in nos. 1 or 2, the competent authority of the group entity receiving the financial support; and
4. the EBA;

The notification shall contain detailed information about the planned financial support, including a copy of the group financial support agreement. The decision by the executive directors pursuant to Article 39 para. 1 shall be attached to the notification.
(2) If the FMA is also the consolidating supervisor for the entity that has decided to provide financial support, then the FMA shall inform the other members of the supervisory college as well as the members of the resolution college about this decision without delay.

Decision of the supervisory authority on the provision of group financial support by an entity incorporated in Austria

Article 41. (1) If the FMA is the competent authority for the group entity providing the financial support, then it may, within five days from the date of receipt of a complete notification pursuant to Article 40, approve the provision of financial support, prohibit it, or restrict it, in the event that it assesses that the conditions for group financial support pursuant to Article 38 have not been met. Decisions about the prohibition or restriction of the financial support shall be justified by the FMA in writing.
(2) The FMA shall communicate its decision pursuant to para. 1 to the following authorities immediately:
1. the consolidating supervisor;
2. the competent authority of the group entity receiving the support; and
3. the EBA;

If the FMA is also the consolidating supervisor, it shall immediate inform the other members of the supervisory college and the members of the resolution college about this decision.
(3) If the FMA, following the receipt of a complete notification pursuant to Article 40 para. 1, does not make use of its powers within the period named in para. 1 to prohibit or restrict the provision of financial support, or if it approved the provision of financial support within the period named in para. 1, the agreement may be implemented in accordance with the notified information.

Involvement of the FMA in the decision about the provision of group financial support by an entity incorporated in another Member State

Article 42. (1) In the event that a supervisory authority incorporated in another Member State prohibits or restricts the provision of financial support to a group entity incorporated in Austria that is supervised by the FMA, to a group entity, which is subject to consolidated supervision by the FMA, then the FMA may, in the event that it objects to the prohibition or restriction of the provision of financial support, within two days of being informed of the decision by the relevant supervisory authority, approach the EBA about the issue, and request its support pursuant to Article 31 of Regulation (EU) No 1093/2010.
(2) In the event that a supervisory authority incorporated in another Member State prohibits or restricts the provision of financial support to a group entity incorporated in Austria, which is supervised by the supervisory authority, and the group recovery plan of which pursuant to Article 7

para. 5 of Directive 2014/59/EU contains details about agreements made about group financial support, the FMA may request the consolidating supervisor to initiate a reassessment of the group recovery plan pursuant to Article 8 of Directive 2014/59/EU, or, if the recovery plan was drawn up on the level of the individual entity in Austria, to request the submission of an updated recovery plan.

Disclosure

Article 43. Every group entity shall be required to disclose whether it is party to a group financial support agreement. Every party of a group financial support agreement shall additionally disclose the general terms of any such agreement and the names of the participating group entities. The information to be disclosed shall be updated at least once a year. The provisions of Articles 431 and 434 of Regulation (EU) No 575/2013 shall apply.

PART 3: EARLY INTERVENTION

Early intervention measures

Article 44. (1) If there is a need for early intervention for an institute pursuant to para. 2, the FMA may order one or more of the following early intervention measures. The FMA may in particular:

1. require from the directors of the institution that one or more of the arrangements or measures set out in the recovery plan be executed, or that the recovery plan is updated in accordance with Article 11, if the circumstances that have led to a need for early intervention differ from the assumptions made in the original recovery plan;
2. require from the directors of the institution, that they execute one or more of the arrangements or measures set out in the updated recovery plan within a specific timeframe;
3. require the directors of the institution to examine the situation, identify measures to overcome any problems identified and draw up an action programme to overcome those problems and a timetable for its implementation;
4. require the directors of the institution to convene, or if the directors fail 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 by the shareholders;
5. require one or more members of the senior management, of the supervisory board or management body or higher management to be removed or replaced if the FMA reaches the opinion that those persons are deemed to be unfit to perform their duties pursuant to Article 13 of Directive 2013/36/EU or Article 9 of Directive 2014/65/EU;
6. require the directors 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;
7. require changes to the institution’s business strategy;
8. require changes to the legal or operational structures of the institution;

9. by means of on-site inspections, for which purpose the FMA may instruct the *Oesterreichische Nationalbank* pursuant to Article 70 para. 1 no. 3 BWG or suitable experts, to acquire all information required by the resolution authority in order to update the resolution plan, in order if necessary to prepare the resolution process of the institution, to undertake a valuation of the assets and liabilities of the institution pursuant to Article 54, and to make this information available to the resolution authority.

(2) The need for early intervention shall in particular apply if an institution has breached, or threatens to breach in the near future, one of the requirements of Regulation (EU) No. 575/2013, of Directive 2013/36/EU or of Title II of Directive 2014/65/EU or any one of Articles 3 to 7, 14 to 17 and 24, 25 and 26 of Regulation (EU) No. 600/2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, published in OJ. No. L 173 on 12.6.2014 p. 84.

(3) A violation shall be assumed as being likely pursuant to para. 2, if on the basis of the evaluation process several considerable factors emerge, which may include the institution's or entity's own funds requirement pursuant plus 1.5 percentage points, that the institution will violate a condition in the near future pursuant to para. 2, because for example its financial situation, including its liquidity situation, its leverage level, non-performing loans or concentration of risk, deteriorates dramatically.

(4) The FMA shall inform the resolution authority immediately about the measures and shall indicate to the resolution authority that the resolution authority has the right to engage the corresponding institution, while observing the conditions determined in accordance with Article 77 paras. 2 and 3, as well as the confidentiality provisions pursuant to Articles 120 to 122, to approach potential purchasers, in preparation for the resolution of the institution.

(5) For each of the measures referred to in para. 1, the FMA shall set an appropriate deadline for completion to enable the FMA to evaluate the effectiveness of the measures.

(6) The general meeting of an institution having the legal form of a stock company may, by a majority of two-thirds of the votes validly cast, decide to amend the content of the articles of association, to allow the convening of an extraordinary general meeting to pass by a decision in relation to a capital increase later than on the twenty-first day, but not later than on the eleventh day prior to the general meeting to be announced, on the proviso that the need for early intervention has been determined by the FMA, and in the case that the capital increase is necessary, to prevent the conditions for resolution from occurring. The amendment to the articles of association shall contain rules that shall be inserted in place of the provisions that shall not apply pursuant to para. 7.

(7) The following provisions shall not apply to a general meeting convened pursuant to para. 6:

1. the cut-off point for submission of items for the agenda and the obligation of notification of an amended agenda pursuant to Article 109 para. 2 of the Stock Corporation Act (AktG; *Aktiengesetz*);
2. the cut-off point for proposed resolutions by shareholders pursuant to Article 110 para. 1 AktG;

3. the obligation to comply with the record date pursuant to Article 111 para. 1 AktG.

Removal of Members of the Board of Management, the Supervisory Board and Senior Management

Article 45. (1) In the event that the early intervention measures pursuant to Article 44 para. 1 are not sufficient to avert the need for early intervention pursuant to Article 44 para. 2, then the FMA, while simultaneously informing the competent body for appointments, may partially or fully prohibit individual or all members of the board of management of the institution from managing the institution, as well as dismissing individual members or all members of the supervisory board, if

1. the financial situation of an institution deteriorates considerably or
2. serious violations against regulations or the articles of association or severe administrative irregularities exist.

The subsequent appointment of the new members of the board of management or the supervisory board require approval by the FMA to have legal effect. Authorisation shall be refused, if the newly appointed directors or members of the supervisory board do not appear to be suitable for overcoming the conditions named in nos. 1 and 2. This provision shall also apply for the prohibition of performing managerial duties or exercising management activities by the senior management of the institution by the FMA.
(2) In the event that the directors required to represent the institution are absent, they shall in urgent cases appoint the competent first-instance commercial court at the credit institution's place of establishment in proceedings except in the case of disputes at the request of the FMA for the period of time required until shortcomings have been addressed. The decision about the appointment of the director shall be effective with his consent as well as, unless otherwise instructed in the decision, upon delivery to the director.

Temporary administrator

Article 46. (1) In the event that the replacement of the management board, the supervisory board or the senior management of the institution is not sufficient pursuant to Article 45, in order to remove the need for early intervention pursuant to Article 44 para. 2, the FMA may appoint one or several temporary administrators for the institution. A temporary administrator shall hold the qualifications, ability and knowledge required to carry out his or her functions, and no conflict of interests shall exist.
(2) The FMA shall define when making the appointment, whether the temporary administrator temporarily replaces the directors, or whether the directors are expected to work together with the temporary administrator. If the FMA appoints a temporary administrator who is to work together with the directors, it shall define the function, duties and powers of this administrator at the time the appointment is made. The FMA may oblige the directors to consult the administrator and to obtain the administrator's consent, before specific decisions or actions are taken.

(3) The FMA shall determine the duties and powers of the temporary administrator at the time of appointment, on the basis of what is proportionate in the circumstances. Powers may include some or all of the powers of the directors of the institution under the statutes of the institution and under the company law provisions that are applicable for the institution in question, including the power to exercise some or all of the administrative functions of the directors.

(4) The FMA shall define the role and functions of the temporary administrator at the time of appointment, as well as any restrictions to his/her role and functions. Such functions shall include that the temporary administrator ascertains the financial position of the institution, manages the business or part of the business of the institution with a view to preserving or restoring the financial position of the institution and takes measures to restore the sound and prudent management of the business of the institution.

(5) The FMA shall publicly disclose that a temporary administrator is being appointed, unless the temporary administrator in question is not empowered to represent the institution. The appointment of a temporary administrator shall become effective when the order of appointment is delivered to the institution. The occurrence of the appointment of a temporary administrator, and as necessary his/her power of representation as well as any changes to the powers of representation of members of senior management are to be entered by the FMA into the Commercial Register.

(6) The FMA may deem that certain acts of a temporary administrator require prior consent from the FMA. The power to convene a meeting of the shareholders of the institution and the setting of the agenda for such a meeting may only be exercised following prior consent by the FMA. The temporary administrator shall report to the FMA at fixed intervals set by the FMA in advance, as well as at the end of his/her mandate on:

1. the financial situation of the institution and
2. the acts performed in the course of its appointment.

(7) The appointment of a temporary administrator may be for a maximum of one year. That period may be extended in exceptional circumstances, if the conditions for appointing the temporary administrator continue to be met. The FMA shall be responsible for determining whether the circumstances for the deployment of a temporary administrator continued to be justifiable, as well as for justifying such an extension to the shareholders. A temporary administrator may be removed by the FMA at any time, in particular if:

1. the conditions for his/her appointment pursuant to para. 1 no longer prevail,
2. it is accepted, that the temporary administrator will no longer fulfil his/her duties properly or
3. the conditions for resolution pursuant to Article 49 have been fulfilled.

The FMA may change the duties, powers and functions of the temporary administrator pursuant to paras. 2 to 6 insofar as the circumstances necessitate this to be done.

(8) A temporary administrator is not a de facto director and conducts his/her duties as an organ of the FMA.

(9) Unless stated otherwise in paras. 1 to 8, the appointment of a temporary administrator shall not prejudice the rights of the shareholders in accordance with Union or national company law.

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

Article 47. (1) In the event that the conditions prevail pursuant to Article 44 or Article 46 for an EU parent undertaking, the FMA as consolidating supervisor shall notify and consult EBA and the other competent authorities within the supervisory college. In connection with the notification and consultation process, the FMA as consolidating supervisor shall decide whether an early intervention measure should be taken against the EU parent undertaking pursuant to Article 44 or Article 46. In taking the decision, the FMA as consolidating supervisor shall take into account the effects of any early intervention measure on the entities within the group in other Member States. The FMA as consolidating supervisor shall notify the decision to the other competent authorities within the supervisory college and EBA.

(2) In the event that the conditions pursuant to Article44 or Article 46 exist for the subsidiary of an EU parent undertaking, the FMA, as the competent authority for prudential supervision on an individual basis, which plans to take an early intervention measure pursuant to Article 44 or Article 46, shall notify EBA and consult the consolidating supervisor. The consolidating supervisor may evaluate the possible effects on the group or on entities within the group in other Member States within three days, and submit this evaluation to the FMA as the competent authority on an individual basis. In connection with this notification and this consultation the FMA shall decide in its capacity as the competent authority on an individual basis, whether an early intervention measure pursuant to Article 44 or Article 46 should be taken. In making the decision, due account shall be taken of a general evaluation by the consolidating supervisor. The FMA as competent authority on an individual basis shall notify the decision to the consolidating supervisor, the other competent authorities within the supervisory college and EBA.

(3) If the FMA intends to order an early intervention measure pursuant to Article 44 or Article 46 for an institution which is licensed in Austria, and at the same time a supervisory authority in another Member State intends to order a measure to be taken in accordance with the relevant national provisions transposing Article 27 or Article 29 of Directive 2014/59/EU for another institution from the same group, the FMA shall participate in the joint evaluation of the issue, of whether the same temporary administrator is to be appointed for all institutions concerned, or whether the application of early intervention measures will be coordinated in the interests of restoring the financial position of the institution concerned. The evaluation shall take place in the form of a written reasoned joint decision within five days from the receipt of a notification pursuant to para. 1, which the FMA, if it is the consolidating resolution authority, shall transmit to the EU parent undertaking. At the request of a competent authority concerned, EBA may assist in reaching of an agreement pursuant to Article 31 of Regulation (EU) No 1093/2010. In the event that the supervisory authorities concerned are not able to reach a consensus decision within five days, the consolidating supervisor and the authorities that are competent for the subsidiaries may decide themselves about the ordering of early intervention measures.

(4) If one of the competent authorities concerned does not agree with the decision that has been communicated pursuant to para. 1 or 2 or if no joint decision pursuant to para. 3 is available, then it may appeal to the EBA pursuant to Article 19 (3) of Regulation (EU) No 1093/2010, if the decision refers to one of the following early intervention measures:

1. Early intervention measures with regard to the implementation of arrangements or measures contained in the recovery plan, as long as the required spectrum of capital and liquidity measures for maintaining or restoring the viability and financial situation of the institution pursuant to no. 4 of the Annex to Article 9, the arrangements or measures for the conservation or restoration of own funds of the institution pursuant to no. 10 of the Annex to Article 9, the arrangements and measures for guaranteeing access to sources of liquidity pursuant to no. 11 of the Annex to Article 9, or measures for the implementation of the recovery play pursuant to no. 19 of the Annex to Article 9 are concerned,
2. Early intervention measures with regard to the drawing up of a plan for a restructuring of debt, or
3. Early intervention measures with regard to the modification of legal or operative structures of an institution.

(5) The decision of each competent authority shall be reasoned. The decision shall take into account the views and reservations of the other competent authorities expressed during the consultation period referred to in para. 1 or 2 or the five-day period referred to in para. 3 as well as the potential impact of the decision on financial stability in the Member States concerned. The decisions shall be provided by the consolidating supervisor to the EU parent undertaking and to the subsidiaries by the respective competent authorities.

(6) In the cases pursuant to para. 4, where, before the end of the consultation period referred to in paras. 1 and 2 or until the expiry of the five-day period referred to in para. 3, any of the competent authorities concerned has referred the matter to EBA in accordance with Article 19(3) of Regulation (EU) No 1093/2010, the consolidating supervisor and the other competent authorities shall defer their decisions and until a decision has been taken by EBA in accordance with Article 19(3) of Regulation (EU) No 1093/2010, and shall take their decision in accordance with the decision of EBA. The five-day period shall be deemed to be the conciliation period within the meaning of Regulation (EU) No 1093/2010. EBA shall take its decision within three days. The matter shall not be referred to EBA after the end of the five-day period or after a joint decision has been reached.

Powers to suspend payment and delivery obligations

Article 47a. (1) The resolution authority may, after consulting the FMA, which shall respond promptly, order payment or delivery obligations arising from contracts to which institutions or undertakings are party to the agreement pursuant to Article 1 para. 1 nos. 2 to 4, where all of the following conditions are met:

1. it has been determined that the institution or undertaking pursuant to Article 1 para. 1 nos. 2 to 4 is failing or likely to fail as defined in Article 49 para. 1 no. 1;
2. there is no immediately available alternative actions taken by the private sector pursuant to Article 49 para. 1 no. 2 that would prevent the failure of the institution or entity pursuant to Article 1 para. 1 nos. 2 to 4;
3. the exercise of the power to suspend is deemed necessary in order to prevent the further deterioration of the financial situation of the institution or entity pursuant to Article 1 para. 1 nos. 2 to 4, and
4. the exercise of the power to suspend is necessary:
    a. either to reach the determination provided for in Article 49 para. 1 no. 3; or
    b. to decide which resolution measures are appropriate, or to ensure the effective application of one or more resolution tools.

(2) Payment or delivery obligations are exempted from the power pursuant to para. 1 towards the following:

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

(3) The resolution authority shall determine the scope of the power pursuant to para. 1 taking into account the circumstances of the individual case. In particular, resolution authorities shall carefully assess whether it is appropriate to extend the suspension to eligible deposits pursuant to Article 7 para. 1 no. 4 ESAEG, especially to covered deposits pursuant to Article 7 para. 1 no. 5 ESAEG held by natural persons and micro, small and medium-sized enterprises. Where the power to suspend payment or delivery obligations is exercised in respect of eligible deposits pursuant to Article 7 para. 1 no. 4 ESAEG, the resolution authority shall ensure that depositors have daily access to an appropriate amount of these deposits.

(4) The period of the suspension (suspension period) stated in para. 1 shall be as short as possible and shall not exceed the minimum period of time that the resolution authority considers necessary for the purposes indicated in para. 1 nos. 3 and 4, and in any event shall not exceed the period from the publication of a notice of suspension pursuant to para. 8 to and the end (midnight) of the resolution authority’s business day following the day of the publication. Following the expiry of the period of suspension, the suspension shall cease to have effect.

(5) When exercising the power pursuant to para. 1 the resolution authority shall have to take into account the potential impact that the exercise of that power might have on the orderly functioning of financial markets and shall consider the applicable national legal provisions, as well as supervisory and judicial powers, to safeguard creditors' rights and equal treatment of creditors in normal insolvency proceedings. In particular, the resolution authority shall take into account

whether national insolvency proceedings may be applied to the company as a result of the determination pursuant to Article 49 para. 1 no. 3, and shall make the arrangements it considers appropriate to ensure appropriate coordination with the national administrative or judicial authorities.

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

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

(8) The resolution authority shall notify the entity and the authorities pursuant to Article 116 para. 5 nos. 1 to 9 without delay when exercising the power pursuant to para. 1. This notification shall be made following the determination pursuant to Article 49 para. 1 no. 1 (failure decision) and prior to the resolution decision. The resolution authority shall publish the order or instrument by which the obligations are suspended, as well as the conditions and duration of the suspension by way of the procedure stated in Article 116 para. 6, or initiate their publication.

(9) Other provisions set out under national law conferring powers to suspend the institutions' or entities' pursuant to para. 1 payment or delivery obligations, prior to a determination pursuant to Article 49 para. 1 no. 1 being reached that those institutions or undertakings are failing or likely to fail or which apply to institutions or entities that are intended to be wound up under normal insolvency proceedings, and which exceed the scope and duration set out in paras. 3 and 4, shall remain unaffected by this Article. Such powers shall be exercised in accordance with the scope, duration and conditions provided for in the relevant provisions set out under national law. The conditions set out in this Article are without prejudice to the conditions for such powers to suspend payment or delivery obligations.

(10) Where the resolution authority exercises the power to suspend payment or delivery obligations in respect of an entity referred to in para. 1 subsection, it may also exercise the power for the duration of that suspension to:

1. restrict the rights of secured creditors of that institution or entity from enforcing security interests in relation to any of the assets of that institution or entity for the same duration, in which case the provisions pursuant to Article 65 shall apply; and

2. suspend the termination rights of a party to a contract with that entity for the same duration, in which case the provisions pursuant to Article 66 shall apply.

(11) If the resolution authority has exercised the power to suspend payment or delivery obligations under the circumstances set out in para. 1 to 10 after making the determination pursuant to Article 49 para. 1 no. 1, and the resolution authority then takes a resolution action in relation to that entity, the resolution authority shall not be allowed to exercise its powers pursuant to Article 64 para. 1, Article 65 para. 1 or Article 66 para. 1 in relation to that undertaking.

PART 4: RESOLUTION

Chapter 1: Objectives, conditions and general principles

Resolution objectives

Article 48. (1) When using resolution tools and exercising resolution powers the resolution authority must take the resolution objectives into account. It shall apply those instruments and exercise those powers, with which the relevant objectives may best be achieved taking into consideration the circumstances that apply in the relevant case in hand.

(2) The resolution objectives referred to in paragraph 1 are:

1. to ensure the continuity of critical functions;
2. to avoid a significant adverse effect on the financial system, in particular by preventing contagion, including to market infrastructures, and by maintaining market discipline;
3. to protect public funds by minimising reliance on extraordinary public financial support;
4. to protect depositors covered by Directive 2014/49/EU and investors covered by Directive 97/9/EC; and
5. to protect client funds and client assets.

(3) The resolution authority shall seek to minimise the costs of resolution and to avoid destruction of value, in pursuing the objectives listed in para. 2, unless necessary to achieve the resolution objectives.

(4) Subject to different provisions of this Federal Act, the resolution objectives are of equal significance; and it is up to the discretion of the resolution authority shall balance them accordingly as appropriate to the nature and circumstances of each individual case.

Conditions for resolution

Article 49. (1) The resolution authority shall order resolution actions in relation to an institution, if the following conditions have been met:

1. if the FMA following consultation with the resolution authority, or the resolution authority following consultation with the FMA determines that the institution is failing or likely to fail;
2. having regard to timing and other relevant circumstances, there is no reasonable prospect that any alternative private sector measures, including measures by an IPS, or other supervisory actions, including early intervention measures pursuant to Article 44 or the write down or conversion of relevant capital instruments and eligible liabilities in accordance with Article 70 taken in respect of the institution, would prevent the failure of the institution within a reasonable timeframe;
3. resolution actions are necessary in the public interest.

(2) a resolution action is treated as being in the public interest if it is necessary for the achievement of one or more of the resolution objectives referred to in Article 48 and is proportionate to these

objectives and if winding up of the institution under normal bankruptcy proceedings would not meet those resolution objectives to the same extent.

(3) The *Oesterreichische Nationalbank* shall inform the FMA and the resolution authority immediately, if in connection with its activities circumstances are determined that justify the assumption that there is an existing risk of the failure of an institution.

(4) It is not necessary that early intervention measures pursuant to Article 44 must be taken prior to a resolution action.

(5) Where the conditions for resolution pursuant to para. 1 are fulfilled by the resolution group as a whole that is an affiliation of credit institutions pursuant to Article 30a BWG, the resolution authority may take resolution actions in relation to the central body as well as all credit institutions that are constantly affiliated to it.

(6) Where the conditions for resolution pursuant to para. 1 nos. 1 and 2 exist, and the resolution authority determines that the condition for resolution pursuant to para. 1 no. 3 does not exist, then the resolution authority shall inform the FMA that this is the case. Thereafter, the FMA shall take suitable measures pursuant to Articles 6, 70, or 81 to 91 BWG.

Instruction of Resolution Actions

Article 50. (1) The resolution authority, in the event that the requirements for resolution pursuant to Article 49 exist, may give instructions for all necessary actions laid down in this federal act pursuant to Article 48 to be taken to achieve the resolution objectives, and in particular may:

1. instruct the application of one or more of the resolution tools listed pursuant to Article 74 para. 2;
2. may, with reference to or in addition to instructions pursuant to no. 1, issue instructions as per the powers set in Articles 58 to 69.

(2) the resolution authority shall use those resolution tools and resolution powers, with which the resolution objectives in the specific case at hand can best be achieved.

(3) When applying the resolution tools, the resolution authority shall take into account the general principles pursuant to Article 74. The application shall occur in accordance with the conditions applicable to the individual tool.

(4) If the conditions for resolution pursuant to Article 49 exist, the resolution authority shall also apply the tool for the participation of the owners of relevant capital instruments pursuant to Article 70 and eligible liabilities. If the participation of the owners of relevant capital instruments and eligible liabilities is sufficient to achieve the resolution objectives, then the resolution authority shall refrain from applying additional resolution tools.

(5) If necessary for the efficient application of resolution actions or application of the tool for the bailing-in of owners of relevant capital instruments and eligible liabilities, pursuant to Article 69 the resolution authority may instruct the change of legal form of an institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4.

Failure of an Institution

Article 51. (1) An institution shall be deemed to be failing or likely to fail, if one or several of the following conditions are fulfilled:

1. the conditions for surrendering a licence pursuant to Article 6 BWG or Article 6 WAG 2018 exist or there are objective elements to support a determination that the institution will, in the near future, infringe the requirements for continuing authorisation in a way that would justify the withdrawal of the authorisation by the competent authority including but not limited to because the institution has incurred or is likely to incur losses that will deplete all or a significant amount of its own funds, or
2. the assets of the institution are or there are objective elements to support a determination that the assets of the institution will, in the near future, be less than its liabilities, or
3. the institution is or there are objective elements to support a determination that the institution will, in the near future, be unable to pay its debts or other liabilities as they fall due, or
4. extraordinary public financial support is required except when, in order to remedy a serious disturbance in the economy and preserve financial stability, the extraordinary public financial support under the legal framework of the Union on State aid takes any of the following forms:
   a. a State guarantee to back liquidity facilities provided by central banks according to the central banks' conditions, or
   b. a State guarantee of newly issued liabilities, or
   c. a channelling of own funds or the purchasing of capital instruments at prices or conditions that do not favour the institution, it neither the conditions pursuant to nos. 1 to 3 nor the conditions pursuant to Article 71 at the time at which the public financial support is granted and where the support measures are restricted to capital contributions that are necessary to close capital shortfalls that have been identified by at Member State level, at Union level or by the Single Supervisory Mechanism, during the Asset Quality Review or comparable exercises by the ECB, the EBA, the authorities of individual countries, and have been confirmed by the FMA.

(2) The guarantees or equivalent measures referred to in para. 1 no. 4 points (a) to (c) shall be confined to solvent institutions and shall be conditional on final approval under the Union State aid framework. The measures shall be of a precautionary and temporary nature and shall be proportionate to remedy the consequences of the serious disturbance and shall not be used to offset losses that the institution has incurred or is likely to incur in the near future.

Conditions for resolution with regard to CRR-financial institutions and holding companies

Article 52. (1) The conditions for resolution with regard to a CRR-financial institution pursuant to Article 1 para. 1 no. 2 exist, if the conditions listed pursuant to Article 49 para. 1 both with regard to the CRR-financial institution as well as the parent undertaking subject to supervision on a consolidated basis are fulfilled.

(2) The conditions for resolution in respect of a holding company pursuant to Article 1 para. 1 no. 3 or no. 4 are met if the conditions pursuant to Article 49 para. 1 for the holding company are met.

(3) Where the subsidiaries of a mixed-activity holding company are held directly or indirectly by an intermediate financial holding company, the resolution authority shall identify the intermediary financial holding company as a resolution entity in the resolution plan, and shall take resolution actions for the purposes of group resolution in relation to the intermediate financial holding company, but not however in relation to the mixed-activity holding company.

(4) Subject to para. 3, the resolution authority may also take resolution measures in relation to a holding company pursuant to Article 1 para. 1 no. 3 or no. 4, where that holding company does not meet the conditions pursuant to Article 49 para. 1, provided that the following conditions are met:

1. the holding company is a resolution entity;
2. one or more subsidiaries which are institutions but not resolution units meet the requirements set out in Article 49 para. 1;
3. the assets and liabilities of these subsidiaries pursuant to no. 2 are such that their failure would threaten the entire resolution group, and resolution measures in respect of the holding company are necessary either for the resolution of those subsidiaries, which are institutions, or for the resolution of the resolution group in question as a whole.

(5) The resolution authority of the institution and the resolution authority of a holding company pursuant to Article 1 para. 1 nos. 3 or 4 may when assessing whether the conditions in Article 49 para. 1 are met in respect of one or more subsidiaries which are institutions, agree for the purposes of paras. 2 and 4, that intra-group capital or loss transfers between the entities, including the exercise of write-down or conversion power may be disregarded.

General principles governing resolution

Article 53. (1) In the application of resolution tools and the exercising of resolution powers, the resolution authority shall take all appropriate measures to ensure that the resolution action is taken in accordance with the following principles:

1. the shareholders of the institution under resolution bear first losses;
2. creditors of the institution under resolution bear losses after the shareholders in accordance with the order of priority of their claims under normal bankruptcy proceedings, except where explicitly prescribed otherwise in this federal act;
3. the supervisory board and the senior management of the institution under resolution are replaced, except in those cases in which the resolution authority deems that the retention of the supervisory board and senior management, in whole or in part, as appropriate to the circumstances, shall be considered necessary for achieving the resolution objectives;

4. the supervisory board and the senior management of the institution under resolution shall be obliged to provide all necessary assistance in order to achieve the resolution objectives;
5. natural and legal persons are made liable, subject to the applicable law of the Member State in question, under civil or criminal law for their responsibility for the failure of the institution;
6. creditors of the same rank shall be treated equitably - except where provisions in this federal act state otherwise;
7. no creditor shall incur greater losses than they would have incurred had the institution or entity referred pursuant to Article 1 para. 1 nos. 2 to 4 been wound up under normal bankruptcy proceedings in accordance with the safeguard provisions pursuant to Articles 106 to 108;
8. secured deposits are fully secured; and
9. the resolution actions are being taken in accordance with the safeguard provisions in this federal act.

(2) Where an institution is a group entity, the resolution authority in applying resolution tools and exercising resolution powers among the options available shall ensure that the impact on other group entities and on the group as a whole as well as the adverse effects on financial stability in the European Union and its Members States, in particular in those countries where the group operates, are kept as low as possible.

(3) The application of resolution tools and exercising the resolution powers, Member States shall as far as applicable be compatible with the Union State aid framework.

(4) If the sale of business tool, the bridge institution tool or the asset separation tool are applied to an institution or entity pursuant to Article 1 para. 1 nos. 2 to 4, then this institution or entity shall be the subject of bankruptcy proceedings or similar insolvency proceedings pursuant to Article 5(1) of Council Directive 2001/23/EC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, OJ L 82, 22.03.2001 p. 16.

(5) When applying the resolution tools and exercising the resolution powers, the resolution authority shall inform and consult employee representatives of the institution where appropriate.

(6) The application of resolution tools and exercising of resolution powers by the resolution authority shall occur without prejudice to provisions on the representation of employees in the supervisory board pursuant to Article 110 of the Labour Constitution Act (ArbVG; *Arbeitsverfassungsgesetz*) published in Federal Law Gazette No. 22/1974.

Chapter 2: Valuation

General provisions

Article 54. (1) Before the resolution authority takes resolution actions or exercises the power to write down or convert capital instruments and eligible liabilities pursuant to Article 70, it shall ensure that a fair, prudent and realistic valuation of the assets and liabilities of the institution or entity pursuant to Article 1 para. 1 nos. 2 to 4 is conducted.

(2) The resolution authority shall allow the valuation to be conducted by an external auditor, an external auditing company or other suitable experts (valuation auditor). The auditors carrying out the valuation must be considered to be independent from the Austrian Financial Market Authority (FMA), the *Oesterreichische Nationalbank* (OeNB), other government authorities as well as the institution or entity listed in Article 1 para. 1 nos. 2 to 4. The following shall be considered unsuitable or not to be independent: anyone who has been active in the capacity of external auditor of the institution or entity pursuant Article 1 para. 1 nos. 2 to 4 within the last five years; or for whom any reason for exclusion applies pursuant to Article 61 para. 2 or Article 62 BWG.

(3) The objective of the valuation shall be to identify the value of the assets and liabilities of the institution or entity pursuant to Article 1 para. 1 nos. 2 to 4 that meets the conditions for resolution pursuant to Articles 49 to 52.

(4) The valuation shall be an integral part of the decision to apply a resolution tool or exercise a resolution power, or the decision to exercise the write down or conversion power of capital instruments and eligible liabilities pursuant to Article 70. The valuation itself shall not be subject to a separate right of appeal but may be subject to an appeal together with the decision in accordance with Article 118.

(5) Regardless of para. 4 and Article 118 the valuation shall be deemed to be final, if all the requirements pursuant to Articles 54 to 56 have been met.

Valuation criteria and documentation

Article 55. (1) The valuation shall be undertaken on the basis of the following criteria:

1. It shall be based upon prudent assumptions, in particular in relation to the probability of default and loss given default and may not assume, from the point at which a resolution action is taken or the power to write down holdings of holders of relevant capital instruments and eligible liabilities pursuant to Article 70 is exercised, that a potential future provision of extraordinary public financial support or central bank emergency liquidity assistance or any central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms to the institution or entity pursuant to Article 1 para. 1 nos. 2 to 4;
2. it shall be taken into consideration, that when applying resolution tools, that the institution under resolution shall provide the following:
    a. a recovery of any reasonable expenses pursuant to Article 74 para. 5 that were properly incurred by the resolution authority and the resolution financing arrangement, and
    b. interest and fees in respect of any loans or guaranteed granted under the resolution financing arrangement.

(2) The valuation shall be supplemented by the following documentation:

1. a balance sheet updated to the reference date for the valuation and a report about the financial situation of the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4;
2. an analysis and an estimation of the market value of the assigned to be assigned to the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4, and
3. the list of outstanding on balance sheet and off balance sheet liabilities shown in the books and records of the institution or entity pursuant to Article 1 para. 1 nos. 2 to 4 with details about the respective creditors and the underlying exposures and their rank in accordance with insolvency law.

(3) Where appropriate, in order to be able to reach informed decisions pursuant to Article 56 nos. 5 and 6, the documentation in para. 2 no.2 may be complemented by analyses and estimations about the assets and liabilities of the institution or entity pursuant to Article 1 para. 1 nos. 2 to 4 on a market value basis.

(4) The valuation shall contain details that allow the subdivision of the creditors into ranks in accordance with the applicable insolvency law as well as an estimate of the treatment that individual shareholders and creditors would have been expected to receive, if the institution or entity pursuant to Article 1 para. 1 nos. 2 to 4 were to have been liquidated in bankruptcy proceedings. The application of the rule pursuant to Article 107, under which no creditor shall be placed in a worse position that if bankruptcy proceedings were to be initiated, remains unaffected by the estimation.

Purpose of the valuation

Article 56. The valuation in particular serves the following purposes:

1. to inform the determination of whether the conditions for resolution or the conditions for the write down or conversion of capital instruments and eligible liabilities pursuant to Article 70 are met;
2. if the conditions for resolution are met, to provide a detailed decision on the appropriate resolution actions to be taken in respect of the institution or entity pursuant to Article 1 para. 1 nos. 2 to 4;
3. when the power to write down or convert relevant capital instruments and eligible liabilities pursuant to Article 70 is applied, to provide a detailed decision on the extent of the cancellation or dilution of shares or other instruments of ownership, and the extent of the write down or conversion of relevant capital instruments and eligible liabilities pursuant to Article 70;
4. when the bail-in tool is applied, to provide a detailed decision on the extent of the write down or conversion of bail-inable liabilities;
5. when the bridge institution tool or asset separation tool is applied, to provide a detailed decision on the assets, rights, liabilities, shares or other instruments of ownership to be transferred and the decision on the value of any consideration to be paid to the institution

under resolution or, as the case may be, to the owners of the shares or other instruments of ownership;

6. when the sale of business tool is applied, to provide a detailed decision on the assets, rights, liabilities, shares or other instruments of ownership to be transferred and to provide the resolution authority's evaluation, whether a transfer is able to stand up to a third-party comparison;
7. in all cases of ensuring that all losses relating to the assets of the institution or entity referred to Article 1 para. 1 nos. 2 to 4 are fully recognised at the moment the resolution tools are applied or the power to write down or convert relevant capital instruments and eligible liabilities pursuant to Article 70 is exercised.

Provisional and final valuation

Article 57. (1) If it is not possible for an independent valuation to be conducted by a valuation auditor in a timely manner, then the resolution authority shall undertake a provisional valuation of the assets and liabilities of the institution or entity pursuant to Article 1 para. 1 nos. 2 to 4, or allow such a valuation to be conducted by suitable experts. This shall in particular be permissible, if on the basis of the required urgency it is not possible or under the prevailing circumstances it is inadequate and unrealisable to meet the requirements pursuant to Article 55 paras. 2 and 4. The preliminary valuation shall serve the aim listed in Article 54 para. 3 and shall include a buffer for additional losses with an appropriate justification.

(2) A valuation which does not meet all the requirements set out in Articles 54 to 56, shall be valid as a preliminary valuation until a conclusive valuation has been undertaken by a valuation auditor. The resolution authority shall initiate this conclusive valuation without delay. The conclusive valuation may be conducted independently or simultaneous to the valuation pursuant to Article 107 by the same valuation auditor, but must however be conducted separately on a content level to the valuation pursuant to Article 107. The conclusive valuation shall serve the following purposes:

1. to ensure that any losses incurred in relation to the assets of the institution or entity referred to pursuant to Article 1 para.1 nos. 2 to 4 are fully recognised in the books of accounts of the institution or entity, and
2. as necessary to provide a detailed decision about the writing back of creditors' claims or the increasing of the value of the consideration paid, pursuant to para. 3.

(3) In the event the estimation of the net assets of the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 conducted during the conclusive valuation yields a higher net value than the estimation contained in the provisional valuation, then the resolution authority may:

1. exercise its power to increase the value of the claims of creditors or owners of relevant capital instruments which have been written down under the bail-in tool, or
2. instruct a bridge institution or wind-down unit to make a further payment of consideration in respect of the assets, rights, liabilities to the institution under resolution, or as the case may

be, in respect of the shares or instruments of ownership to the owners of the shares or other instruments of ownership.

On the other hand, in the event that the estimation of the net assets established during the conclusive valuation yields a lower estimation than the estimation contained in the provisional valuation, the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 shall owe a settlement to the bridge institution or the wind-down unit in the amount of the absolute amount of the identified negative value. The procedure pursuant to Article 116 shall apply for findings in relation to this paragraph.

(4) Irrespective of Article 54 a conducted provisional valuation shall form a reliable basis for the resolution authority, to

1. take resolution actions, including taking control of a failing institution or entity pursuant to Article 1 para 1 nos. 2 to 4, or
2. exercise to power to write down or convert capital instruments and eligible liabilities pursuant to Article 70.

(5) The resolution authority shall not be liability for the correctness and completeness of the provisional valuation.

Chapter 3: Resolution powers

General powers

Article 58. (1) The resolution authority has the following powers, which it may apply in accordance with the conditions of Chapter 5 in connection with or in preparation for the application of a resolution tool either individually or in combination with other powers on institutions or entities pursuant to Article 1 para. 1 nos. 2 to 4:

1. the power to require any person to provide any information required for the resolution authority to decide upon and prepare a resolution action, including updates and supplements of information provided in the resolution plans and including requiring information to be provided through on-site inspections;
2. 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 directors of the institution under resolution;
3. the power to transfer shares or other instruments of ownership issued by an institution under resolution;
4. the power to transfer to another entity, with the consent of that entity, rights, assets or liabilities of an institution under resolution;
5. the power to reduce, including to reduce to zero, the principal amount of or outstanding amount due in respect of bail-inable liabilities, of an institution under resolution;
6. the power to convert bail-inable liabilities of an institution under resolution into ordinary shares or other instruments of ownership of that institution or entity pursuant to Article 1

para. 1 nos. 2 to 4, a relevant parent institution or a bridge institution to which assets, rights or liabilities of the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4, are transferred;

7. the power to cancel debt instruments issued by an institution under resolution except for secured liabilities pursuant to Article 86 para. 2;
8. the power to reduce, including to reduce to zero, the nominal amount of shares or other instruments of ownership of an institution under resolution and to cancel such shares or other instruments of ownership;
9. 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;
10. the power to amend or alter the maturity of debt instruments and other bail-inable liabilities issued by an institution under resolution or amend the amount of interest payable under such instruments and other bail-inable liabilities, or the date on which the interest becomes payable, including by suspending payment for a temporary period, except for secured liabilities pursuant to Article 86 para. 2;
11. the power to close out and terminate financial contracts or derivatives contracts for the purposes of applying Article 91;
12. the power to discharge or replace, individual members or all members of the supervisory board or the senior management of an institution under resolution, and
13. the power to require the FMA to assess the buyer of a qualifying holding in a timely manner by way of derogation from the time-limits laid down in Article 20a BWG or Article 15 WAG 2018.

(2) Unless otherwise specified in this federal act, the resolution authority in the application of resolution tools and the exercising of resolution powers is not bound by the following requirements, regardless of whether otherwise such a legal or contractual obligation arises:

1. requirements to obtain approval or consent from any person either public or private, including the shareholders or creditors of the institution under resolution, and
2. prior to the exercise of the power, procedural requirements to notify any person including any requirement to publish any notice or prospectus or to file or register any document with any other authority.

(3) In applying resolution powers pursuant to para. 1 the resolution authority is also empowered to:

1. subject to the provisions of Article 111, provide for a transfer to take effect free from any liability or encumbrance affecting the financial instruments, rights, assets or liabilities transferred; for that purpose, with any rights of compensation in accordance with this Federal Act shall not be considered to be a liability or an encumbrance;
2. remove rights to acquire further shares or other instruments of ownership;
3. instruct a stock-exchange entity pursuant to Article 3 of the Stock Exchange Act 2018 (BörseG 2018; *Börsegesetz 2018*) published in Federal Law Gazette I no. 107/2017, to

discontinue or suspend the authorisation to trade on a regulated market or the official listing of financial instruments;

4. to take measures so that the recipient is treated as if it were the institution under resolution for the purposes of any rights or obligations of, or actions taken by, the institution under resolution, including, subject to Articles 75 and 78, any rights or obligations relating to participation in a market infrastructure;
5. require the institution under resolution or the recipient to provide one another with information and assistance; and
6. cancel or modify the terms of a contract to which the institution under resolution is a party or substitute a recipient as a party.

The application of these powers by the resolution authority shall only be permitted if this contributes to the effectiveness of a resolution action or to achieving one or more resolution objectives.

