Law
on the Recovery and Resolution of Credit Institutions and Investment Firms*

(Adopted by the 43rd National Assembly on 30 July 2015; published in the Darjaven Vestnik, issue 62 of 14 August 2015; amended, issue 59 of 2016; amended, issues 85, 91 and 97 of 2017; amended, issues 15, 20 and 106 of 2018; amended, issue 37 of 2019; amended, issue 12 of 2021; amended, issue 25 of 2022)

Chapter One

GENERAL PROVISIONS

Subject and Scope

Article 1. (1) (supplemented; Darjaven Vestnik, issue 12 of 2021) This Law shall lay down rules and procedures related to the recovery and resolution of the following entities:

1. credit institutions (banks) to which the Bulgarian National Bank (the BNB) has issued a license for banking activities;

2. (amended; Darjaven Vestnik, issue 15 of 2018) investment firms licensed to conduct business by the Financial Supervision Commission (the Commission) under Article 6, paragraph 2, items 3 and 6 and Article 6, paragraph 3, item 1 of the Law on Markets in Financial Instruments;

3. (amended; Darjaven Vestnik, issue 25 of 2022) financial institutions that are established in a Member State where the financial institution is a subsidiary of a bank or investment firm licensed in the Republic of Bulgaria, or of a company referred to in items 4 or 5, and is covered by the supervision of the parent undertaking on a consolidated basis in accordance with Articles 6–17 of Regulation (EC) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 (OJ, L 176/1 of 27 June 2013), hereinafter referred to as Regulation (EU) No 575/2013;

4. financial holding companies, mixed financial holding companies and mixed activity holding companies with headquarters in the Republic of Bulgaria;

5. parent financial holding companies and mixed financial holding companies in the European Union when they are subject to supervision on a consolidated basis by the BNB or by the Commission;

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6. branches in the Republic of Bulgaria of credit institutions and investment firms from third countries in accordance with the special conditions laid down in this Law;

7. branches in the Republic of Bulgaria of credit institutions and investment firms established in other Member States – in the cases provided for in this Law.

(2) (amended; Darjaven Vestnik, issue 15 of 2018) When exercising their powers and applying the requirements under this Law in relation to an entity referred to in paragraph 1, the BNB, the Commission, respectively, shall take into account the nature of its business, its shareholding structure, its legal form, its risk profile, size and legal status, its interconnectedness with other institutions or to the financial system in general, the scope and complexity of its activities, and whether it exercises any investment services or activities as defined in Article 6, paragraph 2 of the Law on Markets in Financial Instruments.

Authority Responsible for Resolution of Credit Institutions

Article 2. (1) (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) The Bulgarian National Bank is the authority responsible for resolution of entities referred to in Article 1, paragraph 1, subject to the supervision or consolidated supervision by the BNB, and in carrying out its tasks and exercising its powers shall apply 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 (OJ, L 225/1, 30.7.2014), hereinafter referred to as Regulation (EU) No 806/2014, and this Law. The decisions of the BNB as a resolution authority shall be taken by the Governing Council of the BNB, unless otherwise laid down in this Law.

(2) The Governing Council of the BNB shall determine a dedicated structural unit, which shall assist it in exercising the functions under paragraph 1, which shall act separately and independently from the structural units engaged in the tasks related to banking supervision and the other functions of the BNB.

(3) The Governing Council of the BNB shall adopt and publish on its website the internal rules for the operation of the unit under paragraph 2, including the rules regarding professional secrecy and information exchange with other structural units of the BNB and with other authorities.

(4) The unit under paragraph 2 shall actively cooperate with the Banking Supervision Department of the BNB and the Commission in the preparation, planning and enforcement of resolution decisions, where necessary.

(5) (new; Darjaven Vestnik, issue 12 of 2021) Consultations between the resolution authority under paragraph 1 and the competent authority, as provided for in this Law, shall be conducted through an exchange of information and opinions

between the unit under paragraph 2 and the Banking Supervision Department, unless specifically otherwise provided for.

Implementation of Single Resolution Board Decisions by the Authority Responsible for Resolution of Credit Institutions

(new; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013)

Article 2a. (new; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) The Bulgarian National Bank as a resolution authority, respectively a national resolution authority within the meaning of Regulation (EU) No 806/2014 shall carry out tasks and adopt resolution decisions, in compliance with the guidelines and the general instructions issued by the Single Resolution Board (SRB) to resolution authorities, and shall take the necessary actions to implement the decisions under Regulation (EU) No 806/2014.

Authority Responsible for Resolution of Investment Firms

Article 3. (1) (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) The Financial Supervision Commission is the authority responsible for resolution of the entities referred to in Article 1, paragraph 1, which are subject to the supervision by the Commission and are not credit institutions, and the entities subject to consolidated supervision by the Commission. When carrying out its tasks and exercising its powers in respect of the entities referred to in Article 1, paragraph 1, which are not credit institutions and are covered by the scope of consolidated supervision over the parent undertaking by the European Central Bank (ECB) in accordance with Article 4, paragraph 1(g) 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 (OJ, L 287/63, 29.10. 2013), hereinafter referred to as Regulation (EU) No 1024/2013, the Commission shall apply Regulation (EU) No 806/2014 and this Law. The decisions of the Commission as a resolution authority shall be taken on the proposal of a member of the Commission under Article 3, point 5 of the Law on the Financial Supervision Commission, unless otherwise laid down in this Law.

(2) The Commission's Statutes lay down a dedicated structural unit, which shall assist the Commission and the member of the Commission under Article 3, item 5 of the Law on the Financial Supervision Commission in exercising their functions under paragraph 1, which shall act separately and independently from the functions related to the supervision of investment activities and other functions of the Commission.

(3) (amended; Darjaven Vestnik, issue 12 of 2021) The internal rules of the Commission shall lay down the rules for the operation of the unit under paragraph 2, including the rules regarding professional secrecy and information exchange with other structural units of the Commission and with other authorities. The internal rules shall be published on the Commission's website.

(4) The unit under paragraph 2 shall actively cooperate with the Investment Activity Supervision Department of the Commission, as well as with the BNB in the preparation, planning and enforcement of resolution decisions, where necessary.

(5) (new; Darjaven Vestnik, issue 12 of 2021) Consultations between the resolution authority under paragraph 1 and the competent authority, as provided for in this Law, shall be conducted through an exchange of information and opinions between the unit under paragraph 2 and the Investment Activity Supervision Department of the Commission, unless specifically otherwise provided for.

Implementation of Single Resolution Board Decisions by the Authority Responsible for Resolution of Investment Firms

(new; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013)

Article 3a. (new; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) The Financial Supervision Commission as a resolution authority, respectively a national resolution authority within the meaning of Regulation (EU) No 806/2014, in respect of the entities under Article 1, paragraph 1, which are not credit institutions and are covered by the scope of consolidated supervision over the parent undertaking by the European Central Bank (ECB) in accordance with Article 4, paragraph 1(g) of Council Regulation (EU) No 1024/2013, shall carry out tasks and adopt resolution decisions, in compliance with the guidelines and the general instructions issued by the SRB to resolution authorities, and shall take the necessary actions to implement the decisions under Regulation (EU) No 806/2014.

Information Provision and Participation of the Minister of Finance

Article 4. (1) The resolution authority under Article 2, Article 3 respectively, shall promptly inform the Ministry of Finance of its decisions for undertaking resolution actions and applying resolution tools under this Law.

(2) The decisions under paragraph 1 shall be enforceable upon the approval of the Ministry of Finance in the cases, where:

1. they have or may lead to adverse effects on public finances;

2. there is a reasonable probability a need to emerge for using government financial stabilisation tools under Chapter Fourteen, or

3. they are taken in a systemic crisis affecting several institutions or the entire financial sector.

(3) In the cases under paragraph 2, the resolution authority shall submit to the Ministry of Finance the decision under Article 114 and at least the following information:

1. the current financial position of the institution;

2. a resolution plan of the institution;

3. other information relevant to the case at the discretion of the resolution authority or at the request of the Ministry of Finance.

(4) In the cases under paragraph 2, the Ministry of Finance may approve the decision or reject it. If necessary, the resolution authority may make changes in the decision within the approval procedure.

Cooperation between Resolution Authorities

Article 5. (1) (amended; Darjaven Vestnik, issue 37 of 2019) The Bulgarian National Bank and the Commission shall cooperate with the European Banking Authority (EBA) in the implementation of its duties under this Law in accordance with 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 Decision 2009/78/EC (OJ, L 331/12 of 15 December 2010), hereinafter referred to as Regulation (EU) No 1093/2010. They shall communicate to EBA the information necessary to fulfil its duties pursuant to Article 35 of this Regulation.

(2) (new; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) The Bulgarian National Bank and the Commission within the framework of the Single Resolution Mechanism under Regulation (EU) No 806/2014 shall cooperate with the SRB, the European Commission, the Council of the European Union, the ECB, the national resolution authorities and the national competent authorities.

(3) (previous paragraph 2; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) The Bulgarian National Bank, the Commission, respectively, shall take decisions under this Law, taking into account their potential effects in all Member States in which the institution or the group operates, and these decisions shall minimise the negative effects on financial stability and the negative economic and social consequences in these Member States.

(4) (previous paragraph 3; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) The Bulgarian National Bank, members of the Governing Council and the BNB staff shall not be liable for

acts or omissions in the course of discharging their duties under this Law, unless they acted intentionally.

(5) (previous paragraph 4; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) The Commission, its members and staff shall not be liable for acts or omissions in the course of discharging their duties under this Law, unless they acted intentionally.

(6) (previous paragraph 5; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) In the resolution of entities referred to in Article 1, paragraph 1, items 4 and 5, the BNB and the Commission shall interact by participating, where appropriate, in consultations in drafting and adopting resolution plans and in undertaking specific actions, shall exchange information and coordinate their actions in resolution planning.

Chapter Two

RECOVERY AND RESOLUTION PREPARATION

Section One

Recovery and Resolution Planning

Recovery Plans

Article 6. (1) (amended; Darjaven Vestnik, issue 15 of 2018; amended; Darjaven Vestnik, issue 12 of 2021) An institution that is not part of a group subject to consolidated supervision shall draw up and maintain a recovery plan providing for actions and measures to be taken by the institution to restore its financial situation in the event of significant financial difficulties. The recovery plan shall be considered to be part of the governance arrangements within the meaning of Article 14, paragraph 3, item 14 of the Law on Credit Institutions, or of internal organisation, respectively, within the meaning of Article 65 of the Law on Markets in Financial Instruments.

(2) The institution under paragraph 1 shall review and update its recovery plan at least annually or after a change in its legal form, governance structure or organisational structure, its business or its financial position, which could have a material effect on the recovery plan or may require a change in it.

(3) The competent authority under the Law on Credit Institutions or the Law on Markets in Financial Instruments may require the institution to update its recovery plan more frequently than specified in paragraph 2.

(4) Recovery plans shall not assume any access to or receipt of extraordinary public financial support.

(5) The recovery plan may include, where appropriate, an analysis of how and when a bank may apply, in the conditions addressed by the plan, for the use of central bank facilities and identify those assets which are expected to serve as collateral.

(6) The recovery plan shall include the information listed in Annex No 1, unless simplified requirements pursuant to Article 25 are applied to the institution. The competent authority may request the institution to include any additional information in the recovery plan.

(7) The recovery plan shall also include actions and measures which may be taken by the institution where the conditions for early intervention under Article 44, paragraph 1 are met.

(8) The recovery plan shall include appropriate arrangements and procedures for the timely application of recovery actions, as well as a wide range of recovery options for such actions and measures. The plans shall contemplate different scenarios of severe macroeconomic and financial stress relevant to the institution, including system-wide events and stress specific to individual legal entities and to groups.

(9) The management body of the institution shall approve the recovery plan, and then the plan shall be submitted to the relevant competent authority under the Law on Credit Institutions or the Law on Markets in Financial Instruments.

Assessment of Recovery Plans

Article 7. (1) Within six months of the submission of the recovery plan pursuant to Articles 6 and 8 and after consulting the competent authorities of the Member States where significant branches are located, insofar as is relevant to the branch, the competent authority under the Law on Credit Institutions or the Law on Markets in Financial Instruments shall review the plan and assess its compliance with the requirements laid down in Article 6, taking into account the extent to which the probability of the following is justified:

1. the implementation of the arrangements and measures proposed in the plan to maintain or restore the viability and financial position of the institution or of the group, taking into account the actions and measures that the institution has taken or has planned to take;

2. the plan and specific arrangements and measures at various scenarios within the plan to be implemented quickly and effectively in situations of financial stress and avoiding to the maximum extent possible any significant adverse effect of the financial system, including in case of scenarios which would lead other institutions to implement recovery plans within the same period.

(2) Where assessing the appropriateness of the recovery plans, the competent authority under the Law on Credit Institutions or the Law on Markets in Financial Instruments shall take into consideration the appropriateness of the institution's capital and funding structure to the level of complexity of its organisational structure and its risk profile. The recovery plan shall be submitted to the unit under Article 2, paragraph 2 or Article 3, paragraph 2.

(3) In case the unit under Article 2, paragraph 2 or Article 3, paragraph 2 identify any actions in the recovery plan which may adversely impact the resolvability of the institution, it may submit to the competent authority under the Law on Credit

Institutions or the Law on Markets in Financial Instruments recommendations to change the plan.

(4) The competent authority under the Law on Credit Institutions or the Law on Markets in Financial Instruments shall notify the institution or a European Union parent undertaking for its assessment and when a recovery plan has significant weaknesses or there are significant impediments to its implementation, requiring them to submit, within two months, a revised plan. With the permission of the competent authority, the deadline may be extended by another month.

(5) The institution or the European Union parent undertaking may state its opinion on the assessment of the competent authority within 14 days from the date of the notification.

(6) Where the competent authority under the Law on Credit Institutions or the Law on Markets in Financial Instruments does not consider the deficiencies and impediments to have been adequately addressed by the revised plan, they may direct the institution or a European Union parent undertaking to make specific changes to the plan.

(7) If an institution or a European Union parent undertaking fails to submit a revised recovery plan under paragraph 4 or if the competent authority determines that the revised recovery plan does not adequately remedy the deficiencies or impediments and it is not possible to adequately remedy them pursuant to paragraph 6, the competent authority shall require the institution or a European Union parent undertaking to identify within a timeframe set by it changes in its business in order to address the deficiencies in or impediments to the implementation of the recovery plan.

(8) (amended; Darjaven Vestnik, issue 15 of 2018) If the institution or a European Union parent undertaking fails to identify such changes in its business in the timeframe under paragraph 7 or if the competent authority assesses that the proposed changes are not adequate to address the deficiencies or impediments, the competent authority may apply the measures provided for in Article 103, paragraph 2 of the Law on Credit Institutions, Article 276, paragraphs 1 and 2 of the Law on Markets in Financial Instruments, respectively.

Recovery Plans of a Group, Subject to Consolidated Supervision by the BNB or by the Commission

Article 8. (1) (amended; Darjaven Vestnik, issue 37 of 2019) European Union parent undertakings, which is subject to consolidated supervision by the BNB, respectively by the Commission, shall draw up and submit to the relevant consolidating supervisor a group recovery plan which shall identify actions and measures that may be required to be implemented at the level of the European Union parent undertaking and each individual subsidiary.

(2) In the presence of confidentiality requirements equivalent to those laid down in this Law, the consolidated supervisor shall transmit a group recovery plan to:

1. the relevant competent authorities of the group subsidiaries;

2. the competent authorities of the Member States where significant branches are located insofar as is relevant to that branch; and

3. the resolution authorities of the group subsidiaries.

(3) The group recovery plan shall aim to achieve the stabilisation of the group as a whole, or any institution of the group, when it is in a stress situation so as to address or remove the causes of the distress and restore the financial position of the group or the institution of the group, at the same time taking into account the financial position of other group entities.

(4) (amended; Darjaven Vestnik, issue 37 of 2019) The group recovery plan shall include arrangement to ensure the coordination and consistency of actions and measures to be taken at the level of the European Union parent undertaking, at the level of the entities referred to in Article 1, items 4 and 5, as well as measures to be taken at the level of subsidiaries and, where applicable, at the level of significant branches.

(5) The group recovery plan shall include the elements specified in Article 6, paragraph 6. This plan shall include arrangements for intra-group financial support adopted pursuant to an agreement for intra-group financial support that has been concluded in accordance with Chapter Four.

(6) Group recovery plans shall include a range of choices of actions and measures to be taken in case of occurrence of various scenarios under Article 6, paragraph. 8. For each of the scenarios, the group recovery plan shall identify whether there are impediments to the implementation of recovery actions and measures within the group or at the level of individual entities of the group, and whether there are significant practical or legal impediments to the prompt transfer of own funds or the repayment of liabilities or assets within the group.

(7) The management body of a European Union parent undertaking which draws up the group recovery plan pursuant to paragraph 1 shall assess and approve the group recovery plan before submitting it to the relevant consolidating supervisor.

Individual Recovery Plans of Institutions – Part of a Group

Article 9. Subject to Article 10, the BNB, the Commission, respectively, may require an institution registered in the Republic of Bulgaria, which is part of a group, subject to supervision by a consolidating supervisor in another Member State to prepare and submit an individual recovery plan. In these cases, Article 6 and 7 shall be applied.

Assessment of Group Recovery Plans by the Consolidating Supervisor

Article 10. (1) The Bulgarian National Bank, the Commission, respectively, where it is the consolidating supervisor, shall, together with the competent authorities of subsidiaries, after consulting the competent authorities of significant branches insofar as is relevant to the significant branch, review the group recovery plan

and assess its compliance with the requirements and criteria laid down in Article 7, paragraphs 1 and 2 and Article 8. This assessment shall be made in accordance with the procedure established in Article 7, paragraphs 3–7 and this Article, and shall take into account the potential impact of the recovery measures on financial stability in all Member States where the group operates.

(2) The recovery plan under Article 8, paragraph 1 is subject to a multilateral procedure to reach a joint decision between the consolidating supervisor under paragraph 1 and the competent authorities of the subsidiaries of the group on:

1. the review and assessment of the group recovery plan;

2. the need to draw up a recovery plan on an individual basis to institutions that are part of the group; and

3. the application of Article 7, paragraphs 4, 6 and 7 and the relevant requirements to the institution as part of the group and the imposition of the measures under Article 7, paragraph 8.

(3) The deadline for reaching a joint decision under paragraph 2 shall be four months from the date of the transmission by the consolidated supervisor under paragraph 1 of the group recovery plan in accordance with Article 8, paragraph 2.

(4) Within the period under paragraph 3 the relevant consolidating supervisor under paragraph 1 may ask EBA in accordance with Article 31 (c) of Regulation (EU) No 1093/2010 to assist in reaching a joint decision under paragraph 2.

(5) In the absence of a joint decision under paragraph 2 between the consolidating supervisor and the other competent authorities within the period under paragraph 3 concerning the review and assessment of the group recovery plan or any measures the European Union parent undertaking is required in accordance with Article 7, paragraphs 4, 6 and 7 or imposed under Article 7, paragraph 8, the consolidating supervisor under paragraph 1 shall make its own decision, taking into account the views and reservations of the competent authorities of the subsidiaries, expressed in the period under paragraph. 3. The decision shall be communicated to the European Union parent undertaking and to the competent authorities of the subsidiaries.

(6) (amended; Darjaven Vestnik, issue 15 of 2018) If within the period under paragraph 3 a joint decision under paragraph 2 has not been reached and any of the authorities under paragraph 2 has referred to the EBA a matter related to the assessment of the recovery plan or the imposition of measures under Article 103, paragraph 2, items 8 and 11 of the Law on Credit Institutions, Article 276, paragraph 1, items 11 and 17 of the Law on Markets in Financial Instruments, respectively, in accordance with Article 19 of Regulation (EU) No 1093/2010, the consolidating supervisor under paragraph 1 shall defer its decision under paragraph 5 and await the decision of the EBA. In this case, the consolidating supervisor shall take its decision in accordance with the decision of the EBA. In the absence of an EBA decision within one month, the decision of the consolidating supervisor shall apply.

(7) In the absence of a joint decision under paragraph 2 within the period under paragraph 3, the consolidating supervisor under paragraph 1 may reach a joint

decision on the group recovery plan with the competent authorities under paragraph 1 that within the multilateral procedure for reaching a joint decision under paragraph 2 have not expressed reservations. In this case, the plan shall apply only to the relevant entities of the group.

(8) The joint decision under paragraph 2 or paragraph 7, as well as the own decision under paragraphs 5 and 6 shall be recognised as conclusive.

(9) (amended; Darjaven Vestnik, issue 15 of 2018) Where the competent authorities of the subsidiaries shall decide at their sole discretion on the preparation and assessment of individual recovery plans or the imposition of measures similar to those under Article 7, paragraph 8 in relation to their supervised subsidiaries, the consolidating supervisor under paragraph 1 may request from the EBA in accordance with Article 19, paragraph 3 of Regulation (EU) No 1093/2010 to assist in reaching an agreement in relation to the assessment of recovery plans and the implementation of measures similar to those under Article 103, paragraph 2, items 8 and 11 of the Law on Credit Institutions, Article 276, paragraph 1, items 11 and 17 of the Law on Markets in Financial Instruments, respectively, regarding subsidiaries.

Assessment of Group Recovery Plans by the Competent Authority in Relation to a Subsidiary Institution

Article 11. (1) The Bulgarian National Bank, the Commission, respectively, where it is a competent authority of an institution,`1 a subsidiary within the group, shall together with the consolidating supervisor, competent authorities of other subsidiaries of the group and competent authorities of significant branches insofar as is relevant to the significant branch, review the group recovery plan and assess its compliance with the requirements and criteria laid down in Articles 7 and 8. This assessment shall be made in accordance with the procedure established in Article 7, paragraphs 3–7 and pursuant to the conditions of Article 10, paragraphs 2–9, and shall take into account the potential impact of the recovery measures on financial stability in all the Member States where the group operates.

(2) In the absence of a joint decision under Article 10, paragraph 2 within the period under Article 10, paragraph 3 on the need to draw up a recovery plan on an individual basis for the subsidiary institution or implementation of the measures under Article 7, paragraphs 4, 6 and 7 at the level of a subsidiary, the BNB, the Commission, respectively, shall take an individual decision.

(3) If within the period under Article 10, paragraph 3, any of the authorities under Article 10, paragraph 1 has referred the matter in relation with the review and evaluation of the group recovery plan to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the BNB, the Commission, respectively, shall defer its decision under paragraph 2 and await the decision that EBA may take in accordance with Article 19, paragraph 3 of the same Regulation. In this case, the BNB, the Commission, respectively shall decide in accordance with the decision of the EBA.

Assessment of Group Recovery Plans as a Supervisory Authority for a Significant Branch

Article 12. Where the BNB, the Commission, respectively, is a supervisory authority in respect of a significant branch, it shall participate in consultations with the relevant competent authority in respect of the elements of the recovery plan of the institution or the group, which are relevant to the branch.

Recovery Plan Indicators

Article 13. (1) The recovery plan shall include indicators which identify the phases at which appropriate actions and measures referred to the plan may be taken.

(2) The indicators under paragraph 1 may be of qualitative or quantitative nature relating to the institution's financial position and shall be capable of being monitored easily. They shall be coordinated with the relevant competent authority in the assessment of recovery plans in accordance with Article 7 and Articles 10–12.

(3) The institution shall put in place appropriate arrangements for regular monitoring of the indicators under paragraph 1.

(4) The management board, the managers, respectively, or the board of directors of the institution, where they consider it to be appropriate in the circumstances, may decide:

1. to take actions under the recovery plan, notwithstanding the relevant indicator has not been met, or

2. refrain from taking actions specified in the recovery plan, although the relevant indicator has been met.

(5) The institution shall immediately notify the competent authority of its decision under paragraph 4.

Section Two

Resolution Planning

Resolution Plans Preparation

Article 14. (1) (amended; Darjaven Vestnik, issue 37 of 2019) The resolution authority referred to in Article 2, paragraph 1 and Article 3, paragraph 1 shall adopt a resolution plan in respect of an institution that is not part of a group subject to supervision on a consolidated basis.

(2) The resolution authority, after consulting the resolution authorities and the competent authorities of the Member States of the jurisdiction in which any significant branches are located insofar this is relevant to the significant branch shall draw up a resolution plan.

(3) The resolution plan shall provide for the resolution actions which the resolution authority may take where the institution meets the conditions for resolution under Article 51, paragraph 1.

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

(5) The resolution plan shall take into consideration different scenarios including that the event of failure may be idiosyncratic or may occur at a time of broader financial instability or system wide events.

(6) (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) The resolution plan of the institution shall not assume extraordinary public financial support except where it is in the form of financial means from the Single Resolution Fund, the Bank Resolution Fund (BRF) or the Investment Firms Resolution Fund (IFRF) respectively.

(7) Besides the requirement under paragraph 6, the resolution plan shall not assume any of the following:

1. any central bank emergency liquidity assistance;

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

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

(9) Institutions are obliged to assist resolution authority in the drawing up and updating of the resolution plans.

(10) The resolution authority shall review the resolution plans, and, where appropriate, update them, at least annually and after any material changes to the legal or organisational structure of the institution or to its business or its financial position that could have a material effect on the effectiveness of the plan or otherwise necessitates a revision of the resolution plan.

(11) For the purpose of the review under paragraph 10, the institutions shall promptly communicate to the resolution authorities any change that necessitates such a revision or update. Upon identification of changes in the business or financial position of the institution, which could have significant consequences on the effectiveness of the plan, the Banking Supervision Department shall promptly inform the unit under Article 2, paragraph 2, the Commission Deputy Chairman in charge of the Investment Activity Supervision Department, respectively, shall promptly inform the unit under Article 3, paragraph 2.

(12) (new; Darjaven Vestnik, issue 12 of 2021) The resolution authority shall review and update the resolution plan also after the resolution actions and after exercising the powers to write down or convert capital instruments.

(13) (new; Darjaven Vestnik, issue 12 of 2021) In reviewing and updating the plan under paragraph 12, the resolution authority shall set the deadlines for meeting the requirements referred to in Article 70 or 70a or in Article 69a, paragraphs 7–10,

Article 69a, paragraphs 11–13, respectively, or Article 69a, paragraph 16, taking into account the deadline for implementing the recommendation of the competent authority for additional own funds under Article 79d, paragraph 3 of the Law on Credit Institutions.

(14) (previous paragraph 12; Darjaven Vestnik, issue 12 of 2021) The resolution plan shall set out options for applying the resolution tools and resolution powers referred to in this Law.

(15) (previous paragraph 13; Darjaven Vestnik, issue 12 of 2021) Resolution plans shall include the information listed in Annex No 2, quantified whenever appropriate and possible.

(16) (previous paragraph 14; Darjaven Vestnik, issue 12 of 2021) The information under Annex 2, item 1 shall be submitted to the relevant institution.

(17) (previous paragraph 15; Darjaven Vestnik, issue 12 of 2021) The relevant resolution authority shall have the power to require from an institution and an entity referred to in Article 1, paragraph 1, items 3–5 detailed records of financial contracts to which it is a party and may specify a time-limit for submitting those records.

Consultation in Cases of Significant Branches

Article 15. Where the BNB, the Commission, respectively, is a resolution authority and supervisory authority in respect of a significant branch of an institution that is not part of a group, the BNB, the Commission, respectively, shall be involved in consultation on the initiative of the resolution authority of the institution licensed in another Member State before the preparation of the relevant resolution plan.

Information for the Purpose of Resolution Plans and Cooperation on the Part of Institutions

Article 16. (1) In drawing up the plan under Article 14, the relevant resolution authority is entitled to require from institutions:

1. cooperation in the drafting process of resolution plans;

2. the information referred to in Annex No 3, and other information necessary for the preparation and implementation of resolution plans.

(2) Where the information under paragraph 1, item 2 is available in the Banking Supervision Department of the BNB, the Investment Activity Supervision Department of the Commission, respectively, it shall be provided to the unit under Article 2, paragraph 2, Article 3, paragraph 2, respectively.

(3) (new; Darjaven Vestnik, issue 37 of 2019) In compliance with the requirements of Article 116 the resolution authority referred to in Article 2, paragraph 1 shall send to the EBA all the necessary information received in accordance with paragraph 1 in relation to the resolution plan under Article 14.

Group Resolution Plans

Article 17. (1) The Bulgarian National Bank, the Commission, respectively, shall adopt a group resolution plan where the European Union parent undertaking is an institution or entity referred to in Article 1, paragraph 1, items 4 or 5.

(2) (amended; Darjaven Vestnik, issue 37 of 2019) Resolution authorities under paragraph 1, together with the resolution authorities of subsidiaries and after consulting the resolution authorities of significant branches insofar as is relevant to the significant branch, shall draw up the group resolution plan.

(3) (repealed; Darjaven Vestnik, issue 12 of 2021)

(4) (amended; Darjaven Vestnik, issue 12 of 2021) The group resolution plan shall identify resolution measures that are foreseen to be initiated against:

1. the European Union parent undertaking;

2. the subsidiaries that are part of the group and that are located in the European Union;

3. the entities referred to in Article 1, paragraph 1, items 3 and 5;

4. the subsidiaries that are part of the group and that are located in third countries.

(5) (new; Darjaven Vestnik, issue 12 of 2021) In line with the measures under paragraph 4, the group resolution plan shall specify the resolution entities and the resolution groups.

(6) (previous paragraph 5; Darjaven Vestnik, issue 12 of 2021) The group resolution plan shall be drawn up on the basis of the information provided pursuant to Article 16.

(7) (previous paragraph 6; Darjaven Vestnik, issue 12 of 2021) The group resolution plan shall include detailed information concerning:

1. (amended; Darjaven Vestnik, issue 12 of 2021) resolution actions to be taken in relation to resolution entities under the scenarios provided for in Article 14, paragraph 5, as well as the consequences of these actions in relation to the other entities under Article 1, paragraph 1, items 3–5 of the group, parent undertaking and subsidiaries;

2. (new; Darjaven Vestnik, issue 12 of 2021) resolution actions to be taken in relation to resolution entities of each group subject to resolution, where such a group includes more than one resolution group, as well as the consequences of thse actions for the other entities of the same resolution group and for the other resolution groups;

3. (previous item 2; amended, Darjaven Vestnik, issue 12 of 2021) an analysis of the extent to which the resolution tools and powers could be applied and exercised in a coordinated way to the resolution entities established in the European Union, including measures to facilitate the purchase by a third party of the group as a whole, of separate business lines, of activities that are delivered by a number of group enti-

ties, or particular group entities, or resolution groups and identify any potential impediments to a coordinated resolution;,

4. (previous item 3; Darjaven Vestnik, issue 12 of 2021) where a group includes entities incorporated in third countries, identify appropriate arrangements for cooperation and coordination with the relevant authorities of those third countries and the implications for resolution within the European Union;

5. (previous item 4; Darjaven Vestnik, issue 12 of 2021) measures, including the legal and economic separation of particular functions or business lines, that are necessary to facilitate group resolution when the conditions for resolution are met;

6. (previous item 5; amended, Darjaven Vestnik, issue 12 of 2021) other actions which the relevant resolution authorities intend to take in relation to the entities in each resolution group;

7. (previous item 6; Darjaven Vestnik, issue 12 of 2021) an analysis how the group resolution actions could be funded and, where the financing arrangement would be required, set out in details principles for sharing responsibility for that financing between sources of funding in different Member States.

(8) (previous paragraph 7; amended; Darjaven Vestnik, issue 12 of 2021) The principles referred to in paragraph 7, item 7 shall be set out on the basis of equitable and balanced criteria and shall be consistent with Article 143, paragraph 3 and the potential impact on financial stability in all Member States concerned.

(9) (previous paragraph 8; Darjaven Vestnik, issue 12 of 2021) The group resolution may not include any of the tools under Article 14, paragraphs 6 and 7.

(10) (previous paragraph 9; Darjaven Vestnik, issue 12 of 2021) The group resolution plan shall contain a detailed current assessment of the resolvability in accordance with Article 27.

(11) (previous paragraph 10; Darjaven Vestnik, issue 12 of 2021) The group resolution plan shall not have a disproportionate impact on any Member State.

Procedure for Group Resolution Plans

Article 18. (1) The European Union parent undertaking shall submit to the BNB, to the Commission, respectively, as a group-level resolution authority the information under Article 16, paragraph 1, item 2.

(2) The information under paragraph 1 shall cover the activities of the European Union parent undertaking and, if necessary, the activities of each entity of the group.

(3) Subject to the requirements of Article 116, the relevant resolution authority under paragraph 1 shall submit the information received pursuant to this Article to:

1. the European Banking Authority;

2. the resolution authorities of subsidiaries;

3. the resolution authorities of the jurisdictions in which significant branches are located insofar as is relevant to the significant branch;

4. the resolution authorities of the Member States where the entities referred to in Article 1, paragraph 1, items 3–5 are established;

5. the relevant competent authorities of entities and significant branches of the group.

(4) The resolution authority under paragraph 1 shall submit to EBA all information that is relevant to the role of EBA in relation to the group resolution plans. In the case of information relating to third-country subsidiaries, the resolution authority under paragraph 1 shall transmit that information to EBA after the consent of the relevant third-country supervisory authority or resolution authority.

(5) The information provided to the authorities referred to in paragraph 3, items 3–5 shall include at a minimum all information that is relevant to the subsidiary or significant branch.

Procedure for the Adoption of Resolution Plans of the Group Where the BNB, the Commission, Respectively, Is a Group-Level Resolution Authority

Article 19. (1) (amended; Darjaven Vestnik, issue 37 of 2019) The Bulgarian National Bank, the Commission, respectively, in its capacity as a group-level resolution authority, acting jointly with the resolution authorities referred to in Article 18, paragraph 3, items 2–4, in resolution colleges and after consulting the relevant competent authorities, including the competent authorities of the jurisdictions of Member States in which any significant branches are located, shall draw up and maintain group resolution plans.

(2) The group-level resolution authority under paragraph 1 may, at its discretion, and subject to confidentiality requirements laid down in Article 133, involve in the drawing up and maintenance of group resolution plans third-country resolution authorities of jurisdictions in which the group has established subsidiaries, financial holding companies or significant branches.

(3) The group-level resolution authority under paragraph 1 shall review and update group resolution plans at least annually or after any significant change in legal form, governance structure and organisational structure, business or financial position of the group, including each entity of the group, that could have a material effect on or require a change to the plan.

(4) The adoption of the group resolution plan shall take the form of a joint decision of the group-level resolution authority under paragraph 1 and the resolution authorities of subsidiaries.

(5) (new; Darjaven Vestnik, issue 12 of 2021) Where the group consists of more than one resolution group, the planning of the resolution actions under Article 17, paragraph 7, item 2 shall be included in the joint decision under paragraph 4.

(6) (previous paragraph 5; Darjaven Vestnik, issue 12 of 2021) The joint decision under paragraph 4 shall be reached within four months of the date of the transmission of the information referred to in Article 18, paragraph 3 by the group-level resolution authority under paragraph 1.

(7) (previous paragraph 6; Darjaven Vestnik, issue 12 of 2021) The European Banking Authority may, at the request of the group resolution authority under paragraph 1, assist the resolution authorities in reaching a joint decision under paragraph 4 in accordance with Article 31(c) of Regulation (EU) No 1093/2010.

Actions for Reaching a Joint Decision and Coordination of Decisions

Article 20. (1) (amended; Darjaven Vestnik, issue 12 of 2021) In the absence of a joint decision between the resolution authorities referred to in Article 19, paragraph 4 within the time period under Article 19, paragraph 6, the group-level resolution authority pursuant to Article 19, paragraph 1 shall make its own decision on the group resolution plan. The decision shall be fully reasoned and shall take into account the views and reservations of other resolution authorities.

(2) The decision under paragraph 1 shall be provided to the parent undertaking by the group-level resolution authority according to Article 19, paragraph 1.

(3) (amended; Darjaven Vestnik, issue 12 of 2021) If, at the end of the period under Article 19, paragraph 6, any resolution authority referred to in Article 18, paragraph 3, items 2–4 has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the group-level resolution authority under Article 19, paragraph 1 shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation. In such a case, the group-level resolution authority shall take its decision in accordance with the decision of EBA. In the absence of an EBA decision within one month, the decision of the group-level resolution authority shall apply.

(4) (amended; Darjaven Vestnik, issue 12 of 2021) In the absence of a joint decision within the term under Article 19, paragraph 6, each resolution authority of a subsidiary that disagrees with the group resolution plan shall make its own decision and, where appropriate, identify the resolution entity and draw up and maintain a resolution plan for the resolution group composed of entities under its jurisdiction. Until the expiry of the term under Article 19, paragraph 6, the group-level resolution authority under Article 19, paragraph 1 may refer a matter related to individual resolution plans to EBA in accordance with Article 19(3) of Regulation (EU) No 1093/2010.

(5) (new; Darjaven Vestnik, issue 12 of 2021) Each own decision under paragraph 4 shall be substantiated and contain the grounds for the disagreement with the proposed resolution plan of the group, taking into account the views and reservations of the other resolution authorities and competent authorities. Each resolution authority shall notify its decision to the other members of the resolution college.

(6) (previous paragraph 5; Darjaven Vestnik, issue 12 of 2021) The group-level resolution authority under Article 19, paragraph 1 may reach a joint decision with the resolution authorities which do not disagree on a group resolution plan covering group entities referred to in their competence.

(7)(previous paragraph 6; amended; Darjaven Vestnik, issue 12 of 2021) The joint decisions referred to in paragraph 6 and Article 19, paragraph 4 and the individual decision under paragraph 1 shall be recognised as conclusive.

(8) (previous paragraph 7; Darjaven Vestnik, issue 12 of 2021) The procedure under paragraphs 1 and 4 shall not apply where the resolution authority has expressed a disagreement on the grounds of impinges on the fiscal responsibilities of its Member State.

(9) (previous paragraph 8; amended; Darjaven Vestnik, issue 12 of 2021) Where during the preparation of joint decisions, a resolution authority assesses in accordance with paragraph 8 that the subject matter of a disagreement impinges on the fiscal responsibilities of its Member State, the group-level resolution authority according to Article 19, paragraph 1 shall initiate a reassessment of the group resolution plan, including the minimum requirement for own funds and eligible liabilities under Article 69.

Procedure for Preparation and Adoption of Group Resolution Plans, Where the BNB, the Commission, Respectively, Is a Resolution Authority of a Subsidiary

Article 21. (1) Where the BNB, the Commission, respectively, is a resolution authority of a subsidiary of a European Union parent undertaking, it shall participate in procedures for the adoption of group resolution plans and benefit from the rights and fulfill the obligations specified in Articles 18–20 applicable to the resolution authority of a subsidiary.

(2) The resolution authority under paragraph 1 shall review the group resolution plan and may make a proposal to the group-level resolution authority to update the plan in case of a significant change in the legal form, the governance structure and organisational structure, business or financial position of the group, including the institution under paragraph 1, which could have a material effect on the effectiveness of the plan or impose its reconsidering.

(3) (amended; Darjaven Vestnik, issue 12 of 2021) In the absence of a joint decision of the resolution authorities within the term under Article 19, paragraph 6, the BNB, the Commission, respectively, shall make its own decision in respect to the institution under paragraph 1 and, where appropriate, identify the resolution entity and draw up and maintain a resolution plan for the resolution group composed of entities under its jurisdiction. The own decision shall be substantiated and contain the grounds for the disagreement with the proposed resolution plan of the group, taking into account the views and reservations of the other resolution authorities and competent authorities. The resolution authority shall notify its decision to the other members of the resolution college.

(4) (amended; Darjaven Vestnik, issue 12 of 2021) If, until the expiration of the period under Article 19, paragraph 6, any of the resolution authorities under

Article 18, paragraph 3, items 2–5 has referred the matter to EBA, the terms and conditions of Article 20, paragraph 4 shall apply.

(5) Where during the preparation of the joint decision a resolution authority under paragraph 1 assesses that the subject matter of a disagreement impinges on the fiscal responsibilities of the Republic of Bulgaria, it shall ask the group-level resolution authority to make a reassessment of the group resolution plan, including the minimum requirement for own funds and eligible liabilities.

Drawing up and Maintenance of Resolution Plans, Where the BNB, the Commission, Respectively, Is a Resolution Authority in Relation to a Significant Branch

Article 22. (1) The Bulgarian National Bank, the Commission, respectively, as a resolution authority of a significant branch shall participate in the drawing up and maintenance of the resolution plans of the relevant institution or group.

(2) In the process under paragraph 1, the BNB, the Commission, respectively, shall give an opinion as a competent authority pursuant to the Law on Credit Institutions, the Law on Markets in Financial Instruments, respectively.

Review of the Resolution Plan by the BNB, the Commission, Respectively, as the Competent Authority of an Entity of a Group

Article 23. The Bulgarian National Bank, the Commission, respectively, in exercising its supervisory functions with regard to the entity belonging to the group, shall participate in the consultation initiated by the group-level resolution authority, in connection with the drawing up and periodic review of the group resolution plan.

Transmission of Resolution Plans to the Competent Authorities

Article 24. The Bulgarian National Bank, the Commission, respectively, as a group-level resolution authority, shall transmit the resolution plans and any changes thereto to the relevant competent authorities.

Section Three

Simplified Requirements Application

Decision to Apply the Simplified Requirements When Preparing Recovery Plans and Resolution Plans

Article 25. (1) The Bulgarian National Bank, the Commission, respectively, may decide on the application of simplified requirements for the institution in preparing recovery plans, resolution plans, respectively, taking into account:

1. (amended; Darjaven Vestnik, issue 15 of 2018) the impact that the failure of the institution could have, due to the nature of its business, its shareholding structure, its legal form, its risk profile, size and legal status, its interconnectedness to other institutions or to the financial system as a whole, the scope and the complexity

of its activities, exercise of investment services or activities as defined in Article 6 of the Law on Markets in Financial Instruments;

2. the probability of significant negative effects on financial markets, on other institutions, on funding conditions, or on the wider economy under winding up proceedings.

(2) The decision under paragraph 1 shall determine:

1. the contents and details of recovery and resolution plans;

2. the timeframes by which the recovery and resolution plans are to be drawn up and the frequency for updating recovery and resolution plans which may be longer than that provided in this Law;

3. the contents and details of the information required from institution;

4. the level of detail for the assessment of resolvability.

(3) The Bulgarian National Bank, the Commission, respectively, may at any time revoke the application of simplified requirements for the institution in preparing recovery and resolution plans.

(4) The decision under paragraph 1 shall not affect the powers of the BNB and the Commission to take crisis prevention measures or crisis management measures.

(5) The BNB, the Commission, respectively, shall inform EBA of the way they have applied paragraph 1.

(6) The Bulgarian National Bank, the Commission, respectively, cannot decide on the application of simplified requirements to an institution whose total assets exceed BGN 3 billion, or the ratio of its total assets to gross domestic product of the Republic of Bulgaria exceeds 4 per cent.

