

**Royal Decree 1012/2015 of 6 November 2015 implementing Law 11/2015 of 18 June 2015 on recovery and resolution of credit institutions and investment firms, and amending Royal Decree 2606/1996 of 20 December 1996 on deposit guarantee schemes for credit institutions. (Official State Gazette (BOE) of 7 November 2015)**

*Consolidated text including amendment by Royal Decree 309/2019 of 25 April.*

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The regulations approved in recent years to address the potentially difficult situations in which credit institutions and investment firms may find themselves are based on a series of principles which, taking into account the characteristics and specificities of the financial system, stem from recent experience gained from institution resolution processes.

Specifically, these principles are: the need to implement a preventive phase to ensure that the conditions are in place for the orderly resolution of an institution in the event it must be wound up; the setting up of a specific, agile and efficient procedure enabling credit institutions and investment firms to be resolved, instead of applying insolvency legislation, when required for reasons of public interest and financial stability; ensuring the correct separation of supervisory and resolution functions, to avoid any conflict of interest that the supervisory authority might incur by simultaneously exercising resolution powers; and, lastly, the fourth main principle, ensuring that losses arising from resolution are absorbed by the institution's shareholders and creditors and that public funds are not used.

These principles serve as a basis for "Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012 of the European Parliament and of the Council", and for "Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010", which delimit the European regulatory framework for resolution of these institutions and outline the main elements of the Single Resolution Mechanism, one of the pillars of the banking union.

In order to transpose Directive 2014/59/EU of 15 May 2014 into Spanish law, Law 11/2015 of 18 June 2015 was passed, which is based on the principles of Law 9/2012 of 14 November 2012 on restructuring and resolution of credit institutions and completes it in the areas of European Union law that were still pending incorporation into Spanish law. This Royal Decree completes the transposition of the aforementioned Directive and implements certain aspects, particularly organisational aspects, of Law 11/2015 of 18 June 2015.

The Royal Decree has nine chapters, three additional provisions, two transitional provisions, five final provisions and three annexes.

Chapter I contains the general provisions, including criteria for adapting the application of the resolution regulations and for allowing simplified obligations and waivers to be set for certain institutions. It also regulates in detail the way in which institutions should be valued prior to adoption of any resolution measure.

Chapter II describes the content of recovery plans and the criteria for their assessment by the competent supervisor. It also specifies the reporting requirements and obligations to which financial support agreements entered into by institutions in a group will be subject. As regards resolution plans, Chapters II and III set out rules for coordination and decision-making by the supervisory authorities in the event of group-level action.

Chapter III specifies the content of both individual and group resolution plans. It also sets out the aspects to be taken into account by the preventive resolution authority when assessing any obstacles to an institution's resolvability.

Chapter IV details the procedural, coordination and information obligations to be met in the event of an institution being placed under resolution, to ensure that the competent authorities, shareholders and creditors concerned are duly aware of such obligations.

Chapter V sets out rules on the functioning of the resolution tools which, owing to their level of detail, were not envisaged in Law 11/2015 of 18 June 2015. In particular, it specifies the actions to be carried out by the FROB (the Spanish executive resolution authority) to apply these tools.

Chapter VI regulates certain aspects of the write-down and conversion of capital and bail-in instruments, particularly those relating to the determination of the minimum requirement for own funds and eligible liabilities, the valuation of liabilities arising from financial derivatives and the content of the business reorganisation plan.

Chapter VII establishes the rules necessary to determine the conditions under which the FROB is to use the financing arrangements available to it to finance resolution measures. It also regulates institutions' contributions to the National Resolution Fund.

Chapter VIII addresses, in general, the resolution of a cross-border group of institutions and the composition and powers of the resolution colleges, to encourage a coordinated solution to this particularly complex type of situation, given the international character of the institution.

In Chapters VIII and IX the role of the FROB is particularly significant. Not only because, when it is the group-level resolution authority, it will be the authority presiding over the resolution college, and will therefore be responsible for the college's management and coordination functions, but also because, beyond its potential role as chair or member of the resolution colleges, Law 11/2015 of 18 June 2015 confers on it the general role of Spanish liaison and coordination authority for cooperation with international and other European Union Member State authorities.

Chapter IX regulates relations with third countries, promoting the signing of agreements to recognise resolution actions, since the global nature of many institutions also requires cooperation frameworks involving countries outside the European Union.

In the additional provisions, national resolution legislation is aligned with the Single Resolution Mechanism regulation at the European level, the scope of the Royal Decree is extended, in certain cases, to other types of legal entities that form part of an institution's group, and the regime for management, payment and collection of the fee levied on institutions to meet the administrative costs of the FROB is regulated.

The first transitional provision sets the periods within which institutions must make ordinary contributions to the National Resolution Fund in 2015. The second transitional provision provides for a transitional regime for references to the consolidated text of the Securities Market Law, approved by Royal Legislative Decree 4/2015 of 23 October 2015.

As regards the final provisions, the first final provision amends Royal Decree 2606/1996 of 20 December 1996 on deposit guarantee schemes for credit institutions, to implement the new articles introduced by Law 11/2015 of 18 June 2015 in Royal Decree-Law 16/2011 of 14 October 2011

establishing the Deposit Guarantee Scheme for Credit Institutions. This completes the transposition of Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes.

The amendments to Royal Decree 2606/1996 of 20 December 1996 involve a change in the calculation basis for contributions to the new deposit guarantee compartment of the Deposit Guarantee Scheme for Credit Institutions. Thus, the basis for calculation of contributions, following the provisions of Directive 2014/49/EU of 16 April 2014, will not be determined by the total volume of deposits eligible for coverage by the Scheme, but only by the amount effectively guaranteed. The period for reimbursement by the Deposit Guarantee Scheme for Credit Institutions of amounts due to depositors will be progressively shortened from the current twenty business days to seven business days in 2024. Also, the Royal Decree defines the rules for cooperation by the Deposit Guarantee Scheme for Credit Institutions with the deposit guarantee schemes of other European Union Member States, in particular as regards reimbursement of deposits at branches operating outside their home country. As and when appropriate, the Scheme shall operate in accordance with State aid regulations.

The remaining final provisions refer to the powers under which this Royal Decree is adopted, the transposition of the European Directive, the implementing authorisation and the entry into force of the Royal Decree.

Lastly, the Royal Decree includes three annexes describing the information to be included in recovery and resolution plans, the information that preventive resolution authorities may require from institutions for the purposes of drawing up and maintaining resolution plans and the matters that resolution authorities should consider when addressing the resolution of an institution.

This Royal Decree is approved pursuant to the authorisation contained in final provision sixteen of Law 11/2015 of 18 June 2015 whereby the Government may issue any regulations necessary to implement the provisions of the Law.

By virtue whereof, on a proposal of the Minister for Economic Affairs and Competitiveness, with the prior approval of the Minister for Finance and Public Administration, in accordance with the Council of State and following deliberation by the Council of Ministers at its meeting on 6 November 2015,

I HEREBY PROVIDE:

## **CHAPTER I**

### **General provisions**

#### **Article 1.** *Purpose.*

The purpose of this Royal Decree is to implement the provisions of Law 11/2015 of 18 June 2015 on the recovery and resolution of credit institutions and investment firms.

#### **Article 2.** *Scope.*

This Royal Decree shall apply to the institutions envisaged in Article 1(2) of Law 11/2015 of 18 June 2015, excluding those indicated in Article 1(3) thereof.

#### **Article 3.** *Definitions.*

The definitions set out in Article 2 of Law 11/2015 of 18 June 2015 shall apply to this Royal Decree.

**Article 4.** *Circumstances determining the establishment and application of resolution obligations, requirements and tools.*

When establishing or applying the obligations and requirements envisaged in Law 11/2015 of 18 June 2015, or when using the different tools available to them, the competent supervisors and resolution authorities shall take into account the following circumstances of an institution:

- a) The nature of its business.
- b) Shareholding structure.
- c) Legal form.
- d) Risk profile.
- e) Size.
- f) Legal status.
- g) Interconnectedness to other institutions or to the financial system in general.
- h) Scope and complexity of its activities.

i) Whether it is a member of an institutional protection scheme that complies with the requirements of Article 113(7) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, or of other cooperative mutual solidarity systems as referred to in Article 113(6) of that Regulation.

j) Whether it exercises any investment services or activities under the terms defined in Article 4(1)(2) of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

**Article 5.** *Obligations, simplified requirements and exemptions from compliance with preparatory measures.*

1. The competent supervisor and preventive resolution authority should take into account the following criteria to determine the simplified requirements and obligations for compliance with the preparatory measures provided for in Chapters II and III of this Royal Decree:

- a) The specific circumstances mentioned in Article 4 above.
- b) Any rules, guidance or guidelines on this matter approved at the international or European level and which are transposed into or included in Spanish law.
- c) The effect which an institution's failure is likely to have on financial markets, on other institutions, on funding conditions or on the wider economy, owing to the circumstances mentioned in Article 4 above.

d) Whether an institution's failure and subsequent winding up under insolvency proceedings would be likely to have negative effects on financial markets, on other institutions, on funding conditions or on the wider economy.

2. The simplified requirements that the supervisor and the preventive resolution authority may impose shall refer to the following elements:

a) The contents and details of the recovery and resolution plans provided for in Chapters II and III of Law 11/2015 of 18 June 2015.

b) Extension or shortening of the deadline within which the first recovery and resolution plans must be drawn up and the frequency for updating them, which may be lower than that provided for in general in Law 11/2015 of 18 June 2015.

c) The contents and details of the information required from institutions in connection with recovery and resolution plans, as provided for in Chapters II and III of Law 11/2015 of 18 June 2015 and implemented by Articles 11 and 25 and Annexes I and II of this Royal Decree.

d) The contents of the assessment of resolvability provided for in Articles 15 and 16 of Law 11/2015 of 18 June 2015 and implemented by Article 29 and Annex III of this Royal Decree.

3. The assessment referred to in the preceding subparagraph shall be made after consulting, where appropriate, the designated national macroprudential authority, if any.

4. The competent supervisor and preventive resolution authority shall periodically review their decisions on the simplified obligations allowed and, in any event, when they review the recovery plans.

5. The competent supervisor and preventive resolution authority may waive compliance with the following obligations:

a) those relating to recovery and resolution plans, for institutions affiliated to a central body and wholly or partially exempted from prudential requirements in accordance with Article 10 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, and

b) those relating to recovery plans, for institutions which are members of an Institutional Protection Scheme.

6. Where a waiver pursuant to paragraph 5 is granted, the following is to be required:

a) compliance by the central body and institutions affiliated thereto with the obligations relating to recovery and resolution plans on a consolidated basis, within the meaning of Article 10 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013;

b) compliance by the Institutional Protection Scheme with the obligations relating to recovery plans, in cooperation with each of its exempt members.

For that purpose, it shall be understood that any reference to the obligations of a group relating to recovery and resolution plans shall include both the central body and institutions affiliated to it within the meaning of Article 10 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, and their subsidiaries, and that any reference to institutions or parent undertakings that are subject to consolidated supervision pursuant to Article 57 of Law 10/2014 of 26 June 2014, or to

Article 233 of the consolidated text of the Securities Market Law, as approved by Royal Legislative Decree 4/2015 of 23 October 2015, shall include the central body.

7. The competent supervisor and preventive resolution authority shall inform the European Banking Authority of the way they have applied to the institutions under their jurisdiction Article 4(3) of Law 11/2015 of 18 June 2015, paragraphs 2, 5 and 6 of this article, and Article 11(2).

**Article 6. Valuation.**

1. Before adopting any resolution measure, valuation of the assets and liabilities of the institution shall be carried out by an independent expert designated by the FROB, in accordance with Article 5 of Law 11/2015 of 18 June 2015. Where all the requirements laid down in this article are met, the valuation shall be considered to be definitive.

2. Where an independent valuation according to paragraph 1 is not possible, the FROB may carry out a provisional valuation of the assets and liabilities of the institution, in accordance with Article 8(1).

3. The purposes of the valuation shall be as follows:

a) To determine whether the conditions for resolution or the conditions for the write-down or conversion of capital instruments are met.

b) To adopt the decision on the appropriate resolution action to be taken in respect of the institution.

c) To decide 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 capital instruments, in the event that capital is written down or converted.

d) To establish the extent of the write-down or conversion of eligible liabilities, in the event that the bail-in tool is used.

e) To determine which assets, rights, liabilities or shares or other instruments of ownership are 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, when the bridge institution tool or asset separation tool is applied.

f) To substantiate the decision on the assets, rights, liabilities or shares or other instruments of ownership to be transferred, when the sale of business tool is applied, and to inform the FROB's understanding of what constitutes commercial terms for the purposes of Article 26 of Law 11/2015 of 18 June 2015.

g) To ensure that any losses on the assets of the institution are fully recognised at the moment the resolution tools are applied or the power to write down or convert the capital instruments is exercised.

4. Without prejudice to the European Union State aid framework, the valuation shall be based on prudent assumptions, including as to probability of default and severity of losses.

5. The valuation shall not assume any potential future provision of extraordinary public financial support or central bank emergency liquidity assistance or any central bank liquidity assistance provided

under non-standard collateralisation, tenor and interest rate terms from the point at which resolution action is taken or the power to write down or convert relevant capital instruments is exercised.

6. Furthermore, the valuation shall take account of the fact that, if any resolution tool is applied:

a) The FROB and any financing arrangement used pursuant to Article 53 of Law 11/2015 of 18 June 2015 may recover any reasonable expenses incurred by the institution under resolution, in accordance with Article 25(4) of the Law.

b) The resolution financing arrangement may charge interest or fees in respect of any loans or guarantees provided to the institution under resolution, in accordance with Article 53(2) of Law 11/2015 of 18 June 2015.

**Article 7.** *Content of valuation dossier.*

1. The valuation shall be supplemented by the following information as appearing in the institution's accounting books and records:

a) An updated balance sheet and a report on the financial position of the institution.

b) An analysis and estimate of the accounting value of the assets.

c) The list of outstanding balance sheet and off-balance-sheet liabilities shown in the books and records of the institution, with an indication of the respective credits and priority levels under insolvency law.

2. Where appropriate, to inform the decisions referred to in Article 6(4)(e) and (f), the information in subparagraph 1(b) may be complemented by an analysis and estimate of the value of the assets and liabilities of the institution on a market value basis.

3. The valuation shall indicate the subdivision of the creditors in classes in accordance with insolvency law and an estimate of the treatment that each class of shareholders and creditors would have expected to receive if the institution were subject to insolvency proceedings.

That estimate shall not affect the application of the principle provided for in Article 4(1)(d) of Law 11/2015 of 18 June 2015, under which no shareholder or creditor shall bear greater losses than those which they would have borne if the institution had been wound up under insolvency proceedings.

**Article 8.** *Provisional valuation.*

1. Where due to the urgency in the circumstances of the case it is not possible to comply with the requirements of Article 7(1) and (3), or Article 6(2) applies, the FROB shall carry out a provisional valuation. For such purposes, the provisional valuation shall be based on the report issued by the competent supervisor, where applicable, in accordance with Article 5(3) of Law 11/2015 of 18 June 2015.

2. The provisional valuation shall in any event comply with the requirements of Article 5(1) of Law 11/2015 of 18 June 2015 and, insofar as reasonably practicable in the circumstances, with the requirements of Articles 6(1), 7(1) and 7(3).

The provisional valuation shall also include a buffer for additional losses, with appropriate justification.

3. A valuation that does not comply with all the requirements laid down in Articles 6 and 7 shall be considered to be provisional until an independent expert has carried out a definitive valuation that is fully compliant with all such requirements. That ex-post definitive valuation shall be carried out as soon as practicable. It may be carried out either separately from the valuation referred to in Article 10, or simultaneously with and by the same independent expert as that valuation, but shall be distinct from it.

**Article 9.** *Ex-post definitive valuation.*

1. The purposes of the ex-post definitive valuation referred to in Article 8(3) shall be as follows:

a) To ensure that any losses on the assets of the institution are fully recognised in its accounting books.

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

2. In the event that the ex-post definitive valuation's estimate of the net asset value of the institution is higher than the provisional valuation's estimate of the net asset value of the institution, the FROB may:

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

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

3. Notwithstanding Article 6(1), a provisional valuation conducted in accordance with Article 8(1) and (2) shall be a valid basis for the FROB to take such resolution actions as may be necessary, including taking control of a failing institution or exercising the power to write down or convert capital instruments.

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.

**Article 10.** *Valuation of difference in treatment.*

1. For the purposes of assessing whether shareholders and creditors would have received better treatment if the institution under resolution had entered into insolvency proceedings, the FROB shall ensure that a valuation is carried out by an independent expert after the resolution actions have been effected. That valuation shall be distinct from the valuation carried out under Article 5 of Law 11/2015 of 18 June 2015.

2. The valuation mentioned in paragraph 1 shall determine the following aspects:



a) The treatment that shareholders and creditors, or the relevant deposit guarantee schemes, would have received if the institution under resolution had entered insolvency proceedings at the time when the decision referred to in Article 21 of Law 11/2015 of 18 June 2015 was taken.

b) The actual treatment that shareholders and creditors have received in the resolution of the institution under resolution.

c) If there is any difference between the treatment referred to in subparagraphs (a) and (b).

3. The valuation shall be carried out on the basis of the following premises:

a) Assuming that the institution to which the resolution actions have been effected would have entered normal insolvency proceedings at the time when the decision referred to in Article 21 of Law 11/2015 of 18 June 2015 was taken.

b) Assuming that the resolution actions had not been effected.

c) Disregarding any provision of extraordinary public financial support to the institution under resolution.

4. If the valuation determines that the shareholders and creditors, or the deposit guarantee scheme, have incurred greater losses than those they would have incurred had the institution been wound up under insolvency proceedings, they shall be entitled to receive payment of the difference from the financing arrangements provided for in Article 53 of Law 11/2015 of 18 June 2015.

## **CHAPTER II**

### **Recovery planning and early intervention**

#### **Section 1.**

#### **Recovery planning**

#### **Article 11.** *Recovery plans.*

1. The recovery plans provided for in Article 6 of Law 11/2015 of 18 June 2015 shall include at least the following information:

a) Various hypothetical scenarios of financial and macroeconomic instability affecting the financial system as a whole and the institution or the group.

Also, the group recovery plans shall identify, for each of the scenarios, whether there are obstacles to the implementation of the recovery measures and whether there are impediments to the prompt transfer of own funds or the repayment of liabilities or assets within the group.

b) Without prejudice to the simplified obligations laid down in accordance with the provisions of Article 5, the information listed in Annex I.

c) The measures that the institution may adopt where the conditions for early intervention under Article 8 of Law 11/2015 of 18 June 2015 are met. Additionally, the group recovery plans shall include arrangements to ensure the coordination and consistency of the measures to be taken at the level of the

parent and the measures to be taken at the level of the subsidiaries and, where appropriate, of the significant branches.

d) The appropriate conditions and procedures to ensure the correct and timely implementation of recovery actions as well as a wide range of recovery options.

e) The agreements for intragroup financial support that have been concluded in accordance with Section 2.

f) An analysis of the conditions in which the institution could use the central banks' lending facilities. This analysis shall identify those assets which would be expected to qualify as collateral.

Under no circumstances may recovery plans assume any access to public financial support.

2. In accordance with Article 13, the competent supervisor may require the subsidiaries of a group to draw up and submit recovery plans on an individual basis.

In any event, credit institutions subject to direct supervision by the European Central Bank pursuant to Article 6(4) of Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, must draw up recovery plans on an individual basis.

3. Provided that the confidentiality requirements laid down in Article 59 of Law 11/2015 of 18 June 2015 are in place, the competent consolidating supervisor shall transmit the group recovery plans to:

a) The competent supervisors which are members of the supervisory college or with which a coordination and cooperation arrangement has been reached.

b) The competent supervisors of the European Union Member States where significant branches are located, insofar as is relevant to those branches.

c) The competent group-level resolution authorities.

d) The competent resolution authorities of subsidiaries.

**Article 12.** *Assessment of recovery plans.*

1. The competent supervisor shall assess institutions' recovery plans and, in particular, the extent to which they satisfy the requirements laid down in Article 6 of Law 11/2015 of 18 June 2015 and in Article 11 of this Royal Decree, and the following criteria:

a) The implementation of the plan should be reasonably likely to maintain or restore the viability and financial position of the institution or of the group, taking into account the preparatory measures that the institution has taken or has planned to take.

b) The plan and specific options adopted should be able to be implemented quickly and effectively in situations of financial instability and avoiding, to the maximum extent possible, any significant adverse effect on the financial system, including in scenarios which lead other institutions to implement recovery plans within the same period.