(4) If the resolution authority applies its resolution powers, it can also give instructions about continuity arrangements. Such measures must be necessary to ensure that the resolution actions are effective and that the activity transferred may be operated by the recipient. Continuity arrangements shall include, in particular:

1. the continuity of contracts entered into by the institution under resolution, so that the recipient assumes the rights and liabilities of the institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4, relating to any financial instrument, right, asset or liability that has been transferred and is substituted for the institution or entity under resolution pursuant to Article 1 para. 1, nos. 2 to 4, expressly or implicitly in all relevant contractual documents;
2. the substitution of the recipient for the institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4 in any legal proceedings relating to any financial instrument, right, asset or liability that has been transferred.

(5) The powers in paragraph 3 no. 4 and paragraph 4 no. 2 shall not affect the following:

1. the right of an employee of the institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4 to terminate a contract of employment and
2. subject to the provisions pursuant to Articles 64 to 66, any right of a party to a contract to exercise rights under the contract, including the right to terminate, where entitled to do so in accordance with the terms of the contract by virtue of an act or omission by the institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4 prior to the relevant transfer, or by the recipient after the relevant transfer.

Interruption of a legal procedure in civil law matters and suspension of a decision by a civil law court

Article 59. (1) A civil law procedure, in which the institution under resolution is a party, shall be interrupted by the court for a specific period of time, if the resolution authority applies for its

interruption. An interrupted procedure shall be continued officially upon expiry of the defined period of time.
(2) A measure issued by a civil court of law, which affects an institution under resolution, shall be suspended for a defined period of time, if the resolution authority applies for this.
(3) The procedure pursuant to Articles 116 and 116a shall not apply.

Change of party

Article 60. (1) In a procedure under civil law, in which an institution under resolution is a party, the court shall instruction that the recipient in the procedure shall be the party instead of the institution under resolution, if the resolution authority applies for this to be the case, because it has instructed a corresponding continuity measure pursuant to Article 58 para. 4.
(2) The procedure pursuant to Articles 116 and 116a shall not apply.

Provision of services and facilities

Article 61. (1) The resolution authority may instruct in relation to an institution under resolution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 to make information, services, facilities and staff members available, that a recipient requires to effectively operate a business that has been transferred to it. This shall also apply pursuant to Article 82 para. 7 BWG, if banking proceedings have been initiated against the assets of the institution under resolution or the affected entity.
(2) The resolution authority may upon the request of the resolution authority of another Member State for measures pursuant to para. 1, which shall be intended to apply for a group entity incorporated in Austria, therefore recognise that such an instruction applies to the affected group entity incorporated in Austria.
(3) The powers pursuant to paras. 1 and 2 shall be restricted to operational services and facilities; the resolution authority shall not be permitted to oblige the institution or an entity pursuant to Article 1 para. 1 nos. 2 to 4 to take financial assistance.
(4) If an instruction is issued pursuant to paras. 1 or 2, then a consideration shall be defined. When directly prior to the initiation of resolution actions, services and facilities have already been made available on the basis of an agreement, then the consideration shall take into account the duration of application in accordance with this existing agreement. Otherwise, an appropriate consideration should be defined by the resolution authority.
(5) If insolvency proceedings are opened against the assets of the institution or an entity pursuant to Article 1 para. 1 nos. 2 to 4, the following obligations towards the bankruptcy trustee from an instruction pursuant to para. 1 shall continue to exist. The instruction may also be applied towards the bankruptcy trustee.

Powers in respect of assets, rights, liabilities, shares and other instruments of ownership located in third countries

Article 62. (1) In cases in which resolution action also extends to assets located in a third country or shares, other instruments of ownership, rights or liabilities governed by the law of a third country, the resolution authority may order that:

1. the administrator, receiver or other person exercising control of the institution under resolution and the recipient must take all necessary steps to ensure that the transfer, write down, conversion or action becomes effective;
2. the administrator, receiver or other person exercising control of the institution under resolution hold the shares, other instruments of ownership, assets or rights or discharge the liabilities on behalf of the recipient until the transfer, write down, conversion or action becomes effective, and
3. the reasonable expenses of the recipient properly incurred in carrying out any action required pursuant to nos. 1 and 2 are met in any of the ways referred to in Article 74 para. 5.

(2) Where the resolution authority assesses that, in spite of all the necessary steps, whether taken by the administrator, receiver or other person in accordance with para. 1 no. 1, it is highly unlikely that the transfer, conversion or action will become effective in relation to certain assets located in a third country or certain shares, other instruments of ownership, rights or liabilities under the law of a third country, the resolution authority shall not proceed with the transfer, write down, conversion or action. If it has already ordered the transfer, write down, conversion or action, that order shall be ineffective in relation to the assets, shares, instruments of ownership, rights or liabilities concerned. This shall be determined by the resolution authority in the same way as the order was.

Exclusion of certain contractual terms in early intervention and resolution

Article 63. (1) A crisis prevention measure or a crisis management measure, including the occurrence of any event directly linked to the application of such a measure do not apply in relation to an entity within the scope of application of Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements, OJ L 168, 27.06.2002, p. 43, or as an insolvency proceeding in the context of Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems, OJ L 166, 11.06.1998, p. 45, if the principle contractual obligations, including payment obligations and service obligations, as well as the obligation to provide collateral continues to be fulfilled. A suspension or restriction pursuant to Articles 47a, 64 or 65 shall not constitute non-performance of a principle contractual obligation.

(2) In addition, a crisis prevention measure or crisis management measure shall not, per se, be deemed to be an enforcement event or insolvency proceedings under a contract entered into by:

1. a subsidiary, the obligations under which are guaranteed or otherwise supported by the parent undertaking or by any group entity; or

2. any entity of a group which includes cross-default provisions.

(3) if third-country resolution proceedings are detected pursuant to Article 149, then this procedure shall be considered as a crisis management measure for the purposes of this rule.

(4) Provided that the substantive obligations under the contract, including payment and delivery obligations, and provision of collateral, continue to be performed, a crisis prevention measure, a suspension of obligation under Article 47a or a crisis management measure, including any event occurring that is directly linked to the application of such a measure, shall not, per se, make it possible to:

1. exercise any termination, suspension, modification, deferral, netting or set-off rights, including in relation to a contract entered into by:
   a. a subsidiary, the obligations under which are guaranteed or otherwise supported by a group entity, or
   b. any entity of a group which includes cross-default provisions;
2. Ownership
   a. of the affected institution or entity pursuant to Art. 1 para. 1 nos. 2 to 4 or
   b. of a group entity in relation to a contract that includes cross-default provisions,

   is to be demanded, oversight to be exercised or claims on security are to enforced, or
3. affect any contractual rights of
   a. the affected institution or entity pursuant to Art. 1 para. 1 nos. 2 to 4 or
   b. of a group entity in relation to a contract that includes cross-default provisions,

as long as the principal contractual obligations, including payment obligations and service obligations, as well as the obligation to provide collateral continues to be fulfilled. The second sentence of para. 1 shall apply accordingly.

(5) The rights listed in para. 4 nos. 1 to 3 may be exercised, if the rights have arisen as a result of another event other than crisis prevention measure, a crisis management measure or an event immediately associated with the application of such a measure.

(6) Arrangements that contradict the provisions of paras. 1 and 4 shall cease to have effect.

Powers to suspend payment and delivery obligations

Article 64. (1) The resolution authority may order the suspension of payment or delivery obligations in contracts where the institution under resolution is a party to the contract. The suspension order shall be effective from the point of public disclosure pursuant to Article 116 para. 6 and shall be extended until midnight on the following business day following disclosure (suspension period). The resolution authority shall consider the potential impact on the orderly functioning of the financial markets, before it issues the suspension order.

(2) When a payment or delivery obligation would have been due during the suspension period the payment or delivery obligation shall be due immediately upon expiry of the suspension period.

(3) If the resolution authority issues an order pursuant to para. 1, which suspends the payment and delivery obligations of an institution under resolution or entity pursuant to Article 1 para. 1 nos. 2 to 4 set out in a contract, the resulting payment and delivery obligations of the counterparties of the institution under resolution or entity pursuant to Article 1 para. 1 nos. 2 to 4 of the contract shall be suspended for the same period of time.

(4) Payment or delivery obligations are exempted from the suspension order pursuant to para. 1 towards the following:

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

(5) The resolution authority shall determine the scope of the suspension order to para. 1 taking into account the circumstances of the individual case. In particular, resolution authorities shall carefully assess whether it is appropriate to extend the suspension order pursuant to para. 1 to eligible deposits pursuant to Article 7 para. 1 no. 4 ESAEG, especially to covered deposits pursuant to Article 7 para. 1 no. 5 ESAEG held by natural persons and micro, small and medium-sized enterprises.

(6) Where the power to suspend payment or delivery obligations is exercised in respect of eligible deposits pursuant to Article 7 para. 1 no. 4 ESAEG, the resolution authority shall ensure that depositors have daily access to an appropriate amount of these deposits.

Power to restrict the enforcement of security interests

Article 65. (1) The resolution authority may order in relation to the assets of the institution under resolution or entity pursuant to Article 1 para. 1 nos. 2 to 4, that the enforcement of security interests of secured creditors shall be prohibited (suspension of enforcement). This order shall be effective from the point of public disclosure pursuant to Article 116 para. 6 and shall be extended until midnight on the following business day following disclosure (suspension period). The resolution authority shall consider the potential impact on the orderly functioning of the financial markets, before it issues the order.

(2) An order pursuant to para. 1 shall have no effect on:

1. any security interests of systems or operators of systems that were designated in accordance with Directive 98/26/EC,
2. central counterparties that are authorised in the European Union pursuant to Article 14 of Regulation (EU) No. 648/2010, and third-country central counterparties that were recognised by the European Securities and Markets Authority (ESMA) in accordance with Article 25 of Regulation (EU) No. 648/2010, as well as

3. central banks in respect of assets pledged or appropriated by the institution under resolution by means of a financial guarantee or collateral.

(3) The resolution authority shall ensure that all restrictions imposed pursuant to an order pursuant to para. 1 are consistent for all group entities to whom a resolution action is applied, if Article 113 applies.

(4) Articles 5 to 9 of the Financial Collateral Arrangements Act (FinSG; *Finanzsicherheiten-Gesetz*) shall not apply to any restriction on the liquidity of collateral or restriction of security financial collateral arrangements, close-out-netting or set-off arrangements, which are enforced on the basis of the resolution action or the application of the power to write down holdings of holders of relevant capital instruments by the resolution authority, or for comparable restrictions, enforced by similar powers under the law of a Member State, so that institutions pursuant to Article 2 para. 1 no. 3 point d and no. 4 FinSG), for which at least the safeguard provisions pursuant to Articles 106 to 113 or pursuant to Title V Chapter V of Regulation (EU) 2021/23 shall be valid, so that they may be resolved in an orderly manner.

Power to temporarily suspend termination rights

Article 66. (1) The resolution authority may order, that the termination rights of a party to a contract with an institution under resolution shall be suspended, if the payment and delivery obligations and the provision of collateral continue to be met (suspension of enforcement). This order shall be effective from the point of public disclosure pursuant to Article 116 para. 6 and shall be extended until midnight on the following business day following disclosure (suspension period). The resolution authority shall consider the potential impact on the orderly functioning of the financial markets, before it issues the order.

(2) The order pursuant to para. 1 may also be issued in relation to the termination rights of a party to a contract with a subsidiary of an institution under resolution or entity pursuant to Article 1 para. 1 nos. 2 to 4, if

1. the performance of the obligations set out in the is guaranteed by the institution under resolution or supported otherwise;
2. the termination rights on the basis of that contract are based solely on the insolvency or financial condition of the institution under resolution or entity pursuant to Article 1 para. 1 nos. 2 to 4; and
3. in the event that a transfer power has been or may be exercised in relation to the institution under resolution, either:
   a. all the assets and liabilities of the subsidiary relating to that contract have been or may be transferred to and assumed by the recipient; or
   b. the resolution authority provides in any other way adequate protection for such obligations.

(3) An order pursuant to para. 1 or 2 shall have no effect on:

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

(4) Any existing termination right within a contract may be exercised prior to the expiry of suspension period, if the resolution authority informs that the rights and liabilities covered by the contract:

1. are not transferred to another entity; or
2. are not subject to a write-down or conversion in the case of the application of the bail-in tool pursuant to Article 85 para. 2 no. 1.

(5) If termination rights have been suspended on the basis of an order pursuant to para. 1 or 2, these rights may be performed within the meaning of nos. 1 and 2 subject to Article 63:

1. in cases where the rights and liabilities covered by the contract have been transferred to another entity, a counterparty may exercise termination rights in accordance with the terms of that contract only on the occurrence of any continuing or subsequent enforcement event by the recipient entity;
2. if the rights and liabilities covered by the contract remain with the institution under resolution and the resolution authority has not applied the bail-in tool in accordance with Article 85 para. 2 no. 1to that contract, a counterparty may exercise termination rights in accordance with the terms of that contract on the expiry of a suspension pursuant to para. 1.

(6) The FMA or the resolution authority may request the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 to keep detailed records about contracts. Trade repositories pursuant to Article 81 of Regulation (EU) No 648/2012 shall make all information available to the FMA or the resolution authority that they require for the performance of their duties.

Contractual recognition of resolution powers in the case of resolution in third countries

Article 66a. (1) Institutions and entities pursuant to Article 1 para. 1 nos. 2 to 4 are obliged to include in any financial contract which they enter into and which is governed by third-country law, terms by which the parties recognise that the financial contract may be subject to the exercise of powers by the resolution authority to suspend or restrict rights and obligations under Articles 47a, 64, 65 and 66, and recognise that they are bound by the requirements of Article 63.

(2) EU parent undertakings shall ensure that their subsidiaries in third countries in which the financial contracts listed in para. 1, provided that these financial contracts contain obligations that are guaranteed or otherwise ensured to be met in some other manner by the EU parent undertaking, include contractual clauses in order to exclude that the exercising of the power pursuant to para. 1 to suspend or limited the rights and obligations of the EU parent undertaking by the resolution authority that justify the early termination, suspension, amendment, netting, offsetting of netting rights or the enforcement of security interests in respect of those contracts.

(3) The requirement pursuant to para. 2 shall apply to subsidiaries established in a third country which are:

1. credit institutions,
2. investment firms (or that would be investment firms if their registered office were in Austria), or
3. financial institutions.

(4) Para. 1 shall apply to any financial contract that:

1. creates a new obligation after 28 December 2020 or which materially changes an existing obligation, or
2. stipulates the exercising of one or more termination rights or rights to enforce security rights, for which Articles 47a, 63, 64, 65 or 66 would apply if the financial contract were subject to Austrian law.

(5) If an institution or entity pursuant to Article 1 para. 1 nos. 2 to 4 does not include the contractual clause required pursuant to para. 1, this shall not prevent the resolution authority from applying its powers pursuant to Articles 47a, 63, 64, 65 or 66 to that financial contract.

Exercising of control

Article 67. (1) To initiate or execute a resolution action, the resolution authority may order that it takes over control of an institution or entity pursuant to Article 1 para. 1 nos. 2 to 4, by

1. operating the institution using all powers available to its shareholders and directors and performing the activities and services of the institution or entity pursuant to Article 1 para. 1 nos. 2 to 4, or
2. managing and having available the assets and property of the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4.

The resolution authority may administer these powers itself, or it may delegate them to a resolution administrator pursuant to Article 68. Voting rights for shares or other instruments of ownership of the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 may only be exercised in this manner during a resolution.

(2) The execution of resolution actions is also permissible without taking over of control pursuant to para. 1. In exercising of discretion pursuant to para. 1, the resolution authority shall decide in each particular case whether the exercising of control is necessary, taking into consideration the resolution objectives and the general principles governing resolution, the specific circumstances of the institution or entity pursuant to Article 1 para. 1 nos. 2 to 4 and the necessity to facilitate the effective resolution of cross-border groups.

(3) The resolution authority and the resolution administrator shall not be considered as directors pursuant to Article 2 no. 1 BWG. They shall also not be deemed to be de facto directors.

Control measures

Article 67a. (1) The resolution authority may also order individual measures in relation to a legal entity under resolution without exercising of control pursuant to Article 67, where

1. this is necessary to achieve the resolution objectives pursuant to Article 48, or
2. provisions of this federal act or of Regulation (EU) No 806/2014 have been breached.

Article 67 para. 3 shall be applicable.

(2) The resolution authority, in particular, may issue administrative decisions, which

1. instruct the conducting of certain individual transactions,
2. prohibit individual business transactions or
3. prohibit continuing business/transactions either partly or fully, and in this case to permit individual transactions.

(3) In the event that a breach pursuant to para. 1 no. 2 exists for a legal entity under resolution, the resolution authority shall

1. instruct it, under threat of a coercive penalty, to restore legal compliance within a period of time which is appropriate in light of the circumstances, and
2. in cases of repeated or continued breaches enforce the initial coercive penalty imposed and the instruction repeated with the threat of a higher coercive penalty.

Resolution administrator

Article 68. (1) The resolution authority may appoint a resolution administrator, who replace the directors of the institution under resolution or entity pursuant to Article 1 para. 1 nos. 2 to 4. The resolution administrator shall hold the qualifications, ability and knowledge required to carry out his or her functions. The resolution administrator shall be appointed for a maximum period of one year, and may be removed by the resolution authority at any time. The appointment may be extended by the resolution authority in exceptional circumstances up to a total of two years, if the conditions for the appointment of a resolution administrator continue to exist.

(2) The resolution administrator shall have all the powers of the shareholders, the members of the management board and the supervisory board of the institution. This power may however only be exercised within the meaning of para. 4.

(3) The resolution administrator shall be obliged to take all the measures necessary to promote the resolution objectives pursuant to Article 48 and implement resolution actions in accordance with the decisions of the resolution authority. This obligation shall have priority over all other managerial responsibilities that exist pursuant to the articles of association of the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 or other legal provisions and which deviate from this. In line with the resolution tools set out in Chapter 4 such necessary steps shall in particular include:

1. capital increases,
2. the modification of the ownership structure of the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4;

3. being taken over by financially and organisationally healthy institutions or entities pursuant to Article 1 para. 1 nos. 2 to 4;

(4) The resolution authority may restrict the rights, tasks and powers of the resolution administrator at any time without being required to supply reasons for doing so, or may order that such rights, tasks and powers may only be allowed to be performed following written approval. The resolution administrator shall be subject to the supervision of the resolution authority in the performance of his/her duties and powers, and shall act as a body of the resolution authority and shall obey its instructions.

(5) The resolution administrator shall report to the resolution authority at regular intervals set by the resolution authority, as well as at the beginning and end of their mandate on the economic and financial situation of the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 as well as the steps taken by the resolution administrator in the performance or their duties.

(6) The function of the resolution administrator may be performed by the insolvency administrator pursuant to Article 80 of the Insolvency Code (IO; *Insolvenzordnung*) published in Imperial Law Gazette No. 337/1914. An insolvency administrator, who performs the role of a resolution administrator, acts in the performing of these tasks as a body of the FMA.

(7) If other resolution authorities also intend to appoint a resolution administrator for entities within the same group, the resolution authority shall check with them whether the appointment of the same resolution administrator for all the entities concerned is more appropriate in order to find solutions for redressing the financial soundness of the entities concerned.

Conversion into a stock company

Article 69. (1) The resolution may, for the purposes of initiating or applying a resolution action for an institution or an entity pursuant to Article 1 para 2 nos. 2 to 4, which does not have the legal form of a stock company, order its conversion into a stock company (conversion order), if so doing is appropriate for achieving the resolution objectives pursuant to Article 48. The conversion order may be given separately or in conjunction with the application of one or several resolution tools pursuant to Articles 74 et seq.

(2) The conversion order shall at least contain the following details:

1. the firm of the stock company;
2. the members of the initial supervisory board of the stock company; where a supervisory board had already previously existed in the institution or entity, then individual members or all members may be confirmed;
3. the members of the management board including details about their powers of representation; previous members of the management board may be confirmed;
4. details about the quantity, type and scope of shares that the previous shareholders and others persons should receive as a result of the conversion.

(3) The resolution authority shall furthermore, while taking into consideration the previous legal form and taking into account the provisions of the AktG, draw up the articles of association of the stock company and to ensure that an opening balance sheet is drawn up. These documents shall be published in the same manner as the conversion order.
(4) Following the entry into legal effect of the conversion order, the institution or entity shall exist in the form of a stock company. Any third party rights that previously existed in relation to a share shall continue to exist upon the shares that shall exist in their place.
(5) Guarantees, by shareholders or other persons, that existed against the institution or entity at the time of the conversion shall not be affected by the conversion and shall continue to remain effective.
(6) The concluded conversion into a stock company shall be registered with the competent Commercial Register Court by the resolution authority and all members of the management board and the supervisory board including submission of the certificates pursuant to paras. 2 and 3, for entry into the Commercial Register.

Chapter 4: Power to write down holdings of holders of relevant capital instruments

Obligation to write down and convert relevant capital instruments and eligible liabilities

Article 70. (1) In the event that the conditions for resolution pursuant to Article 49 para. 1, Article 49 para. 5 or Article 52 are met for an institution or an entity pursuant to Article 1 para. 1 nos. 2 to 4, or if the power to write down holdings of holders of relevant capital instruments pursuant to Article 71 and eligible liabilities pursuant to Article 70 para. 1d, then the resolution authority shall instruct within the meaning of Article 72 and Article 88, that:

1. relevant capital instruments and eligible liabilities pursuant to Article 70 para. 1d to strengthen the own funds of the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 shall be converted into shares or other Common Equity Tier 1 instruments in the entity, and
2. the par value or the remaining amount of relevant capital instruments and eligible liabilities pursuant to Article 70 para. 1d to cover losses pursuant to Article 88 para. 1 no. 1 of the institution or entity pursuant to Article 1 para. 1 nos. 2 to 4 shall be written down either fully or in part.

(1a) The power to write down or convert relevant capital instruments and eligible liabilities pursuant to Article 70 para. 1d may be exercised as follows:

1. independently of a resolution action; or
2. in combination with a resolution action, if the conditions for resolution set out in Article 49 para. 1, Article 49 para. 5 or Article 52 are met.

(1b) Where relevant capital instruments and eligible liabilities pursuant to para. 1d have been purchased by the resolution entity indirectly through other entities in the same resolution group, the power to write down or convert those relevant capital instruments and eligible liabilities pursuant to para. 1d shall be exercised together with the exercise of the same power at the level of the parent undertaking of the entity concerned or at the level of other parent undertakings that are not resolution entities, so that the losses are effectively passed on to, and the entity concerned is recapitalised by, the resolution entity.

(1c) After exercising the power to write down or convert relevant capital instruments and eligible liabilities in accordance with para. 1d, irrespective of resolution measures, the valuation shall be carried out in accordance with Article 107 and Article 108 shall not apply.

(1d) The power to write down or convert eligible liabilities independently of resolution actions may only be exercised in relation to eligible liabilities that meet the conditions referred to in Article 105 para. 8 no. 1, except the condition related to the remaining maturity of liabilities as set out in Article 72c (1) of Regulation (EU) No 575/2013.

(1e) If the power pursuant to para. 1d is exercised, write-down or conversion must be carried out in accordance with the principle set out in Article 53 para. 1 no. 7.

(1f) Where a resolution action is taken in relation to a resolution entity or, in exceptional circumstances in deviation from the resolution plan, in relation to an entity that is not a resolution entity, the amount that is reduced, written down or converted in accordance with Article 73 para. 2 at the level of such an entity shall count towards the thresholds that apply for the entity concerned pursuant to Article 74 para. 7 and Article 87 para. 2 no. 1 or Article 87 para. 5 no. 1 that apply to the entity concerned.

(2) Before the resolution authority deploys a resolution tool, it shall be required to apply the power to write down holdings of holders of relevant capital instruments in accordance with Article 74 para. 1, if the bail-in tool has not already been applied.

Requirements for writing down holdings of holders of relevant capital instruments

Article 71. (1) The writing down and the conversion of relevant capital instruments and eligible liabilities pursuant to Article 70 para. 1d shall be undertaken if the resolution authority determines that the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4:

1. is no longer viable pursuant to para. 2 without a write-down and conversion of relevant capital instruments and eligible liabilities pursuant to Article 70 para. 1d, or
2. requires extraordinary public financial support, except in the cases listed in Article 51 para. 1 no. 4 point c.

(2) An institution or an entity pursuant to Article 1 para. 1 nos. 2 to 4 shall be deemed as no longer being viable, if

1. they have failed or are likely to fail pursuant to Article 51 and
2. taking into consideration timing and other relevant circumstances, there is no reasonable prospect that any alternative private sector measures, including measures by an institutional protection scheme (IPS), or other supervisory actions, including early intervention measures pursuant to Article 44 can be taken to prevent the failure of the institution within a reasonable timeframe.

A group shall be deemed to be failing or likely to fail where it breaches its consolidated prudential requirements in a way that in such a way that would justify action by the FMA, or there are objective elements to suggest that this shall be the case in the near future including but not limited to because the group has incurred or is likely to incur losses that will deplete all or a significant amount of its own funds.

(3) The resolution authority may also apply the power to write down holdings of relevant capital instruments in relation to relevant capital instruments in compliance with the procedures pursuant to Article 72, that

1. have been issued by a subsidiary and where those capital instruments are recognised for the purposes of meeting own funds requirement on an individual basis and on a consolidated basis, if the resolution authority and the competent authority for determining this of the Member State of the subsidiary determine in the form of a joint decision pursuant to Article 144 para. 2 and Article 145 para. 3, that unless the write down or conversion power is exercised in relation to these instruments, the viability of the group may not be guaranteed pursuant to para. 2, or
2. have been issued by an Austrian parent undertaking and which are recognised for the purposes of meeting own funds requirements on an individual basis at the level of the parent undertaking or on a consolidated basis, where the resolution authority determines that unless the write down or conversion power is exercised in relation to these instruments, the viability of the group pursuant to para. 2 may not be guaranteed.

(4) A relevant capital instrument issued by a subsidiary shall not be written down to a greater extent or converted on worse terms in the case of para. 3 no. 1 than equally ranked capital instruments at the level of the parent undertaking.

Determination of the requirements for the application of the instrument of write-down and conversion of relevant capital instruments for groups

Article 72. (1) Before the resolution authority reaches one of the determinations pursuant to Article 71 in relation to a subsidiary that has issued relevant capital instruments or an eligible liability pursuant to Article 70 para. 1d for the purpose of fulfilling the requirement pursuant to Article 105, that are recognised on an individual basis as well as on a consolidated basis for own funds purposes, it must comply with the following requirements:

1. the resolution authority shall communicate its intention having consulted the resolution authority responsible for the resolution entity concerned within 24 hours of the consultation of that resolution authority, to
    a. the consolidating supervisor and, where it is another authority, the relevant authority of the Member State in which the consolidating supervisor is located;
    b. the resolution authorities that are responsible for other entities within the same resolution group that have directly or indirectly acquired liabilities referred to Article 105 para. 8 from the entity that is subject to Article 105.

2. the resolution authority shall inform the authority that is competent for the individual institutions or entities pursuant to Article 1 para. 1 nos. 2 to 4 immediately of its intention to reach a determination pursuant to Article 71 para. 3 no. 1, which has issued the relevant capital instruments for which in the case of such a determination use must be made of the write-down power, and if different also contact the relevant authorities in the Member States, in which the competent authorities and the consolidating supervisor are located.

(2) If in the case that determination listed pursuant to Article 71 para. 1 no. 2 or para. 3 nos. 1 or 2 has been reached in relation to the resolution of an institution or a group that operates on a cross-border basis, the resolution authority shall take into account the potential impact of the resolution in all Member States where the institution or the group operate.

(3) The resolution authority shall accompany a notification made in accordance with para. 1 with an explanation about why it is considering making the determination in question.

(4) Where a notification was made pursuant to para. 1, the resolution authority shall assess having consulting the authorities notified.

1. whether an alternative measure exists that could be executed instead of the exercising of the write down or conversion power pursuant to Article 70;
2. whether realistic prospects exist that the alternative measure would influence the circumstances that would otherwise require a write down and conversion of relevant capital instruments and eligible liabilities pursuant to Article 70 within an appropriate timeframe.

Alternatives that may be considered include early intervention measures pursuant to Article 44, measures pursuant to Article 70 para. 4a BWG or a liquidity or capital transfer from the parent undertaking.

(5) In the event that the resolution authority arrives at the estimation following agreement with the notified authorities pursuant to para. 4 that alternative measures are available, then it shall apply them without delay.

(6) In the event that the resolution authority in the case referred to in para. 1 no. 1 following consultation with the notified authorities pursuant to para. 4 arrives at the estimation that no alternative measures are available, then the resolution authority itself shall assess whether the determination under consideration referred to in para. 1 is appropriate.

(7) Where the resolution authority decides to make a determination pursuant to Article 70 para. 1, it shall immediately notify the appropriate authorities of the Member States in which the affected subsidiaries are located and the determination shall take the form of a joint decision pursuant to Article 145 para. 3 and Article 147. In the event that a joint decision cannot be reached, the resolution authority shall withhold the determination.

(8) The resolution authority shall implement a decision reached to write down or convert capital instruments of subsidiaries without delay taking into consideration the urgency of the circumstances.

Execution of the write down and convert relevant capital instruments and eligible liabilities

Article 73. (1) Prior to ordering the write down or conversion of capital instruments or eligible liabilities pursuant to Article 70 para. 1d the resolution authority shall ensure that a valuation of the assets and liabilities of the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 is conducted pursuant to Articles 54 to 57. That valuation shall form the basis of the calculation of the write down to be applied to the relevant capital instruments and eligible liabilities pursuant to Article 70 para. 1d, in order to absorb losses and the level of conversion to be applied to relevant capital instruments and eligible liabilities pursuant to Article 70 para. 1d in order to recapitalise the entity. The conversion rate shall be determined in accordance with the principles pursuant to Article 92.

(2) The write down and conversion of relevant capital instruments and eligible liabilities pursuant to Article 70 para. 1d shall take place in the following order:

1. Common Equity Tier 1 items shall be written down in proportion to the losses and to the extent of their capacity and the resolution authority shall take one or both of the actions pursuant to Article 89 para. 1 with regard to the holders of Common Equity Tier 1 instruments;
2. the principal amount of Additional Tier 1 instruments shall be written down or converted into Common Equity Tier 1 instruments or both, to the extent required to achieve the resolution objectives set out in Article 48 or to the extent of the capacity;
3. the principal amount of Tier 2 instruments shall be written down or converted into Common Equity Tier 1 instruments to the extent required to achieve the resolution objectives set out in Article 48 or to the extent of the capacity of the relevant capital instruments, or both;
4. the principal amount of eligible liabilities pursuant to Article 70 para. 1d will, depending on which value is lower, be written down to the extent required to achieve the resolution objectives pursuant to Article 48 or to the extent of the capacity of the relevant eligible liabilities, or converted into Common Equity Tier 1 instruments, or both.

(3) If the nominal value of a relevant capital instrument or eligible liability pursuant to Article 70 para. 1d is written down, then

1. the reduction of that nominal value shall be permanent, without prejudice to any write-up pursuant Article 88 para. 3;
2. except for any liability already accrued, no eligible liability shall remain against the holder of the relevant capital instrument or the eligible liability pursuant to Article 70 para. 1d in connection with the amount of the instrument that has been written down; and
3. no holder of the relevant capital instruments or eligible liabilities pursuant to Article 70 para. 1d shall receive any other compensation other than that pursuant to para. 4.

(4) In order to conduct a conversion pursuant to para. 2 no. 2 of the relevant capital instruments and eligible liabilities pursuant to Article 70 para. 1d, the resolution authority may oblige the entity, to issue Common Equity Tier 1 instruments to the holders of the relevant capital instruments and eligible liabilities. A conversion may only take place if the following conditions are met:

1. the Common Equity Tier 1 instruments are issued by the entity or by a parent undertaking of the institution or entity pursuant to Article 1 para. 1 nos. 2 to 4 with the approval of the resolution authority of the entity pursuant to Article 1 para. 1 nos. 2 to 4 or the resolution authority of the parent undertaking,
2. the Common Equity Tier 1 instruments are issued prior to any issuance of shares or other instruments of ownership that the entity issues for the purposes of provision of own funds by the government or a government authority;
3. the Common Equity Tier 1 instruments shall be assigned without delay following the exercising of the conversion power and transferred, and
4. the conversion rate that determines the number of Common Equity Tier 1 instruments that are provided in respect of each relevant capital instrument of every eligible liability pursuant to Article 70 para. 1d is in line with the principles set out in Article 92.

(5) For the purposes of the provision of Common Equity Tier 1 instruments pursuant to para. 4, the resolution authority may at any time require institutions and entities pursuant to Article 1 para. 1 nos. 2 to 4 to maintain the necessary prior authorisation to issue the relevant number of Common Equity Tier 1 instruments.

Chapter 5: Resolution tools

Section 1: General

General Principles

Article 74. (1) Where a resolution authority decides to apply a resolution tool to an institution or entity pursuant to Article 1 para. 1 nos. 2 to 4, and that resolution action would result in losses being borne by creditors or their claims being converted, the resolution authority shall exercise the power to write down and convert capital instruments and eligible liabilities in accordance with Article 70 immediately before or together with the application of the resolution tool.

(2) The following are resolution tools:

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

(3) The resolution authority may apply the resolution tools individually or in any combination. The discretion of the resolution authority in the selection and application of the resolution tools shall be exercised taking into consideration the resolution objectives pursuant to Article 48. The asset separation tool may however only be applied by the resolution authority together with another resolution tool.

(4) If the resolution tools listed pursuant to para. 2 nos. 1, 2 or 3 are used to transfer only part of the assets, rights or liabilities of the institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4, then the remaining part of the institution or the entity pursuant to Article 1 para. 1 nos. 2

to 4, of which assets, rights or liabilities were transferred shall by liquidated by means of a bankruptcy proceeding. This liquidation must be performed within a reasonable timeframe under consideration of any need for the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 to provide services or support on the basis of an order pursuant to Article 61 in order to enable the recipient to carry out the activities or services conferred by virtue of that transfer, and any other reason that the continuation of the residual institution or entity pursuant to Article 1 para. 1 nos. 2 to 4 is necessary to achieve the resolution objectives or comply with the principles referred to in Article 53.

(5) The resolution authority may recover any reasonable expenses properly incurred in connection with the use of the resolution tools or powers in one or more of the following ways:

1. as a deduction from any consideration paid to the institution under resolution or, as the case may be, to the owners of the shares or other instruments of ownership;
2. as a preferred creditor from the institution under resolution; or
3. as a preferred creditor from any proceeds generated as a result of the termination of the operation of the bridge institution or the wind-down unit.

(6) A transfer undertaken in applying a resolution tool, in exercising a resolution power or applying stabilisation measures, of assets, rights or liabilities from an institution under resolution to another legal entity shall not be contestable pursuant to Articles 27 et seq. of the Insolvency Code (IO; *Insolvenzordnung*), published in Imperial Law Gazette No. 337/1914.

(7) In the extraordinary situation of a systemic crisis, the resolution authority may seek funding from alternative financing sources through the application of stabilisation measures pursuant to 99, if the following conditions are met:

1. a contribution to loss absorption and recapitalisation equal to an amount not less than 8 % of total liabilities including own funds of the institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4, measured at the time of resolution action in accordance with the valuation provided for in Articles 54 to 57, has been made by the shareholders and the holders of other instruments of ownership, the holders of relevant capital instruments and other bail-inable liabilities through write down, conversion or otherwise; and
2. the financing shall be conditional on prior and final approval under the Union State Aid Framework.

Section 2: The sale of business tool

Application of the sale of business tool

Article 75. (1) If the conditions for resolution pursuant to Article 49 or Article 52 are met, then the resolution authority may instruct a transfer to a purchaser that is not a bridge institution. Subject to paras. 7 and 8 of this Article as well as to Article 118, the transfer shall take place without obtaining the consent of the shareholders of the institution or the entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4 or any third party other than the purchaser, and without complying with any procedural requirements under company or securities law other than those pursuant to Article 77 (transfer order). The transfer may refer to:

1. the shares or other instruments of ownership issued by an institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4; and
2. all or individual assets, rights or liabilities of an institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4.

(2) A transfer must stand up to a third-party comparison. The following shall be taken into account:

1. the circumstances relating to the case in hand, both prior to and when conditions for resolutions exist,
2. the Union State aid framework, and
3. the valuation pursuant to Articles 54 to 57,

(3) Irrespective of Article 74 para. 5, consideration paid by the purchaser shall:

1. benefit the owners of the shares or other instruments of ownership, where the sale of business has been effected by transferring shares or instruments of ownership issued by the institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4 from the holders of those shares or instruments to the purchaser; or
2. benefit the institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4, where the sale of business has been effected by transferring some or all of the assets or liabilities of the institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4 to the purchaser.

(4) When applying the sale of business tool the resolution authority may exercise the transfer power more than once in order to make supplementary transfers of shares or other instruments of ownership issued by an institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4 or assets, rights or liabilities of the institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4.

(5) Following an application of the sale of business tool, the resolution authority may, with the consent of the purchaser, exercise the transfer powers in respect of assets, rights or liabilities transferred to the purchaser in order to transfer the assets, rights or liabilities back to the institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4, or the shares or other instruments of ownership back to their original owners, and the institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4 or original owners shall be obliged to take back any such assets, rights or liabilities, or shares or other instruments of ownership.

(6) A purchase must hold the necessary licences, permissions and approvals to be able to continue to operate the acquired entity if a transfer is made. The FMA shall ensure that the applications in relation to the transfer are considered in a timely manner.

(7) Where a transfer leads to the acquisition of or the increasing of a qualifying holding pursuant to Article 20 BWG or Articles 13 and 14 WAG 2018, the FMA shall, by way of derogation from Article 20a para. 2 BWG or Article 15 WAG 2018, make its assessment in a timely manner to ensure that the

application of the sale of business tool is not delayed and that the desired resolution objectives to be achieved by the resolution action are not impeded.

(8) In the event that the FMA has not concluded the assessment pursuant to para. 7 in exceptional circumstances by the time that the issued administrative decision gains legal effect, in which the transfer is ordered, the following shall apply:

1. the transfer of shares or other instruments of ownership to the purchaser shall have immediate legal effect;
2. during the assessment period and during any divestment period pursuant to no. 6, the resolution authority shall suspend the purchaser's voting rights attached to such shares or other instruments of ownership and transfer them to itself, although the resolution authority shall not be obliged to exercise voting rights, and shall not be liability in any way with regard to the exercising of or refraining from exercising voting rights;
3. during the assessment period and during any divestment period pursuant to no. 6 the penal provisions set out in Article 98 para. 5a no. 1, Article 99 para. 1 nos. 3 and 4 or Article 99c paras. 2 and 3 BWG and measures for infringing the requirements for the acquisition or disposals of qualifying holdings shall not apply to such a transfer of shares or other instruments of ownership;
4. as soon as the FMA has concluded the assessment, it shall notify the resolution authority and the purchaser in writing, whether it approves or prohibits the transfer of shares or other instruments of ownership to the purchaser pursuant to Article 20a para. 2 BWG;
5. if the FMA approves a transfer of shares or other instruments of ownership to the purchaser, then the voting rights attached to such shares or other instruments of ownership shall be deemed to be fully transferred to the purchaser immediately once the resolution authority and the purchaser of such an approval notification have received it from the competent authority;
6. if the FMA prohibits such a transfer of shares or other instruments of ownership to the purchaser, then:
   a. the voting rights attached to such shares or other instruments of ownership pursuant to no. 2 shall remain in full force and effect;
   b. the resolution authority may require the purchaser to divest such shares or other instruments of ownership within a divestment period determined by the resolution authority having taken into account prevailing market conditions; and
   c. if the purchaser does not complete such a divestment within the divestment period established by the resolution authority, then the FMA, with the consent of the resolution authority, may impose penalties and other measures for infringing the requirements for acquisitions or disposals of qualifying holdings set out in Article 98 para. 5a no. 1, Article 99 para. 1 nos. 3 and 4 or Article 99c paras. 2 and 3 BWG upon the purchaser.

(9) Transfers made by virtue of the sale of business tool shall be subject to the safeguards referred to in Articles 106 et seq.

(10) For the purposes of exercising the rights to provide services or to establish itself in another Member State in accordance with Directive 2013/36/EU or Directive 2014/65/EU, the purchaser shall be considered to be the legal successor of the institution or entity under resolution pursuant to Article 1 para. 1 no. 2 to 4, and may continue to exercise any such right that was exercised by the institution or entity under resolution pursuant to Article 1 para. 1 no. 2 to 4 in respect of the assets, rights or liabilities transferred.

(11) The purchaser pursuant to para. 1 shall exercise the rights of membership and access to payment, clearing and settlement systems, stock exchanges, investor compensation schemes and deposit guarantee schemes of the institution or entity under resolution pursuant to Article 1 para. 1 no. 2 to 4, provided that it meets the membership and participation criteria for such systems. This shall apply subject to the following conditions:

1. access is not denied on the ground that the purchaser does not possess a rating from a credit rating agency, or that this rating is not commensurate to the rating levels that would otherwise be required to be granted access to the listed systems;
2. if the purchaser does not meet the membership or participation criteria for the listed systems, the resolution authority may order that the purchaser may continue to exercise the membership or participation criteria for a specific period of a maximum of 24 months; the resolution authority may extend this period if applied for by the purchaser.

Other legal effects of the sale of business tool

Article 76. (1) Shareholders and creditors of the institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4 and other third parties, the assets, rights or liabilities or which have not been transferred, irrespective of the safeguard provisions pursuant to Articles 106 et seq. shall not have any rights with regard to the assets, rights or liabilities transferred. No right to a transfer pursuant to Article 75 exists. The bodies of the purchaser shall not have any duty of loyalty or other obligations towards the shareholders and the creditors of the institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4, where such obligations do not arise from this federal act.