Chapter Three

RESOLVABILITY

(title amended; Darjaven Vestnik, issue 12 of 2021)

Assessment of Resolvability for an Institution Which Is Not Part of a Group

Article 26. (1) The resolution authority under Article 2, Article 3, respectively, shall assess the extent to which an institution which is not part of a group is resolvable without the assumption of any of the following:

1. (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) extraordinary public financial support besides the use of the financial arrangements of the SRF, BRF or IFRF, respectively.

2. central bank emergency liquidity assistance;

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

(2) The resolution authority shall make an assessment under paragraph 1 after consulting the resolution authorities of the jurisdictions in which significant branches are located insofar as is relevant to the significant branch.

(3) (amended; Darjaven Vestnik, issue 37 of 2019) An institution shall be deemed to be resolvable if it is feasible and credible for the resolution authority to either liquidate it under insolvency proceedings or to resolve it by applying the different resolution tools and powers with a view to ensuring the continuity of critical functions carried out by the institution while avoiding to the maximum extent possible any significant adverse effect on the financial system, including in circumstances of broader financial instability or system-wide events in the Republic of Bulgaria, in other Member States or in the European Union as a whole.

(4) The resolution authority shall notify EBA in a timely manner whenever an institution is deemed not to be resolvable under the conditions in paragraphs 1 and 3.

(5) For the purposes of the assessment of resolvability of the institution, the resolution authority shall, as a minimum, examine the matters specified in Annex No 4, as well as other circumstances on its discretion.

(6) The resolvability assessment shall be made by the resolution authority at the same time as and for the purposes of the drawing up and updating of the resolution plan in accordance with Article 14.

Assessment of Resolvability for Groups

Article 27. (1) The BNB, the Commission, respectively, as a group-level resolution authority shall assess the extent to which a group is resolvable without the assumption of any of the following:

1. (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) extraordinary public financial support besides the use of the financing of the SRF, BRD or IFRF respectively, or the resolution financing arrangement of another Member State;

2. central bank emergency liquidity assistance;

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

(2) The assessment under paragraph 1 shall be adopted together with the resolution authorities of the subsidiaries, after consulting the relevant competent authorities and the resolution authorities of the jurisdictions in which significant branches are located insofar as is relevant to the significant branch.

(3) (amended; Darjaven Vestnik, issue 12 of 2021) A group shall be deemed to be resolvable if it is feasible and credible for the resolution authority under paragraph 1 and other resolution authorities while avoiding to the maximum extent possible any significant adverse effects on the financial systems, including in circumstances of a broader financial instability or system wide events in the Republic of Bulgaria, in the

Member States where the group entities or branches are established, or in the other Member States or in the European Union as a whole to either:

1. wind up group entities through insolvency proceedings; or

2. (amended; Darjaven Vestnik, issue 12 of 2021) to resolve the group by applying resolution tools and powers to the resolution entities of the group with a view to ensuring the continuity of critical functions carried out by the group entities, where they can be easily separated in a timely manner or by other means.

(4) The resolution authority referred to in paragraph 1 shall notify EBA in a timely manner whenever a group is deemed not to be resolvable under the conditions in paragraphs 1 and 3.

(5) The assessment of group resolvability under the conditions in paragraphs 1 and 3 shall be taken into consideration by the resolution colleges.

(6) For the purposes of the assessment of group resolvability, the resolution authority under paragraph 1 and the other resolution authorities shall take into account the matters specified in Annex No 4, as well as other matters on their discretion.

(7) (new; Darjaven Vestnik, issue 12 of 2021) Where the group consists of more than one resolution group, in addition to the assessment under paragraph 1, the resolution authority shall also assess the resolvability of each resolution group.

(8) (previous paragraph 7; supplemented, Darjaven Vestnik, issue 12 of 2021) The assessment of resolvability for the whole group and, where appropriate, the resolution groups shall be made at the same time as the drawing up and updating of the group resolution plan in accordance with Article 17 and under the decision-making procedure laid down in Articles 18–20.

Participation in the Assessment of Resolvability of the Group Where There Is a Subsidiary or a Significant Branch in the Republic of Bulgaria

Article 28. (1) The Bulgarian National Bank, the Commission, respectively, as a resolution authority of an institution licensed in the Republic of Bulgaria, which is a subsidiary of a group established in another Member State or in the European Union, together with the group-level resolution authority shall assess the extent to which the group can be resolved in accordance with the requirements of Article 27.

(2) (new; Darjaven Vestnik, issue 12 of 2021) Where the group consists of more than one resolution group, the BNB, the Commission, respectively, shall, in its capacity as a resolution authority for an institution licensed in the Republic of Bulgaria, which is a subsidiary established in another Member State or in the European Union, jointly with the group-level resolution authority, assess also the resolvability of each resolution group, while observing the requirements under Article 27.

(3) (previous paragraph 2; supplemented, Darjaven Vestnik, issue 12 of 2021) The Bulgarian National Bank, the Commission, respectively, as a competent authority for an institution licensed in the Republic of Bulgaria, which is a subsidiary of a group established in another Member State or in the European Union, shall partici-

pate in the consultation initiated by the group-level resolution authority in order to assess the extent to which the group can be resolved. Where the group consists of more than one resolution group, the consultations shall also include the resolvability of each resolution group.

Power to Prohibit Certain Distributions

(new; Darjaven Vestnik, issue 12 of 2021)

Article 28a. (new; Darjaven Vestnik, issue 12 of 2021) The resolution authority under Article 2, Article 3, respectively, may take a decision to prohibit an institution or entity referred to in Article 1, paragraph 1, items 4 and 5 from distributing more than the Maximum Distributable Amount related to the minimum requirement for own funds and eligible liabilities ('M-MDA'), calculated in accordance with Annex No 5, through any of the following actions:

1. make distributions in connection with Common Equity Tier 1 capital;

2. create an obligation to pay variable remuneration or discretionary pension benefits, or to pay variable remuneration if the obligation to pay was created at a time when the institution or the entity under Article 1, paragraph 1, items 4 and 5 failed to meet the combined buffer requirement;

3. make payments on Additional Tier 1 instruments.

Conditions for Imposing the Prohibition of Certain Distributions

(new; Darjaven Vestnik, issue 12 of 2021)

Article 28b. (new; Darjaven Vestnik, issue 12 of 2021) (1) (amended; Darjaven Vestnik, issue 25 of 2022) The resolution authority under Article 2, Article 3, respectively, may use the power under Article 28a, where the institution or the entity under Article 1, paragraph 1, items 4 and 5 meets at the same time the combined buffer requirement, the requirements under Article 92, paragraph 1, points (a), (b) and (c) of Regulation (EU) No 575/2013, under Article 11(1) of Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014 (OJ L 314, 5.12.2019, p.1), hereinafter referred to as 'Regulation (EU) 2019/2033', respectively, for investment firms under Article 9a, paragraph 1 of the Law on Markets in Financial Instruments, and the additional own funds requirement under Article 103, paragraph 2, item 5 of the Law on Credit Institutions, under Article 276, paragraph 1, item 11 of the Law on Markets in Financial Instruments, respectively, imposed for risks other than the risk of excessive leverage, but does not meet at the same time the combined buffer requirement and the requirements under Articles 69b–69f, calculated in accordance with Article 69, paragraph 2, item 1.

(2) The institution or the entity, respectively, under Article 1, paragraph 1, items 4 and 5 shall immediately notify the resolution authority of the occurrence of the circumstances under paragraph 1.

(3) The resolution authority, after consulting the competent authority, shall assess whether to exercise the power referred to in Article 28a, taking into account all of the following elements:

1. the reason, duration and magnitude of the failure and its impact on resolvability;

2. the development of the financial situation of the institution or the entity under Article 1, paragraph 1, items 4 and 5 and the likelihood of the condition referred to in Article 51, paragraph 1, item 1;

3. the prospect that the institution or the entity, respectively, under Article 1, paragraph 1, items 4 and 5 will be able to ensure compliance with the requirements under paragraph 1 within a reasonable timeframe;

4. where the institution or the entity, respectively, under Article 1, paragraph 1, items 4 and 5 is unable to replace liabilities that no longer meet the eligibility or maturity criteria laid down in Articles 72b and 72c of Regulation (EU) No 575/2013, or in Article 69a or Article 70a, paragraph 5, if that inability is idiosyncratic or is due to market-wide disturbance;

5. whether the imposition of the prohibition of certain distributions is the most adequate and proportionate means of addressing the situation of the institution or the entity under Article 1, paragraph 1, items 4 and 5, taking into account its potential impact on both the financing conditions and resolvability of the relevant institution or the entity under Article 1, paragraph 1, items 4 and 5.

(4) If after the expiry of nine months of the date of receipt of the notification under paragraph 2 it is established that the institution or the entity under Article 1, paragraph 1, items 4 and 5 is still in the situation referred to in paragraph 1 and there are no grounds for applying the exception under paragraph 5, the resolution authority, after consulting the competent authority, shall take a decision to impose the prohibition under Article 28a.

(5) In the cases under paragraph 4, the prohibition to make certain distributions shall not apply where the resolution authority finds, following an assessment, that at least two of the following conditions are fulfilled:

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

2. the disturbance under item 1 not only results in the increased price volatility of the own funds instruments and eligible liabilities instruments of the institution or the entity under Article 1, paragraph 1, items 4 and 5 or in increased costs for them, but also leads to a full or partial closure of markets which prevents the institution or the entity under Article 1, paragraph 1, items 4 and 5 from issuing own funds instruments and eligible liabilities instruments on these markets;

3. the market closure referred to in item 2 is observed not only for the concerned institution or the entity under Article 1, paragraph 1, items 4 and 5, but also for other market participants;

4. the disturbance referred to in item 1 prevents the concerned institution or the entity under Article 1, paragraph 1, items 4 and 5 from issuing own funds instruments and eligible liabilities instruments in a volume sufficient to remedy the failure;

5. an exercise of the power under Article 28a leads to negative spill-over effects for part of the banking sector, thereby potentially undermining financial stability.

(6) Where the exception under paragraph 5 applies, the resolution authority shall notify the competent authority of its decision and shall explain its assessment in writing.

(7) The resolution authority shall assess the conditions for exercising the power under Article 28a or for applying the exception under paragraph 5 at least once a month, as far as the circumstances under paragraph 1 are still present regarding the institution or the entity under Article 1, paragraph 1, items 4 and 5.

Powers to Address or Remove Impediments to Resolvability

Article 29. (1) (amended; Darjaven Vestnik, issue 12 of 2021) When, pursuant to an assessment of resolvability for an institution, a group or a resolution group carried out in accordance with Articles 26–28, the resolution authority under Article 2, Article 3, respectively, determines that there are substantive impediments to the resolvability of that institution or group or resolution group, the resolution authority shall notify in writing that determination to the entity concerned and to the resolution authorities of the jurisdictions of the Member States in which significant branches are located.

(2) (amended; Darjaven Vestnik, issue 12 of 2021) In the cases under paragraph 1, the drawing up of a resolution plan pursuant to Article 14, paragraph 1, and the joint decision on the group resolution plan under Article 19, paragraph 4 shall be performed after the resolution authority approves the measures to remove the substantive impediments to resolvability in accordance with paragraphs 3 and 4 or decides thereon pursuant to paragraph 6..

(3) (amended; Darjaven Vestnik, issue 12 of 2021) Within four months of the date of receipt of the notification under paragraph 1, the entity concerned shall submit to the resolution authority proposals of possible measures to address or remove the impediments identified in the notification.

(4) (new; Darjaven Vestnik, issue 12 of 2021) The entity shall, within two weeks of the date of receipt of the notification under paragraph 1, propose to the resolution authority possible measures and the timeline for their implementation to ensure that the entity complies with Article 70 or 70a and the combined buffer requirement, where a substantive impediment to resolvability is due to either of the following situations:

1. (amended; Darjaven Vestnik, issue 25 of 2022) the entity concerned meets at the same time the combined buffer requirement, the requirements under Article 92, paragraph 1, points (a), (b) and (c) of Regulation (EU) No 575/2013, under Article 11(1) of Regulation (EU) 2019/2033, respectively, for investment firms under Article 9a, paragraph 1 of the Law on Markets in Financial Instruments, and the additional own funds requirement under Article 103, paragraph 2, item 5 of the Law on Credit Institutions, Article 276, paragraph 1, item 11 of the Law on Markets in Financial Instruments, respectively, imposed for risks other than the risk of excessive leverage, but does not meet at the same time the combined buffer requirement and the requirements under Articles 69b–69f, calculated in accordance with Article 69, paragraph 2, item 1.

2. the entity concerned does not meet the requirements under Articles 92a and 494 of Regulation (EU) No 575/2013 or the requirements under Articles 69b and 69f.

(5) (new; Darjaven Vestnik, issue 12 of 2021) The timeline for the implementation of measures under paragraph 4 shall take into account the circumstances which have led to the substantive impediments to resolvability of the entity concerned.

(6) (previous paragraph 4; supplemented, Darjaven Vestnik, issue 12 of 2021) Where the resolution authority assesses that the measures proposed under paragraphs 3 and 4 do not effectively reduce or remove the impediments under paragraph 1, it shall take a justified decision in which it shall determine and require the entity concerned to take one or more of the following measures:

1. to reconsider any intra-group financing agreements or to assess the need for such agreements, or draw up service agreements, whether intra-group or with third parties, to cover the provision of critical functions;

2. to limit its maximum individual and aggregate exposures;

3 to impose additional specific or regular information requirements relevant for resolution purposes;

4. to divest specific assets;

5. to limit or cease specific existing or proposed activities;

6. to restrict or prevent the development of new or existing business lines or sale of new or existing products;

7. (amended; Darjaven Vestnik, issue 12 of 2021) to make changes to its legal or operational structures or to the structure of any group entity, either directly or indirectly under its control, so as to reduce complexity in order to ensure that critical functions may be legally and operationally separated from other functions through the application of the resolution tools;

8. (amended; Darjaven Vestnik, issue 12 of 2021) for the entity concerned or the parent undertaking, to set up a parent financial holding company in the Republic of Bulgaria or a European Union parent financial holding company;

9. (amended; Darjaven Vestnik, issue 12 of 2021) for the institution or the entity referred to in Article 1, paragraph 1, items 3–5, to issue eligible liabilities to meet the requirements set out in Articles 70 or 71;

10. (amended; Darjaven Vestnik, issue 12 of 2021) for the institution or the entity referred to in Article 1, paragraph 1, items 3–5, to take other measures to meet the minimum requirements for own funds and eligible liabilities under Articles 70 or 71, through renegotiating eligible liabilities, additional Tier 1 instruments or Tier 2 instruments it has issued, with a view to ensuring that any decision of the resolution authority to write down or convert these liabilities or instruments would be legally valid under the applicable law;

11. (amended; Darjaven Vestnik, issue 12 of 2021) where the entity concerned is a subsidiary of a mixed-activity holding company, requiring that the mixed-activity holding company sets up a separate financial holding company to control the entity, if necessary, in order to facilitate the resolution of the entity and to avoid the application of the resolution tools and powers which could have an adverse effect on the non-financial part of the group;

12. (new; Darjaven Vestnik, issue 12 of 2021; amended; Darjaven Vestnik, issue 25 of 2022) for an institution or an entity referred to in Article 1, paragraph 1, items 3–5, to submit a plan to restore compliance with the requirements of Articles 70 or 70a, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, for investment firms under Article 9a, paragraph 1 of the Law on Markets in Financial Instruments, respectively, expressed as a percentage of the applicable requirement laid down in Article 11(1) of Regulation (EU) 2019/2033, multiplied by 12.5, and, where applicable, with the combined buffer requirement and with the requirements referred to in Article 70 or 70a, expressed as a percentage of the total exposure measure referred to in Articles 429 and 429a of Regulation (EU) No 575/2013;

13. (new; Darjaven Vestnik, issue 12 of 2021) for the purpose of ensuring ongoing compliance with Article 70 or 70a, an institution or entity referred to in Article 1, paragraph 1, items 3–5, to change the maturity profile of:

a) own funds instruments, after having obtained the agreement of the competent authority, and

b) eligible liabilities referred to in Article 69a and Article 70a, paragraph 5, item 1;

(7) (amended; Darjaven Vestnik, issue 12 of 2021) In its decision under paragraph 6, the resolution authority shall justify that the measures proposed by the entity concerned cannot lead to the removal of impediments to the resolvability and that the measures set by the resolution authority are proportionate to the removal of the impediments. The resolution authority shall duly consider the potential threat that these impediments pose to the financial stability and the effects of the measures on the business of the entity concerned, its stability and its ability to contribute to the economy.

(8) (previous paragraph 5; amended, Darjaven Vestnik, issue 12 of 2021) The resolution authority shall notify in writing the entity concerned of its decision under paragraph 6.

(9) (previous paragraph 6; amended, Darjaven Vestnik, issue 12 of 2021) Within one month of the notification, the entity concerned shall offer a plan for implementing the measures specified in the decision under paragraph 6.

(10) (previous paragraph 8; amended, Darjaven Vestnik, issue 12 of 2021) The resolution authority decisions made pursuant to paragraphs 1 and 6 shall be motivated, including with respect to the completion of the requirements under paragraph 7.

(11) (previous paragraph 9; amended, Darjaven Vestnik, issue 12 of 2021) Before identifying any measure referred to in paragraph 6, the resolution authority shall duly consider the potential effect of this measure on the entity concerned, on the internal market of financial services, on the financial stability in other Member States and in the European Union as a whole.

Powers to Address or Remove Impediments to Group Resolvability, Where the BNB, the Commission, Respectively, Is a Group-Level Resolution Authority

Article 30. (1) (amended; Darjaven Vestnik, issue 12 of 2021) The Bulgarian National Bank, the Commission, respectively, as a group-level resolution authority together with the resolution authorities of the subsidiaries, after consulting the supervisory college and the resolution authorities of the Member States in which significant branches are located insofar as is relevant to the significant branch, shall consider the assessment of resolvability under Article 27 within the resolution college and shall take all reasonable steps to reach a joint decision on the application of the measures identified in accordance with Article 29 in relation to all resolution entities and their subsidiaries which are entities under Article 1, paragraph 1 and part of the group.

(2) (amended; Darjaven Vestnik, issue 12 of 2021) The relevant group-level resolution authority under paragraph 1, taking into account its functions as a consolidating supervisor in cooperation with EBA in accordance with Article 25, paragraph 1 of Regulation (EU) No 1093/2010, shall prepare a report and submit it to the European Union parent undertaking, to the resolution authorities of subsidiaries, which will provide it to the subsidiaries under their supervision, and to the resolution authorities of the Member States in which significant branches are located.

(3) (amended; Darjaven Vestnik, issue 12 of 2021) The report under paragraph 2 shall be prepared after consulting the competent authorities of the Member States where subsidiaries are located. The report shall analyse the substantive impediments to the effective application of the resolution tools and the exercising of the resolution powers in relation to the group and to the resolution groups where the group consists of more than one resolution group. The report shall consider the impact on the

group's business model and recommend any proportionate and targeted measures that, in the resolution authority's view, are necessary or appropriate to remove these impediments.

(4) (new; Darjaven Vestnik, issue 12 of 2021) Where there is a material impediment to resolvability of the group, stemming from the circumstances under Article 29, paragraph 4 in respect to a group entity, the group-level resolution authority, after consulting the resolution authority of the relevant resolution entity and resolution authorities of its subsidiary institutions, shall notify the EU parent undertaking of the assessment of this impediment.

(5) (previous paragraph 4; amended, Darjaven Vestnik, issue 12 of 2021) Within four months of the date of receipt of the report under paragraph 2, the EU parent undertaking may object reasonably and propose to the group-level resolution authority alternative measures to those recommended in the report under paragraph 2 to remedy the material impediments.

(6) (new; Darjaven Vestnik, issue 12 of 2021; amended; Darjaven Vestnik, issue 25 of 2022) Where the impediments to resolvability identified in the report under paragraph 2 are due to the circumstances under Article 29, paragraph 4 in respect to a group entity, the EU parent undertaking shall, within two weeks of the date of receipt of a notification under paragraph 4, propose to the group-level resolution authority possible measures and the timeline for their implementation to ensure that the group entity complies with the requirements referred to in Articles 70 or 70a expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, for investment firms under Article 9a, paragraph 1 of the Law on Markets in Financial Instruments, respectively, expressed as a percentage of the applicable requirement laid down in Article 11(1) of Regulation (EU) 2019/2033, multiplied by 12.5, and, where applicable, with the combined buffer requirement, and with the requirements under Article 70 or 70a expressed as a percentage of the total exposure measure referred to in Articles 429 and 429a of Regulation (EU) No 575/2013.

(7) (new; Darjaven Vestnik, issue 12 of 2021) The timeline under paragraph 6 shall take into account the circumstances which have led to the emergence of the material impediments to resolvability of the group. The group-level resolution authority shall assess whether the measures proposed by the EU parent undertaking effectively address or remove the material impediment.

(8) (previous paragraph 7; amended, Darjaven Vestnik, issue 12 of 2021) The group-level resolution authority shall communicate each measure proposed by the EU parent undertaking to the consolidating supervisor, to EBA, to resolution authorities of the subsidiaries and to the resolution authorities of the Member States in which significant branches are located, insofar as is relevant to them.

(9) (previous paragraph 6; Darjaven Vestnik, issue 12 of 2021) The group-level resolution authority together with the resolution authorities of the subsidiaries, after consulting the competent authorities and the resolution authorities of Member

States in which significant branches are located, shall do everything within its power to reach a joint decision within the resolution college regarding:

1. the identification of the material impediments;

2. (amended; Darjaven Vestnik, issue 12 of 2021) the assessment of the measures proposed by the European Union parent undertaking in order to address or remove the impediments;

3. the assessment of the measures required by the resolution authorities in order to address or remove the impediments.

(10) (amended; Darjaven Vestnik, issue 37 of 2019; previous paragraph 7; amended; Darjaven Vestnik, issue 12 of 2021) In assessing the measures under paragraph 9, items 2 and 3, the group-level resolution authority shall take into account the potential impact of the measures in the Member States where the group operates.

(11) (previous paragraph 8; amended, Darjaven Vestnik, issue 12 of 2021) The joint decision under paragraph 9 shall be reached within four months of the submission of the objection by the EU parent undertaking under paragraph 5. Where no objection is submitted, the joint decision shall be taken within a month after the expiry of the four-month period under paragraph 5.

(12) (new; Darjaven Vestnik, issue 12 of 2021) The joint decision on the impediments to resolvability stemming from the circumstances under Article 29, paragraph 4 in respect to a group entity shall be taken within two weeks from the submission of the proposal by the EU parent undertaking under paragraph 6.

(13) (previous paragraph 9; amended, Darjaven Vestnik, issue 12 of 2021) The group-level resolution authority shall provide to the European Union parent undertaking the reasoned joint decision under paragraph 9, paragraph 12, respectively.

(14) (previous paragraph 10; amended; Darjaven Vestnik, issue 12 of 2021) Until the expity of the timeframe under paragraph 11, paragraph 12, respectively, the group-level resolution authority may ask EBA for assistance in reaching a joint decision under paragraph 9 or paragraph 12, respectively, in accordance with Article 31 (2) (c) of Regulation (EU) No 1093/2010.

(15) (previous paragraph 11; amended, Darjaven Vestnik, issue 12 of 2021) In the absence of a joint decision within the period referred to in paragraph 11 or paragraph 12, respectively, the group-level resolution authority shall make its own decision on the appropriate measures to be taken in accordance with Article 29, paragraph 6, to be taken at the group level.

(16) (previous paragraph 12; amended; Darjaven Vestnik, issue 12 of 2021) The decision under paragraph 15 shall be fully reasoned and shall take into account the views and reservations of the other resolution authorities.

(17) (previous paragraph 13; amended; Darjaven Vestnik, issue 12 of 2021) If, by the end of the period under paragraph 11, paragraph 12, respectively, a resolution authority under paragraph 1 has referred a matter related to the undertaking of measures provided for in Article 29, paragraph 6, items 7, 8 or 11 to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the group-level

resolution authority shall defer its decision and await any decision that EBA may take in accordance with Article 19, paragraph 3 of that Regulation, and consequently take its decision in accordance with the decision of EBA. If EBA does not decide on the matter within a month, the decision of the group-level resolution authority shall apply.

(18) (amended; Darjaven Vestnik, issue 37 of 2019; previous paragraph 14; amended; Darjaven Vestnik, issue 12 of 2021) In the absence of a joint decision in the period under paragraph 11, paragraph 12, respectively, the group-level resolution authority may refer to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010 a matter on taking any measures according to the legislation of a Member State, similar to the measures referred to in Article 29, paragraph 6, items 7, 8 or 11, when a resolution authority of a subsidiary makes its own decision.

(19) (previous paragraph 15; amended, Darjaven Vestnik, issue 12 of 2021) The joint decision referred to in paragraph 9 and the decisions referred to in paragraphs 15 and 17 shall be recognised as conclusive.

Powers to Address or Remove Impediments to Group Resolvability, Where the BNB, the Commission, Respectively, Is a Resolution Authority of a Subsidiary

Article 31. (1) (amended; Darjaven Vestnik, issue 12 of 2021) The Bulgarian National Bank, the Commission, respectively, as a resolution authority for an institution licensed in the Republic of Bulgaria, which is a subsidiary of a European Union parent undertaking shall participate together with the group-level resolution authority and the resolution authorities or other subsidiaries of the group in considering the assessment to resolvability under Article 27 within the resolution college in order to reach a joint decision on the application of the measures identified in accordance with Article 29 in relation to all resolution entities and their subsidiaries that are entities under Article 1, paragraph 1 and part of the group.

(2) (amended; Darjaven Vestnik, issue 12 of 2021) In the cases under paragraph 1, the Bulgarian National Bank, the Commission, respectively, shall submit to the group-level resolution authority its views and reservations on substantive impediments to resolvability of the group and resolution groups where the group includes more than one resolution group, as well as on the assessment of the measures proposed by the European Union parent undertaking and on possible measures for addressing and removing the impediments at a group level.

(3) (amended; Darjaven Vestnik, issue 12 of 2021) In the absence of a joint decision within the group resolution college, the BNB, the Commission, respectively, may until the expiry of the term under Article 30, paragraph 11, paragraph 12, respectively, refer to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010 a matter on taking measures under Article 29, paragraph 6, items 7, 8 or 11.

(4) (amended; Darjaven Vestnik, issue 12 of 2021) In the absence of a joint decision within the period under Article 30, paragraph 11, paragraph 12, respectively,

the BNB, the Commission, respectively, as a resolution authority for a subsidiary that is a resolution entity, shall take its own decision on appropriate measures under Article 29, paragraph 6, to be taken at a resolution group level.

(5) (amended; Darjaven Vestnik, issue 12 of 2021) The decision under paragraph 4 shall be fully reasoned and take into account the views and reservations of the resolution authorities of the other entities of the same resolution group and the group-level resolution authority. The decision shall be provided to the resolution entity and the relevant resolution authority.

(6) (amended; Darjaven Vestnik, issue 12 of 2021) If, upon expiry of the period under Article 30, paragraph 11, paragraph 12, respectively, the resolution authority under paragraph 1 has referred the matter for taking measures under Article 29, paragraph 6, items 7, 8 or 11 to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the BNB, the Commission, respectively, as a resolution authority for a subsidiary that is a resolution entity, shall defer its decision and await the decision that EBA may take in accordance with Article 19, paragraph 3 of Regulation (EU) No 1093/2010 and consequently shall take a decision in accordance with the EBA decision. In the absence of an EBA decision within one month, the decision of the resolution authority of the resolution entity shall apply.

(7) (new; Darjaven Vestnik, issue 12 of 2021) In the absence of a joint decision within the period under Article 30, paragraph 11, paragraph 12, respectively, the BNB, the Commission, respectively, as a resolution authority for a subsidiary that is not a resolution entity, shall take its own decision on appropriate measures under Article 29, paragraph 6, to be taken by the subsidiary at an individual level.

(8) (new; Darjaven Vestnik, issue 12 of 2021) The decision under paragraph 7 shall be fully reasoned and take into account the views and reservations of the group-level resolution authority and the other resolution authorities. The Bulgarian National Bank, the Commission, respectively, shall provide the decision to the subsidiary, to the resolution entity of the same resolution group, to the resolution authority of this resolution entity and, where different, to the group-level resolution authority.

(9) (new; Darjaven Vestnik, issue 12 of 2021) If, upon expiry of the period under Article 30, paragraph 11, paragraph 12, respectively, a resolution authority has referred a matter for taking measures under Article 29, paragraph 6, items 7, 8 or 11 to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the BNB, the Commission, respectively, as a resolution authority for a subsidiary that is not a resolution entity, shall defer its decision and await the decision that EBA may take in accordance with Article 19, paragraph 3 of Regulation (EU) No 1093/2010 and consequently shall take a decision in accordance with the EBA decision. In the absence of an EBA decision within one month, with regard to the subsidiary that is not a resolution entity, the decision of the BNB, the Commission, respectively, shall apply.

(10) (previous paragraph 7; amended; Darjaven Vestnik, issue 12 of 2021) The decisions under paragraphs 4, 6 and 7 shall be recognised as conclusive.

Powers to Address and Remove Impediments to Resolvability When a Significant Branch Is Established in the Republic of Bulgaria

Article 32. When a significant branch of an institution of a group with a European Union parent undertaking is established in the Republic of Bulgaria, the BNB, the Commission, respectively, shall participate in consultations initiated by the group-level resolution authority insofar as is relevant to the significant branch related to:

1. (amended; Darjaven Vestnik, issue 12 of 2021) reaching a decision in the resolution college in connection with the identification of substantive impediments to resolvability of the group and of all resolution entities and their subsidiaries that are entities under Article 1, paragraph 1 and part of the group;

2. the assessment of the measures proposed by the European Union parent undertaking in order to address or remove the impediments;

3. the assessment of the measures required by the resolution authorities in order to address or remove the impediments.

Powers of the Competent Authority to Address and Remove Impediments to Resolvability

Article 33. Where the BNB, the Commission, respectively, is a supervisory authority in respect of a subsidiary licensed in the Republic of Bulgaria, which is part of a group with a European Union parent undertaking, it shall participate in consultations initiated by the group-level resolution authority on reaching a decision within the resolution college on:

1. (amended; Darjaven Vestnik, issue 12 of 2021) identification of substantive impediments to resolvability of the group and of all resolution entities and their subsidiaries that are entities under Article 1, paragraph 1 and part of the group;

2. the assessment of the measures proposed by the European Union parent undertaking in order to address or remove impediments;

3. the assessment of the measures requested by the resolution authorities in order to address or remove impediments.

Chapter Four
INTRA-GROUP FINANCIAL SUPPORT

Intra-Group Financial Support Agreement

Article 34. (1) An institution under Article 1, paragraph 1, items 1 and 2, which is a parent institution in a Member State or from the European Union or a subsidiary within the group or entities referred to in Article 1, paragraph 1, items 3, 4 and 5, may enter into an agreement with other entities of the group covered by the scope of

consolidated supervision over the parent undertaking and registered in other Member States or third countries to provide financial support to the parent undertaking or subsidiary that meets the conditions for early intervention pursuant to Article 44, provided that the conditions laid down in this Chapter are also met.

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

(3) An intra-group financial support agreement shall not constitute a prerequisite:

1. to provide intra-group financial support from the entity referred to in Article 1, paragraph 1, items 1–5 to another group entity that experiences financial difficulties, if the entity referred to in Article 1, paragraph 1, items 1–5 decides to do so on a case-by-case basis and according to the group policy if it does not represent a risk for the whole group;

2. to operate in a Member State.

(4) The intra-group financial support agreement may:

1. cover one or more subsidiaries of the group and may provide for financial support from the parent undertaking to subsidiaries, from subsidiaries to the parent undertaking, between subsidiaries of the group that are parties to the agreement, or any combination thereof;

2. provide for financial support in the form of a loan, the provision of guarantees, the provision of assets for use as collateral or any combination of these forms of financial support in one or more transactions, including between the beneficiary of the support and a third party.

(5) Where in accordance with the terms of the intra-group financial support agreement, a group entity agrees to provide financial support to another group entity, the agreement may include a reciprocal agreement by the group entity receiving the support to provide financial support to the group entity providing the support.

(6) The intra-group financial support agreement shall specify the rules for calculating the amount of the consideration for any transaction made under it. These rules shall include a requirement that the amount of the consideration shall be determined at the time of provision of financial support.

(7) The agreement, including the rules under paragraph 6 and the other terms, shall comply with the following principles:

1. each party shall act freely in entering into the agreement;

2. in entering into the agreement and in determining the amount of the consideration for the provision of financial support, each party acting in its own best interest which may take into account any direct and indirect benefits that may accrue to any party as a result of provision of the financial support;

3. each party providing financial support obtains full access to relevant information from any party receiving support prior to determination of the amount of consideration and prior to any decision to provide financial support;

4. the amount of the consideration may be consistent with the information which is not available on the market, but is available for the party providing financial support, because of the fact that this party is part of the same group as the party receiving financial support;

5. the rules for the calculation of the amount of consideration under paragraph 6 for the provision of financial support are not bound to take into account any anticipated temporary impact on market prices arising from events external to the group.

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

(9) Any right, claim or action arising from the intra-group financial support agreement may be exercised only by the parties to the agreement, excluding third parties.

Review of a Proposed Agreement by the BNB, the Commission, Respectively, in Its Capacity as a Consolidating Supervisor

Article 35. (1) The parent institution from the European Union, where it is subject to supervision on a consolidated basis in the Republic of Bulgaria, shall submit to the BNB, the Commission, respectively, in its capacity as a consolidating supervisor, an application for authorisation of any intra-group financial support agreement proposed pursuant to Article 34. The application shall contain the text of the proposed agreement and identify the group entities that propose to be parties.

(2) The consolidating supervisor shall forward without delay the application to the competent authorities of each subsidiary that proposes to be a party to the agreement, with a view of reaching a joint decision within a multilateral procedure.

(3) In accordance with the procedure laid down in paragraphs 5–7, the consolidating supervisor shall:

1. grant authorisation for the conclusion of the proposed agreement, if it meets the requirements set out in Article 38;

2. prohibit the conclusion of the proposed agreement, if it is considered to be inconsistent with the requirements of Article 38.

(4) The consolidating supervisor shall take appropriate action within its powers to reach a joint decision with the competent authorities of the subsidiaries within four months of the date of receipt of the application, on whether the proposed agreement meets the conditions laid down in Article 38, taking into account the potential impact, including on the capital market, and fiscal consequences, of the execution of the agreement in the Republic of Bulgaria and in all Member States where the group operates. The joint decision shall be fully reasoned and shall be provided to the applicant by the consolidating supervisor.

(5) The consolidating supervisor may request EBA to assist in reaching a joint decision under paragraph 4 in accordance with Article 31 (c) of Regulation (EU) No 1093/2010.

(6) In the absence of a joint decision within the period under paragraph 4, the consolidating supervisor shall make its own decision on the application. The decision shall be fully reasoned and shall take into account the views and reservations of the other competent authorities. The decision shall be provided by the consolidating supervisor to the applicant and the other competent authorities.

(7) If within the period under paragraph 4 any of the competent authorities has referred the matter to EBA, the consolidating supervisor shall defer its decision and await any decision that EBA may take in one month in accordance with Article 19, paragraph 3 of Regulation (EU) No 1093/2010. In this case, the consolidating supervisor shall take a decision in accordance with the decision of EBA. If EBA has not acted within one month, the decision of the consolidating supervisor shall apply.

Participation of the BNB, the Commission, Respectively, in Reviewing the Proposed Agreement in Their Capacity as a Competent Authority of a Subsidiary

Article 36. (1) The Bulgarian National Bank, the Commission, respectively, in its capacity as a competent authority of an institution which is a subsidiary of a European Union parent undertaking, shall participate within its powers together with the consolidating supervisor and the other competent authorities in the procedure for reaching a joint decision for approval of the proposed intra-group financial support agreement according to the terms and conditions of Article 35, paragraph 4.

(2) In the absence of a joint decision, the competent supervisory authority of the institution which is a subsidiary of a European Union parent undertaking may ask assistance from EBA within the period in Article 35, paragraph 4.

Approval of the Proposed Agreement by Shareholders

Article 37. (1) Any proposed intra-group financial support agreement, which has as a party entity referred to in Article 1, paragraph 1, items 1–5 and for which authorisation has been granted by the consolidating supervisor, shall be subject to approval by the general meeting of the shareholders of the entity as a condition for its entry into force with respect to this party.

(2) The intra-group financial support agreement shall be valid in respect of the party under Article 1, paragraph 1, items 1–5, which is a party to the agreement only if the general meeting of its shareholders or partners have authorised the management body to make a decision to provide or receive financial support in accordance with the terms and conditions of the agreement and the terms provided in this Chapter.

(3) The management body of each entity referred to in Article 1, paragraph 1, items 1–5 that is a party to an agreement shall report annually to the general meeting

of the shareholders on the execution of the agreement, and of any decision taken under the agreement.

(4) The signed intra-group financial support agreements and any changes thereto shall be submitted to the BNB, the Commission, respectively.

Conditions for Intra-Group Financial Support

Article 38. The entity referred to in Article 1, paragraph 1, items 1–5 can provide financial support to another group entity in accordance with Article 34 only if all of the following conditions are met:

1. there is a reasonable prospect that the support provided significantly redresses the financial difficulties of the group entity receiving the support;

2. the provision of financial support has the objective of preserving or restoring the financial stability of the group as a whole or any of the entities of the group and is in the interests of the group entity providing the support;

3. the financial support is provided on clearly defined terms, including consideration in accordance with Article 34, paragraph 7;

4. there is a reasonable prospect, on the basis of the information available to the management body of the person providing financial support at the time when the decision to grant financial support is taken, that the consideration for the support will be received and, if the support is given in the form of a loan, that the loan will be reimbursed, by the group entity receiving the support; if the support is given in the form of a guarantee or any form of collateral, the same condition shall apply to the liability arising for the recipient if the guarantee or the collateral is enforced;

5. the provision of the financial support would not jeopardise the liquidity or solvency of the entity providing the support;

6. the provision of the financial support would not create a threat to financial stability in the Republic of Bulgaria;

7. the entity providing the support complies at the time the support is provided with the capital or liquidity and any regulatory requirements imposed with a statutory or administrative act of the BNB, the Commission, respectively, and the provision of the financial support shall not cause infringement of those requirements, unless authorised by the BNB, the Commission, respectively;

8. (amended; Darjaven Vestnik, issue 106 of 2018; amended, Darjaven Vestnik, issue 25 of 2022) the entity providing the support complies, at the time when the support is provided, with the requirements relating to large exposures laid down in Regulation (EU) No 575/2013 and in the Ordinance under Article 73, paragraph 7 of the Law on Credit Institutions, where the entity is a bank; the provision of the financial support shall not cause infringement of those requirements, unless authorised by the BNB;

9. the provision of the financial support would not undermine the resolvability of the entity providing the support.

Decision to Provide and Receive Financial Support

Article 39. (1) The decision to provide or receive intra-group financial support in accordance with the agreement shall be taken by the management body of the entity referred to in Article 1, paragraph 1, items 1, 2, 3, 4 or 5, providing, receiving respectively, the support.

(2) The decision under paragraph 1 to provide financial support shall be reasoned and shall indicate the objective of the proposed financial support and how the provision of financial support complies with the conditions laid down in Article 38.

Right of Opposition of the BNB, the Commission, Respectively, Where Support Is Provided by a Regulated Entity

Article 40. (1) Before providing support in accordance with the intra-group financial support agreement, the entity referred to in Article 1, paragraph 1, items 1–5 as a subject of a group that intends to provide financial support shall notify:

1. the Bulgarian National Bank, the Commission, respectively, as a competent authority;

2. the consolidating supervisor, if different from authorities referred to in items 1 and 3;

3. the competent authority of the group entity receiving financial support if different from the authorities referred to in items 1 and 2;

4. the European Banking Authority.

(2) The notification under paragraph 1 shall include the reasoned decision in accordance with Article 39 and details of the proposed financial support. In addition to the notification, a copy of the intra-group financial support agreement shall be provided.

(3) Within five business days from the date of receipt of the notification under paragraph 1 and applications under paragraph 2, the BNB, the Commission, respectively, may, through a reasoned decision, permit, prohibit or restrict the provision of financial support, if it considers that the conditions for intra-group financial support under Article 38 have not been met.

(4) The decision of the BNB, the Commission, respectively, under paragraph 3 shall be immediately notified to:

1. the consolidating supervisor;

2. the competent authority of the group entity receiving support;

3. the European Banking Authority.

(5) If the BNB, the Commission, respectively, does not prohibit or restrict the financial support within the period indicated in paragraph 3, or has agreed before the end of that period to the support, the financial support may be provided in accordance with the terms submitted to the competent authority.

(6) The decision of the management body of the entity for the provision of financial support shall be communicated to the authorities under paragraph 1.

Notification Obligations Where the BNB, the Commission, Respectively, Is a Group-Level Consolidating Supervisor

Article 41. (1) Where the BNB, the Commission, respectively, as a group-level consolidating supervisor takes a decision under Article 40, paragraph 3 or is informed about the decision of a competent authority for authorisation, prohibition or restriction of the financial support for a group entity, it shall immediately communicate the relevant decision with the members of the supervisory college and the members of the resolution college.

(2) Where the consolidating supervisor at a group level has been informed about the decision of the management body of the group entity to provide financial support, it shall communicate promptly this decision to other members of the supervisory college and the members of the resolution college.

Right of Opposition of the BNB, the Commission, Respectively, on the Prohibition or Restriction of Financial Support

Article 42. (1) Where the BNB, the Commission, respectively, as a competent authority has objections against the decision of the competent authority of another Member State to prohibit or restrict financial support to the entity pursuant to Article 1, paragraph 1, items 1–5, it may, within two days of receipt of the information on the decision, refer the matter to EBA and request its assistance in accordance with Article 31 of Regulation (EU) No 1093/2010.

(2) The Bulgarian National Bank, the Commission, respectively, may exercise the right under paragraph 1 and where it is a consolidating supervisor, on decisions to prohibit and restrict financial support for subsidiaries of institutions and entities referred to in Article 1, paragraph 1, items 4 and 5.

(3) If the competent authority of another Member State supervising a group entity, which intends to provide intra-group financial support, restricts or prohibits its provision to an entity referred to in Article 1, paragraph 1, items 1–5 and where the group recovery plan in accordance with Article 8 makes reference to intra-group financial support, the BNB, the Commission, respectively, may initiate or require a reassessment of the group recovery plan pursuant to Article 10, or where a recovery plan is drawn up on an individual basis, to require the institution to submit a revised recovery plan.

Disclosure

Article 43. (1) The entities referred to in Article 1, paragraph 1, items 1–5 which are part of a group, shall disclose on their website whether they have entered into an intra-group financial support agreement under Article 34, and shall make a description of the general terms of any such agreement and the names of group entities that are parties to it, and shall update this information at least annually.

(2) In the cases under paragraph 1, Articles 431–434 of Regulation (EU) No 575/2013 shall apply.