When performing this assessment, the competent supervisor shall consider 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.

2. The assessment referred to in the previous paragraph shall be performed within six months at most of the submission of the institution's recovery plan.

In order to perform the assessment, the competent supervisor shall send the recovery plans to the competent resolution authorities and shall consult the supervisors of the European Union Member States in which significant branches of the institution are located insofar as is relevant to the significant branches.

3. If, following the assessment, the competent supervisor concludes that there are material deficiencies in the recovery plan, or impediments to its implementation, it shall notify the institution or the parent of the group and require it to submit a revised plan within two months. This deadline may be extended by one month, if the institution so requests and the competent supervisor considers it necessary.

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

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

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

5. If the institution does not identify changes to its activity within the timeframe established by the competent supervisor, or if the latter concludes that the changes identified are insufficient to address the deficiencies in or impediments to the implementation of the plan, the competent supervisor shall demand from the institution any of the measures envisaged in Article 6(3) of Law 11/2015 of 18 June 2015, without prejudice to the provisions of Articles 68 and 69 of Law 10/2014 of 26 June 2014 and of Articles 260 and 261 of the consolidated text of the Securities Market Law.

**Article 13.** *Assessment of group recovery plans.*

1. In order to assess the group recovery plans, the competent consolidating supervisor shall consult the supervisors of the supervisory college and the supervisors of the significant branches insofar as is relevant to the significant branches.

Following this consultation, it will assess, together with the supervisors of the subsidiaries, the group recovery plan and, in particular, the extent to which the plan satisfies the requirements and criteria laid down in Article 6 of Law 11/2015 of 18 June 2015, and in this section.

The assessment shall be performed according to the procedure laid down in Article 12 and on the basis of the possible repercussions of the recovery measures in all the European Union Member States where the group operates.

2. The competent supervisor, whether on a consolidated or individual basis, shall endeavour to reach a joint decision with the other supervisors on:

- a) The assessment of the group recovery plan.
- b) Whether a recovery plan on an individual basis shall be drawn up for institutions that are part of the group.
- c) The application of the measures referred to in Article 12(3) to (5).

The competent supervisor shall endeavour to reach a joint decision within four months of the date on which the consolidating supervisor transmits the group recovery plan.

The competent supervisor, in accordance with Article 31(c) of Regulation (EU) No 1093/2010 of 24 November 2010, may request the mediation of the European Banking Authority to reach a joint decision.

3. If within the timeframe set in the previous paragraph it is not possible to reach a joint decision on the review and assessment of the group recovery plan or on any measures the parent is required to take in accordance with Article 12(3) to (5), the competent consolidating supervisor shall make its own decision with regard to those matters.

Similarly, in the absence of a joint decision on whether a recovery plan on an individual basis shall be drawn up for certain institutions, or on the application to subsidiaries of the measures envisaged in Article 12(3) to (5), the competent supervisor, where it is the supervisor of a subsidiary, may make its own decision with regard to those matters.

The decisions referred to in this paragraph shall take into account the views and reservations of the other supervisors.

4. Notwithstanding the provisions of the preceding paragraph, if during the four-month period provided for in paragraph 2, and prior to the adoption of a joint decision, any of the supervisors has referred a matter on the assessment of the recovery plans or the implementation of the measures envisaged in Article 6(3)(a), (b) or (d) of Law 11/2015 of 18 June 2015 to the European Banking Authority, the competent supervisor shall defer its decision and await any decision that the European Banking Authority may take in accordance with Article 19(3) of Regulation (EU) No 1093/2010 of 24 November 2010. In these cases, the four-month period shall be deemed to be the conciliation period within the meaning of that Regulation.

The competent supervisor shall take its decision in accordance with the decision of the European Banking Authority. However, in the absence of a decision from the European Banking Authority within one month, the decision of the competent supervisor shall apply.

5. Without prejudice to the provisions of paragraph 3, the competent supervisor and the other supervisors of the group which do not disagree may reach a joint decision on the group recovery plan covering entities under their jurisdictions.

6. The competent supervisor shall recognise and apply the decisions reached by other supervisors in which it has not participated.

7. The competent authority shall convey the decisions adopted by virtue of this article to the parent or to the group entities concerned, as appropriate, and to the other supervisors.

**Article 14.** *Recovery plan indicators.*

1. In accordance with Article 6(2) of Law 11/2015 of 18 June 2015, institutions shall include in their recovery plans a set of indicators that identify the points at which actions referred to in the plan may be taken. These indicators shall be reviewed by the competent supervisor during the recovery plan assessment process.

2. The indicators may be of a qualitative or quantitative nature and shall relate to the institution's financial position. For these purposes, the institutions shall have, at least, capital, liquidity, asset quality and return on asset indicators, as well as macroeconomic, market or other indicators that may be relevant to assess their financial position.

Notwithstanding the foregoing, for investment firms the competent supervisor may waive this obligation in the case of certain of the above-mentioned indicators should they be irrelevant for them owing to the nature, scale and complexity of their activities.

3. In addition, the indicators shall be capable of being monitored easily for the institution and for the competent supervisor. For these purposes, the competent supervisor shall require that institutions put in place appropriate arrangements for the regular monitoring of the indicators.

4. Notwithstanding the provisions of paragraph 1, the institution's management body may:

a) Refrain from taking action under the recovery plan if it does not consider it to be appropriate in the circumstances of the situation.

b) Take action under the recovery plan without the need for the relevant indicator to have been met.

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

**Section 2.**  
**Intragroup financial support**

**Article 15.** *Intragroup financial support agreements.*

1. The group financial support agreements provided for in Article 7 of Law 11/2015 of 18 June 2015 may:

a) Affect one or more group subsidiaries and establish support agreements between subsidiaries and parents and between group subsidiaries.

b) Provide for financial support arrangements in the form of a loan, the provision of guarantees or the provision of assets for use as collateral.

c) Include reciprocal agreements whereby an entity receiving the support may provide, in turn, financial support to the entity providing the support.

2. The group financial support agreement shall specify the criteria for the calculation of the consideration for any transaction performed under the agreement. These criteria shall include a requirement that the consideration shall be set at the time of the provision of financial support.

3. In any event, the agreement shall comply with the following principles:

a) Each party must be acting freely in entering into the agreement.

b) In entering into the agreement and in determining the consideration for the provision of financial support, each party must be acting in its own best interests. These interests may include any direct or indirect benefit that may accrue as a result of provision of the financial support.

c) Each party providing support must have full disclosure of relevant information from any party receiving financial support, prior to determination of the consideration and prior to any decision to provide financial support.

d) The consideration for the provision of financial support may take account of information in the possession of the party providing support based on it being in the same group as the party receiving support, even if this information is not available to the market.

e) The criteria for the calculation of the consideration for the provision of financial support shall not be obliged to take account of any temporary impact on market prices arising from events external to the group.

4. The group financial support agreements shall be authorised by the competent supervisor before they are submitted for approval by the general meeting of each entity involved. However, they shall only be valid if their shareholders have authorised the management body of that entity to make a decision that the entity shall provide or receive financial support in accordance with the terms of the agreement and in accordance with the conditions laid down in this section and if that shareholder authorisation has not been revoked.

In addition, the management body of each entity that is party to the agreement shall report each year to the shareholders on the performance of the agreement, and on the implementation of any decision taken within the framework of the agreement.

5. The group entities shall make public the financial support agreements which they have entered into. The information made public shall include a description of the general terms of any such agreement and the names of the group entities that are party to it.

The information shall be updated at least annually and shall be subject to the general principles of disclosure provided for in Articles 431 to 434 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013.

**Article 16.** *Conditions for group financial support.*

Group financial support may only be provided by an entity if the following conditions are met:

a) There is a reasonable prospect that the support provided significantly redresses the financial difficulties of the receiving entity.

b) The provision of financial support has the objective of ensuring the financial stability of the group as a whole or of any specific entity and is in the interests of the entity providing the support.

c) The financial support is provided on terms, including the consideration in accordance with Article 15(3).

d) There is a reasonable prospect, on the basis of the information available to the management body of the entity providing the financial support, that the consideration will be paid by the entity receiving the support. In particular, if the support consists of a loan or of any form of guarantee or security, the recipient entity must be in a position to reimburse the loan or the liability arising from the enforcement of the guarantee or security.

e) The provision of financial support would not jeopardise the liquidity or solvency of the entity providing the support.

f) The provision of financial support would not create a threat to financial stability in the European Union Member State of the entity providing the support.

g) Unless authorised to do so by the competent supervisor on an individual basis, the entity providing the support, during the provision of such support or as a result of providing it, shall not breach:

(1) The requirements of the regulations on the solvency of credit institutions or of Title VIII of the consolidated text of the Securities Market Law, as regards capital, liquidity and large exposures.

(2) Any additional own funds requirement imposed by Article 69 of Law 10/2014 of 26 June 2014 or by Article 261 of the consolidated text of the Securities Market Law.

h) The provision of financial support would not undermine the resolvability of the entity providing the support.

**Article 17.** *Authorisation of the proposed financial support agreement.*

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

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

3. The competent consolidating supervisor shall only authorise the proposed agreement if it meets the conditions for provision of financial support set out in Article 16. The agreement shall be authorised or prohibited according to the procedure set out in the following article.

4. The competent supervisor shall communicate to the competent resolution authorities any group financial support agreements it has authorised and any changes thereto.

**Article 18.** *Joint decision on the group financial support agreement.*

1. The competent supervisor, either on a consolidated or individual basis, shall endeavour to reach a joint decision on the consistency of the terms of the proposed agreement with the terms for granting financial support, set out in Article 16. This joint decision shall take into account the potential impact of the execution of the agreement in all the European Union Member States where the group operates.

2. The joint decision shall be taken within four months of the date of receipt of the application for authorisation of the financial support agreement by the consolidating supervisor. The joint decision shall be set out in a document containing the fully reasoned decision, to be communicated to the applicant by the consolidating supervisor.

The competent supervisor may request assistance from the European Banking Authority to reach an agreement in accordance with Article 31 of Regulation (EU) No 1093/2010 of 24 November 2010.

3. If the supervisors fail to reach a joint decision within four months, the competent consolidating supervisor shall make its own decision on the application.

The decision shall be set out in a document containing the full reasoning and shall take into account the views and reservations of the other competent supervisors expressed during the four-month period.

The competent consolidating supervisor shall notify its decision to the applicant and the other competent supervisors.

4. Notwithstanding the foregoing, if during the four-month period, and prior to the adoption of a joint decision, any of the competent supervisors of the subsidiaries party to the financial support agreement has referred the matter to the European Banking Authority in accordance with Article 19 of Regulation (EU) No 1093/2010 of 24 November 2010, the competent consolidating supervisor shall defer its decision and await any decision that the European Banking Authority may take in accordance with Article 19(3) of that Regulation. The four-month period shall be deemed to be the conciliation period within the meaning of that Regulation.

The competent consolidating supervisor shall take its decision in accordance with the decision of the European Banking Authority. However, in the absence of a decision from the European Banking Authority within one month, the consolidating supervisor may adopt its own decision.

**Article 19.** *Right of opposition of supervisors.*

1. Before providing support under a group financial support agreement, the management body of the entity that intends to provide support shall notify the supervisor on an individual basis, the consolidating supervisor, the supervisor of the entity receiving the support and the European Banking Authority.

The notification envisaged in the preceding paragraph shall include the reasoned decision of the management body in accordance with Article 16 and details of the proposed financial support, including a copy of the group financial support agreement.

2. Within five business days from the date of receipt of the complete notification in accordance with the preceding paragraph, the competent supervisor on an individual basis of the entity providing



the financial support may prohibit or restrict the provision of support if it assesses that the conditions of Article 16 have not been met. In such cases, the competent supervisor's decision shall be reasoned and shall be communicated immediately to the consolidating supervisor, the competent supervisor of the entity receiving the support and the European Banking Authority.

In addition, the competent consolidating supervisor shall promptly inform the other members of the supervisory college and the members of the resolution college.

3. Where the competent supervisor, either on a consolidated or an individual basis, of the entity receiving support has objections regarding the decision to prohibit or restrict the financial support, it may refer the matter to the European Banking Authority and request its assistance in accordance with Article 31 of Regulation (EU) No 1093/2010 of 24 November 2010, within two days of receipt of the notification of the competent consolidating supervisor.

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

5. The decision of the management body of the institution to provide financial support, once authorisation has been given, shall be transmitted to the supervisor on an individual basis, the consolidating supervisor, the supervisor of the entity receiving the financial support and the European Banking Authority.

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

6. If the competent supervisor restricts or prohibits group financial support, and where the group recovery plan makes reference to this support, the competent supervisor on an individual basis of the entity whose support is restricted or prohibited may request the competent consolidating supervisor to reassess the group recovery plan or, where a recovery plan is drawn up on an individual basis, request the entity to submit a revised recovery plan.

### **Section 3. Early intervention**

**Article 20.** *Coordination of the early intervention measures of the competent consolidating supervisor with other European Union supervisors.*

1. The competent consolidating supervisor shall inform the members of the supervisory college that it has declared an early intervention situation of a parent undertaking as initiated and shall consult the college members on the appropriateness of applying the measures envisaged in Article 9 of Law 11/2015 of 18 June 2015.

2. Following the notification and consultation envisaged in the preceding paragraph, the competent consolidating supervisor shall decide whether to apply any early intervention measure to the parent undertaking of the group.

When it takes its decision, the competent consolidating supervisor shall take into account the impact of the measures on group entities established in other European Union Member States.

The decision shall be notified to the other supervisors in the supervisory college, the European Banking Authority and the parent undertaking of the group.

3. Where the supervisor of a group subsidiary notifies the competent consolidating supervisor that it has declared an early intervention situation of a subsidiary as initiated, the competent consolidating supervisor may assess, within three days at most, the potential effects of the imposition of early intervention measures on the rest of the group.

**Article 21.** *Coordination of the early intervention measures of the competent supervisor on an individual basis with other European Union supervisors.*

1. The competent supervisor, where it is the supervisor on an individual basis of a group subsidiary, shall inform the European Banking Authority that it has declared an early intervention situation of a subsidiary as initiated. Furthermore, it shall consult the consolidating supervisor as to the appropriateness of applying early intervention measures.

2. Following the notification and consultation, the competent supervisor shall decide whether to apply any early intervention measure. The decision shall take into consideration the impact assessment of any measures taken by the competent consolidating supervisor.

3. The competent supervisor shall notify the decision to the consolidating supervisor, the other supervisors in the supervisory college, the European Banking Authority and the group subsidiary to which the early intervention measures are to be applied.

**Article 22.** *Joint decision on the coordination of early intervention measures.*

1. Where more than one supervisor proposes that early intervention measures be applied to more than one group entity, the competent supervisor shall review with the other supervisors whether it is more appropriate to coordinate the early intervention measures.

2. The review envisaged in the preceding paragraph will give rise to a joint decision of the competent consolidating supervisor with the other supervisors, which must be reached within five days at most from the notification by any supervisor that the conditions for early intervention are met.

3. The competent supervisor may request assistance from the European Banking Authority to reach an agreement, in accordance with Article 31 of Regulation (EU) No 1093/2010 of 24 November 2010.

4. If it is not possible to reach a joint decision within the timeframe of five days envisaged in paragraph 2, the competent supervisor may adopt its own decision on the early intervention measures to be applied.

This decision shall take into account the views and reservations of the other supervisors expressed during the consultation period referred to in Articles 20 and 21 or during the five-day period for reaching the joint decision.

5. Notwithstanding the provisions of the preceding paragraph, the competent supervisor shall defer its decision if any other supervisor refers a matter to the European Banking Authority in accordance with Article 19(3) of Regulation (EU) No 1093/2010 of 24 November 2010 and the following conditions are met:

a) The matter referred relates to the decision to impose the early intervention measures envisaged in Article 9(2)(a) of Law 11/2015 of 18 June 2015 regarding paragraphs 4, 10, 11 and 19 of Annex I, or in Article 9(2)(e) or (g) of the above-mentioned Law.

b) The matter is referred to the European Banking Authority before the consultation period to which Articles 20 and 21 refer or at the end of the five-day period for reaching a joint decision referred to in paragraph 2.

c) The joint decision referred to in paragraph 2 has not been reached.

In such cases, the competent supervisor shall take its decision in accordance with the decision of the European Banking Authority pursuant to Article 19(3) of Regulation (EU) No 1093/2010 of 24 November 2010. Nevertheless, if the European Banking Authority does not issue a decision within three days from when the matter was referred, the competent supervisor may adopt its own decision.

6. The competent supervisor may refer a matter to the European Banking Authority and request its assistance where:

a) It does not agree with the decision notified by another supervisor that the conditions for imposing early intervention measures on a group or institution are met.

b) It is not possible to reach a joint decision to impose the early intervention measures envisaged in Article 9(2)(a) of Law 11/2015 of 18 June 2015 regarding paragraphs 4, 10, 11 and 19 of Annex I, or in Article 9(2)(e) or (g) of the above-mentioned Law.

7. The competent supervisor shall convey the decisions adopted pursuant to this article to the parent of the group, where it is the consolidating supervisor, or to the subsidiaries, where it is the supervisor on an individual basis.

**Article 23.** *Appointment and removal of the temporary administrator.*

1. In accordance with Articles 9(2)(j) and 10 of Law 11/2015 of 18 June 2015, where the competent supervisor considers that the early intervention measures envisaged in Article 9(2)(a) to (i) of the above-mentioned Law are insufficient to redress the institution's difficulties, it may decide to appoint temporary administrators to work with or replace its management body or one or more of its members.

The decision, which shall be immediately enforceable, shall be published directly in the Official State Gazette. Once published in the Official State Gazette, the decision will be effective vis-à-vis third parties.

2. All the decisions on the replacement of the management body, general managers or similar officers, determining their powers and actions, and limitations, shall be registered in the Mercantile Register.

3. Without prejudice to the provisions of Law 11/2015 of 18 June 2015 and of this Royal Decree, the appointment of the temporary administrator shall not undermine the rights of the institution's shareholders.

4. The temporary administrators must meet the suitability requirements envisaged in Articles 30 to 32 of Royal Decree 84/2015 of 13 February 2015, implementing Law 10/2014 of 26 June 2014

on the regulation, supervision and solvency of credit institutions, in the case of credit institutions, and the suitability requirements envisaged in Articles 14 bis to 14 quater of Royal Decree 217/2008 of 15 February 2008 on the legal framework of investment firms and other institutions providing investment services, and partially amending the implementing regulations of Collective Investment Institutions Law 35/2003 of 4 November 2003, approved by Royal Decree 1309/2005 of 4 November 2005, in the case of investment firms.

5. The competent supervisor may remove the temporary administrator at any time and for any reason.

**Article 24.** *Powers and functions of the temporary administrator.*

1. The competent supervisor shall specify the powers and functions of the temporary administrator at the time of appointment or at the time of any variation of the terms of appointment. For these purposes, the agreement shall include at least the following content:

a) The temporary administrator's powers, which shall be proportionate to the institution's circumstances and may include some or all of the powers of the management body of the institution, including the power to exercise administrative functions.

b) The temporary administrator's functions and any limits on these functions. Such functions may include:

(1) Ascertaining the financial position of the institution.

(2) Managing the business or part of the business of the institution with a view to preserving or restoring the financial position of the institution.

(3) Taking measures to restore the sound and prudent management of the business of the institution.

c) If the temporary administrator has been appointed to work temporarily with the management body, the temporary administrator's functions, obligations and powers, and the decisions of the institution's management body which must be consulted with or approved by the temporary administrator.

d) The acts of the temporary administrator which must be submitted for approval by the competent supervisor. Notwithstanding the foregoing, the temporary administrator may not convene a general meeting of the shareholders of the institution or set the agenda of such a meeting without the approval of the competent supervisor.

2. Additionally, the competent supervisor may require that the temporary administrator, at intervals considered appropriate by the competent authority and at the end of his or her mandate, draw up reports on the financial position of the institution and on the acts performed in the course of said mandate.

**CHAPTER III**  
**Preventive phase of resolution**

**Section 1.**  
**Resolution planning**

**Article 25.** *Resolution plans.*

1. The resolution plan stipulated in Article 13 of Law 11/2015 of 18 June 2015 shall contain the resolution tools and powers applicable to the institution according to the different stress scenarios that may lead to failure.