(2) A transfer pursuant to Articles 75, 78 or 82 takes place exclusively within the meaning of this federal act and the transfer order, to ensure in particular that:

1. in relation to the institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4, in accordance with general rules to be observed or contractually agreed procedural steps, in particular the decisions by resolution of an general meeting, general assembly or a meeting of creditors or other committees shall be considered as being replaced,
2. in relation to the institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4 participation and approval requirements, whether under law or contractually agreed, shall be deemed to be fulfilled or impediments to transfer shall be considered as being remedied, Article 75 para. 7 shall not be affected,
3. entries into registers, land registers or other such entries or amendments to such entries shall be declarative for the transfer of rights,

4. certificates, particularly global certificates shall be amended accordingly by the transfer order; they may be but must not be required to be exchanged or corrected, and
5. compliance with standard or other rules whether set out under other federal act or in the form of contractual agreements, shall not be necessary.

Procedural provisions for the sale of business tool

Article 77. (1) When applying the sale of business tool to an institution or an entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4, the resolution authority shall market the assets, rights and liabilities or other instruments of ownership issued by the institution or entity pursuant to Article 1 para. 1 nos. 2 to 4 that it intends to transfer, or it shall initiate the necessary steps for a disposal in line with market terms. In the case of pools of rights, assets, and liabilities the disposal in line with market terms may occur separately.

(2) Irrespective of the Union State Aid Framework, the disposal in line with market terms shall occur in accordance with the following criteria:

1. it shall be as transparent as possible and shall not materially misrepresent the assets, rights, liabilities, shares or other instruments of ownership of that institution or entity pursuant to Article 1 para. 1 no. 2 to 4 that the authority intends to transfer, having regard to the circumstances and in particular the need to maintain financial stability;
2. it shall not unduly favour or discriminate between potential purchasers;
3. it shall be free from any conflict of interest;
4. it shall not confer any unfair advantage on a potential purchaser;
5. it shall take account of the necessity to effect a rapid resolution action; and
6. it shall aim to raise as high a sale price for the shares or other instruments of ownership, assets, rights or liabilities involved.

(3) It shall be permissible taking into account the stipulation pursuant to para. 2 no. 2, that the resolution authority approaches specific potential purchasers. A public disclosure about the disposal in line with market conditions of the institution or entity pursuant to Article 1 para. 1 nos. 2 to 4, as would be necessary pursuant to Article 17 (1) of Regulation (EU) no 596/2014 on market abuse (Market Abuse Regulation) and repealing Directive 2003/6/EC of the European Parliament and the Council and Directives 2003/124/EC, 2003/125/EC and 2004/72/EC of the Commission of the European Parliament and of the Council, OJ L 173, 12.06.2014, p. 1, may be suspended in accordance with Article 17 (4) or (5) of the aforementioned regulation.

(4) The resolution authority may apply the sale of business tool without needing to comply with the requirement for a disposal in line with market conditions pursuant to para. 2, where it determines that compliance with those requirements would probably undermine one or more of the resolution objectives. In particular, this shall be the case where the resolution authority is of the opinion that

1. the failure or likely failure of the institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4 presents a material threat to financial stability, or would aggravate such a threat that already exists, or

2. compliance with those requirements would be likely to undermine the effectiveness of the sale of business tool in addressing that threat or achieving the resolution objective referred to Article 48 para. 2 no. 2.

Section 3: Bridge institution tool

Application of the bridge institution tool

Article 78. (1) If the conditions for resolution pursuant to Article 49 or Article 52 exist, the resolution authority may apply the bridge institution tool. It may, while taking into consideration the necessity to maintain critical functions in the bridge institution, issue the order to transfer the following to a bridge institution:

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

(2) The transfer order pursuant to para. 1 may be issued without obtaining the consent of the shareholders of the institutions under resolution or any third party other than the bridge institution, and without complying with any procedural requirements under company or securities law. Article 118 remains unaffected. The legal effects pursuant to Article 76 para 2 shall apply.

(3) The bridge institution must be a joint stock company, which fulfils the following requirements:

1. its shares shall either be completely or majority held by the Federal Government, by *Abbaumanagementgesellschaft des Bundes* (ABBAG), the resolution authority or another public sector entity,
2. it shall be solely controlled due to potential contractual or company law influences or by an instruction pursuant to Article 67 by the resolution authority, and
3. it shall be created for the purpose of receiving and holding some or all of the shares or other instruments of ownership issued by an institution under resolution or some or all of the assets, rights and liabilities of one or more institutions under resolution with a view to maintaining access to critical functions and selling the institution under resolution.

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

(5) Irrespective of Article 74 para. 5, considerations paid by the bridge institution shall:

1. benefit the owners of the shares or other instruments of ownership, where the sale of business was effected by transferring shares or instruments of ownership issued by the institution under resolution from the holders of those shares or instruments of ownership to the purchaser; or
2. benefit the institution under resolution, where the sale of business has been effected by transferring some or all of the assets or liabilities of the institution under resolution to the purchaser.

(6) When applying the bridge institution tool, the resolution authority may exercise the transfer power several times in order to make supplemental transfers of shares or other instruments of ownership issued by an institution under resolution or assets, rights or liabilities of the institution under resolution.

(7) Following an application of the bridge institution tool, the resolution authority may:

1. transfer rights, assets or liabilities back from the bridge institution to the institution under resolution, or the shares or other instruments of ownership back to their original owners, and the institution under resolution or original owners shall be obliged to take back any such assets, rights or liabilities, or shares or other instruments of ownership, provided that the conditions set out in para. 8 are met; or
2. transfer shares or other instruments of ownership, or assets, rights or liabilities from the bridge institution to a third party.

(8) The resolution authority may only carry out a transfer back pursuant to para. 7 no. 1, when

1. the possibility that the specific shares or other instruments of ownership, assets, rights or liabilities might be transferred back is stated expressly in the administrative decision in which the transfer was ordered; or
2. the specific shares or other instruments of ownership, assets, rights or liabilities do not in fact fall within the classes of shares or other instruments of ownership, assets, rights or liabilities, specified in the transfer order by which the transfer was made, of if they do not meet the conditions listed therein for the transfer.

The possibility to permit a transfer back should be appropriately limited in the transfer order and the conditions for a transfer back explained in greater detail.

(9) Transfers between the institution under resolution, or the original owners of shares or other instruments of ownership, on the one hand, and the bridge institution on the other, shall be subject to the safeguards referred to in Articles 106 et seq.

(10) Shareholders and creditors of the institution and other third parties, the assets, rights or liabilities or which have not been transferred to the bridge institution shall, irrespective of the safeguard provisions pursuant to Articles 106 et seq. not have any rights with regard to the assets, rights or liabilities transferred to the bridge institution, or towards the bridge institution or its bodies. No right to a transfer pursuant to para. 1 exists.

The bridge institution

Article 79. (1) The resolution authority, the federal government or, with the consent of the Federal Minister of Finance, ABBAG may establish joint stock companies that may function as bridge institutions. The nominal or share capital may be raised by transferring shares or assets of one or several institutions or entities under resolution pursuant to Article 78, as well as, where necessary, by means of an additional payment of the resolution financing arrangement pursuant to Article 124 para. 1 no. 4. The valuation of these shares or assets for establishing as well as the opening balance sheet of the joint stock company shall where possible be based on the conclusive valuation pursuant to Article 57 para. 2, or if one does not yet exist at the time of establishing the joint stock company, the provisional valuation pursuant to Article 57 para. 1. A formation audit may be waived.

(2) With the approval of the Federal Minister of Finance, the shares of the bridge institution may be transferred to the Federal Government, ABBAG or another public sector entity.

(3) In the case of a transfer pursuant to para. 2 the conditions pursuant to Article 5 para. 1 nos. 3 and 4 and Article 20 BWG shall be considered to be fulfilled.

(4) The bridge institution shall be registered with the competent court by the resolution authority, the members of the management board and the members of the supervisory board for entry into the Commercial Register.

(5) The resolution authority shall appoint the first supervisory board of the bridge institution. The appointment and removal of the directors, as well as the arrangement about their remuneration shall require an approval by the resolution authority to become effective. The remuneration agreement shall be approved, provided that it is appropriate in accordance with the criteria set out in Article 78 para. 1 AktG and considering the particular difficulties of the resolution situation.

Operation of the bridge institution

Article 80. (1) The following requirements shall be respected in operating a bridge institution:

1. the strategy and the risk profile of the bridge institution shall be approved by the resolution authority;
2. the bridge institution holds the necessary licences for operating for banking transactions or for the provision of investment services, which are to be applied for by the directors of the bridge institution without delay;
3. the bridge institution shall satisfy the requirements of Regulation (EU) No 575/2013, BWG and WAG 2018, and is subject to supervision in accordance with these legal acts;
4. the operation of the bridge institution shall be in accordance with the Union State aid framework and for which purpose the resolution authority may specify restrictions on its operations.

If necessary to meet the resolution objectives, the bridge institution may be established, even if at the time of taking up its operations it does not satisfy the requirements set out in the BWG or WAG 2018. The resolution authority shall present the reasons for its non-compliance without delay. The FMA may waive one or several requirements when issuing the necessary licences. In the administrative decision that it issues, it shall indicate the period for which the bridge institution is waived from complying with the requirements.

(2) The directors shall endeavour in operating the bridge institution

1. to maintain access to critical functions, and
2. to dispose of the institution by sale, of its assets, rights or liabilities under appropriate conditions and within the period specified in para. 5 to one or more private sector purchasers.

(3) The operation of the bridge institution shall conclude with the occurrence of the following circumstances, to be determined by the resolution authority by means of an administrative decision:

1. the bridge institution merges with another entity;
2. the bridge institution ceases to meet the requirements of Article 78 para. 3;
3. the sale of all or more or less all assets, rights or liabilities of the bridge institution to a third party;
4. the expiry of the periods specified in para. 5; or
5. the complete liquidation of the bridge institution’s assets and the complete discharging of its liabilities.

(4) If the resolution authority is seeking to dispose of the bridge institution by sale, or to sell its assets, rights or liabilities, it shall market the bridge institution, and the respective assets, rights or liabilities openly and transparently. In so doing, it must be guaranteed that:

1. the facts are presented in a factual correct manner, and that
2. the potential purchases are neither favours nor discriminated against in a way that is not permissible.

Any sale must be made on commercial terms, having due consideration to the prevailing circumstances and in accordance with the Union State aid framework.

(5) Where no circumstances exist pursuant to para. 3 nos. 1 to 3 and 5, the resolution authority shall terminate the operation of the bridge institution as soon as possible, at latest, however, two years after the date on which the last transfer took place from an institution under resolution within the auspices of the bridge institution tool. Following the expiry of this period of time, the continuation of operations may be extended for a period of one year at a time by the resolution authority, when

1. the objectives listed in para. 3 nos. 1 to 4 are supported, or
2. an extension is necessary to ensure the continuity of essential banking or financial services.

The resolution authority is required to justify any extension. The reasoning must contain a detailed assessment of the situation, including of the market conditions and outlook, justifying the extension.

(6) If the bridge institution's activity is terminated as a result of the occurrence of a circumstance pursuant to para. 3 nos. 3 or 4, then the bridge institution shall be liquidated by means of a bankruptcy proceeding. Any proceeds generated as a result of the operation of the bridge institution shall benefit the shareholders of the bridge institution.

(7) Where a bridge institution is used for the purpose of transferring assets and liabilities of more than one institution under resolution the obligation referred to in para. 6 shall refer to the assets and liabilities transferred from the individual institutions under resolution and not to the bridge institution itself.

(8) The resolution authority has the right to participate at meetings of the supervisory board of the bridge institution or its committees. For this purpose, it should be informed about meeting dates and the agenda of meetings as early as possible. Decisions by resolution that have been taken by voting in writing, shall be submitted to the resolution authority.

(9) Any amendment of the articles of association of the bridge institution shall require approval by the resolution authority to become legally effective.

Other provisions for the bridge institution

Article 81. (1) For the purposes of exercising the rights to provide services or to establish itself in another Member State in accordance with Section III BWG (Freedom of Establishment and Freedom to Provide Services) or Section 2 WAG 2007 (Freedom of Establishment and Freedom to Provide Services), a bridge institution shall be considered to be a continuation of the institution under resolution and may continue to exercise any such right that the institution under resolution had previously exercised in relation to the transferred assets, rights or liabilities.

(2) The bridge institution may exercise the rights of membership and access to payment, clearing and settlement systems, stock exchanges, investor compensation schemes and deposit guarantee schemes of the institution under resolution, provided that it meets the membership and participation criteria for participation in such systems. This shall apply subject to the following conditions:

1. access is not denied on the ground that the bridge institution does not possess a rating from a credit rating agency, or that this rating is not commensurate to the rating levels that would otherwise be required to be granted access to the listed systems;
2. if the bridge institution does not meet the membership or participation criteria for the listed systems, the resolution authority may order that the bridge institution may continue to exercise the membership or participation criteria for a specific period of a maximum of 24 months; the resolution authority may extend this period if applied for by the bridge institution.

(3) The application of the bridge institution tool shall not be accompanied by any obligations or responsibility towards the shareholders or creditors of the institution or entity under resolution. The bodies of the bridge institution shall not be liable towards the shareholders or creditors for acts and omissions arising in the exercising of their duties except where gross negligence exists, which leads to the rights of these shareholders or creditors being directly affected.

Section 4: Asset separation tool

Application of the asset separation tool

Article 82. (1) In the event that the conditions for resolution pursuant to Article 49 or Article 52 exist and where an additional resolution tool has been applied (Article 74 para. 3), the resolution authority may apply the asset separation tool. Within the tool, the resolution authority may issue the order to transfer the assets, rights or liabilities of an institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4 or of a bridge institution into one or more asset management vehicles (wind-down unit). The transfer order may be carried out without requiring the approval of the shareholders of the institution or entity under resolution financing arrangement pursuant to Article 1 para. 1 nos. 2 to 4 or a third party, and without needing to comply with the procedural provisions under company law or securities law needing to be complied with. The legal effects pursuant to Article 76 para 2 shall apply. Article 118 remains unaffected.

(2) The transfer to a wind down unit shall only be permissible, where

1. the situation of the particular market for those assets is of such a nature that the disposal by sale of those assets under a bankruptcy proceeding could have an adverse effect on one or more financial markets;
2. such a transfer is necessary to ensure the proper functioning of the institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4 or the bridge institution; or
3. such a transfer is necessary to maximise proceeds of sale.

(3) When applying the asset separation tool the resolution authority shall determine the consideration for which assets, rights or liabilities shall be transferred to the wind-down unit in accordance with the principles set out in Articles 54 to 57 and the Union State aid framework. The consideration may also assume a nominal value or a negative value.

(4) Irrespective of the provisions pursuant to Article 74 para. 5 every consideration paid by the wind-down unit in relation to the assets, rights or liabilities acquired directly from the institution or entity pursuant to Article 1 para. 1 nos. 2 to 4 under resolution shall benefit the institution or entity under resolution. The consideration may be paid in the form of debt issued by the wind-down unit.

(5) Where the bridge institution tool has been applied, a wind-down unit may, following the application of the bridge institution tool, acquire assets, rights or liabilities from the bridge institution.

(6) The resolution authority may transfer assets, rights or liabilities multiple times from the institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4 to one or several wind-down units, and may also transfer back assets, rights or liabilities to the institution or the entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4, provided that the following conditions are satisfied:

1. the possibility to transfer back the specific rights, assets or liabilities is stated expressly in the administrative decision in which the transfer was instructed; or
2. the specific rights, assets or liabilities do not in fact fall within the classes of rights, assets or liabilities listed in the transfer instructions, or do not meet the conditions for transfer set out in the transfer order.

The possibility to permit a transfer back should be appropriately limited in the transfer order. The conditions for a transfer back should be provided in greater detail. The institution or the entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4 shall be obliged to take back the assets, rights or liabilities.

(7) Transfers between the institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4 and the wind-down unit shall be subject to the safeguards for partial transfers of assets defined pursuant to Articles 106 et seq.

(8) Shareholders and creditors of the institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4 and other third parties, the assets, rights or liabilities or which have not be transferred to the write-down unit shall, irrespective of the safeguard provisions pursuant to Articles 106 et seq. not have any rights with regard to the assets, rights or liabilities transferred to the wind-down unit, or towards the write-down unit or its bodies.

(9) The application of the asset separation tool shall not be accompanied by any obligations or responsibility towards the shareholders or creditors of the institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4. The bodies of the wind-down unit shall not be liable towards the shareholders or creditors for acts and omissions arising in the exercising of their duties except where gross negligence exists, which leads to the rights of these shareholders or creditors being directly affected.

The wind-down unit

Article 83. (1) The resolution authority, the federal government or, with the consent of the Federal Minister of Finance, ABBAG may establish joint stock companies that may function as wind-down units. The nominal or share capital may be raised by transferring shares or assets of one or several institutions or entities under resolution pursuant to Article 1 para. 1 nos. 2 to 4 or bridge institutions pursuant to Article 82. The valuation of these shares or assets for establishing as well as the opening balance sheet of the wind-down unit shall where possible be based on the conclusive valuation pursuant to Article 57 para. 2, or if one does not yet exist at the time of establishing the company, the provisional valuation pursuant to Article 57 para. 1. A formation audit may be waived.

(2) the wind-down unit must satisfy the following conditions:

1. Its shares shall either be completely or majority held by the Federal Government, by ABBAG, the resolution authority or another public sector entity,
2. it shall be solely controlled due to potential contractual or company law influences or by an instruction pursuant to Article 67 by the resolution authority, and
3. it shall be created especially for the purpose of receiving and holding some or all of the shares or other instruments of ownership issued by an institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4 or some or all of the assets, rights and liabilities of one or more institutions or entities under resolution pursuant to Article 1 para. 1 nos. 2 to 4 with a view to maintaining access to critical functions and selling the institution or entity referred to in Article 1 para. 1 nos. 2 to 4.

(3) With the approval of the Federal Minister of Finance, the shares of the wind-down unit may be transferred to the Federal Government or ABBAG.

(4) In the case of a transfer pursuant to para. 2 the conditions pursuant to Article 5 para. 1 nos. 3 and 4 and Article 20 BWG shall be considered to be fulfilled.

(5) The wind-down unit shall be registered with the competent court by the resolution authority, the members of the management board and the members of the supervisory board for entry into the Commercial Register.

(6) The resolution authority shall appoint the first supervisory board of the wind-down unit. The appointment and removal of the directors, as well as the arrangement about their remuneration shall require an approval by the resolution authority to become effective. The remuneration agreement shall be approved, provided that it is appropriate in accordance with the criteria set out in Article 78 para. 1 AktG and considering the particular difficulties of the resolution situation.

Operation of the wind-down unit

Article 84. (1) The duty of the wind-down unit shall be to manage the assets transferred to it with the aim of ensuring an orderly, active and disposal at the best possible terms (portfolio wind-down). It may only conduct transactions that serve the purpose of fulfilling its duty. The strategy and the risk profile of the write-down unit shall be approved by the resolution authority. The reduction of the portfolio shall be carried out in accordance with a wind-down plan pursuant to para. 6, and shall be conducted as quickly as possible by means of disposal at the best possible terms. The wind-down unit shall work towards ensuring the compliance with paras. 2 to 11 by the legal entities in which it holds, either directly or indirectly, the majority of voting rights.

(2) The wind-down unit may operate banking and leasing operations to perform its duties, may purchase and divest participations, as well as conduct ancillary transactions as long at the provision of these operations directly or indirectly serves the purpose of performing its duties. The provisions set out in the BWG shall not apply to the wind-down unit except for Article 3 para. 9, Article 5 para. 1 nos. 6 to 13, Article 28a, Article 38, Article 41, Article 42 paras. 1 to 5, Articles 43 to 59a, Article 65, Articles 66 and 67, Article 70 para. 1, Article 70 para. 4 nos. 1 and 2 and Article 70 paras. 7 to 9, Article 73 para. 1 nos. 2, 3, 6 and 8, Article 73a, Article 75, Article 76, Articles 77 and 77a, Article 79, Articles 98 to 99e, Article 99g and Articles 101 and 101a BWG. The provisions of the Mortgage Bond Act (PfandbriefG; *Pfandbriefgesetz*), published in Reich Law Gazette I 492/1927, shall apply where applicable. The provisions of the Financial Markets Anti-Money Laundering Act (FM-GwG; *Finanzmarkt-Geldwäschegesetz*), published in Federal Law Gazette I No. 118/2016, shall apply to the wind-down unit subject to the condition that the wind-down unit is considered an obliged entity pursuant to Article 1 FM-GwG.

(3) Where investment services are provided pursuant to Article 3 para. 2 nos. 1 to 3 WAG 2018, such investment services shall be placed in wind-down without delay. Existing customer accounts shall be transferred to a bridge institution or another credit institution that is authorised to conduct deposit-taking business pursuant to Article 1 para. 1 no. 1 BWG and custody business pursuant to Article 1 para. 1 no. 5 BWG, where the customer does not undertake a transfer to another credit institution. The provisions of WAG 2018, with the exception of Chapter 2 and Articles 94 to 96 shall not apply to the wind-down unit.

(4) The receiving of deposits from the public by the wind-down unit as well as the provision of investment services and investment activities pursuant to Article 1 no. 3 WAG 2018 shall not be permissible. Financial instrument transactions for the wind-down unit's own account for the purpose of management of interest rate risks, currency risks, credit risks and liquidity risks within wind-down activities, provided that there are no associated market-making activities and no access provided to trading systems for third parties.

(5) The directors of the wind-down unit must be reliable and have suitable professional qualifications. No circumstance shall be allowed to prevail, that gives rise to doubts about their complete impartiality, or which provide grounds for suspicion of the existence of conflicts of interest. In carrying out portfolio wind-down they shall act honestly, concertedly and professionally

in the interests of the disposal of assets at the best possible conditions. Conflicts of interest in relation to the measures to be taken in managing the business are to be avoided. In the event that a conflict of interests cannot be avoided, then this should be reported without delay to the supervisory board. A measure taken by the management, which has the appearance of a conflict of interests shall only be performed with the consent of the supervisory board.

(6) The portfolio wind-down shall be conducted in accordance with a wind-down plan, which shall be drawn up by the directors of the wind-down unit, and shall be approved by the supervisory board. An approved wind-down plan shall be submitted to the resolution authority without delay. The wind-down plan shall contain detailed information about the following aspects:

1. a statement about the transactions and measures for disposal that shall be planned for portfolio wind-down purposes,
2. a timeline for the complete disposal of assets,
3. periodic statements about the assets, financial and earnings situation; including cash flow statements, planned balance sheets, calculations about the successful implementation of the plan, and liquidity plans, and
4. details about the risk management taken into account in relation to the write-down goals.

(7) The resolution authority has the right to participate at meetings of the supervisory board of the wind-down unit or its committees. For this purpose, it should be informed about meeting dates and the agenda of meetings as early as possible. Circular decisions shall be submitted to the resolution authority.

(8) Any amendment of the articles of association or the memorandum of association of the wind-down unit shall require approval by the resolution authority to become legally effective.

(8a) The application to initiate insolvency proceedings may only be made by the resolution authority. In receivership proceedings or bankruptcy proceedings the resolution authority shall be recognised as a party to the proceedings. The directors of the wind-down unit shall be obliged towards the resolution authority to prepare and collaborate in the filing of the insolvency.

(9) The operation of the wind-down unit shall end, once:

1. bankruptcy proceedings have been initiated against the assets of the wind-down unit on the basis of an application pursuant to para. 8a;
2. insolvency proceedings initiated by means of a legally effective resolution issued on the basis of an application pursuant to para. 8a, have not been opened due to insufficient assets to cover costs, or have been dismissed, or
3. the portfolio wind-down pursuant to para. 10 has been completed, and a resolution on dissolution has been issued.

(10) Portfolio wind-down shall be deemed to have been completed, where

1. the wind-down unit has already liquidated all banking business activities and investment services, and
2. there are sufficient liquid funds to satisfy existing and expected future liabilities.

(11) As soon as the wind-down unit has completed the portfolio wind-down pursuant to para. 10, a resolution on dissolution is to be issued. The wind-down unit shall inform the resolution authority about this status in writing without delay. A confirmation by an external auditor that the conditions set forth in para. 10 nos. 1 to 2 have been met must be submitted with the notification.
(12) The resolution authority shall determine that the operation of the wind-down unit pursuant to para. 9 has been concluded by means of an administrative decision. As soon as this administrative decision has been issued, the company ceases to be a wind-down unit as defined in this Federal Act. The administrative decision shall be published on the website of the resolution authority until the company is expunged from the Commercial Register, for up to a maximum duration of five years.

Section 5: Bail-in tool

Application of the bail-in tool
Article 85. (1) If the conditions for resolution pursuant to Article 49 or Article 52 exist, the resolution authority may apply the bail-in tool. Under such circumstances it may instruct on the basis of para. 2 with regard to eligible liabilities pursuant to Article 86 para. 1 the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4:
1. to partially or fully reduce the principal amount or the outstanding residual amount, or
2. to convert these amounts into instruments of ownership of that institution or entity pursuant to Article 1 para. 1 nos. 2 to 4, a relevant parent institution or a bridge institution to which assets, rights or liabilities of the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4, are transferred;

(2) The resolution authority may apply the bail-in tool in order to achieve the resolution objectives pursuant to Article 48 in accordance with the resolution principles pursuant to Article 53. The bail-in tool may be used for each of the following purposes:
1. to recapitalise an institution or an entity pursuant to Article 1 para. 1 nos. 2 to 4 that correspond to the conditions for resolution to an extent sufficient to restore its ability to comply with the conditions for authorisation, to the extent that those conditions apply to the entity, and to continue to carry out the activities for which it is authorised under Directive 2013/36/EU or Directive 2014/65/EU, where the entity is authorised pursuant to those Directives, and to sustain sufficient market confidence in the institution or entity pursuant to Article 1 para. 1 nos. 2 to 4, or
2. to convert to own funds or reduce the principal amount of claims or debt instruments that are transferred:
   a. to a bridge institution with a view to providing capital for that bridge institution; or
   b. under the sale of business tool or the asset separation tool.

(3) The resolution authority may apply the bail-in tool for recapitalisation pursuant to para. 2 no. 1 only if there is a reasonable prospect that the application of that tool – in any case together with other relevant measures including measures implemented in accordance with the business

reorganisation plan required under Article 93 will, in addition to achieving relevant resolution objectives, restore the institution or entity in question pursuant to Article 1 para. 1 nos. 2 to 4 to financial soundness and long-term viability. If this is not the case, the resolution authority may apply the resolution tool pursuant to Article 74 para. 2 nos. 1 to 3 and the bail-in tool on the basis of para. 2 no. 2.

Scope of application of the bail-in tool

Article 86. (1) The bail-in tool shall be applicable on all liabilities of an institution or entity pursuant to Article 1 para. 1 nos. 2 to 4 (eligible liabilities), that are not excluded from the scope of application pursuant to para. 2.

(2) An instruction for a reduction or conversion pursuant to Article 85 para. 1 shall not be permitted for the following liabilities, regardless of whether the liabilities are governed by the law of a Member State or a third country:

1. covered deposits;
2. secured liabilities;
3. any liabilities arising from the management of customer assets or deposits conducted by the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4, including customer assets or deposits, which were deposited in the name of the UCITS pursuant to Article 1 (2) of Directive 2009/65/EC or by AIFs pursuant to point a) of Article 4 (1) of Directive 2011/61/EU of the European Parliament and of the Council on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010, published in OJ L 174 of 01.07.2011 p. 1, provided that preferential rights and rights to separation and recovery are applicable, or they are subject to a comparable level of protection under the respective applicable insolvency law;
4. any liabilities arising from a trustee relationship between the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 (as trustee) and another person (as beneficiary), provided that the beneficiary is able to exert preferential rights or rights to separation and recovery, or is subject to a comparable level of protection under the respective applicable insolvency law;
5. liabilities against institutions or entities pursuant to Article 1 para. 1 nos. 2 to 4 – except for entities that are part of the same group – with an original term of less than seven days;
6. liabilities with residual maturity of less than seven days towards
    a. systems or operators of systems that were designated in accordance with Directive 98/26/EC,
    b. other participants in such systems if these liabilities result from participation in the system,
    c. central counterparties authorised in the European Union pursuant to Article 14 of Regulation (EU) No 648/2012, or
    d. third-country central counterparties recognised by ESMA pursuant to Article 25 of Regulation (EU) No 648/2012;

7. liabilities to:
   a. employees as defined in the Labour Constitution Act (AVG - *Arbeitsverfassungsgesetz*);
   b. other employees arising from outstanding wage or salary claims, pension benefits or other fixed remuneration items, with the exception of variable elements of remuneration, unless such items have been determined by means of a collective labour agreement or are in the form of a variable element of remuneration of bearers of a considerable risk pursuant to Article 39b BWG;
   c. a commercial or trade creditor arising from the provision to the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 of goods or services that are critical to the daily functioning of its operations, including IT services, utilities and the rental, servicing and upkeep of premises;
   d. tax and social security authorities, provided that those liabilities are preferred under the applicable law;
   e. deposit guarantee facilities arising from contributions due in accordance with Directive 2014/49/EU.
8. liabilities towards institutions or entities pursuant to Article 1 para. 1 nos. 2 to 4 that are part of the same resolution group, but which are not resolution entities themselves, irrespective of their maturity, except when such liabilities have a lower rank than ordinary unsecured liabilities in regular insolvency proceedings. When applying this exemption, the resolution authority that is the responsible resolution authority for the relevant subsidiary that is not a resolution entity, shall assess whether the amount of the items that meet the requirements set forth in Article 105 para. 8 is sufficient in order to support the implementation of the preferred resolution strategy.

(3) In applying the bail-in tool, the resolution authority shall ensure that all secured liabilities relating to a covered bond cover pool remain unaffected, are handled separately and have sufficient funding. This requirement shall not however prevent the resolution authority from applying the bail-in tool in relation to any part of a secured liability that exceeds the value of the assets against which the secured liability is secured.

(4) 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:

1. it is not possible to bail-in that liability within a reasonable time notwithstanding the good faith efforts of the resolution authority, or
2. the exclusion of such liabilities is strictly necessary and is appropriate to achieve the continuity of critical functions and core business lines in a manner that ensures the ability of the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 under resolution to continue key operations, services and transactions, or
3. the exclusion is strictly necessary and appropriate to avoid giving rise to widespread contagion, in particular with regard to eligible deposits held by natural persons and micro,

small and medium-sized enterprises, which would severely disrupt the functioning of financial markets, including of financial market infrastructures, in a manner that could cause a serious disturbance to the economy of a Member State or of the Union; or

4. the application of the bail-in tool to those liabilities would cause a destruction in value to the extent that the losses borne by other creditors would be higher than if those liabilities were excluded from bail-in.

The resolution authority shall carefully assess whether liabilities towards institutions or entities pursuant to Article 1 para. 1 nos. 2 to 4 that are part of the same resolution group, but that are not resolution units themselves, and which are not excluded from the application of the write-down and conversion powers pursuant to para. 2 no. 8 should be completely or partially excluded under nos. 1 to 4, in order to ensure the effective implementation of the resolution strategy. Where the resolution authority decides to completely or partially exclude a bail-inable liability or a class of bail-inable liabilities pursuant to this paragraph, then the extent of the write-down or conversion applied to other bail-inable eligibilities may be extended in order to take this exclusion into account, provided that the principle pursuant to Article 53 para. 1 no. 7 is observed regarding the extent of the write-down or conversion applied to the other bail-inable liabilities.

(5) When exercising the discretions pursuant to para. 4, the resolution authority shall give due consideration to:

1. the principle that losses should be borne first by shareholders and next, in general, by creditors of the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 under resolution in order of preference;
2. the level of loss absorbing capacity that would remain in the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 under resolution if the eligible liability or class of eligible liabilities were to be excluded; and
3. the need to maintain adequate resources for resolution financing.

(6) Exclusions pursuant to para. 4 may be applied either to completely exclude an eligible liability from write down or to limit the extent of the write down applied to that liability.

(7) Before exercising the discretion to exclude a liability pursuant to para. 4, the resolution authority shall notify the European Commission. Where the exclusion would require a contribution by the resolution financing arrangement or an alternative financing source, the Commission may, within 24 hours of receipt of such a notification, or a longer period with the agreement of the resolution authority, prohibit or require amendments to the proposed exclusion if the requirements of Articles 86 or 87 and the delegated acts are not met in order to protect the integrity of the internal market. This is without prejudice to the application of the Union State aid framework by the European Commission.

Selling of subordinated eligible liabilities to retail clients

Article 86a. (1) A seller of subordinated eligible liabilities that fulfil all the conditions laid down in Article 72a of Regulation (EU) No 575/2013, with the exception of Article 72a (1) (b) and of Article 72b

(3) to (5) of Regulation (EU) No 575/2013, may only sell these liabilities to a retail client pursuant to Article 1 no. 36 WAG 2018 if all of the following conditions are met:

1. the seller has conducted a suitability test pursuant to Article 56 WAG 2018;
2. the seller has satisfied itself, on the basis of the test pursuant to no. 1, that these eligible liabilities are suitable for this retail client;
3. the seller shall document the suitability in accordance with Article 60 WAG 2018.

(2) Where the conditions defined in para. 1 are fulfilled and the financial instrument portfolio of that retail client does not exceed EUR 500,000 at the time of the purchase, the seller shall ensure, based on information provided by the retail client pursuant to para. 3, that both of the following conditions are met at the time of the purchase:

1. the aggregate amount invested by the retail client in liabilities pursuant to para. 1 shall not exceed 10 % of their portfolio of financial instruments;
2. the initial investment amount invested in one or more liabilities pursuant to para. 1 shall be at least EUR 10 000.

(3) The retail client shall provide the seller with precise information about their financial instrument portfolio, including about investments in liabilities pursuant to para. 1.

(4) For the purposes of paras. 2 and 3, the retail client's financial instrument portfolio shall include cash deposits and financial instruments excluding financial instruments that have been given as collateral.

(5) This Article shall not apply to those liabilities pursuant to para. 1 that were issued prior to 28 December 2020.

Contributions of the Resolution Financing Arrangement

Article 87. (1) Where the resolution authority decides to fully or partially exclude an eligible liability or class of eligible liabilities pursuant to Article 86 para. 4 from the bail-in, and if the losses that would have been borne by those liabilities have not been passed on fully to other creditors, the resolution financing arrangement may make a compensation contribution to the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 under resolution, to:

1. cover any losses which have not been absorbed by bail-inable liabilities and restore the net asset value of the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 under resolution to zero pursuant to Article 88 para. 1 no. 1, or
2. to purchases shares or other instruments of ownership or capital instruments of the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 under resolution, in order, pursuant to Article 88 para. 1 no. 2, to recapitalise the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4.

(2) The resolution financing arrangement may only make a contribution defined in para. 1, where:

1. a contribution to loss absorption and recapitalisation equal to an amount of at least 8 % of the total liabilities including own funds of the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 under resolution, measured at the time of resolution action in accordance

with the valuation provided for in Articles 54 to 57, has been made by the shareholders and the holders of other instruments of ownership, the holders of relevant capital instruments and other bail-inable liabilities through write down, conversion or otherwise; and

2. the compensation contribution of the resolution financing arrangement does not exceed 5 % of the total liabilities including own funds of the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 under resolution, measured at the time of resolution action in accordance with the valuation provided for in Articles 54 to 57.

(3) The contribution of the resolution financing arrangement pursuant to para. 1 may be financed, as follows, by:

1. the amount available to the resolution financing arrangement which has been raised through contributions by institutions or entities pursuant to Article 1 para. 1 nos. 2 to 4 and by EU branches pursuant to Article 126, and
2. the amount that can be raised through ex-post contributions pursuant to Article 127 within three years.

In the event that the amounts pursuant to nos. 1 and 2 are not sufficient, the compensation contribution may be raised by contributions originating from alternative financing sources pursuant to Article 128.

(4) In extraordinary circumstances, the resolution authority may seek further funding from alternative financing sources after:

1. the 5 % limit specified in para. 2 no. 2 has been reached; and
2. all unsecured and non-preferred liabilities, which are not eligible deposits, have been written down or converted in full.

Alternatively, or in addition, where the conditions laid down in the nos. 1 and 2 are met, the resolution financing arrangement may make a compensation contribution from resources which have been raised through ex-ante contributions pursuant to Article 126 and which have not yet been used.

(5) By way of derogation from para. 2, the resolution financing arrangement may also make a contribution pursuant to para. 4, if

1. the compensation contribution defined in para. 2 no. 1 for the absorption of losses and for recapitalisation corresponds to at least 20 % of the risk-weighted assets of the affected institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4;
2. the resolution financing arrangement has at its disposal an amount gathered through ex-ante contributions pursuant to Article 126 (without taking contributions to a deposit guarantee facility into account) of at least 3 % of the eligible deposits of all domestically authorised credit institutions, and
3. the affected institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 has assets of less than EUR 900 billion on a consolidated basis.

Assessment of the Bail-in Amount

Article 88. (1) In the application of the bail-in tool, the resolution authority shall conduct an assessment of the following aggregate amounts in accordance with the requirements of Articles 54 to 57:

1. the amount by which eligible liabilities must be written down in order to ensure that the net asset value of the institution under resolution is equal to zero; and
2. 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 an institution or entity pursuant to Article 1 para. 1 nos. 2 to 4 under resolution or a bridge institution.

(2) The assessment pursuant to para. 1 shall establish the amount by which eligible liabilities need to be written down or converted in order to restore the required Common Equity Tier 1 capital ratio of the institution or entity pursuant to Article 1 para. 1 nos. 2 to 4 under resolution or to establish the necessary ratio of the bridge institution taking into account any contribution of capital by the resolution financing arrangement pursuant to Article 124 para. 1 no. 4, and to sustain sufficient market confidence in the institution or entity pursuant to Article 1 para. 1 nos. 2 to 4 under resolution or the bridge institution and enable it to continue to meet, for at least one year, the conditions for authorisation and to continue to carry out the activities for which it is licenced under the BWG or WAG 2018. If the resolution authority intends to use the asset separation tool pursuant to Article 82, the amount by which eligible liabilities need to be reduced shall take into account a prudent estimate of the capital needs of the wind-down unit as appropriate.

(3) Where the resolution authority, having written down capital pursuant to Articles 70 to 73 and having applied the bail-in tool pursuant to Article 85, determines that the level of the write-downs based on the preliminary valuation pursuant to Article 57 is found to exceed requirements when assessed against the definitive valuation pursuant to Articles 54 to 56, it may apply a write-up mechanism to reimburse creditors and then shareholders to the extent necessary.

(3a) Provided that a protection provider has held a creditor harmless in the case of the application of the bail-in tool, claims arising from the application of a write-up mechanism shall be transferred to the protection provider. The resolution authority shall take this right of regress of the protection provider into account in the application of a write-up mechanism, provided that the protection provider is able to provide credible evidence to the resolution authority, that creditors were held harmless.

(4) If the application of the bail-in tool or the power to write down holdings of holders of relevant capital instruments would lead to the acquisition of or the increasing of a qualifying holding in the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 pursuant to Article 20 para. 1 BWG or pursuant to Article 14 para. 1 WAG 2018, the FMA shall undertake, by way of derogation from Articles 20 to 20b BWG and Articles 13 to 11b WAG 2018, the review as defined in Article 20a BWG or Article 11a WAG 2018 as soon as possible, to ensure that the application of the bail-in tool or the power to write down holdings of holders of relevant capital instruments is not delayed and that the

respective desired resolution objectives associated with the resolution action are not prevented from being achieved.

Treatment of shareholders

Article 89. (1) If the resolution authority applies the bail-in tool or the power to write down holdings of holders of relevant capital instruments, it shall employ one or both of the following measures in relation to the shareholders and holders of other instruments of ownership:

1. cancel existing shares or other instruments of ownership or transfer them to creditors participating in the bail-in, or
2. provided that the institution or entity pursuant to Article 1 para. 1 nos. 2 to 4 under resolution, in accordance with the valuation carried out pursuant to Articles 54 to 57 has a positive net value, dilute existing shareholders and holders of other instruments of ownership as a result of the conversion into shares or other instruments of ownership of:
   a. the relevant capital instruments issued by the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 on the basis of the powers pursuant to Article 70, or
   b. bail-inable liabilities, issued by the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 under resolution pursuant to Article 85 para. 1 no. 2 into shares or other instruments of ownership.

In the event that a conversion pursuant to point b) of no. 2 is applied, the resolution authority shall determine a conversion ratio, which dilutes the existing holdings in shares and other instruments of ownership considerably.

(2) The measures referred to in para. 1 shall also be applied by the resolution authority in respect of shareholders and holders of other instruments of ownership where the shares or other instruments of ownership in question were issued or conferred in the following circumstances:

1. pursuant to conversion of debt instruments to shares or other instruments of ownership in accordance with contractual terms of the original debt instruments on the occurrence of an event that preceded or occurred at the same time as the assessment by the resolution authority that the institution or entity pursuant to Article 1 para. 1 nos. 2 to 4 met the conditions for resolution;
2. pursuant to the conversion of relevant capital instruments to Common Equity Tier 1 instruments pursuant to Article 73.

(3) When exercising the discretions pursuant to para. 1, the resolution authority shall give due consideration to:

1. the assessment pursuant to Articles 54 to 57,
2. the amount by which the resolution authority has assessed that Common Equity Tier 1 items must be reduced and relevant capital instruments must be written down or converted pursuant to Article 73 para. 2; and
3. the aggregate amount as per the assessment pursuant to Article 88.

(4) If the application of the bail-in tool or the power to write down holdings of holders of relevant capital instruments would lead to the acquisition of or the increasing of a qualifying holding in the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 pursuant to Article 20 para. 1 BWG or pursuant to Article 11 para. 2 WAG 2007, the FMA shall undertake, by way of derogation from Articles 20 to 20b BWG and Articles 11 to 11b WAG 2007, the review as defined in Article 20a BWG or Article 11a WAG 2007 as soon as possible, to ensure that the application of the bail-in tool or the power to write down holdings of holders of relevant capital instruments is not delayed and that the respective desired resolution objectives associated with the resolution action are not prevented from being achieved.

(5) If the FMA has not concluded the review in accordance with para. 4 at the time of application of the bail-in tool or the power to write down holdings of holders of relevant capital instruments, then Article 75 para. 8 shall apply to any acquisition of or increase of a qualifying holding by an acquirer, which results from the application of the bail-in tool or the conversion of capital instruments.