Chapter Five
EARLY INTERVENTION

Early Intervention Measures

Article 44. (1) (amended; Darjaven Vestnik, issue 25 of 2022) The relevant competent authority under the Law on Credit Institutions or the Law on Markets in Financial Instruments may apply the measures under paragraph 3, where based on an assessment it determines that the institution does or could infringe in the near future the requirements of Regulation (EU) No 575/2013, Regulation (EU) 2019/2033, the Law on Credit Institutions, the Law on Markets in Financial Instruments or their implementing acts due to the rapidly deteriorating financial condition of the institution, including as a result of the threatened liquidity, a rapidly increasing level of leverage, of non-performing loans or of credit concentrations. The assessment shall be based on a set of indicators established by an ordinance of the relevant competent authority, which may include an indicator taking into account the availability of own funds exceeding the minimum requirement to the institution with no less than 1.5 percentage points.

(2) The implementation of measures under this Chapter shall not limit and replace the possibility of applying supervisory measures under Chapter Eleven, Section VI of the Law on Credit Institutions and under the Law on Markets in Financial Instruments.

(3) In the cases under paragraph 1, the competent authority may:

1. require the institution to implement one or more of the arrangements and measures provided for in the recovery plan of the institution; when the circumstances that led to the early intervention measures are different from the assumptions set out in the initial recovery plan, the competent authority shall require the institution to update the recovery plan and within a specified timeframe to implement one or more of the arrangements and measures provided for in the updated plan;

2. require the institution to examine and assess the situation, identify measures to overcome any problems identified and draw up an action programme to overcome these problems and a timetable for its implementation;

3. (amended; Darjaven Vestnik, issue 15 of 2018) issue a written order to the institution to convene a general meeting of shareholders or partners, setting the agenda for the general meeting to adopt certain decisions; if within the period specified by the competent authority the institution does not convene a general meeting of the shareholders, the competent authority may convene such a meeting under Article 103, paragraph 2, item 2 of the Law on Credit Institutions, or pursuant to

Article 276, paragraph 1, item 2 of the Law on Markets in Financial Instruments, respectively;

4. (amended; Darjaven Vestnik, issue 15 of 2018) require one or more members of the management body and members of senior management of the institution to be removed from office or replaced if these persons do not meet the requirements of Articles 10 and 11 of the Law on Credit Institutions, or Articles 12 and 13 of the Law on Markets in Financial Instruments, respectively, and other regulatory requirements;

5. require the institution to draw up a plan for negotiation of debt restructuring with a particular creditor or all of its creditors according to the recovery plan;

6. require changes in the institution's business strategy;

7. require changes in the legal and operational structure of the institution;

8. require and receive, including through on-site inspections examinations, all the information necessary in order to update the resolution plan of the institution and prepare for the possible resolution of the institution, including for the purposes of valuation of the assets and liabilities under Article 55.

(4) (amended, Darjaven Vestnik, issue 97 of 2017, effective as of 5 December 2017) The measures under paragraph 3 in respect of a bank shall be applied by a decision of the BNB Governing Council on a proposal by the Deputy Governor in charge of the Banking Supervision Department, specifying the appropriate deadline for their execution which allows to assess the effectiveness of their implementation.

(5) Where it is identified that conditions for the implementation of early intervention measures under paragraph 1 have been met for a bank, the Deputy Governor in charge of the Banking Supervision Department, shall inform promptly the Governing Council of the BNB.

(6) (amended, Darjaven Vestnik, issue 97 of 2017, effective as of 5 December 2017) The measures under paragraph 3 in respect of an investment firm shall be applied by the Commission on a proposal by the Deputy Chairman in charge of the Investment Activity Supervision Department, specifying the appropriate deadline for their execution which allows to assess the effectiveness of their implementation.

(7) Where it is identified that conditions for the implementation of early intervention measures under paragraph 1 have been met for an investment firm, the Deputy Chairman in charge of the Investment Activity Supervision Department shall promptly inform the Commission.

(8) In the cases under paragraphs 5 and 7, the relevant resolution authority may require the institution to contact potential purchasers in order to prepare for the resolution of the institution, subject to the conditions laid down in Article 59, paragraph 3, and the provisions on confidentiality provided for in Article 116.

Removal of Members of the Management Body and Senior Management

Article 45. (1) The competent authority may require the removal of some or all members of the management body of the institution and persons authorised to

manage and represent the institution or persons from the senior management in the following cases:

1. significant deterioration in the financial situation of the institution;

2. where there are serious infringements of laws or regulations or of the statutes of the institution or its internal rules; or

3. when other measures taken in accordance with Article 44 are not sufficient to improve the financial situation.

(2) The appointment of a new management body or its individual members, and the appointment of new members of senior management in the case of paragraph 1 and Article 44, paragraph 3, item 4 shall be done with the consent or approval from the competent authority and, where applicable, subject to the requirements and procedures of the Law on Credit Institutions, the Law on Markets in Financial Instruments, respectively.

Temporary Administrator

Article 46. (1) Where the competent authority under the Law on Credit Institutions, the Law on Markets in Financial Instruments, respectively, believes that the implementation of the measures under Article 44, paragraph 3, item 4 and Article 45 is insufficient to improve the financial condition of the institution or the branch of the institution from a third country or for the elimination of the established violations, it may appoint one or more persons as temporary administrators to the institution.

(2)(amended; Darjaven Vestnik, issue 15 of 2018) A temporary administrator shall be an individual who at the discretion of the competent authority has the qualifications, ability and knowledge required to carry out his or her functions and tasks, and meets the requirements of Article 11, paragraph 1, item 1, and items 3 to 9 of the Law on Credit Institutions, Article 13, paragraphs 1, 2, 3 and 4 of the Law on Markets in Financial Instruments, respectively. The temporary administrator shall not have relations with the institution or its debtor which give rise to justifiable doubts to his or her impartiality.

(3) Information and documents which prove fulfilment of the requirements under paragraph 2 shall be determined by a BNB ordinance, ordinance of the Commission, respectively.

(4) The temporary administrator shall receive for his work remuneration at the expense of the institution whose amount is determined by the competent authority.

(5) (amended; Darjaven Vestnik, issue 15 of 2018) Upon the appointment of a temporary administrator, the requirement for the approval under Article 11, paragraph 3 of the Law on Credit Institutions and Article 15 of the Law on Markets in Financial Instruments shall not apply.

(6) (amended; Darjaven Vestnik, issue 37 of 2019) The competent authority may appoint a temporary administrator either to work with the management body or to replace temporarily the management body of the institution.

(7) Upon the appointment of a temporary administrator to work together with the management body of the institution, with the decision for appointment the competent authority shall determine the role, duties and powers of the temporary administrator, as well as requirements to the management body of the institution to consult with him or her or to obtain his or her consent prior to taking specific decisions or to take specific actions.

(8) The competent authority shall promptly deliver to the institution the act on the appointment of a temporary administrator and make it public on its website where he or she has the power to represent the institution. The appointment of a temporary administrator with powers to represent the institution shall be announced to the Commercial Register at the request of the competent authority.

(9) In appointing a temporary administrator to replace the management body of the institution, with the act of appointment, the competent authority shall define the powers which may include some or all of the powers of the management body of the institution according to its statutes and applicable law, including the power to exercise some or all of the administrative functions of the management body of the institution.

(10) With the act of appointment, the competent authority shall determine the tasks of the temporary administrator, which may include ascertaining the financial position of the institution, managing the business or part of the activities of the institution in order to preserve or restore the financial position of the institution and taking measures to restore the sound and prudent management of the institution's activity.

(11) (amended; Darjaven Vestnik, issue 37 of 2019) The competent authority may at any time terminate the powers of the temporary administrator and appoint another in his or her place, as well as to alter his or her powers, duties and other conditions of the appointment. The act of the competent authority in such cases is not subject to appeal.

(12) The competent authority may, with the act of appointment and with any modification of the terms of appointment, require certain actions of the temporary administrator to be carried out only after its prior consent. The temporary administrator can convene a general meeting of shareholders or members and set the agenda only with the prior consent of the competent authority.

(13) The competent authority may require the temporary administrator at the end of the term of his or her appointment and periodically according to a schedule determined by it to prepare reports on the financial position of the institution and the actions taken during his or her mandate.

(14) The temporary administrator shall be appointed for a term not exceeding one year. The competent authority may extend this period if the conditions for the appointment under paragraph 1 continue to be met, as in this case justifying its decision to the shareholders.

(15) The appointment of a temporary administrator under this Article shall not prejudice the other rights of the shareholders.

(16) The temporary administrator shall exercise its powers with due diligence. He or she shall be liable only for damages caused intentionally.

(17) Where a temporary administrator has been appointed, he or she can perform the functions of a conservator pursuant to the Law on Credit Institutions, the Law on Markets in Financial Instruments, respectively.

Coordination of Early Intervention Measures and the Appointment of a Temporary Administrator to Groups When the BNB, the Commission, Respectively, Is a Consolidating Supervisor

Article 47. (1) Where the BNB, the Commission, respectively, is a consolidating supervisor and the conditions under Article 44, paragraph 1 or Article 46, paragraph 1 are met in relation to the European Union parent undertaking, it shall notify EBA and consult the other competent authorities within the supervisory college.

(2) In the cases under paragraph 1 following consultation with the members of the supervisory college, the relevant consolidating supervisor under paragraph 1 shall apply a measure under Article 44, paragraph 3 and Article 46, paragraph 1 in respect of the European Union parent undertaking, taking into account the potential impact of the implementation of the measure on the group entities in other Member States. The consolidating supervisor shall notify the members of the supervisory college and EBA of this decision.

(3) The consolidating supervisor under paragraph 1 shall participate in consultations with the competent authority of a subsidiary registered in another Member State where the relevant competent authority has notified the consolidating supervisor that the conditions for the implementation of early intervention measures or the appointment of a temporary administrator regarding this subsidiary are met.

(4) In the cases under paragraph 3, the consolidating supervisor may assess the potential impact of the imposition of early intervention measures or the appointment of a temporary administrator in respect of the subsidiary, the group or the group entities in other Member States. The consolidating supervisor shall communicate to the competent authority under paragraph 3 the results of the assessment within three days of receipt of the notification.

(5) Where at least two competent authorities of group entities intend to implement early intervention measures or to appoint a temporary administrator in respect of more than one institution in the group, the consolidating supervisor under paragraph 1 together with the competent authorities of these institutions shall evaluate the possibility of appointing the same temporary administrator for all affected group entities or to coordinate implementation of early intervention measures in order to facilitate solutions restoring the financial position of the institution concerned. The assessment shall take the form of a joint decision to be taken within five days from the date when the consolidating supervisor has received the notification under

paragraph 3. The consolidating supervisor shall provide to the European Union parent undertaking the joint decision with the corresponding reasons.

(6) The consolidating supervisor or a competent authority from the college may request assistance from EBA in accordance with Article 31 of Regulation (EU) No 1093/2010 to reach an agreement under paragraph 5.

(7) In the absence of a joint decision within the period under paragraph 5, the consolidating supervisor under paragraph 1 shall take an individual decision on the appointment of a temporary administrator and on application of the measure under Article 44, paragraph 3, if it intended to implement such measures in relation to the entity under its supervision.

(8) In case of disagreement with the decision, which was notified by the competent authority in relation to early intervention measures or the appointment of a temporary administrator on a subsidiary or when a joint decision under paragraph 5 is not reached, the consolidating supervisor may, according to Article 19, paragraph 3 of Regulation (EU) No 1093/2010, refer the matter to EBA with regard to:

1. the implementation of the elements of the recovery plan corresponding to items 4, 10, 11 and 19 of Annex No 1;

2. implementation of measures within the meaning of Article 44, paragraph 3, items 5 and 7.

Coordination of Early Intervention Measures and the Appointment of a Temporary Administrator to the Group When the BNB, the Commission, Respectively, Is the Competent Authority in Respect of a Subsidiary

Article 48. (1) Where the conditions under Article 44, paragraph 1 or Article 46, paragraph 1 are met in relation to an institution licensed in the Republic of Bulgaria, which is a subsidiary of a European Union parent undertaking, the BNB, the Commission, respectively, shall notify EBA and consult the consolidating supervisor before taking any measure under Article 44, paragraph 3 and Article 46, paragraph 1.

(2) The Bulgarian National Bank, respectively, the Commission, shall apply the measures under Article 44, paragraph 3 and Article 46, paragraph 1 based on the results of the assessment of the consolidating supervisor and shall notify the consolidating supervisor, the other members of the supervisory college and EBA about the measures implemented.

(3) Where the BNB, the Commission, respectively, and other competent authorities intend to implement early intervention measures in at least two institutions that are part of a group operating in the territory of the Republic of Bulgaria and of another Member State, the consolidating supervisor and the competent authority of an institution licensed in the Republic of Bulgaria, together with other relevant competent authorities, shall take a joint decision by assessing the possibility of appointing the same temporary administrator for all affected group entities or shall coordinate implementation of early intervention measures in order to facilitate solutions restoring the financial position of the institution concerned.

(4) The Bulgarian National Bank, the Commission, respectively, may require the assistance of EBA in accordance with Article 31 of Regulation (EU) No 1093/2010 to reach an agreement under paragraph 3.

(5) In the absence of a joint decision under paragraph 3, the BNB, the Commission, respectively, within five days shall decide on the appointment of a temporary administrator in the institution licensed in the Republic of Bulgaria, and on implementation of a measure under Article 44, paragraph 3.

(6) In case of disagreement with the decision, which was notified by the consolidating supervisor or the competent authority in relation to early intervention measures or the appointment of a temporary administrator to a European Union parent undertaking, or to another group entity, respectively, or when a joint decision under paragraph 3 is not reached, the BNB, the Commission, respectively, may, according to Article 19, paragraph 3 of Regulation (EU) No 1093/2010, refer the matter to EBA with regard to:

1. implementation of the elements of the recovery plan corresponding to the items 4, 10, 11 and 19 of Annex No 1;

2. implementation of the measures within the meaning of Article 44, paragraph 3, items 5 and 7.

Implementation of Article 19, Paragraph 3 of Regulation (EU) No 093/2010

Article 49. (1) The decisions of the BNB and the Commission under Articles 47 and 48 shall be reasoned. They shall take into account the views and reservations of other competent authorities expressed during the consultations under Article 47, paragraph 1 or Article 48, paragraph 1 or during the period under Article 47, paragraph 5 and Article 48, paragraph 5, as well as the potential impact of the decision on financial stability in the Republic of Bulgaria and the Member States concerned.

(2) Where within the consultation deadlines for reaching the joint decision, the matter of implementing the measure is referred for consideration to EBA in accordance with Article 47, paragraph 8 and Article 48, paragraph 6, decision-making shall be deferred until the time when EBA takes any decision. In this case, the BNB, the Commission, respectively, shall decide in accordance with the decision of EBA.

(3) Where EBA has not taken its decision under paragraph 2 within three days, the BNB, the Commission, respectively, shall apply its decision to the institution, for which it is the competent authority.

Chapter Six
OBJECTIVES, CONDITIONS AND GENERAL PRINCIPLES OF RESOLUTION

Resolution Objectives

Article 50. (1) When applying the resolution tools and exercising the resolution powers under this Law, resolution authorities under Article 2 or Article 3 shall have regard to the resolution objectives, and choose the tools and powers that best achieve the objectives that are relevant for the resolution for each case.

(2) The resolution objectives shall be:

1. to ensure the continuity of critical functions;

2. to avoid significant adverse effects on financial stability, in particular by preventing contagion, including to market infrastructure, and by maintaining market discipline;

3. to protect public funds by minimising reliance on extraordinary public financial support and the amount thereof;

4. to protect depositors whose deposits are guaranteed under the terms and provisions of the Law on Bank Deposit Guarantee and investors whose claims are subject to compensation under Title III, Chapter Five, Section IV of the Law on Public Offering of Securities;

5. to protect customers funds and assets.

(3) The resolution of the institution shall be done at minimum cost and avoiding loss in value, unless those costs and losses are needed to achieve the resolution objectives.

(4) The resolution objectives are of equal significance and the relevant resolution authority shall balance them depending on the nature and circumstances of each case.

Conditions for Taking a Decision on Resolution

Article 51. (1) The resolution authority under Article 2 or Article 3 shall decide to take a resolution action of an institution where all of the following conditions are met:

1. (amended; Darjaven Vestnik, issue 12 of 2021) it is found that the institution is failing or is likely to fail;

2. (supplemened; Darjaven Vestnik, issue 12 of 2021) having regards of timing and other substantive circumstances at the discretion of the resolution authority, there is no reasonable prospect that any alternative private sector measures, or supervisory actions and early intervention measures or the write down or conversion of relevant capital instruments and eligible liabilities under Article 89, paragraph 5 taken in respect of the institution, would prevent the failure within a reasonable timeframe;

3. (amended; Darjaven Vestnik, issue 91 of 2017; amended; Darjaven Vestnik, issue 12 of 2021) a resolution action is necessary in the public interest pursuant to paragraph 8.

(2) (new; Darjaven Vestnik, issue 12 of 2021) With regard to the conditions under paragraph 1, a joint report of the unit under Article 2, paragraph 2 and the BNB Banking Supervision Department, where the institution is a bank, correspondingly, a joint report of the unit under Article 3, paragraph 2 and the Investment Activity Supervision Department of the Commission, where the institution is an investment intermediary.

(3) (previous paragraph 2; Darjaven Vestnik, issue 12 of 2021) Adoption of an early intervention measure according to Article 44, paragraph 3 shall not be a condition for taking a resolution action.

(4)(previous paragraph 3; Darjaven Vestnik, issue 12 of 2021) An institution shall be deemed to be failing or likely to fail in one or more of the following circumstances:

1. the institution infringes or there are objective elements to support a determination that the institution will infringe the conditions of the license under the Law on Credit Institutions, the Law on Markets in Financial Instruments, respectively, including, but not limited, because the institution has incurred or is likely to incur losses that will deplete all or a significant amount of its own funds;

2. the value of the assets of the institution is less than the value of its liabilities or may be reasonably assumed that in the near future the value of its liabilities will exceed the value of its assets;

3. the institution is or there are objective elements to support a determination that the institution will, in the near future, be unable to pay its debts or other liabilities to its creditors as they fall due;

4. extraordinary public financial support is required except when, in order to remedy a serious disturbance in the economy of the country and to preserve financial stability, the extraordinary public financial support shall take any of the following forms:

a) a state guarantee on newly issued debt or liquidity support to the bank;

b) provision of own funds or acquisition of capital instruments at prices and on terms that do not confer an advantage upon the bank, where none of the circumstances referred to in items 1–3 or Article 90, paragraph 1 are present at the time public financial support is granted.

(5) (previous paragraph 4; amended; Darjaven Vestnik, issue 12 of 2021) The exceptions under paragraph 4, item 4 shall be applied where extraordinary public financial support meets the following conditions:

1. it is provided only with respect to solvent banks subject to the Law on State Aid and the legal framework of the European Union to state aid and after adoption of a positive decision by the European Commission;

2. it shall be of a precautionary and temporary nature and shall be proportionate to remedy the consequences of serious disturbance;

3. it shall not be used to offset losses that the bank has incurred or is likely to incur in the near future;

4. (amended; Darjaven Vestnik, issue 12 of 2021) the provision of capital under paragraph 4, item 4, letter 'b' is at the amount needed to cover the capital shortfall identified in the stress test under Article 80b of the Law on Credit Institutions, exercised for the banking system at a European Union level, as well as in the asset quality reviews or equivalent stress tests and reviews conducted by the BNB, the European Central Bank or EBA.

(6)(new; Darjaven Vestnik, issue 91 of 2017; previous paragraph 5; amended; Darjaven Vestnik, issue 12 of 2021) The support under paragraph 4, item 4, letters 'a' and 'b' shall be provided upon a decision of the Council of Ministers in compliance with the Law on State Aid and the EU state aid legal framework and following a positive decision announced by the European Commission on the basis of a motivated proposal by the Bulgarian National Bank to the Minister of Finance, containing detailed information on the fulfilment of the conditions set out in paragraph 4 and the other circumstances of importance for the provision of this support.

(7) (new; Darjaven Vestnik, issue 91 of 2017; previous paragraph 6; amended; Darjaven Vestnik, issue 12 of 2021) By virtue of the decision under paragraph 6, the Council of Ministers shall determine the form and amount of the extraordinary public financial support as well as other conditions to be met and measures to be implemented. The Minister of Finance shall be responsible for the enforcement of the Council of Minister's decision.

(8) (previous paragraph 5; Darjaven Vestnik, issue 91 of 2017; previous paragraph 7; Darjaven Vestnik, issue 12 of 2021) The resolution action in paragraph 1, item 3 shall be treated as in the public interest if the following conditions are met:

1. it is necessary for the achievement of and is proportional to one or more of the resolution objectives; and

2. winding up of the institutions under insolvency proceedings would not meet the resolution objectives to the same extent.

Liquidation of an Institution or an Entity That Is Not Subject to a Resolution Action

(new; Darjaven Vestnik, issue 12 of 2021)

Article 51a. (new; Darjaven Vestnik, issue 12 of 2021) An institution or an entity under Article 1, paragraph 1, items 3–5 of which the resolution authority under Article 2 or Article 3 has found that the conditions under Article 51, paragraph 1, items 1 and 2 are met but taking resolution actions would not be in the public interest in accordance with Article 51, paragraph 1, item 3 shall be liquidated under

insolvency proceedings, winding-up or the relevant procedure in accordance with applicable legislation.

Conditions for Resolution with Regard to Financial Institutions and Holding Companies

Article 52. (1) (supplemented; Darjaven Vestnik, issue 12 of 2021) The relevant resolution authority may take resolution actions in relation to a financial institution under Article 1, paragraph 1, item 3, when the resolution conditions laid down in Article 51, paragraph 1 are met with regard to both the financial institution and the parent undertaking, subject to consolidated supervision.

(2) (amended; Darjaven Vestnik, issue 12 of 2021) The relevant resolution authority may take a resolution action in relation to an entity referred to in Article 1, paragraph 1, items 4 and 5, when the resolution conditions under Article 51, paragraph 1 are met with regard to the entity.

(3) (amended; Darjaven Vestnik, issue 12 of 2021) Where the subsidiaries of a mixed-activity holding company are held directly or indirectly by an intermediate financial holding company, the intermediate financial holding company shall be indicated as a resolution entity in the group resolution plan. For the purposes of resolution of the group, the relevant resolution authority may take resolution actions with regard to the intermediate financial holding company but not to the mixed-activity holding company.

(4) (amended; Darjaven Vestnik, issue 12 of 2021) Subject to paragraph 3, notwithstanding the fact that an entity under Article 1, paragraph 1, items 4 and 5 does not meet the conditions for resolution under Article 51, paragraph 1, the relevant resolution authority may take resolution actions in relation to that entity, provided that:

1. the entity under Article 1, paragraph 1, items 4 or 5 is subject to resolution;

2. one or several subsidiaries of the entity under item 1 that are institutions but are not subject to resolution comply with the resolution conditions under Article 51, paragraph 1, and

3. due to the type of assets and liabilities of subsidiaries under item 2, the failure of these subsidiaries threatens the resolution group as a whole and for the resolution of such subsidiaries which are institutions or for the resolution of the relevant resolution group as a whole.

(5) For the purposes of paragraphs 2 and 4, when assessing whether the conditions under Article 51 are met, intra-group transfers of capital or losses between one or more subsidiaries which are institutions, including the write down or conversion of capital instruments may not be recognised if there is a joint agreement between the BNB, the Commission, respectively, and the relevant resolution authority.

Suspension of Certain Obligations Prior to the Exercise of Resolution Powers

(new; Darjaven Vestnik, issue 12 of 2021)

Article 52a. (new; Darjaven Vestnik, issue 12 of 2021) (1) The resolution authority under Articles 2 or 3, after consulting the competent authority, may suspend any payment or delivery obligations pursuant to any contract to which an institution or an entity referred to in Article 1, paragraph 1, items 3–5 is a party, where all of the following conditions are met:

1. it is established pursuant to Article 51, paragraph 1, item 1 that the institution or entity under Article 1, paragraph 1, items 3–5 is failing or likely to fail;

2. there is no immediately available private sector measure referred to in Article 51, paragraph 1, item 2 that would prevent the failure of the institution or entity under Article 1, paragraph 1, items 3–5;

3. the exercise of the power to suspend is deemed necessary to avoid the further deterioration of the financial conditions of the institution or entity under Article 1, paragraph 1, items 3–5;

4. the exercise of the power to suspend is either:

a) necessary to reach the determination under Article 51, paragraph 1, item 3 that there is a public interest of the resolution, or

b) necessary to choose the appropriate resolution actions or to ensure the effective application of one or more resolution tools.

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

1. systems and operators of systems designated for the purposes of the Law on Payment Services and Payment Systems or relevant legislation of a Member State;

2. CCPs authorised in the European Union pursuant to Article 14 of Regulation (EU) No 648/2012 and third-country CCPs recognised by ESMA pursuant to Article 25 of Regulation (EU) No 648/2012;

3. central banks.

(3) The resolution authority shall set the type and scope of the payment or delivery obligations, in respect of which the suspension under paragraph 1 shall be applied, having regard to the circumstances of each case, including the appropriateness of extending the suspension to deposits held by natural persons or micro, small and medium-sized enterprises, falling within the scope of the guarantee under the Law on Bank Deposit Guarantee.

(4) Where the resolution authority determines that it is appropriate to suspend eligible deposits, it shall set by the decision under paragraph 1 a maximum daily amount that can be paid at the request of the depositor. The procedure and terms for determining and paying the maximum daily amount shall be specified in a BNB ordinance.

(5) The resolution authority shall set up as short a period of suspension under paragraph 1 as possible, necessary for the purposes indicated in paragraph 1, items 3 and 4, which in any event shall not last longer than the period from the publication of a notice of suspension pursuant to Article 115, paragraph 3, item 1 to midnight of the following business day.

(6) At the expiry of the period of suspension under paragraph 5, the suspension shall cease to have effect.

(7) When exercising the power under paragraph 1, the resolution authority shall have regard to the potential impact the exercise of that power might have on the orderly functioning of financial markets and shall consider the applicable legislation to safeguard creditors' rights and equal treatment of creditors; if, as a result of the determination under Article 51, paragraph 1, item 3, insolvency proceedings are instituted to an institution or entity under Article 1, paragraph 1, items 3–5, and where appropriate, the resolution authority shall take appropriate measures to ensure adequate coordination with the relevant administrative or judicial authorities.

(8) In the cases under paragraph 1, the payment or delivery obligations of any counterparties to that contract to which an institution or an entity referred to in Article 1, paragraph 1, items 3–5 is a party shall be suspended for the same period of time.

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

(10) In exercising the power under paragraph 1, the resolution authority shall immediately notify the institution or entity under Article 1, paragraph 1, items3–5 and the bodies under Article 115, paragraph 1, items 1–6.

(11) The decision of the resolution authority on suspension of certain obligations, the terms and timeframe of the suspension shall be published in accordance with Article 115, paragraph 3, item 1.

(12) The suspension under paragraph 1 shall be without prejudice to the exercise of powers provided for by law to suspend payment or delivery obligations with the scope and duration that are larger than those under paragraphs 3–5 in respect of:

1. an institution or entity under Article 1, paragraph 1, items 3–5, prior to the determination under paragraph 1, item 1;

2. an institution or entity under Article 1, paragraph 1, items 3–5 subject to liquidation under insolvency proceedings, winding up or another procedure under the applicable law.

(13) Within the term of the suspension of payment or delivery obligations, the resolution authority may:

1. restrict secured creditors of an institution or entity from enforcing security interests in relation to any of the assets of that institution or entity under Article 1, paragraph 1, items 3–5, in which case Article 102, paragraphs 2–4 shall apply; and

2. suspend the termination rights of any party to a contract with that institution or entity under Article 1, paragraph 1, items 3–5, in which case Article 103, paragraphs 2–7 shall apply.

(14) In the event that the resolution authority has suspended certain obligations under the procedure set out in paragraph 1, it shall not exercise its powers under Articles 101–103 with respect to the institution or entity under Article 1, paragraph 1, items 3–5.

General Principles Governing Resolution

Article 53. (1) When applying resolution tools and in the exercise of the resolution powers under this Law, the resolution authority under Article 2 or Article 3 shall take decisions in accordance with the following principles:

1. the shareholders of the institution under resolution shall bear first losses;

2. (amended; Darjaven Vestnik, issue 12 of 2021) creditors of the bank under resolution shall bear losses after the shareholders with the order of priority of their claims under Article 94 of the Law on Bank Bankruptcy, respectively, creditors of the investment firm under resolution shall bear losses after the shareholders with the order of priority of their claims under Article 722, paragraph 1 and Article 722a of the Commercial Law, unless otherwise provided in this Law;

3. the members of the management body and senior management of the institution under resolution shall be dismissed, except in the cases when the retention of the management body and senior management, in whole or in part, as appropriate to the circumstances, is considered to be necessary for the achievement of the resolution objectives;

4. the resolution authority shall require the management body and senior management of the institution under resolution to provide all necessary assistance for the achievement of the resolution objectives;

5. the resolution authority shall initiate actions to seek civil, administrative or criminal liability in accordance with applicable law for persons that are responsible for the failure of the institution as a result of actions or inactions;

6. creditors of the same class shall be treated in an equitable manner, except where otherwise provided in this law;

7. no creditor shall incur greater losses than would have been incurred if the institution or the entity referred to in Article 1, paragraph 1, items 3–5 had been wound up under insolvency proceedings in accordance with the safeguards of Articles 105–107;

8. claims of depositors to the amount of the guarantee under the Law on Bank Deposit Guarantee shall be fully protected;

9. the resolution actions shall be taken in accordance with the safeguards under Chapter Seventeen.

(2) Where an institution is a group entity, the relevant resolution authorities shall apply resolution tools and exercise resolution powers in a way that minimises

the impact on other group entities and on the group as a whole and minimises the adverse effects on financial stability in the European Union and its Member States, in particular, in the states where the group operates.

(3) When applying the resolution tools and exercising the resolution powers, the BNB, the Commission and the Ministry of Finance shall comply with the European Union state aid framework, when applicable.

(4) When applying the resolution tools under Article 56, items 1–3 with regard to an institution or entity referred to in Article 1, paragraph 1, items 3–5, Article 123 of the Labour Code shall not apply.

Chapter Seven
SPECIAL MANAGEMENT

Special Manager

Article 54. (1) The resolution authority under Article 2 or Article 3 may appoint one or more natural persons for special managers to replace the management body of the institution under resolution.

(2) (amended; Darjaven Vestnik, issue 15 of 2018) The special manager shall be a natural person who at the discretion of the resolution authority has the qualifications, ability and knowledge required to carry out the assigned functions and tasks, and shall meet the requirements of Article 11, paragraph 1, item 1, and items 3 to 9 of the Law on Credit Institutions, where an institution is a bank, or the requirements of Article 13, paragraphs 1 to 4 and Article 286, paragraph 2 of the Law on Markets in Financial Instruments where the institution is an investment firm. A person appointed as a temporary administrator of the institution under the terms and conditions of Article 46, paragraph 1 or as a conservator under the Law on Credit Institutions, or the Law on Markets in Financial Instruments, respectively, may be appointed as special manager. The special manager shall not be related to the institution or its debtor by a relationship which gives rise to reasonable doubts about his or her impartiality. The information and documents proving that the requirements are met shall be determined by an ordinance of the BNB, the Commission, respectively. The special manager shall receive remuneration by the institution, the amount of which shall be determined by the resolution authority.

(3) (amended; Darjaven Vestnik, issue 15 of 2018) Upon the appointment of a special manager, the requirement for the approval under Article 11, paragraph 3 of the Law on Credit Institutions, where the institution is a bank, or Article 15 of the Law on Markets in Financial Instruments, respectively, where the institution is an investment firm, shall not apply.

(4) The appointment of a special manager shall be announced in the Commercial Register file of the institution at the request of the resolution authority and shall be disclosed to the public on its website.

(5) Upon the appointment of the special manager, the powers of the shareholders or partners and the management body of the institution shall be suspended if had not been suspended till then, and they shall be exercised by the special manager under the control of resolution authority.

(6) The special manager is obliged to take all the measures and actions necessary to achieve the resolution objectives and implement resolution actions in accordance with the decision of the resolution authority. This obligation shall override any other duty of the management body in accordance with the statutes of the institution or national law, insofar as they are inconsistent.

(7) The resolution authority may set limit to the actions of the special manager, or require that certain acts of the special manager be subject to its prior consent.

(8) The resolution authority may remove the special manager at any time.

(9) The resolution authority may require the special manager to draw up reports on the economic and financial situation of the institution and on the acts performed in the conduct of his or her duties, at the end of his or her mandate and periodically according to a schedule determined by the authority.

(10) A special manager shall be appointed for a term not exceeding one year. The resolution authority may renew this period if the conditions for his or her appointment continue to be met.

(11) Where the resolution authority takes a decision under paragraph 1 in relation to an institution affiliated to a group, it may consult with resolution authorities of other group entities for which a similar measure is provided in order to assess whether it is more appropriate to appoint the same special manager for all the entities concerned in order to facilitate decision-making to redressing financial stability of the entities concerned.

(12) A special manager shall exercise his or her powers within the limitations of this Article and with due diligence. He or she shall only be liable for damages caused intentionally.

Chapter Eight
VALUATION

Valuation for the Purposes of Resolution

Article 55. (1) (amended; Darjaven Vestnik, issue 12 of 2021) Before taking a resolution action or exercising the powers to write down or convert relevant capital instruments and eligible liabilities in accordance with Article 89, the resolution authority under Article 2 or Article 3 shall ensure execution of the valuation of the assets and liabilities of the institution or entity referred to in Article 1, paragraph 1, items 3–5 by a person independent from any public authorities, including the resolution authority, and the institution or entity. A fair, prudent and realistic valuation of assets and liabilities shall be ensured.

(2) The valuation in paragraph 1 shall be conclusive, subject to the provisions of this Article.

(3) Where an independent valuation in paragraph 1 is not possible, the resolution authority may carry out a provisional valuation of the assets and liabilities of the institution or entity referred to in Article 1, paragraph 1, items 3–5 in accordance with paragraphs 12 and 13.

(4) The objective of the valuation under paragraph 1 or paragraph 3 shall be to assess the value of the assets and liabilities of the institution or entity referred to in Article 1, paragraph 1, items 3–5 that meet the conditions for resolution.

(5) The valuation under paragraph 1 or paragraph 3 shall be designed to provide:

1. (supplemented; Darjaven Vestnik, issue 12 of 2021) information whether the conditions for the resolution under Article 51, paragraph 1 or the conditions for the write down or conversion of capital instruments and eligible liabilities under Article 89 are met;

2. if the conditions for resolution are met, data about the decision on the appropriate resolution action to be taken by the resolution authority in respect of the institution or entity referred to in Article 1, paragraph 1, items 3–5 if the conditions for resolution are met;

3. (supplemented; Darjaven Vestnik, issue 12 of 2021) when the power to write down or convert relevant capital instrument is applied by the resolution authority, data about the decision on the extent of the cancellation or dilution of the existing shares and other instruments of ownership and the extent of the write down or conversion of relevant capital instruments and eligible liabilities under Article 89;

4. (amended; Darjaven Vestnik, issue 12 of 2021) when the bail-in tool is applied by the resolution authority, data on the decision about the extent of the write down or conversion of bail-inable liabilities;

5. when the bridge institution tool or asset separation tool is applied by the resolution authority, data about the decision on the assets, rights, liabilities or other instruments of ownership to be transferred, and the decision on the value of any consideration to be paid to the institution under resolution or its shareholders or partners, or holders of other instruments of ownership;

6. when the sale of business tool is applied by the resolution authority, data about the decision on the assets, rights, liabilities or other instruments of ownership to be transferred, and to form a resolution authority understanding of what constitutes commercial terms under Article 58, paragraph 3;

7. confirmation that all losses on the assets of the institution or entity are fully recognised at the moment the resolution tools are applied or the power to write down or convert relevant capital instruments is exercised.

(6) (supplemented; Darjaven Vestnik, issue 12 of 2021) The valuation under paragraph 1 or paragraph 3 shall be based on prudent assumptions, including as to rates of default to the institution or entity referred to in Article 1, paragraph 1, items 3–5, and the severity of losses. The valuation shall not assume any potential

future provision of extraordinary public financial support or central bank emergency liquidity facility or any central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms to the institution or entity from the point at which a resolution action is taken or the power to write down or convert relevant capital instruments and eligible liabilities under Article 89 is exercised by the resolution authority.

(7) The valuation under paragraph 1 or paragraph 3 shall take into account the fact that if any resolution tool is applied:

1. (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) the resolution authority and the Investor Compensation Fund (ICF) may recover from the institution under resolution any reasonable expenses under the conditions of Article 57, paragraph 6;

2. (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) in the use of financial means of the BRF, respectively IFRF, the resolution authority referred to in Article 2, paragraph 1, or ICF, respectively, may charge interest and fees in respect of any loans or guarantees provided to the institution under resolution.

(8) The valuation under paragraph 1 or paragraph 3 shall be supplemented by the following information as appearing in the accounting books of the institution or entity referred to in Article 1, paragraph 1, items 3–5:

1. a current balance and a report on the financial position of the institution or entity;

2. an analysis and an estimate of the accounting value of the assets;

3. the list of outstanding on balance sheet and off balance liabilities of the institution or entity with an indication of the respective receivables and priority levels under the applicable insolvency law.

(9) Where appropriate, with a view to provide data referred to in paragraph 5, items 5 and 6, the information in paragraph 8, item 2 shall be supplemented by an analysis and estimate of the market value of the assets and liabilities of the institution or entity referred to in Article 1, paragraph 1, items 3–5.

(10) The valuation under paragraph 1 or 3 shall indicate the subdivision of the creditors in classes in accordance with their priority levels under the applicable insolvency law and an estimate of the treatment that each class of shareholders and creditors would have been expected to receive, if there were wound up under insolvency proceedings.

(11) The estimate under paragraph 10 shall not affect the valuation under Article 106, paragraph 1.

(12) Except in the case of paragraph 3, a provisional valuation shall be carried out also in the cases where due to the urgency it is not possible to comply fully with the requirements under paragraphs 8 and 10.

(13) The provisional valuation under paragraph 12 shall include a reasonably justified assumption about additional losses.

(14) The valuation under paragraphs 3 and 12 shall be considered to be provisional until an independent person under paragraph 1 has carried out a valuation that is fully compliant with all the requirements laid dawn in this Article. This *ex-post* conclusive valuation shall be carried out as soon as practicable. The conclusive valuation may be carried out separately from the valuation in Article 106, paragraph 1, or simultaneously with it and by the same independent person.

(15) The purpose of the *ex-post* conclusive valuation under paragraph 14 shall be:

1. to ensure that all losses on the assets of the institution or entity referred to in Article 1, paragraph 1, items 3–5 are fully recognised in the balance sheet and income statement of the institution or entity;

2. to provide data for decision-making to increase creditors' claims or to increase the value of the consideration paid while applying paragraph 16.

(16) In the event that the *ex-post* conclusive valuation, the value of net assets of the institution or entity referred to in Article 1, paragraph 1, items 3–5 is higher than the provisional valuation, the resolution authority may:

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

2. instruct a bridge institution or asset management vehicle to make a further payment of consideration as follows:

a) in respect to the transferred assets, rights and liabilities in favour of the institution under resolution, or

b) in respect of the transferred instruments of ownership in favour of shareholders, partners or holders of other instruments of ownership.

(17) (supplemented; Darjaven Vestnik, issue 12 of 2021) A provisional valuation conducted in accordance with paragraphs 3 and 12 shall be a valid basis for resolution authorities to take resolution actions, including taking control of a failing institution or entity referred to in Article 1, paragraph 1, items 3–5, or to exercise the power to write down or convert relevant capital instruments and eligible liabilities under Article 89.

(18) (supplemented; Darjaven Vestnik, issue 12 of 2021) The valuation of the assets and liabilities shall be an integral part of the decision by the resolution authority to apply a resolution tool or to exercise a resolution power, or the decision to exercise the power to write down or convert relevant capital instruments and eligible liabilities under Article 89. The valuation itself may be subject to an appeal only together with the decision in accordance with Article 117.

Selection of an Independent Valuer

(new; Darjaven Vestnik, issue 12 of 2021)

Article 55a. (new; Darjaven Vestnik, issue 12 of 2021; amended; Darjaven Vestnik, issue 25 of 2022) The terms and procedure for the selection of independent valuers for the purposes of Articles 55 and 106 by the authority under Article 2, Article 3, respectively, shall be laid down in an ordinance of the BNB, the Commission, respectively.

Chapter Nine
GENERAL PRINCIPLES OF RESOLUTION TOOLS

Resolution Tools

Article 56. Resolution tools shall be the following:
1. the sale of business tool;
2. the bridge institution tool;
3. the asset separation tool;
4. the bail-in tool.

General Principles for Resolution Tools Application

Article 57. (1) The resolution authority under Article 2 or Article 3 shall exercise enforcement powers provided in this Law for applying the resolution tools to institution or entity referred to in Article 1, paragraph 1, items 3–5, that meet the applicable conditions for resolution.

(2) (amended; Darjaven Vestnik, issue 12 of 2021) Where a resolution authority decides to apply a resolution tool to an institution or entity referred to in Article 1, paragraph 1, items 3–5, and that resolution action would result in losses for creditors or their claims being converted, it shall exercise the power to write down or convert capital instruments and eligible liabilities under Article 89 immediately before or together with the application of the resolution tool.

(3) The resolution authority may apply the resolution tools individually or in combination. Asset separation tool may only be applied in combination.

(4) When only the resolution tools referred to in Article 56, items 1 and 2 are used, and they are used to transfer only parts of the assets, rights or liabilities of the institution or entity referred to in Article 1, paragraph 1, items 3–5 under resolution, the residual part of the institution or entity from which the assets, rights or liabilities have been transferred, shall be wound up under applicable bankruptcy proceedings.

(5) The proceedings in paragraph 4 shall be done within a reasonable timeframe, having regards to the need for the institution or entity referred to in Article 1, paragraph 1, items 3–5 to provide services or facilities pursuant to Article 96 in order to enable the recipient to carry out the activities or services acquired by virtue of

that transfer, and any other reason that the continuation of the residual part of the institution or entity referred to in Article 1, paragraph 1, items 3–5 is necessary to achieve the resolution objectives or to comply with the resolution principles.

(6) (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) The resolution authorities, including the resolution authority referred to in Article 2, paragraph 1 using BRF, respectively ICF using IFRF and the Ministry of Finance may recover any reasonable expenses properly incurred in connection with the use of resolution tools or powers or government financial stabilisation tools in one of the following ways:

1. as a deduction from the consideration paid by a recipient to the institution under resolution or to the shareholders or owners of other instruments of ownership;

2. from the institution under resolution as a preferred creditor; and/or

3. from any proceeds generated as a result of the termination of the bridge institution or the asset management vehicle, as a preferred creditor.

(7) (amended; Darjaven Vestnik, issue 37 of 2019) The Bulgarian bankruptcy legislation relating to voidability or unenforceability of legal acts detrimental to creditors, including but not limited to Article 60 of the Law on Bank Bankruptcy and Articles 646 and 647 of the Commercial Law does not apply to transfers of assets, rights or liabilities from an institution under resolution to another person by virtue of the application of a resolution tool or exercise of a resolution power, or use of a government financial stabilisation tool.