For these purposes, without prejudice to the simplified obligations that may be established for certain institutions pursuant to Article 4 of Law 11/2015 of 18 June 2015 and Article 5 of this Royal Decree, the plan shall include, quantified whenever possible:

- (a) A summary of the key elements of the plan.
- (b) A summary of the material changes to the institution since the information on its resolvability was last updated.
- (c) A demonstration of how critical functions and core business lines could be legally and economically separated, to the extent necessary, from other functions so as to ensure continuity upon the failure of the institution.
- (d) An estimation of the timeframe for executing each material aspect of the plan.
- (e) A detailed description of the resolvability assessment carried out in accordance with Article 15 of Law 11/2015 of 18 June 2015.
- (f) A description of any measures required to address or remove impediments to resolvability identified in the assessment conducted in accordance with Article 15 of Law 11/2015 of 18 June 2015.
- (g) A description of the processes for determining the value and selling potential of the assets of the institution, including core business lines.
- (h) A detailed description of the arrangements for ensuring that the information required from the institutions is up to date and at the disposal of the competent resolution and supervisory authorities at all times.
- (i) An assessment of the conditions under which the institution could access the standard liquidity-providing operations of central banks and the assets that could be provided as collateral.
- (j) An explanation as to how the resolution options could be financed without the arrangements referred to in Article 13(2)(a) to (c) of Law 11/2015 of 18 June 2015.
- (k) A detailed description of the different resolution strategies that could be applied according to the different possible scenarios and the applicable timescales.
- (l) A description of critical interconnections and interdependencies.
- (m) A description of options for preserving access to payments and clearing services and other infrastructures and, where possible, an assessment of the portability of customer positions.
- (n) 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.

(ñ) A plan for communicating with the media and the public.

(o) The minimum requirement for own funds and eligible liabilities required pursuant to Article 44 of Law 11/2015 of 18 June 2015 and a deadline to reach that level, where applicable.

(p) The minimum requirement for own funds and contractual bail-in instruments required pursuant to Article 44 of Law 11/2015 of 18 June 2015 and a deadline to reach that level, where applicable.

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

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

The preventive resolution authority shall disclose the information referred to in subparagraph (a) to the institution concerned.

2. For the purposes of drawing up the resolution plan, the preventive resolution authority may direct the institution to provide, inter alia, the information stipulated in Annex II. Where the competent supervisor holds the information required, it may provide the information directly to the preventive resolution authority.

3. Under Article 13(2) of Law 11/2015 of 18 June 2015, the preventive resolution authority may require institutions to assist them in the drawing up and updating of the plans.

4. The preventive resolution authority shall transmit the resolution plans and any changes thereto to the competent supervisors and the FROB.

**Article 26.** *Group resolution plans.*

1. The group resolution plan provided for in Article 14(1) of Law 11/2015 of 18 June 2015 shall include the elements referred to in paragraph 1 of the foregoing Article, and shall also:

(a) Set out the resolution actions to be taken in relation to group institutions.

(b) Examine the extent to which the resolution tools and powers could be applied and exercised in a coordinated way to group institutions established in the European Union, including any potential impediments to a coordinated resolution. In particular, it shall examine measures to facilitate the purchase by a third party of the group or group entities or separate business lines.

(c) Where a group includes entities incorporated in non-EU countries, identify appropriate arrangements for cooperation and coordination with the relevant authorities and the implications for resolution within the European Union.

(d) Identify measures that are necessary to facilitate group resolution when the conditions for resolution are met. These measures may include the legal and economic separation of particular functions or business lines.

(e) Identify funding conditions for group resolution actions, on the basis of equitable and balanced principles for burden-sharing between sources of funding in different European Union Member States. In particular, these principles shall be based on the criteria established in Article 52(3) and shall take into account the impact on financial stability in all the Member States affected.

(f) Set out any additional actions that the FROB, when it is the group-level resolution authority, intends to take in relation to the resolution of the group.

In any event, the group resolution plans shall not have a disproportionate impact on any Member State.

2. For the purposes of drawing up the group resolution plan, the parent shall submit to the competent preventive resolution authority the information referred to in Article 25(2) concerning the parent and, to the extent required by the preventive resolution authority, each of the group entities.

In addition, the competent preventive resolution authority may use the information submitted by the institutions or provided by the competent supervisory authority pursuant to Article 25(2).

3. The preventive resolution authority shall transmit the resolution plans and any changes thereto to the relevant competent supervisors and the FROB.

**Article 27.** *Exchange of information between resolution authorities and supervisors.*

1. The group-level preventive resolution authority shall, provided that the confidentiality requirements laid down in Law 11/2015 of 18 June 2015 are in place, transmit the information provided by the parent in accordance with Article 26(3) to:

(a) The FROB, as the executive resolution authority.

(b) The European Banking Authority.

(c) The resolution authorities of subsidiaries.

(d) The resolution authorities of the jurisdictions in which significant branches are located insofar as is relevant to the significant branch.

(e) The supervisors with which coordination and cooperation arrangements are in place to conduct consolidated supervision of an institution or that form part of a supervisory college.

(f) The resolution authorities of the European Union Member States where financial holding companies, mixed financial holding companies or mixed-activity holding companies of the group are established.

2. The information provided by the preventive resolution authority, when it is the group-level preventive resolution authority, to the bodies referred to in subparagraphs (c), (d) and (e) of the foregoing paragraph shall include at a minimum all information that is relevant to the subsidiary or significant branch.

3. The information provided by the preventive resolution authority, when it is the group-level preventive resolution authority, to the European Banking Authority shall include all information that the

latter may require to carry out the functions attributed to it under European regulations on group resolution planning.

4. The group-level resolution authority may, at its discretion, and subject to meeting the confidentiality requirements laid down in Article 58(2) of Law 11/2015 of 18 June 2015, involve in the drawing up and maintenance of group resolution plans non-EU country resolution authorities of jurisdictions in which the group has established significant branches, subsidiaries or financial holding companies.

5. Notwithstanding the provisions of the above paragraphs, the group-level preventive resolution authority shall not be obliged to transmit information concerning subsidiaries in non-EU countries if the competent supervisor or resolution authorities of those countries have not granted their consent.

**Article 28.** *Joint decision on the group resolution plan.*

1. In accordance with Article 14 of Law 11/2015 of 18 June 2015, the group resolution plan shall take the form of a joint decision of the preventive resolution authority and the resolution authorities of group subsidiaries and, when the preventive resolution authority acts as the preventive resolution authority of a subsidiary, with the group-level resolution authority.

This decision shall be reached within four months of the date of the transmission by the group-level resolution authority of the information referred to in Article 27.

The preventive resolution authority, in accordance with Article 31(c) of Regulation (EU) No 1093/2010 of 24 November 2010, may request the mediation of the European Banking Authority to reach a joint decision.

2. In the absence of a joint decision between the resolution authorities within the four-month period stipulated in the foregoing paragraph, the preventive resolution authority, when it is the group-level resolution authority, shall make its own decision on the group resolution plan or, when it is the resolution authority of a subsidiary, shall make its own decision and shall prepare and keep updated a resolution plan for the institutions established in Spain.

These decisions shall be fully reasoned and shall take into account the views and reservations of other resolution authorities and supervisors. In addition, when the preventive resolution authority is the resolution authority of a subsidiary, the decision shall set out the reasons for disagreement with the proposed group resolution plan.

The preventive resolution authority shall convey its decisions to the institutions concerned and other members of the resolution college.

3. Notwithstanding the provisions of the foregoing paragraph, if during the four-month period, and prior to the adoption of a joint decision, any resolution authority refers the matter to the European Banking Authority in accordance with Article 19 of Regulation (EU) No 1093/2010 of 24 November 2010, the preventive resolution authority shall defer its decision and await any decision that the European Banking Authority may take pursuant to Article 19(3) of that Regulation. In these cases, the four-month period shall be deemed to be the conciliation period within the meaning of that Regulation.



Likewise, the preventive resolution authority shall take its decision in accordance with the decision of the European Banking Authority. In the absence of a decision from the European Banking Authority within one month, the decision of the competent preventive resolution authority shall apply.

4. Without prejudice to the provisions of paragraph 2, the preventive resolution authority and the other resolution authorities of the group which do not disagree may reach a joint decision on the group resolution plan covering group entities under their jurisdictions.

5. The joint decisions referred to in paragraphs 1 and 4 and the decisions taken pursuant to Articles 3 and 4 shall be recognised as conclusive and applied by the resolution authorities concerned.

6. In the absence of a joint decision during the four-month period stipulated in paragraph 3, the preventive resolution authority may request assistance from the European Banking Authority to reach an agreement in accordance with Article 19(3) of Regulation (EU) No 1093/2010 of 24 November 2010, unless any resolution authority concerned assesses that the subject matter under disagreement may in any way impinge on its Member State's fiscal responsibilities.

7. Where joint decisions are taken pursuant to paragraphs 1 and 3 and a resolution authority assesses that the subject matter of a disagreement regarding group resolution plans impinges on the fiscal responsibilities of its Member State, the preventive resolution authority, when it is the group-level preventive resolution authority, shall initiate a reassessment of the group resolution plan, including the minimum requirement for own funds and eligible liabilities.

## **Section 2. Resolvability assessment**

### **Article 29.** *Resolvability assessment.*

1. In order to perform the resolvability assessment for institutions and groups set forth, respectively, in Articles 15 and 16 of Law 11/2015 of 18 June 2015, the preventive resolution authority shall examine, as a minimum, the matters specified in Annex III.

2. The procedure for adoption of the joint decision on the resolvability assessment for the group shall be that stipulated in Article 28. For these purposes, the resolution college shall take into account the resolvability assessment for the group undertaken by the preventive resolution authority in its role as the group-level preventive resolution authority.

### **Article 30.** *Joint decision on the removal of impediments to group resolvability.*

1. The joint decision on the measures required to remove impediments to a group's resolvability, referred to in Article 18 of Law 11/2015 of 18 June 2015, shall be reached within four months of submission of any observations by the group parent on the measures proposed by the preventive resolution authority to remove the impediments to resolvability, on the basis of paragraph 1 of the aforementioned Article.

In the absence of any observations being submitted during the four-month period available to the group parent under Article 18(2) of Law 11/2015 of 18 June 2015, the joint decision shall be taken as promptly as possible.

In any event, the joint decision shall be reasoned and set out in a document which shall be provided by the group-level resolution authority to the parent undertaking.

2. The preventive resolution authority, in accordance with Article 31(c) of Regulation (EU) No 1093/2010 of 24 November 2010, may request the mediation of the European Banking Authority for a joint decision to be reached.

3. If a joint decision cannot be reached within the time period stipulated in paragraph 1, the preventive resolution authority, when it is the group-level resolution authority, shall take its own decision on the measures that must be applied at the group level or, when it is the resolution authority of a subsidiary, on the measures that must be implemented by group entities established in Spain.

These decisions shall be fully reasoned and shall take into account the views and reservations of other resolution authorities. The decision shall be provided to the parent by the group-level preventive resolution authority.

4. Notwithstanding the provisions of the foregoing paragraph, if during the four-month period, and prior to the adoption of a joint decision, any resolution authority has referred any of the matters set out in paragraph 6 to the European Banking Authority in accordance with Article 19 of Regulation (EU) No 1093/2010 of 24 November 2010, the preventive resolution authority shall defer its decision and await any decision that the European Banking Authority may take in accordance with Article 19(3) of that Regulation. In these cases, the four-month period shall be deemed to be the conciliation period within the meaning of that Regulation.

Likewise, the preventive resolution authority shall take its decision in accordance with the decision of the European Banking Authority. In the absence of a decision from the European Banking Authority within one month, the decision of the preventive resolution authority shall apply.

5. The preventive resolution authority shall recognise and apply the decisions reached by other resolution authorities to which it is not a party.

6. In the absence of a joint decision on the taking of any measures referred to in Article 17(2)(g), (h) or (k) of Law 11/2015 of 18 June 2015, the preventive resolution authority may request that the European Banking Authority assist in reaching an agreement in accordance with Article 19(3) of Regulation (EU) No 1093/2010 of 24 November 2010.

## **CHAPTER IV Resolution**

### **Article 31.** *Notification requirements.*

1. The competent supervisor shall inform the competent preventive resolution authority and the FROB of any notification received under Article 21(4) of Law 11/2015 of 18 June 2015, and of any crisis prevention measures or any actions referred to in Articles 68 and 69 of Law 10/2014 of 26 June 2014, or Articles 260 and 261 of the consolidated text of the Securities Market Law, that are ordered with regard to an institution.

2. When the competent supervisor or the FROB, as appropriate, determines that the conditions referred to in Article 19(1)(a) and (b) of Law 11/2015 of 18 June 2015 are met in relation to an institution, it shall communicate that determination without delay to the following authorities, if different:

- (a) The competent resolution authorities.
- (b) The supervisor of the subsidiaries of that institution.
- (c) The supervisor of the branches of that institution.
- (d) The competent resolution authorities of the branches of that institution.
- (e) The Banco de España.
- (f) The deposit guarantee scheme to which the credit institution is affiliated where necessary to enable the functions of the deposit guarantee scheme to be discharged.
- (g) The body or institution in charge of the resolution financing arrangements where necessary to enable the functions of the resolution financing arrangements to be discharged.
- (h) Where applicable, the group-level resolution authority.
- (i) The Ministry of Economic Affairs and Competitiveness.
- (j) Where the institution is subject to consolidated supervision under Chapter II of Title II of Law 10/2014 of 26 June 2014, or Chapter I of Title VII of the consolidated text of the Securities Market Law, the consolidating supervisor.
- (k) The designated national macroprudential authority, where applicable, and the European Systemic Risk Board.

3. Where the transmission of information referred to in paragraph 2(f) and (g) does not guarantee the appropriate level of confidentiality, the competent authority or the FROB shall establish alternative communication procedures that achieve the same objectives while ensuring the appropriate level of confidentiality.

**Article 32.** *The FROB's information obligations.*

1. Once the resolution process is ordered to commence, the FROB shall adopt the measures set out in this article without delay.

2. The FROB shall notify the decision setting the resolution process in motion to the institution under resolution and the following authorities, if different:

- (a) The competent supervisor for the institution under resolution.
- (b) The competent supervisor of any subsidiary or branch of the institution under resolution.
- (c) The Banco de España.
- (d) The deposit guarantee scheme to which the credit institution under resolution is affiliated.
- (e) The body in charge of the resolution financing arrangements.
- (f) Where applicable, the group-level resolution authority.
- (g) The Ministry of Economic Affairs and Competitiveness.

(h) Where the institution is subject to consolidated supervision under Chapter II of Title II of Law 10/2014 of 26 June 2014, or Chapter I of Title VII of the consolidated text of the Securities Market Law, the consolidating supervisor.

(i) The designated national macroprudential authority, where applicable, and the European Systemic Risk Board.

(j) The European Commission, the European Central Bank, the European Securities and Markets Authority, the European Insurance and Occupational Pensions Authority and the European Banking Authority.

(k) Where the institution under resolution is an institution as defined in Article 2(b) of Directive 98/26/EC, the operators of the systems in which it participates.

3. The notification referred to in the preceding paragraph shall include a copy of any decision by which the relevant powers are exercised and indicate the date from which the resolution actions are effective.

4. The FROB shall publish the decision referred to in this article or shall request or order its publication:

(a) On its official website.

(b) On the website of the competent supervisor and the website of the European Banking Authority.

(c) On the website of the institution under resolution.

(d) Where the shares, other capital instruments or debt instruments of the institution under resolution are admitted to trading on a regulated market, by the means used for the disclosure of regulated information concerning the institution under resolution in accordance with Article 21(1) of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC.

5. If the shares, capital instruments or debt instruments are not admitted to trading on a regulated market, the FROB shall ensure that the decision referred to in paragraph 2 is notified to the shareholders and creditors of the institution under resolution that are known through the registers or databases of the institution which are available to the FROB.

**Article 33.** *Replacement of the management body and general managers or similar officers as a resolution measure.*

1. The members of the management body and general managers or similar officers who are appointed under the provisions of Article 22 of Law 11/2015 of 18 June 2015, shall have the qualifications, ability and knowledge required to carry out their functions.

2. The members of the management body and the general managers shall have the statutory duty to take all the measures necessary to promote the resolution objectives and principles envisaged

in Articles 3 and 4 of Law 11/2015 of 18 June 2015, and implement resolution actions according to the decision of the competent resolution authority.

Those measures may include an increase of capital, reorganisation of the institution's capital structure or holdings taken by institutions that are financially and organisationally sound in accordance with the resolution tools referred to in Chapter V.

3. The FROB may set limits on the action of members of the management body of the institution and the general managers or similar officers, or require that certain of their actions be subject to the resolution authority's prior consent. The FROB may remove the members of the management body and the general managers at any time.

4. Under the terms determined by the FROB, the members of the management body and the general managers of the institution shall draft reports on the economic and financial situation of the institution and on the performance of their functions. These reports shall be prepared on a regular basis under the terms set out by the FROB and at the beginning and end of their mandate.

5. When the FROB and other resolution authorities intend to appoint a special manager in relation to an entity affiliated to a group, the FROB, in coordination with the other authorities, shall consider whether it is more appropriate to appoint the same special manager for all the entities concerned in order to facilitate solutions redressing the financial soundness of the entities concerned.

6. All decisions on the replacement of the management body, general managers or similar officers, determining their powers and actions, and limitations shall be registered in the Mercantile Register.

## **CHAPTER V**

### **Resolution tools**

**Article 34.** *Requirements for the sale of the institution's business.*

The person or institution that emerges as the purchaser of the institution under resolution pursuant to applicable legislation shall have the appropriate authorisation to carry out the business it acquires pursuant to Article 26 of Law 11/2015 of 18 June 2015. The competent supervisors shall ensure that the application for authorisation shall be considered, in conjunction with the transfer, in a timely manner.

**Article 35.** *Functioning of a bridge institution.*

1. The FROB is responsible for setting up the bridge institution referred to in Article 27 of Law 11/2015 of 18 June 2015 and, in particular, for approving:

- (a) The constitutional documents of the bridge institution.
- (b) The appointment of the management body of the bridge institution, which in any event shall be appointed subject to the capital structure thereof.
- (c) The remuneration and responsibilities of the members of the management body of the bridge institution.
- (d) The strategy and risk profile of the bridge institution.

2. The FROB shall order the termination of the operation of a bridge institution in any of the following circumstances:

(a) The bridge institution merges with another institution within the framework of Law 3/2009 of 3 April 2009 on structural changes in firms governed by commercial law.

(b) The bridge institution ceases to meet the requirements to constitute a bridge institution.

(c) The sale of all or most of the bridge institution's assets or liabilities to a third party.

(d) The bridge institution's assets are wound down and its liabilities are discharged.

3. If none of the circumstances envisaged in the preceding paragraph arise, the FROB shall terminate the operation of a bridge institution as soon as possible and in any event two years after the date on which the last transfer from an institution under resolution pursuant to the bridge institution tool was made.

The FROB may extend the two-year period for one or more additional one-year periods to support the outcomes referred to in the preceding paragraph or where necessary to ensure the continuity of essential banking or financial services.

The decision of the FROB to extend the two-year period shall be reasoned and contain a detailed assessment of the situation, including of the market conditions and outlook, that justifies the extension.

**Article 36.** *Functioning of an asset management vehicle.*

1. Pursuant to the provisions of Article 28(3) of Law 11/2015 of 18 June 2015 and taking into account the relevant circumstances, the FROB shall in each case determine the most appropriate means of control over the asset management vehicle to ensure that the vehicle acts in accordance with the resolution objectives.

2. The asset management vehicle shall manage the assets and liabilities received from the institution under resolution. The assets shall be managed with a view to maximising their value through eventual sale or orderly wind down.

3. The FROB shall approve the asset management vehicle's constitutional documents, its management body and the remuneration thereof, and shall determine the responsibilities of the management body, and the strategy and risk profile of the vehicle.

4. In exercising the powers set out in the preceding paragraph, the FROB shall determine the corporate governance obligations applicable to the asset management vehicle, to ensure its optimal organisation and functioning, for the purposes of achieving the resolution objectives and ensuring transparency in its actions. The obligations set out in Royal Decree 1559/2012 of 15 November 2012 establishing the legal framework for asset management vehicles, shall apply on a supplementary basis.

**CHAPTER VI**  
**Write-down and conversion of capital instruments and bail-in**

**Article 37.** *Procedure for full or partial exclusion of certain liabilities or categories of eligible liabilities.*

Before exercising the discretion to exclude a liability under Article 43(1) of Law 11/2015 of 18 June 2015, the FROB shall notify the European Commission.