Sequence of write down and conversion (loss absorption cascade)

Article 90. (1) When applying the bail-in tool, the resolution authority shall observe the following requirements:

1. Common Equity Tier 1 items shall be reduced pursuant to Article 73 para. 2 no. 1;
2. where the reduction pursuant to no. 1 in total falls below the total of the amounts pursuant to Article 89 para. 3 nos. 2 and 3, the principal amount of the Additional Tier 1 instruments shall be reduced by the necessary amount and within the boundaries of their capacity;
3. where the deterioration pursuant to no. 1 and 2 in total falls below the total of the amounts pursuant to Article 89 para. 3 nos. 2 and 3, the principal amount of the Additional Tier 1 instruments shall be reduced by the necessary amount and within the boundaries of their capacity;
4. where the total reduction of shares or other instruments of ownership and relevant capital instruments pursuant to nos. 1 to 3 is less than the sum of the amounts referred to in Article 89 para. 3 nos. 2 and 3, the principal amount of subordinated debt that is not Additional Tier 1 or Tier 2 capital shall be reduced in accordance with the hierarchy of claims in normal insolvency proceedings, to result in conjunction with the write down pursuant to nos. 1 to 3 the sum of the amounts referred to in Article 89 para. 3 nos. 2 and 3;
5. where the reduction in value of shares or other instruments of ownership, relevant capital instruments and bail-inable liabilities pursuant to nos. 1 to 4 is less than the sum of the amounts referred to in Article 89 para. 3 nos. 2 and 3, the principal amount of the residual bail-inable liabilities pursuant to Article 86 including liabilities pursuant to Article 131 para. 4, or the outstanding residual amount of these shall be reduced to the required extent in accordance with the hierarchies of the loans and advances within the scope of regular insolvency proceedings, including the hierarchy of deposits pursuant to Article 131, resulting

together with the write-down pursuant to nos. 1 to 4 in the sum of the amounts referred to in Article 89 para. 3 nos. 2 and 3.

(2) When the resolution authority applies the write down or conversion powers, it shall allocate the losses represented by the sum of the amounts referred to in Article 89 para. 3 nos. 2 and 3 equally between shares or other instruments of ownership and bail-inable liabilities of the same rank by reducing the principal amount of, or outstanding amount payable in respect of, those shares or other instruments of ownership and bail-inable liabilities to the same extent pro rata to their value except where a different allocation of losses amongst liabilities of the same rank is allowed in the circumstances specified in Article 86 para. 4. This shall apply irrespective of the possibility, that liabilities, which have been excluded from bail-in pursuant to Article 86 para. 4, shall receive a more favourable treatment than bail-inable liabilities which are of the same rank in normal insolvency proceedings.

(3) Claims from own funds items of entities pursuant to Article 1 para. 1 nos. 1 to 4 shall have a lower ranking in normal insolvency proceedings than claims that do not arise from own funds items. If an instrument is only partially recognised as own funds items, then the entire instrument is to be treated as a claim resulting from an own funds item and has a lower ranking than claims not arising from own funds items.

Application of the Bail-in tool on Derivative Liabilities

Article 91. (1) The resolution authority may apply the bail-in tool to derivative liabilities only after or at the same time as the closing out of the derivatives.

(2) In the event that the conditions for resolution exist, the resolution authority shall terminate and close out the derivative contracts for the purpose of the application of the bail-in tool. Provided that a liability from a derivative pursuant to Article 86 para. 4 is excluded from the scope of the bail-in tool, the resolution authority may terminate and close out the liability.

(3) Where derivative transactions are subject to a netting agreement, the resolution authority or a valuation auditor appointed by the resolution authority shall determine as part of the valuation pursuant to Articles 54 to 57 the net value of the liability arising from those transactions in accordance with the terms of the agreement.

(4) The resolution authority or a valuation auditor shall determine the value of the derivative liabilities on the basis of:

1. appropriate methodologies for determining the value of classes of derivatives, including transactions that are subject to netting agreements,
2. principles for establishing the relevant point in time at which the value of a derivative position should be determined, and
3. appropriate methodologies for comparing the destruction in value that would arise from the close out and application of the bail-in tool on derivatives with the amount of losses that would be borne by derivatives in the case of the application of the bail-in tool.

(5) Paras. 1 to 4 shall also apply for other financial contracts, in the event that they were concluded within a framework contract that contains a netting arrangement. This shall in particular apply for the transactions listed in Article 20 para. 1 nos. 1 to 4 Insolvency Code (IO; *Insolvenzordnung*).

Conversion rate

Article 92. (1) The resolution authority may, if it applies the power to write down holdings of relevant capital instruments or the bail-in tool, determine different conversion rates pursuant to the principles in paras. 2 and 3 upon different categories of relevant capital instruments and eligible liabilities.

(2) When determining an appropriate conversion rate the resolution authority shall take the principal amount within the resolution objectives and the ranking in a bankruptcy proceeding into account.

(3) When different conversion rates are determined by the resolution authority according to para. 1, the resolution authority shall apply a higher conversion rate upon liabilities that are considered to be senior under applicable insolvency law than on subordinated liabilities.

Drawing up, approval and implementation of a business reorganisation plan

Article 93. (1) In the event of the bail-in tool being applied for recapitalisation purposes pursuant to Article 85 para. 2 no. 1 by the resolution authority, the directors of the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 shall draw up a business reorganisation plan within one month pursuant to Article 94 and shall submit it to the resolution authority for approval.

(2) The resolution authority may appoint one or more resolution administrators pursuant to Article 68 para. 1 for the drawing up and implementation of a restructuring plan.

(3) In exceptional circumstances, the resolution authority may extend the deadline defined in para. 1 by an additional month, if this is necessary to achieve the resolution objectives. If pursuant to the regulations under union law there exists an obligation for notification of the business reorganisation plan for State aid reasons, the deadline pursuant to para. 1 may be extended in accordance with the deadlines that exist in relation to the State aid procedures, however by a maximum of one month.

(4) The resolution authority shall review and approve the business reorganisation plan within one month. It shall assess the probability in its review in accordance with Article 68 whether the long-term viability of the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 can be restored in the case that the plan is executed. The assessment shall be completed in agreement with the FMA. In the event that the resolution authority arrives at the conclusion during its review, that the restoration of the long-term viability is improbable, it shall issue an order for improvement, to be complied with within two weeks. Subsequent amendments to the business reorganisation plan require an approval by the resolution authority.

(5) If the bail-in tool pursuant to Article 85 para. 2 no. 1 is applied to two or more entities within a group, then the restructuring plan is to be drawn up by the EU parent institution and shall cover all institutions within the group in accordance with the procedure pursuant to Articles 15 et seq. The restructuring plan shall be submitted to the competent authority for resolution on a consolidated

basis. If the resolution authority is responsible for the group resolution, it shall transmit the restructuring plan to the competent resolution authorities for the other entities within the group and the EBA.

(6) The approved business reorganisation plan shall be implemented by the directors or the resolution administrator. Progress reports relating to its implementation shall be submitted to the resolution authority at least semi-annually. The resolution authority may request that the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 make changes to the business reorganisation plan within a timeframe appropriate to the particular situation, if the changes are necessitated by an essential change in circumstances.

Requirements for the Business Reorganisation Plan

Article 94. (1) The business reorganisation plan shall set out measures aiming to restore the long-term viability of the institution or entity pursuant to Article 1 para. 1 nos. 2 to 4 or parts of its business within a reasonable timescale. These measures shall be based on realistic assumptions as to the economic and financial market conditions under which the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 will be active. The business reorganisation plan shall in particular take account of the current state and the future outlook for the financial markets. Assumptions shall be presented to cover the best and worst case scenarios, including a combination of situations under which the institution may be most vulnerable. The assumptions shall be compared with appropriate sector-wide benchmarks.

(2) The business reorganisation plan shall, as a minimum, cover the following components:

1. a detailed diagnosis of the factors and problems that caused the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 to fail or to be likely to fail, and the circumstances that led to its difficulties;
2. a description of the measures aiming to restore the long-term viability of the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 that are to be adopted, and
3. a timetable for the implementation of those measures.

(3) With regard to the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4, in particular the following measures may be taken, which are intended to restore the financial soundness and long-term viability of the institution or the entity within the group:

1. the restructuring of business activities;
2. the modification of the operative systems and the infrastructure of the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4;
3. the discontinuation of loss-making business activities;
4. the restructuring of existing business activities that can be made competitive; and
5. the sale of assets or of business lines.

Section 6: Further Provisions

Taking effect

Article 95. (1) If the resolution authority issues an order, under which it makes use of the bail-in tool or the power to write down holdings of holders of relevant capital instruments, the reduction of the principal amount or the outstanding residual amount, the conversion or the cancellation becomes directly effective, and becomes binding for the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 under resolution as well as the affected creditors and shareholders.

(2) If the resolution authority reduces the principal amount or the outstanding residual amount of a liability within the scope of the application of the instruments listed in para. 1, either partially or completely,

1. the liability shall be deemed to be discharged to the extent of the amount reduced, and
2. the relevant certificate or agreement, by which the original liability was created, shall continue to apply in relation to the residual principal amount of, or outstanding amount payable in respect of the liability, subject to any modification of the amount of interest payable to reflect the reduction of the principal amount, and any further modification of the terms that the resolution authority could prescribe by means of the power pursuant to Article 58 para. 1 no. 10.

(3) The rights of creditors of eligible liabilities against co-debtors, guarantors and other third parties, who are liable for the liabilities of the legal entity to be resolved, shall remain unaffected by the application of the bail-in tool or the power to write down holdings of holders of relevant capital instruments. The legal entity to be resolved, however, shall be released by the application of these instruments towards its co-debtors, guarantors, other third parties or other parties with a right to recourse in the same way as towards the creditors of eligible liabilities.

Revocation of the admission to trading

Article 96. (1) The resolution authority shall, if necessary within the power to write down holdings of holders of relevant capital instruments or the bail-in tool, order the revocation of the admission of trading on a regulated market of securities of the institution or entity pursuant to Article 1 para. 1 nos. 2 to 4 under resolution. The affected exchange operating company shall comply with this order without delay.

(2) The resolution authority shall inform the competent authorities pursuant to Directive 2004/39/EC on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC of the European Parliament and of the Council, as published in OJ L 145 of 30.4.2004 p. 1, without delay by means of an order pursuant to para. 1, if securities are authorised for trading on a regulated market in another Member State or a comparable market in a third country. At the request of the resolution authority the information make be transmitted by the FMA to the competent authorities of the Member States or third countries pursuant to Article 39 para. 8 BörseG 2018. The

exchange operating company shall inform the operators of other regulated markets or comparable markets of a third country without delay, if an order is issued pursuant to para. 1.

Admission to trading of newly issued securities

Article 97. (1) Securities that are issued within the application of the power to write down holdings of holders of relevant capital instruments or the bail-in tool, shall be admitted to trade in a regulated market on any domestic securities exchange pursuant to Article 1 no. 1 BörseG 2018 at the order of the resolution authority. In taking the decision, the resolution authority shall take into consideration the achieving of the resolution objectives, as well as whether securities of the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 under resolution are already traded on one or several regulated markets. The obligation relating to the publication of a prospectus for admittance to the stock exchange pursuant to Regulation (EU) 1129/2017 and those relating to a public offering pursuant to Article 2 KMG 2019 shall be waived.

(2) The resolution authority shall communicate the characteristics of the security to the executive directors of the exchange operating company to which securities are admitted to trading pursuant to para. 1.

(3) The obligations associated with the admission to trading on a regulated market shall be fulfilled by the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4.

Recognition of crisis prevention and crisis management measures of other Member States

Article 97a. (1) If a resolution authority transfers shares or other instruments of ownership or assets, rights or liabilities to another Member State in the application of a crisis management measure pursuant to Article 2 para. 1 no. 102 of Directive 2014/59/EU, and the transfer affects domestically issued assets or rights or liabilities that are subject to Austrian law, such a transfer shall also have the same effect as a transfer by the resolution authority in Austria.

(2) The same shall apply for the exercising of write-down and conversion powers as defined in Article 2 para. 1 no. 66 of Directive 2014/59/EU by a resolution authority in another Member State, provided that the affected liabilities or capital instruments are subject to Austrian law or exist against creditors incorporated in Austria.

(3) The resolution authority shall support the resolution authority in another Member State in the transfer, conversion or write-down pursuant to paras. 1 and 2.

Contractual recognition in third countries

Article 98. (1) Institutions and entities pursuant to Article 1 para. 1 nos. 2 to 4 shall be obliged to include a contractual clause whereby the creditor or party to the agreement or instrument that constitutes the liability shall recognise that it may be subject to the write-down and conversion powers, and agree to accept a reduction of the principal amount or outstanding balance, a conversion or a cancellation by a resolution authority if the liability fulfils all of the following conditions:

1. the liability is not exempted pursuant to Article 86 para. 2;
2. the liability does not constitute a deposit in accordance with Article 131 para. 1;

3. the liability is subject to the law of a third country; and
4. The liability was issued or entered into after 28 December 2020.

(2) The resolution authority may decide that the liability pursuant to para. 1 does not apply to institutions or entities pursuant to Article 1 para. 1 nos. 2 to 4, in which case the minimum amount pursuant to Article 1 para. 1 shall be equal to the loss absorption amount pursuant to Article 102 para. 2 no. 1, provided that the liabilities which meet the conditions laid down in para. 1 nos. 1 to 4, and which do not contain the contractual clause referred to in para. 1 are not offset against the requirement.

(3) The resolution authority may waive the requirement pursuant to para. 1, where it is ensured that the liabilities listed in para. 1 or are instruments under the law of the third country concerned or are bound to the resolution authority's write-down and conversion powers that are the subject of a binding agreement with the relevant third country. The resolution authority may lift this exemption at any time.

(4) In the event that an institution or entity pursuant to Article 1 para. 1 nos. 2 to 4 determines that it is legally or otherwise impracticable to insert a contractual clause required pursuant to para. 1 into the contractual terms of a corresponding liability, then that entity must notify the resolution authority of its decision, including the designation of the category of the liability as well as a justification for this finding. The institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 shall provide the resolution authority with all the information requested by the resolution authority within an appropriate time frame following receipt of the notification, so that the resolution authority is able to assess the impact of the notification on the resolvability of that institution or entity pursuant to Article 1 para. 1 nos. 2 to 4.

(5) The obligation to include in the contractual provisions a term required in accordance with para. 1 is automatically suspended from the moment of receipt by the resolution authority of the notification.

(6) In the event that the resolution authority concludes that it is not legally or otherwise impracticable to include a clause required under para. 1 in the contractual provisions, taking into account the need to ensure the resolvability of the institution or entity pursuant to Article 1 para. 1 nos. 2 to 4, then it shall demand such a contractual clause to be included, within a reasonable timeframe following receipt of the notification pursuant to para. 4. In addition, the resolution authority may also require the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 to change its approach to applying the waiving of the contractual recognition of bail-in.

(7) The liabilities listed in para. 4 shall not be allowed to include Additional Tier 1, Tier 2 capital instruments or debt instruments pursuant to Article 2 no. 49a, provided that these instruments are unsecured liabilities. Furthermore, the liabilities pursuant to para. 4, are primarily liabilities to liabilities pursuant to Article 131 para. 3 nos. 1, 2 and 3 as well as Article 131 para. 4.

(8) Where the resolution authority determines, in the context of the assessment of the resolvability conducted pursuant to Articles 27 and 28 of an institution or entity pursuant to Article 1 para. 1 nos. 2 to 4 or at any other time, that within a class of liabilities which includes eligible liabilities, the amount

of liabilities that do not contain the contractual clause referred to in paragraph in para. 1 in accordance with para. 4, together with the liabilities which are excluded from the application of the bail-in tool pursuant to Article 86 para. 2 or which are likely to be excluded in accordance with Article 86 para. 4 amounts to more than 10 % of that class of liabilities, it shall immediately assess the impact of that particular fact on the resolvability of that institution or entity pursuant to Article 1 para. 1 nos. 2 to 4, including the impact on the resolvability resulting from the risk of breaching the creditor safeguards provided in Article 106 when applying write-down and conversion powers to eligible liabilities.

(9) Where the resolution authority concludes, on the basis of the assessment referred to in para. 8, that the liabilities which, in accordance with the para. 4, do not include the contractual term referred to in para. 1, create a material impediment to resolvability, it shall apply the powers provided in Article 29 as appropriate to remove that impediment to resolvability.

(10) Liabilities for which the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 fails to include the clause required under para. 1 in the contractual provisions, or for which the requirement does not apply pursuant to para. 4 et seq., shall not be counted against the minimum amount of own funds and eligible liabilities.

(11) At the request of the resolution authority, the institution or entity pursuant to Article 1 para. 1 nos. 2 to 4 shall submit a legal opinion relating to the legal enforceability and effectiveness of the contractual clause pursuant to para. 1.

(12) If an institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 fails to include a clause required pursuant to para. 1 in the contractual provisions governing a liability, that failure shall not prevent the resolution authority from exercising write down and conversion powers in relation to that liability.

(13) If the resolution authority considers it necessary, it may, on the basis of the conditions further clarified following the application of Article 55 (6) of Directive 2014/59/EU in the version of Directive (EU) 2019/879, determine further clarified conditions regarding the categories of liabilities in respect of which an institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 may find that it is legally or otherwise impracticable to include the contractual term referred to in para. 1.

Application of stabilisation measures

Article 99. (1) If necessary to ensure financial stability, the Federal Minister of Finance may take stabilisation measures in relation to the authorisation of State aid by the European Commission, provided that one of the requirements pursuant to para. 2 exists. This is only permissible as a last resort, once the other resolution tools have been considered as comprehensively as possible for ensuring the stability of the financial markets, and where beneficial have been used. The FMA, the resolution authority and the *Oesterreichische Nationalbank* shall inform the Federal Minister of Finance of any observations of a fundamental nature arising in their areas of competence without delay. Furthermore, they shall also inform the Minister of any observations of particular significance without delay, if they are of the opinion that the application of the resolution tools would not be adequate in order to achieve one of the aims specified in para. 2 nos. 1 to 3.

(2) The application of stabilisation measures shall only be permitted, if the requirements for a resolution exist, and in additional one or the following requirements is fulfilled:

1. the Federal Minister of Finance determined on the basis of opinions of the *Oesterreichische Nationalbank*, the FMA and the resolution authority, that the application of the resolution tools would not be sufficient, to prevent considerable harmful effects on financial stability, or
2. the Federal Minister of Finance determines on the basis of an opinion of the resolution authority, that the application of the resolution tools would not be sufficient to protect the public interest, after the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 has previously already been provided with exceptional liquidity assistance by the central bank, or
3. the Federal Minister of Finance determines on the basis of an opinion of the FMA and the resolution authority prior to applying the temporary public ownership tool (para. 4), that the application of the resolution tools would not be sufficient to protect the public interest, after the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 has previously already been provided with public equity support by means of the equity support tool (para. 3),

the opinions of the institutions listed in nos. 1 to 3 shall describe the circumstances and the possible options, and shall be submitted to the Federal Minister of Finance with the required urgency.

(3) The Federal Minister of Finance may apply the public equity support tool and may participate in the recapitalisation of an institution or an entity pursuant to Article 1 para. 1 nos. 2 to 4, by making capital available to the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 in exchange for Common Equity Tier 1 instruments, Additional Tier 1 instruments or Tier 2 instruments, provides that the requirements for the capital instruments apply as defined in Part 2 of Regulation (EU) no 575/2013. If the public equity support tool is applied, the Federal Minister of Finance shall ensure that the participation is transferred to the private sector as soon as the economic and financial situations permit. In the fulfilment of shareholder’s rights, the Federal Minister of Finance shall work toward an economical and professional management of the institution or entity pursuant to Article 1 para. 1 nos. 2 to 4 or other legal entity, upon which the public equity support tool is applied.

(4) The Federal Minister of Finance may take over an institution or entity pursuant to Article 1 para. 1 nos. 2 to 4 on a temporary basis (temporary public ownership tool). The Federal Minister of Finance may issue one or several transfer orders for this purpose, in which the beneficiary is an authorised representative of the Federal Minister of Finance or an entity, of which either the majority or all shares are held by the government. If the temporary public ownership tool is applied, the Federal Minister of Finance shall ensure that the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 or other legal entity is managed in an economical and professional manner, and is transferred to the private sector as soon as the economic and financial situations permit.

(5) The Financial Stability Act shall not apply to measures pursuant to paras. 3 and 4. However, measures pursuant to paras. 3 and 4 shall have to be covered in their total amount pursuant to

Article 2 para. 4 of the Financial Market Stability Act, published in Federal Law Gazette I No. 136/2008.

Section 7: Minimum requirement for own funds and eligible liabilities

Application and calculation of the minimum requirement for own funds and eligible liabilities

Article 100. (1) Every institution and entity pursuant to Article 1 para. 1 nos. 2 to 4 shall comply with the requirements for own funds and eligible liabilities at all times as prescribed in this provision and in Articles 101 to 105c, in accordance with these provisions.

(2) The requirement referred to in para. 1 shall be calculated as the amount of own funds and eligible liabilities pursuant to Article 102 paras. 4 to 12 or paras. 15 to 21 and expressed as percentages of:

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

(3) References in this Federal Act to Article 92 of Regulation (EU) No. 575/2013, regarding the own funds requirements on an individual basis for CRR investment firms, that are not investment firms defined in Article 1 (2) of Regulation (EU) 2019/2033, are to be understood as follows:

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

(4) References in this Federal Act to Article 70b BWG regarding the additional own funds requirements for CRR investment firms, that are not investment firms defined in Article 1 (2) of Regulation (EU) 2019/2033, are to be understood as references to Article 29 WPFG.

(5) Institutions exempted from the requirements of para. 1 shall not be part of the consolidation referred to in Article 104 para. 3.

Eligibility of liabilities in resolution entities

Article 101. (1) Liabilities may only be included in the amount of own funds and eligible liabilities of resolution entities if they meet the requirements of Articles 72a, 72b with the exception of para. 2 (d), and Article 72c of Regulation (EU) No 575/2013.

(2) Where references are made in this Federal Act to the requirements set out in Article 92a or 92b of Regulation (EU) No 575/2013, then for the purposes of this provision the eligible liabilities shall consist, by way of derogation from para. 1, of eligible liabilities as defined in Article 72k of Regulation (EU) No 575/2013 and set out in Chapter 5a of Title I of Part 2 of Regulation(EU) No 575/2013.

(3) Liabilities that arise from debt instruments with embedded derivatives, such as structured notes, that meet the conditions of para. 1, except for point (l) of Article 72a (2) of Regulation (EU) No

575/2013, shall be included in the amount of own funds and eligible liabilities only where one of the following conditions is met:

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

(4) Debt instruments pursuant to para. 3, including their embedded derivatives, shall not be subject to any netting agreement and shall not be valued in accordance with Article 91 para. 3. The liabilities pursuant to para. 3 may only be included in the amount of own funds and eligible liabilities for that part corresponding to the nominal amount referred to in para. 3, no. 1 or the fixed or increasing amount referred to in para. 3, no. 2.

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

1. they are issued in accordance with Article 105 para. 8 no. 1;
2. the exercise of the write-down or conversion power in relation to those liabilities in accordance with Articles 70, 71 or 72 does not affect the control of the subsidiary by the resolution entity;
3. they do not exceed an amount after deduction:
    a. the sum of the liabilities issued to and bought by the resolution entity either directly or indirectly through other entities in the same resolution group and the amount of own funds issued in accordance with Article 105 para. 2 no. 2 from
    b. the amount required in accordance with Article 105 para. 8 no. 1.

(6) Without prejudice to the minimum amount pursuant to Article 102 paras. 11 and 12 or Article 103 para. 1 no. 1, the resolution authority shall ensure that part of the requirement set out in Article 104 of 8 % of total liabilities, including own funds, is met by resolution entities that are G-SIIs, or by resolution entities that are subject to Article 102 paras. 11 and 12 or Article 102 paras. 13 and 14 with own funds and with subordinated eligible instruments, or with liabilities pursuant to para. 5. The resolution authority may permit that a level lower than 8 % of the total liabilities, including own funds, but greater than the amount resulting from the application of the formula (1 - (X1 / X2)) × 8 % of the total liabilities, including own funds, shall be met by resolution entities that are G-SIIs or resolution entities that are subject to Article 102 paras. 11 and 12 or Article 102 paras. 13 and 14 using own funds, subordinated eligible instruments, or liabilities as referred to in paras. 9 and 10,

provided that all the conditions set out in Article 72b(3) of Regulation (EU) No 575/2013 are met, where, in light of the reduction that is possible under Article 72b(3) of Regulation (EU) No. 575/2013:

1. X1 = 3.5 % of total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013; and
2. X2 = the sum of 18 % of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 and the amount of the combined buffer requirement.

(7) If the application of para. 6 results in a requirement of more than 27 % of the total risk exposure amount for resolution entities subject to Article 102 paras. 11 and 12, then the resolution authority for the resolution entity concerned shall limit the part of the requirement pursuant to Article 104 to be met by using own funds, subordinated eligible instruments or liabilities pursuant to para. 5 to an amount equal to 27 % of the total risk exposure amount, if the resolution authority has come to the conclusion that:

1. access to the resolution financing arrangement in the resolution plan is not considered as an option for the resolution of that resolution entity; and
2. if no. 1 does not apply, the resolution entity can meet the requirements pursuant to Article 87 para. 2 or Article 87 para. 5 depending on their applicability, by the requirement pursuant to Article 104.

(8) In carrying out the assessment pursuant to para. 7, the resolution authority shall also take into account the risk of disproportionate impact on the business model of the resolution entity concerned. Para. 7 is not applicable to resolution entities subject to Article 102 paras. 13 and 14.

(9) For resolution entities that are neither G-SIIs nor resolution entities that are subject to Article 102 paras. 11 and 12 or Article 102 paras. 13 and 14, the resolution authority may decide that a part of the requirement referred to in Article 104 up to the greater of 8 % of the total liabilities, including own funds, of the entity and the amount calculated using the formula pursuant to para. 7, shall be met using own funds, subordinated eligible instruments, or liabilities pursuant to para. 5, provided that the following conditions are met:

1. non-subordinated liabilities referred to in paras. 1 and 2 have the same priority ranking in the insolvency hierarchy as certain liabilities that are excluded from the application of write-down and conversion powers pursuant to Article 86 para. 2 to 4;
2. there is a risk that, as a result of a planned application of write-down and conversion powers to non-subordinated liabilities that are not excluded from the application of write-down and conversion powers in accordance with Article 86 paras. 2 to 4, creditors whose claims arise from those liabilities incur greater losses than they would incur in a winding-up under normal insolvency proceedings;
3. the amount of own funds and other subordinated liabilities does not exceed the amount necessary to ensure that the creditors referred to in no. 2 do not incur greater losses than the level of losses they would otherwise have incurred in a winding-up under normal insolvency proceedings.

(10) Where the resolution authority determines that, within a class of liabilities which includes eligible liabilities, the amount of the liabilities that are excluded or reasonably likely to be excluded from the application of write down and conversion powers pursuant to Article 86 para. 2 to 4 totals more than 10 % of that class, the resolution authority shall assess the risk referred to in para. 9 no. 2.
(11) For the purposes of paras. 6 to 10, and 12, derivative liabilities shall be included in total liabilities on the basis that full recognition is given to counterparty netting rights. The own funds of a resolution entity that are used to comply with the combined buffer requirement shall be eligible to comply with the requirements referred to in paras. 6 to 10, and 12.
(12) By way of derogation from paras. 6 to 8, the resolution authority may decide that the requirement pursuant to Article 104 shall be met by resolution entities that are G-SIIs or resolution entities that are subject to Article 102 paras. 11 to 14 using own funds, subordinated eligible instruments, or liabilities pursuant to para. 5, to the extent that, due to the obligation of the resolution entity to comply with the combined buffer requirement and the requirements referred to in Article 92a of Regulation (EU) No 575/2013, Article 102 paras. 11 and 12 as well as Article 105, the sum of those own funds, instruments and liabilities does not exceed the greater of:

1. 8 % of total liabilities, including own funds, of the entity; or
2. the amount resulting from the application of the formula A x 2 + B x 2+ C, where A, B and C are the following amounts:
    a. A = the amount resulting from the requirement referred to in point (c) of Article 92(1) of Regulation (EU) No 575/2013;
    b. B = the amount resulting from the requirement pursuant to Article 70b BWG;
    c. C = the amount resulting from the combined buffer requirement.

(13) The resolution authority may exercise the power referred to in para. 12 in relation to resolution entities that are G-SIIs or which are subject to Article 102 paras. 11 and 12 or Article 102 paras. 13 and 14 and which meet one of the following requirements, for up to a maximum of 30 % of all resolution entities that are G-SIIs or which are subject to Article 102 paras. 11 and 12 or Article 102 paras. 13 and 14 for which the resolution authority determines the requirement pursuant to Article 104. The conditions shall be considered by resolution authorities as follows:

1. material impediments to resolvability have been identified in the preceding resolvability assessment and either:
    a. no remedial action was taken within the time frame set by the resolution authority once measures pursuant to Article 29 para. 6 had been taken, or
    b. the identified material impediment cannot be addressed using any of the measures pursuant to Article 29 para. 6, and exercising the power pursuant to para. 12 would partially or fully compensate for the negative impact of the material impediment on resolvability;
2. the resolution authority considers that the feasibility and credibility of the resolution entity's preferred resolution strategy is limited, taking into account the entity's size, its

interconnectedness, the nature, scope, risk and complexity of its activities, its legal form, and its shareholding structure; or

3. the requirement pursuant to Article 70b BWG takes into account that the resolution entity that is a G-SII or is subject to Article 102 paras. 11 and 12 or Article 102 paras. 13 and 14, is among the 20 % of the institutions with the highest risk, for which the resolution authority sets the requirement pursuant to Article 100 para. 1.

(14) For the purposes of the percentages pursuant to para. 13, the resolution authority rounds up the calculated result to the next higher integer.

(15) The resolution authority must take the decisions pursuant to paras. 9 or 12 after consulting the FMA. When making these decisions, the resolution authority must also take into account:

1. the depth of the market for the resolution entity's own funds instruments and subordinated eligible instruments, the pricing of such instruments, where they exist, and the time needed to execute any transactions necessary for the purpose of complying with the decision;
2. the amount of eligible liabilities instruments that meet all of the conditions referred to in Article 72a of Regulation (EU) No 575/2013 that have a residual maturity below one year as of the date of the decision, with a view to making quantitative adjustments to the requirements referred to in paras. 9, 10 and 12;
3. the availability and the amount of instruments that meet all of the conditions referred to in Article 72a of Regulation (EU) No 575/2013 with the exception of the conditions referred to in point (d) of Article 72b(2) of Regulation (EU) No 575/2013;
4. whether the amount of liabilities that are excluded from the application of write-down and conversion powers pursuant to Article 86 paras. 2 to 4 and that, in normal insolvency proceedings, rank equally with or below the highest ranking eligible liabilities is significant in comparison to the own funds and eligible liabilities of the resolution entity. Where the amount of excluded liabilities does not exceed 5 % of the amount of the own funds and eligible liabilities of the resolution entity, the excluded amount shall be considered as insignificant. Above that threshold, the resolution authority shall assess the significance of the excluded liabilities;
5. the resolution entity's business model, funding model, and risk profile, as well as its stability and ability to contribute to the economy; and
6. the impact of possible restructuring costs on the resolution entity's recapitalisation.

Determination of the minimum requirement for own funds and eligible liabilities

Article 102. (1) The requirement stated in Article 100 para. 1 shall be determined by the resolution authority after consulting the FMA based on the following criteria:

1. the need to ensure that the resolution group can be resolved by the application of the resolution tools to the resolution entity – including, where appropriate, the bail-in tool – in a way that meets the resolution objectives;

2. the need to ensure, if necessary, that the resolution entity and its subsidiaries, which are institutions or entities pursuant to Article 1 para. 1 nos. 2 to 4, but that are not resolution entities, have sufficient own funds and eligible liabilities in order to be able to absorb losses in the event that they are used by the bail-in tool or write-down and conversion powers and that it is possible to return to a total capital ratio and as applicable leverage ratio of the entities concerned to a level necessary to ensure that they continue to satisfy authorisation criteria and are able to carry out the activities for which they have been licensed pursuant to the BWG or WAG 2018;
3. the need to ensure, in the case that the resolution plan anticipates the possibility for certain classes of eligible liabilities to be excluded from bail-in pursuant to Article 86 para. 4 or to be transferred in full to a recipient under a partial transfer, that the resolution entity has sufficient own funds and other eligible liabilities to absorb losses and to restore its total capital ratio and, as applicable, its leverage ratio, to the level necessary to ensure that they continue to satisfy authorisation criteria and are able to carry out the activities for which they have been licensed pursuant to the BWG or WAG 2018;
4. the size, the business model, the funding model and the risk profile of the entity;
5. the extent to which the failure of the entity would have an adverse effect on financial market stability, including through contagion to other institutions or entities, due to the interconnectedness of the entity with those other institutions or entities or with the rest of the financial system.

(2) Where the resolution plan provides that resolution action is to be taken or that the power to write down and convert relevant capital instruments and eligible liabilities in accordance with Articles 70 and 71 is to be exercised in accordance with the relevant scenario pursuant to Article 20 para. 3, then the requirement referred to in Article 100 para. 1 shall equal an amount sufficient to ensure that:

1. the losses that are expected to be incurred by the entity are fully absorbed (‘loss absorption’);
2. the resolution entity and its subsidiaries that are institutions or entities pursuant to Article 1 para. 1 nos. 2 to 4 but are not resolution entities are recapitalised to a level necessary to enable that they continue to satisfy authorisation criteria and are able to carry out the activities for which they have been licensed pursuant to the BWG or WAG 2018 or an equivalent legislative act for an appropriate period not longer than one year (‘recapitalisation’).

(3) *(repealed by amendment in Federal Law Gazette I 34/2025)*

(3a) The resolution authority shall not determine the requirement referred to in Article 100 para. 1 for liquidation entities.

(3b) By way of derogation from para. 3a, the resolution authority may determine the requirement under Article 100 para. 1 for a liquidation entity on an individual basis in an amount that exceeds the loss absorption amount pursuant to Article 100 para. 1. The determined requirement shall take into account any possible impact on financial stability and on the risk of contagion to the financial system, including the financing capacity of deposit guarantee schemes. In such cases the liquidation unit shall observe the requirement referred to in Article 100 para. 1 by way of

1. own funds,
2. eligible liabilities that meet the eligibility criteria listed in Article 72a of Regulation (EU) No 575/2013, although eligible liabilities pursuant to Article 72b (2) points b and d of the said Regulation are excluded, or
3. liabilities pursuant to Article 101 para 3.

(3c) Article 77 (2) and Article 78a of Regulation (EU) No 575/2013 shall not apply for liquidation entities, for which the resolution authority has not determined the requirement referred in Article 100 para. 1.

(3d) Holdings in own funds and eligible liabilities instruments issued by subsidiary institutions which are liquidation entities for which the resolution authority has not determined the requirement referred to in Article 100 para. 1 shall not be deducted under Article 72e(5) of Regulation (EU) No 575/2013.

(3e) By way of derogation from para. 3d an entity pursuant to Article 1 para. 1, that itself is not a resolution entity, but

1. is a subsidiary of a resolution entity, or
2. is a subsidiary of a third-country undertaking, that would be a resolution entity were it established in the European Union,

shall deduct its holdings of own funds instruments in subsidiary institutions that belong to the same resolution group and that are liquidation entities for which the resolution authority has not determined the requirement referred to in Article 100 para. 1 where the aggregate amount of those holdings is equal to or exceeds 7 % of the total amount of its own funds and liabilities that comply with the eligibility criteria set out in Article 105 para. 8, calculated annually as of 31 December as an average over the previous 12 months.

(4) The amount referred to in para. 2 for resolution entities corresponds to:

1. for the purpose of calculating the requirement pursuant to Article 100 para. 1 in accordance with Article 100 para. 2 no. 1, the sum of
   a. the amount of the losses to be absorbed in resolution that corresponds to the requirements referred to in point (c) of Article 92(1) of Regulation (EU) No 575/2013 and Article 70b BWG of the resolution entity at the consolidated resolution group level; and
   b. a recapitalisation amount that allows the resolution group resulting from resolution to restore compliance with its total capital ratio requirement referred to in point (c) of Article 92(1) of Regulation (EU) No 575/2013 and its requirement pursuant to Article 70b BWG at the consolidated resolution group level after the implementation of the preferred resolution strategy; and
2. for the purpose of calculating the requirement pursuant to Article 100 para. 1 (1) in accordance with Article 100 para. 2 no. 2, the sum of
   a. the amount of the losses to be absorbed in resolution that corresponds to the resolution entity's leverage ratio requirement referred to in point (d) of Article 92(1) of Regulation (EU) No 575/2013 at the consolidated resolution group level; and

b. a recapitalisation amount that allows the resolution group resulting from resolution to restore compliance with the leverage ratio requirement referred to in point (d) of Article 92(1) of Regulation (EU) No 575/2013 at the consolidated resolution group level after the implementation of the preferred resolution strategy.

(5) For the purposes of Article 100 para. 2 no. 1, the requirement referred to in Article 100 para. 1 shall be expressed in percentage terms as the amount calculated in accordance with para. 4 no. 1, divided by the total risk exposure amount. For the purposes of Article 100 para. 2 no. 2, the requirement referred to in Article 100 para. 1 shall be expressed in percentage terms as the amount calculated in accordance with para. 4 no. 2, divided by the leverage ratio exposure.

(6) When determining the individual requirement pursuant to para. 4 no. 2, the resolution authority must take into account the requirements pursuant Article 74 para. 7 as well as pursuant to Article 87 paras. 2 and 5

(7) When determining the recapitalisation amount, the resolution authority shall:

1. use the most recently reported values for the relevant total risk exposure amount or total exposure measures for the leverage ratio, adjusted for any changes resulting from resolution actions set out in the resolution plan; and
2. after consulting the FMA, it adjusts the amount corresponding to the applicable requirement under Article 70b BWG downwards or upwards in order to determine the requirement to be applied after the implementation of the preferred resolution strategy for the resolution entity.

(8) The resolution authority shall be able to increase the requirement pursuant to para. 4 no. 1 lit. b by an appropriate amount necessary to ensure that, following resolution, the entity is able to sustain sufficient market confidence for an appropriate period, which shall not exceed one year.

(9) If para. 8 is applied, the amount pursuant to para. 8 is equated with the amount specified of the combined buffer requirement applicable after application of the resolution tools less the amount specified in Article 23a BWG.

(10) The resolution authority shall adjust the amount pursuant to para. 8 downwards if the resolution authority – after consulting the FMA – determines that it is feasible and credible for a lower amount to be sufficient to maintain market confidence and to ensure both the continued provision of critical economic functions of the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 and its access to funding without recourse to extraordinary public financial support exceeding contributions from resolution financing arrangements pursuant to Article 87 paras. 2 and 5 as well as Article 124 para. 3. The resolution authority shall adjust the amount pursuant to para. 8 upwards if the resolution authority – after consulting the FMA – determines that a higher amount is necessary to maintain sufficient market confidence for an appropriate period of no more than one year and to ensure both the continuation of critical economic functions of the institution or entity pursuant to Article 1 para. 1 nos. 2 to 4 and its access to funding without the need for extraordinary public financial support beyond the contributions from the resolution financing arrangements pursuant to Article 87 paras. 2 and 5 as well as Article 124 para. 3.

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

1. 13.5 %, where calculated in accordance with Article 100 para. 2 no. 1; and
2. 5 %, where calculated in accordance with Article 100 para. 2 no. 2.

(12) By way of derogation from Article 101, resolution entities pursuant to para. 11 shall meet the amount of the requirement stated in para. 11 of 13.5 %, where calculated in accordance with Article 100 para. 2 no. 1, or of 5 %, where calculated in accordance with Article 100 para. 2 no. 2, with own funds, subordinated eligible instruments or liabilities pursuant to Article 101 para. 5.

(13) The resolution authority may, after consulting the FMA, decide to apply the requirements pursuant to paras. 11 and 12 to a resolution entity which is not subject to Article 92a of Regulation (EU) No 575/2013 and which is part of a resolution group, the total assets of which are lower than EUR 100 billion, and for which the resolution authority has arrived at the conclusion that they are reasonably likely to pose a systemic risk in the event of their failure.

(14) When taking a decision pursuant to para. 13, the resolution authority shall take the following criteria into account:

1. the prevalence of deposits and the absence of debt instruments in the funding model;
2. the extent to which access is limited to the capital markets for eligible liabilities;
3. the extent to which the resolution entity relies on Common Equity Tier 1 capital to meet the requirement referred to in Article 104.
4. if there is no decision pursuant to para. 13, any decisions pursuant to Article 101 paras. 9 and 10 must remain unaffected.

(15) For entities that are not themselves resolution entities, the amount referred to in para. 2 shall be as follows:

1. for the purpose of calculating the requirement pursuant to Article 100 para. 1 in accordance with Article 100 para. 2 no. 1, the sum of
   a. the losses to be absorbed, that correspond to the requirements for the entity in accordance with point c of Article 92 of Regulation (EU) No 575/2013 and Article 70b BWG; and
   b. a recapitalisation amount that allows the entity to restore compliance with its total capital ratio requirement referred in point c of Article 92(1) of Regulation (EU) No 575/2013 and the requirement pursuant to Article 70b BWG after the exercise of the power to write down or convert relevant capital instruments and eligible liabilities in accordance with Articles 70 et seq. or after the resolution of the resolution group; and
2. for the purpose of calculating the requirement pursuant to Article 100 para. 1 (1) in accordance with Article 100 para. 2 no. 2, the sum of
   a. the amount of the losses to be absorbed that corresponds to the entity's leverage ratio requirement referred to in point d of Article 92(1) of Regulation (EU) No 575/2013; and

b. a recapitalisation amount that allows the entity to restore compliance with its leverage ratio requirement referred to in point d of Article 92(1) of Regulation (EU) No 575/2013 after the exercise of the power to write down or convert relevant capital instruments and eligible liabilities in accordance with Articles 70 et seq. or after the resolution of the resolution group.