(8) In a situation of systemic crisis the BNB may propose to the Minister of Finance a bank under resolution to be financed through the use of government financial stabilisation tools provided for in Chapter Fourteen, when the following conditions are met:

1. (amended; Darjaven Vestnik, issue 12 of 2021) a contribution to loss absorption and recapitalisation equal to an amount of not less than 8 per cent of total liabilities, including own funds of the institution under resolution, measured at the time of resolution action in accordance with the valuation provided for in Article 55, has been made by the shareholders, the holders of other instruments of ownership, the holders of relevant capital instruments and creditors on bailed-in liabilities through cancellation of shares, write-down, conversion or otherwise;

2. the financing is provided in compliance with the State Aid Law and the legal framework of the European Union for state aid and adoption of a positive decision by the European Commission.

Chapter Ten
SALE OF A BUSINESS TOOL

Sale of a Business Tool

Article 58. (amended; Darjaven Vestnik, issue 15 of 2018) (1) The resolution authority under Article 2 or Article 3 may decide to transfer to a potential purchaser that is not a bridge institution:

1. instruments of ownership issued by an institution under resolution;

2. all or part of the assets, rights or liabilities of an institution under resolution.

(2) Subject to paragraphs 8–10 and in accordance with Article 117, the transfer under paragraph 1 shall take place without obtaining the consent of the shareholders of the institution under resolution or any third party other than the purchaser. The transfer shall not be compliant with any restrictions under the Commercial Law or the Law on Public Offering of Securities. The transfer is carried out in accordance with Article 59.

(3) A transfer pursuant to paragraph 1 shall be made by the resolution authority on commercial terms that comply as much as possible with the valuation under Article 55 and is consistent with the circumstances, subject to the requirements of the State Aid Law and the legal framework of the European Union for state aid.

(4) Subject to Article 57, paragraph 6, any consideration paid by the purchaser shall benefit:

1. the shareholders or partners where the sale of business has been effected by transferring the instruments of ownership issued by the institution under resolution from their owners to the purchaser;

2. the institution under resolution, where the sale of the business has been effected by transferring some or all of the assets or liabilities of the institution under resolution to the purchaser.

(5) When applying the sale of a business tool, the resolution authority may exercise the transfer power more than once in order to make supplemental transfers of instruments of ownership issued by an institution under resolution or, as the case may be, assets, rights or liabilities of the institution under resolution.

(6) When applying the sale of a business tool, the resolution authority may exercise the transfer powers in respect of the assets, rights or liabilities transferred to the purchaser in order to transfer them back to the institution under resolution or for other instruments of ownership back to their original owners. In these cases the institution under resolution and the original owners shall be obliged to take back the transferred assets, rights or liabilities, or shares or other instruments of ownership. This transfer shall be done with the consent of the purchaser, which may be given before or after application of a sale of a business tool.

(7) The potential purchaser under paragraph 1 should have the necessary license to carry out the business it acquires.

(8) (amended; Darjaven Vestnik, issue 37 of 2019) Where a transfer of the instruments of ownership by virtue of application of the sale of business tool would result in the acquisition of or increase in a qualifying holding in an institution, the BNB, respectively the Commission, shall take decisions on the submitted applications, respectively, notifications pursuant to Articles 28–34 of the Law on Credit Institutions, respectively, Article 53, paragraph 3 and Articles 55–57 of the Law on Markets in Financial Instruments, in a timely manner in order not to delay the application of the tool and prevent the resolution action from achieving the relevant resolution objectives.

(9) In case at the date of application of the sale of a business tool, the competent authority has not acted in accordance with Articles 28–34 of the Law on Credit Institutions, Article 53, paragraph 3 and Articles 55–57 of the Law on Markets in Financial Instruments respectively:

1. the transfer of the instruments of ownership to the acquirer shall have immediate legal effect;

2. within the terms under Articles 28–34 of the Law on Credit Institutions, Article 53, paragraph 3 and Articles 55–57 of the Law on Markets in Financial Instruments respectively, and within the term for sale under paragraph 10, item 2(b), the acquirer's voting rights attached to the shares shall be suspended and vested solely to the resolution authority; the resolution authority shall have no obligation to exercise any such voting right and shall have no responsibility for exercising or refraining from exercising such voting rights;

3. within the terms under Articles 28–34 of the Law on Credit Institutions, Article 53, paragraph 3 and Articles 55–57 of the Law on Markets in Financial Instruments, and within the term for sale under paragraph 10, item 2(b), the BNB, the Deputy Chairman of the Commission in charge of the Investment Activity Supervision Department, or the Commission respectively shall not impose any penalties and any other supervisory measures for infringing the requirements for acquisitions or disposals of qualifying holding contemplated by Article 103, paragraph 2, Articles 152 and 152b of the Law on Credit Institutions, Article 276, paragraph 1 and Article 290 of the Law on Markets in Financial Instruments respectively.

(10) The Bulgarian National Bank, the Commission respectively shall notify the acquirer of whether approves or opposes in accordance with the provisions of the Law on Credit Institutions, the Law on Markets in Financial Instruments respectively, as the following consequences occur:

1. if the competent authority approves a transfer to the acquirer of the instruments of ownership, the restriction to the voting rights under paragraph 9, item 2 shall be terminated upon receipt of the approval;

2. if the competent authority opposes the transfer of the instrument of ownership to the acquirer:

a) the voting rights attached to them shall remain to be exercised by the resolution authority as provided by paragraph 9, item 2;

b) the resolution authority may require the acquirer to sell the instruments of ownership within the period determined by the resolution authority having taken into account prevailing market conditions; and

c) if the acquirer does not complete the sale in letter b, the competent authority under the Law on Credit Institutions, the Law on Markets in Financial Instruments respectively may impose on the acquirer supervisory measures and penalties for infringing the requirements for the acquisition or disposal of qualifying holding in accordance with Article 103, paragraph 2, Articles 152 and 152b of the Law on Credit Institutions, under Article 276, paragraph 1 and Article 290 of the Law on Markets in Financial Instruments respectively.

(11) A transfer made by virtue of the sale of business tool shall be subject to the safeguards under Chapter Seventeen.

(12) The shareholders or creditors of the institution under resolution and third parties, whose assets, rights or liabilities are not transferred, shall not have any rights in respect of transferred assets, rights or liabilities other than those provided in paragraph 11.

(13) In order to exercise the right to provide services or for establishment in the Republic of Bulgaria in accordance with Section II, Chapter Three of the Law on Credit Institutions and the Law on Markets in Financial Instruments, it shall be assumed that the purchaser of the institution for which a sale of asset tool is applied by the resolution authority in a Member State is the successor of the institution under resolution and may continue to exercise the powers exercised by it before application of the sale of a business tool in relation to transferred assets, rights or liabilities.

(14) The purchaser under paragraph 1 may continue to exercise the rights for membership and access to payment, clearing and settlement systems, regulated market, ICF and BDIF of the institution under resolution, provided that it meets the membership and participation criteria.

Sale of a Business Tool: Procedural Requirements

Article 59. (1) Where applying the sale of a business tool to an institution or entity referred to in Article 1, paragraph 1, items 3–5, the resolution authority under Article 2 or Article 3 shall make marketing and make arrangements for the marketing of the assets, rights, liabilities or instruments of ownership of that institution that the authority intends to transfer.

(2) Pools of rights, assets and liabilities under paragraph 1 may be marketed separately.

(3) The marketing referred to in paragraph 1 shall be carried out in accordance with the following principles:

1. it shall be as transparent as possible and shall not materially misrepresent the assets, rights, liabilities or instruments of ownership of that institution that the

resolution authority intends to transfer, having regard to the circumstances and in particular the need to maintain financial stability;

2. it shall not unduly favour or discriminate between potential purchasers;

3. it shall be free from any conflict of interest;

4. it shall not confer any unfair advantage on a potential purchaser;

5. it shall take account of the need to effect a rapid resolution action;

6 it shall aim at maximising, as far as possible, the sale price for the other instruments of ownership, assets, rights or liabilities involved;

7. where applicable, the supply is carried out in compliance with the requirements of the State Aid Act and the legal framework of the European Union for State aid.

(4) The principles referred to in paragraph 3 shall not prevent the resolution authority to propose to the particular potential purchasers as far as the requirements of paragraph 3, item 2 are not infringed.

(5) The public disclosure of the marketing in paragraph 1, that is required under Article 17, paragraph 1 of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (Regulation on market abuse) and repealing Directive 2003/6/EC of the European Parliament and the Council and Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173/1 of 12 June 2014) may be delayed in accordance with Article 17, paragraphs 4 or 5 of that Regulation.

(6) The resolution authority may apply the sale of business tool without complying with the requirement for marketing under paragraph 1, when it determined that compliance with those requirements would be likely to undermine one or more of the resolution objectives and in particular if it considers that:

1. there is a material threat to financial stability arising from or aggravated by failure or likeliness for failure of the institution under resolution;

2. compliance with the requirement under paragraph 1 would likely to undermine the effectiveness of the sale of the business tool in addressing that threat or achieving the resolution objective under Article 50, paragraph 2, item 2.

Chapter Eleven

THE BRIDGE INSTITUTION TOOL

The Bridge Institution Tool

Article 60. (1) In order to maintain critical functions in the bridge institution, resolution authority under Article 2, Article 3, may decide to transfer to a bridge institution the following:

1. instruments of ownership issued by an institution under resolution;

2. all or part of the assets, rights or liabilities of the institution under resolution.

(2) Subject to Article 117, the transfer referred to in paragraph 1 may take place without obtaining the consent of the shareholders of the institution under resolution

or any third party other than the bridge institution. In the cases under paragraph 1, the restrictions arising from the Commercial Law or the Law on Public Offering of Securities shall not apply.

(3) When applying the bridge institution tool for each institution under resolution a separate bridge institution shall be created, except when the bridge institution is a financial holding company established and functioning under Article 63.

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

(5) Subject to Article 57, paragraph 6, any consideration paid by the bridge institution shall benefit:

1. the owners of instruments of ownership, where the instruments of ownership issued by the institution under resolution have been transferred to the bridge institution by their owners;

2. the institution under resolution, where the transfer to the bridge institution has been effected by transferring some or all of the assets or liabilities of the institution under resolution to the bridge institution.

(6) When applying the bridge institution tool, the resolution authority may exercise the transfer power more than once in order to make supplemental transfers of instruments of ownership issued by an institution under resolution or, as the case may be, assets, rights or liabilities of the institution under resolution.

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

1. transfer rights, assets or liabilities back from the bridge institution to the institution under resolution, or the instruments of ownership back to their original owners, and the institution under resolution or original owners shall be obliged to take back any such assets, rights or liabilities, or instruments of ownership, provided that the conditions laid down in paragraph 8 are met;

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

(8) Resolution authority may make a transfer under paragraph 7, item 1 at any time in the presence of one of the following circumstances:

1. the possibility that other instrument of ownership or assets, rights and liabilities might be transferred back is stated expressly in the decision under paragraph 1 and in the contract under which the transfer was made;

2. the relevant instruments of ownership, assets, rights or liabilities do not fall within the classes of, or do not meet the conditions for a transfer, specified in the decision of paragraph 1 under which the transfer was made.

(9) Transfers between institutions under resolution and the original owners of the instruments of ownership, on the one hand, and the bridge institution on the other one, shall be subject to the safeguards under Chapter Seventeen.

(10) The shareholders, or partners, or creditors of the institution under resolution and third parties, whose assets, rights or liabilities are not transferred to the bridge institution, cannot claim to the transferred assets, rights or liabilities, as well as in respect of senior management and management body of the bridge institution, except safeguards provided in Chapter Seventeen.

(11) For the purpose of exercising the rights to provide services or for establishment in the Republic of Bulgaria in accordance with Section II, Chapter Three of the Law on Credit Institutions or the Law on Markets in Financial Instruments, a bridge institution of a Member State shall be considered to be the successor of the institution under resolution and may continue to exercise its rights in respect of the transferred assets, rights or liabilities.

(12) The bridge institution, including that of a Member State may continue to exercise the rights of membership and access to payment, clearing and settlement systems, regulated market, ICF and BDIF of the institution under resolution, provided that the institution under resolution meets the applicable criteria for participation or membership.

(13) The objectives of the bridge institution shall not imply any duty or responsibility to shareholders or creditors of the institution under resolution. The management body or senior management of the bridge institution shall have no liability to the shareholders and creditors of the institution under resolution for acts and omission in discharge of their duties unless the act or omission implies gross negligence or serious misconduct, which directly affects rights of the shareholders or creditors.

(14) The bridge institution can be a bridge bank, bridge investment firm of bridge financial holding company.

Establishment and Operation of a Bridge Bank

Article 61. (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) The bridge bank is a legal entity, which is established as a joint stock company by the BNB in its capacity as a resolution authority referred to in Article 2, paragraph 1, at the proposal of the unit under Article 2, paragraph 2 and shall meet the following requirements:

1. (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) the capital of the bridge bank shall be fully or partially financed with financial means of the SRF or of the BRF;

2. (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) the resolution authority referred to in Article 2, paragraph 1 shall exercise control over the bridge bank, including after applying the bail-in tool for the purposes of Article 65, paragraph 1, item 2;

3. it is created to acquire and hold all or part of the assets, rights and liabilities of the bank under resolution in order to maintain access of the customers of the bank under resolution to its critical functions and subsequent sale of the bank.

(2) The operation of a bridge bank shall respect following requirements:

1. the statutes of the bridge bank have been approved by the BNB in its capacity as a resolution authority according to Article 2, paragraph 1;

2. the board of directors of the bridge bank has been approved by the BNB in its capacity as a resolution authority according to Article 2, paragraph 1;

3. The Bulgarian National Bank in its capacity as a resolution authority according to Article 2, paragraph 1 has approved the remuneration of the members of the board of directors and has determined their responsibilities;

4. (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) The Bulgarian National Bank in its capacity as a resolution authority referred to in Article 2, paragraph 1 has approved the strategy and the risk profile of the bridge bank on a proposal from the board of directors of the bridge bank.

5. the bridge bank is licensed in accordance with the Law on Credit Institutions, including in relation to the activities or services acquired;

6. the bridge bank complies with the requirements of, and is subject to supervision by the BNB pursuant to the Law on Credit Institutions, Regulation (EU) No 575/2013 and, where applicable, comply with the requirements and is subject to supervision by the Financial Supervision Commission under the Law on Markets in Financial Instruments;

7. the bridge bank shall operate in accordance with the legal framework of the European Union for State Aid, and the BNB as its resolution authority under Article 2, paragraph 1 may specify restrictions on its operations accordingly.

(3) (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) Proposals for approvals under paragraph 2, items 1–3, proposals for issuance of licenses under paragraph 2, item 5 and issuance of approvals and permissions under the Law on Credit Institutions shall be drawn up by the unit referred to in Article 2, paragraph 2.

(4) Where necessary to meet the resolution objectives, the unit in Article 2, paragraph 2 can propose issuing of a license for the operation of the bridge bank under paragraph 2, item 5 without it meets all the requirements of the Law on Credit Institutions and the Law on Markets in Financial Instruments. To that end, the BNB in its capacity as competent authority under the Law on Credit Institutions has the right to issue a license, provided that it specifies a short period of time for which the bridge bank is required to achieve full compliance with the Law on Credit Institutions and the Law on Markets financial instruments.

(5) The board of directors shall manage the bridge bank with a view to maintaining access to critical functions and selling the bank as well as its assets, rights or liabilities to one or more private sector purchasers where conditions are appropriate at the latest within two years from the date on which the last transfer from a bank under resolution through the bridge bank tool was made. This period may be extended by the BNB under the conditions in paragraph 9.

(6) Actions for selling the bridge bank or its assets, rights or liabilities shall be carried out under the following conditions:

1. free and transparent marketing;

2. absence of a material misstatement in the presentation of assets and liabilities;

3. the sale does not favour or penalise unreasonably potential purchasers;

4. The sale shall be carried out on commercial terms in accordance with the requirements of the State Aid Law and the legal framework of the European Union for state aid;

5. compliance with the rules and framework of the European Union in the field of competition.

(7) The Bulgarian National Bank in its capacity as an authority according to Article 2, paragraph 1 shall take a decision that a legal entity established pursuant to a decision under Article 60, paragraph 1, shall be no longer a bridge bank within the meaning of paragraph 1 upon the occurrence of any of the following circumstances:

1. a merger of the bridge bank with another person;

2. the bridge bank ceases to meet the requirements of paragraph 1;

3. the sale of all or substantial for the activity assets, rights or liabilities of the bridge bank to a third party and the actions taken for the termination of the bank;

4. after the expiry of the period specified in paragraphs 5 and 8 or, where applicable under paragraph 9;

5. the liquidation of the bridge bank is completed; its assets are completely wound down and it liabilities are completely discharged.

(8) (amended; Darjaven Vestnik, issue 37 of 2019) If none of the outcomes referred to in paragraph 7, items 1–3 applies, the BNB in its capacity as a resolution authority referred to in Article 2, paragraph 1, shall terminate the operation of the bridge bank as soon as possible but not later than the expiry of the two-year period under paragraph 5.

(9) The Bulgarian National Bank may extend the period under paragraph 8 for one or more additional one-year periods where such an extension:

1. supports to outcomes referred to in paragraph 7, items 1–3 or item 5; or

2. is necessary to ensure the continuity of essential banking or financial services.

(10) The decision of the BNB under paragraph 9 to extend the period shall be reasoned and shall contain a detailed assessment of the situation, including of market conditions and outlook of the bridge bank that justify the extension.

(11) Where the operations of a bridge bank are terminated as a result of the circumstances under paragraph 7, item 3 or item 4, the bridge bank shall be wound up under Chapter Twelve of the Law on Credit Institutions.

(12) (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) Subject to Article 57, paragraph 6 any proceeds resulting from the termination under paragraph 11 of the bridge bank shall benefit its shareholders, except where in the course of termination insolvency is established.

Establishment and Operation of a Bridge Investment Firm

Article 62. (1) (amended; Darjaven Vestnik, issue 37 of 2019) The bridge investment firm shall be a legal entity, which is established by the ICF as a joint stock company or a limited liability company and shall meet the following requirements:

1. (amended; Darjaven Vestnik, issue 37 of 2019) the capital of the bridge investment firm shall be fully or partially financed with financial means of the SRF or IFRF;

2. it shall be controlled by the of Commission in its capacity as a resolution authority, including after applying the bail-in tool for the purposes of Article 65, paragraph 1, item 2;

3. it has been created to acquire and hold all or part of the assets, rights and liabilities of the investment firm under resolution in order to maintain access of the customers of the investment firm under resolution to its critical functions and subsequent sale of the investment firm.

(2) The operation of a bridge investment firm shall respect following requirements:

1. the statutes of the bridge investment firm have been approved by the Commission in its capacity as a resolution authority according to Article 3, paragraph 1;

2. the management body of the bridge investment firm has been approved by the Commission in its capacity as a resolution authority according to Article 3, paragraph 1;

3. the Commission in its capacity as a resolution authority according to Article 3, paragraph 1 shall approve the remuneration of the members of management body (board of directors) and determine their responsibilities;

4. the Commission in its capacity as a resolution authority according to Article 3, paragraph 1 shall approve the strategy and risk profile of the bridge investment firm;

5. the bridge investment firm shall be licensed in accordance with the Law on Markets in Financial Instruments, including in relation to the activities or services acquired;

6. (amended; Darjaven Vestnik, issue 25 of 2022) the bridge investment firm shall comply with the requirements of, and is subject to supervision by the Commis-

sion pursuant to the Law on Markets in Financial Instruments and Regulation (EU) No 575/2013 or Regulation (EU) 2019/2033;

7. (amended; Darjaven Vestnik, issue 37 of 2019) the operation of the bridge investment firm shall be in accordance with the legal framework of the European Union for state aid and the resolution authority under Article 3, paragraph 1 may specify restrictions on its operations accordingly.

(3) The proposals under paragraph 2, items 1–3 shall be prepared by the Management Board of the ICF and shall be submitted to the Commission for approval. Proposals under paragraph 2, item 4 shall be prepared by the management body of the bridge investment firm. Applications for a license under item 5 and approvals under the Law on Markets in Financial Instruments shall be submitted by the Management Board of the ICF.

(4) Where necessary to meet the resolution objectives, the unit in Article 3, paragraph 2 can propose issuing of a license for the operation of the bridge investment firm under paragraph 2, item 5 without it meets all the requirements of the Law on Markets in Financial Instruments. To that end, the Commission in its capacity as a competent authority under the Law on Markets in Financial Instruments has the right to issue a license, provided that it specifies a short period of time for which the bridge investment firm is required to achieve full compliance with the Law on Markets financial instruments.

(5) The management body shall manage the bridge investment firm with a view to maintaining access to critical functions and selling the investment firm as well as its assets, rights or liabilities to one or more private sector purchasers where conditions are appropriate at the latest within two years from the date on which the last transfer from an investment firm under resolution pursuant to the bridge investment firm tool was made. This period may be extended by the Commission under the conditions in paragraph 9.

(6) Actions for selling the bridge investment firm or its assets, rights or liabilities shall be carried out under the following conditions:

1. free and transparent marketing;

2. absence of a material misstatement in the presentation of assets and liabilities;

3. the sale does not favour or penalise unreasonably potential purchasers;

4. The sale shall be carried out on commercial terms in accordance with the requirements of the State Aid Law and the legal framework of the European Union for state aid;

5. compliance with the rules and framework of the European Union in the field of competition.

(7) (amended; Darjaven Vestnik, issue 37 of 2019) The Commission in its capacity as an authority according to Article 3, paragraph 1 shall take a decision that a legal entity established pursuant to a decision under paragraph 1, shall be no longer a bridge investment firm within the meaning of paragraph 1 upon the occurrence of any of the following circumstances:

1. a merger of the bridge investment firm with another person;

2. the bridge financial firm ceases to meet the requirements of paragraph 1;

3. the sale of all or substantial for the activity assets, rights or liabilities of the bridge investment firm to a third party and the actions taken for the termination of the investment firm;

4. after the expiry of the period specified in paragraphs 5 and 8 or, where applicable under paragraph 9;

5. the liquidation of the bridge investment firm is completed; its assets are completely wound down and it liabilities are completely discharged.

(8) If none of the outcomes referred to in paragraph 7, items 1–3 applies, the Commission in its capacity as a resolution authority under Article 3, paragraph 1, shall terminate the operation of a bridge investment firm as soon as possible but not later than the expiry of the two-year period under paragraph 5.

(9) The Commission may extend the period under paragraph 8 for one or more additional one-year periods where such an extension:

1. supports to outcomes referred to in paragraph 7, items 1–3 or item 5; or

2. is necessary to ensure the continuity of essential financial services.

(10) The decision of the Commission under paragraph 9 to extend the period shall be reasoned and shall contain a detailed assessment of the situation, including of market conditions and outlook of the bridge investment firm that justify the extension.

(11) Where the operations of a bridge investment firm are terminated as a result of the circumstances under paragraph 7, item 3 or item 4, the bridge investment firm shall be wound up under applicable provisions of the Law on Market in Financial Instruments and Commercial Law.

(12) Subject to Article 57, paragraph 6, any proceeds resulting from the termination under paragraph 11 of the bridge investment firm shall benefit its shareholders or owners of holdings, except where in the course of termination insolvency is established.

Bridge Financial Holding Company

Article 63. (1) (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) The bridge financial holding shall be established as a holding company under Article 277 of the Commercial Law and shall meet the following requirements:

1. (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) the capital of the bridge financial holding shall be fully or partially financed with financial means of the SRF, BRF or IFRF respectively;

2. it shall be controlled by the relevant resolution authority, including after applying the bail-in tool for the purposes of Article 65, paragraph 1, item 2;

3. it has been created to acquire and hold all or part of the assets, rights and liabilities, issued by one or more institutions under resolution in order to maintain access of the customers of the institutions under resolution to their critical functions and subsequent sale of the institutions.

(2) The operation of a bridge financial holding company shall respect following requirements:

1. the statutes and constitutional documents of the bridge financial holding company have been approved by the resolution authority;

2. the management body of the bridge investment firm has been approved by the resolution authority;

3. the resolution authority shall approve the remuneration of the members of the management body and determine their responsibilities;

4. (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) the resolution authority has approved the strategy and the risk profile of the bridge financial holding at the proposal of the management body of the bridge financial holding;

5. (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) the bridge financial holding shall meet the requirements of the Law on Credit Institutions, the Law on Markets in Financial Instruments respectively; in cases where the bridge financial holding has been set up for acquisition of shares and other instruments of ownership issued by a bank under resolution, it shall be entered in the register under Article 3a of the Law on Credit Institutions in accordance with the requirements and procedure provided for;

6. the bridge financial holding company shall comply with the requirements of, and is subject to supervision by the BNB pursuant to the Law on Credit Institutions, the Commission pursuant to the Law on Markets in Financial Instruments and Regulation (EU) No 575/2013 respectively;

7. the operation of the bridge financial holding company shall be in accordance with the legal framework of the European Union for state aid and the resolution authority may specify restrictions on its operations accordingly.

(3) (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) Proposals for issuance of approvals under Article 2, items 1–3 shall be prepared by the unit under Article 2, paragraph 2, by the ICF respectively, and shall be submitted to the resolution authority for approval.

(4) The management body shall manage the bridge financial holding company in order to maintain access to critical functions of the institution under resolution and subsequent sale, as well as the sale of its assets, rights or liabilities of one or more private purchasers where conditions are appropriate at the latest within two years from the date on which the last transfer of shares and other instruments of ownership, issued by the institution under resolution pursuant to the bridge institution was made.

(5) The bridge financial holding company shall perform actions on sale of shares and other instruments of ownership, issued by the institution under resolution, or its assets, rights or liabilities under the following conditions:

1. free and transparent marketing;

2. absence of a material misstatement in the presentation of assets and liabilities;

3. the sale does not favour or penalise unreasonably potential purchasers;

4. the sale shall be carried out on commercial terms in accordance with the requirements of the State Aid Law and the legal framework of the European Union for state aid;

5. compliance with the rules and framework of the European Union in the field of competition.

(6) The resolution authority shall decide that a legal entity established pursuant to a decision under Article 60, paragraph 1, ceases to be a bridge financial holding company tool within the meaning of paragraph 1 upon the occurrence of any of the following circumstances:

1. sale to a third party of all shares and other instruments of ownership of institutions under resolution held by bridge financial holding company;

2. sale to a third party or parties all or substantial for the activity assets, rights or liabilities of the institutions under resolution, whose shares and other instruments of ownership acquired by the bridge financial holding company, and subsequent termination of the institutions under resolution;

3. the bridge financial holding company ceases to meet the requirements of paragraph 1;

4. the termination of bridge financial holding company is completed.

(7) Participation of bridge financial holding company in the capital of the institution under resolution shall be transferred to the private sector with consideration as soon as the commercial and financial circumstances permit.

(8) Where the operations of the bridge financial holding company are terminated as a result of the circumstances under paragraph 6, items 1–3, the bridge financial holding company shall be terminated under the Commercial Law.

(9) Subject to Article 57, paragraph 6, proceeds received as a result of the actions under paragraph 6, items 1 and 2 shall benefit the shareholders and partners of the bridge financial holding company.

Chapter Twelve
THE ASSET SEPARATION TOOL

The Asset Separation Tool

Article 64. (1) The resolution authority under Article 2 or Article 3 may decide to transfer the assets, rights or liabilities of an institution under resolution or a bridge institution to one or more asset management vehicles.

(2) Subject to Article 117, the transfer referred to in paragraph 1 may take place without the consent of the shareholders or partners of the institution under resolution or any third party other than the bridge institution and without complying with the requirements of the Commercial Law or the Law on Public Offering of Securities.

(3) The asset management vehicle shall be joint-stock company with one-tier governing system that meets the following requirements:

1. (amended; Darjaven Vestnik, issue 37 of 2019) the company's capital shall be entirely or partially financed by the BRD or IFRF respectively and shall be controlled by the resolution authority;

2. (new; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) where the institution under resolution is covered by Regulation (EU) No 806/2014, the company's capital shall be entirely or partially financed by the SRF and shall be controlled by the resolution authority;

3. (previous item 2; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) it has been created for the receiving some or all of the assets, rights and liabilities of one or more institutions under resolution or a bridge institution.

(4) The asset management vehicle under paragraph 1 shall the assets transferred to it with a view to maximising their value through eventual sale or orderly liquidation in accordance with applicable legislative requirements.

(5) (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) At the proposal of the unit under Article 2, paragraph 2, the ICF respectively, the resolution authority shall approve:

1. the Articles of association of the asset management vehicle;

2. the management body of the asset management vehicle;

3. the remuneration of the members of the management body and their responsibilities;

4. the strategy and risk profile of the vehicle.

(6) The resolution authority may exercise power specified in paragraph 1 to transfer assets, rights or liabilities, where one of the following conditions is available:

1. the situation of the particular market for those assets is of such a nature that the liquidation of those assets under insolvency proceedings could have an adverse effect on one or more financial markets;

2. such a transfer is necessary to ensure the proper functioning of the institution under resolution or the bridge bank, or the bridge investment firm;

3. such transfer is necessary for increasing the proceeds from the assets liquidation.

(7) When applying the asset separation tool, the resolution authority shall determine the consideration for which the assets, rights and liabilities under paragraph 1 are transferred to the asset management vehicle in accordance with Article 55 in compliance with the State Aid Act and the legal framework of the European Union for state aid. The consideration may have a symbolic or negative value.

(8) Subject to Article 57, paragraph 6 the consideration under paragraph 7 paid by the asset management vehicle in respect of the assets, rights or liabilities acquired directly from the institution under resolution shall benefit the institution under resolution and may be paid in form of debt issued by the asset management vehicle.

(9) Resolution authorities may take a decision to transfer assets, rights or liabilities from the institution under resolution to one or more asset management vehicles on more than one occasion and transfer assets, rights or liabilities back from one or more asset management vehicles to the institution under resolution provided that the conditions specified in paragraph 11 are met.

(10) The institution under resolution shall be obliged to take back the assets, rights or liabilities transferred under paragraph 9.

(11) The resolution authority may decide to perform at any time a reverse transfer under paragraph 9 in the presence of any of the following circumstances:

1. the possibility that the specific rights, assets or liabilities might be transferred back is expressly stated in the decision under paragraph 1 or in the contract by which the transfer was made;

2. the specific rights, assets or liabilities do not fall within the classes of, or do not meet the conditions for a transfer, specified in the decision under paragraph 1 by which the transfer was made.

(12) The reverse transfer under paragraph 11 can be performed at any time and it shall comply with any other conditions specified in the contract for the relevant purpose.

(13) Transfers between the institution under resolution and the asset management vehicle shall be subject to the safeguards for partial property transfers specified in Chapter Seventeen. Shareholders or creditors of the institution under resolution and other third parties whose assets, rights or liabilities are not transferred to the asset management vehicle shall not have any claims in relation to the assets, rights or liabilities transferred or its management body or senior management of the company.

(14) The asset management vehicle shall have no any duties or responsibilities to shareholders or creditors of the institution under resolution. The management body and senior management of the asset management vehicle shall have no liability to shareholders and creditors of the institution under resolution for acts and omission in the performance of their duties unless the act or omission implies gross negligence or serious misconduct, which directly affects rights of the shareholders or creditors.

Chapter Thirteen
THE BAIL-IN TOOL

Section I
General Provisions

Objective of the Bail-in Tool

Article 65. (1) The resolution authority Article 2 or Article 3 may decide to use the bail-in tool to meet the resolution objectives specified in Article 50, paragraph 2 in accordance with the resolution principles for the following purposes:

1. to recapitalise an institution or entity referred to in Article 1, paragraph 1, items 3–5 that meets the conditions for resolution to the extent sufficient to:

a) its ability to comply with the conditions for authorisation, as applicable;

b) to continue to carry out the activities for which it is authorised under the Law on Credit Institutions, the Law on Markets in Financial Instruments respectively, where applicable;

c) to sustain sufficient market confidence in the institution or entity;

2. to convert to equity or reduce the principal amount of the liabilities of the institution under resolution or debt instruments that are transferred:

a) to a bridge institution with a view to providing capital for that bridge institution; or

b) under the sale of the business tool or the asset separation tool.

(2) The resolution authority may decide to apply the bail-in tool for the purpose referred to in paragraph 1, item 1 only if there is a reasonable prospect that the application of that tool together with other relevant measures including measures implemented in accordance with the business reorganisation plan required by Article 79 will, in addition to achieving relevant resolution objectives, restore the institution or entity referred to in Article 1, paragraph 1, items 3–5 in question to financial soundness and long-term viability.

(3) If the conditions of paragraph 2 are not met, the resolution authority under Article 2, Article 3 respectively, may apply some of the resolution tools referred to in Article 56, items 1–3 and the bail-in tool in accordance with paragraph 1, item 2.

Scope of the Bail-in Tool

Article 66. (1) The resolution authority under Article 2 or Article 3 may apply the bail-in tool to all liabilities of the institution or entity referred to in Article 1, paragraph 1, items 3–5 that are not excluded from the scope of that tool pursuant to paragraph 2.

(2) The resolution authority shall not exercise its powers for a write-down or conversion in relation to the following liabilities whether the liabilities are governed by the legislation of the Republic of Bulgaria, by the law of another Member State or a third country:

1. covered deposits;

2.* secured liabilities, including mortgage-backed bonds within the meaning of the Law on Mortgage-Backed Bonds, covered bonds and liabilities in the form of financial instruments used for hedging purposes, which form an integral part of the coverage pool, and which according to the applicable law are secured in a way similar to covered bonds;

3. liabilities that arise by virtue of holding by the institution or entity referred to in Article 1, paragraph 1, items 3–5 of client assets or client money, including those held on behalf of undertakings for collective investment in transferable securities (UCITS) or on behalf of alternative investment funds, provided that the relevant client is protected under the applicable insolvency law;

4. liabilities that arise by virtue of a fiduciary relationship between the institution or entity referred to in Article 1, paragraph 1, items 3–5 as a fiduciary and another person (beneficiary), provided that such a beneficiary is protected under the applicable insolvency or civil law;

5. liabilities to institutions, excluding entities that are part of the group to which belongs the institution under resolution, with an original maturity of less than seven days;

6. (amended; Darjaven Vestnik, issue 20 of 2018; amended; Darjaven Vestnik, issue 12 of 2021) liabilities with a residual term to maturity of less than seven days, owed to systems or system operators eligible under Chapter Eight of the Law on Payment Services and Payment Systems or the legislation of a Member State, or their participants and arising from the participation in such a system or liabilities owed to CCPs authorised in the European Union pursuant to Article 14 of Regulation (EU) No 648/2012 and third-country CCPs recognised by ESMA pursuant to Article 25 of Regulation (EU) No 648/2012;

7. liabilities to any of the following persons:

* 2. (amended; Darjaven Vestnik, issue 25 of 2022, effective as of 8 July 2022) secured liabilities, including covered bonds and liabilities in the form of financial instruments used for hedging purposes, which form an integral part of the coverage pool, and which according to the applicable law are secured in a way similar to covered bonds;

a) an employee or employees, in relation to accrued salary, pension benefits or other fixed remuneration, except for the variable component of remuneration that is not regulated by a collective bargaining agreement;

b) providers of goods and services that are critical to the daily functioning of the institution or entity referred to in Article 1, paragraph 1, items 3–5, including IT service, utilities and rental, servicing and upkeep of premises in which the activity is performed;

c) tax and social security authorities, provided that those claims are privileged under the applicable law;

d) deposit guarantee schemes arising from contributions due in accordance with applicable law.

8. (new; Darjaven Vestnik, issue 12 of 2021) liabilities to an institution or entity under Article 1, paragraph 1, items 3–5 that is part of the same resolution group but is not itself a resolution entity, irrespective of the residual maturity, except for the liabilities which under the applicable bankruptcy law are satisfied in an order after unsecured non-preferential liabilities; the resolution authority of the relevant subsidiary that is not a resolution entity shall assess whether the amount of the elements meeting the requirements under Article 70a, paragraph 5 is sufficient to support the implementation of the preferred resolution strategy.

(3) (amended; Darjaven Vestnik, issue 15 of 2018) The exemption under paragraph 2, item 7a shall not apply to the variable component of the remuneration of material risk takers within the meaning of Article 73b, paragraph 2 of the Law on Credit Institutions, Article 65, paragraph 1, item 14 of the Law on Markets in Financial Instruments respectively.

(4) The execution of powers under paragraph 1 does not lead to violation of the requirements for distinction and adequate funding of the secured assets, included in the coverage of the covered bonds.

(5) The resolution authority may exercise the powers referred to in paragraph 1, where appropriate, in relation to:

1. any part of a secured liability, with which amount of the liability exceeds the value of collateral;

2. any part of a deposit that exceeds the coverage level under Chapter Three of the Law on Bank Deposit Guarantee.

Additional Exclusion from the Scope of the Bail-in Tool

Article 67. (1) In exceptional circumstances, where the bail-in tool is applied, the resolution authority under Article 2 or Article 3 may be exclude or partially exclude certain liabilities from the application of the powers of the write down or conversion powers where:

1. it is not possible to bail-in those liabilities within a reasonable time notwithstanding the good faith efforts of the resolution authority;

2. the exclusion is strictly necessary and is proportionate to achieve the continuity of critical functions and core business lines in a manner that maintains the ability of the institution under resolution to continue key operations, services and transactions;

3. the exclusion is strictly necessary and proportionate to avoid giving rise to widespread contagion, in particular as regards eligible deposits held by natural persons and micro, small and medium sized enterprises, which would severely disrupt the functioning of financial markets, including of financial market infrastructures, in a manner that could cause a serious disturbance to the economy of the Republic of Bulgaria or of the European Union; or

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

(2) (new; Darjaven Vestnik, issue 12 of 2021) When duly required, to ensure the effective implementation of the resolution strategy and the conditions under paragraph 1 are met, the resolution authority may exclude, in whole or in part, from the application of write-down and conversion powers the liabilities to institutions or entities under Article 1, paragraph 1, items 3–5, that are part of the same resolution group but are not resolution entities, and which liabilities are not excluded from the application of write-down and conversion powers in accordance with Article 66, paragraph 2, item 8.

(3) (previous paragraph 2; amended; Darjaven Vestnik, issue 12 of 2021) In order to facilitate the resolution and limiting the need for additional exceptions under paragraph 1, the resolution authority may, in accordance with Article 29, paragraph 6, item 2 set a lower limit for exposures of other institutions to the institution or its group in the form of liabilities that can be bailed-in. This lower limit does not apply to liabilities between persons who are part of the one and the same group.

(4) (previous paragraph 3; amended; Darjaven Vestnik, issue 12 of 2021) Where a resolution authority decides to exclude or partially exclude a bail-inable liability or a class of bail-inable liabilities under paragraph 1, the level of write-down or conversion applied to other eligible liabilities may be increased to take account of such exclusions, provided that the levels of write-down and conversion applied to other bail-inable liabilities comply with the principle under Article 53, paragraph 1, item 7.

(5) (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013; previous paragraph 4; Darjaven Vestnik, issue 12 of 2021) A decision under paragraph 1 shall be made only if a capacity for financing from the BRF, from the IFRF respectively, is available subject to constraints under Article 68.

(6) (previous paragraph 5; Darjaven Vestnik, issue 12 of 2021) When exercising its powers under paragraph 1, the resolution authority shall give due consideration to:

1. the principle that losses should be borne first by shareholders and next, by creditors of the institution under resolution in order of preference;

2. the level of loss absorption, available at the institution under resolution if the liability or a class of liabilities was excluded from bail-in; and

3. the need to maintain an adequate level of funds for the BRF, for the IFRF, respectively.

(7) (previous paragraph 6; Darjaven Vestnik, issue 12 of 2021) Before exercising the power to exclude a liability under paragraph 1, the resolution authority shall notify the European Commission. Where the exclusion would require a contribution by the BRF, respectively, by the IFRF or an alternative source of funding under Article 68, the power is exercised if the European Commission does not prohibit or request an amendment to the scope of the proposed exclusion within 24 hours of receipt of such a notification, or a longer period with the agreement of the resolution authority.

Sale of Subordinated Eligible Liabilities to Retail Clients

(new; Darjaven Vestnik, issue 12 of 2021)

Article 67a. (new; Darjaven Vestnik, issue 12 of 2021) In transactions in financial instruments which meet the conditions under point (a) of Article 72a(1) and Article 72a(2) and Article 72b(1, 2, 6 and 7) of Regulation (EU) No 575/2013, the seller may complete the sale to a retail client only if the nominal value of the instrument is not less than the lev equivalent of EUR 50,000 and after performing a suitability assessment under Article 78 of the Law on Markets in Financial Instruments.

Conditions and Restrictions on Funding by the BRF, the IFRF Respectively, in Additional Exclusion from the Scope of the Bail-in Tool

Article 68. (1) (amended; Darjaven Vestnik, issue 12 of 2021) Where a resolution authority decides to exclude or partially exclude a bail-inable liability or class of bail-inable liabilities and the losses that would have been borne by those liabilities have not been passed on fully to other creditors, the BRF, the IFRF respectively, may make a contribution to the institution under resolution in order to achieve at least one of the following:

1. (amended; Darjaven Vestnik, issue 12 of 2021) to cover any losses which have not been absorbed by bail-inable liabilities and restore the net asset value of the institution under resolution to zero in accordance with Article 73, paragraph 1, item 1;

2. to purchase shares/holdings or other capital instruments in the relevant institution under resolution in order to recapitalise the institution in accordance with Article 73, paragraph 1, item 2.

(2) The Bank Resolution Fund, IFRF respectively, may make a contribution referred to in paragraph 1 only where:

1. (amended; Darjaven Vestnik, issue 12 of 2021) a contribution to loss absorption equal to an amount not less than 8 per cent of the total liabilities including own funds of the institution under resolution, measured at the time of resolution action in accordance with the valuation provided for in Article 55, has been made by the shareholders or partners, holders of instruments of ownership and creditors on bailed-in liabilities through cancellation of shares, write-down, conversion or otherwise;

2. the contribution of the BRF, the IFRF respectively, does not exceed 5 per cent of the total liabilities, including own funds of the institution under resolution, measured at the time of resolution action in accordance with the valuation provided for in Article 55.

(3) The requirement in paragraph 2, item 1 may not be applied when the following conditions are met:

1. (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013); amended; Darjaven Vestnik, issue 12 of 2021) a contribution to loss absorption and recapitalisation under paragraph 2, item 1 of the shareholders or partners, holders of instruments of ownership and creditors on bailed-in liabilities of the institution under resolution is not less than 20 per cent of the risk-weighted assets of the institution, as well as

2. (repealed; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013)

3. the balance sheet of the institution on a consolidated basis is below the equivalent of EUR 900 billion.

(4) The contribution of the BRF, the IFRF respectively, under paragraph 1 may be financed by the following ways:

1. financial means available to the BRF, the IFRF respectively, which have been raised through annual contributions by institutions licensed in the Republic of Bulgaria, and branches of institutions from third countries established in the Republic of Bulgaria;

2. financial means that can been raised by institutions through extraordinary contributions within three years; or

3. where the financial means under items 1 and 2 are insufficient – funding raised from alternative financing source in accordance with Article 141, where it is possible.