Where the exclusion would require a contribution by the National Resolution Fund or use by the FROB of an alternative financing source, under Article 43(4) and Section 6 of Chapter VI of Law 11/2015 of 18 June 2015, the European Commission may, within 24 hours of receipt of such a notification, or a longer period with the agreement of the FROB, prohibit or require amendments to the proposed exclusion if the requirements of this article and delegated acts are not met, in order to protect the integrity of the internal market. This is without prejudice to the application of European State aid regulations.

**Article 38.** *Determination of the minimum requirement for own funds and eligible liabilities.*

1. Eligible liabilities, including subordinated debt instruments and subordinated loans that do not qualify as additional Tier 1 or Tier 2 capital, shall be included in the amount of own funds and eligible liabilities referred to in Article 44 of Law 11/2015 of 18 June 2015, where they satisfy the following conditions:

- a) The instrument is issued and fully paid up.
- b) The liability is not owed to, secured by or guaranteed by the institution itself.
- c) The purchase of the instrument was not funded directly or indirectly by the institution.
- d) The liability has a remaining maturity of at least one year.
- e) The liability does not arise from a derivative.
- f) The liability does not arise from a deposit referred to in paragraph 1 of the fourteenth additional provision of Law 11/2015 of 18 June 2015.

For the purpose of subparagraph d), where a liability confers upon its owner a right to early repayment, the maturity of that liability shall be the first date on which the right may be exercised.

2. Where an institution is required to demonstrate, in accordance with Article 44(4) of Law 11/2015 of 18 June 2015, that any decision of a resolution authority to write down or convert an eligible liability would be effective under the law of the relevant third country, it shall do so having regard to the terms of the contract governing the liability, international agreements on the recognition of resolution proceedings and other relevant matters.

3. To qualify as a contractual bail-in instrument for the purposes of Article 44(7) of Law 11/2015 of 18 June 2015, the preventive resolution authority shall be satisfied that the instrument:

a) Contains a contractual term providing that, where a resolution authority decides to apply the bail-in tool to that institution, the instrument shall be written down or converted to the extent required before other eligible liabilities are written down or converted.

b) Is subject to a binding subordination agreement, undertaking or provision under which, in the event of insolvency proceedings, it ranks below other eligible liabilities in accordance with paragraph 1 and cannot be repaid until other eligible liabilities outstanding at the time have been settled.

**Article 39.** *Waiver of the minimum requirement for own funds and eligible liabilities.*

1. The group-level preventive resolution authority may, after consulting the FROB, fully waive the application of the individual minimum requirement for own funds and eligible liabilities to a European Union parent undertaking where:

a) The European Union parent undertaking complies on a consolidated basis with the minimum requirement set under Article 44 of Law 11/2015 of 18 June 2015.

b) The competent authority of the European Union parent undertaking has fully waived the application of individual capital requirements to the institution in accordance with Article 7(3) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013.

2. The preventive resolution authority of a subsidiary may, after consulting the FROB, fully waive the application of Article 44 of Law 11/2015 of 18 June 2015 to that subsidiary on an individual basis, where:

a) Both the subsidiary and its parent undertaking are subject to authorisation and supervision by the same Member State.

b) The subsidiary is included in the consolidated supervision of the institution which is the parent undertaking.

c) The highest level group entity in the Member State of the subsidiary, where different to the European Union parent undertaking, complies on a sub-consolidated basis with the minimum requirement set under Article 44 of Law 11/2015 of 18 June 2015.

d) There is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities to the subsidiary by its parent undertaking.

e) The parent undertaking satisfies the competent authority regarding the prudent management of the subsidiary and has declared, with the consent of the competent authority, that it guarantees the commitments entered into by the subsidiary, or third-party risks with the subsidiary are negligible.

f) The risk evaluation, measurement and control procedures of the parent undertaking cover the subsidiary.

g) The parent undertaking holds more than 50% of the voting rights in the subsidiary or has the right to appoint or remove a majority of the members of the management body of the subsidiary.

h) The competent authority of the subsidiary has fully waived the application of individual capital requirements to the subsidiary in accordance with Article 7(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013.

**Article 40.** *Determination of the minimum requirement for own funds and eligible liabilities of the group's subsidiaries and European Union parent undertakings.*

1. The Spanish preventive resolution authority shall, following a report from the FROB and the competent supervisor, set the minimum requirement for own funds and eligible liabilities applicable at individual level to the Spanish subsidiaries of the group.



2. The Spanish preventive resolution authority, where it is also the group-level preventive resolution authority, shall determine, following a report from the FROB and after consulting the consolidating supervisor, the minimum requirement at consolidated level for the European Union parent undertakings, and the individual minimum requirement for the parent undertaking.

**Article 41.** *Joint decision on the minimum requirement for own funds and eligible liabilities applicable at consolidated level.*

1. The Spanish preventive resolution authority, as the group-level preventive resolution authority or the preventive resolution authority responsible for the subsidiaries on an individual basis, shall, following a report from the FROB, do everything within its power to reach a joint decision on the level of the minimum requirement applied at consolidated level in accordance with Article 44 of Law 11/2015 of 18 June 2015.

2. The joint decision shall be set out and reasoned in a report. The Spanish preventive resolution authority, when it is the group-level preventive resolution authority, shall notify the decision to the European Union parent undertaking.

3. In the absence of a joint decision within four months, the Spanish preventive resolution authority, when it is the group-level preventive resolution authority, shall, following a report from the FROB, take a decision on the consolidated minimum requirement after duly taking into consideration the assessment of subsidiaries performed by the relevant resolution authorities.

4. If, during the four-month period, any of the resolution authorities concerned has referred the matter to the European Banking Authority in accordance with Article 19 of Regulation (EU) No 1093/2010 of 24 November 2010, the Spanish group-level resolution authority shall defer its decision and await any decision that the European Banking Authority may take in accordance with Article 19(3) of that Regulation. Subsequently, it shall decide in accordance with the European Banking Authority's decision.

The four-month period shall be deemed to be the conciliation period within the meaning of Article 19 of that Regulation.

The matter shall not be referred to the European Banking Authority after the end of the four-month period or after a joint decision has been reached. In the absence of a decision from the European Banking Authority within one month, the decision of the group-level resolution authority shall apply.

5. The joint decision and the decision taken by the group-level resolution authority in the absence of a joint decision shall be binding on the Spanish preventive resolution authorities.

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

**Article 42.** *Minimum requirement for own funds and eligible liabilities of subsidiaries at individual level and joint decision on the minimum requirement applied at individual level to the subsidiaries of the group.*

1. The minimum requirement for own funds and eligible liabilities for the subsidiary shall be set at an appropriate level, taking into account the following:

a) The criteria listed in Article 44(2) of Law 11/2015 of 18 June 2015, in particular the size, business model and risk profile of the subsidiary, including its own funds.

b) The consolidated requirement that has been set for the group under Article 41.

2. The Spanish preventive resolution authority, when it is the group-level preventive resolution authority or the preventive resolution authority responsible for any of the subsidiaries on an individual basis, shall, following a report from the FROB, do everything within its power to reach a joint decision on the level of the minimum requirement to be applied to each subsidiary on an individual basis.

3. The joint decision shall be set out and reasoned in a report. The Spanish preventive resolution authority, when it is the group-level preventive resolution authority, shall notify the decision to the Spanish subsidiaries and, where applicable, to the European Union parent undertaking.

In the absence of a joint decision between the resolution authorities within four months, the decision shall be taken by the Spanish preventive resolution authority with regard to the Spanish subsidiaries duly considering the views and reservations expressed by the group-level resolution authority.

4. If, during the four-month period, the group-level resolution authority has referred the matter to the European Banking Authority in accordance with Article 19 of Regulation (EU) No 1093/2010, the preventive resolution authority responsible for the subsidiary on an individual basis shall defer its decision and await any decision that the European Banking Authority may take in accordance with Article 19(3) of that Regulation, and shall take its decision in accordance with that of the European Banking Authority.

The four-month period shall be deemed to be the conciliation period within the meaning of that Regulation.

The matter shall not be referred to the European Banking Authority after the end of the four-month period or after a joint decision has been reached.

In the absence of a decision from the European Banking Authority within one month, the decisions of the Spanish preventive resolution authority responsible for the subsidiary shall apply.

5. The joint decisions and any decisions taken by the resolution authorities of the subsidiaries in the absence of a joint decision shall be binding on the Spanish preventive resolution authority.

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

7. The group-level resolution authority shall not refer the matter to the European Banking Authority for the purposes of binding mediation where the level set by the resolution authority of the subsidiary is within one percentage point of the consolidated level set under Article 41.

**Article 43.** *Value of liabilities arising from derivatives.*

The FROB shall determine the value of liabilities arising from derivatives in accordance with the following:

a) Appropriate methodologies for determining the value of classes of derivatives, including transactions that are subject to netting agreements.

b) Principles for establishing the relevant point in time at which the value of a derivative position should be established.

c) Appropriate methodologies for comparing the destruction in value that would arise from the close-out of transactions and bail-in of derivatives with the amount of losses that would be borne by derivatives in a bail-in.

**Article 44.** *Business reorganisation plan.*

1. Within one month from the bail-in tool being applied to an institution under Article 40(2)(a) of Law 11/2015 of 18 June 2015, the management body of the institution or the individual(s) or legal person(s) designated under Article 22(1) of Law 11/2015 of 18 June 2015 shall draw up and submit to the FROB a business reorganisation plan, in accordance with Article 49 of that Law, that satisfies the requirements of paragraphs 4 and 5 of this article. Where the European Union State aid framework is applicable, the plan shall be compatible with the recovery plan that the institution is required to submit to the European Commission under that framework.

2. Where the bail-in tool laid down in Article 40(2)(a) of Law 11/2015 of 18 June 2015 is applied to two or more group entities, the business reorganisation plan to be submitted to the FROB shall be prepared by the Spanish parent undertaking, or by the parent undertaking not located in Spain when supervision of the group on a consolidated basis is the responsibility of the competent Spanish supervisory authorities, pursuant to Article 81 of Royal Decree 84/2015 of 13 February 2015, and shall cover all of the institutions in the group in accordance with the procedure specified in Articles 12 and 13. The FROB shall communicate the plan to other resolution authorities concerned and to the European Banking Authority.

3. In exceptional circumstances, and if it is necessary for achieving the resolution objectives, the FROB may extend the period in paragraph 1 up to a maximum of two months from the application of the bail-in tool.

Where the business reorganisation plan is required to also be notified within the European Union State aid framework, the FROB may extend the period in paragraph 1 up to a maximum of two months from the application of the bail-in tool or up to the deadline laid down by the European Union State aid framework, whichever is earlier.

**Article 45.** *Content and execution of the business reorganisation plan.*

1. The business reorganisation plan shall set out measures aiming to restore the long-term viability of the institution or parts of its business within a reasonable timescale.

Those measures shall be based on realistic assumptions as to the economic and financial market conditions under which the institution will operate.

The business reorganisation plan shall take account, inter alia, of the current state and future prospects of the financial markets, reflecting best-case and worst-case scenarios, along with a selection of events allowing the identification of the institution's main vulnerabilities. The scenarios shall be compared with appropriate sector-wide benchmarks.

2. The business reorganisation plan shall include at least the following elements:

a) A detailed diagnosis of the factors and problems that caused the institution to fail or to be likely to fail, and the circumstances that led to its difficulties.

b) A description of the measures aiming to restore the long-term viability of the institution.

c) A timetable for the implementation of those measures.

3. Within one month of the date of submission of the business reorganisation plan, the FROB, in agreement with the competent supervisor and the preventive resolution authority, shall assess the capacity of the plan to restore the long-term viability of the institution. If the FROB, the preventive resolution authority and the competent supervisor are satisfied that the plan would achieve that objective, the FROB shall approve the plan.

4. If the FROB is not satisfied that the plan would achieve the objective referred to in paragraph 3, the FROB, in agreement with the competent supervisor and preventive resolution authority, shall notify the management body of the institution or the individual(s) or legal person(s) designated under Article 22(1) of Law 11/2015 of 18 June 2015 and require the amendment of the plan.

5. Within fifteen calendar days from the date of receipt of the notification referred to in paragraph 4, the management body of the institution or the individual(s) or legal person(s) designated in accordance with Article 22(1) of Law 11/2015 of 18 June 2015 shall submit an amended plan to the FROB for approval. The FROB, in agreement with the competent supervisor and the preventive resolution authority, shall assess the amended plan and, within seven calendar days and in agreement with both the above, shall notify the management body of the institution or the individual(s) or legal person(s) designated in accordance with Article 22(1) of Law 11/2015 of 18 June 2015 whether it is satisfied that the plan is appropriate or further amendments are required.

6. The management body of the institution or the individual(s) or legal person(s) designated in accordance with Article 22(1) of Law 11/2015 of 18 June 2015 shall implement the reorganisation plan as ordered by the FROB and the competent supervisor and preventive resolution authority, and shall also submit a report to the FROB at least every six months on progress in the implementation of the plan. The FROB may require more frequent reporting in view of the circumstances of the institution or group and the measures envisaged in the plan.

7. The management body of the institution or the individual(s) or legal person(s) designated in accordance with Article 22(1) of Law 11/2015 of 18 June 2015 shall revise the plan if, in the opinion of the FROB with the agreement of the competent supervisor, this is necessary to achieve the aim referred to in paragraph 1, and shall submit any such revision to the FROB for approval, after consulting the preventive resolution authority and competent supervisor.

**Article 46.** *Conversion and write-down of capital instruments.*

1. In order to effect a conversion of relevant capital instruments under Article 39(1)(b) of Law 11/2015 of 18 June 2015, the FROB may require institutions to issue Common Equity Tier 1 instruments to the holders of the capital instruments set out in that Law.

2. Relevant capital instruments may only be converted where the following conditions are met:

a) Those Common Equity Tier 1 instruments are issued by the institution or by a parent undertaking of the institution, with the agreement of the FROB or, where relevant, of the resolution authority of the parent undertaking.

b) Those Common Equity Tier 1 instruments are issued prior to any issuance of shares or other capital instruments by that institution for the purposes of provision of own funds by the State or a government entity.

c) Those Common Equity Tier 1 instruments are awarded and transferred without delay following the exercise of the conversion power.

d) The conversion rate that determines the number of Common Equity Tier 1 instruments that are provided in respect of each relevant capital instrument complies with the principles set out in Article 48(5) of Law 11/2015 of 18 June 2015.

**Article 47.** *Notification and consultation requirements in the consolidated-level application.*

1. The FROB, prior to determining whether any of the conditions envisaged in Article 38(2)(b), (c), (d) or (e) of Law 11/2015 of 18 June 2015 are met regarding a Spanish subsidiary that issues capital instruments eligible for compliance with own funds requirements on an individual and on a consolidated basis, shall:

a) Notify, without delay, the consolidating supervisor and, if different, the resolution authority of the Member State where the consolidating supervisor is located that it intends to assess whether the conditions set out in Article 38(2)(b), (c), (d) or (e) of Law 11/2015 of 18 June 2015 are met.

b) Notify, without delay, the competent supervisor responsible for each institution that has issued capital instruments in relation to which the write-down or conversion power is to be exercised and, if different, the resolution authorities of the corresponding Member States and the consolidating supervisor.

2. When determining whether the conditions referred to in Article 38(2)(c), (d) or (e) of Law 11/2015 of 18 June 2015 are met in the case of resolution of an institution or a group with cross-border activity, the FROB shall take into account the potential impact of the resolution in all the Member States where the institution or the group operates.

3. The FROB shall accompany the notification made pursuant to paragraph 1 with an explanation of the reasons why it considers that the conditions in question are met.

4. Where a notification has been made pursuant to paragraph 1, the FROB, after consulting the authorities notified, shall assess the following matters:

a) Whether an alternative measure to the exercise of the write-down or conversion power in accordance with Article 38(2) of Law 11/2015 of 18 June 2015 is available.

b) If such an alternative measure is available, whether it can feasibly be applied.

c) If such an alternative measure could feasibly be applied, whether there is a realistic prospect that it would address, in an adequate timeframe, the circumstances that would otherwise require the implementation of the provisions of Article 38(2) of Law 11/2015 of 18 June 2015.

5. For the purposes of paragraph 4 above, alternative measures mean the early intervention measures referred to in Article 9 of Law 11/2015 of 18 June 2015, the measures referred to in Article 68(2) of Law 10/2014 of 26 June 2014, and Article 260 of the consolidated text of the Securities Market Law, or a transfer of funds or capital from the parent undertaking.

6. Where, pursuant to paragraph 4, the FROB, after consulting the notified authorities, considers that alternative measures are available, can feasibly be applied and would deliver the outcome referred to in subparagraph c), it shall ensure that those measures are applied.

7. Where, in a case referred to in paragraph 1(a), and pursuant to paragraph 4 of this article, the FROB, after consulting the notified authorities, assesses that no alternative measures are available that would deliver the outcome referred to in paragraph 4(c), the FROB shall decide whether it is appropriate to implement the provisions of Article 38(2) of Law 11/2015 of 18 June 2015.

8. Where the FROB determines that the conditions set out in Article 38(2)(d) of Law 11/2015 of 18 June 2015 are met, it shall immediately notify the competent authorities of the Member States in which the affected subsidiaries are located. The determination shall take the form of a joint decision as set out in Article 63(3) and (4). In the absence of a joint decision, no such determination shall be made.

9. The FROB shall, without delay and paying particular regard to the urgency of the circumstances, implement a decision to write down or convert capital instruments made in accordance with Article 38(2)(b), (c), (d) or (e) of Law 11/2015 of 18 June 2015, and this article, with regard to the subsidiaries of institutions located in Spain.

## **CHAPTER VII FROB**

### **Section 1. Financing arrangements**

#### **Article 48.** *National Resolution Fund.*

1. The financial means of the National Resolution Fund shall reach at least 1% of the amount of covered deposits of all the institutions by 31 December 2024. When this percentage is reached, the Minister for Economic Affairs and Competitiveness, at the proposal of the FROB and following consultation with the preventive resolution authorities, may order the suspension of contributions.

Likewise, where indispensable to achieve the purposes of the National Resolution Fund, the Minister for Economic Affairs and Competitiveness, of his/her own motion or at the FROB's initiative and following consultation with the resolution authorities, may increase the amount set in the foregoing paragraph.

The FROB may order that the initial period of time ending on 31 December 2024 be extended by a maximum of four years if the National Resolution Fund has made successive disbursements in excess of 0.5% of the covered deposits of all the institutions.

2. If, after the initial period of time referred to in the preceding paragraph, the financial means of the Fund diminish below the target level, the ordinary contributions shall resume until the target level is reached.

3. If, after the target level has been reached for the first time, the available financial means are reduced to less than two thirds of that level, the contributions of the institutions shall be set at a level allowing for the target level to be reached within six years.

4. Subject to Articles 25 to 28 of Law 11/2015 of 18 June 2015, the amounts received from the institution under resolution or the bridge institution, the interest and other earnings on investment and any other earnings may benefit the National Resolution Fund.

5. In the event that the use of the financing arrangements for the purposes set out in Article 53(1) of Law 11/2015 of 18 June 2015 indirectly results in part of the losses of an institution being passed on to the resolution financing arrangement, the principles governing the use of the latter set out in Section 4 of Chapter VI of Law 11/2015 of 18 June 2015 shall apply.

**Article 49.** *Determination by the FROB of annual contributions.*

1. Every year, by 1 May, the FROB shall determine the total contribution that the obliged institutions as a whole are required to make to the National Resolution Fund and the ordinary contributions each institution is required to make during the year, in the light of the information it has available and that which it may request from institutions for these purposes.

2. The total amount shall be set to ensure that the objective stipulated in Article 48(1) is met, with due account of the phases of the economic cycle and the procyclical impact that the contributions may have on the financial position of contributing institutions.

3. Pursuant to Article 53(1)(a)(2) of Law 11/2015 of 18 June 2015, the contributions shall be adjusted in proportion to the risk profile of each institution, in accordance with the following criteria:

a) The risk exposure of the institution, taking into account the importance of its trading activities, its off-balance-sheet exposures and its degree of leverage.

b) The stability and variety of the company's sources of financing and unencumbered highly liquid assets.

c) The financial condition of the institution.

d) The probability that the institution enters into resolution.

e) The extent to which the institution has previously benefited from extraordinary public financial support.

f) The complexity of the structure of the institution and its resolvability.

g) The importance of the institution to the stability of the financial system or economy of one or more European Union Member States or of the European Union as a whole.

h) The fact that the institution is part of an institutional protection scheme.

4. The FROB shall take such measures as required to ensure that the institutions make the required contributions.

In particular, the FROB may adopt standard forms or templates to facilitate the payment of the contributions. In any event, it may require from institutions any additional information as necessary to ascertain that the contributions are duly made.