(16) For the purposes of Article 100 para. 2 no. 1, the requirement referred to in Article 100 para. 1 shall be expressed in percentage terms as the amount calculated in accordance with para. 15 no. 1, divided by the total risk exposure amount. For the purposes of Article 100 para. 2 no. 2, the requirement referred to in Article 100 para. 1 shall be expressed in percentage terms as the amount calculated in accordance with para. 15 no. 2, divided by the leverage ratio exposure.

(17) When determining the individual requirement pursuant to para. 15 no. 2, the resolution authority must take into account the requirements pursuant Article 74 para. 7 as well as pursuant to Article 87 paras. 2 and 5.

(18) When determining the recapitalisation amount, the resolution authority shall:

1. use the most recently reported values for the relevant total risk exposure amount or total exposure measure, adjusted for any changes resulting from resolution actions set out in the resolution plan; and
2. after consulting the FMA, adjust the amount corresponding to the applicable requirement pursuant to Article 70b BWG either upwards or downwards, to determine the requirement to be applied after the exercise of the power to write down or convert relevant capital instruments and eligible liabilities in accordance with Articles 70 et seq. or after the resolution of the resolution group for the relevant entity.

(19) The resolution authority may increase the requirement pursuant to para. 15 no. 1 lit. b by an appropriate amount necessary to ensure that, following the exercise of the power to write down or convert relevant capital instruments and eligible liabilities in accordance with Articles 70 and 71, the entity is able to sustain sufficient market confidence for an appropriate period which shall not exceed one year.

(20) If para. 19 is applied, the amount pursuant to para. 19 shall be equated, after exercising the power under Articles 70 and 71 or after the resolution of the resolution group, less the amount specified in Article 23a BWG.

(21) The resolution authority shall adjust the amount pursuant to para. 19 downwards if the resolution authority – after consulting the FMA – determines that it is feasible and credible for a lower amount to be sufficient to maintain market confidence and to ensure both the continued provision of critical economic functions of the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 and its access to funding without recourse to extraordinary public financial support exceeding contributions from resolution financing arrangements pursuant to Article 87 paras. 2 and 5 as well as Article 124 para. 3, after the exercise of the power pursuant to Articles 70 et seq. or after the resolution of the resolution group has taken place. The resolution authority shall adjust the amount pursuant to para. 19 upwards if the resolution authority – after consulting the FMA –

determines that a higher amount is necessary to maintain sufficient market confidence for an appropriate period of no more than one year and to ensure both the continuation of critical economic functions of the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 and its access to funding without the need for extraordinary public financial support beyond the contributions from the resolution financing arrangements pursuant to Article 87 paras. 2 and 5 as well as Article 124 para. 3.

(22) Where the resolution authority expects that certain classes of eligible liabilities are reasonably likely to be fully or partially excluded from bail-in pursuant to Article 86 para. 4 or might be transferred in full to a recipient under a partial transfer, the requirement referred to in Article 100 para. 1 shall be met using own funds or other eligible liabilities that are sufficient to:

1. cover the amount of excluded liabilities identified pursuant to Article 86 para. 4;
2. ensure that the conditions referred to in para. 2 are fulfilled.

(23) The resolution authority's decision to impose a minimum amount of own funds and eligible liabilities under this Article shall contain the reasons for that decision, including a full assessment of the elements referred to in paras. 2 to 22, and shall be reviewed by the resolution authority without undue delay to reflect any changes in the level of the requirement pursuant to Article 70b BWG.

(24) For the purposes of paras. 4 to 10 and 15 to 21, capital requirements shall be interpreted in accordance with the competent authority's application of the transitional provisions laid down in Chapters 1, 2 and 4 of Title I of Part Ten of Regulation (EU) No 575/2013 and in the provisions of national legislation exercising the options granted to the competent authorities under Regulation (EU) No 575/2013.

Minimum requirement for own funds and eligible liabilities for resolution entities of global systemically important institutions and significant EU subsidiaries of third-country global systemically important institutions

Article 103. (1) Resolution entities that are a G-SII or a subsidiary of a G-SII shall hold a minimum amount of own funds and eligible liabilities consisting of the following components:

1. the requirements referred to in Articles 92a and 494 of Regulation (EU) No 575/2013; and
2. any additional requirement for own funds and eligible liabilities set by the resolution authority in relation to that entity in accordance with para. 3.

(2) A significant EU subsidiary of a G-SII from a third country must hold a minimum amount of own funds and eligible liabilities consisting of the following components:

1. the requirements referred to in Articles 92b and 494 of Regulation (EU) No 575/2013; and
2. any additional requirement for own funds and eligible liabilities set by the resolution authority in relation to that significant subsidiary pursuant to para. 3 and to be met with own funds and liabilities that comply with the conditions set out in Articles 105 and 137 para. 4.

(3) If the resolution authority is the resolution authority responsible for a resolution entity which is a G-SII, part of a G-SII or a significant EU subsidiary of a G-SII from a third country, it shall determine an additional requirement for own funds and eligible liabilities pursuant to para. 1 no. 1 and para. 2

no. 2 if the requirement set out in para. 1 no. 1 or para. 2 no. 1 is not sufficient to meet the conditions set out in Article 102, to ensure that the conditions set out in Article 102 are met.

(4) If more than one subsidiary of the same G-SII are resolution entities or third country entities, that would be resolution entities were they established in the European Union, and if the resolution authority is the competent resolution authority for those subsidiaries, the resolution authority shall determine the additional requirement for own funds and eligible liabilities pursuant to paras. 1 lit. b and paras. 2 lit. b for the purposes of Article 105b para. 4

1. for every resolution entity or third-country entity, that would be a resolution entity were it established in the European Union,
2. for the EU parent undertaking under the assumption that it is the only resolution entity of the G-SII.

(5) In its decision, the resolution authority must determine the decision requiring an additional requirement for own funds and eligible liabilities pursuant to para. 1 lit. b and para. 2 lit. b , taking into account the conditions set out in para. 3.

(6) The FMA must notify the resolution authority without delay of any change in the additional own funds requirement pursuant to Article 70b BWG. The resolution authority must then review the appropriateness of the level of the additional requirement for own funds and eligible liabilities pursuant to para. 1 no. 2 and para. 2 no. 2 and, as applicable to issue a new decision taking into account the conditions set out in para. 3.

Minimum requirement for own funds and eligible liabilities resolution entities individual institution basis

Article 104. (1) Resolution entities shall comply with the requirements set out in Articles 101 to 103 on a consolidated basis at the level of the resolution group.

(2) If the resolution authority is the resolution authority responsible for a resolution entity, it must set the minimum amount of own funds and eligible liabilities on a consolidated basis at the level of the resolution group pursuant to Article 105b and on the basis of the requirements in accordance with Articles 101 to 103. In doing so, it must take into account whether the resolution of third country subsidiaries in the group should be performed separately in accordance with the resolution plan.

(3) If the resolution authority is the resolution authority responsible for a resolution group that is an affiliation of credit associations pursuant to Article 30a BWG, it shall determine which entities of this resolution group must observe Article 102 paras. 4 to 12 and Article 103 para. 1 to which amount and manner, and its preferred resolution strategy, to ensure that the resolution group as a whole meets the requirements set out in paras. 1 and 2.

Minimum requirement for own funds and eligible liabilities in respect of entities that are not resolution entities

Article 105. (1) Institutions that are subsidiaries of a resolution entity or of a third-country undertaking, but are not themselves resolution entities, shall comply with the requirements laid down in Article 102 on an individual basis.

(2) After consulting the FMA, the resolution authority may impose a minimum amount of own funds and eligible liabilities on an entity pursuant to Article 1 para. 1 nos. 2, 3 or 4, which is a subsidiary of a resolution entity, but which is not itself a resolution entity.

(3) By way of derogation from para. 1, EU parent undertakings that are not themselves resolution entities, but which are subsidiaries of third-country undertakings must comply with the requirements set out in Articles 102 and 103 on a consolidated basis.

(3a) By way of derogation from paras. 1 and 2 the resolution authority may decide to determine the requirement referred to in Article 102 or the subsidiaries referred to in paras. 1 and 2 on a consolidated basis, where the resolution authority concludes that all of the following conditions are met:

1. the subsidiary meets one of the following conditions:
   a. the subsidiary is held directly by the resolution entity, where
      aa) the resolution entity is an EU parent financial holding company or an EU parent mixed financial holding company;
      bb) the subsidiary and the resolution entity are established in the same Member State and are part of the same resolution group;
      cc) the resolution entity itself does not have a direct holding in any subsidiary institution or any subsidiary entity pursuant to Article 1 para. 1, that itself is subject to the requirements pursuant to Article 102;
      dd) in the resolution authority's estimation the subsidiary would be disproportionately affected by the deductions required pursuant to Article 72e (5) of Regulation (EU) No 575/2013;
   b. the subsidiary is only subject to the requirement pursuant to Article 70b BWG on a consolidated basis, and the determination of the requirement pursuant to Article 102 on a consolidated basis does not lead to the overstating of the recapitalisation needs of the subgroup consisting of entities within the consolidation perimeter for the purposes of Article 102 para. 1 no. 2, in particular where there is a prevalence of liquidation entities within the same consolidation perimeter; or
2. compliance with the requirement pursuant to Article 102 on a consolidated basis as a substitute for compliance with these requirements on an individual basis does not materially impair any of the following:
   a. the credibility and feasibility of the group resolution strategy;
   b. the capacity of the subsidiary to comply with its own funds requirement after having exercised write-down and conversion powers;
   c. the adequacy of the internal loss transfer and recapitalisation mechanisms, including the write-down or conversion (Articles 70 to 73) of relevant capital instruments and eligible liabilities of the subsidiary concerned or of other entities in the resolution group.

(4) Resolution groups that were determined pursuant to Article 2 no. 82b lit. b, credit institutions that are permanently affiliated to a central body, but that themselves are not resolution units, a

central body that is not a resolution entity, and all resolution entities that are not subject to the requirements of Article 104 para. 3 must comply with Article 102 paras. 15 to 21 on an individual basis.

(5) For an entity pursuant to paras. 1 to 4, the minimum amount of own funds and eligible liabilities shall be determined in accordance with Articles 105b and 137, depending on their applicability, and in accordance with the requirements set out in Article 102.

(5a) Where an entity referred to in paras. 1 and 2 complies with the requirement referred to in Article 100 para. 1 on a consolidated basis, then the amount of own funds and eligible liabilities of that entity shall include the following liabilities issued in accordance with para. 8 no. 1 by a subsidiary established in the European Union included in the consolidation of that entity:

1. liabilities issued to and bought by the resolution entity, either directly, or indirectly through other entities in the same resolution group that are not included in the consolidation of the entity complying with the requirement referred to in Article 100 para. 1 on a consolidated basis;
2. liabilities issued to an existing shareholder that is not part of the same resolution group.

(5b) The liabilities referred to in para. 5a nos. 1 and 2 shall not exceed the amount determined by subtracting the sum of nos. 1 and 2 from the amount of the requirement referred to in Article 100 para. 1 applicable to the subsidiary included in the consolidation:

1. the liabilities issued to and bought by the entity complying with the requirement referred to in Article 100 para. 1 on a consolidated basis, either directly, or indirectly through other entities in the same resolution group that are included in the consolidation of that entity;
2. the amount of own funds that are issued pursuant to para. 8 no. 2.

(6) If the resolution authority is the competent authority for a subsidiary other than a resolution entity, it may exempt it from the application of this Article if:

1. both the subsidiary and the resolution entity are established in Austria and are part of the same resolution group;
2. the resolution entity holds the minimum amount of own funds and eligible liabilities pursuant to Article 104;
3. no current or foreseen material practical or legal impediment exists or is expected for the prompt transfer of own funds or repayment of liabilities by the resolution entity to the subsidiary in respect of which a determination has been made in accordance with Article 70 para. 1 or Article 71 para. 1, in particular where resolution action is taken in respect of the resolution entity;
4. the resolution unit, with the approval of the FMA, has declared that it:
    a. meets the requirements of the FMA regarding the prudent management of the subsidiary, and
    b. guarantees the commitments entered into by its subsidiary, or the risks caused by the subsidiary are insignificant;

5. the risk evaluation, measurement and control procedures of the resolution entity also extend to cover the subsidiary, and
6. the resolution entity holds more than 50 % of the voting rights attached to shares in the capital of the subsidiary or is authorised to appoint or remove a majority of the members of the management body of the subsidiary.

(7) The resolution authority may exempt a subsidiary that is not a resolution entity from the application of this Article if:

1. both the subsidiary and its parent undertaking are established in Austria and are part of the same resolution group;
2. its parent undertaking holds the minimum amount of own funds and eligible liabilities on a consolidated basis;
3. no current or foreseen material practical or legal impediment exists or is expected for the prompt transfer of own funds or repayment of liabilities by the parent undertaking to the subsidiary in respect of which a determination has been made in accordance with Article 70 para. 1 or Article 71 para. 1, in particular where resolution action is taken in respect of the parent undertaking or powers are exercised pursuant to Article 70 paras. 1a to 1c;
4. the parent undertaking, with the approval of the FMA, has declared that it:
   a. meets the requirements of the FMA regarding the prudent management of the subsidiary, and
   b. guarantees the commitments entered into by its subsidiary, or the risks caused by the subsidiary are insignificant;
5. the risk evaluation, measurement and control procedures of the parent undertaking also cover the subsidiary, and
6. the parent undertaking holds more than 50 % of the voting rights attached to shares in the capital of the subsidiary or has the right to appoint or remove a majority of the members of the management body of the subsidiary.

(8) The minimum amount of own funds and eligible liabilities of the entities covered by this Article shall be composed of one or more of the following elements:

1. liabilities:
   a. that are issued to and bought by the resolution entity, either directly or indirectly through other entities in the same resolution group that bought the liabilities from the entity that is subject to this Article, or are issued to and bought by an existing shareholder that is not part of the same resolution group as long as the exercise of write-down or conversion powers in accordance with Articles 70 to 73 does not affect the control of the subsidiary by the resolution entity;
   b. that fulfil the eligibility criteria referred to in Article 72a of Regulation (EU) No 575/2013, except for points (b), (c), (k), (l) and (m) of Article 72b(2) and Article 72b(3) to (5) of that Regulation;

c. that rank, in normal insolvency proceedings, below liabilities that do not meet the condition referred to in lit. a and that are not eligible for own funds requirements;

d. that are subject to write-down or conversion powers pursuant to Articles 70 to 73 in a manner that is consistent with the resolution strategy of the resolution group, in particular by not affecting the control of the subsidiary by the resolution entity;

e. the acquisition is not funded directly or indirectly by the entity that is subject to this Article;

f. the provisions governing which do not indicate explicitly or implicitly that the liabilities would be called, redeemed, repaid or repurchased early, as applicable, by the entity that is subject to this Article, other than in the case of the insolvency or liquidation of that entity, and that entity does not otherwise provide such an indication;

g. the provisions governing which do not give the holder the right to accelerate the future scheduled payment of interest or principal, other than in the case of the insolvency or liquidation of the entity that is subject to this Article;

h. the level of interest or dividend payments, as applicable, due thereon is not amended on the basis of the credit standing of the entity that is subject to this Article or its parent undertaking;

2. The following own funds:

   a. Common Equity Tier 1 capital, and

   b. other own funds that are issued to and bought by entities that are included in the same resolution group, or are issued to and bought by entities that are not included in the same resolution group as long as the exercise of write down or conversion powers pursuant to Articles 70 to 73 does not affect the control of the subsidiary by the resolution entity.

(9) Where the conditions laid down in para. 6 nos. 1 and 2 are met, the resolution authority of a subsidiary may permit the minimum amount of own funds and eligible liabilities to be met in full or in part with a guarantee provided by the resolution entity, which fulfils the following conditions:

1. the guarantee is provided for at least an amount that is equivalent to the amount of the requirement for which it substitutes;
2. the guarantee is triggered when the subsidiary is unable to service its debts or other liabilities as they fall due, or a determination has been made in accordance with Article 70 para. 1 or Article 71 para. 1 in respect of the subsidiary, whichever is the earliest;
3. the guarantee is secured for at least 50 % of its amount by means of a financial collateral arrangement as defined in point (a) of Article 2(1) of Directive 2002/47/EC;
4. the collateral backing the guarantee fulfils the requirements of Article 197 of Regulation (EU) No 575/2013, which, following appropriately conservative haircuts, is sufficient to cover the amount collateralised as referred to in no. 3;
5. the collateral backing the guarantee is unencumbered and, in particular, is not used as collateral for other guarantees;

6. the collateral has an effective maturity that fulfils the same maturity condition as that referred to in Article 72c(1) of Regulation (EU) No 575/2013; and
7. there are no legal, regulatory or operational barriers to the transfer of the collateral from the resolution entity to the relevant subsidiary, including where resolution action is taken in respect of the resolution entity

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

Exceptions for affiliations of credit institutions

Article 105a. If the resolution authority is the resolution authority responsible for an affiliation of credit institutions pursuant to Article 30a BWG, it may partially or entirely exempt the central body or a credit institution permanently affiliated to a central body from the application of Article 105 if all of the following conditions are met:

1. they are credit institutions and a central body which are part of an affiliation of credit institutions pursuant to Article 30a BWG and part of the same resolution group pursuant to Article 2 no. 82b lit. b;
2. the commitments of the central body and its permanently affiliated credit institutions are joint and several liabilities, or the commitments of its permanently affiliated credit institutions are entirely guaranteed by the central body;
3. the minimum amount of own funds and eligible liabilities and the solvency and liquidity of the central body and of all of the permanently affiliated credit institutions, are monitored as a whole on the basis of the consolidated accounts of those institutions;
4. in the event of a waiver for a credit institution permanently affiliated to a central body, the management of the central body is authorised to issue instructions to the management of the permanently affiliated institutions;
5. the resolution group concerned meets requirement pursuant to Article 104 para. 3 and
6. there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities between the central body and the permanently affiliated credit institutions in the event of resolution.

Procedure for determining the minimum requirement for own funds and eligible liabilities

Article 105b. (1) If the resolution authority is the group-level resolution authority or the resolution authority responsible for the resolution entity, or the competent resolution authority for a subsidiary of a resolution group that is subject to the requirement pursuant to Article 105 on an individual basis, then it shall endeavour to reach a joint decision with the other competent resolution authorities within four months with regard to:

1. the amount of the requirement imposed on each resolution entity on a consolidated basis at the level of the resolution group pursuant to Article 104 para. 1 and

2. the amount of the requirement imposed on each entity in a resolution group that is not a resolution entity on an individual basis pursuant to Article 105 para. 1.

The joint decision must be in line with Articles 104 and 105.

(2) The resolution authority shall submit the joint decision referred to in para. 1:

1. to the resolution entity, as the resolution authority responsible for the resolution entity;
2. to the entity as the resolution authority responsible for an entity of a resolution group that is not a resolution entity;
3. to the EU parent undertaking as the resolution authority responsible for the resolution entity, in the event that this EU parent undertaking itself is not a resolution entity of the same resolution group.

(3) It may be stipulated in the joint decision pursuant to para. 1 that the requirements pursuant to Article 102 paras. 15 to 21 are partially met by the subsidiary concerned in line with Article 105 para. 8 with instruments that are issued to and acquired by entities that are not members of the resolution group, provided that this is in line with the resolution strategy and the resolution entity has not acquired, directly or indirectly, sufficient instruments that satisfy the requirements set out in Article 105 para. 8.

(4) Where more than one G-SII entity that are part of the same G-SII are resolution entities or third-country entities that would be resolution entities if they were established in the European Union, then

1. the resolution authority, as the resolution authority responsible for the G-SII, and the resolution authorities referred to in para. 1, where appropriate and compatible with the resolution strategy of the G-SII; or
2. the resolution authority, as the resolution authority responsible for a subsidiary of a G-SII, and the resolution authorities referred to in para. 1, and the responsible resolution authority of the G-SII

to discuss and agree on the application of Article 72e of Regulation (EU) No 575/2013 and any adjustment to the widest possible reduction or elimination of the difference between the sum of the amounts referred to in Article 103 para. 4 no. 1 and in Article 12a point (a) of Regulation (EU) No 575/2013 for individual resolution entities or third-country entities and the sum of the amounts referred to in Article 103 para. 4 no. 2 of this Federal Act and in Article 12a point (b) of Regulation (EU) No 575/2013 for the EU parent undertaking. The adjustment may take account of differences in the calculation of total risk exposure amounts in the Member States or third countries concerned by adjusting the level of the requirement pursuant to Article 103. However, it must not be used to compensate for differences arising from exposures between resolution groups. The sum of the amounts specified for individual resolution entities in Article 103 para. 4 no. 1 of this Federal Act and in Article 12a point b of Regulation (EU) 575/2013 shall not be allowed to be lower than the sum of the amounts set out in Article 103 para. 4 no. 2 of this Federal Act and in Article 12a point (b) of Regulation (EU) 575/2013 for the EU parent undertaking.

(5) If the resolution authority is the resolution authority responsible for the resolution entity and there is no joint decision within four months on the consolidated requirement for the resolution group pursuant to Article 104, then the resolution authority has to decide on its own, subject to the provisions pursuant to para. 6. In doing so, it must take into account the following points:

1. the assessment by the other competent resolution authorities of the entities in the resolution group that are not a resolution entity;
2. the opinion of the competent authority responsible for group resolution.

(6) If, within four months, any of the resolution authorities concerned has referred the matter referred to in para. 5 to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the resolution authority, as the resolution authority responsible for the resolution entity, shall defer its decision pursuant to para. 5 until EBA has reached a decision in accordance with Article 19(3) of Regulation (EU) No 1093/2010. As soon as EBA has taken a decision, the resolution authority that is competent as the group-level resolution authority for the resolution entity shall make its decision pursuant to para. 5 in accordance with EBA's decision. The four-month period shall be considered as a conciliation phase as defined in Regulation (EU) No 1093/2010. Once the four months have expired, or after a joint decision has been reached pursuant to para. 1, EBA may no longer be consulted pursuant to Article 19 of Regulation (EU) No 1093/2010. In the absence of an EBA decision within one month of the referral of the matter, the decision of the resolution authority that is the resolution authority responsible for the resolution entity shall apply.

(7) If the resolution authority is the resolution authority responsible for an entity of a resolution group

1. it may, as defined in para. 6 address the matter referred to in para. 5 to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010;
2. it shall make its assessment pursuant to para. 5 no. 1 available to the resolution authority responsible for the resolution entity.

(8) If the resolution authority is the group-level resolution authority

1. it may, within four months, as defined in para. 6 address the matter referred to in para. 5 to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010;
2. it shall make its opinion pursuant to para. 5 no. 2 available to the resolution authority responsible for the resolution entity.

(9) If the resolution authority is the resolution authority responsible for an entity of a resolution group and there is no joint decision within four months regarding the applicable requirement on an individual basis pursuant to Article 105 then the resolution authority, subject to the provisions set out in para.10, shall decide on its own, and in so doing shall take into account the views and reservations expressed in writing by the resolution authority responsible for the resolution entity and the group-level resolution authority.

(10) If, within four months, the resolution authority responsible for the resolution entity or the group-level resolution authority has referred the matter referred to in para. 9 to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the resolution authority, as the resolution authority

responsible for the resolution entity, shall defer its decision pursuant to para. 9 until EBA has reached a decision in accordance with Article 19(3) of Regulation (EU) No 1093/2010. As soon as EBA has taken a decision, the resolution authority that is competent as the resolution authority responsible for the subsidiary shall make its decision pursuant to para. 9 in accordance with EBA's decision. The four-month period shall be considered as a conciliation phase as defined in Regulation (EU) No 1093/2010. Once the four months have expired, or after a joint decision has been reached pursuant to para. 1, EBA may no longer be consulted pursuant to Article 19 of Regulation (EU) No 1093/2010. In the absence of an EBA decision within one month of the referral of the matter, the decision of the resolution authority that is the resolution authority responsible for the subsidiary shall apply.

(11) If the resolution is the group-level resolution authority or the resolution authority responsible for the resolution entity, then it may not deal with EBA with binding intermediary activities in accordance with Article 19 of Regulation (EU) No 1093/2010 if the threshold set by the resolution authority responsible for the subsidiary is:

1. a maximum of 2 % of the total risk exposure amount pursuant to Article 92(3) of Regulation (EU) No 575/2013 with regard to the requirement set out in Article 104, and
2. in line with Article 102 paras. 15 to 21.

(12) Where the resolution authority is the resolution authority responsible for the resolution entity or the group-level resolution authority,

1. it may, within four months, as defined in para. 10 address the matter referred to in para. 9 to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010;
2. it shall make its views and reservations pursuant to para. 9 available in writing to the resolution authority responsible for the entity of a resolution group.

(13) If there is no joint decision within four months on the consolidated requirement of the resolution group and the requirement of the entities of the resolution group on an individual basis, the following shall apply:

1. the decision on the consolidated requirement for the resolution group shall be taken in accordance with paras. 5 and 6;
2. the decision on the requirement of the subsidiaries of the resolution group on an individual basis shall be taken in accordance with paras. 9 and 10;

(14) The resolution authority shall recognise the joint decisions and decisions taken in the absence of a joint decision in accordance with paras 5 to 13 as being final and apply them. Within its competence, the resolution authority shall regularly review the decisions referred to in paras. 1 to 13, and where applicable update them.

(15) The resolution authority shall review compliance of the requirement pursuant to Article 100 para. 1 in consultation with the other competent resolution authorities, and where applicable shall take any necessary decisions pursuant to paras. 1 to 14 in parallel with the drawing up and updating of the resolution plans.

Reporting and disclosure of the minimum requirement for own funds and eligible liabilities

Article 105c. (1) The entities pursuant to Article 1 para. 1that are subject to the minimum amount pursuant to Article 100 para. 1 must report the following details to the FMA, the resolution authority and the *Oesterreichische Nationalbank*, taking into account the requirements set out in para. 2:

1. the requirements to be applied pursuant to Articles 104 and 105, expressed in accordance with Article 100 para. 2 and the amounts of own funds that where applicable meet the conditions set out in Article 105 para. 8 no. 2 and the amounts of eligible liabilities, including stating the amounts as percentages in accordance with Article 100 para. 2, after all calculated deductions pursuant to Articles 72e to 72j of Regulation (EU) No 575/2013;
2. the amounts of the remaining bail-inable liabilities;
3. with regard to the items mentioned nos. 1 and 2, the following:
   a. their composition including their maturity profile,
   b. their ranking under normal insolvency proceedings,
   c. whether they are subject to the statutory provisions of a third country and, where applicable, which third country is concerned and whether they contain the contractual clauses pursuant to Article 98(1), Article 52(1) points p and q, and Article 63 points n and o of Regulation (EU) No 575/2013.

The obligation to notify amounts of the other bail-inable liabilities under no. 2 shall not apply to entities that, at the time of the notification of the information, hold an amount of own funds and eligible liabilities in the amount of at least 150 % of the requirement pursuant to Article 100 para. 1, calculate pursuant to no. 1.

(2) The entities listed in para. 1 shall report

1. the information pursuant to para. 1 no. 1 at least semi-annually, and
2. the information pursuant to para. 1 nos. 2 and 3 at least annually.

The FMA or the resolution authority may however require the entities referred to para. 1 to report the information pursuant to para. 1 more frequently.

(3) The entities pursuant to Article 1 para. 1 must disclose the following information at least annually:

1. the amounts of own funds that where applicable fulfil the conditions set out in Article 105 para. 8 no. 2, as well as the amount of eligible liabilities;
2. the composition of the items referred to in no. 1, including their maturity profile and their ranking in normal insolvency proceedings;
3. the requirements to be applied pursuant to Article 104 and Article 105, expressed in accordance with Article 100 para. 2.

Where the resolution authority has set a longer transitional period in accordance with Article 161 para. 7, then the disclosure requirements set out in this paragraph shall only apply once the transitional period has ended.

(4) Paras. 1 and 3 shall not apply to liquidation entities unless the liquidation authority has determined the requirement referred to in Article 100 para. 1 for such an entity pursuant to

Article 102 para. 3b. In that case the resolution authority shall determine the content and frequency of reporting and disclosure obligations for this entity. The resolution authority shall communicate these reporting and disclosure obligations to the liquidation entity concerned that shall not go beyond the extent necessary for monitoring compliance with the requirements determined in Article 102 para. 3b.

(5) Where resolution measures have been carried out or where the write-down and conversion power pursuant to Article 70 has been exercised, the disclosure requirements pursuant to para. 3 shall apply from the stated qualifying date pursuant to Article 161 para. 5 regarding compliance with the requirements pursuant to Articles 104 or 105.

(6) The resolution authority shall notify the EBA about the minimum requirement for own funds and eligible liabilities that it has determined for every entity that falls within its responsibility in accordance with Articles 104 and 105, as well as about the decision that it has reached for every entity pursuant to Article 105 para. 3a that falls within its responsibility.

(7) The *Oesterreichische Nationalbank* shall submit expert opinions about the notifications pursuant to para. 1 no. 1.

(8) Paras. 1 to 7 shall also apply to notifications pursuant to Article 12 (2) of Regulation (EU) No. 806/2014.

Breaches against the minimum requirement for own funds and eligible liabilities

Article 105d. (1) The resolution authority or the FMA, within the scope of their respective competence, shall investigate any breach of the minimum amount of own funds and eligible liabilities pursuant to Articles 104 and 105 on the basis of at least one of the following points:

1. powers to address and remove impediments to resolvability pursuant to Articles 29 to 31;
2. the powers pursuant to Article 28a;
3. the measures referred to in Article 70 para. 4a BWG;
4. early intervention measures pursuant to Article 44;
5. sanctioning measures pursuant to Articles 152 and 153.

Under Articles 49 and 52, the resolution authority or the FMA may also carry out an assessment of whether the institution or entity pursuant to Article 1 para. 1 nos. 2 to 4 is failing or likely to fail.

(2) The resolution authority and the FMA must consult each other on the exercise of their respective powers pursuant to para. 1.

Chapter 6: Safeguards

Treatment of shareholders and creditors in the case of partial transfers and application of the bail-in tool

Article 106. (1) Except in the case of the application of the bail-in tool pursuant to para. 2, in the event of only a partial transfer of rights, assets or liabilities of the institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4 by the resolution authority, the shareholders and those creditors, whose exposures have not been transferred, shall receive a payment of at least the

amount that they would have received, if the institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4 at the time when the decision was taken pursuant to Article 115, would have realised within a bankruptcy proceeding.
(2) In the case of the application of the bail-in tool by the resolution authority the shareholders and creditors, whose exposures were written down, or converted to equity, shall not sustain greater losses than they would have incurred, if the institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4 at the time when the decision referred to in Article 115 was taken, would have realised in within a bankruptcy proceeding.

Valuation of difference in treatment

Article 107. (1) To assess whether shareholders and creditors would have received better treatment if a bankruptcy proceeding had been initiated against the institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4, as well as for the purposes of Article 106 following the conducting of the resolution action or actions, a valuation shall be undertaken by an independent expert auditor without delay. The auditor shall be chosen and appointed by the resolution authority. This valuation shall be conducted separated from the valuation pursuant to Articles 54 to 57.
(2) The valuation pursuant to para. 1 shall contain:
1. how the shareholders and creditors, or the relevant deposit guarantee schemes would have been treated, if a bankruptcy proceeding had been initiated at the time that the decision pursuant to Article 115 was taken for the institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4, for which the resolution action or actions were carried out;
2. how shareholders and creditors were treated during the resolution of the institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4; and
3. whether differences exist between the respective treatments pursuant to no. 1 and 2.

(3) The evaluation of the different treatment shall be carried out under the assumption that:
1. a bankruptcy proceeding had been initiated at the time that the decision pursuant to Article 115 was taken for the institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4, for which the resolution action or actions were effected;
2. the resolution action or resolution actions had not been effected; and
3. extraordinary financial support from public funds had not occurred towards the institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4.

Safeguard for shareholders and creditors

Article 108. If the valuation pursuant to Article 107 concludes that larger losses have been incurred by a shareholder or creditor listed in Article 106 or the deposit guarantee facility pursuant to Article 132 than they would be sustained in the event of a divestment as part of a bankruptcy proceeding, then the affected shareholder or creditor of the affected deposit guarantee facility shall have the right to have the amount of the difference paid out from the resolution financing arrangement.

Safeguard for counterparties in partial transfers

Article 109. (1) The safeguarding measures listed in para. 2 shall be applied in the following cases:

1. the resolution authority transfers some but not all of the assets, rights or liabilities of an institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4 to another entity or, in the exercise of a resolution tool, from a bridge institution or wind-down unit to another person;
2. the resolution authority exercises the powers specified in Article 58 para. 3 no. 6.

(2) The following arrangements and the counterparties to the following arrangements shall be afforded appropriate protection:

1. security arrangements, under which a person has by way of security an actual or contingent interest in the assets or rights that are subject to transfer, irrespective of whether that interest is secured by specific assets or rights or by way of a floating charge or similar arrangement;
2. title transfer financial collateral arrangements under which collateral or coverage of the performance of specified obligations is provided by a transfer of full ownership of assets from the collateral provider to the collateral taker, on terms providing for the collateral taker to transfer assets if those specified obligations are performed;
3. set-off arrangements under which two or more claims or obligations owed between the institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4 and a counterparty can be set off against each other;
4. netting agreements;
5. covered bonds;
6. structured finance arrangements, including securitisations and instruments used for hedging purposes which form an integral part of the cover pool and which according to Austrian law are secured in a way similar to the covered bonds, which involve the granting and holding of security by a party to the arrangement or a trustee, agent or nominee.

(3) Para. 2 shall apply irrespective of the number of parties involved in the arrangements and of whether the arrangements:

1. are created by contract, trusts or other means, or arise automatically by operation of law;
2. arise under or are governed in whole or in part by the law of another Member State or of a third country.

(4) What type of safeguard is appropriate is defined in Articles 110 to 113. In addition the restrictions listed in Articles 63 to 66 shall be taken into account.

Protection for financial collateral, set off and netting agreements

Article 110. (1) For the purpose of ensuring the appropriate protection for title transfer financial collateral arrangements and set-off and netting arrangements, the following shall be avoided:

1. a transfer of some, but not all, of the rights and liabilities that are protected under a title transfer financial collateral arrangement, a set-off arrangement or a netting arrangement between the institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4 and another person, as well as
2. any alteration or termination of rights and liabilities that are protected under a title transfer financial collateral arrangement, set-off arrangements and netting arrangements occurring as a result of reverting to additional powers.

(2) Rights and liabilities are to be treated as protected in accordance with such an aforementioned arrangement, if the parties to the arrangement are entitled to set-off or net those rights and liabilities.

(3) Notwithstanding para. 1, where necessary in order to ensure availability of the eligible deposits, the resolution authority may:

1. transfer eligible deposits that are part of an arrangement pursuant to para. 1, without transferring other assets, rights or liabilities that are part of the same arrangement, and
2. transfer, modify or terminate those assets, rights or liabilities without transferring the eligible deposits.

Protection for security arrangements

Article 111. (1) For the purpose of appropriate protection for liabilities secured under a security arrangement, the following is to be avoided:

1. the transfer of assets against which the liability is secured unless that liability and benefit of the security are also transferred;
2. the transfer of a secured liability unless the benefit of the security are also transferred;
3. the transfer of the benefit of the security unless the secured liability is also transferred; or
4. the modification or termination of a security arrangement through the use of ancillary powers, if the effect of that modification or termination is that the liability ceases to be secured.

(2) Notwithstanding para. 1, where necessary in order to ensure availability of the eligible deposits, the resolution authority may:

1. transfer eligible deposits that are part of an arrangement pursuant to para. 1, without transferring other assets, rights or liabilities that are part of the same arrangement, and
2. transfer, modify or terminate those assets, rights or liabilities without transferring the eligible deposits.

Protection for structured finance arrangements and covered bonds

Article 112. (1) For the purposes of the adequate protection of structured finance arrangements, including arrangements pursuant to Article 109 para. 2 nos. 5 and 6, the following is to be avoided:

1. the transfer of some, but not all, of the assets, rights or liabilities which constitute or form part of a structured finance arrangement, including arrangements pursuant to Article 109 para. 2 nos. 5 and 6, to which the institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4 is a party;
2. the termination or modification through the use of ancillary powers of the transfer of some, but not all, of the assets, rights or liabilities which constitute or form part of a structured finance arrangement, including arrangements pursuant to Article 109 para. 2 nos. 5 and 6, to which the institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4 is a party;

(2) Notwithstanding para. 1, where necessary in order to ensure availability of the eligible deposits, the resolution authority may:

1. transfer eligible deposits that are part of an arrangement pursuant to para. 1, without transferring other assets, rights or liabilities that are part of the same arrangement, and
2. transfer, modify or terminate those assets, rights or liabilities without transferring the eligible deposits.

Partial transfers: protection of trading, clearing and settlement systems

Article 113. (1) The application of a resolution tool shall not be allowed to affect the operation of systems and rules of systems covered by Directive 98/26/EC, where the resolution authority:

1. transfers some but not all of the assets, rights or liabilities of an institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4 to another entity; or
2. uses powers pursuant to Article 58 para. 3 to cancel or amend the terms of a contract to which the institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4 is a party or to substitute a recipient as a party.

(2) In particular, a transfer, cancellation or amendment as referred to in para. 1 of this Article shall not revoke a transfer order in contravention of Article 5 of Directive 98/26/EC; and shall not modify or negate the enforceability of transfer orders and netting as required by Articles 3 and 5 of Directive 98/26/EC, the use of funds, securities or credit facilities as required by Article 4 of Directive 98/26/EC thereof or protection of collateral security as required by Article 9 Directive 98/26/EC.

Chapter 7: Procedure

Powers to obtain information and to conduct on-site inspections

Article 113a. (1) The resolution authority may at any time within its scope of competence

1. obtain information about all business matters from institutions and entities pursuant to Article 1 para 1 nos. 2 to 4, their bodies or the competent auditing organisations;
2. inspect bookkeeping records, documents and electronic data carriers of institutions and entities pursuant to Article 1 para. 1 nos. 2 to 4;
3. prescribe institutions and entities pursuant to Article 1 para. 1 nos. 2 to 4 to submit interim financial statements, reports in specified forms and layouts, and audit reports; and
4. to conduct on-site inspections at institutions and entities pursuant to Article 1 para. 1 nos. 2 to 4 itself or to allow such inspections to be conducted pursuant to para. 2.

The extent of the resolution authority's rights of information, presentation and inspection pursuant to nos. 1 to 4 and the obligation to ensure that documents are available in Austria shall be determined in accordance with Article 60 para. 3 BWG.

(2) The FMA and the resolution authority may appoint in their respective area of competence, for the purposes of this federal act and Regulation (EU) No 806/2014, suitable experts, or where on-site inspections fall within an area of competence of the *Oesterreichische Nationalbank* pursuant to Article 3 para. 5, the *Oesterreichische Nationalbank* to conduct on-site inspections.

Notification requirements

Article 114. (1) If the directors decide an institution or an entity pursuant to Article 1 para. 1 nos. 2 to 4 it going to fail, or there is a threat of it failing, then they must notify this to the FMA without delay in writing.

(2) The FMA shall inform the resolution authority without delay of all notifications received pursuant to para. 1, and about all crisis prevention measures as well as other supervisory measures that are relevant for the resolution authority, which they require an institution or an entity pursuant to Article 1 para. 1 nos. 2 to 4 to take.

(3) Where the FMA determines that the conditions referred to in Article 49 para. 1 no. 1 are met in relation to an institution or referred to in Article 52 in relation to a specific entity pursuant to Article 1 para. 1 nos. 2 to 4, or if the resolution authority determines that the conditions referred to in Article 49 para. 1 no. 1 are met in relation to an institution or referred to in Article 52 in relation to a specific entity pursuant to Article 1 para. 1 nos. 2 to 4, then this determination shall be communicated without delay to the following authorities, if different:

1. the resolution authority;
2. the FMA;
3. the competent authority for the branches of the affected institution or entity pursuant to Article 1 para. 1 nos. 2 to 4;
4. the competent resolution authority for the branches of the affected institution or entity pursuant to Article 1 para. 1 nos. 2 to 4;
5. the *Oesterreichische Nationalbank*;

6. the deposit guarantee scheme to which a credit institution is affiliated where necessary to enable the functions of the deposit guarantee scheme to be discharged;
7. the body in charge of the resolution financing arrangements where necessary to enable the functions of the resolution financing arrangements to be discharged;
8. the competent resolution authority on a consolidated level;
9. the Federal Minister of Finance;
10. where the institution or the entity referred to in Article 1 para. 1 nos. 2 to 4 of this federal act is subject to supervision on consolidated basis under Chapter 3 of Title VII of Directive 2013/36/EU, the consolidating supervisor; and
11. the ESRB and the Financial Market Stability Board.

(4) The FMA or the resolution authority shall ensure that in submitting information pursuant to para. 3, that the required level of confidentiality to permit the achievement of resolution objectives is guaranteed. It may either partially or fully suspend or restrict the submission.

Preparation of decisions by the resolution authority

Article 115. (1) When a communication is received from the FMA pursuant to Article 114 para. 3 or on its own initiative, the resolution authority shall check whether the conditions set out in Article 49 para. 1 and Article 52 in respect of the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 are met.

(2) The outcome of the inspection whether resolution actions should be initiated against the institution or entity pursuant to Article 1 para. 1 nos. 2 to 4, must contain the following items:

1. reasons for the outcome of the inspection, including the finding, of whether the requirements exist or not for resolution in the case of the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4;
2. the action that the resolution authority intends to take, as well as where applicable the assessment of whether an application for the initiation of bankruptcy proceedings or the appointment of an administrator or any other action to be taken in accordance with this federal act.

By way of derogation from Article 3 para. 5 the resolution authority may for the purpose of selecting the intended action pursuant to no. 2 obtain an expert opinion from the *Oesterreichische Nationalbank*.

(3) The resolution authority shall document the outcome and the significant findings of the inspection pursuant to paras. 1 and 2 as well as the planned further steps.