(5) In extraordinary circumstances, the resolution authority may seek further funding from alternative financing source under the following conditions:

1. the 5 per cent limit specified in paragraph 2, item 2 is reached; and

2. all unsecured, non-preferred claims of creditors which are not eligible deposits have been written down or converted in full.

(6) (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) The Bank Resolution Fund, the IFRF respectively, may make a contribution under the terms and conditions of paragraph 5 and from the funds collected from annual contributions, which have not been used yet.

Section II

Calculation of the Minimum Requirement for Own Funds and Eligible Liabilities

(title amended; Darjaven Vestnik, issue 12 of 2021)

Application of the Minimum Requirement

Article 69. (1) (amended; Darjaven Vestnik, issue 37 of 2019; amended, Darjaven Vestnik, issue 12 of 2021) The resolution authority under Article 2 or Article 3 shall set for institutions and entities under Article 1, paragraph 1, items 3–5 a minimum requirement for own funds and eligible liabilities under the terms and procedure of Articles 69a–72b.

(2) (amended; Darjaven Vestnik, issue 12 of 2021) The minimum requirement for own funds and eligible liabilities under Article 1 shall be calculated under Article 69c, 69d or 69e depending on the entity as an amount of own funds and eligible liabilities and expressed as percentage shares of:

1. (amended; Darjaven Vestnik, issue 25 of 2022) the total risk exposure of the relevant institution or entity under Article 1, paragraph 1, items 3–5 calculated in accordance with Article 92, paragraph 3 of Regulation (EU) No 575/2013, for investment firms under Article 9a, paragraph 1 of the Law on Markets in Financial Instruments, respectively, calculated in accordance with the applicable requirement laid down in Article 11(1) of Regulation (EU) 2019/2033, multiplied by 12.5, and

2. the total risk exposure measure of the relevant institution or entity under Article 1, paragraph 1, items 3–5 calculated in accordance with Article 429 and 429a of Regulation (EU) No 575/2013.

(3) (repealed; Darjaven Vestnik, issue 12 of 2021).

(4) (repealed; Darjaven Vestnik, issue 12 of 2021).

(5) (repealed; Darjaven Vestnik, issue 12 of 2021).

(6) (repealed; Darjaven Vestnik, issue 12 of 2021).

(7) (amended; Darjaven Vestnik, issue 37 of 2019; repealed; Darjaven Vestnik, issue 12 of 2021).

(8) (amended; Darjaven Vestnik, issue 12 of 2021) The resolution authority under Article 2, Article 3 respectively, shall control the implementation by the

institutions of the minimum requirement for own finds and eligible liabilities under paragraph 1 and, where applicable, Articles 70 and 70a.

(9) (amended; Darjaven Vestnik, issue 12 of 2021) The resolution authority under Article 2, Article 3 respectively, shall notify the EBA on the minimum requirement for own funds and eligible liabilities, as set under Articles 70 and 70a for each entity falling within the scope of their competence.

Eligible Liabilities and Resolution Entities

(new; Darjaven Vestnik, issue 12 of 2021)

Article 69a. (new; Darjaven Vestnik, issue 12 of 2021) (1) The amount of own funds and eligible liabilities of resolution entities shall include liabilities that meet the conditions laid down in Article 72a, Article 72b, paragraph 1, paragraph 2 (a–c and e–n), paragraphs 3–7 and Article 72c of Regulation (EU) No 575/2013.

(2) Where the requirements under Article 92a or Article 92b of Regulation (EU) No 575/2013 are applied to a resolution entity, eligible liabilities shall be determined in accordance with Article 72k of Regulation (EU) No 575/2013 and in accordance with Part Two, Title I, Chapter 5a of Regulation (EU) No 575/2013.

(3) Liabilities that arise from debt instruments with embedded derivatives, such as structured notes, that meet the conditions of Article 72a, paragraph 1 and paragraph 2 (a–k), Article 72b, paragraph 1, paragraph 2 (a–c and e–n), paragraphs 3–7 and Article 72c of Regulation (EU) No 575/2013 shall be included in the amount of own funds and eligible liabilities where one of the following conditions is met:

1. the principal amount of the liability arising from the debt instrument is known at the time of issue, is fixed or increasing, and is not affected by an embedded derivative feature, and the total amount of the liability arising from the debt instrument, including the embedded derivative, can be valued on a daily basis by reference to an active and liquid two-way market for an equivalent instrument without credit risk, in accordance with Articles 104 and 105 of Regulation (EU) No 575/2013;

2. the debt instrument includes a contractual term that specifies that the value of the claim in cases of the insolvency of the issuer and of the resolution of the issuer is fixed or increasing, and does not exceed the initially paid-up amount of the liability.

(4) Debt instruments referred to in paragraph 3, including their embedded derivatives, shall not be subject to any netting agreement and the valuation of such instruments shall not be subject to Article 76, paragraph 3.

(5) The liability referred to in paragraph 3 shall only be included in the amount of own funds and eligible liabilities with respect to the part of the liability that corresponds to the principal amount referred to in paragraph 3, item 1 or to the fixed or increasing amount of the claim referred to in paragraph 3, item 2.

(6) Where liabilities are issued by a subsidiary established in the European Union that is part of the same resolution group as the resolution entity, under the condition to be bought by an existing shareholder in the capital of this subsidiary that is not part of the same resolution group, and the liabilities are bought by this shareholder,

those liabilities shall be included in the amount of own funds and eligible liabilities of that resolution entity, provided that all of the following conditions are met:

1. the liabilities are issued in accordance with Article 70a, paragraph 5, item 1;

2. the exercise of the write-down or conversion power in relation to those liabilities in accordance with Articles 89–91 or Article 93 does not affect the control of the subsidiary by the resolution entity;

3. those liabilities do not exceed an amount determined by subtracting the sum of the liabilities issued under the condition to be bought by the resolution entity and bought by it either directly or indirectly through other entities in the same resolution group and the amount of own funds issued in accordance with Article 70a, paragraph 5, item 2 from the minimum requirement applicable in accordance with Article 70, paragraphs 1–4.

(7) Where the resolution entity is a global systemically important institution (G-SII) or it is subject to Article 69d, paragraph 1 or 2 or paragraphs 3–5, the resolution authority under Article 2, Article 3 respectively, shall determine the minimum requirement for own funds and eligible liabilities referred to in Article 70 in compliance with the requirements of Article 69d, paragraphs 1 and 2 or Article 69f, paragraph 1, item 1 and shall ensure that a part of the minimum requirement equal to 8 per cent of the total liabilities, including own funds, are met by using own funds, subordinated eligible instruments or liabilities as referred in paragraph 6.

(8) In cases under paragraph 7 where the conditions under Article 72b, paragraph 3 of Regulation (EU) No 575/2013 are met, the resolution authority may permit a level lower than 8 per cent of the total liabilities, including own funds, but greater than the amount resulting from the application of the formula under Appendix No 6, item 1.

(9) For resolution entities that are subject to Article 69d, paragraphs 1 and 2, where the application of paragraph 7 leads to a requirement greater than 27 per cent of the total risk exposure amount, the resolution authority shall limit for the resolution entity concerned the part of the requirement referred to in Article 70 which is to be met using own funds, subordinated eligible instruments, or liabilities as referred to in paragraph 6, to an amount equal to 27 per cent of the total risk exposure amount. The limitation shall apply if the resolution authority has assessed that:

1. access to the relevant resolution financing arrangement is not included in the resolution plan as an option for resolving that resolution entity, or

2. where access to the relevant resolution financing arrangement is included in the resolution plan, the requirement referred to in Article 70 allows the resolution entity to meet the conditions under Article 68, paragraph 2, paragraph 3 respectively.

(10) In carrying out the assessment referred to in paragraph 9, the resolution authority shall take into account the risk of disproportionate impact on the business model of the resolution entity concerned.

(11) For resolution entities that are neither G-SIIs, nor resolution entities that are subject to Article 69d, paragraphs 1 and 2 or paragraphs 3–5, the resolution authority may decide that a part of the minimum requirement for own funds and eligible liabilities referred to in Article 70 up to the greater of 8 per cent of the total liabilities, including own funds, and the amount resulting from the application of the formula under Appendix No 6, item 2, shall be met using own funds, subordinated eligible instruments, or liabilities as referred to in paragraph 6.

(12) The resolution authority may apply paragraph 11 provided that the following conditions are met:

1. non-subordinated liabilities referred to in paragraphs 1–5 that are included in the amount of own funds and eligible liabilities have the same priority ranking in the insolvency hierarchy according to the applicable legislation as certain liabilities that are excluded from the scope of write-down and conversion powers in accordance with Article 66, paragraphs 2–5 or Article 67, paragraphs 1, 2 and 4;

2. there is a risk that, as a result of a planned application of write-down and conversion powers to non-subordinated liabilities that are not excluded from the scope of write-down and conversion powers in accordance with Article 66, paragraphs 2–5 or Article 67, paragraphs 1, 2 and 4, creditors whose claims arise from those liabilities incur greater losses than they would incur in liquidation under insolvency proceedings;

3. the amount of own funds and other subordinated liabilities does not exceed the amount necessary to ensure that the creditors referred to in item 2 do not incur losses above the level of losses that they would have incurred in liquidation under insolvency proceedings.

(13) Where the resolution authority determines that, within a class of liabilities which includes eligible liabilities, the amount of the liabilities that are excluded or reasonably likely to be excluded from the application of write-down and conversion powers in accordance with Article 66, paragraphs 2–5 or Article 67, paragraphs 1, 2 and 4, totals more than 10 per cent of that class, the resolution authority shall assess the risk referred to in Article 12, item 2.

(14) For the purposes of paragraphs 7–13 and paragraph 16 derivative liabilities shall be included in total liabilities on the basis that full recognition is given to counterparty netting rights.

(15) The own funds of a resolution entity that are used to comply with the combined buffer requirement shall be eligible to comply with the requirement referred to in paragraphs 7–13 and paragraph 16.

(16) The Board may decide that the requirement referred to in Article 70 shall be met by resolution entities that are G-SIIs or resolution entities that are subject to Article 69d, paragraphs 1 and 2 or paragraphs 3–5 using own funds, subordinated eligible instruments, or liabilities as referred to in paragraph 6, to the extent that, due to the obligation of the resolution entity to comply with the combined buffer requirement, the requirements referred to in Article 92a of Regulation (EU)

No 575/2013, and the requirements referred to in Article 69d, paragraphs 1 and 2 and Article 70, the sum of those own funds, instruments and liabilities does not exceed the greater of:

1. 8 per cent of total liabilities, including own funds, of the entity, or

2. the amount resulting from the application of the formula under Annex 6, item 2.

(17) The resolution authority may exercise the power referred to in paragraph 16 with respect to resolution entities that are G-SIIs or that are subject to Article 69d, paragraphs 1 and 2 or paragraphs 3–5 and that meet one of the following conditions:

1. substantive impediments to resolvability have been identified in the preceding resolvability assessment and either:

a) no remedial action has been taken for implementing of the measures referred to in Article 29, paragraph 6 in the timeline required by the resolution authority, or

b) the identified substantive impediments cannot be addressed using any of the measures referred to in Article 29, paragraph 6 and the exercise of the power referred to in paragraph 16 would fully or partially compensate for the negative impact of the substantive impediments on resolvability;

2. the resolution authority considers that the feasibility and credibility of the resolution entity's preferred resolution strategy are limited, taking into account the entity's size, its interconnectedness, the nature, scope and complexity of its activities, its legal status and its ownership structure;

3. (amended Darjaven Vestnik, issue 25 of 2022) after the competent authority has applied Article 103a, paragraph 2 of the Law on Credit Institutions, Article 276, paragraph 1, item 11 of the Law on Markets in Financial Instruments respectively, the resolution authority shall report that, in terms of riskiness, the resolution entity is among the top 20 per cent of institutions for which a minimum requirement for own funds and eligible liabilities referred to in Article 69, paragraph 1 shall be set.

(18) The resolution authority may exercise the power referred to in paragraph 16 with respect to all resolution entities that are G-SIIs or that are subject to Article 69d, paragraphs 1 and 2 or paragraphs 3–5, or only with respect to part of them, taking into account the specificities of the national banking sector.

(19) Calculating the percentages referred to in paragraph 17, item 3 the resolution authority shall round the number resulting from the calculation up to the closest whole number.

(20) The resolution authority shall take the decisions referred to in paragraphs 11, 12, 13 and 16, taking into account:

1. the depth of the market for the resolution entity's own funds instruments and subordinated eligible instruments, the pricing of such instruments, where they exist, and the time needed to execute any transactions necessary for the purpose of complying with the decision;

2. the amount of eligible liabilities instruments that meet all of the conditions referred to in Article 72a of Regulation (EU) No 575/2013 that have a residual matu-

rity below one year as of the date of the decision, with a view to making quantitative adjustments to the requirements referred to in paragraphs 11–13 or 16;

3. the availability and the amount of instruments that meet all of the conditions referred to in Article 72a and Article 72b, paragraph 1, paragraph 2 (a–c and e–n) and paragraphs 3–7 of Regulation (EU) No 575/2013;

4. whether the amount of liabilities that are excluded from the application of write-down and conversion powers in accordance with Article 66 or 67 and that, in insolvency proceedings, rank equally with or below the highest ranking eligible liabilities, is significant in comparison to the own funds and eligible liabilities of the resolution entity; where the amount of excluded liabilities does not exceed 5 per cent of the amount of the own funds and eligible liabilities of the resolution entity, the excluded amount shall be considered as not being significant; above that threshold, the significance of the excluded liabilities shall be assessed by the resolution authority;

5. the resolution entity's business model, funding model and risk profile, as well as its stability and ability to contribute to the economy, and

6. the impact of possible restructuring costs on the resolution entity's recapitalisation.

Determination of the Minimum Requirement for Own Funds and Eligible Liabilities

(new; Darjaven Vestnik, issue 12 of 2021)

Article 69b. (new; Darjaven Vestnik, issue 12 of 2021) The requirement referred to in Article 69, paragraph 1 shall be determined by the resolution authority referred to in Article 2, Article 3 respectively, on the basis of the following criteria:

1. the need to ensure that the resolution group can be resolved by the application of the resolution tools to the resolution entity, including, where appropriate, the bail-in tool, in a way that meets the resolution objectives;

2. (amended; Darjaven Vestnik, issue 25 of 2022) the need to ensure, where appropriate, that the resolution entity and its subsidiaries that are institutions or entities referred to in Article 1, paragraph 1, items 3–5 but are not resolution entities, have sufficient own funds and eligible liabilities to ensure that, if the bail-in tool or write-down and conversion powers respectively, were to be applied to them, losses could be absorbed and the total capital ratio and, as applicable, the leverage ratio of the relevant entities, can be restored to a level necessary to enable them to continue to comply with the conditions for issuing a licence and to carry on the activities for which they are licensed in accordance with the relevant national legislation, implementing Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176 27.6.2013, p. 338), hereinafter referred to as 'Directive 2013/36/EC' or Directive 2014/65/EU of the European Parliament and

of the Council of 15 May 2014 on markets in financial instruments and amending Regulation 2002/92/EC and Directive 2011/61/EU (OJ, L173/349 of 12 June 2014), hereinafter referred to as Directive 2014/65/EU;

3. the need to ensure, if the resolution plan anticipates the possibility for certain classes of eligible liabilities to be excluded from bail-in pursuant to Article 67 or to be transferred in full to a recipient under a partial transfer, that the resolution entity has sufficient own funds and other eligible liabilities to absorb losses and to restore its total capital ratio and, as applicable, its leverage ratio, to the level necessary to enable it to continue to comply with the conditions for issuing a licence and to carry on the activities for which it is licensed under the Law on Credit Institutions or the Law on Markets in Financial Instruments;

4. the size, the business model, the funding model and the risk profile of the entity;

5. the extent to which the failure of the entity would have an adverse effect on financial stability, including through contagion to other institutions or entities, due to the interconnectedness of the entity with those other institutions or entities or with the rest of the financial system.

(2) Where, in accordance with the relevant scenario referred to in Article 14, paragraph 5, the resolution plan provides that resolution action is to be taken or that the power to write down and convert relevant capital instruments or eligible liabilities in accordance with Article 89 is to be exercised, the requirement referred to in Article 69, paragraph 1 shall be determined in an amount sufficient to ensure:

1. loss absorption – the losses that are expected to be incurred by the entity are fully absorbed;

2. recapitalisation – the resolution entity and its subsidiaries that are institutions or entities referred to in Article 1, paragraph 1, items 3–5 but are not resolution entities, are recapitalised to a level necessary to enable them to continue to comply with the conditions for issuing a licence, and to carry on the activities for which they are licensed in accordance with the relevant national legislation, implementing Directive 2013/36/EU or Directive 2014/65/EU for an appropriate period as set by the resolution authority, but not longer than one year.

(3) Where the resolution plan provides that the entity is to be liquidated under insolvency proceedings, the resolution authority may limit the requirement referred to in Article 69, paragraph 1 for that entity, so that it does not exceed an amount sufficient to absorb losses in accordance with paragraph 2, item 1, if it considers that the limit is justified as regards any possible impact on financial stability and on the risk of contagion to the financial system.

(4) Where the resolution authority expects that certain classes of eligible liabilities are likely to be fully or partially excluded from bail-in pursuant to Article 67, paragraphs 1 and 2 or might be transferred in full to a recipient under a partial transfer, the minimum requirement referred to in Article 69, paragraph 1 shall be met using own funds or other eligible liabilities that are sufficient to cover the

amount of excluded liabilities identified in accordance with Article 67, paragraphs 1 and 2 and to ensure that the conditions referred to in paragraphs 2 and 3 are fulfilled.

(5) (amended; Darjaven Vestnik, issue 25 of 2022) The decision by the resolution authority under Article 2, Article 3 respectively, to set a minimum requirement for own funds and eligible liabilities shall be reasoned, including a full assessment of the elements referred to in paragraphs 2–4, Article 69c, 69d and 69e. The decision shall be reviewed without undue delay to reflect any changes in the level of the requirement referred to in Article 103a, paragraph 2 of the Law on Credit Institutions, Article 276, paragraph 1, item 11 of the Law on Markets in Financial Instruments, respectively.

Minimum Requirement for Own Funds and Eligible Liabilities for Resolution Entities

(new; Darjaven Vestnik, issue 12 of 2021)

Article 69c. (new; Darjaven Vestnik, issue 12 of 2021) (1) In cases referred to in Article 69b, paragraph 2 the amount of the minimum requirement of own funds and eligible liabilities with respect to the resolution entity shall be set as follows:

1. for the purpose of calculating the requirement referred to in Article 69, paragraph 2, item 1, the sum of:

a) (amended; Darjaven Vestnik, issue 25 of 2022) the amount of the losses for the entity to be absorbed in resolution that corresponds to the requirements referred to in Article 92, paragraph 1 (c) of Regulation (EU) No 575/2013, the requirements under Article 11(1) of Regulation (EU) 2019/2033 for investment firms under Article 9a, paragraph 1 of the Law on Markets in Financial Instruments, respectively, and Article 103a, paragraph 2 of the Law on Credit Institutions, Article 276, paragraph 1, item 11 of the Law on Markets in Financial Instruments for resolution entities at a consolidated level of the resolution group, and

b) (amended; Darjaven Vestnik, issue 25 of 2022) the recapitalisation amount that allows the resolution group to restore compliance with the total capital ratio requirement, referred to in Article 92, paragraph 1(c) of Regulation (EU) No 575/2013, in Article 11(1) of Regulation (EU) 2019/2033 for investment firms under Article 9a, paragraph 1 of the Law on Markets in Financial Instruments, respectively, and of the requirement referred to in Article 103a, paragraph 2 of the Law on Credit Institutions, Article 276, paragraph 1, item 11 of the Law on Markets in Financial Instruments, respectively, at the consolidated resolution group level after the implementation of the preferred resolution strategy;

2. for the purpose of calculating the requirement referred to in Article 69, paragraph 2, item 1, the sum of:

a) the amount of the losses to be absorbed that corresponds to the entity's leverage ratio requirement referred to in Article 92, paragraph 1(d) of Regulation (EU) No 575/2013, at the consolidated resolution group level, and

b) the recapitalisation amount that allows the resolution group to restore compliance with the leverage ratio requirement referred to in Article 92, paragraph 1 (c) of Regulation (EU) No 575/2013 at the consolidated resolution group level after the implementation of the preferred resolution strategy.

(2) For the purposes of Article 69, paragraph 2, item 1 the minimum requirement for own funds and eligible liabilities shall be expressed in percentage terms as the amount calculated in accordance with paragraph 1, item 1, divided by the total risk exposure amount.

(3) For the purposes of Article 69, paragraph 2, item 2 the minimum requirement for own funds and eligible liabilities shall be expressed in percentage terms as the amount calculated in accordance with paragraph 1, item 2, divided by the total exposure measure.

(4) When setting the individual requirement referred to in paragraph 1, item 2, the resolution authority referred to in Article 2, Article 3 respectively, shall take into account the requirements referred to in Article 57, paragraph 8 and Article 68, paragraphs 2 and 3.

(5) When setting the recapitalisation amount referred to in paragraph 1, item 1(b) and item 2 (b), the resolution authority shall:

1. use the most recently reported values for the relevant total risk exposure amount or total exposure measure, adjusted for any changes resulting from resolution actions set out in the resolution plan, and

2. (amended; Darjaven Vestnik, issue 25 of 2022) after consulting the competent authority, adjust the amount corresponding to the current requirement referred to in Article 103a, paragraph 2 of the Law on Credit Institutions, Article 276, paragraph 1, item 11 of the Law on Markets in Financial Instruments, respectively, to determine the requirement that is to apply to the resolution entity after the implementation of the preferred resolution strategy.

(6) (amended; Darjaven Vestnik, issue 25 of 2022) The resolution authority shall be able to increase the requirement provided in paragraph 1, item 1 (b) by an appropriate amount necessary to ensure that following the resolution the entity is able to sustain sufficient market confidence for an appropriate period which shall not exceed one year. In these cases the amount of the increase shall be equal to the combined buffer requirement that is to apply after the application of the resolution tools, less the amount of the countercyclical capital buffer as set under the procedure of the ordinance referred to in Article 39, paragraph 2 of the Law on Credit Institutions, where a resolution authority is the BNB, or under the procedure of the ordinance referred to in Article 11, paragraph 5 of the Law on Markets in Financial Instruments for investment firms under Article 9a, paragraph 2 of the same Law, where a resolution authority is the Commission.

(7) The resolution authority shall lower the amount of the requirement set under paragraph 6 if, after consulting the competent authority, the resolution authority determines that after the implementation of the resolution strategy it would be feasi-

ble and credible for a lower amount to be sufficient to sustain market confidence and to ensure the continued provision of critical economic functions by the institution or entity referred to in Article 1, paragraph 1, items 3–5, as well as its access to funding without recourse to extraordinary public support other than contributions from resolution financing arrangements in accordance with Article 68, paragraphs 2 and 3, and Article 137, paragraph 3.

(8) The resolution authority shall increase the amount of the requirement set under paragraph 6 if, after consulting the competent authority, the resolution authority determines that for an appropriate period, which shall not exceed one year, a higher amount is necessary to sustain sufficient market confidence and to ensure the continued provision of critical economic functions by the institution or entity referred to in Article 1, paragraph 1, items 3–5, as well as its access to funding without recourse to extraordinary public support other than contributions from resolution financing arrangements in accordance with Article 68, paragraphs 2 and 3, and Article 137, paragraph 3.

(9) (amended; Darjaven Vestnik, issue 25 of 2022) For the purposes of paragraphs 1–8, capital requirements shall be applied in accordance with the competent authority's application of Part Ten, Title I, Chapters 1, 2 and 4 of Regulation (EU) No 575/2013, Regulation (EU) 2019/2033, respectively, and the relevant provisions of the Law on Credit Institutions, the Law on Markets in Financial Instruments respectively, and their implementing instruments establishing the exercise of discretion granted to the competent authorities.

Minimum Requirement for Own Funds and Eligible Liabilities for Resolution Entities That Are Not Subject to Article 92a of Regulation (EU) No 575/213

(new; Darjaven Vestnik, issue 12 of 2021)

Article 69d. (new; Darjaven Vestnik, issue 12 of 2021) (1) For a resolution entity which is not subject to Article 92a of Regulation (EU) No 575/2013 and which is part of a resolution group the total assets of which exceed EUR 100 billion, the minimum level of the requirement under Article 69c shall be:

1. 13.5 per cent, when calculated as a percentage of the total risk exposure amount in accordance with Article 69, paragraph 2, item 1; and

2. 5 per cent, when calculated as a percentage of the total exposure measure in accordance with Article 69, paragraph 2, item 2.

(2) The level of the requirement under Article 1 shall be achieved using own funds, subordinated eligible instruments, or liabilities under Article 69a, paragraph 6.

(3) A resolution authority referred to in Article 2 or Article 3 may decide to apply the requirements under paragraphs 1 and 2 to a resolution entity which is not subject to Article 92a of Regulation (EU) No 575/2013, which is part of a resolution group the total assets of which are lower than EUR 100 billion and which the resolution

authority has assessed as reasonably likely to pose a systemic risk in the event of its failure.

(4) The decision under paragraph 3 shall be made, after consulting the competent authority, taking into account:

1. the prevalence of deposits, and the absence of debt instruments, in the funding model of the resolution entity;

2. the extent to which access to the capital markets for eligible liabilities is limited;

3. the extent to which the resolution entity relies on Common Equity Tier 1 capital to meet the requirement referred to in Article 70.

(5) The fact that the resolution entity has not taken a decision pursuant to paragraph 3 is without prejudice to any decision under Article 69a, paragraphs 11–13.

Minimum Requirement for Own Funds and Eligible Liabilities for Entities That Are Not Resolution Entities

(new; Darjaven Vestnik, issue 12 of 2021)

Article 69e. (new; Darjaven Vestnik, issue 12 of 2021) (1) For an entity that is not a resolution entity, the amount of the minimum requirement under Article 69b, paragraph 2 shall be determined, as follows:

1. for the purpose of calculating the requirement referred to in Article 69, paragraph 2, item 1, the sum of:

a) (amended; Darjaven Vestnik, issue 25 of 2022) the amount of the losses for the entity to be absorbed in resolution that corresponds to the requirements referred to in Article 92 (1)(c) of Regulation (EU) No 575/2013, the requirements under Article 11(1) of Regulation (EU) 2019/2033 for investment firms under Article 9a, paragraph 1 of the Law on Markets in Financial Instruments, respectively, and in Article 103a, paragraph 2 of the Law on Credit Institutions, or in Article 276, paragraph 1, item 11 of the Law on Markets in Financial Instruments, respectively, and

b) (amended; Darjaven Vestnik, issue 25 of 2022) a recapitalisation amount that allows the entity to restore compliance with its total capital ratio requirement referred to in Article 92, paragraph 1 (c) of Regulation (EU) No 575/2013, referred to in Article 11(1) of Regulation (EU) 2019/2033 for investment firms under Article 9a, paragraph 1 of the Law on Markets in Financial Instruments, respectively, and its requirement referred to in Article 103a, paragraph 2 of the Law on Credit Institutions, Article 276, paragraph 1, item 11 of the Law on Markets in Financial Instruments respectively, after the exercise of the power to write down or convert relevant capital instruments and eligible liabilities under Articles 89–91 or after the resolution of the resolution group; and

2. for the purpose of calculating the requirement referred to in Article 69, paragraph 2, item 1, the sum of:

a) the amount of the losses to be absorbed that corresponds to the entity's leverage ratio requirement referred to in Article 92, paragraph 1(d) of Regulation (EU) No 575/2013; and

b) a recapitalisation amount that allows the entity to restore compliance with the leverage ratio requirement referred to in Article 92, paragraph 1(d) of Regulation (EU) No 575/2013 after the exercise of the power to write down or convert relevant capital instruments and eligible liabilities under Articles 89–91 or after the resolution of the resolution group.

(2) For the purposes of Article 69, paragraph 2, item 1 the minimum requirement for own funds and eligible liabilities shall be expressed in percentage terms as the amount calculated in accordance with paragraph 1, item 1, divided by the total risk exposure amount.

(3) For the purposes of Article 69, paragraph 2, item 2 the minimum requirement for own funds and eligible liabilities shall be expressed in percentage terms as the amount calculated in accordance with paragraph 1, item 2, divided by the total exposure measure.

(4) When setting the individual requirement under paragraph 1, item 2, the resolution authority under Article 2, Article 3 respectively, shall take into account the requirements referred to in Article 57, paragraph 8 and Article 68, paragraphs 2 and 3.

(5) When setting the recapitalisation amounts, the resolution authority shall:

1. use the most recently reported values for the relevant total risk exposure amount or total exposure measure, adjusted for any changes resulting from resolution actions set out in the resolution plan; and

2. (amended; Darjaven Vestnik, issue 25 of 2022) after consulting the competent authority, adjust the amount corresponding to the current requirement referred to in Article 103a, paragraph 2 of the Law on Credit Institutions and Article 276, paragraph 1, item 11 of the Law on Markets in Financial Instruments respectively, to determine the requirement that is to apply to the relevant entity after the exercise of the power to write down or convert relevant capital instruments and eligible liabilities under Articles 89–91 or after the resolution of the resolution group.

(6) (amended; Darjaven Vestnik, issue 25 of 2022) The resolution authority shall be able to increase the requirement provided in paragraph 1, item 1(b) by an appropriate amount necessary to ensure that, following the exercise of the power to write down or convert relevant capital instruments and eligible liabilities under Articles 89–91, the entity is able to sustain sufficient market confidence for an appropriate period which shall not exceed one year. In these cases the amount of the increase shall be equal to the combined buffer requirement that is to apply after the exercise of the write-down or conversion power under Articles 89 – 91 or after the resolution of the resolution group, less the amount of the countercyclical capital buffer as set under the procedure of the ordinance referred to in Article 39, paragraph 2 of the Law on Credit Institutions, where a resolution authority is the BNB, or under the procedure of the ordinance referred to in Article 11, paragraph 7 of the Law on Markets in Financial Instruments, where a resolution authority is the Commission.

(7) The resolution authority may lower the amount of the requirement set by applying paragraph 6 if, after consulting the competent authority determines that after the exercise of the power under Articles 89–91 or after the resolution of the resolution group, it would be feasible and credible for a lower amount to be sufficient to sustain market confidence and to ensure the continued provision of critical economic functions by the institution or entity referred to in Article 1, paragraph 1, items 3–5, as well as its access to funding without recourse to extraordinary public support other than contributions from resolution financing arrangements in accordance with Article 68, paragraphs 2 and 3, and Article 137, paragraph 3.

(8) The resolution authority shall increase the amount of the requirement set by applying paragraph 6 if, after consulting the competent authority, the resolution authority determines that for an appropriate period, which shall not exceed one year, a higher amount is necessary to sustain sufficient market confidence and to ensure the continued provision of critical economic functions by the institution or entity referred to in Article 1, paragraph 1, items 3–5, as well as its access to funding without recourse to extraordinary public support other than contributions from resolution financing arrangements in accordance with Article 68, paragraphs 2 and 3, and Article 137, paragraph 3.

(9) (amended; Darjaven Vestnik, issue 25 of 2022) For the purposes of paragraphs 1–8, capital requirements shall be applied in accordance with the competent authority's application of Part Ten, Title I, Chapters 1, 2 and 4 of Regulation (EU) No 575/2013 or Regulation (EU) 2019/2033 and the relevant provisions of the Law on Credit Institutions, the Law on Markets in Financial Instruments, respectively, and their implementing instruments establishing the exercise of discretion granted to the competent authorities.

Minimum Requirement for Own Funds and Eligible Liabilities for Resolution Entities of G-SIIs and Union Material Subsidiaries of Non-EU G-SIIs

(new; Darjaven Vestnik, issue 12 of 2021)

Article 69f. (new; Darjaven Vestnik, issue 12 of 2021) (1) For a resolution entity that is a G-SII or part of a G-SII, the requirement referred to in Article 69, paragraph 1 shall consist of:

1. the requirements referred to in Articles 92a and 494 of Regulation (EU) No 575/2013; and

2. an additional requirement for own funds and eligible liabilities that the resolution authority under Article 2, Article 3 respectively, may determine in relation to the resolution entity in accordance with paragraph 3.

(2) For a Union material subsidiary of a non-EU G-SII, the requirement referred to in Article 69, paragraph 1 shall consist of:

1. the requirements referred to in Articles 92b and 494 of Regulation (EU) No 575/2013; and

2. an additional requirement for own funds and eligible liabilities that the resolution authority may determine in relation to the Union material subsidiary in accordance with paragraph 3, which is to be met using own funds and liabilities that meet the conditions of Article 70a and Article 122, paragraphs 5–7.

(3) An additional requirement for own funds and eligible liabilities in relation to the resolution entity or the Union material subsidiary of a non-EU G-SII may be determined only where the requirement referred to in paragraph 1, item 1, paragraph 2, item 1 respectively, is not sufficient to fulfil the conditions set out in Articles 69b to 69e. An additional requirement shall be determined only to an extent that ensures that the conditions set out in Articles 69b to 69e are fulfilled.

(4) When applying the procedure under Article 71, paragraphs 6–8 for determining the minimum requirement for own funds and eligible liabilities for more than one G-SII entity belonging to the same G-SII, the additional requirement referred to in paragraph 3 shall be calculated as follows:

1. for each resolution entity;

2. for the European Union parent entity as if it was the only resolution entity in the group of the G-SII.

(5) (amended; Darjaven Vestnik, issue 25 of 2022) The decision for additional requirement for own funds and eligible liabilities under paragraph 1, item 2, paragraph 2, item 2 respectively, shall be reasoned by the resolution authority, including the assessment of fulfilment of the conditions under paragraph 3. The decision shall be reviewed in a timely manner in case of changes in the level of the requirement referred to in Article 103a, paragraph 2 of the Law on Credit Institutions, Article 276, paragraph 1, item 11 of the Law on Markets in Financial Instruments, respectively, that applies to the resolution group or the Union material subsidiary of a non-EU G-SII.

Application of the Minimum Requirement for Own Funds and Eligible Liabilities to Resolution Entities

(amended; Darjaven Vestnik, issue 12 of 2021)

Article 70. (amended; Darjaven Vestnik, issue 12 of 2021) (1) Resolution entities shall comply with the requirements laid down in Articles 69a to 69f on a consolidated basis at the level of the resolution group.

(2) The minimum requirement for own funds and eligible liabilities for a resolution entity at the consolidated resolution group level shall be determined by the resolution authority referred to in Article 2, Article 3 respectively, in accordance with the procedures under Articles 71 and 72 and on the basis of the requirements referred to in Articles 69a to 69f and of whether the third-country subsidiaries of the group are to be resolved separately under the resolution plan.

Application of the Minimum Requirement for Own Funds and Eligible Liabilities to Entities That Are Not Themselves Resolution Entities

(new; Darjaven Vestnik, issue 12 of 2021)

Article 70a. (new; Darjaven Vestnik, issue 12 of 2021) (1) Institutions that are subsidiaries of a resolution entity or of a third-country entity, but are not themselves resolution entities, shall comply with the requirements laid down in Articles 69b to 69e on an individual basis.

(2) A resolution authority referred to in Article 2, Article 3 respectively, may apply the requirement laid down in paragraph 1 to an entity referred to in Article 1, paragraph 1, items 3–5 that is a subsidiary of a resolution entity but is not itself a resolution entity.

(3) The European Union parent undertakings that are not themselves resolution entities, but are subsidiaries of third-country entities, shall comply with the requirements laid down in Articles 69b to 69f on a consolidated basis.

(4) The minimum requirement for own funds and eligible liabilities for an entity which is not itself a resolution entity shall be determined in compliance with Articles 71 and 72 and in accordance with Articles 69b to 69e.

(5) The minimum requirement for own funds and eligible liabilities for an entity referred to in paragraphs 1–3 shall be met using one or more liabilities and own funds, as follows:

(1) liabilities in relation to which the following conditions are met:

a) they are issued under the condition to be bought by the resolution entity either directly or indirectly through other entities in the same resolution group that bought the liabilities from the entity under paragraph 1 or are issued under the condition to be bought by an existing shareholder that is not part of the same resolution group and the liabilities are bought by this shareholder as long as the exercise of write down or conversion powers in accordance with Articles 89–93 does not affect the control of the subsidiary by the resolution entity;

b) fulfil the eligibility criteria referred to in Articles 72a and 72b, paragraph 1 and paragraph 2 (a, d–j and n) of Regulation (EU) No 575/2013;

c) rank, in insolvency proceedings, below liabilities that do not meet the condition referred to in letter 'a' and that are not eligible for own funds requirements;

d) that are subject to write down or conversion powers in accordance with Articles 89–93 in a manner that is consistent with the resolution strategy of the resolution group, in particular by not affecting the control of the subsidiary by the resolution entity;

e) the acquisition of ownership of them is not funded directly or indirectly by the entity referred to in paragraphs 1–3;

f) the provisions governing the liabilities which do not provide explicitly or implicitly for the liabilities to be called, redeemed, repaid or repurchased early, by the entity referred to in paragraphs 1–3, other than in the case of the insolvency

or liquidation of that entity, and that entity does not otherwise provide such an indication;

g) the provisions governing the liabilities which do not give the holder the right to claim payment of future interest or principal prior to the agreed deadlines, other than in the case of the insolvency or liquidation of the entity referred to in paragraphs 1–3;

h) the level of interest or dividend payments, as applicable, due thereon is not amended on the basis of the credit standing of the entity referred to in paragraphs 1–3 or its parent undertaking;

2. the own funds that include:

a) Common Equity Tier 1 capital; and

b) other own funds that are issued under the condition to be bought directly by entities that are included in the same resolution group and bought by them, or that are issued under the condition to be bought directly by entities that are not included in the same resolution group and bought by them as long as the exercise of write down or conversion powers in accordance with Articles 89–93 does not affect the control of the subsidiary by the resolution entity;

(6) The resolution authority of a subsidiary that is not a resolution entity may waive the application of the requirement under paragraphs 1–5 to that subsidiary where:

1. both the subsidiary and the resolution entity are established in Bulgaria and are part of the same resolution group;

2. the resolution entity complies with the minimum requirement referred to in Article 70;

3. there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities by the resolution entity to the subsidiary in respect of which a determination has been made in accordance with Article 90, in particular where resolution action is taken in respect of the resolution entity;

4. the resolution entity 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 the risks in the subsidiary are of no significance;

5. the risk evaluation, measurement and control procedures of the resolution entity cover the subsidiary; and

6. the resolution entity holds more than 50 per cent of the voting rights attached to shares in the capital of the subsidiary or has the right to appoint or remove a majority of the members of the management body of the subsidiary.

(7) The resolution authority of a subsidiary that is not a resolution entity may waive the application of the requirement under paragraphs 1–5 to it where:

1. both the subsidiary and its parent undertaking are established in Bulgaria and are part of the same resolution group;

2. the parent undertaking complies on a consolidated basis with the requirement referred to in Article 69, paragraph 1;

3. there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities by the parent undertaking to the subsidiary in respect of which a determination has been made in accordance with Article 90, in particular where resolution action or powers referred to in Article 89, paragraphs 1–4 are taken in respect of the parent undertaking;

4. 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 the risks in the subsidiary are of no significance;

5. the risk evaluation, measurement and control procedures of the parent undertaking cover the subsidiary;

6. the parent undertaking holds more than 50 per cent of the voting rights attached to shares in the capital of the subsidiary or has the right to appoint or remove a majority of the members of the management body of the subsidiary.

(8) Where the conditions laid down in paragraph 6, items 1 and 2, are met, the resolution authority of a subsidiary may permit the requirement referred to in Article 69, paragraph 1 to be met in full or in part with a guarantee provided by the resolution entity, which fulfils the following conditions:

1. the guarantee is provided for at least an amount that is equivalent to the amount of the requirement for which it substitutes;

2. the guarantee is triggered when the subsidiary is unable to pay its liabilities as they fall due, or a determination has been made with regard to the conditions under Article 90 in respect of the subsidiary, whichever is the earliest;

3. the guarantee is collateralised through a financial collateral arrangement as defined in the Law on Financial Collateral Agreements for at least 50 per cent of its amount;

4. the collateral backing the guarantee fulfils the requirements of Article 197 of Regulation (EU) No 575/2013, which, following appropriately conservative haircuts, is sufficient to cover the amount collateralised as referred to in item 3;

5. the collateral backing the guarantee is unencumbered and is not used as collateral to back any other guarantee;

6. the collateral has an effective maturity that fulfils the maturity condition referred to in Article 72c, paragraph 1 of Regulation (EU) No 575/2013; and

7. there are no legal, regulatory or operational barriers to the transfer of the collateral from the resolution entity to the relevant subsidiary, including where resolution action is taken in respect of the resolution entity.

(9) For the purposes of paragraph 8, item 2, at the request of the resolution authority, the resolution entity shall provide an independent written and reasoned legal opinion or shall otherwise satisfactorily demonstrate that there are no legal,

regulatory or operational barriers to the transfer of collateral from the resolution entity to the relevant subsidiary.

Coordination of Measures to Implement the Minimum Requirement for Resolution Entities

(amended; Darjaven Vestnik, issue 12 of 2021)

Article 71. (amended; Darjaven Vestnik, issue 12 of 2021) (1) The decision to impose a minimum requirement of own funds and eligible liabilities shall be taken in parallel with the development and the maintenance of the resolution plan.

(2) The Bulgarian National Bank, the Commission respectively, where it is a group-level resolution authority, the resolution authorities of the resolution entities, where the group consists of more than one resolution group, and the resolution authorities responsible for the subsidiaries on an individual basis shall reach a joint decision on:

1. the amount of the minimum requirement that is to apply at the consolidated resolution group level to each resolution entity;

2. the amount of the minimum requirement that is to apply on an individual basis to each entity of a resolution group which is not a resolution entity.

(3) The BNB, the Commission respectively, where it is a resolution authority of the resolution entity, the group-level resolution authority, and the resolution authorities responsible for the subsidiaries on an individual basis shall reach a joint decision on:

1. the amount of the minimum requirement that is to apply at the consolidated resolution group level; and

2. the amount of the minimum requirement that is to apply on an individual basis to each entity of the resolution group which is not itself a resolution entity.

(4) The joint decisions referred to in paragraph 2, paragraph 3 respectively, shall be reached, while observing the requirements under Articles 70 and 70a, shall be reasoned and provided by the resolution authority to the resolution entity and the European Union parent undertaking, when that parent undertaking is not itself a resolution entity from the same resolution group.

(5) The joint decision taken in accordance with paragraph 2, paragraph 3 respectively, may provide that, where consistent with the resolution strategy the resolution entity has not bought directly or indirectly sufficient instruments complying with Article 70a, paragraph 5, the requirements referred to in Article 69e are partially met by the subsidiary which is not a resolution entity in compliance with Article 70a, paragraph 5 with instruments issued to be bought by entities not belonging to the resolution group and bought by them.