5. The institutions shall be governed by the general accounting rules laid down by the competent authority.

The competent accounting authority may, following a report from the other competent authorities, set out the required registration requirements for satisfactory compliance with the institutions' contribution obligations.

**Article 50.** *Extraordinary contributions.*

1. The annual amount of extraordinary contributions shall not exceed three times the annual amount of the ordinary contributions.

2. The FROB shall determine the amount that each institution shall pay as extraordinary contribution according to the rules applicable to ordinary contributions set out in Article 53(1)(a) of Law 11/2015 of 18 June 2015.

3. The FROB may defer, wholly or partially, the obligation to pay the extraordinary contribution if this obligation were to jeopardise the institution's liquidity or solvency or its financial position. Such a deferral shall be granted for a period of no longer than six months but may be renewed at the request of the institution. The payment shall be made when such a payment no longer jeopardises the institution's liquidity or solvency.

4. Article 49(3) and (4) shall be applicable to the contributions raised under this article.

**Article 51.** *Loans between financing arrangements of European Union Member States.*

1. In accordance with the provisions of Article 53(1)(b) of Law 11/2015 of 18 June 2015, the National Resolution Fund may, at the request of the FROB, borrow from and lend to the financing arrangements of other Member States.

In both cases, prior to taking a decision, the FROB shall request a report from the Ministry of Economic Affairs and Competitiveness, which must issue its report within five business days.

2. The formal procedures whereby the FROB may decide to make or accept a request to borrow shall be processed swiftly.

3. Should the FROB accept a request to borrow jointly with other resolution authorities or financing arrangements, the interest rate, repayment period and other conditions of the loan shall be as agreed among the loan participants.

The amount lent by the National Resolution Fund, at the request of the FROB, shall be pro rata to the total covered deposits in Spain with respect to the total covered deposits in the Member States of the participating financing arrangements. That pro-rata rate may vary upon agreement of all the participating financing arrangements or resolution authorities.

4. Loans granted under this article shall be treated as assets of the National Resolution Fund and shall be included in the calculation of the target level set out in Article 48(1).



**Article 52.** *Mutualisation of national financing arrangements in the case of a group resolution.*

1. For the purposes of Article 53(3) of Law 11/2015 of 18 June 2015, the FROB, after consulting the resolution authorities of the institutions that are part of the group, shall propose, if necessary, a financing plan as part of the group resolution scheme provided for in Articles 62 and 63.

2. The financing plan shall be agreed in accordance with the decision-making procedure referred to in Articles 62 and 63 and shall include:

a) A valuation of the affected group entities, in accordance with Article 5 of Law 11/2015 of 18 June 2015.

b) The losses corresponding to each affected group entity at the moment the resolution tools are exercised.

c) For each affected group entity, the losses that would be suffered by each class of shareholders and creditors.

d) The contributions of the deposit guarantee scheme of which each affected group entity is a member, in accordance with Article 53(7) of Law 11/2015 of 18 June 2015.

e) The total contribution by the corresponding financing arrangement and the purpose and form of the contribution.

f) The basis for calculating the amount that each of the national financing arrangements of the Member States where affected group entities are located is required to contribute in order to build up the total contribution referred to in subparagraph e).

g) The contributions that the national financing arrangement of each affected group entity is required to make to the financing of the group resolution and the form of those contributions.

h) The amount of borrowing that the resolution authorities or the financing arrangements of the Member States where the affected group entities are located may contract from other institutions, financial institutions and third parties in general under Article 53(5) of Law 11/2015 of 18 June 2015.

i) A timeframe, extendable where necessary, for the use of the financing arrangements of the Member States where the affected group entities are located.

3. Unless agreed otherwise in the financing plan, the basis for calculating the contribution of each national financing arrangement referred to in subparagraph e) of the preceding paragraph shall have regard to:

a) The proportion of the group's risk-weighted assets that belong to the entities.

b) The proportion of the group's assets that belong to the entities.

c) The proportion of the losses, which have given rise to the need for group resolution, that originated in group entities under the supervision of the competent authorities in the Member State of that resolution financing arrangement.

d) The proportion of the resources of the group financing arrangements which, under the financing plan, are expected to be used to benefit the group entities established in the Member State of that resolution financing arrangement directly.

4. Without prejudice to the provisions of paragraph 1, the FROB may take the steps necessary to ensure that the National Resolution Fund can effect its contribution to the financing of group resolution immediately.

5. For the purposes of this article, the FROB shall have the power, under the conditions laid down in Article 53(5) of Law 11/2015 of 18 June 2015, to use the National Resolution Fund to arrange loans, request the opening of credit lines and carry out whatsoever other forms of borrowing, and to guarantee the loans and transactions that it enters into.

6. Any proceeds or benefits that arise from the use of the group financing arrangements shall be allocated to the National Resolution Fund in accordance with their contributions to the financing of the resolution as established in paragraph 1.

**Article 53.** *Use of deposit guarantee schemes in the context of resolution.*

1. The determination of the amount by which the Deposit Guarantee Scheme for Credit Institutions shall be liable in accordance with Article 53(7) of Law 11/2015 of 18 June 2015 shall comply with the conditions established in Article 5 of that Law.

2. The amount referred to in the preceding paragraph shall be disbursed in cash.

3. Where eligible deposits at an institution under resolution are transferred to another institution through the sale of business tool or the bridge institution tool, the depositors have no claim, under Royal Decree-Law 16/2011 of 14 October 2011, against the Deposit Guarantee Scheme for Credit Institutions in relation to the part of their deposits at the institution under resolution that are not transferred, provided that the amount of eligible deposits transferred is equal to or more than the aggregate coverage level provided for in Article 10 of the aforementioned Royal Decree-Law.

4. Where the bail-in tool is applied, the deposit guarantee scheme shall not make any contribution towards the costs of recapitalising the institution under resolution or bridge institution envisaged in Article 36(2)(b) of Law 11/2015 of 18 June 2015.

**Section 2.**  
**Action by the FROB**

**Article 54.** *Effectiveness of resolution actions in third countries.*

Where the FROB assesses that, notwithstanding the provisions of Article 64(1)(o) of Law 11/2015 of 18 June 2015, it is highly unlikely that the resolution measures or tools will become effective in relation to certain assets located in a third country or certain shares, other instruments of ownership, rights or liabilities governed by the law of that third country, the FROB shall not order the adoption of such measures.

**Article 55.** *Restrictions on the enforcement of collateral.*

Where Article 67(2) of Law 11/2015 of 18 June 2015 applies, the FROB shall ensure that any restrictions imposed pursuant to the power referred to in Article 70(4) of Law 11/2015 of 18 June 2015 are consistent for all group entities in relation to which a resolution action is taken.

## **CHAPTER VIII** **Group resolution**

### **Section 1.** **Group resolution principles**

**Article 56.** *General principles regarding decision-making involving more than one Member State.*

When adopting the measures and exercising the powers arising from Law 11/2015 of 18 June 2015, and from this Royal Decree, which may have effects in one or several Member States, the competent supervisor and resolution authority shall take into account the following principles:

- a) Efficacy, efficiency and keeping resolution costs as low as possible.
- b) Diligence and speed.
- c) Cooperation and coordination in order to ensure the efficacy of the measures adopted and the powers exercised.
- d) That the functions and responsibilities of the authorities of each Member State are clearly defined and respected.
- e) That due consideration is given to the interests of the Member States where the parent undertakings are established, in particular the impact of any decision or action or inaction on the financial stability, fiscal resources, resolution fund, deposit guarantee scheme or investor compensation scheme of those Member States.
- f) That due consideration is given to the interests of each individual Member State where a subsidiary is established, in particular the impact of any decision or action or inaction on the financial stability, fiscal resources, resolution fund, deposit guarantee scheme or investor compensation scheme of those Member States.
- g) That due consideration is given to the interests of each Member State where significant branches are located, in particular the impact of any decision or action or inaction on the financial stability of those Member States.
- h) That due consideration is given to the objectives of balancing the interests of the various Member States involved and of avoiding unfairly prejudicing or unfairly protecting their interests, including avoiding unfair burden allocation across Member States.
- i) That any obligation under Law 11/2015 of 18 June 2015 and its implementing regulations to consult an authority before any actions are taken or powers exercised implies at least an obligation to consult that authority on those elements of the action or power exercised which have or which are likely to have:

- (1) an effect on the European Union parent undertaking, the subsidiary or the branch; and

(2) an impact on the stability of the Member State where the European Union parent undertaking, the subsidiary or the branch is established or located.

j) That resolution authorities, when taking resolution actions, duly take into account and follow the group resolution plans referred to in Articles 13 and 14 of Law 11/2015 of 18 June 2015, unless the resolution authorities consider, taking into account the circumstances of the case, that the resolution objectives will be achieved more effectively by taking actions which are not provided for in the resolution plans.

k) Transparency whenever a decision or power is likely to have implications on the financial stability, fiscal resources, resolution fund, deposit guarantee scheme or investor compensation scheme of any relevant Member State.

l) Recognition that coordination and cooperation are most likely to achieve a result which lowers the overall cost of resolution.

**Article 57.** *Resolution colleges.*

1. When acting as the group-level executive resolution authority, the FROB, in cooperation with the competent preventive resolution authority, shall establish resolution colleges that perform the functions set out in Articles 14, 16, 18, 20(3) and 44 of Law 11/2015 of 18 June 2015.

In any case, the FROB and the competent preventive resolution authority shall cooperate and coordinate with the resolution authorities of third countries to participate in the resolution colleges that are established.

2. The resolution colleges shall establish the framework in which the competent supervisory and resolution authorities perform the following functions:

a) Exchanging information relevant for the development of group resolution plans, for the application of preparatory or preventative measures and for group resolution.

b) Developing group resolution plans.

c) Assessing the resolvability of groups.

d) Exercising powers to address or remove impediments to the resolvability of groups.

e) Deciding on the need to establish a group resolution scheme as referred to in Articles 62 and 63.

f) Reaching agreement on the proposed group resolution scheme.

g) Coordinating public communication of group resolution strategies and schemes.

h) Coordinating the use of financing arrangements.

i) Setting the minimum requirement for own funds and eligible liabilities for groups at consolidated and subsidiary level.

3. Resolution colleges may be used as a forum to discuss any issues relating to cross-border group resolution.

**Article 58.** *Composition of resolution colleges.*

1. In the circumstances set out in Article 57(1), the following authorities shall be members of the resolution colleges:

a) The FROB and the competent preventive resolution authority, as group-level resolution authorities. As the main contact authority and coordinating authority, the FROB shall chair the resolution college.

b) The resolution authorities of each Member State in which a subsidiary covered by consolidated supervision is established.

c) The resolution authorities of Member States where the parent undertaking of the institutions referred to in Article 1(2)(d) of Law 11/2015 of 18 June 2015 is established.

d) The resolution authorities of Member States in which significant branches are located.

e) The supervisors of the Member States concerned. Where the competent supervisor of a Member State is not its central bank, the supervisor may decide to be accompanied by a representative from the Member State's central bank.

f) The Ministry of Economic Affairs and Competitiveness and the competent ministries of the Member States concerned, where the resolution authorities which are members of the resolution college are not the competent ministries.

g) The Deposit Guarantee Scheme for Credit Institutions, provided for in Royal Decree-Law 16/2011 of 14 October 2011, and 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.

h) The European Banking Authority, in accordance with paragraph 3.

2. Where an institution has a subsidiary or branch in a third country that would be considered significant were it located in the European Union, the resolution authorities of that third country may, at their own request, be invited to participate in the resolution college as observers, provided that they are subject to confidentiality requirements equivalent, in the opinion of the group-level resolution authority, to those set forth in Article 58 of Law 11/2015 of 18 June 2015.

3. The European Banking Authority shall be invited to attend the meetings of the resolution college, with no voting rights.

4. In addition to those cases where the FROB and the competent preventive resolution authority are members of the resolution college in their capacity as the group-level resolution authority, under the terms laid down in paragraph 1(a), they shall also participate in the resolution college when any of the circumstances referred to in paragraphs 1(b), (c) or (d) apply, and in any other circumstances provided for in the resolution regulations.

**Article 59.** *Powers and duties of the group-level resolution authority.*

1. As chair of the resolution college, the FROB shall be assisted by the competent preventive resolution authority and shall be responsible for:

a) Establishing arrangements and procedures for the functioning of the resolution college, after consulting the other authorities.

b) Coordinating the activities of the resolution college and the flow of information between the resolution authorities, relaying to the other authorities of the Member States the information needed to perform their functions.

c) Convening and chairing the meetings of the resolution college, and providing sufficient advance notice of the meetings and agendas.

d) Notifying the members of the resolution college of the dates of any planned meetings so that they can request to participate.

e) Deciding which members and observers shall be invited to attend each meeting of the resolution college, taking into account the usefulness of their attendance for the college, the relevance of the issues to be discussed for the members and observers and the potential impact on financial stability in the Member States concerned.

f) Keeping the members of the college informed, in a timely manner, of the outcomes of the meetings and of the decisions adopted.

2. The members participating in the resolution college shall cooperate closely.

3. Notwithstanding the provisions of paragraph 1(e), resolution authorities shall be entitled to participate in resolution college meetings whenever matters subject to joint decision-making or relating to a group entity located in their Member State are on the agenda.

4. In any event, the provisions of Article 58(2) of Law 11/2015 of 18 June 2015 shall be taken into account as regards confidentiality obligations.

**Article 60.** *Waiver of the requirement to establish a resolution college.*

As the group-level executive resolution authority, the FROB shall not be required to establish a resolution college should there already exist other groups or colleges that perform the same functions and are subject to the same system of organisation and participation as resolution colleges. In these cases, any reference to resolution colleges made in Law 11/2015 of 18 June 2015 and its implementing regulations shall likewise be deemed to refer to such groups or colleges.

**Article 61.** *European resolution colleges.*

1. Where a third-country institution has subsidiaries established in Spain and in one or more other Member States, or branches that are regarded as significant by Spain and by one or more other Member States, the resolution authorities of the Member States where they are established shall establish a European resolution college.

2. Where the subsidiaries or significant branches belong to a financial holding company established in the European Union pursuant to the fourth paragraph of Article 60(2) of Law 10/2014 of

26 June 2014, the chair of the European resolution college shall be determined in accordance with the provisions of Article 88(3) of Directive 2014/59/EU of 15 May 2014.

Where consolidated supervision corresponds to a Spanish supervisory authority, the FROB shall be the competent executive resolution authority. As the main contact authority and coordinating authority, the FROB shall chair the resolution college.

Where the first subparagraph of paragraph 2 does not apply, the members of the European resolution college shall nominate and agree the chair.

3. By mutual agreement of all the parties, the requirement to establish a European resolution college may be waived if other groups or colleges exist that perform the same functions and are subject to the same system of organisation and participation. In this case, any reference to European resolution colleges made in Law 11/2015 of 18 June 2015 and its implementing regulations shall be deemed to refer to such groups or colleges.

## **Section 2.** **Resolution of subsidiaries and group resolution**

### **Article 62.** *Resolution of subsidiaries forming part of a group.*

1. In the event of resolution of a subsidiary that belongs to a financial conglomerate or group that also operates in other European Union Member States and whose consolidated supervision is not the responsibility of the Spanish authorities, before a resolution process is initiated the FROB shall notify the following information to the group-level resolution authority, the European Union authority responsible for the consolidated supervision of the group to which the subsidiary belongs and the members of the group resolution college:

a) The decision that the institution meets the conditions for resolution set out in Articles 19 and 20 of Law 11/2015 of 18 June 2015.

b) The resolution actions or insolvency measures that the FROB considers to be appropriate for that institution.

2. Where the FROB is the group-level executive resolution authority, upon receiving a notification from another resolution authority pursuant to the foregoing paragraph, it shall assess, after consulting the other members of the resolution college, the likely impact of the resolution actions or other measures notified on the group and on group entities in other Member States. In particular, it shall assess whether such actions or measures would make it likely that the conditions for resolution would be satisfied in relation to another group entity in another Member State.

3. If the FROB, after making the consultation envisaged in the foregoing paragraph, assesses that applying to the subsidiary the resolution actions or other measures notified would not make it likely that the conditions for resolution would be satisfied in relation to another group entity in another Member State, the resolution authority responsible for that institution may take the resolution actions or other measures that it notified.

Otherwise, the FROB, after consulting the other members of the resolution college, shall, no later than 24 hours after receiving the notification under paragraph 1, propose a group resolution scheme

and submit it to the resolution college. That 24-hour period may be extended with the consent of the resolution authority which made the initial notification.

4. If within 24 hours, or a longer period that has been agreed, of receipt of the notification under paragraph 1 from the resolution authority of a Member State, the FROB, as the group-level executive resolution authority, has not made the assessment envisaged in paragraph 2, the resolution authority which made the notification may take the resolution actions or other measures that it notified.

5. The group resolution schemes required under paragraph 3 shall:

a) Take into account and follow the group resolution plans approved in accordance with the provisions of Article 14 of Law 11/2015 of 18 June 2015, unless the resolution authorities consider, taking into account the circumstances of the case, that the resolution objectives will be achieved more effectively by taking actions which are not provided for in the resolution plans.

b) Outline the resolution actions that should be taken by the resolution authorities in relation to the parent undertaking or particular group entities, with the aim of meeting the resolution objectives and principles referred to in Articles 3 and 4 of Law 11/2015 of 18 June 2015.

c) Specify how those resolution actions should be coordinated.

d) Establish a financing plan which takes into account the group resolution plan, principles for sharing responsibility as established in accordance with Article 26 and the mutualisation as referred to in Article 52.

6. Without prejudice to the provisions of paragraph 7 below, the FROB, together with the resolution authorities responsible for the subsidiaries covered by the group resolution scheme, shall take a joint decision on whether to approve the scheme.

The FROB, along with the other resolution authorities, may request that the European Banking Authority assist in reaching a joint decision, in accordance with Article 31(c) of Regulation (EU) No 1093/2010 of 24 November 2010.

7. Where the FROB disagrees with or departs from the group resolution scheme proposed by the group-level resolution authority or considers that it needs to take actions or measures other than those proposed in the scheme for reasons of financial stability, it shall set out in detail the reasons for the disagreement or the reasons to depart from the scheme, notify the group-level resolution authority and the other resolution authorities and inform them about the actions or measures it intends to take.

When setting out the reasons for its disagreement, the FROB or other resolution authority shall take into consideration the resolution plans and the potential impact on financial stability in the Member States concerned, as well as the potential effect of the actions or measures on other parts of the group.

8. Should it not disagree, the FROB, together with the other resolution authorities which do not disagree, may reach a joint decision on a group resolution scheme covering the group entities in Spain and in the Member States of the other resolution authorities which do not disagree.

9. The joint decision referred to in paragraphs 6 and 8 and the decisions taken by the resolution authorities in the absence of a joint decision referred to in paragraph 8 shall be conclusive and applied by the FROB.



10. The FROB shall perform all actions under this article without delay, and with due regard to the urgency of the situation.

11. Where a group resolution scheme is not implemented but resolution actions are taken in relation to any group entity, the FROB shall cooperate closely within the resolution college with a view to achieving a coordinated resolution strategy for all the group entities.

12. When taking any resolution action in relation to any group entity, the FROB shall inform the members of the resolution college regularly and fully about those actions or measures and their ongoing progress.

13. Where the FROB is not the group-level resolution authority, it shall exercise the functions and rights corresponding to it as member of the resolution college or equivalent body.

14. For the purposes of this article and the following article, a group resolution scheme shall be as defined in Article 2(1)(45) of Directive 2014/59/EU of 15 May 2014.

**Article 63.** *Group resolution.*

1. Where the FROB, as the group-level resolution authority, in cooperation with the competent preventive resolution authority, decides that a European Union parent undertaking for which it is responsible meets the conditions for resolution, it shall notify the information referred to in Article 62(1)(a) and (b) without delay to the competent consolidating supervisor and to the other members of the resolution college.

The resolution actions or other measures taken for the purposes of Article 62(1)(b) may include the implementation of a group resolution scheme drawn up in accordance with Article 62(5) in any of the following circumstances:

a) Where resolution actions or other measures at parent level notified in accordance with Article 62(1)(b) make it likely that the conditions for resolution would be fulfilled in relation to a group entity in another Member State.

b) Where resolution actions or other measures at parent level only are not sufficient to stabilise the situation of the group or are not likely to provide an optimum outcome.

c) Where one or more subsidiaries meet the conditions for resolution, according to the resolution authorities responsible for those subsidiaries.

d) Where application of the group resolution scheme is more beneficial for the subsidiaries of the group.