Resolution authority proceedings

Article 116. (1) The ordering of resolution actions pursuant to Article 50 shall be conducted by means of an administrative decision without a preceding investigation (emergency administrative decision).

(2) The emergency administrative decision shall be issued by publication of an edict pursuant to para. 3 (edict detailing actions), and shall thereby be deemed to have been delivered. The edict detailing actions must contain:

1. the name of the company, the Commercial Register number and the place of incorporation
   a. of the institution or entity pursuant to Article 1 para. 1 nos. 2 to 4 to be placed into resolution, and
   b. in the event of the application of one of the resolution tools pursuant to Article 74 para. 2 nos. 1 to 3 of the transferring legal entity and the recipient;
2. details about the resolution actions, in particular:
   a. about what the application of one of the resolution tools pursuant to Article 74 para. 2 nos. 1 to 3 refers, and
   b. about the affected capital instruments and liabilities in the case of application of the bail-in tool pursuant to Article 85 or the power to write down holdings of holders of relevant capital instruments pursuant to Article 70,

   with a description by classes of instrument being sufficient;
3. a copy of any order under which resolution tools are applied or relevant powers are exercised;
4. the point in time from which the resolution actions are effective;
5. a brief instruction
   a. about the direct legal effects for the institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4 as well as for the affected creditors and shareholders; and
   b. about the timeframe pursuant to para. 8.

(3) The edict detailing actions shall be published on a website of the resolution authority. If publication via the Internet is only temporarily not possible, then the publication shall take place in another suitable manner, in particular in one or several periodical publications or by means of radio.

(4) Upon publication of the edict detailing actions, the emergency administrative decision pursuant to para. 1 shall be deemed to have been issued and shall become effective towards the legal entities pursuant to para. 2 no. 1 and all parties whose rights have been affected by the resolution actions, in particular the shareholders and creditors of the institution or entity under resolution pursuant to Article 1 para 1 nos. 2 to 4.

(5) Copies of the edict detailing actions shall be sent for information purposes to:

1. the institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4;
2. the FMA;
3. the competent authority for the branches of the affected institution or entity pursuant to Article 1 para. 1 nos. 2 to 4;
4. the *Oesterreichische Nationalbank*;
5. the deposit guarantee scheme to which the credit institution under resolution is affiliated;
6. the body in charge of the resolution financing arrangements;
7. where applicable, the competent resolution authority on a consolidated level;
8. the Federal Minister of Finance;

9. where the institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4 of this federal act is subject to supervision on a consolidated basis under Chapter 3 of Title VII of Directive 2013/36/EU, the consolidating supervisor;
10. the ESRB and the Financial Market Stability Board;
11. the European Commission, the ECB, the ESMA, the EIOPA and the EBA;
12. where the institution under resolution is an institution pursuant to Article 2(b) of Directive 98/26/EC, the operators of the systems in which it participates.

(6) The resolution authority shall publish the edict detailing actions or an announcement or sanction their publication, in which the effects of the resolution action, in particular the effects on retail customers as well as where applicable the conditions that apply and the duration of the suspension or restriction pursuant to Articles 64, 65 and 66 are summarised, as follows:

1. on a website of the resolution authority;
2. on the website of the EBA;
3. on the website of the institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4;
4. if the shares, other instruments of ownership or debt instruments of the institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4 are admitted to trading on a regulated market, the means used for the disclosure of regulated information concerning the institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4 pursuant to Article 123 para. 4 BörseG 2018.

(7) If the shares, instruments of ownership or debt instruments are not admitted to trading on a regulated market, the resolution authority shall ensure that the documents providing proof of the instruments referred to in para. 6 are sent to the shareholders and creditors of the institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4, that are known through the registers or databases of the institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4, to which the resolution authority has access.

(8) Legal entities pursuant to para. 2 no. 1 as well as other parties whose rights are affected by the resolution actions, in particularly the shareholders and creditors of the institution or entity under resolution pursuant to Article 1 para. 1 nos. 2 to 4 may challenge an administrative decision issued in accordance with paras. 1 to 4 in writing to the resolution authority, by way of derogation from Article 57 para. 2 AVG within 3 months of the publication of the edict detailing actions. The challenge procedure shall not have any suspensory effect. Legal entities pursuant to para. 2 no. 1 are in any case parties to the procedure pursuant to para. 9. Others affected by the resolution actions shall lose their position as a party to the procedure, if they do not submit a challenge within the aforementioned timeframe. Article 42 para. 3 AVG shall apply accordingly. Article 57 para. 3 AVG shall not apply.

(9) Upon expiry of the timeframe pursuant to para. 8 the resolution authority shall officially initiate an investigation. The submissions in writing submitted by other parties shall be excluded from the access to files by a party while the challenge period is open. The resolution authority may schedule

an oral hearing. Such a hearing shall be announced by means of an edict (*Tagsedikt*). Article 44d para. 2 as well as Article 44e paras. 1 and 2 AVG shall apply.

(10) If the resolution authority intends to amend the emergency administrative decision in such a way, that persons, who had hitherto not been parties to the procedure, thereby become affected in their rights, then it shall give the parties affected by the edict in this way the opportunity to challenge it within a period of 3 months. The edict shall contain the details pursuant to para. 2 as well as the envisaged ruling that is intended to be amended in the emergency administrative decision. The provisions of paras. 3, 8 and 9 shall apply.

(11) The resolution authority shall address all challenges against the emergency administrative decision, including challenges pursuant to para. 10 by means of an administrative decision (administrative decision in relation to the challenge procedure (*Vorstellungsbescheid*)). Such an administrative decision shall be announced by means of an edict (*Vorstellungsedikt* (edict in relation to the challenge)). The provisions of para. 2 nos. 1 to 4 and paras. 3 and 4 shall apply.

(12) As soon as an emergency administrative decision pursuant to para. 1 or an administrative decision pursuant to para. 11 has become legally effective, the resolution authority shall announce the administrative decision as well as where applicable a notice that no complaint has been submitted against the administrative decision during the open period by means of an edict (edict confirming legal effectiveness). Para. 3 is applicable in this context.

(13) The resolution authority shall make the administrative decisions pursuant to paras. 1 and 11 available for public inspection during office hours until an edict pursuant to para. 12 has been published.

(14) The instruction to provide a timely valuation pursuant to Article 58 para. 1 no. 13 shall not be issued in the form of an administrative decision; the disclosure obligations set out in paras. 5 to 7 shall apply.

Simplified procedure in the case that the affected group of persons is known

Article 116a. (1) By way of derogation from Article 116 the resolution authority may order resolution actions pursuant to Article 50 by means of an administrative decision pursuant to AVG, if the identity of all the natural and legal persons whose rights are affected is known.

(2) Article 116 paras. 5 to 7 shall be applied with the proviso that the administrative decision pursuant to para. 1 shall be issued instead of the edict detailing actions. The public bodies listed in Article 116 para. 5 shall be informed as the same time as the copies of the administrative decision are submitted, about the point in time from when the resolution actions shall become effective.

(3) Paras. 1 and 2 shall not apply for resolution tools pursuant to Article 74 para. 2.

Non-application of rules under company law

Article 117. In the application of resolution tools, powers and mechanisms pursuant to Articles 48 et seq., the provisions set out in this federal act shall take precedence over contradictory provisions under company law. The resolution authority shall only be required to comply with rules under company law to the extent that doing so shall be compatible with this federal act.

Right of appeal

Article 118. (1) Article 22 para. 2 FMABG shall apply subject to the following condition: For the ordering of resolution actions, the rebuttable presumption shall apply that the granting of suspensory effect shall be detrimental to the overriding public interest.

(1a) An appeal against an administrative decision pursuant to para. 1a second sentence does not have a suspensory effect. Provided that the appeal is not rejected as being submitted too late or as being impermissible, the resolution authority shall submit the appeal to the Federal Administrative Court (BVwG; *Bundesverwaltungsgericht*) without delay including the files relating to the procedure. The Federal Administrative Court shall rule on the appeal without delay following consultation with the resolution authority, and shall return the files relating to the procedure to the resolution authority, providing that it does not decide to refrain from issuing a preliminary appeal decision.

(1b) In proceedings relating to complaints against the ordering of resolution actions, the Federal Administrative Court may recognise the granting of suspensory effect by way of a decision, if this would be contrary to the non-mandatory public interest and, having weighed up all the interests concerned, where there would be a disproportionate disadvantage for the complainant. In this context, the rebuttable presumption shall apply that the granting of suspensory effect shall be detrimental to the overriding public interest. In the event that suspensory effect is granted, then the enforcement of the contested administrative decision shall be suspended and the necessary orders to be taken.

(2) The Federal Administrative Court and the Supreme Administrative Court shall base the reviewing of the administrative decisions of the resolution authority on the basis of the complex valuations of the economic facts by the resolution authority.

(3) The effects of administrative decision issued by the resolution authority that shape the legal situation, with the exception of administrative penal decisions, shall not be affected by repealing or amendment by the Federal Administrative Court as well as the Supreme Administrative Court. Removal of the legal effect of administrative decisions issued by the resolution authority therefore does not occur.

(4) para. 3 shall not apply, if the removal of legal effect

1. does not place the resolution objectives at risk,
2. it would not constitute a threat to the interests of third parties that require protection, and
3. is not impossible.

(5) Where the possibility of the removal of the legal effects in accordance with paras. 3 and 4 is excluded, an affected party make within 3 months of the conclusion of the ordinary and extraordinary appeal procedure may exercise a claim against the Federal Government for compensation of the unlawfully caused disadvantages as a result of the administrative decisions

issued by the resolution authority, which would not have been incurred had the authority behaved in a lawful manner. Existing claims for compensation shall only be satisfied by the Federal Government. The claim shall be exercised against the contested procedure at the Commercial Court in Vienna.

Restrictions of insolvency proceedings and other procedures

Article 119. (1) If an application is made to initiate insolvency proceedings against an institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4, the insolvency court shall inform the resolution authority without delay. Such an obligation to inform shall be dropped in the event that the FMA has submitted the application for insolvency.
(2) Insolvency proceedings may only be initiated against the assets of an entity pursuant to Article 1 para. 1 nos. 2 to 4, is the notification pursuant to para. 1 has taken place, and the resolution authority has not informed the insolvency court with seven days of receipt of the notification that it is planning to take a resolution action in relation to the entity pursuant to Article 1 para. 1 nos. 2 to 4.
(3) An insolvency proceeding against the assets of an institution or an entity pursuant to Article 1 para. 1 nos. 2 to 4 shall not affect the application of a resolution tool and the exercising of resolution powers that have been conducted as well as their respective legal effects. The possibility of contesting the application of resolution instruments or the exercising of resolution powers in accordance with the IO or the Rescission Code (AnfO, *Anfechtungsordnung*), published in Imperial Law Gazette No. 337/1914 shall be excluded.
Restriction of the legal effect of administrative decisions issued by the resolution authority
Article 119a. As soon as the Board pursuant to Article 29 (2) of Regulation (EU) no 806/2014 issues a decisions issued directly to an institution under resolution pursuant to point 14 of Article 3 (1) of Regulation (EU) no 806/2014, all administrative decisions issued by the resolution authority on the same matter shall cease to be effective.

Chapter 8: Confidentiality and exchange of information

Confidentiality

Article 120. (1) The persons and public bodies listed in nos. 1 to 14, as well as persons who are active in the persons and public bodies listed in nos. 1 to 14, shall be prohibited from disclosing or passing on confidential information:
1. the resolution authority;
2. the FMA;
3. the Federal Ministry of Finance;
4. the *Oesterreichische Nationalbank*;
5. the temporary administrator and resolution administrator appointed pursuant to this federal act;

6. potential acquirers that are contacted by the competent authorities or solicited by the resolution authorities, irrespective of whether that contact or solicitation was made as preparation for the use of the sale of business tool, and irrespective of whether the solicitation resulted in an acquisition;
7. auditors, accountants, legal advisors, other professional advisors, valuers and other experts directly or indirectly engaged by the resolution authorities, competent authorities, competent ministries or by the potential acquirers referred to in no. 6;
8. deposit guarantee schemes pursuant to ESAEG;
9. the compensation facility pursuant to Article 73 WAG 2018,
10. the body in charge of the resolution financing arrangements;
11. other authorities involved in the resolution process;
12. a bridge institution or a wind-down unit;
13. other persons or bodies, that provide, or have provided permanent or temporary services, whether directly or indirectly, for the persons, bodies or authorities named pursuant to nos. 1 to 12;
14. senior management, members of the management body, and employees of the persons, and bodies or authorities referred to in nos. 1 to 12 before, during and after their appointment.

(2) Confidential information is information that the persons, and bodies listed in nos. 1 to 14 have received in performing their professional activities or have received from a competent authority or resolution authority within their duties in accordance with this federal act, as well as any information that must be kept secret on the basis of Article 14 para. 2 FMABG or another legal regulation or under Union law.

(3) By way of derogation from para. 1 the exchange of any information between employees within one of the bodies listed in nos. 1 to 11 shall in any case be permissible.

(4) Institutions and entities belonging to a group shall be obliged to handle recovery plans and group recovery plans confidentially; they may only pass on recovery plans or group recovery plans to those third parties that are involved in the drawing up and implementation of the recovery plan or the group recovery plan. For the purposes of this provision, the term “group” also encompasses those entities, which belong to a group pursuant to Article 6 para. 1 or 2.

(5) In the event of confidentiality requirements being breached, the provisions set out under national law relating to compensation for damages shall apply, in which instance Article 3 para. 9 shall apply.

(6) Other provisions set out under national law regarding the onward transmission of information for the purposes of procedure under criminal law or civil law shall remain unaffected by these Articles.

Permissible exchange of information

Article 121. (1) By way of derogation from Article 120 the resolution authority and the FMA may exchange information, provided that it is necessary to do so for the performance of their duties in accordance with this federal act, with one another as well as with the following authorities, persons and bodies:

1. resolution authorities in the EEA;
2. competent authorities in the EEA;
3. the Federal Ministry of Finance and other competent ministries;
4. the *Oesterreichische Nationalbank* and other central banks within the European System of Central Banks and other entities in the Member States with a similar function;
5. deposit guarantee schemes pursuant to Article 7 para. 1 nos. 1 ESAEG;
6. investor compensation schemes pursuant to Article 44 no. 9 ESAEG;
7. competent courts or authorities for bankruptcy proceedings and regular insolvency proceedings;
8. the Financial Market Stability Board and authorities, which are to ensure the sustained stability of the financial system in Member States through the use of macroprudential rules;
9. persons entrusted with conducting audit inspections;
10. EBA;
11. subject to compliance with Article 122 with third-country authorities that carry out equivalent duties as resolution authorities;
12. subject to their obligation to fulfil stricter confidentiality requirements, a potential acquirer for the purpose of planning or carrying out a resolution action;
13. subject to their requirement to comply with strict confidentiality requirements, any other person where necessary for the purposes of planning or carrying out a resolution action;
14. parliamentary investigation committees pursuant to Article 53 para. 1 of the Federal Constitutional Act (B-VG; *Bundesverfassungsgesetz*) on the basis of a decision following a request pursuant to Article 53 para. 3 B-VG, the Austrian Court of Audit (*Rechnungshof*), provided that its mandate for an investigation related to decisions and other activities of the resolution authority in accordance with this federal act, as well as the Austrian Ombudsman Board (*Volksanwaltschaft*) within Article 148b B-VG;
15. the European Systemic Risk Board (ESRB);
16. national authorities, that are competent for the supervision of payment systems,
17. authorities in the EEA, which are entrusted with the public duty of supervising other financial sector entities;
18. authorities in the EEA, which are responsible for the supervision of financial markets and insurance undertakings;
19. authorities in the EEA, which are responsible for maintaining the stability of the financial system in Member States through the use of macroprudential rules, and authorities which are responsible for maintaining the stability of the financial system.

(2) by way of derogation from Article 120 the persons listed in Article 120 para. 1 nos. 1 to 12 may disclose confidential information to other persons and bodies, if:

1. the disclosure of the confidential information is necessary for the performance of their duties in accordance with this federal act;
2. the disclosure of the confidential information is conducted in summarised or general form in such a way that it is not possible to identify individual institutions or entities pursuant to Article 1 para. 1 nos. 2 to 4; or
3. the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 or the authority, from which the information originates, has explicitly granted prior approval for its disclosure.

Disclosure pursuant to this paragraph may only take place, following a prior assessment of the potential effects of disclosing the confidential information having taken place with regard to public interests for financial, monetary or economic policy, for the commercial interests of natural and legal pensions, for the purpose of inspections, for investigations and on audits by the persons listed in Article 120 para. 1 nos. 1 to 12. The procedure for checking the effects of disclosing such information shall include a specific assessment of the effects of any disclosure of the contents and details of recovery and resolution plan as referred to in Articles 8, 9, 15, 16, and 19 to 23 and the result of any assessment carried out under Articles 12 to 14, 17, 18 and 27. In order to ensure that confidentiality requirements pursuant to Article 120 and in accordance with this paragraph are adhered to, the persons and bodies named in Article 120 para. 1 nos. 1 to 4, 8, 9, 11 and 12 shall issue internal rules which further define the corresponding rules under law.

Exchange of confidential information with third country authorities

Article 122. (1) The resolution authority, the FMA and the Federal Minister of Finance shall only be allowed to exchange confidential information as defined in Article 120 para. 2 with the relevant third-country authorities, if the following conditions are met:

1. Requirements and standards exist for the third country authorities concerned in relation to the obligation of professional secrecy that are at least equivalent to the requirements set out in Article 84 of Directive 2014/59/EU; the appraisal of whether equivalent requirements exist shall be undertaken by the FMA and the Federal Minister of Finance shall be informed upon request;
2. the information is necessary for the performance by the relevant third-country authorities of their resolution functions under national law that are comparable to those under this Act and, subject to no. 1 of this paragraph, is not used for any other purposes.

(2) Where confidential information originates from another Member State or a third country, the resolution authority, the FMA and the Federal Minister of Finance may only disclose that information to relevant third-country authorities, if the following conditions are met:

1. the relevant authority of the Member State or the third country where the information originated (the originating authority) agrees to that disclosure;
2. the information is disclosed only for the purposes permitted by the originating authority.

(3) Provided that the requirements pursuant to para. 1 nos. 1 and 2 as well as pursuant to Chapter IV of Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, p. 1 are fulfilled, the power for the exchange of information also covers the processing and transmission of personal data to third-country authorities.

PART 5: RESOLUTION FINANCING ARRANGEMENT AND SINGLE RESOLUTION FUND

Setting up a resolution financing arrangement

Article 123. (1) The resolution financing arrangement shall be set up by the resolution authority, in order to ensure an effective application of the resolution tools and powers for certain investment firms and EU branches. The use of the resolution financing arrangement shall be triggered by the resolution authority within the meaning of the resolution objectives and principles listed in Articles 48 and 53 as well as for the actions listed in Article 124 para. 1 in the case of certain investment firms and EU branches. The resolution financing arrangement shall have adequate financial resources.

(2) For the purpose of ensuring that the resolution financing arrangement has adequate financial resources, the resolution authority shall:

1. calculate ex ante contributions pursuant to Article 126 and ex post extraordinary contributions pursuant to Article 127;
2. collect ex ante contributions pursuant to Article 126 in order to reach the target level pursuant to Article 125; and
3. collect ex post extraordinary contributions pursuant to Article 127, where the contributions listed in no. 1 are not adequate.

(3) The resolution authority may conclude borrowing arrangements on the account of the resolution financing arrangement and arrange other forms of support pursuant to Article 128.

(4) Contributions to deposit guarantee systems shall not count as contributions towards the target level for resolution financing mechanism pursuant to Article 125.

(5) All contributions shall be prescribed by the resolution authority by means of an administrative decision. Payment notices for contributions and extraordinary contributions shall be enforceable by the resolution authority from their due date, even if the basis and amount of such contributions are contested.

(6) The resolution authority shall invest all contributions to the resolution financing arrangement through the Austrian Treasury (ÖBFA; *Österreichische Bundesfinanzierungsagentur*). For this purpose, the resolution authority shall set up an account at the *Oesterreichische Nationalbank* (OeNB). The ÖBFA shall upon instruction by the Federal Minister of Finance pursuant to Article 2

para. 1 no. 10 of the Federal Act on the Management and Coordination of Financial and other Government Debt (Government Financing Act; *Bundesfinanzierungsgesetz*) published in Federal Law Gazette I No 763/1992, perform the investment of all contributions for the resolution financing arrangement.
(7) The resolution authority shall communicate information about the contributions that have been collected and the level of the financial resources of the resolution financing arrangement to the Federal Minister of Finance on an annual basis or when requested to do so.
(8) *repealed (Amendment published in Federal Law Gazette I 237/2022)*

National contribution to the Single Resolution Fund

Article 123a. (1) Institutions with their place of incorporation in Austria, from whom contributions are to be collected pursuant to Article 70 of Regulation (EU) No 806/2014, shall make regular contributions and extraordinary contributions collected on an ex-post basis by means of their financial means. The total of the regular contributions in a contribution year corresponds to the prescribed contribution of the annual national contribution to the Single Resolution Fund by the Board.
(2) The resolution authority shall collect regular contributions and extraordinary ex post contributions to the Single Resolution Fund from institutions, from which regular contributions and ex post extraordinary contributions are to be collected pursuant to Article 70 of Regulation (EU) No 806/2014. For this purpose, it shall issue payment notices to those institutions the respective regular contribution, the ex post extraordinary contribution and the necessary payment conditions by means of an administrative decision. The institutions shall transfer the prescribed contributions promptly into an account, the details of which shall be supplied by the resolution authority. Payment notices shall be enforceable from their due date, even if the basis and amount contained therein are contested. Corrections in relation to regular and ex post extraordinary contributions collected shall be addressed in the subsequent following contribution payment notice.
(3) The resolution authority, as defined in Article 1(1) of the Agreement, shall transfer the annual national regular contribution and the national ex post extraordinary contributions from the date of application of the Agreement, to the extent that these contributions were not used in accordance with Article 3(4) of the Agreement for national resolution actions (Article 124 para. 1) in full into the national compartment assigned to the Republic of Austria of the Single Resolution Fund. The resolution authority shall not use national regular contributions and extraordinary ex post contributions for its own actions, with the exception of the contributions that were used for national resolution actions in accordance with Article 3(4) of the Agreement.
(4) The resolution authority shall transfer the annual national regular contributions and ex post extraordinary contributions pursuant to para. 3 respectively in accordance with the deadlines set out in Article 3 of the Agreement. In so doing, the resolution authority shall transfer the contributions collected for the 2015 calendar year pursuant to Articles 126 and 127 BaSAG in the version published

in Federal Law Gazette I no. 98/2014 to the Single Resolution Fund in accordance with the deadlines set out in Article 3(2) of the Agreement.

(5) If the contributions were made in the form of irrevocable payment commitments pursuant to Article 70(3) of Regulation (EU) No 806/2014, then these payment commitments including the accompanying collateral shall be transferred to the Single Resolution Fund.

(6) If financial resources have been temporarily transferred pursuant to Article 7(1) of the Agreement to the compartment assigned to the Republic of Austria, then the resolution authority shall transfer the nationally collected ex post extraordinary contributions to the Single Resolution Fund prior to the expiry of the transitional period. The amount of the collected ex post extraordinary contributions to be transferred shall be defined in accordance with the second sentence of Article 7(1) of the Agreement.

(7) If financial resources that have been temporarily transferred to the compartment assigned to the Republic of Austria, are called in in accordance with Article 7(5) of the Agreement, the resolution authority shall transfer the financial resources pursuant to the third sentence of Article 7(5) of the Agreement to the Single Resolution Fund in accordance with the conditions that the Board has determined under the application of the second sub-paragraph of Article 7(5) of the Agreement.

(8) The resolution authority shall communicate information about the regular contribution and the ex post extraordinary contributions that have been collected and the level of the financial resources during the transitional period of the compartment assigned to the Republic of Austria to the Federal Minister of Finance on an annual basis and when requested to do so.

(9) The FMA may at the request of the resolution authority and by means of a regulation pursuant to Article 74 para. 6 BWG prescribe for institutions with their place of incorporation in Austria, from which contributions are to be collected pursuant to Article 70 of Regulation (EU) No. 806/2014, the necessary significant disclosure of the calculation base for the calculation of the regular contributions and extraordinary ex post contributions, in accordance with Delegated Regulation (EU) 2015/63.

Exercise of powers under the Agreement

Article 123b. (1) The resolution authority shall inform the Federal Minister of Finance without delay about

1. the receipt of an application to temporarily transfer funds from the compartment assigned to the Republic of Austria to another compartment;
2. a decision by the Board about an application pursuant to no. 1; and
3. other circumstances, which are of significant relevance for the exercising of powers pursuant to paras. 1 and 2;

and to present the Federal Minister of Finance a detailed recommendation about how to proceed subsequently.

(2) The resolution authority may with the consent of the Federal Minister of Finance for the whole procedure:

1. apply to the Board for a temporary transfer of funds from other national compartments to the compartment assigned to the Republic of Austria pursuant to Article 7(1) of the Agreement;
2. raise objections against the temporary transfer of funds from the compartment assigned to the Republic of Austria to another national compartment pursuant to Article 7(4) of the Agreement;
3. apply for transfer back of funds, which were transferred from the compartment assigned to the Republic of Austria to another national compartment pursuant to Article 7(5) of the Agreement;
4. submit an application to the Board pursuant to Article 10(2) of the Agreement, to have the Board check, whether another contractual party to the Agreement has fulfilled its obligations to transfer contributions to the Single Resolution Fund; and
5. submit a request to the Board pursuant to point a) of Article 5(1) of the Agreement, to take into consideration the criteria pursuant to point b) of Article 107(5) of Directive 2014/59/EU.

(3) If an application is made by another contractual party on the basis of point a) of Article 7(1) of the Agreement and if funds have been transferred into the compartment assigned to the Republic of Austria from the compartment assigned to this contractual party, then the Federal Minister of Finance shall ensure that the funds are repaid, in order to meet the obligations arising from Article 7 para. 5 of the Agreement.

Bridge Financing

Article 123c. (1) In order to ensure the financing of resolution actions in institutions that have an obligation to contribute pursuant to Article 123a or entities belonging to the group of institutions that have an obligation to contribute, that fall within the scope of application of Regulation (EU) No 806/2014, the Federal Minister of Finance shall be authorised, during the transitional period pursuant to Article 2 no. 110 to grant to the Board pursuant to Article 2 no. 18a temporary repayable loans for a fee (bridge financing) where the following conditions exist:

1. where all other financing options have been exhausted by the board that are stipulated in Regulation (EU) No 806/2014 or the Agreement pursuant to Article 2 no. 109 and made available to the Board if necessary;
2. the existence of a contractual memorandum of understanding on the bridge financing, which was concluded on the basis of Articles 73 and 74 of Regulation (EU) No 806/2014 between the Federal Minister of Finance and the Board, and
3. the granting of the loan at conditions that are determined in the contractual memorandum of understanding, and which in particular also ensure the timely and guaranteed repayment of the bridge financing.

(2) The authorisation by the Federal Minister of Finance towards the Board for bridge financing pursuant to para. 1 during the transitional period shall be limited to the respective outstanding total amount of EUR 1 600 000 000.

Management and administration of contributions

Article 123d. (1) Assets that are to be assigned to the resolution financing arrangement or the Single Resolution Fund, shall not be assigned to the assets of the FMA and may not be offset against one another. Claims against the resolution authority, claims that shall be allocated to the resolution financing arrangement and claims that shall be allocated to the Single Resolution Fund, may not be offset against one another with legal effect.
(2) The resolution authority shall draw up an estimated budget and a balance sheet and income statement for the resolution financing arrangement for each financial year (calendar year) and shall draw up an annual report. An outlook for the following year shall be attached to the estimated budget. With regard to the procedure to be observed for the estimated budget, the provisions for the financial statement of the FMA (Article 17 FMABG) shall apply, for the balance sheet the provisions for the FMA's annual financial statement (Article 18 FMABG) and for the annual report the provisions for the FMA's annual report (Article 16 para. 3 FMABG). The provisions of the second and third sections of Book III of the Company Code (UGB; *Unternehmensgesetzbuch*) published in the Imperial Law Gazette p. 219/1897 as amended, shall not apply to the FMA.
(3) The Executive Board shall be required to report regularly, at least one a year, to the Supervisory Board of the FMA, about the provisioning of the resolution financing arrangement and the investment strategy. In addition, the FMA shall regularly, at least once a year, report on the national contributions to the Single Resolution Fund and the total value of the assets assigned to the national compartment as of the reporting date.
(4) The ex-ante contributions to the resolution financing arrangement and to the Single Resolution Fund shall become due one month after being prescribed to the institution subject to the obligation to pay contributions or to the legal entity subject to the obligation to pay contributions, provided that the resolution authority does not determine another timeframe by means of an administrative decision. The ex-post extraordinary contributions to the resolution financing arrangement and to the Single Resolution Fund shall become due when prescribed to the institution subject to the obligation to pay contributions or to the legal entity subject to the obligation to pay contributions, provided that the resolution authority does not determine a later timeframe by means of an administrative decision.

Use of the resolution financing arrangement

Article 124. (1) The resolution financing arrangement shall only be used to the extent required for the effective application of the resolution tools for certain investment firms and EU branches for the following measures:

1. to guarantee the assets or the liabilities of the certain investment firm under resolution, its subsidiaries, a bridge institution or a wind-down unit;
2. to make loans to the certain investment firm under resolution, its subsidiaries, a bridge institution or a wind-down unit;
3. to purchase assets from a certain investment firm under resolution;
4. to make contributions to a bridge institution or a wind-down unit;
5. to pay compensation to shareholders or creditors pursuant to Article 108;
6. to make a contribution to the certain investment firm under resolution in lieu of the write down or conversion of liabilities of certain creditors, when the bail-in tool is applied and the resolution authority decides to exclude certain creditors from the scope of bail-in in accordance with Article 86 para. 4 and Article 87;
7. to grant credits to other resolution financing arrangements in the European Union on a voluntary basis pursuant to Article 129; or
8. a combination of the measures listed in nos. 1 to 7.

(2) In the case of the application of the sale of business resolution tool pursuant to Article 75 by the resolution authority, the financial means of the resolution financing arrangement may also be used for the aforementioned measures in relation to the purchaser.
(3) The means from the resolution financing arrangement shall not be used directly to settle the losses of a certain investment firm or an EU branch or to recapitalise a certain investment firm or EU branch. If the using of the means of the resolution financing arrangement for the measures listed in para. 1 indirectly results in part of the losses of a certain investment firm or EU branch being passed on to the resolution financing arrangement, then the principles governing the use of the resolution financing arrangement pursuant to Article 87 shall apply.

Target level for the resolution financing arrangement

Article 125. (1) The target level of the resolution financing arrangement consists of the contributions prescribed for certain investment firms and EU branches set by the resolution authority taking into consideration their respective size and their respective risk profile and shall be at least 1 % of the eligible deposits of such entities, although adequate financial resources pursuant to Article 123 para. 1 must be ensured. When setting adequate financial resources, the resolution authority shall take into consideration the relative sizes of all certain investment firms that are established in Austria or EU branch establishments that are active in Austria, and well as taking into account the probability that one of these certain investment firms or EU branch establishments actually has to be resolved and the resolution financing arrangement is required to intervene.
(2) During the initial period pursuant to Article 126 para. 1, the resolution authority shall spread out the contributions to the financing arrangements raised in accordance with Article 126 in terms of their timing as evenly as possible until the target level is reached, taking into due consideration the

phase of the business cycle and any impact pro-cyclical contributions may have on the financial position of contributing institutions.

(3) Where the resolution financing arrangement has performed total pay-outs of more than 0.5 % of target level for the resolution financing arrangement for all certain investment firms and EU branch establishments listed in para. 1, then the initial period or replenishment period may be extended by a maximum of four years.

(4) If, after the initial period referred to in Article 126 para. 1, the available financial means fall below the specified target level, the resolution authority shall again collect regular contributions in accordance with Article 126 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 to allow the target level to be reached within six years.

(5) The regular contribution shall be determined while taking due account of the phase of the business cycle, and the impact procyclical contributions may have when setting annual contributions in the context of para. 4.

Contributions to the resolution financing arrangement

Article 126. (1) Existing certain investment firms and EU branch establishments shall pay contributions and extraordinary contributions to reach target level for the resolution financing arrangement by 31 December 2024. Where there are no existing certain investment firms and EU branch establishments authorised in Austria, then the initial period for the resolution financing arrangement for certain investment firms that subsequently establish their registered office in Austria, and EU branch establishment that subsequently establish their registered office in Austria or commence activity in Austria shall begin with the licensing of a certain investment firm for the first time or with an EU branch establishment commencing business activities or establishing a registered office in Austria. Certain investment firms and EU branch establishments shall pay contributions and extraordinary contributions, with the target level pursuant to Article 125 para. 1 being required to be reached within 10 years of the initial period starting.

(2) The resolution authority shall prescribe and collect contributions and where applicable extraordinary contributions from the entities named in para. 1. The resolution authority shall collect contributions from the individual certain investment firms and EU branches pro rata to the amount of their liabilities (excluding own funds) less eligible deposits commensurate to the aggregate liabilities (excluding own funds) less eligible deposits of all certain investment firms established in Austria and all EU branches established or active in Austria. These contributions shall be adapted in accordance with the size and the risk profile of such undertakings, with the criteria set out in para. 5 serving as a basis.

(3) The available financial means to be taken into account in order to reach the target level specified in Article 125 may with the approval of the resolution authority include irrevocable payment

commitments which are fully backed by collateral of low risk assets unencumbered by any third party rights, at the free disposal and earmarked for the exclusive use by the resolution authority for the purposes specified in Article 124 para. 1. The share of irrevocable payment commitments shall not exceed 30 % of the total amount of contributions raised.

(4) The amounts received from the certain investment firms under resolution or EU branches or the bridge institutions, the interest and other earnings on investments and any other earnings may benefit the resolution financing arrangement.

(5) The calculation of the contributions and extraordinary contributions shall occur in accordance with the size and risk profile of the entities listed in para. 1 taking into consideration the following criteria, with the methodology defined in Section 2 of Delegated Regulation (EU) 2015/63 and as applicable the methodological rules stipulated in the FMA Regulation pursuant to Article 126 para. 6 applying:

1. the risk exposure of the institution, including the scope of its trading activities, its off-balance sheet exposures and its degree of leverage;
2. the stability and diversity of the entity's sources of funding and unencumbered highly liquid assets;
3. the financial condition of the institution;
4. the probability that the institution enters into resolution;
5. the extent to which the institution has previously benefited from extraordinary public financial support;
6. the complexity of the structure of the institution and its resolvability;
7. the importance of the institution to the stability of the financial system or economy of one or more Member States or of the European Union;
8. the fact that the institution is part of an institutional protection scheme (IPS).

(6) The FMA may upon request by the resolution authority determine by means of a Regulation applying the methodology defined in Delegated Regulation (EU) 2015/63 which parameters are to be considered within the scope of the criteria pursuant to para. 5 for calculating the contributions for the entities listed in para. 1 and for which certain investment firms and EU branch establishments lump sum contributions as defined in Delegated Regulation (EU) 2015/63 are to be prescribed and collected. Where necessary for the appropriate classification in terms of size and risk of entities liable to pay contributions, the FMA may in so doing also deviate from the calculation method set out in Delegated Regulation (EU) 2015/63 and define an adequate methodology for calculating contributions taking into consideration the criteria pursuant to para. 5. For entities that are not expected to be resolved, an annual lump sum contribution shall be prescribed of between EUR 1,000 and a maximum of EUR 50,000. Furthermore, the FMA is also empowered, at the request of the resolution authority to prescribe the certain investment firms and EU branch establishments the necessary significant disclosure of the calculation basis for the purpose of calculating the contributions by means of a Regulation. Moreover, the FMA, at the request of the resolution

authority, may also further specify the methodology for the composition of appropriate financial resources pursuant to Article 125 para. 1 by way of a Regulation.

Extraordinary ex-post contributions

Article 127. (1) Where the available financial means are not sufficient to cover the losses, costs or other expenses incurred by the use of the resolution financing arrangement, then the resolution authority for the entities listed in Article 125 para. 1 shall collect extraordinary ex-post contributions, in order to cover the additional amounts. The calculation of the amount of extraordinary ex-post contributions to be collected from the individual certain investment firms shall occur pursuant to the rules laid down in Article 126 para. 2. The extraordinary ex-post contributions shall not be allowed to exceed three times the annual amount of contributions determined pursuant to Article 126.

(2) Article 126 paras. 4 to 5 shall be applicable to the contributions raised under this Article.

(3) The resolution authority may defer, in whole or in part, an institution's obligation to pay extraordinary ex-post contributions to the resolution financing arrangement, if the payment of such contributions would jeopardise the liquidity or solvency of the certain investment firm or the EU branch. Such a deferral shall be granted for a maximum period of six months, but may be extended upon application by the certain investment firm or the EU branch. The contribution deferred pursuant to this paragraph shall be paid as soon as such a payment no longer jeopardises the certain investment firm or EU branch's liquidity or solvency.

Alternative funding means

Article 128. The resolution authority may take out loans or other forms of support from institutions, CRR financial institutions or other third parties for the account of the resolution financing arrangement in the event that the amounts raised in accordance with Article 126 are not sufficient to cover the losses, costs or other expenses incurred by the use of the resolution financing arrangements, and in the case that the extraordinary ex-post contributions provided for in Article 127 are not immediately accessible or are not sufficient.

Borrowing between financing arrangements

Article 129. (1) The resolution authority may take out loans for the account of the resolution financing arrangement from other resolution financing arrangements within the European Union, in the event that

1. the amounts raised under Article 126 are not sufficient to cover the losses, costs or other expenses incurred by the use of the resolution financing arrangement;
2. the extraordinary ex-post contributions provided for in Article 127 are not immediately accessible; and

3. the alternative funding means provided for in Article 128 are not immediately accessible on reasonable terms.

(2) The resolution authority may grant credits to other resolution financing arrangements within the European Union from the resolution financing arrangement, provided that they fulfil the conditions listed in para. 1 nos. 1 to 3, and provided that after the credit has been granted that it continues to have adequate available financial means.

(3) If the resolution authority receives an application from another resolution financing arrangement to grant it a loan, then the resolution authority shall inform the Federal Minister of Finance about this without delay and shall gain the approval of the Federal Minister of Finance, if it intends to grant the loan. When making a decision regarding the granting of a credit to another resolution financing arrangement within the European Union, the resolution authority shall consider the following factors:

1. the national economic interest in relating to Austrian and European financial market stability;
2. the fact whether, and to what extent, the financial means of the resolution financing arrangement have already been used or whether ex post extraordinary contributions have been collected; and
3. whether, and to what extent the other resolution financing arrangement is making using of other alternative financing options.

(4) The rate of interest, repayment period and other terms and conditions of the loans shall be agreed between the borrowing resolution financing arrangement and the other resolution financing arrangements which have decided to participate. The same interest rate, repayment rate and other terms and conditions shall apply for the loan from each of the participating resolution financing arrangements. The resolution authority may only make difference arrangements by applying the conditions pursuant to para. 3 and following consultation with the Federal Minister of Finance.

(5) The amount lent by each of the participating resolution financing arrangements shall be calculated on a pro rata basis in relation to the amount of eligible deposits in the Member State of the respective resolution financing arrangement, with respect to the aggregate amount of the eligible deposits in the Member States of the participating resolution financing arrangements. The resolution authority may only make difference arrangements by applying the conditions pursuant to para. 3 and following consultation with the Federal Minister of Finance.

(6) The exposure arising from the granting of a loan to another resolution financing arrangement pursuant to the preceding paragraphs shall be calculated on the basis of the target level of the resolution financing arrangement.

Mutual assistance of national financing arrangements in the case of a group resolution

Article 130. (1) In the event of group resolution pursuant to Articles 139 to 146, the resolution financing arrangement of a certain investment firm, which is part of a group, shall contribution towards the financing of the group resolution on the basis of the following paragraphs.

(2) If the resolution is the group-level resolution authority, it shall propose, after consulting the resolution authorities of the certain investment firms that are part of the group, if necessary prior to taking any resolution action, a financing plan as part of the group resolution scheme pursuant to Articles 139 to 146. The financing plan shall be agreed in accordance with the decision-making procedure referred to in Articles 139 to 146.

(3) The group resolution plan shall cover the following:

1. a valuation pursuant to Articles 54 to 57 with regard to the affected group entities;
2. the losses to be recognised by each affected group entity at the moment the resolution tools are exercised;
3. for each affected group entity, the losses that would be suffered by each class of shareholders and creditors;
4. the contribution that deposit guarantee schemes would be required to make pursuant to Article 132 para. 1;
5. the total contribution by resolution financing arrangements and the purpose and form of the contribution;
6. the basis for calculating the amount that each of the national resolution financing arrangements of the Member State where affected group entities are located is required to contribute to the financing of the group resolution in order to build up the total contribution pursuant to no. 5;
7. the amount that the national resolution financing arrangement of each affected group entity is required to contribute to the financing of the group resolution and the form of those contributions;
8. the amount of borrowing that the resolution financing arrangements of the Member States where the affected group entities are located, may contract from institutions, CRR financial institutions and other third parties pursuant to Article 128;
9. a timeframe for the use of the resolution financing arrangements of the Member States, in which the affected group entities are located; the resolution authority may extend the timeframe, if and to the extent that this is necessary.

(4) The basis for apportioning the contribution referred to in para. 3 no. 6 shall be consistent with para. 5 and with the principles set out in the group resolution plan in accordance with Article 23 para. 2 no. 6, unless otherwise agreed in the financing plan.

(5) Unless agreed otherwise in the financing plan, the basis for calculating the contribution of each national resolution financing arrangement shall in particular take the following into consideration:

1. the proportion of the group's risk weighted assets held at certain investment firms, which are established in the Member State of the resolution financing arrangement in question;
2. the proportion of the group's assets held at certain investment firms, which are established in the Member State of the resolution financing arrangement in question;

3. the proportion of the losses, which have given rise to the need for group resolution, which originated in group entities under the supervision of competent authorities in the Member State of that resolution financing arrangement; and
4. the proportion of the financial means of the group resolution financing arrangements which, under the financing plan, are expected to be used to directly benefit group entities established in the Member State of that resolution financing arrangement.