(6) Where the BNB, the Commission, respectively, is a resolution authority of the resolution entity which together with other entities belong to the same G-SII, it shall discuss and, where appropriate and consistent with the G-SII's resolution strategy, agree on the application of Article 72e of Regulation (EU) No 575/2013

and any adjustment to minimise or eliminate the difference between the sum of the amounts referred to in Article 69f, paragraph 4, item 1 and Article 12a of Regulation (EU) No 575/2013 for individual resolution entities and the sum of the amounts referred to in Article 69f, paragraph 4, item 2 and Article 12a of Regulation (EU) No 575/2013.

(7) Adjustments under paragraph 6 may be applied in respect of differences in the calculation of the total risk exposure amounts between the relevant Member States by adjusting the level of the requirement. Adjustments shall not be applied to eliminate differences resulting from exposures between resolution groups.

(8) The sum of the amounts referred to in Article 69f, paragraph 4, item 1 and Article 12a of Regulation (EU) No 575/2013 for individual resolution entities shall not be lower than the sum of the amounts referred to in Article 69f, paragraph 4, item 2 and Article 12a of Regulation (EU) No 575/2013.

(9) In the absence of a joint decision within four months because of a disagreement concerning a consolidated resolution group requirement referred to in Article 70, the BNB, the Commission respectively, as a resolution authority of the resolution entity, shall determine the amount of consolidated minimum requirement, taking into account:

1. the assessment of entities of the resolution group that are not a resolution entity, performed by the relevant resolution authorities;

2. the opinion of the group-level resolution authority, where different from the BNB, the Commission respectively.

(10) Where, at the end of the four-month period under paragraph 9, any of the resolution authorities concerned has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the BNB, the Commission respectively, as a resolution authority of the resolution entity, shall defer its decision and await any decision that EBA may take within one month in accordance with Article 19, paragraph 3 of Regulation (EU) No 1093/2010, and shall take its decision in accordance with the decision of EBA.

(11) Where the BNB, the Commission respectively, is a group-level resolution authority or a resolution authority of the resolution entity, it shall not refer a matter for the level of the requirement determined at an individual basis by the resolution authority of a subsidiary which is not itself a resolution entity, where the level is:

1. (amended; Darjaven Vestnik, issue 25 of 2022) within 2 per cent of the total risk exposure amount calculated in accordance with Article 92, paragraph 3 of Regulation (EU) No 575/2013, for investment firms under Article 9a, paragraph 1 of the Law on Markets in Financial Instruments, respectively, in accordance with the applicable requirement laid down in Article 11(1) of Regulation (EU) 2019/2033, multiplied by 12.5 of the requirement referred to in Article 70;

2. complies with the requirements under Article 69d, paragraphs 1–8.

(12) Where an EBA decision is not taken within one month, the BNB, the Commission respectively, shall take its own decision, as a resolution authority of the resolution entity.

(13) In the absence of a joint decision within four months because of a disagreement concerning the level of consolidated resolution group requirement and the level of the requirement that is to apply to the entities of the resolution group on an individual basis, the decision concerning the level of consolidated requirement for the resolution group shall be taken by the BNB, the Commission respectively, as a resolution authority of the resolution entity, in accordance with paragraphs 10–12.

(14) The joint decision referred to in paragraphs 2 and 3 and any decisions taken in the absence of a joint decision shall be binding on the BNB, the Commission respectively, shall be reviewed and where necessary updated.

(15) Where the BNB, the Commission respectively, is a resolution authority in relation to an entity of a resolution group which is not a resolution entity, it shall be involved in taking a joint decision on the amount of the minimum requirement that is to apply at the consolidated resolution group level. In this case, the BNB, the Commission respectively, shall exercise powers of the resolution authority concerned in accordance with paragraphs 1–13. In this case, the joint decision shall be binding on the BNB, the Commission respectively.

Coordination of Measures to Implement the Minimum Requirement for Entities That Are Not Resolution Entities

(amended; Darjaven Vestnik, issue 12 of 2021)

Article 72. Amended; Darjaven Vestnik, issue 12 of 2021) (1) The Bulgarian National Bank, the Commission, respectively, as a group-level resolution authority that is not a resolution entity shall determine the minimum requirement for own funds and eligible liabilities in respect of the entity at an individual level in accordance to Article 70a.

(2) The decision referred to in paragraph 1 shall be reached in parallel with the development and the maintenance of the resolution plan in the form of a joint decision by the resolution authority of the resolution entity, the group-level resolution authority, where different from the former, the BNB, the Commission respectively, and the resolution authorities responsible for other subsidiaries of a resolution group that are subject to the minimum requirement on an individual basis.

(3) The joint decision under paragraph 2 shall be reasoned and forwarded by the BNB, the Commission respectively, to the entity of a resolution group which is not a resolution entity.

(4) The joint decision taken in accordance with paragraph 2 may provide that, where consistent with the resolution strategy the resolution entity has not bought directly or indirectly sufficient instruments complying with Article 70a, paragraph 5, the requirements referred to in Article 69e are partially met by the subsidiary which is not a resolution entity in compliance with Article 70a, paragraph 5 with instru-

ments issued to be bought by entities not belonging to the resolution group and bought by them.

(5) In the absence of a joint decision within four months because of a disagreement concerning the level of the requirement under Article 70a, the BNB, the Commission respectively, as a resolution authority of an entity which is subject to the minimum requirement under Article 70a shall determine the amount of the requirement on an individual basis, taking into account:

1. the views and reservations expressed in writing by the resolution authority of the resolution entity; and

2. the views and reservations expressed in writing by the group-level resolution authority, where the group-level resolution authority is different from the resolution authority of the resolution entity.

(6) Where, at the end of the four-month period under paragraph 5, the group-level resolution authority of the resolution entity has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the BNB, the Commission respectively, as a resolution authority of an entity which is not a resolution entity, shall defer its decision and await any decision that EBA may take within one month in accordance with Article 19, paragraph 3 of Regulation (EU) No 1093/2010, and shall take its decision in accordance with the decision of EBA.

(7) Where an EBA decision is not taken within one month, the BNB, the Commission respectively, shall take its own decision on the minimum requirement that is to apply to a subsidiary licensed in the Republic of Bulgaria which is not a resolution entity.

(8) The joint decision referred to in paragraph 2 and any decisions taken in the absence of a joint decision shall be binding on the BNB, the Commission respectively, shall be reviewed and where necessary updated.

(9) In the absence of a joint decision within four months because of a disagreement concerning the level of the consolidated resolution group requirement and concerning the level of the requirement that is to apply to the entities of the resolution group on an individual basis, the decision concerning the level of the requirement that is to apply to a subsidiary of the resolution group licensed in the Republic of Bulgaria on an individual basis shall be taken by the BNB, the Commission respectively, in accordance with paragraphs 1–7. In this case, the decision shall be binding on the BNB, the Commission respectively.

(10) In cases referred to in paragraph 1, the BNB, the Commission respectively, shall be involved in taking a joint decision on the amount of the minimum requirement that is to apply at the consolidated resolution group level and on an individual basis to each entity of a resolution group which is not a resolution entity. The joint decision shall be binding on the BNB, the Commission respectively.

Minimum Requirement for Own Funds and Eligible Liabilities for Resolution Entities in the Transitional and Post-resolution Period

(new; Darjaven Vestnik, issue 12 of 2021)

Article 72a. (new; Darjaven Vestnik, issue 12 of 2021) (1) The minimum levels of the requirements referred to in Article 69d shall not apply for a term of two years from:

1. the date on which the resolution authority has applied the bail-in tool; or

2. the date on which the resolution entity has put in place an alternative private sector measure as referred to in Article 51, paragraph 1, item 2 by which capital instruments and other liabilities have been written down or converted into Common Equity Tier 1 instruments, or on which write down or conversion powers, in accordance with Articles 89–91, have been exercised, in order to recapitalise the resolution entity without the application of resolution tools.

(2) The minimum requirement referred to in Article 69, paragraphs 7–10 and paragraph 16, Article 69d respectively, shall not apply for the term of three years from the date on which the resolution entity or the group of which the resolution entity is part has been identified as a G-SII, or the resolution authority has began to apply the requirements referred to in Article 69d, paragraphs 1 and 2, paragraphs 3–5 respectively, to the resolution entity.

(3) The resolution authority referred to in Article 2, Article 3 respectively, shall determine a transitional period for institutions or entities under Article 1, paragraph 1, items 3–5 to which the resolution tools or write-down or conversion power referred to in Articles 89–91 have been applied, to meet the minimum requirement for own funds and eligible liabilities, determined by respectively applying Article 70 or Article 70a, or the requirements that result from the application of Article 69a, paragraphs 7–10, paragraphs 11–13 or paragraph 16.

(4) When determining the transitional period, the resolution authority shall take into account:

1. the prevalence of deposits and the absence of debt instruments in the funding model;

2. the access to the capital markets for eligible liabilities;

3. the extent to which the resolution entity relies on Common Equity Tier 1 capital to meet the requirement referred to in Article 70.

(5) The resolution authority shall communicate to the institution and entity referred to in Article 1, paragraph 1, items 3–5 the planned minimum requirement for own funds and eligible liabilities for each 12-month period during the transitional period, with a view to facilitating a gradual build-up of its loss-absorbing and recapitalisation capacity and compliance with the determined minimum requirement at the end of the transitional period.

Reporting and Public Disclosure of the Minimum Requirement for Own Funds and Eligible Liabilities

(new; Darjaven Vestnik, issue 12 of 2021)

Article 72b (new; Darjaven Vestnik, issue 12 of 2021) (1) Institutions and entities under Article 1, paragraph 1, items 3–5 for which the resolution authority determines a minimum requirement for own funds and eligible liabilities referred to in Article 69 shall report to the BNB, in its capacity as a resolution and competent authority, the Commission respectively, in its capacity as a resolution and competent authority on:

1. the amounts of own funds that, where applicable, meet the conditions of Article 70a, paragraph 5, item 2, and the amounts of eligible liabilities, and the expression of those amounts in accordance with Article 69, paragraph 2 after any applicable deductions in accordance with Articles 72e to 72j of Regulation (EU) No 575/2013;

2. the amounts of other bail-inable liabilities;

3. the items of own funds and liabilities referred to in items 1 and 2, including:

a) the composition, including maturity profile,

b) the ranking in insolvency proceedings, and

c) where applicable, the reference to the laws of a third country that govern the respective item and whether they contain the contractual terms under Article 84, paragraphs 1–3, and Article 52, paragraph 1(p and q) and Article 63(n and o)of Regulation (EU) No 575/2013.

(2) The obligation to report on the amounts of other bail-inable liabilities referred to in paragraph 1, item 2 shall not apply to entities that, at the date of the reporting of that information, hold amounts of own funds and eligible liabilities of at least 150 per cent of the requirement referred to in Article 69, paragraph 1 as calculated in accordance with paragraph 1, item 1.

(3) The reports under paragraph 1, item 1 shall be provided on at least a semi-annual basis.

(4)The reports under paragraph 1, items 2 and 3 shall be provided on at least an annual basis.

(5) The Bulgarian National Bank, the Commission respectively, may require the institutions and entities under Article 1, paragraph 1, items 3–5 to report in accordance with paragraph 1 on a more frequent basis.

(6) The entities under paragraph 1 shall disclose to the public on at least an annual basis:

1. the amounts of own funds that, where applicable, meet the conditions of Article 70a, paragraph 5, item 2, and the amounts of eligible liabilities;

2. the composition of items referred to in item 1, including their maturity profile and their ranking in insolvency proceedings;

3. the applicable requirement referred to in Article 70 or Article 70a, expressed as a percentage shares under Article 69, paragraph 2.

(7) The requirements under paragraphs 1 and 6 shall not apply to institutions and entities referred to in Article 1, paragraph 1, items 3–5 whose resolution plan provides that the entity is to be wound up under insolvency proceedings.

(8) Where resolution actions have been implemented or the write-down or conversion power have been exercised, public disclosure requirements referred to in paragraph 6 shall apply from the date of the deadline to comply with the requirements of Article 70 or Article 70a as defined in Article 72a.

Breaches of the Minimum Requirement for Own Funds and Eligible Liabilities

(new; Darjaven Vestnik, issue 12 of 2021)

Article 72c. (new; Darjaven Vestnik, issue 12 of 2021) (1) In order to remove breaches of the minimum requirement for own funds and eligible liabilities referred to in Articles 70 and 70a, the resolution authority under Article 2, Article 3 respectively, may:

1. exercise powers to address or remove impediments to resolvability in accordance with Article 29 or 30;

2. exercise powers under Articles 28a–28c;

3. impose administrative measures and penalties in accordance with Article 145.

(2) In order to remove breaches of the minimum requirement for own funds and eligible liabilities referred to in Articles 70 and 70a, the competent authority may:

1. impose measures under Article 103, paragraph 2 of the Law on Credit Institutions, or in Article 276, paragraph 1 of the Law on Markets in Financial Instruments respectively;

2. apply early intervention measures under Article 4.

(3) In the case of breaches of the minimum requirement for own funds and eligible liabilities, resolution and competent authorities may also carry out an assessment under Article 51, paragraph 1, item 1 or in Article 52 respectively, of whether the institution or entity under Article 1, paragraph 1, items 3–5 is failing or is likely to fail.

(4) Resolution and competent authorities shall consult each other when they exercise their respective powers under paragraphs 1–3.

Section III

Implementation of the Bail-in Tool

Assessment of the Amounts of Bail-in

Article 73. (1) (amended; Darjaven Vestnik, issue 37 of 2019) Before applying the bail-in tool the resolution authority under Article 2 or under Article 3 based on the valuation under Article 55 shall assess the following:

1. (amended; Darjaven Vestnik, issue 12 of 2021) where relevant, the amount by which the bail-inable liabilities must be written down to ensure that the net asset value of the bank under resolution is equal to zero; and

2. (amended; Darjaven Vestnik, issue 12 of 2021) the amount by which the bail-inable liabilities must be converted into shares or other instruments of ownership in order to restore the Common Equity Tier 1 ratio of:

a) the institution under resolution; or

b) the bridge institution.

(2) The assessment under paragraph 1 shall take into account capital contributions which BRF, IFRF respectively, may do under Article 137, paragraph 1, item 3, and the need to sustain sufficient market confidence in the institution under resolution or the bridge institution and enable it to continue to meet for at least one year, the conditions for licensing and to continue to carry out the activities for which it was licensed under the Law on Credit Institutions, the Law on Markets in Financial Instruments respectively.

(3) (amended; Darjaven Vestnik, issue 12 of 2021) Where the resolution authority intends to use the asset separation tool, the amount by which bail-inable liabilities need to be reduced, shall take into account a prudent estimate of the capital needs of the asset management vehicle.

(4) Where capital has been written down in accordance with Chapter Fifteen and bail-in has been applied pursuant to Articles 65, paragraph 1 and the level of write-down based on the preliminary valuation according to Article 55 is found to exceed requirements when assessed against the conclusive valuation according to Article 55, paragraph 15, the resolution authority may apply write-up mechanism to reimburse creditors and then shareholders to the extent necessary.

(5) Resolution authorities shall establish and maintain arrangements to ensure that the assessment and valuation under paragraph 1 is based on information about the assets and liabilities of the institution under resolution that is as up-to-date and comprehensive as it is reasonably possible.

Treatment of Shareholders in Bail-in or Write-down or Conversion of Capital Instruments

Article 74. (1) When applying the bail-in tool in accordance with Article 65, paragraph 1 or the write-down or conversion of capital instruments in accordance with Article 89, the resolution authority shall take in respect of shareholders and other holders of instruments ownership at least one of the following actions:

1. cancel existing shares and other instruments of ownership or transfer them to creditors for liabilities of the institution under resolution that were written down or converted in the application of the bail-in tool;

2. provided that, in accordance with the valuation carried out under Article 55 the institution under resolution has a positive net asset value, dilute existing share-

holders and holders of other instruments of ownership of the institution as a result of the conversion into shares or other instruments of ownership of:

a) relevant Additional Tier 1 and Tier 2 instruments, issued by the institution after the exercise of the powers under Article 89 of the resolution authority or

b) (amended; Darjaven Vestnik, issue 12 of 2021) bail-inable liabilities issued by the institution under resolution in the exercise of powers of the resolution authority referred to in Article 94, paragraph 2, item 6.

(2) The conversion under paragraph 1, item 2 is performed at a ratio which significantly dilutes existing shareholders and holders of other instruments of ownership.

(3) The actions referred to in paragraph 1 shall also be taken in respect of shareholders and holders of other instruments of ownership, where the shares and other instruments of ownership were issued or conferred in the following circumstances:

1. following the conversion of debt instruments into shares or other instruments of ownership in accordance with contractual terms of the original debt instruments on the occurrence of an event that preceded or occurred at the moment of the decision of the resolution authority that the institution or entity referred to in Article 1, paragraph 1, items 3–5 are eligible for resolution;

2. conversion of the Additional Tier 1 and Tier 2 instruments to Common Equity Tier 1 items pursuant to Article 92.

(4) When considering the action to take in accordance with paragraph 1, the resolution authority shall have regard to:

1. the valuation carried out in accordance with Article 55;

2. the amount by which the resolution authority has assessed that Common Equity Tier 1 items must be reduced and relevant Additional Tier 1 and Tier 2 instruments must be written down or converted in accordance with Article 92, and

3. the aggregate amount according to Article 73.

(5) (amended; Darjaven Vestnik, issue 15 of 2018) Where the application of the bail-in tool or conversion of Tier 1 and Tier 2 capital instruments would lead to the acquisition or increase of a qualifying holding in an institution in the context of the Articles 28–34 of the Law on Credit Institutions, Articles 53–59 of the Law on Markets in Financial Instruments respectively, the competent authority shall carry out the assessment required in a timely manner that does not delay the application of bail-in tool or the conversion, or prevent the achievement of the resolution objectives.

(6) Where on the date of application of the bail-in tool or the conversion of the Tier 1 and Tier 2 capital instruments, the competent authority has not completed its assessment under paragraph 5, any acquisition or increase of a qualifying holding by an acquirer resulting from the application of bail-in tool or conversion, the procedures under Article 58, paragraphs 9 and 10 shall apply.

Sequence of the Write-down and Conversion

Article 75. (1) When applying the bail-in tool, the resolution authority under Article 2 or Article 3 shall exercise the write-down and conversion powers, taking into account any exclusion under Articles 66 and 67 and complying with the following requirements and sequence:

1. Common Equity Tier 1 items are reduced in accordance with Article 92;

2. where the reduction pursuant to item 1 is less than the sum of the amounts referred to in Article 74, paragraph 4, items 2 and 3, the principle amount of Additional Tier 1 instruments is reduced to the extent necessary or in full;

3. where the total reduction under items 1 and 2 is less than the sum of the amounts referred to in Article 74, paragraph 4, items 2 and 3, the principle amount of Tier 2 instrument is reduced to the extent necessary or in full;

4. where the total reduction under items 1–3 is less than the sum of the amounts referred to in Article 74, paragraph 4, items 2 and 3, the principle amount of subordinated debt, which is not part of the Additional Tier 1 or Tier 2 instruments, in accordance with the hierarchy of claims in insolvency proceedings shall be reduced to the extent necessary or in full;

5. (amended; Darjaven Vestnik, issue 12 of 2021) where the total reduction under items 1–4 is less than the sum of the amounts referred to in Article 74, paragraph 4, items 2 and 3, the principle amount of, or outstanding amount payable in respect of, the rest of bail-inable liabilities, including debt instruments referred to in Article 94, paragraph 1, item 11 of the Law on Bank Bankruptcy, is reduced after applying the exceptions of Article 66, paragraph 2 and, where applicable, Article 67, in accordance with the hierarchy of claims provided for in Article 94 of the Law on Bank Bankruptcy, Article 722, paragraph 1 and Article 722a of the Law on Commerce respectively.

(2) (amended; Darjaven Vestnik, issue 12 of 2021) When applying the write-down or conversion powers, resolution authorities shall allocate the losses represented by the sum of the amounts referred to in Article 74, paragraph 3, items 2 and 3 equally between instruments of ownership and bail-inable liabilities of the same rank by reducing the principal amount of, or outstanding amount payable in respect of, those instruments of ownership or bail-inable liabilities to the same extent pro rata to their value except where a different allocation of losses amongst liabilities of the same rank is allowed in the circumstances specified in Article 67.

(3) (amended; Darjaven Vestnik, issue 12 of 2021) The requirement referred to in paragraph 2 shall not apply to liabilities which have been excluded from bail-in in accordance with Article 66, paragraph 2 and Article 67 from receiving more favourable treatment than bail-inable liabilities which are of the same rank in normal insolvency proceedings.

(4) Before applying paragraph 1, item 5, the resolution authority shall convert or reduce the principal amount of the instruments referred to in paragraph 1, items 2–4

where those instruments have not already been converted and contain any of the following conditions:

1. the principal amount of the instrument to be reduced on the occurrence of any event that refers to the financial situation, solvency or levels of own funds of the institution or entity referred to in Article 1, paragraph 1, items 3–5;

2. the conversion of the instruments into instruments of ownership on the occurrence of any such event.

(5) Where the principal amount of an instrument has been reduced, but not to zero, in accordance with terms of paragraph 4, item 1 before the application of the bail-in pursuant to paragraph 1, resolution authorities shall apply the write-down and conversion powers to the residual amount of that principal in accordance with paragraph 1.

(6) When deciding on whether liabilities are to be written down or converted into equity, resolution authorities shall not convert one class of liabilities, while a class of liabilities that is subordinated to that class remains substantially unconverted into equity or not written down, unless otherwise permitted under Article 66, paragraph 2 and Article 67.

Write-down and Conversion of Liabilities Arising from Derivatives

Article 76. (1) The resolution authority under Article 2 or Article 3 shall exercise the write-down and conversion powers to liabilities arising from derivatives only after closing the positions on derivative contracts. Upon placing the institution under resolution, the resolution authority may terminate or close out all derivative contracts for that purpose.

(2) Paragraph 1 shall not apply in cases where the liability under a derivative contract is excluded from the scope of the bail-in tool under Article 67.

(3) Where derivative transactions are subject to a netting agreement, the resolution authority or an independent valuer shall determine as part of the valuation under Article 55 the liability arising from those transactions on a net basis in accordance with the terms of the agreement

(4) The resolution authority shall determine the value of liabilities under derivative contracts in accordance with:

1. appropriate methodologies for determining the value of classes of derivatives, including transactions that are subject to netting agreements;

2. principles for establishing the relevant point in time at which the value of a derivative position should be established; and

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

Rate of Conversion of Debt to Equity

Article 77. In exercising its powers specified in Article 90, paragraph 1 and Article 94, paragraph 2, item 6, the resolution authority under Article 2 or Article 3 may apply different conversion rates to different classes of capital instruments and liabilities in accordance with one or both of the following principles:

1. the conversion rate shall represent appropriate compensation to the affected creditors for their loss incurred as a result of the exercise of the write-down or conversion powers by the resolution authority;

2. when different conversion rates are applied, the conversion rate applicable to liabilities that are considered to be senior in insolvency shall be higher than the conversion rate applicable to the subordinated liabilities.

Reorganisation Measures Accompanying Bail-in

Article 78. Where applying the bail-in tool in order to recapitalise the institution or entity referred to in Article 1, paragraph 1, items 3–5 in accordance with Article 65, paragraph 1, item 1, the resolution authority under Article 2 or Article 3 requires the institution or entity to draw up and implement a business reorganisation plan accordance with Article 79.

Business Reorganisation Plan

Article 79. (1) Within one month after the application of the bail-in tool in accordance with Article 65, paragraph 1, item 1 to an institution or entity referred to in Article 1, paragraph 1, items 3–5, the management body of the institution shall draw up and submit to the resolution authority under Article 2 or Article 3 a business reorganisation plan that satisfies the requirements of Article 80.

(2) (amended; Darjaven Vestnik, issue 37 of 2019) Where the Union state aid framework is applicable, the plan under paragraph 1 shall meet the requirements of the business reorganisation plan. Where applicable, the institution or the company shall submit the plan to the European Commission.

(3) When the bail-in tool in accordance with Article 65, paragraph 1, item 1 is applied to two or more group entities, the business reorganisation plan shall be prepared by the parent institution from the European Union and shall cover all institutions in the group in accordance with the applicable procedures set out in Articles 8–12.

(4) In the cases under paragraph 3, where the BNB, the Commission respectively, is a group-level resolution authority, it shall communicate the plan in paragraph 1 to the relevant resolution authorities and the EBA.

(5) The resolution authority may extend the period under paragraph 1, with no more than one month in exceptional circumstances and if necessary for achieving the resolution objective.

(6) Where the legal framework of the European Union state aid is applied, the extension of the period under paragraph 5 shall not exceed the time limit set under the state aid framework.

Requirements for Business Reorganisation Plan

Article 80. (1) A business reorganisation plan shall set out measures aiming to restore long-term viability of the institution or entity referred to in Article 1, paragraph 1, items 3–5, or part of their business within a reasonable timescale. Those measures shall be based on realistic assumptions regarding economic and financial market conditions under which the institution or entity will operate.

(2) A business reorganisation plan shall be consistent with the current state and future prospects of the financial markets, reflecting best-case and worst-case assumptions, including a combination of events allowing the identification of the institution's main vulnerabilities. Assumptions shall be compared with appropriate benchmarks for the relevant sector of the financial system.

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

1. a detailed analysis of the factors and problems that caused the institution or entity referred to in Article 1, paragraph 1, items 3–5 to fail or to be likely to fail, and circumstances that led to its difficulties;

2. a description of measures aiming to restore the long term viability of the institution or entity referred to in Article 1, paragraph 1, items 3–5 that are to be adopted;

3. a timetable for the implementation of measures under item 2.

(4) Measures aiming to restore the long term viability of the institution or entity referred to in Article 1, paragraph 1, items 3–5 may include:

1. the reorganisation of the activities of the institution or entity referred to in Article 1, paragraph 1, items 3–5;

2. changes in operational systems and infrastructure of the institution;

3. the withdrawal from loss-making activities;

4. the restructuring of existing activities that can be made competitive;

5. the sale of assets or business lines.

Approving the Business Reorganisation Plan

Article 81. (1) Within one month of the date of submission of the business reorganisation plan, the resolution authority under Article 2 or Article 3 shall assess the likelihood that the plan, if implemented, will restore long-term viability of the institution or entity referred to in Article 1, paragraph 1, items 3–5 and shall approve it when is satisfied that the plan would achieve that objective.

(2) If the resolution authority is not satisfied that the plan would achieve the restoration of long-term viability of the institution or entity referred to in Article 1, paragraph 1, items 3–5, it shall notify the management body of its concerns and require amendments to the plan.

(3) Within two weeks from the date of receipt of the notification referred to in paragraph 2, the management body shall submit an amended plan to the resolution authority for approval. Within a week the resolution authority shall assess the amended plan and shall notify the management body whether it is satisfied that the plan, as amended, addresses the concerns under paragraph 2 or whether further amendments are required.

(4) The management body shall implement the business reorganisation plan as agreed by the resolution authority and shall submit a report to the resolution authority at least every six months on the progress in the implementation of the plan. The management body shall revise the plan if, in the opinion of the resolution authority, it is necessary in order to achieve the aim referred to in Article 80, paragraph 1, and shall submit any such revision to the resolution authority for approval.

Section IV

Bail-in Tool: Ancillary Provisions

Effect of Bail-in

Article 82. (1) Where a resolution authority under Article 2 or Article 3 exercise a power referred to in Article 89 and Article 94, paragraph 2, items 5–9 the decisions about a reduction of principal or outstanding amount due, conversion or cancellation effect and is immediately binding on the institution under resolution and affected creditors and shareholders.

(2) The resolution authority shall have the power to complete or require the completion of all the administrative and procedural tasks necessary to give effect to the exercise of a power referred to in Article 89 and Article 94, paragraph 2, items 5–9, including:

1. the registration of circumstances arising from exercising the powers under paragraph 1, in the Commercial Register;

2. the delisting or removal from trading of shares or other instruments of ownership or debt instruments;

3. the listing or admission to trading of new instruments of ownership;

4. the relisting or readmission of any debt instruments which have been written down, without the requirement for the issuing of a prospectus in accordance with applicable law.

(3) Where a resolution authority reduces to zero the principal amount of, or outstanding amount payable in respect of, a liability by means of the power referred to in Article 94, paragraph 2, item 5, that liability and any obligations or claims arising in relation to it that are not accrued at the time when the power is exercised shall be treated as discharged for all purposes, and shall not be provable in any subsequent proceedings in relation to the institution under resolution or any successor entity in any subsequent winding up.

(4) Where a resolution authority reduces in part, but not in full, the principal amount of, or outstanding amount payable in respect of, a liability by means of the power referred to in Article 94, paragraph 1, item 5, the liability shall be discharged to the extent of the amount reduced. The relevant instrument or agreement that created the original liability shall continue to apply in relation to the residual principal amount of, or outstanding amount payable in respect of the liability, subject to any modification of the amount of interest payable to reflect the reduction of the principal amount, and any further modification of the terms that the resolution authority might make by means of the power referred to Article 94, paragraph 1, item 10.

Removing Procedural Impediments to Bail-in

Article 83. (1) The resolution authority under Article 2 or Article 3 may require institutions and entities referred to in Article 1, paragraph 1, items 3–5 to maintain at all times sufficient amount of authorised share or of other Common Equity Tier 1 instruments, so that, in the event that the resolution authority exercise its powers under Article 94, paragraph 2, items 5 and 6 in relation to an institution or an entity, or any of its subsidiaries, the institution or entity is not prevented from issuing sufficient new instruments of ownership to ensure effective conversion of liabilities.

(2) The resolution authority shall assess the need to impose the requirement laid down in paragraph 1 and determine the amount of capital in the context of the development and maintenance of the resolution plan, having regard to the resolution actions contemplated in that plan.

(3) If the resolution plan provides for the possible application of the bail-in tool, the resolution authority shall assess that the authorised share capital or other Common Equity Tier 1 instruments are sufficient to cover the sum of the amounts referred to in 74, paragraph 4, items 2 and 3.

(4) The resolution authority shall require that there are no procedural impediments to the conversion of liabilities to shares or other instruments of ownership existing by virtue of their instruments of incorporation or statutes, including pre-emption rights for shareholders or requirements for the consent of shareholders to an increase in capital.

Contractual Recognition of Bail-in

(amended; Darjaven Vestnik, issue 12 of 2021)

Article 84. (amended; Darjaven Vestnik, issue 12 of 2021) (1) In the agreement or instrument creating the liability, institutions and entities referred to in Article 1, paragraph 1, items 3–5, that are party thereto, include a contractual term by which the creditor or other parties to the agreement or instrument recognise that liability may be subject to the write down and conversion powers and agree to be bound by any reduction of the principal or outstanding amount due, conversion or cancellation that is effected by the exercise of those powers by a resolution authority, provided that that liability:

1. is not excluded under Article 66, paragraph 2;

2. is not a deposit as referred to in Article 94, paragraph 1, item 4a of the Law on Bank Bankruptcy;

3. is governed by the law of a third country; and

4. is issued or entered into after the entry into force of this Law.

(2) The requirement under paragraph 1 shall not apply where the resolution authority determines that the liabilities referred to in paragraph 1 can be subject to write down and conversion powers pursuant to the law of the third country or to a binding agreement concluded with it.

(3) The resolution authority under Article 2 or 3 may not apply paragraph 1 to institutions or entities referred to in Article 1, paragraph 1, items 3–5 in respect of which the requirement under Article 69, paragraph 1 equals the loss-absorption amount as defined under Article 69b, paragraph 2, item 1, provided that liabilities that meet the conditions referred to in paragraph 1 and which do not include the contractual term referred to in paragraph 1 are not counted towards that requirement.

(4) Where the resolution authority concludes that it is legally or otherwise impracticable to include a contractual term referred to in paragraph 1 in the agreement or instrument, the liability on which should be satisfied in the insolvency proceeding prior to the liabilities under Article 94, paragraph 1, items 11–15 of the Law on Bank Bankruptcy, the institution or entity under Article 1, paragraph 1, items 3–5 shall notify the resolution authority, indicating the class of liabilities and the reasons for its conclusion. In this case, the performance of obligation to include a contractual term shall be suspended as of the time of obtaining the notification by the resolution authority.

(5) The resolution authority shall assess the possibility of inclusion of a contractual term referred to in paragraph 1 in the agreement or instrument under paragraph 1 and the effects of the notification on the resolvability of the institution or entity under Article 1, paragraph 1, items 3–5, to that end, it may require the institution or entity to submit additional information.

(6) Where the resolution authority concludes that it is legally or otherwise practicable to include a contractual term referred to in paragraph 1 in the agreement and instrument under paragraph 1, it shall take into account the need to ensure the resolvability of the institution or entity under Article 1, paragraph 1, items 3–5 and shall require the institution or entity to include such contractual term.

(7) In the cases under paragraph 6, the resolution authority may require the institution or entity under Article 1, paragraph 1, items 3–5 to amend its practices concerning the application of the exemption from contractual recognition of bail-in.

(8) Paragraphs 4–7 shall not apply to Additional Tier 1 instruments, Tier 2 instruments and debt instruments creating or acknowledging a debt, where those instruments are unsecured liabilities.

(9) Where the resolution authority, in the context of the assessment of the resolvability under Articles 26 and 27, or at any other time, determines that, within a

class of liabilities, which includes eligible liabilities, the amount of liabilities that, in accordance with paragraph 4, do not include the contractual term referred to in paragraph 1, together with the liabilities which are excluded from the application of the bail-in instrument in accordance with Article 66, paragraph 2 or which are likely to be excluded in accordance with Article 67, paragraphs 1 and 2, exceeds 10 per cent of that class, it shall immediately assess the impact of that fact on the resolvability of the institution or entity under Article 1, paragraph 1, items 3–5, including the impact resulting from the risk of breaching the creditor safeguards under Article 105, when applying write-down and conversion powers to eligible liabilities.

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

(11) Liabilities under paragraph 1 for which the institution or entity referred to in Article 1, paragraph 1, items 3–5 fails to include the contractual term required by paragraph 1 or for which, in accordance with paragraphs 4–10, the requirement for a contractual term does not apply, shall not be counted towards the minimum requirement for own funds and eligible liabilities.

(12) The resolution authority may require the institution or entity referred to in Article 1, paragraph 1, items 3–5 to provide a legal opinion relating to the enforceability and effectiveness of the contractual term referred to in paragraph 1.

(13) Where an institution or entity under Article 1, paragraph 1, items 3–5 does not include in an agreement or instrument under paragraph 1, a contractual term referred to in paragraph 1, that shall not prevent the resolution authority from exercising the write down and conversion powers in relation to that liability.

(14) Based on regulatory technical standards developed by the EBA the resolution authority may determine specific categories of liabilities for which the institution or entity referred to in Article 1, paragraph 1, items 3–5 may apply the determination that it is legally or otherwise impracticable to include the contractual term referred to in paragraph 1 in an agreement or instrument under paragraph 1.

Chapter Fourteen

GOVERNMENT FINANCIAL STABILISATION TOOL

General Provisions

Article 85. (1) In the event of a systemic crisis, as a last resort, if the resolution objectives for the resolution of a bank under resolution are not achieved, after the tools in Article 56 were implemented by the BNB to the maximum extent appropriate with a view to preserving financial stability and is unlikely to be achieved through other resolution activities, the BNB shall notify the Minister of Finance and may make a proposal under Article 57, paragraph 8.

(2) The notification under paragraph 1 shall contain detailed information on:

1. the current financial condition of the bank under resolution;

2. the decision under Article 114 of the BNB based on an independent valuation under Article 55;

3. fulfilment of the conditions under Article 51, paragraph 1;

4. resolution tools applied;

5. fulfilment of the conditions under Article 57, paragraph 8, item 1;

6. other significant circumstances.

(3) Based on the notification under paragraph 2 and assessment of the BNB on the possibilities for resolution, the Minister of Finance after consulting the Governing Council of the BNB may make a fully reasoned proposal to the Government for a decision on government financial stabilisation tool in Article 86, paragraph 1, subject to state aid rules, provided that the implementation of the resolution measures would not suffice to avoid a significant adverse effects on financial stability and for the government financial stabilisation tool under Article 86, paragraph 1, item 2 the application of the resolution measures would not suffice to protect the public interest, where measures under Article 86, paragraph 1, item 1 has previously been applied to the institution.

(4) The Government shall decide on the proposal of the Minister of Finance under paragraph 3, which determines:

1. objectives to be achieved by the application of government financial stabilisation tools;

2. the relevant government tool under Article 86, paragraph 1;

3. the amount by which the state will participate in the capital of the bank under resolution and the type of financial instruments against which capital support is provided;

4. the purchaser of the shares and other financial instruments that are recognised as Tier 1 or Tier 2 capital instruments;

5. other conditions which must be fulfilled in accordance with the respective government financial stabilisation tool and measures to be implemented.

(5) The Minister of Finance is responsible for the application of the decision of the Government under paragraph 5.

(6) (amended; Darjaven Vestnik, issue 85 of 2017) In case of application of government financial stabilisation tool, the Minister of Finance has all the powers of the resolution authority pursuant to Article 94. In these cases, the Minister of Finance is also an administrator for aid within the meaning of Article 9 of the Law on State Aid.

Types of Government Financial Stabilisation Tools

Article 86. (1) Government financial stabilisation tools are:

1. government equity support tool; and

2. temporary government ownership tool.

(2) The government equity support is applied through state involvement in increasing the own funds of the bank under resolution by a decision of the BNB in compliance with the requirements of Regulation (EU) No 575/2013 through the acquisition of:

1. Common Equity Tier 1 instruments;
2. Additional Tier 1 instruments; or
3. Tier 2 instruments.

(3) The participation of the state in increasing the own funds of the institution under paragraph 2 may be direct or through a sole proprietor company with state participation in the capital.

(4) The temporary government ownership tool is applied through the acquisition by the state directly or through a sole proprietor company with state participation in the capital of all newly issued shares of the bank under resolution, provided that the bail-in tool is applied to the fullest extent, and shareholders have taken losses by reducing the capital and cancellation of all shares.

(5) In the cases under paragraphs 2 and 4 the bank's shareholders lose their right under Article 194, paragraphs 1 and 2 of the Commercial Law to acquire relevant to their share part of new shares before the capital increase.

Exercising the Rights of the State

Article 87. (1) In the cases of Article 86, paragraphs 2 and 4, the state, the company under Article 86, paragraphs 3 and 4 respectively, within the acquired shareholder rights shall provide management of the bank on a commercial and professional basis in compliance with the provisions of all laws and bylaws governing banking activity, and with resolution objectives.

(2) The state, the company pursuant to Article 86, paragraphs 3 and 4 respectively, sold their holding in the capital of the bank, acquired pursuant to Article 86, paragraphs 2 or 4 to persons from the private sector as soon as the commercial and financial circumstances allow.

Appealing the Decision of the Government

Article 88. (1) The decision of the Government under Article 85, paragraph 4 shall be subject to appeal pursuant to Article 117. The appeal does not suspend the execution.

(2) The decision of the Government under Article 85, paragraph 4 and the court decision shall be published in the Commercial Register in the file of the bank under resolution.

(3) The revocation of the decision under Article 85, paragraph 4 shall not affect the validity of administrative acts and the rights of bona fide third parties, acquired on the basis of the revoked decision or administrative acts based on it, until the date of the court decision is announced in the Commercial Register. In this case a compensation for damages might be required only.

Chapter Fifteen

Write Down or Conversion of Capital Instruments and Eligible Liabilities

(title amended; Darjaven Vestnik, issue 12 of 2021)

Requirement to Write Down or Convert Relevant Capital Instruments and Eligible Liabilities

(amended; Darjaven Vestnik, issue 12 of 2021)

Article 89. (amended; Darjaven Vestnik, issue 12 of 2021) (1) The resolution authority under Article 2 or 3 may, where necessary, decide to write down or convert relevant capital instruments and eligible liabilities of an institution or entity under Article 1, paragraph 1, items 3–5 into instruments of ownership.

(2) The decision under paragraph 1 may be made independently or as part of the resolution action, where the conditions for resolution specified in Article 51 or 52 are met.

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

(4) After the exercise of the power to write down or convert relevant capital instruments and eligible liabilities independently of resolution action, the resolution authority shall carry out valuation provided for in Article 106, and where necessary Article 107 shall apply.

(5) The power to write down or convert eligible liabilities independently of resolution action may be exercised by the resolution authority only in relation to eligible liabilities that meet the conditions referred to in Article 70a, paragraph 5, item 1, except the condition related to the remaining maturity of liabilities as set out in Article 72c, paragraph 1 of Regulation (EU) No 575/2013.

(6) When the power under Article 5 is exercised, the resolution authority shall comply with the principle referred to in Article 53, paragraph 1, item 7.

(7) Where the resolution authority takes a resolution action in relation to a resolution entity or, in exceptional circumstances in deviation from the resolution plan, in relation to an entity that is not a resolution entity, it shall take into account the amount by which the relevant capital instruments or eligible liabilities are reduced, written down or converted in accordance with Article 92, paragraph 1 at the level of such an entity, towards the thresholds laid down in Articles 57, paragraph 8 and

Article 68, paragraph 2, item 1, or Article 68, paragraph 3, item 1 that apply to the entity concerned.

Conditions of Deciding on Write-down or Conversion of Capital Instruments

Article 90. (1) (amended; Darjaven Vestnik, issue 12 of 2021) The resolution authority under Article 2 or Article 3 shall immediately take a decision under Article 89, paragraph 1 in relation to the relevant capital instruments and eligible liabilities referred to in Article 89, paragraph 5, where one or more of the following circumstances apply:

1. (amended; Darjaven Vestnik, issue 12 of 2021) where the determination has been made by the resolution authority that conditions for resolution specified in Article 51 or Article 52, have been met before any resolution action is taken;

2. (amended; Darjaven Vestnik, issue 12 of 2021) the Bulgarian National Bank, the Commission respectively, determines that unless the powers specified in Article 89, paragraph 1 are exercised in relation to the relevant capital instruments, and eligible liabilities under Article 89, paragraph 5, the institution or the entity referred to in Article 1, paragraph 1, items 3–5 will no longer be viable;

3. where relevant capital instruments are issued by a subsidiary, which is an institution licensed in the Republic of Bulgaria, and where those capital instruments are recognised for the purposes of meeting own funds requirements on an individual basis for the institution and on a consolidated basis for the group, the BNB, the Commission respectively, has taken a decision together with the appropriate authority of the Member State of the consolidating supervisor pursuant to Article 127, in which it is determined that unless the write-down or conversion power is exercised in relation to those instruments, the group will no longer be viable;

4. where relevant capital instruments are issued by a subsidiary of an institution or a financial holding company, for which the BNB, the Commission respectively, is a consolidating supervisor and where those capital instruments are recognised for the purpose of meeting own funds requirements on an individual basis for the subsidiary and on a consolidated basis for the group, the BNB, the Commission respectively, has taken a decision jointly with the appropriate authority of the Member State of the subsidiary in accordance with Article 126, paragraph 5, in which it is determined that the write-down or conversion power is exercised in relation to those instruments, the group will no longer be viable;

5. where relevant capital instruments are issued by the parent institution of a Member State or parent institution from the European Union and where those capital instruments are recognised for the purpose of meeting own funds capital requirements on an individual basis for the institution and on a consolidated basis, the BNB, the Commission respectively, has taken a decision, that unless the write-down or conversion power is exercised in relation to those instruments, the group will no longer be viable;

6. (amended; Darjaven Vestnik, issue 12 of 2021) extraordinary public financial support is required for the institution or the entity referred to in Article 1, paragraph 1, items 3–5 except in any of the circumstances set out in Article 51, paragraph 4, item 4, letter 'b'.