2. Where the actions proposed by the FROB, as the group-level executive resolution authority, do not include a group resolution scheme, the FROB shall take its decision after consulting the members of the resolution college. This decision shall:

a) Take into account and follow the resolution plans unless the FROB, along with the other resolution authorities, assesses, taking into account 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.

b) Take into account the financial stability of the Member States concerned.

3. Where the actions proposed by the FROB, as the group-level executive resolution authority, include a group resolution scheme, this scheme shall take the form of a joint decision of the resolution authorities.

The FROB, along with the other resolution authorities, may request that the European Banking Authority assist in reaching a joint decision in accordance with Article 31(c) of Regulation (EU) No 1093/2010.

4. Where the FROB disagrees with or departs from the group resolution scheme proposed by the group-level resolution authority or considers that it needs to take actions or measures other than those proposed in the plan for reasons of financial stability, it shall set out in detail the reasons for the disagreement or the reasons to depart from the group resolution scheme, notify the group-level resolution authority and the other resolution authorities and inform them about the actions or measures it intends to take.

When setting out the reasons for its disagreement, the FROB or other resolution authority shall take into consideration the resolution plans and the potential impact on financial stability in the Member States concerned, as well as the potential effect of the actions or measures on other parts of the group.

5. Should it not disagree, the FROB, together with the other resolution authorities which do not disagree, may reach a joint decision on a group resolution scheme covering the group entities in Spain.

6. The joint decision referred to in paragraphs 3 and 5 and the decisions taken by the resolution authorities in the absence of a joint decision referred to in paragraph 4 shall be conclusive and applied by the FROB.

7. The FROB shall perform all actions under this article without delay, and with due regard to the urgency of the situation.

8. Where a group resolution scheme is not implemented but resolution actions are taken in relation to any group entity, the FROB shall cooperate closely within the resolution college with a view to achieving a coordinated resolution strategy for all affected group entities.

9. When taking any resolution action in relation to any group entity, the FROB and the other resolution authorities shall inform the members of the resolution college regularly and fully about those actions or measures and their ongoing progress.

10. Where the FROB is not the group-level resolution authority, it shall exercise the functions and rights corresponding to it as member of the resolution college or equivalent body.

## **CHAPTER IX**

### **Agreements with third countries**

#### **Article 64.** *Agreements with third countries.*

1. Bilateral agreements may be entered into with third countries on the means of cooperation between the respective resolution authorities, inter alia, for the purpose of information sharing in connection with recovery and resolution planning for institutions operating in Spain and in third countries,

all in full compliance with the provisions of Article 58(2) of Law 11/2015 of 18 June 2015. These agreements shall be entered into, in particular, in the following situations:

a) where the third-country parent undertaking has subsidiaries or branches in Spain that are regarded as significant, or

b) where a parent undertaking established in Spain has subsidiaries or branches in third countries.

2. The agreements referred to in this article shall, in particular, seek to ensure the establishment of processes and arrangements between the FROB and the competent preventive resolution authority, and the relevant third-country authorities, for cooperation in carrying out the tasks and exercising the powers indicated in Article 68.

3. The agreements referred to in this article shall not contain provisions in relation to individual institutions.

4. The agreements referred to in this article may be entered into unless and until the Council of the European Union has entered into an international agreement on cooperation between the resolution authorities and the competent authorities of the third countries, and provided that such agreements do not contravene the provisions of this chapter and of Chapter VII of Law 11/2015 of 18 June 2015.

**Article 65.** *Recognition and enforcement of third-country resolution proceedings.*

1. Where there is a European resolution college established in accordance with Article 61, it shall take a joint decision on whether to recognise third-country resolution proceedings relating to an institution of that country which:

a) has significant subsidiaries or branches in Spain and in at least another Member State, or

b) has assets, rights or liabilities located in Spain and in at least another Member State, or governed by the law of Spain and of the other Member State.

Where the joint decision on the recognition of the third-country resolution proceedings is reached, the FROB shall seek the enforcement of the recognised third-party resolution proceedings in accordance with Spanish law.

2. In the absence of a joint decision between the resolution authorities participating in the European resolution college, or in the absence of a European resolution college, the FROB shall make its own decision on whether to recognise and enforce third-country resolution proceedings, taking into account the applicable national law.

This decision shall give due consideration to the interests of the other Member States concerned and, in particular, to its impact on the other parts of the group and on financial stability in those Member States.

3. For the purposes of this article, the FROB shall be empowered to:

a) Exercise the resolution powers in relation to the following:

(1) assets of a third-country institution that are located in Spain or governed by Spanish law.

(2) rights or liabilities of a third-country institution that are booked by a Spanish branch or governed by Spanish law, or are enforceable in accordance with Spanish law.

b) Perform, or require another person to perform, transfers of shares or other capital instruments in a subsidiary established in Spain.

c) Exercise the powers envisaged in Article 70 of Law 11/2015 of 18 June 2015 in relation to the rights of any party to a contract with an institution referred to in paragraph 1, where exercising such powers is necessary to enforce third-country resolution proceedings.

d) Prevent any action to terminate, liquidate or accelerate contracts, or prevent any other exercise of contractual rights, of institutions referred to in paragraph 1 and other group entities, where such a right or exercise affects the third-country institution or others in its group and arises from resolution action taken by the third-country resolution authority or pursuant to the law of such third country, provided that the substantive obligations under the contract, including in particular payment and delivery obligations, and provision of collateral, continue to be complied with.

4. The FROB may take, where necessary in the public interest, resolution action with respect to a parent undertaking where the relevant third-country authority determines that a group entity of such parent undertaking that is incorporated in that third country meets the conditions for resolution under the law of that third country. To that end, the FROB is empowered to use any resolution power in respect of that parent undertaking, and Article 70 of Law 11/2015 of 18 June 2015 and Article 66 of this Royal Decree shall apply.

5. The recognition and enforcement of third-country resolution proceedings shall be without prejudice to the national law applicable to insolvency proceedings.

6. Once the Council of the European Union, in the exercise of its powers, enters into an international agreement with a third country on the terms envisaged in Article 64(4) this article shall not apply. Once such agreement has been entered into, this article shall only apply insofar as the agreement does not regulate the recognition and enforcement of third-country resolution proceedings.

**Article 66.** *Right to refuse recognition or enforcement of third-country resolution proceedings.*

The FROB, after consulting other resolution authorities, where a European resolution college is established under Article 61, may refuse to recognise or to enforce third-country resolution proceedings if it considers:

a) that the third-country resolution proceedings would have adverse effects on financial stability in Spain, or that the proceedings would have adverse effects on financial stability in another Member State;

b) that independent resolution action under Article 67 in relation to a Spanish branch is necessary to achieve one or more of the resolution objectives;

c) that creditors, including in particular depositors located or payable in Spain, would not receive the same treatment as third-country creditors and depositors with similar legal rights under the third-country home resolution proceedings;

d) that recognition or enforcement of the third-country resolution proceedings would have material fiscal implications for Spain; or

e) that the effects of such recognition or enforcement would be contrary to national law.

**Article 67.** *Resolution of branches of third-country institutions.*

1. The FROB may act in relation to a branch located in Spain that is not subject to any third-country resolution proceedings, or that is subject to third-country resolution proceedings and one of the circumstances referred to in Article 66 applies.

Article 70 of Law 11/2015 of 18 June 2015 and Article 66 of this Royal Decree shall apply in the case envisaged in the preceding subparagraph.

2. The FROB may exercise the powers envisaged in paragraph 1 where it considers that action is necessary in the public interest and one or more of the following conditions is met:

a) The branch no longer meets, or is likely not to meet, the conditions imposed by national law for its authorisation and operation within Spain and there is no prospect that any private sector, supervisory or relevant third-country action would restore the branch to compliance or prevent failure in a reasonable time frame.

b) The third-country institution is, in the opinion of the FROB, unable or unwilling, or is likely to be unable, to pay its obligations to Spanish creditors, or obligations that have been created or booked through the branch, as they fall due, and the FROB is satisfied that no third-country resolution proceedings or insolvency proceedings have been or will be initiated in relation to that institution in a reasonable time frame.

c) The relevant third-country authority has initiated resolution proceedings in relation to the institution, or has notified to the Spanish resolution authority its intention to initiate such a proceeding.

3. Where the FROB takes an independent action in relation to a branch located in Spain, it shall have regard to the resolution objectives and take the action in accordance with the following principles and requirements, insofar as they are relevant:

a) the principles provided for in Article 4 of Law 11/2015 of 18 June, and

b) the requirements relating to the application of the resolution tools in Chapter V of Law 11/2015 of 18 June 2015.

**Article 68.** *Cooperation with third-country authorities.*

1. Competent resolution authorities and supervisors, where appropriate, shall conclude non-binding cooperation arrangements with the relevant third-country authorities indicated in paragraph 4, in line with EBA framework arrangements.

This article shall not prevent the conclusion of bilateral or multilateral arrangements with third countries, in accordance with Article 33 of Regulation (EU) No 1093/2010.

2. Cooperation arrangements concluded in accordance with this article between competent supervisory and resolution authorities and third-country resolution authorities may include provisions on the following matters:

a) The exchange of information necessary for the preparation and maintenance of resolution plans.

b) The consultation and cooperation required for the development of resolution plans, including a reference to the principles for the exercise of powers under Articles 65 and 67 or equivalent powers under the law of the relevant third countries.

c) The exchange of information necessary for the application of resolution tools and exercise of resolution powers, and equivalent powers under the law of the relevant third countries.

d) Early warning to or consultation of parties to the cooperation arrangement before taking any significant action under Law 11/2015 of 18 June 2015 and this Royal Decree or relevant third-country law.

e) The coordination of public communication in the case of joint resolution actions.

f) Procedures and arrangements for the exchange of information and cooperation under subparagraphs (a) to (e), including, where appropriate, the establishment and operation of crisis management groups.

3. EBA shall be notified of any cooperation arrangements that competent supervisory and resolution authorities have concluded in accordance with this article.

4. Non-binding cooperation arrangements concluded by competent resolution and supervisory authorities shall respect the non-binding framework cooperation arrangements concluded by EBA with the following third-country authorities:

a) Where a subsidiary is established in Spain and in one or more other Member States, the relevant authorities of the third country where the parent undertaking is established.

b) Where a third-country institution operates one or more branches located in Spain and in one or more other Member States, the relevant authority of the third country where the institution is established.

c) Where a parent undertaking established in Spain with a subsidiary or significant branch in another Member State also has one or more third-country subsidiaries, the relevant authorities of the third countries where those subsidiaries are established.

d) Where a Spanish institution with a subsidiary or significant branch in another Member State has established one or more branches in one or more third countries, the relevant authorities of the third countries where those branches are located.

5. The participating authorities shall exchange the information necessary and make the efforts required to implement the cooperation arrangements in good faith and on the terms envisaged. In particular, they shall cooperate in the following matters:

a) The development of resolution plans in accordance with Articles 13 and 14 of Law 11/2015 of 18 June 2015 and equivalent third-country law.

b) The assessment of the resolvability of such institutions and groups in accordance with Articles 15 and 16 of Law 11/2015 of 18 June 2015 and equivalent third-country law.

c) The application of powers to address or remove impediments to resolution pursuant to Articles 17 and 18 of Law 11/2015 of 18 June 2015, and equivalent third-country law.

d) The application of early intervention measures pursuant to Articles 8 to 12 of Law 11/2015 of 18 June 2015 and equivalent third-country law.

e) The application of resolution tools and exercise of resolution powers pursuant to Spanish law and equivalent third-country law.

6. Once the Council of the European Union, in the exercise of its powers, enters into an international agreement with a third country on the terms envisaged in Article 64(4) this article shall not apply. Once such agreement has been entered into, this article shall only apply insofar as the agreement does not govern the matters provided for in this article.

**First additional provision.  
Single Resolution Mechanism and Single Resolution Fund.**

This Royal Decree shall be applied in conjunction with Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014, as and when these provisions come into effect, in accordance with Article 99 of the Regulation.

**Second additional provision.  
Financial institutions and other types of entities.**

This Royal Decree shall be applicable to the institutions and entities envisaged in Article 1(2)(b), (c) and (d) of Law 11/2015 of 18 June 2015, to the extent necessary in order to give full effect to the resolution objectives and principles provided for in Articles 3 and 4 thereof, and to strictly comply with the provisions of Directive 2014/59/EU of 15 May 2014. In particular, the provisions of Articles 4 to 10, 11, 13, 15, 26, 27 and 28, Chapter V, and Articles 44, 45, 46, 47, 54, 55, 62, 63 and 68 of this Royal Decree shall be applicable to them, without prejudice to such other provisions of the Royal Decree whose wording includes or requires their application to these institutions and entities.

**Third additional provision.  
Management, settlement and collection of the fee for the activities performed by the FROB  
as resolution authority.**

1. In accordance with paragraph 8 of the sixteenth additional provision of Law 11/2015 of 18 June 2015, the FROB shall adopt the agreements and approve the forms, models and instructions necessary to carry out its functions relating to management, settlement and collection of the fee for its activities as resolution authority.

2. The FROB shall settle the fee when it settles the contributions required of institutions pursuant to the second additional provision and to paragraph 2 of the fourth additional provision of Law 11/2015 of 18 July 2015.

3. Institutions shall make the payment within the time frame envisaged in Article 62 of General Tax Law 58/2003 of 17 December 2003.

4. The provisions of Law 58/2013 of 17 December 2013 and of the General Revenue Regulations, enacted by Royal Decree 939/2005 of 29 July 2005, shall apply on a supplementary basis.

**Fourth additional provision.  
Regime applicable in the event of insolvency of an institution.<sup>1</sup>**

For the purposes of paragraph 2(b) of the fourteenth additional provision of Law 11/2015 of 18 June 2015 on the recovery and resolution of credit institutions and investment firms, debt instruments shall not be considered to contain embedded derivatives simply because they are referenced to variable interest rates derived from widely-used reference rates, or because they are not denominated in the issuer's national currency, provided that the capital, repayments and interest are denominated in the same currency.

**First transitional provision.  
Transitional regime for contributions to the National Resolution Fund and the Deposit Guarantee Scheme.**

1. As regards the National Resolution Fund, the FROB shall collect the ordinary contribution corresponding to institutions for 2015 no later than 31 December 2015.

2. By application of the provisions of Article 6(3) of Royal Decree-Law 16/2011 of 14 October 2011, the Deposit Guarantee Scheme Management Committee shall determine the annual amount of the contributions to be made to the deposit guarantee compartment by institutions during the period envisaged in the fourth transitional provision of Law 11/2015 of 18 June 2015.

**Second transitional provision.  
References to the consolidated text of the Securities Market Law, enacted by Royal Legislative Decree 4/2015 of 23 October 2015.**

1. Until the entry into force of the consolidated text of the Securities Market Law, enacted by Royal Legislative Decree 4/2015 of 23 October 2015, any reference made thereto in this Royal Decree should be understood as a reference to Securities Market Law 24/1988 of 28 July 1988, where appropriate.

2. Specifically, the correlation of the articles is as follows:

a) In Article 5(6), the reference made to Article 233 of the consolidated text of the Securities Market Law should be understood as a reference to Article 84 of Law 24/1988 of 28 July 1988.

b) In Article 12(5), the references made to Articles 260 and 261 of the consolidated text of the Securities Market Law should be understood as references to Article 87 octies and 87 nonies, respectively, of Law 24/1988 of 28 July 1988.

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<sup>1</sup> Incorporated by the second final provision of Royal Decree 309/2019 of 26 April 2019.



c) In Article 16(g), the references made to Title VIII and Article 261 of the consolidated text of the Securities Market Law should be understood as references to Title VIII and Article 97 nonies, respectively, of Law 24/1988 of 28 July 1988.

d) In Article 31(1), the references made to Articles 260 and 261 of the consolidated text of the Securities Market Law should be understood as references to Article 87 octies and 87 nonies, respectively, of Law 24/1988 of 28 July 1988.

e) In Article 31(2)(j), the reference made to Title VII, Chapter I of the consolidated text of the Securities Market Law should be understood as a reference to Title VII, Chapter I of Law 24/1988 of 28 July 1988.

f) In Article 32(2)(h), the reference made to Title VII, Chapter I of the consolidated text of the Securities Market Law should be understood as a reference to Title VII, Chapter I of Law 24/1988 of 28 July 1988.

g) In Article 47(5), the reference made to Article 260 of the consolidated text of the Securities Market Law should be understood as a reference to Article 87 octies of Law 24/1988 of 28 July 1988.

h) In the first final provision, Three, the reference made in the second subparagraph of Article 4(1) to the consolidated text of the Securities Market Law should be understood as a reference to Law 24/1988 of 28 July 1988.

i) In the first final provision, Three, the reference made in the third subparagraph of Article 4(1) to Article 2 of the consolidated text of the Securities Market Law should be understood as a reference to Article 2 of Law 24/1988 of 28 July 1988.

**First final provision.  
Amendment of Royal Decree 2606/1996 of 20 December 1996 on deposit guarantee  
schemes for credit institutions.**

Royal Decree-Law 2606/1996 of 20 December 1996 on deposit guarantee schemes for credit institutions has been amended as follows:<sup>2</sup>

One. Article 3 now reads as follows:

“Article 3. Assets of the Deposit Guarantee Scheme for Credit Institutions.

1. Institutions affiliated to the Deposit Guarantee Scheme for Credit Institutions are required to comply with the financial regime for annual and supplementary contributions regulated in paragraphs 2 and 5, in order to ensure that the Scheme is able to meet its obligations to depositors and investors under this Royal Decree.

2. The Management Committee shall determine the amount of the annual contributions to be made by the institutions affiliated to the Deposit Guarantee Scheme for Credit Institutions, in accordance with the criteria established in Article 6 of Royal Decree-Law 16/2011 of 14 October 2011 whereby the Deposit Guarantee Scheme for Credit Institutions was created. To this end, the basis for calculation of the contributions to be made by institutions to each compartment of the Scheme shall be:

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<sup>2</sup>Texts included in Royal Decree 2606/1996 of 20 December 1996.

a) In the case of contributions to the deposit guarantee compartment, the covered deposits, as defined in Article 4(1).

b) In the case of contributions to the securities guarantee compartment, 5% of the market price on the last trading day of the year, on the corresponding secondary market, of the covered securities, as defined in Article 4(2), at year-end. Where the latter include securities and financial instruments that are not traded on a Spanish or foreign secondary market, the calculation basis used shall be their nominal or redemption value, whichever is more appropriate for the type of security or financial instrument concerned, unless there is, or there has been declared, a more significant value for the purpose of their deposit or recording.

3. The annual contributions of member institutions shall be used to meet the needs arising from the functions attributed to the compartments of the Scheme and shall be deposited in the accounts designated by the Management Committee, from each year-end, in one or more disbursements, in view of the needs of the Scheme and within the periods established by the Management Committee.

However, without prejudice to the provisions of paragraph 4 below, any annual surplus and any other surplus in the Scheme's assets in respect of the amount required to meet its objectives shall remain in such assets and shall not be distributed or refunded to member institutions.

4. When the available financial resources of a compartment of the Scheme reach an amount sufficient to meet its objectives, the Minister for Economic Affairs and Competitiveness, at the Banco de España's proposal, may resolve to reduce the contributions mentioned in paragraph 1 of this article. In any event, pursuant to Article 6(6) of Royal Decree-Law 16/2011 of 14 October 2011, the contributions to a compartment shall be suspended when the compartment's available financial resources are equal to or exceed 1% of the amount guaranteed by that compartment. This circumstance shall be reported by the Management Committee in the manner established by it.

Notwithstanding the provisions of the previous subparagraph, the contributions to the deposit guarantee compartment may not be suspended when this compartment's available financial resources are below the target level established in Article 6(4) of Royal Decree-Law 16/2011 of 14 October 2011.

5. Where the available financial resources are insufficient to make payments to depositors or investors, the Management Committee may resolve to require supplementary contributions of affiliated institutions, distributed according to the calculation basis for contributions provided for in paragraph 1.

Notwithstanding the preceding subparagraph, the total amount of the contributions shall not exceed:

a) In the case of the deposit guarantee compartment, 0.5% of the covered deposits per calendar year, unless authorised by the Banco de España. Also, the Banco de España may defer, wholly or partially, a credit institution's obligation to pay the extraordinary contribution if this were to jeopardise the institution's liquidity or solvency. Such an extension shall not be granted for longer than six months but may be renewed at the institution's request. In any event, no such deferral or extension shall be granted if the Banco de España anticipates that the institution will still be unable to pay its contributions thereafter.

b) In the case of the securities guarantee compartment, the amount necessary to remedy the lack of funds.