(6) For the purpose of this Article, Member States shall ensure that group resolution financing arrangements are allowed, under the conditions laid down in Article 128, to contract borrowings or other forms of support, from institutions, CRR financial institutions or other third parties.

(7) The respective national resolution financing arrangements may provide guarantees for the loans taken out by the group resolution financing arrangements in accordance with para. 6.

(8) Proceeds or other benefits that arise from the use of the group resolution financing arrangement, shall be allocated by the resolution authority to all national resolution financing arrangements in accordance with their contributions to the financing of the resolution pursuant to para. 2.

Ranking in the insolvency hierarchy

Article 131. (1) The following claims shall be of equal rank in bankruptcy proceedings, which is higher than the rank provided for the claims of ordinary unsecured creditors:
1. the part of eligible deposits that originate from natural persons and micro, small and medium-sized enterprises, which exceed the eligible deposits;
2. deposits that would be considered eligible deposits from natural persons, micro, small and medium–sized enterprises were they not made through branches located outside the European Union of institutions established within the European Union.
3. the liquidity reserve within a liquidity association to the extent required pursuant to Article 27a BWG and to the same extent required pursuant to Article 27a BWG for a group of affiliated credit institutions pursuant to Article 30a BWG.

(2) The following claims shall be of equal rank in bankruptcy proceedings, which shall be higher than the rank pursuant to para. 1:
1. covered deposits,
2. deposit guarantee facilities, which in the case of insolvency subrogate to the rights and obligations of covered depositors,
3. the liquidity reserve within a liquidity association to the extent required pursuant to Article 27a BWG and to the same extent required pursuant to Article 27a BWG for a group of affiliated credit institutions pursuant to Article 30a BWG.

(3) In the case of entities pursuant to Article 1 para. 1 nos. 1 to 4 ordinary unsecured claims assume a higher rank in bankruptcy proceedings than unsecured claims resulting from debt instruments that meet the following conditions:
1. the original contractual maturity of the debt instruments is of at least one year;

2. the debt instruments contain no embedded derivatives and are not derivatives themselves;
3. the relevant contractual documentation and, where applicable, the prospectus related to the issuance explicitly refer to the lower ranking under this paragraph.

(4) Unsecured claims resulting from debt instruments that meet the conditions pursuant to para. 3 nos. 1 to 3, shall assume a higher rank in bankruptcy proceedings that claims from instruments names in Article 90 para. 1 nos. 1 to 4.

(5) For the ranking of unsecured claims resulting from debt instruments in bankruptcy proceedings, which were issued by entities pursuant to Article 1 para. 1 nos. 1 to 4 prior to 30 June 2018, the provisions set out under Federal Law on bankruptcy proceedings in the applicable version of 31 December 2016 shall apply.

(6) For the purposes of para. 3 no. 2:
1. debt instruments with variable interest derived from a broadly used reference rate, or
2. debt instruments not denominated in the domestic currency of the issuer, provided that principal, repayment and interest are denominated in the same currency,
3. are not to be considered as debt instruments containing embedded derivatives solely on the basis of the features listed in no. 1 or no. 2 of this paragraph.

(7) Within the same rank, the claims shall be satisfied in a proportional manner.

(8) The registration of claims shall not be required to contain any information about their ranking.

Use of deposit guarantee facilities in the context of resolution

Article 132. (1) In the event that the resolution authority takes a resolution action, and provided that the action ensures that depositors continue to have access to their deposits, the deposit guarantee scheme to which the institution is affiliated shall be liable for the following:
1. in the case that the bail-in tool is applied, for the amount by which eligible deposits would have hypothetically been written down by without applying the waiver pursuant to Article 86 para. 2 no. 1, in order to absorb the losses in the institution pursuant to Article 88 para. 1 no. 1, or
2. in the case that one or several other resolution tools have been applied other than the bail-in tool, to the extent of the losses that the eligible depositors would have hypothetically sustained without the application of the waiver pursuant to Article 86 para. 2 no. 1.

(2) The obligation of the deposit guarantee facility shall in no event be higher that the obligation that would have existed in the event of the bankruptcy of the institution.

(3) When the bail-in tool is applied, the deposit guarantee facility shall not be required to make any contribution towards the costs of recapitalising the institution or bridge institution pursuant to Article 88 para. 1 no. 2.

(4) Where it is determined by the valuation pursuant to Article 107 that the deposit guarantee facility's contribution to the resolution was greater than the net losses it would have incurred had the institution been liquidated following bankruptcy proceedings, the deposit guarantee facility

shall be entitled to claim a pay-out of the difference from the resolution financing arrangement pursuant to Article 108.

(5) The deposit guarantee facilities shall make all information available to the resolution authority for the calculation in accordance with para. 1.

(6) The determination of the amount, which the deposit guarantee facility is liable pursuant to para. 1, shall correspond to the conditions listed in Article 57.

(7) The contribution from the deposit guarantee facility for the purpose of para. 1 shall be paid on the basis of the assets pursuant to no. 1 of Annex 2 to Article 43 Part 1 BWG.

(8) Where eligible deposits at an institution under resolution are transferred to another legal entity through the sale of business tool or the bridge institution tool, the depositors have no claim against the deposit guarantee facility pursuant to Part 2 ESAEG in relation to any part of their deposits at the institution under resolution that are not transferred, provided that the amount of funds transferred is equal to or more than the amount reimbursed pursuant to Article 13 para. 1 ESAEG.

(9) The liability of the deposit guarantee facility shall in any case not exceed the amount that is the equivalent of 0.4 % of the total of the eligible deposits of its member institutions.

PART 6: CROSS-BORDER GROUP RESOLUTION

Section 1: Cross-border decision-making and information; resolution colleges

General principles regarding decision-making involving more than one Member State

Article 133. If the resolution authority or other empowered authorities in accordance with this Federal Act make decisions or take actions in accordance with this Federal Act, that may have an impact in one or more other Member States, then they shall observe the following general principles:

1. When taking a resolution action the principle of efficacy of decision-making and of keeping resolution costs as low as possible shall be observed.
2. decisions shall be made and action taken in a timely manner and with due urgency when required;
3. Austrian authorities shall cooperation with one another as well as with the resolution authorities, competent authorities and other authorities of other Member States, including the ECB as competent authority, so that decisions may be reached and actions taken in a coordinated manner.
4. Austrian authorities shall precisely define with one another as well as with authorities from other Member States, what tasks and competences they shall respectively perform.
5. Appropriate consideration shall be given to the interests of the Member States where the EU parent undertakings or subsidiaries are established, in particular with regard to the impact of any decision or action or inaction on the financial stability, fiscal resources, the resolution financing arrangement, deposit guarantee scheme or investor compensation scheme of those Member States.

6. Appropriate consideration shall be given to the interests of individual Member States where significant branches are located, in particular the impact of any decision or action or inaction on the financial stability of those Member States;
7. Appropriate consideration shall be given to the objectives of balancing the interests of the various Member States involved and of avoiding unfairly prejudicing or unfairly protecting the interests of particular Member States, including avoiding unfair burden allocation across Member States;
8. If any obligation exists in accordance with this federal act, to consult another authority before any decision or action is taken, these authorities shall as a minimum be consulted on those elements of the proposed decision or action which have or which are likely to have:
   a. an effect on the EU parent undertaking, the subsidiary or the branch as applicable; and
   b. an impact on the stability of the Member State where the EU parent undertaking, the subsidiary or as applicable the branch, is established or located;
9. When taking resolution actions, the resolution authority shall take into account and follow the resolution plans, unless the resolution authority considers, taking into account the circumstances of the case, that the resolution objectives will be achieved more effectively by taking actions which are not provided for in the resolution plans.
10. The requirement for transparency shall be required to be observed whenever a proposed decision or action is likely to have implications on the financial stability, fiscal resources, the resolution financing arrangement, the deposit guarantee scheme or investor compensation scheme of another Member State.
11. The aim of coordination and cooperation shall be to lower the overall cost of resolution.

Resolution colleges

Article 134. (1) Subject to Article 137 the resolution authority as the group-level resolution authority shall establish resolution colleges to carry out the tasks referred to in Articles 22 to 26, 28, 30, 31, 100 to 105b and 139 to 146, and, where appropriate, to ensure cooperation and coordination with third-country resolution authorities.

(2) The resolution college shall fulfil the following tasks:

1. exchanging information relevant for the development of group resolution plans, for the application to groups of preparatory and preventative powers and for group resolution;
2. developing group resolution plans pursuant to Articles 22 to 26;
3. assessing the resolvability of groups pursuant to Article 28;
4. exercising powers to address or remove impediments to the resolvability of groups pursuant to Articles 30 and 31;
5. deciding on the need to establish a group resolution scheme as referred to in Articles 139 to 146;

6. reaching the agreement on a group resolution scheme proposed in accordance with Articles 139 to 146;
7. coordinating public communication of group resolution strategies and schemes;
8. coordinating the use of financing arrangements established under Title VII of Directive 2014/59/EU;
9. setting the minimum requirements for groups on a consolidated level and on the level of the subsidiaries in accordance with Articles 100 to 105b.

In addition, the resolution college may be used as a forum to discuss any issues relating to cross-border group resolution.

(3) The resolution authority that is the group-level resolution authority may decline to establish a resolution college if other groups or colleges already perform the same functions and carry out the same tasks specified in paras. 1 and 2 and in Articles 135 and 136, and comply with or fulfil all the conditions and procedures, including those covering membership and participation in resolution colleges, established in paras. 1 and 2 and in Articles 135, 136 and 138. In such a case, all references to resolution colleges in this federal act shall also be understood as references to those other groups or colleges.

Members of the resolution college

Article 135. (1) The following shall be members of the resolution college:

1. the resolution authority that is the group-level resolution authority;
2. the resolution authorities of the individual Member States in which a subsidiary covered by consolidated supervision is established;
3. the resolution authorities of the Member States, in which a parent undertaking of one or more institutions of the group is established;
4. the resolution authorities of the Member States in which significant branches are located;
5. the FMA as the consolidating supervisor;
6. the competent authority of the Member States, where those countries' resolution authorities are members of the resolution college; in the case of the competent authority of a Member State not being the central bank of the Member State, the competent authority may be accompanied by a representative from the central bank of the Member State;
7. the Federal Ministry of Finance;
8. the competent ministries of other Member States, where the resolution authorities of other Member States which are members of the resolution college are not the competent ministries;
9. the authority that is responsible for the deposit guarantee scheme of a Member State, where the resolution authority of that Member State is a member of the resolution college;
10. the European Banking Authority pursuant to para. 2.

(2) EBA shall contribute to promoting and monitoring to ensure the efficient, effective and consistent functioning of resolution colleges, taking into account international standards. For this purpose,

EBA shall be invited to the meetings of the resolution college by the resolution authority that is the group-level resolution authority as a member without a voting right.

(3) The resolution authority that is the group-level resolution authority may invite the resolution authorities of third countries to participate in the resolution college as observers, where they request to be invited, in the case that:

1. a parent undertaking or institution established in the EEA has a subsidiary institution or a branch in that third country that would be considered to be significant were it located in the EEA, and
2. the resolution authority of the third country is subject to confidentiality requirements that are equivalent in the opinion of the resolution authority to the requirements set out in Article 122.

Organisation of the resolution college

Article 136. (1) The resolution authority that is the group-level resolution authority shall chair the resolution college, and in this function shall

1. establish written arrangements and procedures for the functioning of the resolution college, after consulting the other members of the resolution college;
2. coordinate all activities of the resolution college;
3. convene and chair its meetings and keep all members of the resolution college fully informed in advance of the organisation of meetings of the resolution college, about the main issues to be discussed and the issued to be considered;
4. notify the members of the resolution college of any planned meetings so that they can request to participate;
5. decide which members and observers shall be invited to attend particular meetings of the resolution college, on the basis of specific needs, taking into account the relevance of the issue to be discussed for those members and observers, in particular the potential impact on financial stability in the Member States concerned;
6. keep all of the members of the college informed, in a timely manner, of the decisions and outcomes of those meetings.

The resolution authorities of other Member States shall always be invited to participate in resolution college meetings whenever matters subject to joint decision-making or relating to a group entity located in their Member State are on the agenda.

(2) The members of the resolution college shall cooperate closely.

European resolution colleges

Article 137. (1) If a third-country institution or a third-country parent undertaking established in Austria and at least one other Member State has

1. EU subsidiaries, or
2. EU parent undertakings, or

3. EU branches classified as significant by at least two Member States,

the resolution authority, together with the resolution authorities of the other Member States in which these entities are established or where these significant branches are located, shall establish a single European resolution college.

(2) The European resolution college referred to in para. 1 shall carry out the functions and tasks referred to in Article 88 of Directive 2014/59/EU in relation to the entities referred to in paragraph 1 and, where those tasks are relevant, also in respect of the EU branches.

(3) The tasks of the European resolution college shall include setting the requirements under Articles 100 to 105b. When setting the requirements under Articles 100 to 105b, where applicable the members of the European resolution college shall take into consideration the global resolution strategy set by the third-country authorities.

(4) Where EU subsidiaries or an EU parent undertaking and its subsidiaries are not resolution entities under the global resolution strategy and the members of the European resolution college approve this strategy, then the EU subsidiaries or the EU parent undertaking are required to fulfil the requirements pursuant to Article 105 paras. 1 to 5 on a consolidated basis, by issuing the instruments listed in Article 105 para. 8 nos. 1 and 2 to the third-country parent undertaking at its head or its subsidiaries established in the same third country as the third country parent undertaking at its head or other entities under the conditions pursuant to Article 105 para. 8 no. 1 lit. a and no. 2 lit. b.

(5) The resolution authority shall chair the European resolution college, in the case that

1. all EU subsidiaries of a third-country institution or third-country parent undertaking are subordinate to a single EU parent undertaking and that EU parent undertaking is established in Austria; or
2. the EU parent undertaking or EU subsidiary established in Austria has the highest balance sheet total.

(6) The resolution authority may, by mutual agreement of all the relevant parties, waive the requirement to establish a European resolution college, if other groups or colleges perform the functions and tasks listed in paras. 1 to 5 and 7 and complies with all the conditions and procedures listed in paras. 1 to 5 and 7 and Article 138, including those covering membership of and participation in supervisory colleges. In such a case, all references to European resolution colleges in this federal act shall also be understood as references to those other groups or colleges.

(7) With the exception of paras. 5 and 6, the European resolution committee shall be active pursuant to Article 134 paras. 1 and 2 as well as Articles 135 and 136.

Exchange of information between authorities

Article 138. (1) Subject to Articles 120 and 121 the resolution authority and the FMA shall submit all information to the resolution authorities and competent authorities in other Member States upon the latter's request, that are relevant for the performance of the functions conferred upon them by Directive 2014/59/EU.

(2) The resolution authority that is the group-level resolution authority shall coordinate all relevant information between the resolution authorities. In particular, the resolution authority as the group-level resolution authority shall provide the resolution authorities in other Member States with all the relevant information in a timely manner with a view to facilitating the exercising of the tasks listed in Article 134 para. 2 nos. 2 to 9.

(3) Prior to the onward transmission of information which has been provided by a third country resolution authority, the resolution authority shall seek the consent of the third country resolution authority in question for the onward transmission of that information, if such consent has not already been granted. In the event that the third country resolution authority does not grant such approval, then the resolution authority is not obliged to transmit information originating from the third country resolution authority.

(4) The resolution authority shall submit information to the Federal Minister of Finance or the competent ministry of another Member State, which refers to a decision or a matter, in which case a notification is prescribed to the Federal Minister of Finance or other competent ministries, or the consultation or consent of the Federal Minister of Finance or of another competent ministry is prescribed, or if the decision or matter may have implications for public funds in Austria or in another Member State.

Section 2: Group resolution involving a subsidiary of the group

Submission of information about the conditions for resolution

Article 139. If the resolution authority arrives at the conclusion that an institution or an entity pursuant to Article 1 para. 1 nos. 2 to 4, that is a subsidiary of a group, fulfils the requirements of Articles 49 or 52, then it shall submit the following information to the group-level resolution authority, the consolidating supervisor as well as the members of the group-level resolution college:

1. its conclusion that the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 fulfils the requirements of Articles 49 or 52; and
2. information about the resolution actions or insolvency measures that the resolution authority considers to be appropriate for the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 in question.

Procedure, if the resolution authority is not the group-level resolution authority

Article 140. (1) If the resolution authority is not the group-level resolution authority, then it may take the resolution actions or insolvency measures in accordance with Article 139 no. 2, if

1. the group-level resolution authority, after consulting the other members of the resolution college, arrives at the conclusion that the resolution actions or insolvency measures pursuant

to Article 139 no. 2 would not make it likely that the conditions pursuant to Articles 49 or 52 would be satisfied in relation to group entities in another Member State, or

2. the group-level resolution authority does not submit any conclusion to the resolution authority within a 24-hour deadline, of a longer deadline that has been agreed upon following receipt of the information pursuant to Article 139.

(2) If the resolution authority disagrees with a group resolution scheme which was proposed by the group-level resolution authority pursuant to Article 91 (6) of Directive 2014/59/EU, or considers that for reasons of financial stability that other resolution actions or measures other than those proposed in the group resolution scheme must be taken in relation to an institution or entity pursuant to Article 1 para. 1 nos. 2 to 4, then it shall be asked to justify in detail, why it does not agree with the group resolution scheme, or wishes to pursue an alternative approach. When justifying its reasons for disagreeing, the resolution authority shall take into adequate consideration the resolution plans that are available, the potential impact on financial stability in the affected Member States, as well as the potential consequences on other parts of the group. The resolution authority shall submit this justification to the group-level resolution authority and the other resolution authorities that are covered by the group resolution scheme, and at the same time communicate which actions it wishes to take.

(3) The resolution authority shall recognise and apply joint decisions pursuant to Article 91 paras. 7 or 9 of Directive 2014/59/EU as well as decisions made by other resolution authorities pursuant to Article 91(8) of Directive 2014/59/EU as being final.

Procedure, if the resolution authority is the group-level resolution authority

Article 141. (1) If the resolution authority as the group-level resolution authority received a notification from a resolution authority of another Member State pursuant to Article 91 (1) of Directive 2014/59/EU, then it shall assess the consequences, following a consultation with the other members of the respective resolution college, which the notified resolution actions or insolvency measures would have on the group or upon entities within the group in other Member States. In particular, it should be assessed whether the notified resolution actions or insolvency measures would make it likely that the conditions or requirements for resolution in relation to group entity in another Member State are met.

(2) If the resolution authority as the group-level resolution authority, after consulting the other members of the resolution college, arrives at the conclusion that the measures about which they have been notified, do not make it likely that the requirements pursuant to Articles 32 or 33 of Directive 2014/59/EU are met in relation to a group entity in another Member State, then it shall notify the resolution authority that made the notification about this circumstance.

(3) If the resolution authority as the group-level resolution authority, after consulting the other members of the resolution college, arrives at the conclusion that the resolution actions or insolvency measures make it likely that the conditions laid down pursuant to Articles 32 or 33 of

Directive 2014/59/EU are met in relation to a group entity in another Member State, then it shall submit a proposal for a group resolution scheme pursuant to Article 142 to the Single Resolution Mechanism within 24 hours of receipt of the notification pursuant to para. 2, although this deadline may be extended subject to the consent of the notifying resolution authority.

Group resolution scheme

Article 142. (1) In a group resolution scheme

1. existing resolution plans shall be taken into account and followed, unless the resolution authorities assess, taking into account circumstances of the case, that resolution objectives will be achieved more effectively by taking actions which are not provided for in the resolution plans;
2. the resolution actions shall be outlined that should be taken by the relevant resolution authorities in relation to the EU parent undertaking or particular group entities with the aim of meeting the resolution objectives and principles referred to in Articles 48 and 53 respectively;
3. specify how those resolution actions should be coordinated;
4. shall establish a financing plan which takes into account the group resolution plan, principles for sharing financial responsibility as established pursuant to Article 23 para. 2 no. 6 and the mutual support pursuant to Article 130.

(2) The group resolution scheme shall form the subject of a joint decision by the resolution authority as the group-level resolution authority subject to Article 91 (8) of Directive 2014/59/EU and the resolution authorities of the other Member States that are competent for the subsidiaries addressed by the group resolution scheme. If not all of the resolution authorities of the other Member States agree to the group resolution scheme, then the resolution authority may reach a joint decision with the remaining resolution authorities in other Member States about the group resolution scheme for the group entities located in their Member State. The resolution authority and the other competent resolution authorities may request support from the EBA to assist in reaching a joint decision in accordance with Article 31 (c) of Regulation (EU) No. 1093/2010.

(3) In any case where a group resolution scheme is not implemented and resolution authorities take resolution actions in relation to any group entity, those resolution authorities shall cooperate closely within the resolution college with a view to achieving a coordinated resolution strategy for all the group entities that are failing or likely to fail.

(4) The resolution authority shall inform the members of the resolution college regularly and fully about the resolution actions taken by it in relation to a group entity and ongoing progress.

(5) The resolution authority shall recognise and apply joint decisions pursuant to para. 2 as well as decisions made by other resolution authorities pursuant to Article 91(8) of Directive 2014/59/EU as being final.

Performance of actions without delay

Article 143. The resolution authority shall perform all actions pursuant to Articles 139 to 142 without delay, and with due regard to the urgency of the situation.

Section 3: Group resolution involving an EU parent undertaking

Procedure if the resolution authority is not the group-level resolution authority

Article 144. (1) If the resolution authority disagrees with a group resolution scheme which was proposed by the group-level resolution authority pursuant to Article 92 (1) of Directive 2014/59/EU, or considers that for reasons of financial stability that other resolution actions or measures other than those proposed in the group resolution scheme must be taken in relation to an institution or entity pursuant to Article 1 para. 1 nos. 2 to 4, then it shall be asked to justify in detail, why it does not agree with the group resolution scheme, or wishes to pursue an alternative approach. When justifying its reasons for disagreeing, the resolution authority shall take into adequate consideration the resolution plans that are available, the potential impact on financial stability in the affected Member States, as well as the potential consequences on other parts of the group. The resolution authority shall submit this justification to the group-level resolution authority and the other resolution authorities that are covered by the group resolution scheme, and at the same time communicate which actions it wishes to take.
(2) The FMA shall recognise and apply joint decisions pursuant to Article 92 paras. 3 and 5 of Directive 2014/59/EU as well as decisions made by other resolution authorities pursuant to Article 92(4) of Directive 2014/59/EU as being final.

Procedure if the resolution authority is the competent group-level resolution authority

Article 145. (1) If the resolution authority as the group-level resolution authority arrives at the conclusion that an EU parent undertaking for which it is responsible fulfils the requirements of Articles 49 or 52, then it shall notify the information listed in Article 139 nos. 1 and 2 to the FMA and the other members of the resolution college of the group without delay. The resolution actions or insolvency measures pursuant to Article 139 no. 2 may include the implementation of a group resolution scheme drawn up in accordance with Article 142 para. 1, under one of the following prevailing circumstances:

1. resolution actions or other measures at parent level notified pursuant to Article 139 no. 2 that make it likely that the conditions laid down in Article 49 or 52 will be fulfilled in relation to a group entity in another Member State;
2. resolution actions or other measures at parent level are not sufficient to stabilise the situation or are not likely to provide a satisfactory outcome;

3. one or more subsidiaries meet the conditions referred to in Article 49 or 52 according to a determination by the resolution authorities responsible for those subsidiaries in other Member States;
4. resolution actions or other measures at group level will benefit the subsidiaries of the group in a way which makes the application of a group resolution scheme appropriate.

(2) If the measures notified pursuant to para. 1 do not include a group resolution scheme, then the resolution authority as the group-level resolution authority shall make its decision after consulting the members of the resolution college. In taking the decision, the resolution authority shall

1. take into account and follow existing resolution plans, unless resolution authorities assess, taking into account circumstances of the case, that resolution objectives will be achieved more effectively by taking actions which are not provided for in the resolution plans, and
2. take into consideration the financial market stability of the relevant Member States.

(3) Where the actions proposed pursuant to para. 1 include a group resolution scheme, the group resolution scheme shall take the form of a joint decision of the resolution authority as the group-level resolution authority and the resolution authorities of other Member States that are responsible for the subsidiaries that are covered by the group resolution scheme. If not all of the resolution authorities agree to the group resolution scheme, then the resolution authority may reach a joint decision with the remaining resolution authorities in other Member States about the group resolution scheme for the group entities located in their Member State. The resolution authority and the other competent resolution authorities may request support from the EBA to assist in reaching a joint decision in accordance with Article 31 (c) of Regulation (EU) No. 1093/2010.

(4) If a group resolution scheme is not implemented and the resolution authorities take resolution actions in relation to any group entity, those resolution authorities shall cooperate closely within the resolution college, which shall also decide upon resolution actions, in order to achieve a coordinated resolution strategy for all affected group entities.

(5) The resolution authority shall inform the members of the resolution college regularly and fully about the resolution actions taken by it in relation to a group entity and ongoing progress.

(6) The resolution authority shall recognise and apply joint decisions pursuant to para. 3 as well as decisions made by other resolution authorities pursuant to Article 92(4) of Directive 2014/59/EU as being final.

Performance of actions without delay

Article 146. The resolution authority shall perform all actions pursuant to Articles 144 and 145 without delay, and with due regard to the urgency of the situation.

PART 7: RELATIONS WITH THIRD COUNTRIES

Agreements with third countries

Article 147. (1) Provided that the conditions set out in Article 122 have been fulfilled and the Federal Minister of Finance is authorised to conclude agreements pursuant to Article 66 para. 2 B-VG, the Federal Minister of Finance may, at the suggestion of the resolution authority, conclude agreements with the resolution authorities of third countries, in which the type and means of the cooperation between the resolution authority and the relevant third countries authorities, inter alia for the purpose of information sharing in connection with recovery and resolution planning in relation to institutions, CRR financial institutions, parent undertakings and third country institutions, with regard to the following situations:

1. in cases where a third-country parent undertaking has subsidiary institutions or significant branches in Austria and at least one other Member State;
2. in cases where a parent undertaking established in Austria and which has a subsidiary or a significant branch in at least one other Member State has one or more third country subsidiary institutions;
3. in cases where an institution established in Austria and which has a parent undertaking, a subsidiary or a significant branch in at least one other Member State has one or more branches in one or more third countries.

(2) Within an agreement pursuant to para. 1 it shall in particular be ensured that processes and arrangements are established between resolution authority and the relevant third country authorities for cooperation in carrying out some or all of the tasks and exercising some or all of the powers listed in Article 148 paras. 3 and 4.

(3) The inclusion of provisions in relation to individual institutions, financial services institutions, parent undertakings or third-country institutions shall not be permissible in an agreement pursuant to para. 1.

(4) Agreements pursuant to para. 1 shall be concluded for an indefinite period of time. They shall cease to be in force, as soon as an Agreement of the European Union pursuant to Article 93 (1) of Directive 2014/59/EU enters into force with the third country in question.

Cooperation with third-country authorities

Article 148. (1) Paras. 2 to 5 shall apply in relation to the cooperation with a third country, for as long as and provided that no Agreement of the European Union pursuant to Article 93 (1) of Directive 2014/59/EU has entered into force with the third country in question. Paras. 2 to 5 shall continue to apply following the entry into force of an international agreement pursuant to Article 93 (1) of Directive 2014/59/EU with the third country in question, provided that the Agreement does not have the content listed in paras. 2 to 5 as its subject matter.

(2) With regard to the cooperation with a third country, the EBA may concluding legally non-binding framework cooperation agreements pursuant to Article 97 of Directive 2014/59/EU with third-country authorities. The FMA or the resolution authority may conclude cooperation agreements with the third-country authorities that are non-binding, that are in line with EBA framework arrangements. These cooperation agreements may contain additional provisions with regard to the matters listed in para. 4.

(3) The FMA or the resolution authority may, regardless of the existence of a framework cooperation agreement of the EBA with third country authorities pursuant Article 97 of Directive 2014/59/EU, conclude separate, legally non-binding cooperation agreements with third-country authorities, provided that they deem these to be necessary. In such cooperation agreements the processes and arrangements may be defined regarding the necessary sharing of information and the cooperation between the participating authorities with regard to the exercising of some or all or the following tasks and powers listed in nos. 1 to 5:

1. the drawing-up of resolution plans pursuant to Article 19 paras. 1 and 2, Articles 20 and 21, Article 22 paras. 1 and 2 as well as Articles 23 to 26 and the equivalent requirements under the law of the relevant third countries;
2. the assessment of the resolvability of such institutions and groups, in accordance with Articles 27 and 28 and the comparable requirements under the law of the relevant third countries;
3. the application of powers to address or remove impediments to resolvability pursuant to Articles 29 to 31 and the similar powers under the law of the relevant third countries;
4. the application of early intervention measures pursuant to Article 44 and the similar powers under the law of the relevant third countries;
5. the application of resolution tools and exercise of resolution powers and similar powers exercisable by the relevant third-country authorities.

(4) The cooperation arrangements concluded pursuant to para. 2 or 3 may furthermore contain provisions about the following matters:

1. the exchange of information necessary for the preparation and maintenance of resolution plans;
2. consultation and cooperation in the development of resolution plans, including principles for the exercise of powers under Articles 149 and 151 and similar powers under the law of the relevant third countries;
3. the exchange of information necessary for the application of resolution tools and exercise of resolution powers and similar powers under the law of the relevant third countries;
4. early warning to or consultation of parties to the cooperation arrangement before taking any significant action under this federal act or relevant third-country law affecting the institution or group to which the arrangement relates;
5. the coordination of public communication in the case of joint resolution actions;

6. procedures and arrangements for the exchange of information and cooperation in accordance with nos. 1 to 5, including, where appropriate, through the establishment and operation of crisis management groups.

(5) The FMA and the resolution authority shall inform the EBA about cooperation arrangements, which have been concluded pursuant to paras. 2 to 4.

Recognition and enforcement of third-country resolution proceedings

Article 149. (1) Paras. 2 to 6 shall apply in relation to third-country resolution proceedings, for as long as and provided that no Agreement of the European Union pursuant to Article 93 (1) of Directive 2014/59/EU has entered into force with the third country in question. Paras. 2 to 6 shall continue to apply following the entry into force of an international agreement pursuant to Article 93 (1) of Directive 2014/59/EU with the third country in question, provided that the Agreement does not have recognition and enforcement of resolution proceedings as its subject matter.

(2) If a European resolution college exists pursuant to Article 137 para. 1, then it, with the exception of the cases listed in Article 150, shall decide in a joint decision, whether it recognises third-country resolution proceedings in relation to a third-country institution or a parent undertaking, which

1. has EU subsidiaries established in, or Union branches located in and regarded as significant by, two or more Member States; or
2. has assets, rights or liabilities located in two or more Member States or are governed by the law of those Member States.

If the European resolution college has confirmed the recognition of third-country resolution proceedings in a joint decision, then the resolution authority shall endeavour to enforce the recognised third-country resolution proceedings, provided that doing so is compatible with Austrian legislation.

(3) If the members of the European resolution college are unable to reach a joint decision regarding the recognition of third-country resolution proceedings pursuant to para. 2, or if no European resolution committee exists, then the resolution authority, taking Article 150 into consideration, itself shall decide whether it recognises third-country resolution proceedings with regard to third-country institutions or parent undertakings, which

1. has EU subsidiaries established in Austria and at least one other Member State, or EU branches located in Austria and at least one other Member State and regarded as significant by two or more Member States; or
2. has assets, rights or liabilities, which are accounted for in Austria and at least one other Member State, or which are subject to Austrian law and the law of at least one other Member State.

In arriving at this decision the resolution authority shall take into consideration the interests of each individual Member State where a third-country institution or a parent undertaking is active, as well as in particular potential effects in relation to the recognition and enforcement of the third-country resolution proceedings on other group entities and the financial stability of the respective affected Member States.

(4) For the purposes of paras. 3 and 4 the resolution authority shall be authorised:

1. to exercise resolution powers in relation to the following:
   a. assets of a third-country institution or third-country parent undertaking, which are located in Austria or are subject to Austrian law;
   b. right or liabilities of a third-country institution that either are the responsibility of the EU branch in Austria or are subject to Austrian law or which constitute legally enforceable claims in Austria;
2. to enforce, or to issue the instruction to enforce a transfer of shares or other instruments of ownership in an EU subsidiary established in Austria;
3. to exercise the powers in Articles 64 to 66 in relation to the rights of any party to a contract with an entity listed in para. 2, where such powers are necessary in order to enforce third-country resolution proceedings; and
4. to render unenforceable any right to terminate, liquidate or accelerate contracts, or affect the contractual rights, of entities referred to in para. 2 and other group entities, where such a right arises from resolution action taken in respect of the third-country institution, parent undertaking of such entities or other group entities, whether by the third-country resolution authority itself or otherwise pursuant to legal or regulatory requirements as to resolution arrangements in that country, provided that the substantive contractual obligations, including payment and delivery obligations, and provision of collateral, continue to be performed.

(5) If the relevant third-country authority determines that an institution incorporated in that third country meets the conditions applicable for resolution under the law of that third country, the resolution authority may take resolution actions with regard to a parent undertaking established in Austria with respect to a parent undertaking, provided that this is necessary in the public interest. For this purpose, the resolution authority may take any kind of resolution actions in relation to the parent undertaking and apply Article 63.

(6) Austrian bankruptcy proceedings, which may be applicable in line with this federal act, shall remain unaffected by the recognition and enforcement of third-country resolution proceedings.

Refusal of recognition or enforcement of third-country resolution proceedings

Article 150. The resolution authority may refuse to recognise or to enforce third-country resolution proceedings pursuant to Article 149, if it believes that

1. the relevant third-country resolution proceedings would have adverse effects on Austria, or that the proceedings may have adverse effects on financial stability in another Member State;
2. independent resolution action pursuant to Article 151 in relation to a EU branch is necessary to achieve one or more of the resolution objectives;

3. creditors, including in particular depositors located or payable in a Member State, would not receive the same treatment as third-country creditors and depositors with similar legal rights under the third-country resolution proceedings;
4. recognition or enforcement of the third-country resolution proceedings would have material fiscal implications for Austria; or
5. the effects of such recognition or enforcement would be contrary to Austrian law.

In the event that a European Resolution Board exists pursuant to Article 5 para. 1, the resolution authority shall consult the respective relevant resolution authorities of the other Member States prior to making a decision of refusal of recognition or enforcement.

Resolution of EU Branches

Article 151. (1) If an EU branch located in Austria either is not subject to any third-country resolution proceedings or if a EU branch located in Austria is subject to third-country resolution proceedings but at the same time one of the circumstances pursuant to Article 150 prevails, the resolution authority may take resolution actions to this EU branch or apply Article 63, if it is of the opinion that these actions are necessary in the public interest, and if at the same time at least one of the following conditions is met:

1. the EU branch located in Austria no longer meets or is likely in the near future not to meet the conditions for its authorisation and business activities in Austria, and no prospect exists that any private sector, FMA or the third-country, in which the superordinate entity is established, action will have the necessary effect that compliance with the requirements will be restored within a reasonable timeframe;
2. the third-country institution is, in the opinion of the resolution authority, unable or unwilling, or in the near future is likely to be unable, to pay its obligations to creditors within the European Union, or obligations that have been created or booked through the EU branch, as they fall due and the resolution authority assumes that no third-country resolution proceedings or insolvency proceedings have been or will be initiated in relation to that third-country institution in a reasonable timeframe;
3. the third-country authority has initiated third-country resolution proceedings in relation to the third-country institution or has notified the resolution authority about its intention to initiate such a proceeding.

(2) If the resolution authority takes resolution actions in relation to an EU branch located in Austria, then in so doing it shall take into consideration the resolution objectives and shall proceed with regard to the application of resolution tools in line with the principles determined in Article 53 and the conditions pursuant to Articles 54 to 57, provided that these principles or conditions are relevant for the exercising of the resolution power concerned.

PART 8: PENAL PROVISIONS AND OTHER MEASURES

Penal provisions

Article 152. (1) Any person who

1. as the person responsible (Article 9 VStG) of an institution that is not part of a group, fails to draw up recovery plans pursuant to Article 8 para. 1 by the dates defined by the FMA pursuant to Article 4 para. 1 no. 2, or who fails pursuant to Article 11 to extend or update them;
2. as the person responsible (Article 9 VStG) of an EU parent undertaking, fails to draw up group recovery plans pursuant to Article 15 para. 1 by the dates defined by the FMA pursuant to Article 4 para. 1 no. 2, or who fails pursuant to Article 15 para. 1 in conjunction with Article 11 to extend or update them;
3. as the person responsible (Article 9 VStG) of an entity fails to inform the FMA pursuant to Article 40 para. 1 no. 1 that it shall provide intra-group financial assistance;
4. as the person responsible (Article 9 VStG) of an institution or an entity pursuant to Article 1 para. 1 nos. 2 to 4 in contravention of Article 114 para. 1 fails to inform the FMA, that the institution or entity pursuant to Article 1 para. 1 nos. 2 to 4 is failing or likely to fail;
5. as the person responsible (Article 9 VStG) of an institution fails to make available to the resolution authority or to the FMA all information pursuant to Article 21 para. 1 for the development of resolution plans,
6. commits an administrative offence and shall be punished by the FMA with a fine of up to EUR 5 000 000 or up to double the amount of the gain arising from the breach, where this amount is able to be determined.

(2) Any person who,

1. as the person responsible (Article 9 VStG) of an institution makes false statements in a recovery plan;
2. as the person responsible (Article 9 VStG) of an institution fails to notify the FMA in writing without delay pursuant to Article 10 para. 4 about taking a measure set out in the recovery plan or of choosing not to a measure set out in the recovery plan;
3. as the person responsible (Article 9 VStG) of an institution fails to notify the FMA in writing without delay pursuant to Article 19 para. 2 of a change that significantly affects the effectiveness of the resolution plan that makes it necessary to revise or update the resolution plan;
4. as the person responsible (Article 9 VStG) of a wind-down unit fails pursuant to Article 84 para. 11 to notify the resolution authority in writing without delay about the issuing of a resolution on dissolution;
5. as the person responsible (Article 9 VStG) of an institution or entity pursuant to 'Article 1 para. 1 nos. 2 to 4 repeatedly fails to submit the notifications stipulated in Article 4a, Article 105c or Article 12 (2) of Regulation (EU) No 806/2014 to the FMA, to the resolution

authority or to the *Oesterreichische Nationalbank* within the stipulated deadlines or repeatedly submits them incorrectly or incompletely in a way that is not in accordance with the formal requirements laid down by law or by means of a Regulation, commits an administrative offence and shall be punished by the FMA with a fine of up to EUR 60 000.

(3) In the event of a notification requirement pursuant to Article 10 para. 4 or Article 19 para. 2 being breached the FMA shall refrain from initiating and conducting administrative penal proceedings if the notification not properly submitted was subsequently made before the FMA had gained knowledge of the offence. This shall also apply to procedures pursuant to Article 153 paras. 1 and 2.

Penal provisions with regard to legal persons

Article 153. (1) The FMA may impose fines on legal persons if persons who acted individually or as part of a body of a legal person and who have a managerial role within the legal person on the basis of:

1. a power of representation of the legal person,
2. an authority to take decisions on behalf of the legal person, or
3. an authority to exercise control within the legal person

have acted in breach of the obligations listed in Article 152 para. 1, nos. 1, 2 or 5 or Article 152 para. 2 nos. 1 to 3.

(2) Legal persons may also be held responsible for breaches of the obligations listed in Article 152 para. 1, nos. 1, 2 or 5 or Article 152 para. 2 nos. 1 to 3, if such breaches by a person acting for the legal person were made possible by a lack of supervision or control by one of the persons referred to in para. 1.

(3) The fine pursuant to paras. 1 or 2 shall amount to up to 10% of the total annual turnover pursuant to para. 4 or up to two twice the amount of the benefit derived from the breach, to the extent that this can be quantified.

(4) The total annual turnover pursuant to para. 3 in the case of credit institutions pursuant to Article 1 para. 1 BWG shall be the total amount of all income items listed in nos. 1 to 7 of Annex 2 to Article 43 BWG less the expenditures listed therein; if the company is a subsidiary, the total annual turnover shall be taken from the consolidated financial statements of the ultimate parent undertaking in the group in the preceding financial year. With regard to other legal persons, the relevant figure shall be annual total sales. Where the FMA is unable to determine or calculate the bases for the total revenues, then it shall estimate them. In so doing, all relevant circumstances shall be taken into account that are relevant for the estimate.

Article 154. *(repealed)*

Disclosure of legal breaches and fines

Article 155. (1) The FMA may publish the name of the natural person, of the institution, the CRR-financial institution, the EU parent undertaking or other legal persons in the event of a breach of Article 152 listing the breach committed, provided that such a disclosure shall not gravely jeopardise the stability of the financial markets or cause a disproportionately high level of damage to the parties concerned.

(2) Non-appealable fines imposed due to breaches pursuant to Articles 152 and 153 shall be published on the internet immediately by the FMA, including details of the identity of the person upon whom the sanction has been placed, and information on the type and nature of the underlying breach.

(3) Publication pursuant to para. 2 shall be carried out on an anonymous basis if the disclosure of names:

1. of a sanctioned natural person would be disproportionate, or
2. would jeopardise the stability of the financial markets or a Member State or several Member States of the European Union, or
3. would jeopardise implementation of current criminal law investigations, or
4. the parties concerned would suffer a disproportionately high level of damage, insofar as it can be determined.

If there are grounds for anonymous publication pursuant to nos. 1 to 4, but it can be assumed that these grounds will cease to exist in the foreseeable future, the FMA may refrain from an anonymous publication and publish the sanction also pursuant to para. 1 once the grounds pursuant to nos. 1 to 4 have ceased to apply.