(2) For the purposes of paragraph 1, an institution, or an entity referred to in Article 1, paragraph 1, items 3–5 or a group shall be deemed to be no viable only if both of the following conditions are available:

1. (amended; Darjaven Vestnik, issue 12 of 2021) they are failing or likely to fail pursuant to Article 51, paragraph 4 or pursuant to paragraph 3;

2. (amended; Darjaven Vestnik, issue 12 of 2021) having regard the degree of urgency and other relevant circumstances, there is no reasonable prospect that any action, including private sector measures or actions of the BNB, the Commission respectively, in its capacity as a competent authority, including early intervention measures, other than write-down or conversion of capital instruments or eligible liabilities referred to in Article 89, paragraph 5, whether or not exercised individually or simultaneously with the resolution action, would prevent the failure of the institution or the entity referred to in Article 1, paragraph 1, items 3–5 or the group within a reasonable timeframe.

(3) A group shall be deemed to be failing or likely to fail where the group infringes or there are objective elements to support a determination that the group, in the near future, will infringe its consolidated prudential requirements in a way that would justify action by the BNB, respectively, the Commission, or other competent authority, including but not limited to because the group has incurred or is likely to incur losses that will deplete all or a significant amount of its own funds.

Requirements in Applying Write-down of Capital Instruments

Article 91. (1) The relevant capital instruments issued by an institution licensed in the Republic of Bulgaria, which is a subsidiary shall not be written down or converted in accordance with Article 90, paragraph 1, item 3 on worse terms than equal-ranked capital instruments at the level of the parent undertaking which have been written down or converted.

(2) The relevant capital instruments issued by a subsidiary of an institution or a financial holding company which is subject to supervision by the BNB, the Commission respectively, shall not be written down or converted in accordance with Article 90, paragraph 1, item 4 on worse terms than equal-ranked capital instruments at the level of the parent undertaking which have been written down or converted.

(3) Before making a determination referred to in Article 90, paragraph 1, item 3 in relation to the institution licensed in the Republic of Bulgaria, the BNB, the Commission respectively, shall make a notification and consultations under Article 93.

(4) Before making a determination referred to Article 90, paragraph 1, item 4 in relation to the subsidiary that issues relevant capital instruments, the BNB, the Commission respectively, shall make a notification and consultations under Article 93.

(5) (amended; Darjaven Vestnik, issue 12 of 2021) Before exercising its powers to write down or convert capital instruments, the BNB, the Commission respectively, shall ensure that a valuation under Article 55 of the assets and liabilities of the institution or the entity referred to in Article 1, paragraph 1, items 3–5, which shall form the basis of the calculation of the write-down to be applied to the relevant capital instruments or eligible liabilities referred to in Article 89, paragraph 5 in order to absorb losses and the level of conversion to be applied to those capital instruments in order to recapitalise the institution or the entity.

Provision for Write-down or Conversion of the Relevant Capital Instruments and Eligible Liabilities

(title amended; Darjaven Vestnik, issue 12 of 2021)

Article 92. (1) The resolution authority under Article 2 or Article 3 shall exercise the write-down or conversion powers to the extent required for achieving the resolution objectives, in accordance with the terms of the priority of the claims under insolvency proceedings, in a way that produces the following results:

1. Common Equity Tier 1 items are reduced first in proportion to the losses or to their full amount; the Bulgarian National Bank, the Commission respectively, shall take actions under Article 74, paragraphs 1 and 2 in respect of holders of the instruments;

2. Additional Tier 1 instruments is written down and/or converted into Common Equity Tier 1 instruments to the extent required to achieve the resolution objective or to their full amount;

3. Tier 2 instruments is written down and/or converted into Common Equity Tier 1 instruments to extent required to achieve the resolution objectives or to their full amount.

4. (new; Darjaven Vestnik, issue 12 of 2021) the principal amount of eligible liabilities referred to in Article 89, paragraph 5 is written down or converted into Common Equity Tier 1 instruments or both, to the extent required to achieve the resolution objectives set out in Article 50, or to the extent of the capacity of the relevant eligible liabilities, whichever is lower.

(2) (amended; Darjaven Vestnik, issue 12 of 2021) Where the principal amount of a relevant capital instrument, or an eligible liability under Article 89, paragraph 5 is written down:

1. the reduction of the principal amount shall be permanent, subject to any write up in accordance with the reimbursement mechanism in Article 73, paragraph 4;

2. (amended; Darjaven Vestnik, issue 12 of 2021) no liability to the holder of the relevant capital instrument or of the eligible liability under Article 89, paragraph 5 shall remain under or in connection with that amount of the instrument, which has been written down, except for:

a) where applicable, already accrued interest and other liabilities;

b) damages that may arise as a result of an appeal challenging the legality of the exercise of the write-down powers; or

c) the provision of Common Equity Tier 1 instruments to the holder of relevant capital instruments under paragraph 3;

3. (amended; Darjaven Vestnik, issue 12 of 2021) no compensation is paid to the holder of the relevant capital instruments or of the liabilities as referred to in Article 89, paragraph 5 other than in accordance with paragraph 3.

(3) (amended; Darjaven Vestnik, issue 12 of 2021) In order to effect a conversion of relevant capital instruments, and eligible liabilities as referred to in Article 89, paragraph 5, in accordance with paragraph 1, items 2–4 the resolution authority may require the institution or entity referred to in Article 1, paragraph 1, items 3–5 to issue Common Equity Tier 1 instruments to the holders of those instruments and eligible liabilities. Relevant capital instruments and eligible liabilities may only be converted where the following conditions are met:

1. those Common Equity Tier 1 instruments are issued by the institution or the entity referred to in Article 1, paragraph 1, items 3–5 or by a parent undertaking with the agreement of the BNB, the Commission respectively, or the resolution authority of the parent undertaking where it is different;

2. those Common Equity Tier 1 instruments are issued prior to any issuance of instruments of ownership of the institution or entity referred to in Article 1, paragraph 1, items 3–5 for the purposed of provision of own funds by the state, or by the governmental agency or company;

3. those Common Equity Tier 1 instruments are awarder and transferred without delay following the exercise of conversion power;

4. (amended; Darjaven Vestnik, issue 12 of 2021) the conversion rate that determines the number of Common Equity Tier 1 instruments that are provided in respect of each relevant capital instrument or each eligible liability as referred to in Article 89, paragraph 5, complies with the principles laid down in Article 77.

(4) For the purpose of provision of Common Equity Tier 1 instrument in accordance with paragraph 3, the resolution authority may require institution or entity referred to in Article 1, paragraph 1, items 3–5 to maintain at all times the necessary prior decisions, approvals and permissions to issue the relevant number of Common Equity Tier 1 instruments.

Procedure for Coordination of the Findings in Relation to Article 90

Article 93. (1) (amended; Darjaven Vestnik, issue 12 of 2021) Before taking a decision under Article 90, paragraph 1, items 2–5 or 6 in relation to an institution licensed in the Republic of Bulgaria, which is a subsidiary of a European Union parent undertaking that issues relevant capital instruments, or eligible liabilities as referred to in Article 89, paragraph 5, for the purposes of meeting the requirement referred to in Article 70a on an individual basis or relevant capital instruments that are recognised for the purposes of meeting the own funds requirements on an indi-

vidual or consolidated basis for the group, the BNB, the Commission respectively, after consulting the resolution authority of the relevant resolution entity, shall notify within 24 hours:

1. the consolidating supervisor and, if different, the appropriate authority in its Member State;

2. resolution authorities of other entities within the same resolution group that directly or indirectly purchased liabilities referred to in Article 70a, paragraph 5 from the entity that is subject to Article 70a, paragraphs 1–4.

(2) (amended; Darjaven Vestnik, issue 12 of 2021) Before taking a decision under Article 90, paragraph 1, items 3 and 4 in relation to an institution or entity referred to in Article 1, paragraph 1, items 3–5, which is a subsidiary of an institution or a financial holding company, for which the BNB, the Commission respectively, is a consolidating supervisor, that issues relevant capital instruments that are recognised for the purposes of meeting the own funds requirements on an individual and consolidated basis, the BNB, the Commission respectively, shall notify without delay:

1. the competent authorities responsible for each institution or entity referred to in Article 1, paragraph 1, items 3–5 that has issued the relevant capital instruments in relation to which the write-down or conversion powers are to be exercised, if that decision is taken;

2. (amended; Darjaven Vestnik, issue 12 of 2021) the appropriate authorities of the Member States where the competent authorities under item 1 and the consolidating supervisor are located.

(3) the BNB, the Commission respectively, shall accompany a notification made pursuant to paragraph 1 or 2 with an explanation of the reasons why it is considering taking the decision in question.

(4) Where taking a decision referred to in Article 90, paragraph 1, items 3–6 in the case of an institution or of a group with cross-border activities, the BNB, the Commission respectively, and other appropriate authorities shall take into account the potential impact of the resolution in all the Member States where the institution or the group operates.

(5) (amended; Darjaven Vestnik, issue 12 of 2021) Following the notification under paragraph 1, respectively under paragraph 2, and after consulting the authorities notified under paragraph 1, item 1, respectively under paragraph 2 the BNB, the Commission respectively, shall assess the following matters:

1. whether an alternative measure to the exercise of the write down or conversion powers in accordance with Article 90, paragraph 1 is available;

2. whether a measure under item 1 could remove, in an adequate timeframe, the circumstances necessitating the decision under Article 90, paragraph 1.

(6) (amended; Darjaven Vestnik, issue 15 of 2018) Alternative measures under paragraph 5, item 1 mean early intervention measures under Article 44, measures under Article 103, paragraph 2 and Article 103a, paragraph 1 of the Law on Credit Institutions, Article 276, paragraph 1 of the Law on Markets in Financial Instru-

ments respectively, or similar measures pursuant to applicable legislation, the transfer of funds or capital from the parent undertaking.

(7) Where, after consulting the notified authorities, the assessment under paragraph 5 is positive, the BNB, the Commission respectively, shall ensure that the measure is applied.

(8) Where, in the case referred to in paragraph 1, and pursuant to paragraph 5, the BNB, the Commission respectively, assesses that no alternative measure are available, it shall consider whether to take a decision under Article 90, paragraph 1.

(9) Where, the BNB, the Commission respectively, considers to take a decision under Article 90, paragraph 1, item 4, it shall immediately notify the appropriate authorities of the Member States in which the affected subsidiaries are located and the decision shall be taken in the form of a joint decision as set out in Article 126, paragraph 5. In the absence of a joint decision, no procedure under Article 90, paragraph 1, item 4 shall be carried out by the BNB, the Commission respectively.

Chapter Sixteen

RESOLUTION POWERS

General Powers

Article 94. (1) The resolution authority under Article 2 or Article 3 shall apply the resolution tools to institutions and entities referred to in of Article 1, paragraph 1, items 3–5 that meet the applicable conditions for resolution.

(2) In exercising the powers under paragraph 1 the resolution authority is entitled:

1. to require any person to provide any information required for the resolution authority to decide upon and prepare a resolution action, including updates and supplements of information provided in the resolution plans and including requiring information to be provided through on-site inspections;

2. to take control of an institution under resolution and exercise all the rights and powers conferred upon the shareholders and the management body of the institution under resolution;

3. to transfer instruments of ownership issued by an institution under resolution;

4. to transfer to another entity, with the consent of that entity, rights, assets or liabilities of an institution under resolution;

5. (amended; Darjaven Vestnik, issue 12 of 2021) to reduce, including to reduce to zero, the principal amount or outstanding amount due in respect of bail-inable liabilities of an institution under resolution;

6. (amended; Darjaven Vestnik, issue 37 of 2019; amended, Darjaven Vestnik, issue 12 of 2021) to convert bail-inable liabilities of an institution under resolution into common shares of this institution or company under Article 1, paragraph 1, items 3–5, to the respective parent institution or a bridge institution to which assets,

rights or liabilities of the institution or the company under Article 1, paragraph 1, items 3–5 shall be transferred;

7. to cancel debt instruments issued by the institution under resolution, except for secured liabilities and in compliance with Article 66, paragraph 2;

8. to reduce, including to reduce to zero, the nominal amount of shares or other instruments of ownership of an institution under resolution and to cancel such shares and other instruments of ownership;

9. to require an institution under resolution or a relevant parent institution to issue new shares or other capital instruments, including contingent convertible instruments;

10. (amended; Darjaven Vestnik, issue 12 of 2021) to change the maturity of debt instruments and other bail-inable liabilities, issued by an institution under resolution, or change the amount of interest payable on such instruments and other bail-inable liabilities, or the date on which interest becomes payable, including by suspending payment for a temporary period, except for secured liabilities and in compliance with Article 66, paragraph 2;

11. to close out or terminate financial contracts or derivative contracts for the purposes of applying Article 76;

12. to remove and/or replace one or more members of the management body or senior management of an institution under resolution;

13. to require timely assessment of the person acquiring a qualifying holding by way of derogation from the time limits laid down in the terms provided for in Chapter Three, Section III of the Law on Credit Institutions, Article 26b, paragraph 4 of the Law on Markets in Financial Instruments, respectively.

(3) When applying the decisions under paragraph 1 no restrictions have to be applied arising from:

1. existing powers to obtain approval or consent of any person either public or private entity, including the shareholders or creditors of the institution under resolution, except where Article 4 is applied;

2. existing requirements for prior notification of certain individuals, including the requirement to publish a notice or prospectus or to file or register any document with another authority, except notifications under Articles 113 and 115 of the State Aid Law and the legal framework of the European Union for state aid.

(4) (new; Darjaven Vestnik, issue 37 of 2019) The public authorities and officials shall be obligated to provide assistance within their powers to the resolution authorities when exercising their powers.

Additional Powers

Article 95. (1) When exercising resolution powers, the resolution authority under Article 2 or Article 3 have the power to:

1. subject to Article 110 for a transfer to take effect free of any liability or encumbrance affecting the financial instruments, rights, assets or liabilities transferred; for

that purpose, any right of compensation in accordance with this Law shall not be considered to be a liability or an encumbrance;

2. remove rights to acquire further shares;

3. require the relevant authority to discontinue or suspend the admission to trading on a regulated market or the official listing of financial instruments pursuant to the Law on Public Offering of Securities or relevant legislation;

4. provide for the recipient to be treated as if it were the institution under resolution for the purposed of any rights or obligations of, or actions taken by, the institution under resolution, including any rights or obligations related to participation in market infrastructure, in application of Article 58 and 60;

5. require the institution under resolution of the recipient to provide the other party with information and assistance;

6. modify or cancel the contract to which the institution under resolution is a party or substitute a recipient as a party.

7. (new; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) require the institution which has received state aid on the grounds of Article 19, paragraph 3 of Regulation (EU) No 806/2014 to recover the misused amounts within a certain period pursuant to a decision on the recovery under Article 19, paragraph 5 of Regulation (EU) No 806/2014.

(2) The resolution authority shall exercise the powers specified in paragraph 1 where it is considered by the resolution authority to be appropriate to help to ensure that a resolution action is effective or to achieve one or more resolution objectives.

(3) The resolution authorities have the power to provide for continuity arrangements necessary to ensure that the resolution action is effective and, where relevant, the business transferred may be operated by the recipient.

(4) The measures under paragraph 3 shall apply through an order by the resolution authority, where they relate to:

1. the continuation of contracts entered into by an institution under resolution, so that the recipient assumes the rights and liabilities of the institution under resolution relating to financial instruments, rights, assets or liabilities that have been transferred and is substituted for the institution of resolution, explicitly or implicitly in all relevant contractual documents;

2. the substitution of the recipient for the institution under resolution in any legal proceedings relating to financial instruments, rights, assets or liabilities that have been transferred.

(5) The orders under paragraph 4 have effect notwithstanding the existing restrictions on the transfer of receivables and payables in accordance with national legislation.

(6) The powers in paragraph 1, item 4 and paragraph 4, item 2 shall not affect:

1. the right of an employee of the institution under resolution to terminate a contract of employment;

2. subject to Articles 101–103, any right of a party to a contract to exercise rights under the contract, including the right to terminate it, where entitled to do so in accordance with the contractual terms by virtue of an act or omission by the institution under resolution prior to the relevant transfer, or by the recipient after the relevant transfer.

Powers to Require the Provision of Services and Facilities

Article 96. (1) The resolution authority under Article 2, Article 3 respectively, may require an institution under resolution or any of its group entities, to provide services or facilities that are necessary to enable a recipient to operate effectively the business transferred to it, and where they cannot be provided by another provider in reasonable time frame and at less cost. When normal insolvency proceedings are applied in relation to the institution of the first sentence, the receiver shall ensure the implementation of those requirements.

(2) When the resolution authorities from other Member States have adopted similar obligation to those given in paragraph 1 regarding the institution or group established in the Republic of Bulgaria, the resolution authority may impose their compliance.

(3) The services and facilities provided in accordance with paragraphs 1 and 2 are restricted to operational services and facilities and do not include any form of financial support.

(4) The services and facilities under paragraphs 1 and 2 shall be provided:

1. where the services and facilities were provided under an agreement to the institution under resolution immediately before the resolution action was taken and for the same terms and conditions as those of the agreement;

2. where there is no agreement or where the agreement has expired, on reasonable terms.

Applicable Law to Enforce Crisis Management Measures or Crisis Prevent Measures from Other Member States

Article 97. (1) Where in resolution of the institution or group entity in another Member State, the assets located in the Republic of Bulgaria are transferred, or rights or liabilities governed by the Bulgarian legislation, the transfer shall be made under this Law and applicable Bulgarian legislation.

(2) The resolution authority under Article 2, Article 3 respectively, shall provide the resolution authority of a Member State that has made or intends to make the transfer under paragraph 1 with all reasonable assistance to ensure that the instruments of ownership or assets, rights or liabilities are transferred to the recipient in accordance with applicable law.

(3) Shareholders, creditors and third parties that are affected by the transfer under paragraph 1, shall not be entitled to prevent, challenge or demand cancellation of the effects of the transfer on the basis of the provisions of Bulgarian legisla-

tion or other legislation governing the shares, other instruments of ownership, rights or liabilities.

(4) (amended; Darjaven Vestnik, issue 12 of 2021) Where the resolution authority of another Member State has exercised the write-down or conversion powers and the bail-inable liabilities or relevant capital instruments of the institution under resolution include instruments or liabilities that are governed by the law of the Republic of Bulgaria or liabilities owed to creditors in the Republic of Bulgaria, the principal amount of those liabilities or instruments is reduced, or liabilities or instruments are converted, in accordance with the exercise of the write-down or conversion powers by the resolution authority of another Member State.

(5) Creditors that are affected by the exercise of write-down or conversion powers referred to in paragraph 4 shall not be entitled to challenge the reduction of the principal amount of the instrument or liability or its conversion on the basis of the provisions of the legislation of the Republic of Bulgaria.

(6) The resolution measures under paragraphs 1 and 4 may be appealed in the manner prescribed by the laws of the Member State where the resolution authority is established. The law of that Member State applies also to partial transfers under paragraph 1, which governs the safeguard mechanisms in this case.

Applicable Law to Enforce Crisis Management Measures or Crisis Prevent Measures in Other Member States

Article 98. (1) Where a resolution authority under Article 2, Article 3, respectively, carries out a resolution to an institution or an entity referred to in Article 1, paragraph 1, items 3–5 and transfers assets, rights or liabilities that are located in another Member State, the transfer takes place under the applicable law of that Member State.

(2) (the correction concerns the Bulgarian version only; Darjaven Vestnik, issue 37 of 2019) The resolution authority under paragraph 1 may seek assistance by the resolution authority in the Member State under paragraph 1 in order to ensure that the instruments of ownership or assets, rights or liabilities are transferred to the recipient in accordance with applicable law.

(3) Where the resolution authority under paragraph 1 exercises the write-down or conversion powers and the eligible liabilities or relevant capital instruments of the institution under resolution include instruments or liabilities that are governed by the law of another Member State or liabilities owed to creditors in that Member State, the principal amount of those liabilities or instruments is reduced or liabilities or instruments are converted, in accordance with the write-down or conversion powers exercised by the resolution authority under paragraph 1 in accordance with this Law.

(4) The resolution measures under paragraphs 1 and 3 may be appealed pursuant to Article 117.

Powers in Respect of Assets, Rights, Liabilities and Other Instruments of Ownership Located in Third Countries

Article 99. (1) In cases in which resolution action taken in respect of assets located in a third country, or shares, other instruments of ownership, rights or liabilities governed by the law of a third country, the resolution authority under Article 2, respectively, Article 3, may require that:

1. the administrator, receiver of other person exercising control over the institution under resolution, and the recipient take all necessary measures to ensure that the transfer, write-down, conversion or action becomes effective;

2. the administrator, receiver or other person exercising control over the institution under resolution to continue to hold shares, other instruments of ownership, assets or exercise the rights, or discharge the liabilities on behalf of the recipient until the transfer, write-down, conversion or action become effective;

3. the reasonable expenses of the recipient properly incurred in carrying out any action required by items 1 and 2 are met in any of the ways specified in Article 57, paragraph 6.

(2) Where the resolution authority under paragraph 1 assesses, in spite of all the necessary measures taken by the administrator, receiver or other person in accordance with paragraph 1, item 1, it is highly unlikely that the transfer, write-down, conversion or action will become effective in relation to certain assets located in a third country, or in respect of certain shares, other instruments of ownership, rights or liabilities governed by the law of a third country, the resolution authority shall not proceed with the transfer, write-down, conversion or action. If it has already ordered the transfer, write-down, conversion or action, that order shall be void in relation to the assets, shares, other instruments of ownership, rights or liabilities under the first sentence.

Exclusion of Certain Contractual Terms in Early Intervention and Resolution

Article 100. (1) A crisis prevention measure or a crisis management measure taken in relation to an institution or a company under Article 1, paragraph 1, items 3–5, including the occurrence of any event which directly linked to the application of such a measure, shall not considered a failure within the meaning of Article 10 of the Law on Financial Collateral Arrangements or winding-up proceedings within the meaning of the Law on Payment Services and Payment Systems under a contracts in which the institution or entity is a party, provided essential contractual obligation, including payment and delivery obligations and the provision of collateral, continue to be performed.

(2) A crisis prevention measure or crisis management measure shall not be deemed to be a default or winding-up proceedings under paragraph 1 and under a contract entered into by:

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

2. entity of a group, where the contract includes cross-default provisions.

(3) Where third country resolution proceedings are recognised in accordance with Article 129 or otherwise where a resolution authority under of Article 2 or Article 3 decides so, such proceedings shall for the purposes of this Article constitute a crisis management measure.

(4) (amended; Darjaven Vestnik, issue 12 of 2021) Provided that the substantive obligations under the contract, including payment and delivery obligations, and provision of collateral, continue to be performed, a suspension under Article 52a, a crisis prevention measure or a crisis management measure, including the occurrence of any event directly linked to the application of such a measure, shall not, per se, make it possible for anyone to:

1. exercise any termination, suspension, modification, netting or set-off rights, including in relation to a contract entered into by:

a) a subsidiary, the obligations of which are guaranteed or otherwise supported by a group entity; or

b) any group entity which includes cross-default provisions;

2. obtain possession, exercise control or enforce any security over any property of the institution or the entity referred to in Article 1, paragraph 1, items 3–5 concerned or any group entity in relation to contract which includes cross-default provisions;

3. affect any contractual rights of the institution or the entity referred to in Article 1, paragraph 1, items 3–5 concerned or any group entity in relation to a contract which includes cross-default provisions.

(5) This Article shall not affect the right of a person to take an action referred to in paragraph 4 where that right arises by virtue of an event other than the crisis prevention measure, the crisis management measure or the occurrence of any event directly linked to the application of such a measure.

(6) (amended; Darjaven Vestnik, issue 12 of 2021) A suspension or restriction under Article 52a, Articles 101, 102 or 103 shall not constitute non-performance of a contractual obligation for the purposes of paragraphs 1, 2 and 4 and Article 103, paragraph 1.

(7) The provisions contained in this Article shall be considered to be overriding mandatory rules within the meaning of Article 9 of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ, L 177/6 of 4 July 2008).

Powers to Suspend Certain Obligations

Article 101. (1) (amended; Darjaven Vestnik, issue 37 of 2019) The resolution authority under Article 2 or Article 3 may suspend the execution of any payment or delivery obligations pursuant to any contract in which the institution under resolu-

tion is a party from the publication of a notice of the suspension in accordance with Article 115, paragraph 3, item 1 until midnight on the next business day.

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

(3) If an institution under resolution's payment or delivery obligations under a contract are suspended under paragraph 1, the payment or delivery obligations of the institution under resolution's counterparties under that contract shall be suspended for the same period of time.

(4) Any suspension under paragraph 1 shall not apply to:

1. (repealed; Darjaven Vestnik, issue 12 of 2021);

2. (amended; Darjaven Vestnik, issue 12 of 2021) payment and delivery obligations owed to the systems or operators of systems designated for the purposes of the Law on Payment Services and Payment Systems or relevant legislation of a Member State;

3. (amended; Darjaven Vestnik, issue 12 of 2021) central counterparties authorised to operate in the European Union pursuant to Article 14 of Regulation (EU) No 648/2012 and third-country central counterparties recognised by ESMA pursuant to Article 25 of Regulation (EU) No 648/2012;

4. (new; Darjaven Vestnik, issue 12 of 2021) central banks.

(5) When exercising a power under this Article, resolution authority shall have regard to the impact the exercise of that power might have on the orderly functioning of financial markets.

(6) (new; Darjaven Vestnik, issue 12 of 2021) The resolution authority shall set the scope and type of the payment or delivery obligations, in respect of which the suspension under paragraph 1 of this paragraph shall be applied, having regard to the circumstances of each case, including the appropriateness of extending the suspension to deposits held by natural persons and micro, small and medium-sized enterprises, falling within the scope of the guarantee under the Law on Bank Deposit Guarantee.

(7) (new; Darjaven Vestnik, issue 12 of 2021) Where the resolution authority determines that it is appropriate to suspend eligible deposits, it shall, for the suspension period, set by the decision under paragraph 1 a maximum daily amount that may be paid at the request of the depositor. The terms and procedures for determining and paying the maximum daily amount shall be specified in a BNB ordinance.

Power to Restrict the Enforcement of Secured Interests

Article 102. (1) The resolution authority under Article 2 or Article 3 may restrict the right of secured creditors of an institution under resolution to take enforcement action in respect of the assets of the institution under resolution from the publication of the notice of restriction in accordance with Article 115, paragraph 4 until midnight on the next business day.

(2) (amended; Darjaven Vestnik, issue 12 of 2021) The resolution authority shall not exercise the power referred to in paragraph 1 in relation to any of the following:

1. security interest of systems or operators of systems designated for the purposes of ensuring settlement finality in accordance with the Law on Payment Services and Payment Systems and the relevant applicable legislation;

2. central counterparties authorised in the European Union pursuant to Article 14 of Regulation (EU) No 648/2012 and third-country central counterparties recognised by ESMA pursuant to Article 25 of Regulation (EU) No 648/2012;

3. central banks, over assets pledged or provided by way of margin or collateral by the institution under resolution.

(3) Where Article 112 applies, resolution authority shall within its powers impose the same restrictions under paragraph 1 for all group entities to which a resolution action is taken.

(4) When exercising a power under this Article, resolution authority shall have regards to the impact the exercise of that power might have on the orderly functioning of financial markets.

Power to Temporarily Suspend Termination Rights

Article 103. (1) (amended; Darjaven Vestnik, issue 37 of 2019) The resolution authority under Article 2 or Article 3 may suspend the termination rights of any party to a contract with an institution under resolution from the publication of the notice in accordance with Article 115, paragraph 3, item 1 until midnight on the next business day, provided that the payment and delivery obligations and the provisions of collateral continue to be performed.

(2) The resolution authority can suspend the termination rights of any party to a contract with a subsidiary of the institution under resolution, where:

1. the obligations under this contract are guaranteed or otherwise secured by the institution under resolution;

2. the termination right is based solely on the insolvency or financial condition of the institution under resolution;

3. in the case of a transfer power that has been exercised in relation to the institution under resolution, either:

a) all the assets and liabilities of the subsidiary have been or may be transferred to and assumed by the recipient, or

b) the resolution authority provides in any other way adequate protection for such obligations.

(3) The suspension decision under paragraph 2 shall take effect from the publication of the notice in accordance with Article 115, paragraph 4 until midnight on the next business day in the Republic of Bulgaria or in the Member State where the subsidiary of the institution under resolution is established.

(4) (amended; Darjaven Vestnik, issue 12 of 2021) The suspension under paragraphs 1 and 2 shall not apply with respect to:

1. systems or operators of systems ensuring settlement finality in accordance with the Law on Payment Services and Payment Systems or the relevant applicable legislation;

2. central counterparties authorised in the European Union pursuant to Article 14 of Regulation (EU) No 648/2012 and third-country central counterparties recognised by ESMA pursuant to Article 25 of Regulation (EU) No 648/2012;

3. central banks.

(5) A person may exercise a termination rights under a contract with an institution under resolution before the end of the period referred to in paragraphs 1 and 3 if it receives a notice from the resolution authority that the rights and liabilities covered by the contract shall not be:

1. transferred to another entity; or

2. subject to write down or conversion in the application of the bail-in tool in accordance with Article 65, paragraph 1, item 1.

(6) Where a resolution authority exercises the powers under paragraphs 1 and 2, and where no notice has been given under paragraph 5, the right of termination may be exercised after the expiry of the period of suspension in compliance with Article 100, as follows:

1. if the rights and liabilities covered by the contract are transferred to another entity, the counterparty may exercise termination rights in accordance with relevant contractual terms only on the occurrence of any continuing or subsequent event, which is a reason for termination of the contract;

2. if the institution under resolution retains its rights and liabilities under the contract and the resolution authority has not applied the bail-in tool in accordance with that contract, a counterparty may exercise termination rights under the terms of that contract after the expiry of the suspension in paragraph 1 or paragraph 3.

(7) When exercising a power under this Article, resolution authority shall have regard to the impact the exercise of that power might have on the orderly functioning of financial markets.

(8) Institution or entity referred to in Article 1, paragraph 1, items 3–5 shall maintain detailed records of financial contracts within the meaning of § 1, item 83.

Contractual Recognition of Resolution Stay Powers

(new; Darjaven Vestnik, issue 12 of 2021)

Article 103a. (new; Darjaven Vestnik, issue 12 of 2021) (1) When entering into a financial contract institutions and entities referred to in Article 1, paragraph 1, items 3–5 shall include terms by which the parties recognise that the financial contract may be subject to the exercise of powers by the resolution authority to suspend or restrict rights and obligations under Articles 52a, 101, 102 and 103, and recognise that they are bound by the requirements of Article 100, provided:

1. the financial contract is governed by third-country law;

2. the financial contract provides for the exercise of one or more termination rights or rights to enforce security interests to which Articles 52a, 101, 102 or 103 would apply if the financial contract were governed by the applicable legislation of the Republic of Bulgaria.

(2) Institutions and entities referred to in Article 1, paragraph 1, items 3–5, which are EU parent undertakings shall take the necessary measures to ensure that their third-country subsidiaries include, in the financial contracts referred to in paragraph 1 terms to exclude that the exercise of the power of the resolution authority under Articles 52a, 100, 101, 102 or 103 to suspend or restrict rights and obligations of the EU parent undertaking constitutes a valid ground for early termination, suspension, modification, netting, exercise of set-off rights or enforcement of security interests on those contracts.

(3) Paragraph 2 shall apply to third-country subsidiaries which are credit institutions, investment firms, or undertakings which would be investment firms if they had a head office in the Republic of Bulgaria or financial institutions.

(4) Where the institution or the entity referred to in Article 1, paragraph 1, items 3–5 does not include in the financial contract a contractual term required in accordance with paragraph 1, that shall not prevent the resolution authority under Article 2 or Article 3 from exercising the powers under Articles 52a, 100, 101, 102 or 103 in relation to liabilities arising from that financial contract.

Exercise of the Resolution Powers

Article 104. (1) For the purpose of taking resolution action, resolution authority under Article 2 or Article 3 is able to control the institution under resolution, so as to:

1. operate and conduct the activities of the institution under resolution with all the powers of its shareholders and management body; and

2. manage and dispose of the assets and property of the institution under resolution.

(2) The control referred to in paragraph 1 shall be exercised by the resolution authority through mandatory orders to the management body of the institution under resolution or through special manager.

(3) During the resolution period the resolution authority shall suspend the voting rights of shareholders in shares of the institution under resolution.

(4) The resolution authority may take a resolution action without exercising the control in paragraph 1 over the institution under resolution.

(5) The resolution authority shall assess in each particular case whether it is appropriate to carry out the resolution action by exercising control under paragraph 1 or without being exercised under paragraph 4. For such assessment, the resolution objectives and general principles governing the resolution, the specific circumstances of the institution under resolution and the need to facilitate the effective resolution of cross-border groups shall be taken into account.

Chapter Seventeen
SAFEGUARDS

Treatment of Shareholders and Creditors in the Case of Partial Transfers and Application of the Bail-in Tool

Article 105. (1) Where in the course of the resolution action, resolution authority under Article 2 or Article 3 transfers only parts of the rights, assets and liabilities of the institution under resolution, the shareholders and those creditors whose claims have not been transferred, receive in satisfaction of their claims at least as much as what they would have received if the institution under resolution had been wound up under insolvency proceedings at the time when the decision referred to in Article 114 was taken.

(2) Where resolution authority applies the bail-in tool, the shareholders and creditors whose claims have been written down or converted to equity do not incur greater losses than they would have incurred if the institution under resolution had been wound up under insolvency proceedings immediately at the time when the decision referred to in Article 114 was taken.

Valuation of Difference in Treatment

Article 106. (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, resolution authority under Article 2, respectively Article 3, shall order in a due time a valuation which is carried out by an independent person as soon as possible after the resolution action or actions have been effected. That valuation shall be distinct from the valuation carried out under Article 55.

(2) The valuation in paragraph 1 shall determine:

1. the treatment that shareholders and creditors, or the BDIF, would have received for their claims, respectively the loss that they would incurred, if the institution under resolution had entered insolvency proceedings at the time when the decision referred to in Article 144 was taken;

2. the actual treatment that shareholders and creditors have received for their claims, respectively the loss that they would incurred, in the resolution of the institution;

3. if there is a difference between the treatments under items 1 and 2.

(3) In carrying out the valuation under paragraph 1 it is assumed that against institution under resolution:

1. insolvency proceedings has been initiated at the date of the decision under Article 114 and that the resolution action has not been effected;

2. any provision of extraordinary public financial support shall not be taken into account.

(4) (new; Darjaven Vestnik, issue 12 of 2021) The valuation under paragraph 1 where the BNB is a resolution authority shall be performed by a an independent valuer approved under the procedure laid down in the ordinance provided for in Article 55a.

Safeguards for Shareholders and Creditors

Article 107. (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) In the event the valuation under Article 106 has established that a shareholder, creditor or the BDIF incurred greater losses than those which they would have incurred had the institution been wound up under insolvency proceedings, they shall be entitled to be paid the difference by the SRF, BRF or IFRF respectively.

Safeguards for Counterparties in Partial Transfers

Article 108. (1) Where the resolution authority under Article 2 or Article 3 has carried out a resolution action in which transfers some but not all of the rights, assets and liabilities of the institution under resolution to another person or, in the case of application of the resolution tool, transfers the rights, assets and liabilities from a bridge institution or asset management vehicle to another person, and in the exercise of powers under Article 95, paragraph 1, item 6, the protection under Articles 109–112 shall apply to the following contracts and to the counterparties thereto:

1. security arrangements, under which a secured person has rights by way of actual or contingent interest in the assets or rights that are subject to transfer, irrespective of whether that interest is secured by specific assets or rights or by way of a floating charge or similar arrangement;

2. title transfer financial collateral arrangements under which collateral to secure or cover the performance of specified obligations is provided by a transfer of full ownership of assets from the collateral provider to the collateral taker, on terms providing for the collateral taker to transfer assets if those specified obligations are performed;

3. set-off arrangements under which two or more claims or obligations owed between the institution under resolution and a counterparty can be set off against each other;

4. netting arrangements;

5. covered bonds;

6. structured finance arrangements, including securitisations and instruments used for hedging purposes which form an integral part of the coverage pool and which according to applicable law in the Member State are secured in a way similar to the covered bonds, which involve the granting and holding of security by a party to the arrangement or a trustee, agent or nominee.

(2) Paragraph 1 shall apply notwithstanding:

1. the number of counterparties to the agreement or contract;

2. the form and the reason for the occurrence of the agreement or contract;

3. whether the agreement or contract arises or is govern in whole or in part by the law of another Member State or third country.

(3) In the cases under paragraph 1, the powers provided for in Articles 100–103 shall apply.

Protection for Financial Collateral, Set Off and Netting Agreements

Article 109. (1) Where exercising the powers under this Law, a resolution authority under Article 2, respectively Article 3, shall not partially transfer the rights and liabilities under a financial collateral agreement by a transfer of ownership, under set-off arrangements and netting agreements which entitle the parties to set-off or net their rights and liabilities, and shall not modify or terminate those rights or liabilities.

(2) Notwithstanding paragraph 1, where necessary in order to ensure availability of the covered deposits, the BNB may:

1. transfer covered deposits which are part of any of the arrangements mentioned in paragraph 1 without transferring other assets, rights or liabilities that are part of the same arrangement;

2. transfer, modify or terminate those assets, rights or liabilities under item 1 without transferring the covered deposits.

Protection for Security Arrangement

Article 110. (1) Where exercising its powers under this Law, a resolution authority under Article 2, respectively Article 3, may not:

1. transfer assets against which the liability is secured unless that liability and benefit of the security are also transferred;

2. transfer the secured liability unless the benefit of the security are also transferred;

3. transfer the benefit of the security unless the secured liability is also transferred; or

4. modify or terminate the security arrangement through the use of ancillary powers, if the effect of that modification or termination is that the liability ceases to be secured.

(2) Notwithstanding paragraph 1, where necessary in order to ensure the availability of covered deposits, the BNB may:

1. transfer covered deposits which are part of any of the arrangements mentioned in paragraph 1 without transferring other assets, rights or liabilities that are part of the same arrangement;

2. transfer, modify or terminate those assets, rights or liabilities under item 1 without transferring the covered deposits.

Protection for Structured Finance Arrangements and Covered Bonds

Article 111. (1) Where exercising its powers under this Law, a resolution authority under Article 2, respectively Article 3, may not:

1. transfer some, but not all, of the assets, rights and liabilities which constitute or form part of a structured finance arrangement, including arrangements referred to in Article 108, paragraph 1, items 5 and 6, to which the institution under resolution is a party;

2. (amended; Darjaven Vestnik, issue 37 of 2019) terminate or modify the assets, rights and liabilities which are, or form a part of structured finance agreements, including those under Article 108, paragraph 1, items 5 and 6 to which the institution under resolution is a party.

(2) Notwithstanding paragraph 1, where necessary in order to ensure the availability of the covered deposits, the BNB may:

1. transfer covered deposits which are part of any of the arrangements mentioned in paragraph 1 without transferring other assets, rights or liabilities that are part of the same arrangement;

2. transfer, modify or terminate those assets, rights or liabilities under item 1 without transferring the covered deposits.

Protection of Systems Providing Settlement Finality

Article 112. (1) The application of a resolution tool does not affect the operation and the rules of payment systems and securities settlement systems, which provide the settlement finality under the Law on Payment Services and Payment Systems and relevant legislation, where the resolution authority under Article 2 or Article 3:

1. transfers some but not all of the assets, rights or liabilities of an institution under resolution to another entity; and

2. uses powers under Article 95 to cancel or amend the terms of a contract to which the institution under resolution is a party or to substitute a recipient as a party.

(2) A transfer, cancellation or amendment as referred to in paragraph 1 shall be made in accordance with the terms of irrevocability of a transfer order, the requirements for the implementation of transfer orders and netting and protection of collaterals in payment systems and systems for securities settlement with finality of the settlement under the Payment Services and Payment Systems and relevant legislation.

Chapter Eighteen
PROCEDURAL OBLIGATIONS

Notification Requirements

Article 113. (1) (amended; Darjaven Vestnik, issue 12 of 2021) The management board, the board of directors of the institution or entity referred to in Article 1, paragraph 1, items 3–5, respectively, shall notify the BNB and the Commission, respectively, in their capacity as competent authority under the Law on Credit Institutions and the Law on Markets in Financial Instruments, respectively, where it considers that the institution or the entity is failing or likely to fail within the meaning specified in Article 51, paragraph 4.

(2) The competent authority under paragraph 1 shall inform the relevant resolution authorities of any notifications received under paragraph 1 or any crisis prevention measures or actions which it requires to be taken by an institution or entity referred to in Article 1, paragraph 1, items 3–5 in the application of supervisory measures pursuant to the Law on Credit Institutions and the Law on Markets in Financial Instruments, respectively.

(3) Where a competent authority determines that the conditions referred to in Article 51, paragraph 1, items 1 and 2 are met in relation to an institution or entity referred to in Article 1, paragraph 1, items 3–5, it shall notify:

1. the competent authorities of all branches of the institution or entity referred to in Article 1, paragraph 1, items 3–5;

2. the resolution authorities of all branches of the institution or entity referred to in Article 1, paragraph 1, items 3–5;

3. the central bank, where applicable;

4. the Management Board of the BDIF and of the ICF, respectively, where there is a possibility to act according to their legal powers;

5. the group-level resolution authority, where applicable;

6. the Ministry of Finance;

7. the consolidating supervisor in case the institution or entity referred to in Article 1, paragraph 1, items 3–5 are subject to supervision on consolidated basis;

8. the European Systemic Risk Board.

Decision of the Resolution Authority to Take Resolution Actions

Article 114. After assessing whether the conditions for resolution are met in relation to the institution or entity referred to in Article 1, paragraph 1, items 3–5 on the basis of notification under Article 113, paragraph 1 or on its own initiative, a resolution authority under Article 2, respectively Article 3, shall decide whether to take resolution action, with the decision containing at least the following:

1. the reasons for that decision, including the determination whether the institution meets the conditions for resolution under Article 51;

2. the resolution tools that the resolution authority intends to apply, resolution actions it intends to take, resolution powers it intends to exercise, or where appropriate a proposal to proceed with the withdrawal of the license and the liquidation or withdrawal of the license and a request to the competent court for insolvency proceedings.