6. The contributions made to the deposit guarantee compartment under paragraph 2 in the past twelve months by a credit institution that transfers its activity to another European Union Member State and becomes affiliated to another deposit guarantee scheme shall be transferred to such deposit guarantee scheme in proportion to the amount of the covered deposits that are transferred.

Notwithstanding the preceding subparagraph, in no case may the contributions made to the deposit guarantee compartment under paragraph 5 be transferred.

7. The Scheme's uncommitted assets must be invested in a diversified manner and in assets included in the first or second categories set out in Table 1 of Article 336 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, or in assets considered secure and liquid by the Management Committee.

8. The Deposit Guarantee Scheme for Credit Institutions shall report to the European Banking Authority, by 31 March of each year, the amount of the covered deposits and available financial means of the Scheme's deposit guarantee compartment as at 31 December of the previous year."

Two. A new Article 3 bis is added with the following wording:

"Article 3 bis. Allocation of general costs, expenses and obligations to each compartment.

In accordance with the provisions of Article 6(2) of Royal Decree-Law 16/2011 of 14 October 2011, any costs, expenses and obligations not allocated to any compartment shall be distributed as follows:

a) To the deposit guarantee compartment, an amount equal to the total amount of those costs, expenses and obligations multiplied by the calculation basis for the contributions to this compartment and divided by the sum of the calculation bases for the contributions to the two compartments.

b) To the securities guarantee compartment, an amount equal to the total amount of those costs, expenses and obligations multiplied by the calculation basis for the contributions to this compartment and divided by the sum of the calculation bases for the contributions to the two compartments."

Three. Article 4(1) and (4) now reads as follows:

"1. For the purposes of this Royal Decree, credit balances on accounts, including funds arising from temporary situations deriving from normal banking transactions that the institution is required to repay under the legal and contractual conditions applicable, irrespective of the currency in which they are denominated, including fixed-term and savings deposits, shall be considered eligible deposits, provided they have been made in Spain or another European Union Member State, excluding the deposits indicated in paragraph 4. The part of these deposits that does not exceed the coverage levels established in Article 7 shall be considered covered deposits.

The funds arising from temporary situations referred to in the preceding subparagraph shall include, in any event, monetary resources entrusted to the institution for investment services, pursuant to the consolidated text of the Securities Market Law, or arising from the provision of such services or pursuit of such activities.

Credit balances that satisfy any of the following conditions shall not be considered deposits for the purposes of this Royal Decree:

a) Their existence can only be proven by a financial instrument as defined in Article 2 of the consolidated text of the Securities Market Law approved by Royal Legislative Decree 4/2015 of 23 October 2015. Therefore, repos and bearer certificates of deposit are not considered deposits.

b) The principal is not repayable at par.

c) The principal is only repayable at par under a particular guarantee or agreement provided by the credit institution or a third party.

4. The following shall not be considered eligible deposits for the purposes of this Royal Decree and shall, therefore, be excluded from the scope of coverage of the Deposit Guarantee Scheme for Credit Institutions:

a) Deposits made by other credit institutions for their own account and on their own behalf, and those made by:

(1) Securities brokers and dealers.

(2) Insurance undertakings.

(3) Investment trust companies.

(4) Management companies of collective investment undertakings, pension funds, securitisation funds, venture capital funds and the deposits of the entities they manage.

(5) Portfolio management companies and financial advisory firms.

(6) Venture capital companies and their management companies.

(7) Any other financial institution as defined in Article 4(1)(26) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013.

b) An institution's own funds as defined by Article 4(1)(118) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, regardless of the amount by which they are recorded as such.

c) Debt securities issued by the credit institution, including promissory notes and negotiable paper.

d) Deposits whose holder has not been identified, pursuant to Law 10/2010 of 28 April 2010 on the prevention of money laundering and terrorist financing, or which originate from transactions giving rise to a criminal conviction for money laundering.

e) Deposits made by general government, except for those made by local authorities with an annual budget of up to €500,000.

Securities held by the persons mentioned in subparagraphs a) and e) above shall not be considered covered securities for the purposes of this Royal Decree."

Four. Article 5 now reads as follows:

“Article 5. Credit Institution Deposit Guarantee Scheme affiliation.

1. With the exception of the Official Credit Institute, all Spanish credit institutions must become affiliated to the compartments of the Deposit Guarantee Scheme for Credit Institutions.

2. The following regime shall apply to branches of foreign credit institutions:

a) Branches of credit institutions authorised in another European Union Member State may become affiliated to the securities guarantee compartment.

b) The following regime shall apply to branches of credit institutions authorised in a non-European Union country:

(1) Their affiliation to the deposit or securities guarantee compartments of the Deposit Guarantee Scheme for Credit Institutions shall be mandatory when the covered deposits or securities held at or entrusted to the branch, respectively, are not covered by a guarantee scheme in their home country.

(2) They are required to become affiliated to the relevant compartment of the Deposit Guarantee Scheme for Credit Institutions to cover any difference in level or scope where the guarantee of the home country's scheme is lower than that covered by the former, whether in respect of the covered deposits or securities.

(3) Affiliation to the relevant compartment of the Deposit Guarantee Scheme for Credit Institutions shall not be mandatory where the covered deposits or securities have an equal or higher coverage level in the home country. Affiliation to the securities guarantee compartment shall likewise not be mandatory where the institution does not provide investment services in Spain.

In order to determine which regime is applicable, each branch must provide evidence, where appropriate, of the coverage provided by the home country's guarantee scheme.

3. The Deposit Guarantee Scheme for Credit Institutions shall cooperate with the deposit guarantee schemes of other countries to organise, where appropriate, payment of the covered amounts. To this end, it may establish such cooperation agreements and mechanisms as it may deem appropriate.

The Scheme shall notify the European Banking Authority of any agreements entered into with the deposit guarantee schemes of other European Union Member States and of their content. Also, the Scheme may request the assistance of the European Banking Authority to resolve impediments to agreements being reached or differences in their interpretation, in accordance with Article 19 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC.

4. The Management Committee shall publish annually in the Official State Gazette the list of institutions affiliated to each compartment of the Scheme.

5. Except as provided for in Article 3(6), institutions which for any reason cease to be members of the Scheme are required to pay to the Scheme any amounts outstanding in connection with the

annual and extraordinary contributions approved and they shall not be entitled to a refund of the amounts contributed thereto.”

Five. A new Article 5 bis is added with the following wording:

“Article 5 bis. Depositor information.

1. Credit institutions operating in Spain must make available to actual and intending depositors and investors, at all their branch offices and on their websites, in an easily comprehensible and accessible manner, the information needed to identify the deposit guarantee scheme to which they belong. This information shall in any event include its name, head office address, telephone number and internet and e-mail addresses, and the provisions applicable to it, specifying the amount and scope of the coverage provided. The information sheet set out in the Annex shall be used to provide information on the deposit guarantee.

Credit institutions operating under different trademarks shall clearly inform their depositors of this, and of the fact that the coverage level established in Article 7(1) applies to the depositor’s aggregate deposits at the credit institution. This information shall be included in the information provided to depositors indicated in this article and in the Annex.

In the case of deposits or securities not covered pursuant to Article 4(4), the institutions must inform their depositors and investors of this.

Upon request, depositors or investors shall likewise be informed of the conditions that need to be met and of the formalities required in order for the covered amount to be paid.

Also, institutions shall make available to the public information on the characteristics of the scheme to which they are affiliated and shall indicate, where appropriate, the coverage offered by foreign systems or schemes. In particular, they shall indicate the coverage regime for deposits or securities recorded at other financial institutions.

Without prejudice to the previous subparagraphs, institutions affiliated to the Scheme may not use that affiliation in their advertising, although they may mention it without adding any other details or information about the Scheme.

2. Before entering into a deposit-taking contract, institutions shall provide depositors with the information indicated in the previous paragraph and depositors shall acknowledge receipt thereof.

3. Confirmation that deposits are eligible for coverage shall be provided to depositors on their bank statements, including a reference to the information sheet set out in the Annex. This information sheet shall be provided to depositors at least annually.

4. The website of the Deposit Guarantee Scheme for Credit Institutions shall contain the necessary information for depositors, in particular information concerning the provisions regarding the process for and conditions of deposit guarantees.

5. In the case of a merger, division, conversion of subsidiaries into branches or similar operations, credit institutions shall inform depositors at least one month before the operation takes legal effect, unless the Banco de España allows a shorter deadline on the grounds of commercial secrecy or financial stability.

Depositors shall have a three-month period following notification of the merger or conversion or similar operation to withdraw or transfer to another credit institution, without incurring a penalty, their eligible deposits, including all accrued interest and benefits up to the date on which the operation takes effect.

6. If a credit institution withdraws or is excluded from a deposit guarantee scheme, it shall inform its depositors accordingly within one month of such withdrawal or exclusion.

7. If a depositor uses internet banking, the information required to be disclosed by this article may be communicated by electronic means, unless the depositor expressly requests that it be communicated on paper.”

Six. Article 7 now reads as follows:

“Article 7. Amount of covered deposits.

1. The amount of covered deposits shall be limited to the amounts laid down in Article 10(1) of Royal Decree-Law 16/2011 of 14 October 2011. The guarantee shall cover interest accrued but not credited at the date on which the events envisaged in Article 8(1) take place. The limits laid down in Article 10(1) shall not be exceeded in any case.

2. Any debts that depositors may have with the credit institution shall not be taken into account to calculate the repayable amount, unless such debts become claimable prior to or on the same date as the reference dates envisaged in the previous paragraph and the legal and contractual provisions governing the contract between the credit institution and the depositor so envisage.

In any event, credit institutions shall duly inform depositors, before the contract is entered into, of whether their debts shall or shall not be taken into account at the time of calculating the covered amount in accordance with the provisions of the previous subparagraph.

3. In the case of non-euro denominated deposits, the amount covered shall be the euro equivalent, applying the exchange rate of the date on which any of the events envisaged in Article 8(1) of this Royal Decree take place, or of the preceding business day if it is a public holiday.

4. The guarantees envisaged in this article shall be applied per depositor, whether an individual or a legal entity, regardless of the number and type of cash deposits held by the depositor at the institution. Such limit shall also apply to depositors whose deposits exceed the maximum covered.

5. Where there is more than one account holder, the amount shall be divided among the holders in accordance with the deposit contract or, failing this, in equal parts.

6. Where deposit holders act as representatives or agents of third parties, provided that the legal beneficiary was identified or is identifiable before the circumstances described in Article 8 take place, the Scheme’s coverage shall apply to the third-party beneficiaries of the deposit in the amount corresponding to them.

Notwithstanding the foregoing, where the person acting as representative or agent is an institution that is not covered by the Scheme pursuant to Article 4(4)(a), it shall be considered that the deposit belongs to such institution and it shall not be covered by the Scheme.

7. Any deposits existing when the authorisation of an institution affiliated to the Scheme is revoked shall continue to be covered until the winding-up or liquidation of the institution, which shall continue to be obliged to make the legally required contributions. In the case of current accounts, the balance covered shall be that existing at the date of the revocation, less any debit orders paid between said date and the date the circumstance giving rise to payment of the compensation is declared.”

Seven. A new Article 7 bis is added with the following wording:

“Article 7 bis. Amount of covered securities.

1. The covered amount for investors that have entrusted securities or financial instruments to the credit institution shall be independent of that provided for in the previous article and shall be a maximum amount of €100,000.

The amount shall be calculated at the market value of such securities and instruments on the date on which any of the events mentioned in Article 8(2) of this Royal Decree take place, or on the previous business day if it is a public holiday, applying, where appropriate, the exchange rate as at that date. The covered amounts shall be paid in their monetary equivalent.

2. In the case of securities and instruments that are not traded on an official secondary market, whether Spanish or foreign, to determine the covered amount, once any of the events envisaged in Article 8 have taken place, and only for this process, the value shall be calculated on the basis of the following criteria:

a) Equities: the underlying value calculated on the basis of the latest audited balance sheet of the issuer; if there is no audited balance sheet, or if it has been qualified with adjustments that might determine a lower underlying value than that resulting from the accounts, the market value shall be determined based on expert judgment.

b) Debt securities: the nominal value plus accrued coupon, where the interest rate is explicit, or the redemption value discounted at the implied issue price in the case of zero-coupon securities or securities issued at a discount.

c) Financial instruments: the estimated market value calculated according to generally accepted valuation procedures for the instrument in question.

d) In the case of securities or instruments issued by firms in insolvency proceedings, the repayment value shall be determined based on expert judgment. The determination may be postponed until the insolvency proceedings conclude.

3. The guarantees envisaged in this article shall be applied per investor, whether an individual or a legal entity, regardless of the number and types of securities or financial instruments held by the investor at the institution.

4. Where there is more than one holder of the securities or financial instruments, the amount shall be divided among the holders in accordance with the securities custody agreement or, failing this, in equal parts.

5. Where holders of a securities deposit act as representatives or agents of third parties, provided that such condition existed before the circumstances described in Article 8 take place, the



Scheme's coverage shall apply to the third-party beneficiaries of the securities deposit in the amount corresponding to them.

Notwithstanding the foregoing, where the person acting as representative or agent is an institution that is not covered by the Scheme pursuant to Article 4(4)(a), it shall be considered that the securities deposit belongs to such entity and it shall not be covered by the Scheme.

6. Any securities or financial instruments entrusted to the institution when authorisation to provide investment services is revoked shall cease to be covered by the Scheme after three months have elapsed from the revocation date. During that period, the institution shall be obliged to make the legally required contributions.”

Eight. Article 8(1) and (2) is amended as follows:

“Article 8. Grounds for enforcement of guarantee.

1. The Scheme shall repay depositors the amount of the covered deposits, against the deposit guarantee compartment if and when any of the following events arise:

a) An insolvency order has been made against the institution or an application for insolvency proceedings has been filed.

b) An insolvency order has not been made against the institution, but it has defaulted on deposits due and payable and the Banco de España determines that, in its opinion and for reasons directly deriving from the financial position of the institution in question, the latter is unable to make the repayments and there appears to be no prospect of it being able to do so in the immediate future. After hearing the Scheme's Management Committee, the Banco de España shall resolve as soon as possible, and no later than five business days after having verified for the first time that the institution has failed to repay deposits that are due and payable, after hearing the institution concerned and without this entailing interruption of the period indicated.

2. The Scheme shall repay holders the amount of the securities and financial instruments subject to coverage, against the securities guarantee compartment, if and when any of the following events arise:

a) An insolvency order has been made against the credit institution and this entails suspending the repayment of securities or financial instruments; notwithstanding the foregoing, these amounts shall not be paid if, within the period established for initiating disbursement thereof, the suspension is lifted.

b) The Banco de España declares that the credit institution cannot, in view of the events of which the Banco de España itself is aware and for reasons directly related to the institution's financial position, meet its obligations to investors.

In order for the Banco de España to declare the foregoing, the following conditions must be satisfied:

a) The investor, having requested that the credit institution refund the securities and financial instruments entrusted to it, has received no satisfaction within twenty-one business days.

b) The credit institution is not in the situation envisaged in paragraph 1(a) of this article.

c) A hearing has been granted to the credit institution.”

Nine. Article 9 now reads as follows:

“Article 9. Payment and its effects.

1. Without prejudice to the provisions of Article 4(4):

a) The deposit guarantee compartment of the Deposit Guarantee Scheme for Credit Institutions must satisfy claims that have been duly verified within the seven business days following the reference dates established in Article 7 bis (1).

The compilation and transmission by credit institutions of accurate information on depositors and covered deposits, which is necessary to verify claims, must be made within the time periods stipulated in the first paragraph of this subparagraph.

The payment of deposits envisaged in the first paragraph of this subparagraph may be postponed in any of the following cases:

(1) Where it is uncertain whether a person is legally entitled to receive repayment or the deposit is subject to legal dispute.

(2) Where the deposit is subject to measures that restrict depositors' powers to dispose thereof.

(3) Where there has been no transaction relating to the deposit within the last 24 months.

(4) Where, pursuant to the second subparagraph of Article 10(1) of Royal Decree-Law 16/2011 of 14 October 2011, the amount to be reimbursed exceeds €100,000.

(5) Where, in accordance with paragraph 6, the amount must be paid by the deposit guarantee scheme of the home European Union Member State of the branch of a credit institution operating in Spain.

Notwithstanding the provisions of this subparagraph a), the deposits envisaged in Article 7(6) shall be subject to a payment period of up to three months from the dates of reference established in Article 7 bis (1).

The deposit guarantee compartment of the Deposit Guarantee Scheme for Credit Institutions shall make the relevant payments without it being necessary for the depositors to request same. To this end, credit institutions shall provide all the information necessary about deposits and depositors when required by the Scheme. However, the deposit guarantee compartment shall make no payment whatsoever if there has been no transaction relating to the deposit within the last 24 months and the value of the deposit is lower than the administrative cost that would be incurred by the Scheme in making such a payment.

b) Similarly, the securities guarantee compartment of the Deposit Guarantee Scheme for Credit Institutions shall satisfy investors' claims as quickly as possible, and no later than three months after having determined their positions and the value thereof.

Where the Deposit Guarantee Scheme for Credit Institutions anticipates that it will be unable to make the payments envisaged in subparagraph b) within the period established, it may apply to the Banco de España for an extension of no more than three months, indicating the reasons for such request. The Banco de España may authorise the extension where it considers that there are exceptional reasons justifying the postponement, such as a high number of investors, the existence of securities entrusted to the institution in other countries, or extraordinary technical or legal difficulties in verifying the effective balance of the covered securities or whether or not the covered amount should be paid.

2. Payment of the covered amounts of cash deposits and securities or instruments shall not extend to deposits made or securities or instruments deposited after the date on which any of the events described in the previous article had taken place, or to deposits, investments or amounts withdrawn after that date, without prejudice to the provisions of Article 7(1).

3. The Deposit Guarantee Scheme for Credit Institutions may not use the time periods referred to in the preceding paragraphs to deny the benefit of a guarantee to any depositors or investors that were unable to exercise their rights in time. Any amounts remaining unpaid, within the periods established or the extensions thereof, shall remain in the Deposit Guarantee Scheme for Credit Institutions at the disposal of their holders, without prejudice to their being time-barred by law. However, if depositors or investors were to make any claims to enforce the guarantee after they had been paid any amount agreed in insolvency proceedings, the amount already received in such proceedings must be taken into consideration in determining the amount to be paid under the guarantee, in order to ensure that such depositors or investors have no economic advantage or disadvantage in comparison with those that enforced the guarantee earlier.

4. The very fact of paying the covered amounts shall cause the Deposit Guarantee Scheme for Credit Institutions to become subrogated, by operation of law, to the rights of the depositors or investors, up to an amount equivalent to that of the payments made, with the document evidencing payment being sufficient title thereto.

5. In the event that the securities or other financial instruments entrusted to the institution were repaid by it subsequent to payment of a covered amount, the Deposit Guarantee Scheme for Credit Institutions may recoup the amount paid, in full or in part, if the amount repaid, valued as established in Article 7(1) at the time of repayment, were higher than the difference between the amount of securities or other instruments entrusted to the institution, valued at the time the events envisaged in Article 8(2) took place, and the amount paid to the investor. Where the value of the repayment is higher than that of the securities or instruments, calculated at the date indicated in Article 8(2), the excess shall be distributed between the Scheme and the investor on a pro rata basis according to their respective credits.

The repayment shall be made to the Deposit Guarantee Scheme for Credit Institutions, which shall deliver to the investor the corresponding amounts in accordance with the preceding subparagraph, the Scheme being empowered, for such purpose, to sell the number of securities as may be appropriate.

6. The Deposit Guarantee Scheme for Credit Institutions shall make the relevant payments to depositors of branches of credit institutions of other European Union Member States established in Spain on behalf of the deposit guarantee scheme of the home European Union Member State and in accordance with the latter's instructions. Also, the Scheme shall inform the depositors concerned on behalf of the deposit guarantee scheme of the home European Union Member State, and may receive

correspondence from such depositors on behalf of the deposit guarantee scheme of the home Member State.

However, the Deposit Guarantee Scheme for Credit Institutions shall not make any payment until it has received the necessary funds from the deposit guarantee scheme of the home Member State.

Additionally, the Scheme shall demand from the deposit guarantee scheme of the home Member State compensation for any costs incurred during the payment.

7. The Deposit Guarantee Scheme for Credit Institutions shall not bear any liability with regard to acts carried out in accordance with the instructions given by the deposit guarantee scheme of the home Member State.