(4) The person affected by this publication may make an application to the FMA to review the lawfulness of the publication pursuant to paras. 1, 2 or 3 in a procedure resulting in an administrative decision. In this case, the FMA shall notify the public of the initiation of such a procedure in the same way. If, in the course of this review, the publication is found to be unlawful, the FMA shall correct the publication or, at the request of the person subject to this publication, either revoke it or remove it from its website. If a complaint brought against an administrative decision that was made public in accordance with paras. 1, 2 or 3, for which suspensory effect is granted in a legal proceeding, then the FMA shall make this fact known in the same manner. The publication shall be corrected or at the request of the concerned party either revoked or removed from the FMA's Internet presence, if the administrative decision has been repealed.

(5) If a publication pursuant to paras. 2 or 3 is not to be revoked or removed from the internet pursuant to a decision in accordance with para. 4, it shall be maintained for a period of at least five years. Publication of the personal data shall however only be maintained for as long as none of the criteria pursuant to para. 3 nos. 1 to 4 are fulfilled.

Notifications to EBA

Article 156. The FMA shall notify EBA of all administrative penalties arising from breaches pursuant to Article 152. If appeal proceedings have been initiated against a sanction imposed by the FMA, then both this circumstance as well as the outcome of the appeal proceedings shall also be reported to the EBA.

Other measures

Article 157. If an institution or an entity pursuant to Article 1 para. 1 nos. 2 to 4 breaches the provisions of this federal act or of Regulation, then the FMA shall

1. instruct the institution or the entity pursuant to Article 1 para. 1 nos. 2 to 4 under threat of a coercive penalty, to restore legal compliance within a period of time which is appropriate in light of the circumstances;
2. in cases of repeated or continued breaches, completely or partly prohibit the executive directors from managing the institution or entity, unless this would be inappropriate based on the nature and severity of the breach, and where restoration of legal compliance may be expected pursuant to no. 1; in such cases, the initial coercive penalty imposed shall be enforced and the instruction repeated along with the threat of a larger coercive penalty;

Effective punishment of legal breaches

Article 158. When determining the type of sanction or measure to be enforced for breaches against the provisions of this federal act as well as in calculating the amount of a fine, where appropriate, the following circumstances in particular shall be borne in mind:

1. the severity and duration of the breach;
2. the degree of responsibility of the natural or legal person responsible;
3. the financial strength of the responsible natural or legal person as indicated, for example, by the total sales of the responsible legal person or the annual income of the responsible natural person;
4. the amount of the gains made or losses avoided by the responsible natural or legal person, insofar as they can be determined;
5. the losses caused to third parties by the breach, insofar as they can be determined;
6. the level of cooperation of the responsible natural or legal person with the competent authority;
7. previous breaches by the responsible natural or legal person; and
8. any potential systemic consequences of the breach.

The provisions of the VStG shall be unaffected by this Article.

Recommendations of the Board

Article 158a. The resolution authority shall review recommendations by the Board pursuant to Article 38 (8) of Regulation (EU) No 806/2014, and where legal conditions to do so exist shall impose administrative penalties and other measures in accordance with Articles 152 to 158.

Enforcement of fines and penalty payments of the Board

Article 158b. (1) The fines and penalty payments imposed by the board pursuant to Articles 38 and 39 of Regulation (EU) No. 806/2014 by means of a decision shall, provided that an administrative decision has been issued pursuant to para. 2, shall be enforced by the local administrative authorities in application of the Administrative Enforcement Act 1991 (VVG; *Verwaltungsvollstreckungsgesetz 1991*), published in Federal Law Gazette No. 53/1991.

(2) The FMA shall in the process of the enforcement of a decision of the Board pursuant to Articles 38 and 39 of Regulation (EU) No 806/2014 check its authenticity. If the decision is real, the FMA shall determine this by means of an administrative decision. This administrative decision constitutes the enforcement title pursuant to Article 41 (3) of Regulation (EU) No 806/2014.

Usage of received fines

Article 159. (1) Fines imposed by the FMA pursuant to this federal act shall be passed on to the Federal Government.

(2) By way of derogation from para. 1 the received amounts from fines and penalty payments imposed on the basis of a decision by the Board pursuant to Articles 38 and 39 of Regulation (EU) No 806/2014 shall be passed on to the Single Resolution Fund.

PART 9: COSTS, TRANSITIONAL AND FINAL PROVISIONS

Estimation of costs

Article 160. (1) The FMA's costs for its activities in accordance with this Federal Act including its activity as the resolution authority with regard to the entities listed in nos. 1 and 3 and costs for accounting group 1 (banking supervision costs) pursuant to Article 19 para. 1 no. 1 FMABG. Article 69a BWG shall apply for the allocation of costs as appropriate, applied with the proviso, that

1. institutions,
2. financial holding companies and mixed financial holding companies, insofar as they are part of a group of credit institutions pursuant to Art. 30 BWG, and
3. EU branches established or active in Austria that provide banking services or bank-related ancillary services in Austria,

are liable to pay costs. The FMA shall form a sub-accounting group for these institutions that are liable to pay costs within the accounting group for banking supervision for this purpose.

(1a) The FMA's costs for its activities in accordance with this Federal Act including its activity as the resolution authority with regard to the entities listed in nos.1 and 2 and costs for accounting group 3 (securities supervision costs) pursuant to Article 19 para. 1 no. 3 FMABG. Article 89 WAG 2018 shall apply for the allocation of costs as appropriate, applied with the proviso, that

1. CRR investment firms and
2. EU branches established or active in Austria that provide investment services or investment-related ancillary services in Austria,

are liable to pay costs. The FMA shall form a sub-accounting group for these institutions that are liable to pay costs within the accounting group for securities supervision for this purpose.

(2) The prescription of fees for prepayment for the 2015 financial year shall be issued by the FMA for the 2015 financial year for the entities liable to pay costs in accordance with this federal act by 15 June 2015. On the basis of these fee prescriptions, the entities liable to pay costs shall remit the prescribed amount, by deviation from Article 19 para. 5 FMABG, in two equal instalments by 15 July and 15 October 2015.

Transitional provisions

Article 161. (1) For institutions,

1. for which a resolution plan or restructuring plan had already been approved by the European Commission in accordance with the EU rules and resolutions on state aid pursuant to Articles 107 to 109 of the Treaty on the Functioning of the European Union (TFEU) when this federal act entered into force, and
2. which, at the time of the entry into force of this federal act, have already been placed in resolution, and
3. which are not subject to direct supervision by the European Central Bank pursuant to Article 6 (4) of Regulation (EU) No 1024/2013,

Part 2 of this federal act shall only be applied with the proviso that the content of the recovery plan is restricted to a reference to the resolution plan, and the content of the resolution plan shall contain the points listed in para. 2.

(2) The resolution plan for institutions pursuant to para. 1, shall consist, where possible with quantifying information, of:

1. basic information about the institution, with information to ensure that the institution can be correctly identified, in addition to the company name and address;
2. a summary of the main contents of the resolution plan, with this information to be disclosed to the affected institution;
3. a summary of any material changes within the institution that have arisen since submission of the last resolution plan;
4. a reference to any state aid decisions pursuant to Articles 107 to 109 TFEU that refer to the affected institution;
5. a summary of the main points of the resolution or restructuring plan and any significant obligations of the institution arising from the state aid decision pursuant to Articles 107 to 109 TFEU, as well as the significant measures that were taken to comply with the conditions relating to the state aid decision;
6. where applicable, any opinion expressed by the institution in relation to the resolution plan;
7. where applicable, options for the application of resolution actions pursuant to Chapters 3, 4 and 5 of Part 4 of this federal act;

8. a summary of all significant impediments to resolution including explanations, where necessary and proportionate, as well as a list of the relevant measures by means of which these impediment could be addressed in accordance with Chapter 2;
9. an analysis, which contains information about how, when and subject to which requirements the institution may apply to use central bank facilities, including a listing of the assets, which would be expected to qualify as collateral;
10. a demonstration of how critical functions and core business lines could be legally and economically separated, to the extent necessary, from other functions so as to ensure continuity upon the failure of the institution;
11. a detailed description of the arrangements for ensuring that the information required pursuant to Article 21 is up-to-date and at the disposal of the resolution authorities at all times;
12. a description of critical interdependencies;
13. a description of options for preserving access to payments and clearing services and other infrastructures and, an assessment of the portability of client positions;
14. a description of essential operations and systems for maintaining the continuous functioning of the institution's operational processes;

(3) The resolution authority may prescribe less stringent requirements in its assessment pursuant to Article 4 for the institutions named in para. 1 than those requirements set out in para. 2 with regard to the resolution plan.

(4) The Federal Minister of Finance may make, at the request of the resolution authority, financial means available to legal entities, upon which resolution actions are applicable in accordance with this federal act (measure to ensure the resolution objectives), if

1. it is consequently ensured that the resolution objectives are achieved and resolution actions taken;
2. the resolution action, which the resolution authority intends to deploy, is most suitable for achieving the resolution objectives;
3. it is permissible under the European Union's State aid framework;
4. the deployment of this action is not precluded by a resolution by the resolution authority or the Board; and
5. the resolution action shall not be financed by financial means from the Single Resolution Fund (Article 67 of Regulation (EU) No 806/2014).

Measures pursuant to this paragraph shall be calculated on the total amount pursuant to Article 2 para. 4 of the Financial Market Stability Act, published in Federal Law Gazette I No. 136/2008. The decision of the Federal Minister of Finance shall be communicated to the resolution authority.

(5) By way of derogation from Article 100 para. 1 the resolution authority shall set appropriate transitional periods for institutions or entities pursuant to Article 1 para. 1 nos. 2 to 4, in order to meet the requirements set out in Articles 104 and 105 or the requirements resulting from the application of Article 101 paras. 6 to 10 and 12, depending on their applicability. The deadline for

institutions and undertakings to comply with the requirements set out in Articles 104 and 105 or the requirements resulting from the application of Article 101 paras. 6 to 10 and 12 shall be 1 January 2024.

(6) The resolution authority shall determine intermediate targets to be met by the institutions and undertakings pursuant to Article 1 para. 1 nos. 2 to 4 by 1 January 2022 for the requirements set out in Articles 104 and 105, or for the requirements resulting from the application of Article 101 paras. 6 to 10 and 12 depending on their applicability. The intermediate target levels are to be determined in such a way to ensure a linear build-up of own funds and eligible liabilities towards fulfilling the requirement.

(7) By way of derogation from para. 5, the resolution authority may set a transitional period ending after 1 January 2024 provided this is sufficiently justified and appropriate based on the criteria set out in para. 13, with the resolution authority taking into consideration the following:

1. the development of the entity's financial situation;
2. the prospect that the undertaking will be able to ensure, within a reasonable time frame, that the requirements set out in Articles 104 and 105 or the requirements resulting from the application of Article 101 paras. 6 to 10 and 12 are met; and
3. whether the entity is able to replace liabilities that no longer meet the eligibility or maturity criteria laid down in Articles 72b and 72c of Regulation (EU) No 575/2013, and Articles 101 or 105 para. 8, and if not, whether that inability is of an idiosyncratic nature or is due to market-wide disturbances.

(8) The deadline for resolution entities to meet the minimum level of requirements set out in Article 102 paras. 11 to 14 is 1 January 2022.

(9) The minimum levels of the requirements pursuant to Article 102 paras. 11 to 14 shall not apply within the two-year period following the date:

1. on which the resolution authority applied the bail-in tool;
2. on which the resolution entity initiated alternative actions taken by the private sector pursuant to Article 49 para. 1 no. 2, whereby capital instruments and other liabilities were written down or converted into Common Equity Tier 1 instruments, or
3. on which write-down or conversion powers were exercised on that resolution entity in order to recapitalise the resolution entity without the application of resolution tools.

(10) The requirements pursuant to Article 101 paras. 6 to 8 and 12 as well as Article 102 paras. 11 to 14, depending on their applicability, shall not apply for a period of three years from the date on which the resolution entity or group to which the resolution entity belongs was identified as a G-SII or since when the provisions pursuant to Article 102 para. 11 or 13 have been applied to the resolution entity.

(11) By way of derogation from Article 100 para. 1 the resolution authority must specify an appropriate transitional period for an institution or entity pursuant to Article 1 para. 1 nos. 2 to 4, to which resolution tools or write-down or conversion power have been applied, in order to meet the

requirements set out in Articles 104 and 105 or the requirements resulting from the application of Article 101 paras. 6 to 10 and 12, depending on their applicability.

(12) For the purposes of paras. 5 to 11, during the transitional period, the resolution authority shall communicate to the institution or entity pursuant to Article 1 para. 1 nos. 2 to 4 a planned minimum amount of own funds and eligible liabilities for each period of 12 months in order to facilitate a gradual build-up of their loss-absorbing and recapitalisation capacity. At the end of the transitional period, the minimum amount of own funds and eligible liabilities must be equal to the amount set pursuant to Article 101 paras. 6 to 10 and 12, Article 102 paras. 11 to 14, Article 104 or 105 depending on their applicability.

(13) When determining the transitional period, the resolution authority shall take into account the following:

1. the prevalence of deposits and the absence of debt instruments in the funding model;
2. the access to the capital markets for eligible liabilities;
3. the extent to which the resolution entity relies on Common Equity Tier 1 capital to meet the requirement referred to in Article 104.

(14) Subject to paragraph 5, the resolution authority shall not be prevented from changing the transitional period or the planned minimum requirement for own funds and eligible liabilities notified in accordance with para. 12 at a later date.

Wind-down entity

Article 162. (1) The FMA may authorise in the event that conditions pursuant to para. 2 exist following an application by an institution that the institution shall operate as a wind-down entity. Article 84 is applicable for the wind-down entity. The wind-down entity must work towards to the compliance of Article 84 by the legal entities in which it holds, either directly or indirectly, the majority of voting rights.

(2) An authorisation pursuant to para. 1 may be granted for an institution, which operates solely to manage the assets and liabilities with the aim of ensuring an orderly, active and best possible liquidation (portfolio wind-down), and has decided to do this permanently, if:

1. the institution no longer conducts business in the market or towards third parties, unless for the purpose of winding-down remaining business,
2. the institution does not take deposits or other repayable funds from the public after having taken the permanent decision pursuant to the first sentence of para. 2,
3. the institution has initiated proceedings in order to guarantee that contractual partners from the remaining business relations are informed and advised in an appropriate manner, and
4. the institution was already conducting its business prior to 31.12.2014 in accordance with a resolution or restructuring plan, which had been authorised by the European Commission in accordance with Union law provisions set in Articles 107 to 109 TFEU and the accompanying issued regulations.

The existence of the requirement pursuant to nos. 1 to 3 is to be confirmed by the bank auditor.

(3) Portfolio wind-down must be carried out in accordance with a wind-down plan pursuant to Article 84. The licence granted pursuant to BWG for conducting banking transactions ceases to exist following the entry into effect of an administrative decision issued by the FMA pursuant to para. 1 and the institution continues to operate as a wind-down entity.

(4) The wind-down plan of the wind-down entity must be drawn up and authorised pursuant to Article 84 para. 6. The senior management must submit an annual liquidation report about the progress of liquidation compared to the wind-down plan to the supervisory board and the resolution authority. The correctness of the liquidation report and compliance with the approved wind-down plan or the wind-down entity must be confirmed by the external auditor.

(5) The provision of transitional services to third parties is also considered a portfolio wind-down-related task, who were included in the consolidated financial statement as of the last balance sheet date prior to the application being made, or were founded between this point and the administrative decision pursuant to para. 1 becoming legally binding. Transitional services are such services that were provided on the basis of a contract at the time when the administrative decision pursuant to para. 1 became legally binding and for the continuation of which a legal obligation exists.

(6) The powers and instruments set in part 4 of this federal act are applicable to the wind-down entity and the wind-down unit pursuant to Article 2 of the Act for the Creation of a Wind-Down Entity (GSA; *Bundesgesetz zur Schaffung einer Abbaueinheit*), as published in Federal Law Gazette I No. 51/2014. Article 51 para. 1 no. 2 is not applicable to the wind-down entity pursuant to Article 2 GSA.

Accessibility of information in the European Single Access Point

Article 162a. (1) The entity in question shall submit the information pursuant to Article 43 and Article 105c para. 3 for the purpose of making it accessible via the Entity (ESAP) at the same time as its disclosure to the FMA as the ESAP collection body pursuant to Article 2 point 2 of Regulation (EU) 2023/2859.

(2) The information are to be submitted in a data extractable format pursuant to Article 2 point 3 of Regulation (EU) 2023/2859 or, where prescribed under EU law in particular Implementing Technical Standards issued pursuant to Article 128a (6) of Directive 2014/59/EU, in a machine-readable format pursuant to Article 2 point 3 of Regulation (EU) 2023/2859 and shall contain the following meta data:

1. all names of the entity in question to which the information relates;
2. the entity in question’s legal entity identifier (LEI) pursuant to Article 7(4) point d of Regulation (EU) 2023/2859;
3. the requirements and reporting obligations pursuant to Article 7(4) point d of Regulation (EU) 2023/2859;
4. the type of information pursuant to the classification in Article 7(4) point c of Regulation (EU) 2023/2859;

5. a statement about whether the information contains personal data.

(3) for the purposes of para. 2 no. 2 the entity in question is obliged to obtain a legal entity identifier.

(4) The FMA is a the ESAP collection body pursuant to Article 2 point 2 of Regulation (EU) 2023/2859 for information pursuant to Article 46 para. 5, Article 47a para. 8, Article 68 para. 1, Article 116 para. 2 nos. 3 and 4 and Article 155. It shall make this information available through the European Single Access Point (ESAP). The information shall be submitted in a data extractable format pursuant to Article 2 point 3 of Regulation (EU) 2023/2869 and shall contain the following meta data:

1. all names of the institution in question to which the information relates;
2. where available the institution's legal entity identifier (LEI) pursuant to Article 7(4) point b of Regulation (EU) 2023/2859;
3. the type of information pursuant to the classification in Article 7(4) point c of Regulation (EU) 2023/2859;
4. a statement about whether the information contains personal data.

(5) The FMA shall be the collection point pursuant to Article 3 (2) of Regulation (EU) 2023/2859 for the collection of information submitted on a voluntary basis stated in Regulation (EU) 2023/2631.

(6) The FMA shall be empowered to determine the data formats of the information submitted pursuant to paras. 2 and 5 as well as the accompanying meta data and the submission methods by means of a Regulation, where doing so appears expedient taking into consideration the rules under Union law.

(7) The FMA shall be empowered as the controller under data protection law pursuant to Article 4 point 7 of Regulation (EU) 2016/679 in its function as ESAP collection point pursuant to paras. 1, 4, and 5 for processing personal data in accordance with the General Data Protection Regulation.

Gender-neutral use of language

Article 163. Where expressions in this federal act relating to persons are given only in the masculine form, they shall refer equally to men and women. The respective gender-specific form shall be used when applied to specific persons.

References

Article 164. (1) Where this Federal Act refers to other Federal Acts, then unless instructed otherwise, those Federal Acts shall be applied in their respective current versions.

(2) Where references are made in this federal act to European Union legal acts, those acts shall be applicable, unless instructed otherwise, in the following version:

1. Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, OJ L 176, 27.06.2013, p. 338, in the version of Directive (EU) 2021/338, OJ L 68, 26.02.2021, p. 14 and the corrigendum in OJ L 214, 17.06.2021, p. 74;
2. Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, OJ L 176, 27.06.2013, p. 1, in the

version of Implementing Regulation (EU) No 2021/1043, OJ L 225, 25.06.2021, p. 52, in the version of the corrigendum in OJ L 398, 11.11.2021, p. 32;

3. Regulation (EU) No. 1024/2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, OJ L 287, 29.10.2013, p. 63, as amended by the corrigendum OJ L 218, 19.08.2015, p. 82;
4. Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, OJ L 173 of 12.06.2014, p. 190, most recently amended by Directive (EU) 2021/23, OJ L 22, 22.01.2021, p. 1;
5. Regulation (EU) No 806/2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010, OJ L 225, 30.07.2014, p. 1, most recently amended by Regulation (EU) No 2021/23, OJ L 22, 22.02.2021, p. 1;
6. Delegated Regulation (EU) No. 2015/63 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, OJ L 11, 17.01.2015, p. 44, as amended by the corrigendum OJ L 156, 20.06.2017, p. 38.
7. Directive (EU) 2019/879 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC, OJ L 150, 07.06.2019, p. 296, in the version of the corrigendum in OJ L 283, 31.08.2020, p. 2.
8. Regulation (EU) 2019/2033 on prudential requirements for investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No. 806/2014, OJ L 314, 05.12.2019, p. 1, in the version of the corrigendum in OJ L 261, 22.07.2021, p. 60.
9. Directive (EU) 2019/2034 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU, OJ L 314, 05.12.2019, p. 64, as amended by the corrigendum, OJ L 214, 17.06.2021, p. 74;
10. Regulation (EU) 2021/23 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132, OJ L 22, 22.01.2021, p. 1;
11. Regulation (EU) 2022/2554 on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014, (EU) No. 909/2014 and (EU) 2016/1011, OJ L 333, 27.12.2022, p. 1;
12. Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 04.05.2016, p. 1, in the version of the corrigendum OJ L 74, 04.03.2021, p. 35;

13. Regulation (EU) 2023/2859 establishing a European single access point providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability, OJ L 2023/2859, 20.12.2023, p. 1, in the version of the Directive (EU) 2024/1760, OJ L 2024/1760, 05.07.2024.

Fees and charges

Article 165. (1) The charges required for the enforcement of this federal act for juridical acts, correspondence and official acts shall be exempted from the charges determined by federal act, the charges for government administration as well as the court and judicial administrative fees set out in the Court Fees Act (GGG; *Gerichtsgebührengesetz*), published in Federal Law Gazette No. 501/1984.
(2) The federal government, the resolution authority, the resolution financing arrangement and the Board, as well as a bridge institution, a wind-down unit, and ABBAG shall furthermore be exempted from the payment of the charges set out in the GGG for procedures before ordinary courts, the subject matter of which are enforcement contained in this federal act.

Enforcement

Article 166. The following shall be responsible for the enforcement of this federal act: with regard to the exception from fees pursuant to the GGG 1984 the Federal Minister for Justice; with regard to Articles 32 para. 4, Article 59, Article 60, Article 117, Article 118 para. 5 and Article 119 the Federal Minister of Finance in coordination with the Federal Minister for Justice; and with regard to the remaining provisions the Federal Minister of Finance.

Entry into force and application

Article 167. (1) This federal act shall enter into force on 1 January 2015.
(2) The table of contents with regard to Article 99, Article 2 no. 109, Article 74 paras. 6 and 7, Article 84 para. 8a, Article 99 and Article 126 para. 6 in the version of the federal act published in Federal Law Gazette I No. 127/2015 shall enter into force on 1 July 2015.
(3) Article 123d paras. 1 and 2 shall enter into force on 31 December 2015.
(4) The table of contents with regard to Article 4a as well as Article 4a including its heading and Article 84 para 2 in the Version of the federal act as published in Federal Law Gazette I No 118/2016 shall enter into force on 1 January 2017.
(5) Article 2 no. 3, Article 2 no. 107, Article 51 para. 1 no. 1, Article 58 para. 1 no. 13, Article 58 para. 3 no. 3, Article 75 para. 7, Article 80 para. 1, Article 81 para. 1, Article 84 para. 3, Article 84 paras. 1, 4, 9, and 10 to 12, Article 88 para. 2, Article 89 para. 4, Article 96 para. 2, Article 97 para. 1, Article 116 para. 6 no. 4, Article 120 para. 1 no. 9, Article 152 para. 2 no. 4 and Article 153 paras. 1 and 2 in the version of the Federal Act amended in Federal Law Gazette I No. 107/2017 shall enter into force on 3 January 2018. Article 153 para. 5, Article 154 including its heading and Article 158b para. 3 shall expire at the end of 2 January 2018.

(6) The entry in the table of contents for Article 133, Article 2 no. 49a, Article 90 para. 1 no. 5 and Article 131 in the version of the Federal Act amended in Federal Law Gazette I No. 37/2018 shall enter into force on 30 June 2018.

(7) Article 97 para. 1 in the version of the Federal Act amended in Federal Law Gazette I No. 62/2019 shall enter into force on 21 July 2019.

(8) Article 105c para. 3 in the version amended by Federal Act in Federal Law Gazette I No. 98/2021 shall enter into force on 1 January 2024.

(9) Article 2 no. 95 in the version of the Federal Act published in Federal Law Gazette I No. 199/2021 shall enter into force on 08 July 2022.

(10) Article 1 no 4, Article 3 para. 3, Article 65 para. 4 and Article 164 para. 4 in the version as amended in Federal Law Gazette I No. 57/2022 shall enter into force on 12 August 2022.

(11) Article 160 para. 1a in the version amended in Federal Law Gazette I No. 237/2022 shall apply for the first time to the 2023 FMA financial year. Prepayments shall be prescribed for the first time for the 2024 FMA financial year.

(12) Article 2 nos. 3, 3b and 21, Article 3 para. 5, Article 4a paras. 1 to 4, Article 50 paras. 4 and 5, Article 100 paras. 3 to 5, Article 125 paras. 1 to 4, Article 126 paras. 1, 2, 5 and 6, Article 127 para. 1, Article 160 paras. 1 and 1a, Article 164 para. 2, Article 167 and Article 168 in the version of the Federal Act amended in Federal Law Gazette I No. 237/2022 shall enter into force on 01 February 2023. Article 123 para. 8 and Article 164 paras. 3 and 4 shall expire at the end of 31 January 2023.

(13) Article 20 para. 5 nos. 3 and 17, point 16 of the Annex to Article 9, points 14 and 14a of the Annex to Article 21, points 4 and 4a of the Annex to Article 27, Article 164 para. 2 no. 11 and Article 168 para. 3 in the version amended by Federal Act in Federal Law Gazette I No. 112/2024 shall enter into force on 17 January 2025.

(14) Article 2 no. 82c, Article 102 paras. 3a to 3e, Article 103 para. 4, Article 105 paras. 3a, 5a and 5b, Article 105b para. 4, Article 105c paras. 4 and 6 and Article 168 para. 4 in the version amended by Federal Act in Federal Law Gazette I No. 34/2025 shall enter into force at the end of the day of publication; Article 102 para. 3 shall be repealed at the same time.

(15) The table of contents with regard to Article 162a as well as Article 105 para. 3a, para. 3a no. 1 lit. b and para. 5a, Article 152 para. 2 nos. 5 to 7, Article 162a including heading, Article 164 para. 2 nos. 11 and 12 and Article 168 para. 5 in the version of the federal act amended in Federal Law Gazette I No. 5/2026 shall enter into force on the following day after publication. Article 162a para. 4 first sentence shall apply from 9 January 2030. Article 162a paras. 1 to 3, para. 4 second and third sentence and para. 7 in the version of the federal act amended in Federal Law Gazette I No. 5/2026 shall apply from 10 January 2030. (2) The FMA shall inform ESMA by 9 January 2030 that it is the collection body pursuant Article 3 (2) of Regulation (EU) 2023/2859 for the collection of information on a voluntary basis listed in Regulation 2014/59/EU.

Transposition Note

Article 168. (1) Federal Law Gazette I No 98/2021 implements Directive (EU) 2019/879 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC, OJ L 150, 7.06.2019, p. 296.

(2) Federal Law Gazette I No. 237/2022 implements Directive (EU) 2019/2034 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU, OJ L 314, 05.12.2019, p. 64, as amended by the corrigendum, OJ L 214, 17.06.2021, p. 74.

(3) The Federal Act published in Federal Law Gazette I No. 112/2014 transposes Directive (EU) 2022/2556 amending Directives 2009/65/EC, 2009/138/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU, 2014/65/EU, (EU) 2015/2366 and (EU) 2016/2341 regarding digital operational resilience in the financial sector, OJ L 333, 27.12.2022, p. 153.

(4) The Federal Act amended in Federal Law Gazette I No. 34/2025 transposes Article 2 of Regulation (EU) 2022/2036 amending Regulation (EU) No. 575/2013 and Directive 2014/59/EU as regards the prudential treatment of global systemically important institutions with a multiple-point-of-entry resolution strategy and methods for the indirect subscription of instruments eligible for meeting the minimum requirement for own funds and eligible liabilities, OJ L 275, 25.10.2022, p. 1 as well as transposing Article 1 of Directive (EU) 2024/1174 amending Directive 2014/59/EU and Regulation (EU) No 806/2014 as regards certain aspects of the minimum requirement for own funds and eligible liabilities, OJ L 2024/1174, 22.04.2024.

(5) The federal act published in Federal Law Gazette I No. 5/2026 transposes Directive (EU) 2023/2864 amending certain directives as regards the establishment and functioning of the European single access point, OJ L 2023/2864, 20.12.2023, in the version of the corrigendum published in OJ L 2024/90411, 15.07.2024.

ANNEXES

Annex to Article 9: Information to be included in recovery plans

The recovery plan must contain in particular:

1. a summary of the key elements of the plan and a summary of overall recovery capacity;
2. a summary of the material changes to the institution since the most recently filed recovery plan;
3. a communication and disclosure plan outlining how the firm intends to manage any potentially negative market reactions;
4. a range of capital and liquidity actions required to maintain or restore the viability and financial position of the institution;
5. an estimation of the timeframe for executing each material aspect of the plan;
6. a detailed description of any material impediment to the effective and timely execution of the plan, including consideration of impact on the rest of the group, customers and counterparties;
7. identification of critical functions;
8. a detailed description of the processes for determining the value and marketability of the core business lines, operations and assets of the institution;
9. a detailed description of how recovery planning is integrated into the corporate governance structure of the institution as well as the policies and procedures governing the approval of the recovery plan and identification of the persons in the organisation responsible for preparing and implementing the plan;
10. arrangements and measures to conserve or restore the institution's own funds;
11. arrangements and measures to ensure that the institution has adequate access to contingency funding sources, including potential liquidity sources, an assessment of available collateral and an assessment of the possibility to transfer liquidity across group entities and business lines, to ensure that it can continue to carry out its operations and meet its obligations as they fall due;
12. arrangements and measures to reduce risk and leverage;
13. arrangements and measures to restructure liabilities;
14. arrangements and measures to restructure business lines;
15. arrangements and measures necessary to maintain continuous access to financial markets infrastructures;
16. a breakdown of the rules and measures that are necessary for continuing the institution's business operations, including the network and information systems established and managed pursuant to Regulation (EU) 2022/2554;
17. preparatory arrangements to facilitate the sale of assets or business lines in a timeframe appropriate for the restoration of financial soundness;

18. other management actions or strategies to restore financial soundness and the anticipated financial effect of those actions or strategies;
19. preparatory measures that the institution has taken or plans to take in order to facilitate the implementation of the recovery plan, including those necessary to enable the timely recapitalisation of the institution;
20. a framework of indicators which identifies the points at which appropriate actions referred to in the plan may be taken.

Annex to Article 21: Information that the resolution authority may request institutions to provide for the purposes of drawing up and maintaining resolution plans

The resolution authority may in particular request institutions to provide for the purposes of drawing up and maintaining resolution plans the following information:

1. detailed description of the institution's organisational structure including a list of all legal persons;
2. identity of the direct holders of and the percentage of voting and non-voting rights of each legal person;
3. the location, jurisdiction of incorporation, licensing and key management associated with each legal person;
4. a mapping of the institution's critical operations and core business lines including material asset holdings and liabilities relating to such operations and business lines, by reference to legal persons;
5. a detailed description of the components of the institution's and all its legal entities' liabilities, separating, at a minimum by types and amounts of short term and long-term debt, secured, unsecured and subordinated liabilities;
6. details of those liabilities of the institution that are bail-inable 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. information on the most important/most critical counterparties of the institution and analysis of the impact on the institution's financial position of key counterparties defaulting;
11. each system on which the institution conducts a material number or value amount of trades, including a mapping to the institution's legal persons, critical operations and core business lines;
12. each payment, clearing or settlement system of which the institution is directly or indirectly a member, including a mapping to the institution's legal persons, critical operations and core business lines;
13. a detailed inventory and description of the key management information systems, including those for risk management, accounting and financial and regulatory reporting used by the institution including a mapping to the institution's legal persons, critical operations and core business lines;
14. information about the owners of the systems identified in no. 13, service level agreements related thereto, and any software and systems or licences, including a mapping to their legal

entities, critical operations and core business lines, as well as information about critical ICT third-party service provider as defined in Article 3 (23) of Regulation (EU) 2022/2554;

14a. results of the digital operational resilience tests conducted by institutions in accordance with Regulation (EU) 2022/2554;

15. an identification and mapping of the legal persons and the interconnections and interdependencies among the different legal persons such as:
    a. shared or jointly deployed employees, installations and systems;
    b. capital, funding or liquidity rules;
    c. existing or contingent credit exposures;
    d. cross guarantee agreements, cross-collateral arrangements, cross-default provisions and cross-affiliate netting arrangements;
    e. risk transfers and agreements on back-to-back transactions; service level agreements;

16. the competent authority and the resolution authority;

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

18. a description of the arrangements that the institution has in place to ensure that, in the event of resolution, the resolution authority will have all the necessary information, as determined by the resolution authority, for applying the resolution tools and powers;

19. all the agreements entered into by the institutions and their legal entities with third parties the termination of which may be triggered by a decision of the authorities to apply a resolution tool and whether the consequences of termination may affect the application of the resolution tool;

20. a description of possible liquidity sources for supporting resolution;

21. information on the encumbrance of assets, and on liquid assets, off-balance sheet activities, hedging strategies and booking practices.

Annex to Article 27: Matters that the resolution authority is to consider when assessing the resolvability of an institution or group

When assessing the resolvability of an institution or group, the resolution authority shall consider the following.
When assessing the resolvability of a group, references to an institution shall be deemed to include any institution or entity referred to in Article 1 para. 1 nos. 3 or 4 within a group:

1. the extent to which the institution is able to map core business lines and critical operations to legal persons;
2. the extent to which legal and corporate structures are aligned with core business lines and critical operations;
3. the extent to which there are arrangements in place to provide for essential staff, infrastructure, funding, liquidity and capital to support and maintain the core business lines and the critical operations;
4. to what extent the service level agreements concluded by the institution, including contractual agreements for the use of ICT services can be robustly and fully enforced in the event of the resolution of the institution;

4a. the digital operational resilience of those network and information systems that support the critical functions and core business lines of the institution, although reports on major ICT-related incidents and the results of the digital operational resilience tests conducted in accordance with Regulation (EU) 2022/2554 shall be taken into account;

5. the extent to which the governance structure of the institution is adequate for managing and ensuring compliance with the institution’s internal policies with respect to its service level agreements;
6. the extent to which the institution has a process for transitioning the services provided under service level agreements to third parties in the event of the separation of critical functions or of core business lines;
7. the extent to which there are contingency plans and measures in place to ensure continuity in access to payment and settlement systems;
8. the adequacy of the management information systems in ensuring that the resolution authority is able to gather accurate and complete information regarding the core business lines and critical operations so as to facilitate rapid decision making;
9. the capacity of the management information systems to provide the information essential for the effective resolution of the institution at all times, even under rapidly changing conditions;
10. the extent to which the institution has tested its management information systems under stress scenarios as defined by the resolution authority;
11. the extent to which the institution can ensure the continuity of its management information systems both for the affected institution and the new institution in the case that the critical

operations and core business lines are separated from the rest of the operations and business lines;

12. the extent to which the institution has established adequate processes to ensure that it provides the resolution authority with the information necessary to identify depositors and the amounts covered by the deposit guarantee scheme;
13. where the group uses intra-group guarantees, the extent to which those guarantees are provided at market conditions and the risk management systems concerning those guarantees are robust;
14. where the group engages in back-to-back transactions, the extent to which those transactions are performed at market conditions and the risk management systems concerning those transactions practices are robust;
15. the extent to which the use of intra-group guarantees or back-to-back booking transactions increases contagion across the group;
16. the extent to which the legal structure of the group inhibits the application of the resolution tools as a result of the number of legal persons, the complexity of the group structure or the difficulty in aligning business lines to group entities;
17. the amount and type of bail-inable liabilities of the institution;
18. where the assessment involves a mixed activity holding company, the extent to which the resolution of group entities that are credit institutions, investment firms or CRR-financial institutions could have a negative impact on the non-financial part of the group;
19. whether service level agreements exist and how robust they are;
20. whether third-country authorities have the resolution tools necessary to support resolution actions by a resolution authority within the EU, and the scope for coordinated action between EU Member State and third-country authorities;
21. the feasibility of using resolution tools in such a way which meets the resolution objectives, given the tools available and the institution’s structure;
22. the extent to which the group structure allows the resolution authority to resolve the whole group or one or more of its group entities without causing significant direct or indirect adverse effects on the financial system, market confidence or the economy and with a view to maximising the value of the group as a whole;
23. the arrangements and means through which resolution could be facilitated in the cases of groups that have subsidiaries established in different jurisdictions;
24. the credibility of using resolution tools in such a way which meets the resolution objectives, given possible impacts on creditors, counterparties, customers and employees and possible actions that third-country authorities may take;
25. the extent to which the impact of the institution’s resolution on the financial system and on financial market’s confidence could be adequately evaluated;
26. the extent to which the resolution of the institution could have a significant direct or indirect adverse effect on the financial system, market confidence or the economy;

27. the extent to which contagion to other institutions or to the financial markets could be contained through the application of the resolution tools and powers;
28. the extent to which the resolution of the institution could have a significant effect on the operation of payment and settlement systems.

Annex to Article 28a: Calculation of the Maximum Distributable Amount (MDA) in relation to the Minimum Requirement for own funds and Eligible Liabilities

1. The maximum distributable amount in respect of the minimum requirement for own funds and eligible liabilities shall be calculated by multiplying the sum determined in accordance with point 2 by the factor determined in accordance with point 3. If, after calculating the maximum distributable amount in relation to the minimum amount of own funds and eligible liabilities, measures are set in accordance with Article 28a para. 1 nos. 1 to 3, they shall reduce the distributable amount in relation to the minimum amount of own funds and eligible liabilities.
2. The total amount to be multiplied shall consist of the following components:
   a. all interim profits not included in Common Equity Tier 1 capital pursuant to Article 26 (2) of Regulation (EU) No 575/2013, less any distribution of profits or payments as a result of any of the actions pursuant to Article 28a para. 1 nos. 1 to 3; plus
   b. all full-year profits not included in Common Equity Tier 1 capital pursuant to Article 26 (2) of Regulation (EU) No 575/2013, less any distribution of profits or payments as a result of any of the actions pursuant to Article 28a para. 1 nos. 1 to 3; less
   c. the amounts which would be payable as tax if the profits specified in lits. a and b were to be retained.
3. The factor shall be determined as follows:
   a. where the Common Equity Tier 1 capital maintained by the undertaking which is not used to meet any requirements under Article 92a of Regulation (EU) No 575/2013 and pursuant to Articles 102 and 103, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of that Regulation, is within the lowest quartile of the combined buffer requirement, the factor shall be 0.
   b. where the Common Equity Tier 1 capital maintained by the entity which is not used to meet any requirements under Article 92a of Regulation (EU) No 575/2013 and pursuant to Articles 102 and 103, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of that Regulation, is within the second quartile of the leverage ratio buffer requirement, the factor shall be 0.2.
   c. where the Common Equity Tier 1 capital maintained by the entity which not used to meet any requirements under Article 92a of Regulation (EU) No 575/2013 and pursuant to Articles 102 and 103, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of that Regulation, is within the third quartile of the leverage ratio buffer requirement, the factor shall be 0.4.
   d. where the Common Equity Tier 1 capital maintained by the entity which not used to meet any requirements under Article 92a of Regulation (EU) No 575/2013 and pursuant to Articles 102 and 103, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of that Regulation, the factor shall be 0.6.

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

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

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

Where "Q_n" indicates the ordinal number of the quartile concerned.

TRANPOSITION NOTES

Article 1 -Transposition Note

(Note: from Federal Law Gazette I No. 117/2015, on Articles 2, 120, 125, 131 and 132, as published in Federal Law Gazette I no. 98/2014)

This federal act transposes

1. Directive 2014/49/EU on deposit guarantee schemes (DGSD),OJ L 173, 12.06.2014 p. 149, last corrected by OJ L 309. 30.10.2014 p. 37, and
2. Directive 97/9/EC on investor compensation schemes, OJ L 84, 26.03.1997 p. 22.

Article 1 - Transposition Note

(Note: from Federal Law Gazette I No. 159/2015, on Articles 1, 3a. 13, 16, 44, 46, 47, 58 to 60, 67a, 80, 88, 91, 93, 95, 97a, 105, 111 to 113a, 116, 116a, 119a, 121, 123 to 130, 133, 158a to 159 and 165, Federal Law Gazette I no. 98/2014)

This federal act transposes

1. Regulation (EU) No 806/2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010, OJ L 225, 30.07.2014, p.1,
2. Council Implementing Regulation (EU) 2015/81 of 19 December 2014 specifying uniform conditions of application of Regulation (EU) No 806/2014 of the European Parliament and of the Council with regard to ex ante contributions to the Single Resolution Fund, OJ L 15, 22.01.2015, p.8,
3. Commission Delegated Regulation (EU) 2015/63 of 21 October 2014 supplementing Directive 2014/59/EU with regard to ex ante contributions to the national financial arrangements, OJ L 11, 17.01.2015, p. 44,
4. and the Agreement on the transfer and mutualisation of contributions to the Single Resolution Fund,
5. and the partial transposition of Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010, OJ L 60 of 28.02.2014 p. 34, last corrected by OJ L 246 of 23.09.2015 p. 11, with regard to supervisory regulations for credit institutions;

Article 1 - Transposition of European Union Directives

(Note: from Federal Law Gazette I No. 118/2016, on Articles 4a, 84 and 105, as published in Federal Law Gazette I no. 98/2014)

This federal act

1. transposes Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 and repealing Directive 2005/60/EC Directive 2006/70/EC, OJ L 141 of 05.06.2015, p. 73, and
2. creates the necessary measures for the enforcement of Regulation (EU) No 2015/847 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006, OJ L 141, 05.06.2015, p. 1.

Article 1 - Transposition Note

This federal act transposes

1. Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, OJ L 173 of 12.06.2014, p. 190, and
2. Article 92 of Directive 2014/65/EU on markets in financial instruments and amending Directives 2002/92/EC and 2011/61/EU, OJ L 173, 12.06.2014 p. 349.