8. The Deposit Guarantee Scheme for Credit Institutions shall use the deposit guarantee schemes of the European Union Member States where branches of Spanish credit institutions are established to make the corresponding payments to the deposits of those branches.

For the purposes of the preceding subparagraph, the Deposit Guarantee Scheme for Credit Institutions shall send funds to the deposit guarantee scheme of the host Member State, together with the relevant payment instructions, and shall compensate the deposit guarantee scheme of the host Member State for any costs incurred during the payment.

Also, the Deposit Guarantee Scheme for Credit Institutions shall periodically provide the deposit guarantee scheme of the host Member State with the information envisaged in Article 9 bis and the results of the stress tests performed in accordance with Article 12 of Royal Decree-Law 16/2011 of 14 October 2011.”

Ten. A new Article 9 bis is added with the following wording:

“Article 9 bis. Information to be provided by credit institutions.

1. Credit institutions shall have identified at all times the aggregated amount of eligible and covered deposits of each depositor.

This information may be requested by the Deposit Guarantee Scheme for Credit Institutions at any time.

2. The Deposit Guarantee Scheme for Credit Institutions shall ensure the confidentiality and the protection of the data pertaining to depositors’ accounts. For this purpose, such data shall be processed in accordance with Organic Law 15/1999 of 13 December 1999 on Personal Data Protection.”

Eleven. Article 10 is amended as follows:

“Article 10. Other actions of the Deposit Guarantee Scheme for Credit Institutions

1. Under Article 11(5) of Royal Decree-Law 16/2011 of 14 October 2011, exceptionally, where the situation of a credit institution, according to the information provided by the Banco de España, is such that it is foreseeable that the Scheme will be obliged to pay, in accordance with the grounds envisaged in Article 8(1)(b), the Scheme may adopt, against the deposit guarantee compartment, preventive and reorganisation measures envisaged in the following article to prevent the winding up of

the institution. These measures must be adopted as part of a plan agreed with the institution and approved by the competent supervisor, after consultation with the FROB.

Notwithstanding the foregoing, the Scheme shall not adopt these measures if the competent resolution authorities under Law 11/2015 of 18 June 2015 on the recovery and resolution of credit institutions and investment firms consider that the conditions for resolution are met.

2. Any plan which contains measures requiring the approval of the General Meeting or General Assembly of the institution concerned shall be considered conditional and shall not be carried out until the agreements making it possible are implemented. In the meantime, if the institution's situation so calls for, the Scheme may provide interim aid, provided that such aid is duly guaranteed in the opinion of the Management Committee.

3. The funds used by the Scheme under this article should be provided immediately by the credit institutions affiliated to the deposit guarantee compartment in the following cases:

a) If, pursuant to Article 9(1)(a), the deposit guarantee compartment must pay covered deposits and its available financial means amount to less than two-thirds of the target level established in Article 6(4) of Royal Decree-Law 16/2011 of 14 October 2011.

b) Where the deposit guarantee compartment is not required to pay covered deposits, in the event that the compartment's available financial means are below 25% of the target level established in Article 6(4) of Royal Decree-Law 16/2011 of 14 October 2011."

Twelve. Article 11 is amended as follows:

"Article 11. Preventive and reorganisation measures.

1. The Deposit Guarantee Scheme for Credit Institutions may adopt, in accordance with the previous article, any of the following preventive and reorganisation measures with respect to an institution:

- a) Grant of non-refundable aid.
- b) Grant of guarantees, loans on favourable terms or subordinated debt.
- c) Acquisition of impaired or non-profitable assets on the institution's balance sheet.
- d) Subscription of capital increases, as laid down in the following paragraphs.
- e) Any other financial support.

2. The Scheme may subscribe capital increases approved by institutions to restore their financial position where these are not covered by their shareholders.

In any event, it shall be understood that the aforementioned capital increases are not covered by an institution's shareholders when its General Meeting has resolved to disapply pre-emption rights, in full or in part, as provided for in the applicable legislation.

The Scheme shall offer the shares subscribed in the capital increases referred to in the previous paragraph for sale within a maximum period of two years. This offer for sale shall ensure participation,

at least, by credit institutions affiliated to the Scheme that satisfy the conditions as to economic capacity, activity and other aspects, in relation to the importance and size of the institution being reorganised, so as to ensure the definitive restoration of the solvency and normal functioning of that institution.

If it is not possible within the two-year period envisaged in the previous subparagraph to ensure that institutions that can guarantee the restoration of the solvency and normal functioning of the institution being reorganised can participate in the offer, the Scheme may extend that period by one or more additional one-year periods. The decision to extend the two-year period shall be reasoned and shall include a detailed assessment of the situation that justifies the extension, including the market conditions and outlook.

The offer shall specify the minimum commitments that the successful bidder must accept.

The award shall be made by the Scheme in favour of the institution that submits the most favourable conditions. To this effect, in addition to the economic conditions, the economic and organisational capacity and means of each institution submitting a bid may be taken into account.

The share sale offer, the related conditions and the award decision shall be published in the Official State Gazette.

3. In order to facilitate award of the shares, the Scheme may absorb losses, provide guarantees and acquire assets recorded on the balance sheets of the institutions concerned, and assume responsibility for the economic balance of the various processes or proceedings that may be in progress or may subsequently be brought.

The Scheme may also acquire assets from institutions where, in the opinion of the Management Committee, such acquisition will substantially contribute to avoiding other measures for restoring the financial situation of an institution affiliated to the Scheme.

The actions envisaged in the preceding subparagraphs shall in no case exclude the directors of institutions from their obligations to adopt other measures that will contribute to strengthening their asset and solvency position and to providing the income statement with the necessary balance.

4. In no case shall the limits established in the articles of association on voting rights apply to the Fund in relation to any shares acquired or subscribed pursuant to this article.”

Thirteen. Two new Articles 12 and 13 are added, which read as follows:

“Article 12. Stress tests.

In accordance with Article 12 of Royal Decree-Law 16/2011 of 14 October 2011, the Banco de España shall subject the Scheme, at least once every three years, to stress tests of its ability to meet its payment obligations in situations of stress.

These tests shall verify the Scheme’s financial position and the resilience of its systems and operational capacities.

Article 13. Communication and cooperation.

Without prejudice to Articles 82 and 83 of Law 10/2014 of 26 June 2014, the Deposit Guarantee Scheme for Credit Institutions may share information and communicate effectively with other

deposit guarantee schemes, with the affiliated credit institutions, with the Banco de España, the FROB and the relevant authorities from other European Union Member States.”

Fourteen. The following fourth transitional provision is added:

“Fourth transitional provision. Consideration of nominative certificates of deposit as covered deposits.

Until their initial maturity date, nominative certificates of deposit issued prior to 2 July 2014 shall be considered covered deposits for the purposes of this Royal Decree.”

Fifteen. The following fifth transitional provision is added:

“Fifth transitional provision. Disclosure requirement regarding deposits that will cease to be covered.

Depositors whose deposits will cease to be covered after 3 July 2015 as a result of the amendments made to this Royal Decree by Royal Decree 1012/2015 of 6 November 2015 implementing Law 11/2015 of 18 June 2015 on the recovery and resolution of credit institutions and investment firms, must be informed by their credit institution within two months from the date of entry into force of this Royal Decree.”

Sixteen. The following sixth transitional provision is added:

“Sixth transitional provision. Payment periods.

1. The maximum payment period of seven business days laid down in Article 9(1)(a) will not come into effect until 1 January 2024. Until then, the maximum payment periods shall be as follows:

- a) Twenty business days, until 31 December 2018.
- b) Fifteen business days, between 1 January 2019 and 31 December 2020.
- c) Ten business days, between 1 January 2021 and 31 December 2023.

2. Until 31 December 2023, where the Deposit Guarantee Scheme for Credit Institutions cannot make the repayable amount available within seven business days, it shall pay depositors an appropriate amount of their covered deposits to cover the cost of living within five business days of a request. This amount shall be deducted from the repayable amount referred to in the first subparagraph of Article 7(1).

The Deposit Guarantee Scheme for Credit Institutions shall only grant access to the appropriate amount as referred to in the previous subparagraph on the basis of data of the Scheme itself or of data provided by the credit institution.

3. The payment envisaged in the preceding paragraph may be deferred in any of the cases envisaged in the third subparagraph of Article 9(1)(a).”

Seventeen. The following annex is added:

Deposits in (insert name of credit institution) are protected by:	(insert the name of the relevant DGS) (1)
Limit of protection:	€100,000 per depositor per credit institution (2) (replace by adequate amount if currency not EUR) (where applicable:) The following trademarks are part of your credit institution (insert all trademarks which operate under the same licence)
If you have more deposits at the same credit institution:	All your deposits at the same credit institution are aggregated and the total is subject to the limit of €100,000 (replace by adequate amount if currency not euro) (2)
If you have a joint account with other person(s):	The limit of €100,000 (replace by adequate amount if currency not euro) applies to each depositor separately (3)
Reimbursement period in case of credit institution's failure:	7 business days (replace by another deadline if applicable) (4)
Currency of reimbursement:	Euro (replace by another currency where applicable)
Contact:	(insert the contact data of the relevant DGS (address, telephone, e-mail, etc.))
More information:	(insert the website of the relevant DGS)
Acknowledgement of receipt by the depositor:	
Additional information (all or some of the below)	

(1) Scheme responsible for the protection of your deposit.

(Only where applicable): Your deposit is covered by a contractual scheme officially recognised as a Deposit Guarantee Scheme. If insolvency of your credit institution should occur, your deposits would be repaid up to €100,000 (replace by adequate amount if currency is not euro).

(Only where applicable): Your credit institution is part of an Institutional Protection Scheme officially recognised as a Deposit Guarantee Scheme. This means that all the institutions that are members of this scheme mutually support each other in order to avoid insolvency. If insolvency of your credit institution should occur, your deposits would be repaid up to €100,000 (replace by adequate amount if currency is not euro).

(Only where applicable): Your deposit is covered by a statutory Deposit Guarantee Scheme and a contractual Deposit Guarantee Scheme. If insolvency of your credit institution should occur, your deposits would in any case be repaid up to €100,000 (replace by adequate amount if currency is not euro).

(Only where applicable): Your deposit is covered by a statutory Deposit Guarantee Scheme. In addition, your credit institution is part of an Institutional Protection Scheme in which all members mutually support each other in order to avoid insolvency. If insolvency should occur, your deposits would be repaid up to €100,000 (replace by adequate amount if currency is not euro) by the Deposit Guarantee Scheme.

(2) General limit of protection.

If a deposit is unavailable because a credit institution is unable to meet its financial obligations, depositors are repaid by a Deposit Guarantee Scheme. This repayment covers at maximum €100,000 (replace by adequate amount if currency is not euro) per credit institution. This means that all deposits at the same credit institution are added up in order to determine the coverage level. If, for instance, a



depositor holds a savings account with €90,000 and a current account with €20,000, he or she will only be repaid €100,000.

(Only where applicable): This method will also be applied if a credit institution operates under different trademarks. The (insert name of the account-holding credit institution) also trades under (insert all other trademarks of the same credit institution). This means that all deposits with one or more of these trademarks are in total covered up to €100,000.

(3) Limit of protection for joint accounts.

In the case of joint accounts, the limit of €100,000 applies to each depositor.

(Only where applicable): However, deposits in an account to which two or more persons are entitled as members of a business partnership, association or grouping of a similar nature, without legal personality, are aggregated and treated as if made by a single depositor for the purpose of calculating the limit of €100,000 (replace by adequate amount if currency not euro).

In some cases (insert cases defined in national law), deposits are protected above €100,000 (replace by adequate amount if currency not euro). More information can be obtained under (insert the website of the relevant DGS).

(4) Reimbursement.

The responsible Deposit Guarantee Scheme is (insert name, address, telephone, e-mail and website). It will repay your deposits (up to €100,000 (replace by adequate amount if currency not euro)) within (insert repayment period as is required by national law) at the latest, from (31 December 2023) within (7 business days).

(Add information on emergency/interim payout if repayable amount(s) are not available within 7 business days.) If you have not been repaid within these deadlines, you should contact the Deposit Guarantee Scheme, since the time to claim reimbursement may be barred after a certain time limit. Further information can be obtained under (insert website of the responsible DGS).

Other important information.

In general, all retail depositors and businesses are covered by Deposit Guarantee Schemes. Exceptions for certain deposits are stated on the website of the responsible Deposit Guarantee Scheme. Your credit institution will also inform you, on request, whether certain products are covered or not. If deposits are covered, the credit institution shall also confirm this on the statement of account.”

### **Second final provision. Competence.**

This Royal Decree is issued under the provisions of Article 149(1)(6), (1)(11) and (1)(13) of the Spanish Constitution, which give the State competency over mercantile law, the regulation of credit, banking and insurance, and the regulation and coordination of the general planning of economic activity, respectively. The foregoing competence does not apply to the first final provision of this Royal Decree, which is issued under the competence stated in the Royal Decree it amends.

### **Third final provision. Transposition of European Union legislation.**

This Royal Decree partially transposes into Spanish law Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 and Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014.

**Fourth final provision.  
Implementing authority.**

The Minister for Economic Affairs and Competitiveness or, with his/her express authorisation, the Banco de España and the Comisión Nacional del Mercado de Valores (National Securities Market Commission), may issue the necessary provisions to implement and execute this Royal Decree. If such authorisation is conferred, a prior report on the Royal Decree by the other competent resolution or supervisory authorities shall be required.

**Fifth final provision.  
Entry into force.**

1. This Royal Decree shall enter into force on the day following its publication in the Official State Gazette.

2. Notwithstanding the foregoing, the bail-in rules contained in Chapter VI shall enter into force on 1 January 2016.

**ANNEX I  
Information to be included in the recovery plans**

The recovery plan shall include the following information:

1. A summary of the key elements of the plan and 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 any potentially negative market reactions are intended to be managed.
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 time frame 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, along with the policies and procedures governing the approval of the recovery plan and identification of the persons in the organisation responsible for preparing and implementing the plan.

10. Arrangements and measures to conserve or restore the institution's own funds.
11. Arrangements and measures to ensure that the institution has adequate access to contingency funding sources, including potential liquidity sources, an assessment of available collateral and an assessment of the possibility to transfer liquidity across group entities and business lines, to ensure that it can continue to carry out its operations and meet its obligations as they fall due.
12. Arrangements and measures to reduce risk and leverage.
13. Arrangements and measures to restructure liabilities.
14. Arrangements and measures to restructure business lines.
15. Arrangements and measures necessary to maintain continuous access to financial markets infrastructures.
16. Arrangements and measures necessary to maintain the continuous functioning of the institution's operational processes, including infrastructure and IT services.
17. Preparatory arrangements to facilitate the sale of assets or business lines in a time frame 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 intends 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 II**

### **Information that preventive resolution authorities may request institutions to provide for the purposes of drawing up and maintaining resolution plans**

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

1. A detailed description of the institution's organisational structure including a list of all legal persons comprising the group.
2. Identification of the direct holders and the percentage of voting and non-voting rights of each shareholder and legal person comprising the group.
3. The location, jurisdiction of incorporation, licensing and key management associated with the legal persons comprising the group.
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 comprising the group.

5. A detailed description of the components of the institution's and all its legal entities' liabilities, separating, at a minimum by types and amounts of short-term and long-term debt, secured, unsecured and subordinated liabilities.

6. Details of those liabilities of the institution that are eligible liabilities.

7. An identification of the processes needed to determine to whom the institution has pledged collateral, the person that holds the collateral and the jurisdiction in which the collateral is located.

8. A description of the off-balance-sheet exposures of the institution and its legal persons, including a mapping to its critical operations and core business lines.

9. The material hedges of the institution including a mapping to each member of the group.

10. Identification of the major or most critical counterparties of the institution, along with an analysis of the impact of the failure of major counterparties in the institution's financial situation.

11. Each system on which the institution conducts a material number or value amount of trades, including a mapping to the members of the group, critical operations and core business lines of the institution.

12. Each payment, clearing or settlement system of which the institution is directly or indirectly a member, including a connection to the legal persons comprising the group, critical operations and core business lines of the institution.

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 members of the group, critical operations and core business lines of the institution.

14. An identification of the owners of the systems identified in the above paragraph, service level agreements related thereto, and any software and systems or licenses, including a mapping to the members of the group, critical operations and core business lines of the institution.

15. An identification and mapping of the members of the group and the interconnections and interdependencies among them, such as:

a) common or shared personnel, facilities and systems;

b) capital, funding or liquidity arrangements;

c) existing or contingent credit exposures;

d) cross-guarantee agreements, cross-collateral arrangements, cross-default provisions and cross-affiliate netting arrangements;

e) risks transfers and back-to-back trading arrangements; and service level agreements.

16. The competent supervisor and resolution authorities for each legal person comprising the group.

17. The member of the management body responsible for providing the information necessary to prepare the resolution plan of the institution, and those responsible, if different, for the legal persons comprising the group, 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 the members of the group with third parties the termination of which may be triggered by a decision of the authorities to apply a resolution tool and whether the consequences of termination may affect the application of the resolution tool.

20. A description of possible liquidity sources for supporting resolution.

21. Information on asset encumbrance, liquid assets, off-balance-sheet activities, hedging strategies and booking practices.

### **ANNEX III**

#### **Matters to be considered by the resolution authorities when assessing the resolvability of an institution or group**

When assessing the resolvability of an institution or group, the resolution authorities shall consider the following:

1. The extent to which the institution is able to map core business lines and critical operations to legal persons.

2. The extent to which legal and corporate structures are aligned with core business lines and critical operations.

3. The extent to which there are arrangements in place to provide for essential staff, infrastructure, funding, liquidity and capital to support and maintain the core business lines and the critical operations.

4. The extent to which the service agreements that the institution maintains are fully enforceable in the event of resolution of the institution.

5. The extent to which the governance structure of the institution is adequate for managing and ensuring compliance with the institution's internal policies with respect to its service level agreements.

6. The extent to which the institution has a process for transitioning the services provided under service level agreements to third parties in the event of the separation of critical functions or of core business lines.

7. The extent to which there are contingency plans and measures in place to ensure continuity in access to payment and settlement systems.

8. The adequacy of the management information systems in ensuring that the resolution authorities are able to gather accurate and complete information regarding the core business lines and critical operations so as to facilitate rapid decision making.

9. The capacity of the management information systems to provide the information essential for the effective resolution of the institution at all times, even under rapidly changing conditions.

10. The extent to which the institution has tested its management information systems under stress scenarios as defined by the resolution authority.

11. The extent to which the institution can ensure the continuity of its management information systems both for the affected institution and the new institution in the case that the critical operations and core business lines are separated from the rest of the operations and business lines.

12. The extent to which the institution has established adequate processes to ensure that it provides the resolution authorities with the information necessary to identify depositors and the amounts covered by the deposit guarantee schemes.

13. Where the group uses intra-group guarantees, the extent to which those guarantees are provided at market conditions and the risk management systems concerning those guarantees are robust.

14. Where the group engages in back-to-back transactions, the extent to which those transactions are performed at market conditions and the risk management systems concerning those transaction practices are robust.

15. The extent to which the use of intra-group guarantees or back-to-back 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 eligible liabilities of the institution.

18. Where the assessment involves a mixed activity holding company, the extent to which the resolution of group entities could have a negative impact on the non-financial part of the group.

19. The existence and robustness of service level agreements.

20. Whether non-European Union country authorities have the resolution tools necessary to support resolution actions by European Union resolution authorities, and the scope for coordinated action between European Union and third-country authorities.

21. The feasibility of using resolution tools in such a way which meets the resolution objectives, given the tools available and the institution's structure.

22. The extent to which the group structure allows the resolution authority to resolve the whole group or one or more of its group entities without causing a significant direct or indirect adverse effect on the financial system, market confidence or the economy and with a view to maximising the value of the group as a whole.

23. The arrangements and means through which resolution could be facilitated in the cases of groups that have subsidiaries established in different jurisdictions.

24. The credibility of using resolution tools in such a way which meets the resolution objectives, given possible impacts on creditors, counterparties, customers and employees and possible actions that non-European Union country authorities may take.

25. The extent to which the impact of the institution's resolution on the financial system and on financial market confidence can be adequately evaluated.

26. The extent to which the resolution of the institution could have a significant direct or indirect adverse effect on the financial system, market confidence or the economy.

27. The extent to which contagion to other institutions or to the financial markets could be contained through the application of the resolution tools and powers.

28. The extent to which the resolution of the institution could have a significant effect on the operation of payment and settlement systems.