Procedural Obligations of the Resolution Authority

Article 115. (1) (amended; Darjaven Vestnik, issue 37 of 2019) After taking a resolution action according to the decision under Article 114 the resolution authority shall notify the institution under resolution as well as:

1. the competent authorities of the branches of the institution under resolution;

2. the Bulgarian National Bank where the institution is an investment firm;

3. the Management Board of the BDIF and the Management Board of the ICF, respectively;

4. the group-level resolution authority, where applicable;

5. the Ministry of Finance of the Republic of Bulgaria;

6. the consolidating supervisor in cases where the institution under resolution is subject of supervision on a consolidated basis;

7. the European Commission, the ESRB, the EBA, the ECB, the European Securities and Markets Authority and the European Investment and Occupational Pensions Authority;

8. the operators of payment systems and the settlement securities systems in which the institution participates.

(2) The notification referred to in paragraph 1 shall include a copy of any act by which the resolution actions are taken and indicate the date from which they are effective.

(3) A copy of the act by which resolution actions are taken or notification for the effects of it, in particular the effects on customers of the institution under resolution, and the terms and period of suspension or restriction referred to in Articles 101–103 shall be published by the following means:

1 on the official website of the BNB and of the Commission, respectively;

2. on the website of the institution under resolution;

3. at the request of the resolution authority in the Commercial Register when the resolution action effects a change in circumstances, subject to entry;

4. where the instruments of ownership or debt instruments of the institution under resolution are admitted to trading on a regulated market, the means used for the disclosure of regulated information.

(4) If the instruments of ownership or debt instruments are not admitted to trading on a regulated market, the resolution authority shall ensure that the documents referred to in paragraph 3 are sent to the shareholders and creditors of the institution under resolution that are known through the registers or databases of the institution under resolution which are available to the resolution authority.

(5) (amended; Darjaven Vestnik, issue 85 of 2017; amended; Darjaven Vestnik, issue 37 of 2019) Where resolution actions include provision of state aid, including the use of financial means of the BRF, the IFRF respectively, a decision under Article 114 correspondingly, the act by which resolution actions are undertaken, shall be taken after receipt of a positive or conditional decision by the European Commission on the compatibility of State aid with the internal market. In those cases, the relevant resolution authority is an aid administrator within the meaning of Article 9 of the Law on State Aid.

Confidentiality

Article 116. (1) The use of information received and created in connection with the recovery and resolution of institutions and entities referred to in Article 1, paragraph 1, items 3–7, the requirements under this Article about professional secrecy, as such information is used solely to fulfill the duties arising from this Law.

(2) The requirements of professional secrecy shall be binding in respect of the following persons:

1. the Bulgarian National Bank;
2. the Financial Supervision Commission;
3. the Ministry of Finance of the Republic of Bulgaria;
4. special managers or temporary administrators;
5. potential acquirers that are solicited by the resolution authority under Article 2 or Article 3, irrespective of whether that solicitation was made as preparation for the use of the sale of business tool, and irrespective of whether the solicitation resulted in an acquisition;
6. auditors, accountants, legal and professional advisors, valuers and other experts directly or indirectly engaged by the BNB, the Commission, the Ministry of Finance or by the potential acquirers referred to in item 5;
7. the Deposit Insurance Fund;
8. the Investor Compensation Fund;
9. other authorities involved in the resolution process, where applicable;
10. a bridge institution or an asset management vehicle;
11. any other person who provides or have provided services directly or indirectly, permanently or occasionally, to persons referred to in items 1–10;
12. employees, members of the management and control bodies and any other persons working for the bodies or entities referred to in items 1–11 before, during and after their appointment.

(3) (amended; Darjaven Vestnik, issue 37 of 2019) With a view to ensuring that the requirements of this Article are complied with, the persons in paragraph 2, items 1–3 and items 7–10 shall adopt internal rules, including rules to secure professional secrecy by the persons directly involved in the resolution process.

(4) (amended; Darjaven Vestnik, issue 37 of 2019) The persons referred to in paragraph 2 are prohibited from disclosing confidential information received during

the course of their professional activities or from the BNB, the Commission or other competent authority or a resolution authority in connection with its procedure and objectives under this Law, unless the information is disclosed in the exercise of their functions under this Law or in summary or collective form such that individual institutions or entities referred to Article 1, paragraph 1, items 3–7 cannot be identified or with the express and prior consent of the BNB, the Commission, the authority, the institution or the entity referred to in Article 1, paragraph 1, items 3–7 which provided the information.

(5) Upon disclosure of information under paragraph 4 the possible consequences on public interest as regards financial, monetary or economic policy, on the commercial interests of individuals and legal entities, on the purpose of carrying out inspections, on investigations and on audits shall be assessed. The procedure for checking the effects of disclosing information shall include a specific assessment of the effects of any disclosure of the contents and details of recovery plans and resolution plans and the results of any assessments on the recovery plans and the resolvability.

(6) The requirements of paragraphs 1–5 shall not prevent:

1. (amended; Darjaven Vestnik, issue 37 of 2019) employees and persons working for bodies or entities referred to in paragraph 2, items 1–10 from sharing information within each authority or entity; or

2. (amended; Darjaven Vestnik, issue 37 of 2019) employees and persons working for the BNB, for the Commission respectively, from sharing information with each other and with other resolution authority in the Republic of Bulgaria, with other resolution authorities in the European Union, with other competent authorities of the European Union, with the Ministry of Finance, with the BDIF, with the ICF, with the competent court for insolvency proceedings, with the auditors of the financial statements of institutions or entities under Article 1, paragraph 1, items 3–7, with the EBA, or with third-country authorities that carry out resolution functions or, subject to strict confidentiality requirements, to a potential acquirer for the purpose of planning or carrying out a resolution action.

(7) Notwithstanding any other provision of this Article, the BNB and the Commission, respectively, subject to strict confidentiality requirements, may also exchange information with other entities for the purpose of planning and carrying out a resolution action.

(8) This Article shall be without prejudice to the disclosure of information for the purposes of legal proceedings in civil and criminal cases, which is carried out accordingly.

Chapter Nineteen
RIGHT OF APPEAL AND EXCLUSION OF OTHER ACTIONS

Right of Appeal of Decisions

Article 117. (1) A decision to take a crisis prevention measure or decision to exercise any power under this Law, other than applying of crisis management measure is subject to appeal before the Supreme Administrative Court (SAC).

(2) The decision to take a crisis management measurer is subject to appeal before the SAC by all affected persons. In these cases, the court shall decide in due time and justify its assessment by using complex economic assessments of the facts carried out by the BNB and by the Commission, respectively.

(3) The right of appeal under paragraphs 1 and 2 shall not suspend the execution of the decisions of the BNB and the Commission, respectively.

(4) The annulment of a decision under paragraphs 1 and 2 taken by the BNB and the Commission, respectively, shall not affect any subsequent administrative acts or third bona fide parties' rights, which were based on the annulled decision or on the administrative acts. In that case, remedies for a wrongful decision or action by the BNB and by the Commission, respectively, shall be limited to compensation for the loss suffered as a result of the decision or act.

Restrictions on Other Judicial Proceedings

Article 118. (1) Where the conditions for resolution in relation to the entity referred to in Article 1, paragraph 1, items 2–5 are met, the insolvency proceedings shall be opened at the request of the resolution authority under of Article 2, respectively Article 3, or with the prior consent of the resolution authority.

(2) (amended; Darjaven Vestnik, issue 37 of 2019) In cases under paragraph 1 the court shall notify the resolution authority of any petition to open bankruptcy proceedings of a company under Article 1, paragraph 1, items 2–5. In such cases the court shall rule on the petition after it has received information from the resolution authority that it would not take resolution actions in respect of an investment firm or a group entity. The resolution authority shall provide the information to the court within seven days from the date of the notification under sentence one.

(3) The resolution authority may request the court to stop any judicial action or proceedings in which an institution under resolution is or become a party, if this is necessary for the effective application of the resolution tools and resolution powers and without restrictions affecting performance in connection with secured interests imposed under Article 102.

Chapter Twenty

CROSS-BORDER GROUP RESOLUTION

General Principles Regarding Decision-making Involving More than One Member State

Article 119. When making decisions or taking action pursuant to this Law which may have an impact in one or more other Member States, the BNB and the Commission, respectively have regard to the following general principles:

1. the imperatives of efficacy of decision-making and of keeping resolution costs as low as possible when taking resolution action;

2. decisions are made and action is taken in a timely manner and with due urgency when required;

3. in order to ensure a coordinated and effective decision-making, the BNB and the Commission, respectively, shall cooperate with the relevant resolution authorities, competent authorities and other authorities of Member States;

4. where an institution licensed in the Republic of Bulgaria is a subsidiary of a European Union parent undertaking, due consideration is given to the interests of the Member State where the parent undertaking is established, including the impact of any decision or action or inaction on the financial stability, fiscal resources, the financing mechanism of the resolution, deposit guarantee scheme or investor compensation scheme of those Member State;

5. due consideration is given to the interests of individual Member States that has established subsidiaries of parent undertaking, subject of supervision from the BNB and from the Commission, respectively, including the impact of any decision or action or inaction on the financial stability, fiscal resources, the financing mechanism of the resolution, deposit guarantee scheme or investor compensation scheme of those Member State;

6. due consideration is given to the interests of each Member State that has a significant branch of institution licensed in the Republic of Bulgaria, including the impact of any decision or action or inaction on the financial stability of those Member States;

7. due consideration is given to the achieving of a balance between the interests of the Member States concerned and of avoiding unfair or unjustified harm the interests of the Republic of Bulgaria or another Member State, including the avoidance of unfair burden allocation across Member States;

8. any obligation under this Law to consult an authority before any decision or action is taken implies at least that such an obligation to consult that authority on the elements of the proposed decision or action which are likely to have an effect on the European Union parent undertaking, the subsidiary or the significant branch or to have an impact on the stability of the Member State where the relevant European

Union parent undertaking, the subsidiary or the significant branch is established or located;

9. when taking resolution actions, the BNB and the Commission, respectively, shall take into account and apply resolution plans, unless the BNB and the Commission, respectively, and the relevant resolution authorities consider that the resolution objectives will be achieved more effectively through actions which are not provided for in the resolution plans;

10. ensure the necessary degree of transparency whenever a proposed decision or action is likely to have implications on the financial stability and fiscal resources of the Republic of Bulgaria and the Member States, BRF, BDIF, IFRF, ICF, as well as resolution funds, deposit guarantee schemes and investor compensation schemes of any relevant Member States concerned; and

11. coordination and cooperation are most likely to achieve a result which lowers the overall costs of resolution.

Resolution Colleges

Article 120. (1) The Bulgarian National Bank and the Commission, respectively, where is a group-level resolution authority, shall establish resolution colleges to carry out the tasks referred to in Articles 17–20, 27, 30, 71, Article 72, paragraph 9, Articles 125, 126 and 128 and ensure cooperation and coordination with third-country resolution authorities, where appropriate.

(2) A resolution college pursuant to paragraph 1 consists of the following bodies:

1. the Bulgarian National Bank and the Financial Supervision Commission, respectively, in their capacity as a group-level resolution authority and consolidating supervisor;

2. the Ministry of Finance of the Republic of Bulgaria;

3. the Deposit Insurance Fund, where the BNB is a consolidating supervisor;

4. the European Banking Authority without voting right;

5. the resolution authorities in each Member State where a subsidiary is established, subject of consolidated supervision by the BNB and by the Commission, respectively;

6. the resolution authorities in Member States where an entity referred to in Article 1, paragraph 1, item 5 is established, which is part of the group and the parent of one or more institutions in the group;

7. the resolution authorities of Member States in which significant branches are located;

8. the competent authorities of Member States for which the resolution authority is a member of the college;

9. competent ministries, if not resolution authorities;

10. the authority that is responsible for the deposit guarantee scheme of a Member State, where the relevant resolution authority is a member of the resolution college.

(3) The Bulgarian National Bank, the Commission, other resolution authorities and other authorities, respectively, shall participate in the work of the resolution colleges in paragraph 1 in accordance with their existing powers to perform the following objectives and tasks:

1. exchanging information relevant for the development of group resolution plans, for the application to groups of preparatory and preventative powers and for group resolution;

2. developing group resolution plans;

3. assessing the resolvability of group pursuant to Article 27;

4. exercising powers to address or remove impediments to the resolvability of groups pursuant to Article 30;

5. deciding on the need to establish a group resolution scheme as referred to in Articles 125 and 126;

6. coordinating public communication of group resolution strategies and schemes;

7. coordinating the use of financing mechanisms for resolutions established;

8. (amended; Darjaven Vestnik, issue 12 of 2021) setting the minimum requirements under Articles 69–72 at group level and subsidiary level.

(4) If the competent authority of a Member State under paragraph 2, item 8 is not a central bank, it may decide to be accompanied by a representative of the central bank.

(5) Where a parent undertaking or an institution, part of the group under paragraph 1, has a subsidiary or a branch, that would be considered to be significant were it located in the European Union, the resolution authorities of the third country may, at their request, be invited to participate in the resolution college as observers, provided that the BNB and the Commission, respectively, considers that those resolution authority apply confidentiality requirements that are equivalent to those under Article 133.

(6) The Bulgarian National Bank and the Commission, respectively, shall be the chair of activities of the college under paragraph 1, and in that capacity it shall:

1. approves written arrangements and procedures for the functioning of the college, after consulting the other members;

2. coordinate all activities of the resolution college;

3. convene and chair all its meetings and keep all members of the college fully informed in advance of the organisation of meetings, the main issues to be discussed and the items to be considered;

4. notify the members of the college of any planned meetings so that they can request to participate;

5. decide which members and observers shall be invited to attend particular meetings of the resolution college, on the basis of specific needs, taking into account the relevance of the issue to be discussed for those members and observers, in particular the potential impact on financial stability in the Member States concerned;

6. keep all of the members of the college informed, in a timely manner, of the decisions and outcomes of those meetings under item 5.

(7) The Bulgarian National Bank, the Commission, the Ministry of Finance and the Management Board of the BDIF, respectively, maintain close cooperation with members of the college under paragraph 1. When the college under paragraph 1 shall be chaired by the Commission, it has the right to invite the BNB representative in its capacity of a central bank.

(8) In exercising the discretion under paragraph 6, item 5, the BNB and the Commission, respectively, shall invite:

1. all resolution authorities, members of the college, where the agenda includes matters on which the process for achieving a joint decision is applied; or

2. the relevant resolution authority where the agenda includes matters related to group entity, established in the Member State;

3. the European Banking Authority.

(9) The Bulgarian National Bank and the Commission, respectively, may not establish a college in paragraph 1, if other group or college performs the functions and tasks under paragraph 3 and complies with all the conditions and procedures under this Article and Article 123, as in such case all references to resolution college within the meaning of this Law shall be deemed as reference to that other group or college.

Participation in a Resolution College

Article 121. (1) The Bulgarian National Bank, the Commission, the Ministry of Finance and the BDIF, respectively, shall participate in a resolution college established by the group-level resolution authority or another group or college, performing the same functions and tasks, where:

1. the Bulgarian National Bank and the Commission, respectively, is a resolution authority on an individual basis to an institution which is a subsidiary of a parent undertaking of the European Union;

2. a significant branch of the institution of the group is established in the Republic of Bulgaria; or

3. a subsidiary established in the Republic of Bulgaria is a parent undertaking of one or more institutions within the group and is an entity referred to in Article 1, paragraph 1, item 5.

(2) Where participate in the college under paragraph 1, the BNB and the Commission, respectively, shall perform the tasks under Article 120, paragraph 3 in accordance with its powers.

(3) The Bulgarian National Bank and Commission, respectively, is entitled to participate at any meeting of the college under paragraph 1, where the agenda includes matters on which the process of achieving a joint decision shall be applied or matters related to an institution licensed in the Republic of Bulgaria, or to a group entity referred to in Article 1, paragraph 1, items 3–5.

(4) The Bulgarian National Bank, the Commission, the Ministry of Finance and the BDIF, respectively, shall maintain close cooperation with members of the college under paragraph 1. Where the Commission participates in the college under paragraph 1, it is entitled to invite the BNB representative to participate in the college in its capacity as a central bank.

European Resolution Colleges

Article 122. (1) (amended; Darjaven Vestnik, issue 12 of 2021) Where a third-country parent undertaking has an institution, which is a subsidiary, licensed in the Republic of Bulgaria as well as subsidiaries established in other Member States or institution from a third country has a significant branch established in the Republic of Bulgaria, as well as significant branches established in other Member States, the relevant resolution authority under Article 2, paragraph 1 or Article 3, paragraph 1 and the resolution authorities of Member States where the subsidiaries and significant branches are established, shall establish a European resolution college.

(2) (amended; Darjaven Vestnik, issue 15 of 2018; amended, Darjaven Vestnik, issue 12 of 2021) Where the EU parent undertaking established in the Republic of Bulgaria holds all EU subsidiaries of a third-country institution or third-country parent undertaking, the European resolution college shall be chaired by the resolution authority under Article 2 or Article 3 respectively.

(3) (new; Darjaven Vestnik, issue 12 of 2021) The resolution authority under Article 2 or Article 3 respectively, shall participate as a member of the European resolution college where the EU parent undertaking, established in another Member State, holds all EU subsidiaries of a third-country institution or third-country parent undertaking. In these cases, the European resolution college shall be chaired by the resolution authority of the Member State where the EU parent undertaking is established.

(4) (former paragraph 3; amended, Darjaven Vestnik, issue 12 of 2021) Where the conditions under paragraph 2 or paragraph 3 are not met, the European resolution college shall be chaired by the resolution authority of the EU parent undertaking or EU subsidiary with the highest value of total on-balance sheet assets.

(5) (former paragraph 4, Darjaven Vestnik, issue 12 of 2021) The European resolution college shall perform the functions and tasks referred to in Article 120 in relation to subsidiary institutions and, where appropriate, in relation to significant branches.

(6) (new; Darjaven Vestnik, issue 12 of 2021) When setting the minimum requirements referred to in Articles 69–72, members of the European resolution college shall take into consideration the global resolution strategy, if any, adopted by third-country authorities.

(7) (new; Darjaven Vestnik, issue 12 of 2021) Where, in accordance with the global resolution strategy, subsidiaries established in the EU or a EU parent undertaking and its subsidiary institutions are not resolution entities and the members

of the European resolution college agree with that strategy, subsidiaries established in the EU or the EU parent undertaking on a consolidated basis, shall comply with the requirement of Article 70a by issuing instruments referred to in Article 70a, paragraph 5, items 1 and 2, to:

1. their ultimate parent undertaking established in a third country;

2. the subsidiaries of that ultimate parent undertaking that are established in the same third country, or

3. to other entities under the conditions set out in Article 70a, paragraph 5, item 1, letter 'a' and item 2, letter 'b'.

(8) (previous paragraph 5; Darjaven Vestnik, issue 12 of 2021) The resolution authority under Article 2, respectively Article 3, and other resolution authority under paragraph 1 may, by mutual agreement, waive the requirement to establish a European college under paragraph 1, if other group or college, including a resolution college under Articles 120 and 121 performs the functions and tasks specified in paragraphs 2–7 and complies with all the conditions and procedures under this Article and Article 123, and in such a case all references to European resolution college within the meaning of this Law shall be deemed as reference to that other group or college. In this case the consent of the other group members or college is needed.

Information Exchange

Article 123. (1) (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) In compliance with the requirements under Article 116, the BNB, the Commission respectively, shall provide at request to the SSP, other resolution authorities and other competent authorities all information necessary for the performance of their tasks related to the recovery and resolution of institutions and entities of their groups.

(2) Where the BNB and the Commission, respectively, is a group-level resolution authority, it shall coordinate the exchange of all relevant information between resolution authorities, including shall provide in a timely manner to other resolution authorities all the necessary information with a view to facilitating the exercising of the tasks referred to in Article 120, paragraph 3, items 2–8.

(3) The Bulgarian National Bank and the Commission, respectively, shall transmit information provided from a third-country resolution authority only after consent of that authority.

(4) The Bulgarian National Bank and the Commission, respectively, shall exchange information with the Ministry of Finance where information concerns a decision or matter that requires notification, approval or consent of the Ministry or may have implications for public finances.

Group Resolution Involving a Subsidiary from the Republic of Bulgaria

Article 124. (1) Where a resolution authority under Article 2 of Article 3 decides that an institution licensed in the Republic of Bulgaria, or entity established in the Republic of Bulgaria which are institutions or entities referred to in Article 1, paragraph 1, items 3–5 and which are subsidiaries of the group, eligible for resolution, they shall notify the following information without delay to the group-level resolution authority to the consolidating supervisor and the authorities members of the resolution college for the group:

1. the decision that the institution or entity referred to in Article 1, paragraph 1, items 3–5 meets the conditions for resolution;

2. the resolution actions or those leading to the opening of insolvency proceedings, which the resolution authority under Article 2, respectively Article 3, considers to be appropriate for that institution or entity referred to in Article 1, paragraph 1, items 3–5.

(2) The resolution authority under Article 2 or Article 3 may take the actions under paragraph 1, where:

1. the group-level resolution authority, after consultation with other members of the resolution college, assesses that the resolution actions or procedures would not make it likely that the conditions for resolution would be satisfied in relation to a group entity in another Member State; or

2. within 24 hours, after receiving the notification under paragraph 1 from the group-level resolution authority, it has not make an assessment under paragraph 1.

(3) The period under paragraph 2, item 2 may be extended with the consent of the resolution authority under Article 2 or Article 3.

(4) Where the conditions under paragraph 2 are not met, by a proposal from the group-level resolution authority, a group resolution scheme shall be adopt in the form of a joint decision of this authority, the resolution authority under Article 2 or Article 3 and resolution authorities of the subsidiaries included in the scheme.

(5) The resolution authority under Article 2 or Article 3 may request EBA to assist in reaching a joint decision under paragraph 4 and in accordance with Article 31(c) of Regulation (EU) No 1093/2010.

(6) If any resolution authority under Article 2, respectively Article 3, disagrees with or departs from the group resolution scheme proposed by the group-level resolution authority or considers that it needs to take independent resolution actions or measures other that those proposed in the scheme in relation to an institution or entity referred to in Article 1, paragraph 1, items 3–5 for reasons of financial stability, it shall set out in detail the reasons for disagreement or the reasons to depart from the scheme, notify the group level resolution authority and the other resolution authorities that are covered by the scheme of the reasons and inform them about the actions or measures it will take. Where setting out the reasons for its disagreement, the resolution authority under Article 2, respectively Article 3, shall take into

consideration the resolution plan, the potential impact on financial stability in the Member States concerned and the potential effect of individual actions or measures on other parts of the group.

(7) The joint decision referred to in paragraph 4, and the decision under paragraph 6 of the resolution authority under Article 2 or Article 3 are conclusive.

Group Resolution Involving a Subsidiary Outside the Republic of Bulgaria, Where the Bulgarian National Bank and the Commission, Respectively Is a Group-level Resolution Authority

Article 125. (1) On receiving a notification from the resolution authority of a Member State that a group subsidiary for which the BNB and the Commission, respectively, is a group-level resolution authority, meets the conditions for resolution and after consulting the other members of resolution college, the BNB and the Commission, respectively, shall assess the likely impact of the resolution actions or other measures proposed by the authority in respect of the subsidiary would have on the group and group entities in Republic of Bulgaria and other Member States and whether resolution actions or other measures would make it likely that the conditions for resolution in relation to a group entity in the Republic of Bulgaria or another Member State would be satisfied.

(2) If the group-level resolution authority under paragraph 1, after consultation with other members of the resolution college, assesses that the resolution actions or other measures notified in accordance with paragraph 1, would make it likely that the conditions for resolution would be satisfied in relation to a group entity in Bulgaria or a Member State, it shall propose a group resolution scheme and submit it to the resolution college no later than 24 hours after receiving the notification under paragraph 1.

(3) The period under paragraph 2 may be extended with the consent of the resolution authority of another Member State under paragraph 1.

(4) The group resolution scheme under paragraph 2 shall:

1. comply with and follow the resolution plan unless the group-level resolution authority and other resolution authorities consider that the resolution objectives will be achieved more effectively through actions which are not provided for in the plan;

2. outline the resolution actions that should be taken by the BNB the Commission and other resolution authorities, respectively, in relation to the European Union parent undertaking and the group entities with the aim of meeting the resolution objectives referred to in Article 50 and resolution principles under Article 53;

3. specify how those resolution actions under item 2 should be coordinated;

4. contain a financing plan that complies with the group resolution plan, principles for sharing responsibility set out in Article 17, paragraph 6, item 6 and paragraph 7, and the mutualisation under Article 143.

(5) Group resolution scheme in paragraph 2 shall take the form of a joint decision of the group-level resolution authority and the resolution authorities in relation to subsidiaries included in the scheme.

(6) The group-level resolution authority may request EBA to assist in reaching a joint decision under paragraph 5 in accordance with Article 31(c) of Regulation (EU) No 1093/2010.

(7) Where one or more resolution authorities disagree with or do not intend to implement the resolution scheme under paragraph 2, the BNB, the Commission and other resolution authorities, respectively, may reach a joint decision on a resolution scheme under paragraph 5.

(8) The joint decisions under paragraphs 5 and 7 shall be conclusive.

Group Resolution Where the BNB and the Commission, Respectively, Is a Group-level Resolution Authority

Article 126. (1) Where the BNB and the Commission, respectively, is a group-level resolution authority and considers that a respective European Union parent undertaking meets the conditions for resolution, it shall notify the information under Article 124, paragraph 1 without delay to the members of the resolution college of the group.

(2) Actions under Article 124, paragraph 1, item 2 may include the implementation of a group resolution scheme drawn up in accordance with Article 125, paragraph 4, if one of the following circumstances is in place:

1. actions at parent level notified in accordance with Article 124, paragraph 1, item 2, make it likely that the conditions for resolution would be fulfilled in relation to a group entity in another Member State;

2. actions at parent level only are not sufficient to stabilise the situation or are not likely to provide an optimum outcome;

3. one or more subsidiaries meet the conditions for resolution according to the findings of the resolution authorities responsible for those subsidiaries; or

4. resolution actions or procedures at group level will benefit the subsidiaries in a way which makes a group resolution scheme appropriate.

(3) (the correction concerns the Bulgarian version only; Darjaven Vestnik, issue 37 of 2019) Where the actions proposed by the group-level resolution authority under paragraph 1 do not include a group resolution scheme, it shall take a decision after consulting the members of the resolution college.

(4) The decision under paragraph 3 shall take into account:

1. the resolution plan unless the group-level resolution authority and other resolution authorities assess that the resolution objectives will be achieved more effectively through actions which are not provided for in the plan;

2. the financial stability of the Member States concerned.

(5) Where the proposed actions under paragraph 1 include a group resolution scheme, the scheme shall take the form of a joint decision of the group-level resolu-

tion authority and resolution authorities responsible for subsidiaries included in the scheme.

(6) The group-level resolution authority may request EBA to assist in reaching a joint decision under paragraph 3 in accordance with Article 31(c) of Regulation (EU) No 1093/2010.

(7) Where one or more resolution authorities disagree with or intend to depart from the resolution scheme under paragraph 3, the group-level resolution authority and other resolution authorities may reach a joint decision on a resolution scheme.

(8) The joint decisions under paragraphs 5 and 7 shall be conclusive.

Group Resolution Where the BNB, Respectively, the Commission Is a Resolution Authority of a Subsidiary

Article 127. (1) Where the group-level resolution authority proposes the adoption of the group resolution scheme and such a scheme includes actions in relation to subsidiary institution licensed in the Republic of Bulgaria or group entity referred to in Article 1, paragraph 1, items 3–5, this scheme is adopted by a joint decision of this authority, the resolution authority under Article 2 or Article 3 and other resolution authorities in relation to the subsidiaries included in the scheme.

(2) The resolution authority under Article 2 or Article 3 may request EBA to assist in reaching a joint decision under paragraph 1 in accordance with Article 31(c) of Regulation (EU) No 1093/2010.

(3) The resolution authority under Article 2 or Article 3 shall participate in consultation on the initiative of the group-level resolution authority, which group includes a subsidiary institution licensed in the Republic of Bulgaria or group entity referred to in Article 1, paragraph 1, items 3–5 where that authority considers that the European Union parent undertaking of the group meets the conditions for resolution, but did not offer group resolution scheme in accordance with paragraph 1.

(4) If any resolution authority under Article 2 or Article 3 disagrees with or departs from the group resolution scheme proposed by the group-level resolution authority, or considers that it needs to take independent resolution actions or measures other that those proposed in the scheme in relation to an institution or entity referred to in Article 1, paragraph 1, items 3–5 for reasons of financial stability, it shall set out in detail the reasons for disagreement or the reasons to depart from scheme, notify the group level resolution authority and the other resolution authorities that are covered by the scheme of the reasons and inform them about the actions or measures it will take. When setting out the reasons for its disagreement, the resolution authority under Article 2 or Article 3, shall take into consideration the resolution plan, the potential impact on financial stability in the Member States concerned and the potential effect of the actions or measures on other parts of the group.

(5) The joint decisions referred to in paragraph 1 and the decision of the resolution authority under Article 2 or Article 3 and under paragraph 4 are conclusive.

Cooperation in the Resolution of the Group Entities

Article 128. (1) In case where a group resolution scheme is not implemented and the resolution authority under Article 2 or Article 3 takes resolution actions in relation to any group entity, it shall cooperates closely with other resolution authorities within the resolution college with a view to achieve a coordinated resolution strategy for all the group entities that are failing or likely to fail.

(2) Where taking resolution action in relation to the group entity, the resolution authority under Article 2, respectively Article 3, shall inform the members of the resolution college regularly and fully about this action and its on-going progress.

(3) The resolution authority under Article 2, respectively Article 3, shall perform applicable actions under Articles 124–127 and under this Article without delay, and with due regards to the urgency of the situation.

Chapter Twenty-One
RELATIONS WITH THIRD COUNTRIES

Recognition and Enforcement of Third-county Resolution Proceedings

Article 129. (1) Third-country resolution proceedings shall be recognised and entry into force in accordance with the international agreements. Where such agreements are not enforced or do not contain provisions on the recognition and enforcement of resolution proceedings, provision of this Article shall apply.

(2) Where there is a European resolution college, a resolution authority under Article 2, respectively Article 3, shall participate as a member in reaching a joint decision on the recognition of third-country resolution proceeding in relation to institution or a parent undertaking from that third country where an agreement that governs the recognition and enforcement of third-country resolution proceedings is not concluded and entered into force and within the limits of Article 130.

(3) Where the joint decision on the recognition of the third-country resolution proceeding under paragraph 2 shall apply insofar not contrary to the Bulgarian legislation.

(4) Where the European resolution college is not established and in the absence of a joint decision by the resolution authorities participating in the European resolution college, the resolution authority under Article 2, respectively Article 3, shall make its own decision, within the limits of Article 130 on recognition and enforcement of the relevant third-country resolution proceedings in relation to institution or a parent undertaking of that State, taking into account the interests of the Republic of Bulgaria and the other Member States where an institution or a parent undertaking operates, including the potential impact of the recognition and enforcement of the third-country resolution proceedings on the other parts of the group and financial stability in those Member States.

(5) Under a decision to implement the third-country resolution proceedings, the resolution authority under Article 2, respectively Article 3, has the right to use the resolution powers provided for in this Law.

(6) Where necessary to protect the public interest, the BNB and the Commission, respectively, may take resolution action in relation to parent undertaking for which is a resolution authority where at the discretion of the relevant authority of the third-country institution in this State meets the conditions for resolution under its national legislation. Where the resolution authority takes resolution actions, Article 100 shall apply.

(7) The recognition and enforcement of third-county resolution proceedings shall be without prejudice to any insolvency proceedings under the Law on Bank Bankruptcy or under Part IV of the Commercial Code.

Right to Refuse Recognition or Enforcement of Third-country Resolution Proceedings

Article 130. The resolution authority under Article 2, Article 3 respectively, after consulting other resolution authority, where a European resolution college is established, may refuse to recognise or enforce third-country resolution proceedings if it considers that:

1. the third-country resolution proceedings would have adverse effects on financial stability in the Republic of Bulgaria or in another Member State;

2. independent resolution action pursuant to Article 131 in relation to a branch in the Republic of Bulgaria is necessary to achieve the resolution objectives;

3. creditors, including in particular depositors located or payable in the Republic of Bulgaria or in a Member State, would not receive the same treatment as third-country creditors and depositors with similar legal rights under the third-country home resolution proceedings;

4. the recognition or enforcement of the third-country resolution proceedings would have material fiscal implications for the Republic of Bulgaria; or

5. the effects of such recognition or enforcement would be contrary to the Bulgarian legislation.

Resolution of the Third-country Institution Branch

Article 131. (1) Where third-country resolution proceedings are not applied in relation to a branch of the institution licensed to conduct business in the Republic of Bulgaria, or where the resolution authority under Article 2, respectively Article 3, has refused recognition of the proceedings pursuant to Article 130, it shall apply its resolution powers under this Law. Where the resolution authority takes resolution actions, Article 100 shall apply

(2) The powers required in paragraph 1 may be exercised by resolution authority under Article 2 or Article 3 where it considers that the resolution action is in the public interest and at least one of the following conditions is met:

1. the branch in Bulgaria no longer meets, or is likely not to meet, the conditions for authorisation and operation of an institution established in a third country, or of the investment firm through a branch, and there is no prospect that any private sector, supervisory or relevant third-country action would restore the institution to compliance or prevent failure in a reasonable timeframe;

2. the third-country institution is, in the opinion of the resolution authority under Article 2, respectively Article 3, unable or unwilling, or is likely to be unable, to pay its obligations to creditors from the Republic of Bulgaria or from another Member State, or obligations that have been created or booked through the branch, as they fall due and no resolution proceedings or insolvency proceedings according to the third-country legislation have been or will be initiated in relation to that institution in a reasonable timeframe;

3. the relevant third-country authority has initiated third-country resolution proceedings in relation to the third-country institution, or has notified to the resolution authority under Article 2, respectively Article 3, its intention to initiate such a proceeding.

(3) Where a resolution authority under Article 2, paragraph 1, or under Article 3, paragraph 1 takes an independent action in relation to a branch in the Republic of Bulgaria, it shall have regard to the resolution objectives in accordance with the following principles and requirements:

1. the principles set out in Article 53;

2. the requirements relating to the application of the resolution tools.

(4) (new; Darjaven Vestnik 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) Where resolution of a branch of a third-country credit institution requires the use of funds from the BRF, Article 137 shall apply by using funds from the sub-fund under Article 134, paragraph 1, item 1.

(5) (new; Darjaven Vestnik 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) Where resolution of a branch of a third-country investment firm requires the use of funds from the IFRF, Article 137 shall apply by using funds from the sub-fund under Article 135, paragraph 1, item 1.

Cooperation with Third-Country Authorities

Article 132. (1) Where in respect of cooperation with relevant third-country authorities framework cooperation agreements are concluded by the EBA, the BNB and the Commission may also conclude non-binding cooperation agreements with them, where appropriate, in accordance with the framework agreements.

(2) Non-binding cooperation agreements under paragraph 1 may cover the following matters:

1. the exchange of information necessary for the preparation and maintenance of resolution plans;

2. consultations and cooperation in the development of resolution plans, including principles for the exercise of powers under Articles 129 and 131 and similar powers under the law of the relevant third countries;

3. the exchange of information necessary for the application of resolution tools and for the exercise of resolution powers and similar powers under the law of the relevant third countries;

4. early warning to or consultation of parties before taking any significant action under this Law or the relevant third-country law affecting the institution or group to which the agreement relates;

5. the coordination of public communication in case of joint resolution actions;

6. procedures and arrangements for the exchange of information and cooperation under items 1–5, including, where appropriate, through the establishment and operation of crisis management group.

(3) The Bulgarian National Bank and the Commission shall notify EBA of any cooperation agreement concluded in accordance with paragraph 1.

Exchange of Confidential Information

Article 133. (1) The Bulgarian National Bank, the Commission and the Ministry of Finance shall provide information which is a professional secrecy under Article 116 to the relevant third-country resolution authority, competent authorities and competent ministries if:

1. those authorities are subject to confidentiality requirements at least considered to be equivalent to the requirements of Article 116 and corresponding to the European Union law and the Republic of Bulgaria Law on Personal Data Protection;

2. the information is necessary for the relevant third-country authorities only for the performance of their resolution functions under national law that are comparable to those assigned under this Law.

(2) Where confidential information originates in another Member State, it may be provided to the relevant third-country authorities only with the consent of the Member State authorities for the purposes for which consent has been given.

(3) When providing information which is a professional secrecy to another Member State, the BNB, the Commission and the Ministry of Finance may indicate that the information may be disclosed only after explicit consent of the BNB, the Commission or the Ministry of Finance, respectively, and determine the purposes for which they gave consent.

Chapter Twenty Two
RESOLUTION FINANCING MECHANISMS

Bank Resolution Fund

(amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013)

Article 134. (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) (1) The resolution authority under Article 2, paragraph 1 shall manage a bank resolution fund which shall include individual sub-funds:

1. a sub-fund to finance the application of resolution tools and exercise resolution powers under this Law in respect of branches of third-country credit institutions, and

2. a sub-fund to raise contributions under Articles 69, 70 and 71 of Regulation (EU) No 806/2014 and their transfer to the SRF.

(2) Funds of individual sub-funds shall be invested in compliance with the requirements of this Law without the assumption of mixing the funds.

(3) Costs incurred on BRF management shall be funded by fees collected in relation to the BNB resolution function under Article 59a of the Law on the Bulgarian National Bank.

(4) The resolution authority under Article 2, paragraph 1 shall prepare separate financial statements of the BRF.

(5) The resolution authority under Article 2, paragraph 1 shall take a decision on the use of funds from the BRF only in accordance with the resolution objectives under Article 50 and the principles under Article 53.

Investment Firm Resolution Fund

Article 135. (1) (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) An Investment Firm Resolution Fund shall be established, which shall include individual sub-funds:

1. a sub-fund to finance the application of resolution tools and exercise resolution powers under this Law in respect of investment firms under Article 1, paragraph 1, item 2, which are not covered by the scope of Regulation (EU) No 806/2014 and branches of third-country investment firms under Article 1, paragraph 1, item 6, and

2. a sub-fund to raise contributions under Articles 69, 70 and 71 of Regulation (EU) No 806/2014 and their transfer to the SRF; the sub-fund shall be established

where an investment firm falls within the scope of Article 2 of Regulation (EU) No 806/2014.

(2) The IFRF is managed by the Management Board of the ICF. Costs related to the management of this Fund, shall be part of the overall administrative costs of the ICF and shall be financed as envisaged by the Law on Public Offering of Securities.

(3) The Management Board of the ICF shall prepare separate financial statements of IFRF.

(4) The Commission as a resolution authority under Article 3 shall take decision about use of the financial means of the IFRF and shall assign this decision for application to the Management Board of the ICF.

(5) The decision of paragraph 4 may be taken only in accordance with the resolution objectives under Article 50 and the principles in Article 53.

Resolution Funds Management

Article 136. (1) (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) The resolution authority under Article 2, paragraph 1, the Management Board of the ICF respectively, shall take decisions on:

1. (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) levying from branches of third-country credit institutions, investment firms respectively, which are not covered by the scope of Regulation (EU) No 806/2014, and from branches of third-country investment firms of annual contributions in accordance with Article 139;

2. (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) levying from branches of third-country credit institutions, investment firms respectively, which are not covered by the scope of Regulation (EU) No 806/2014, and from branches of third-country investment firms of extraordinary contributions in accordance with Article 140 where the contributions under item 1 are insufficient, and

3. contracts borrowings and other forms of support and the provision of loans on terms and conditions specified in Articles 141 and 142;

4. investing the resources of the BRF and of the IFRF, respectively;

5. the appointment of a registered auditor for independent financial audit of the annual financial statements of the BRF and of the IFRF, respectively;

6. performance of tasks assigned under this Law, including Chapter Eleven and Chapter Twelve;

7. (amended; Darjaven Vestnik, issue 12 of 2021) adoption of the annual financial statements of the BRF and of the IFRF, respectively, and their publication up to 30 April.

(2) (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) Funds of the BRF shall be held on account with the BNB and shall be invested in accordance with the Law on the Bulgarian National Bank.

(3) (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) Funds of the IFRF may be invested in compliance with the principles of security, liquidity and diversification in financial tools as follows:

1. deposits in levs and euro or other financial instruments offered by the Bulgarian National Bank;

2. deposits in euro with foreign banks, which have one of the three highest credit ratings, assigned by two credit rating agencies;

3. debt instruments in Euro, without embedded options issued by foreign countries, foreign banks, foreign financial institutions, international financial organisations, foreign agencies or other foreign companies which instruments or issuers have one of the three highest credit ratings assigned by two credit rating agencies.

(4) (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) The Investment Firms Resolution Fund shall be entitled to:

1. (the correction concerns the Bulgarian version only; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) to carry out repo transactions (transactions with repurchase arrangement) in euro with foreign banks, foreign financial institutions or international financial organisations, which have one of the three highest credit ratings, assigned by two credit rating agencies;

2. (the correction concerns the Bulgarian version only; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) to grant loans against collateral equivalent to their holdings of debt instruments under paragraph 3, item 3 of foreign banks, foreign financial institutions or international financial organisations, which have one of the three highest credit ratings assigned by two credit rating agencies.

(5) (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) In compliance with the requirements of this Law and the Law on the Bulgarian National Bank funds of the IFRF may be assigned for management to the BNB against remuneration.

(6) (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) The rules and constraints for investment of IFRF funds, as well as the changes to them, shall be approved by the Management Board of the ICF.

Use of the Resolution Financing Arrangements

Article 137. (1) The resolution authority under Article 2, respectively Article 3, shall take decision about use of the financial means of the BRF and IFRF, respectively, to the extent necessary to ensure the effective application of the resolution tools. Those financial means may be used for one or more of the following actions:

1. to guarantee the assets or the liabilities of or to make loans to institution under resolution, its subsidiaries, a bridge bank, a bridge investment firm or an asset management vehicle;

2. to purchase assets of the institution under resolution;

3. to acquire ordinary shares issued by a bridge bank, a bridge investment firm, a bridge financial holding company or an asset management vehicle;

4. (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) to pay compensations to shareholders, partners or creditors in accordance with Article 107;

5. to make contribution to the institution under resolution when the bail-in tool is applied and the resolution authority under Article 2, respectively Article 3, decides to exclude certain creditors from the scope of bail-in in accordance with Article 67;

6. to lend to other financing mechanisms on a voluntary basis.

(2) Actions under paragraph 1 may be taken with respect to the purchaser in the context of the sale of business tool.

(3) The financial means of the BRF and the IFRF, respectively, shall not be used directly to absorb losses of an institution or an entity referred to in Article 1, paragraph 1, items 3–5 or to recapitalise such an institution or entity. Where the use of the financial means under paragraph 1 results into a part of the losses of an institution or an entity referred to in Article 1, paragraph 1, items 3–5 being passed on to the BRF and to the IFRF, respectively, the requirements of Article 67 shall apply.

Sources of Funding

(title amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013)

Article 138. (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) (1) Sources of funds to the BRF, to the IFRF respectively, shall be:

1. annual and extraordinary contributions by banks and branches of third-country credit institutions, by investment firms and branches of third-country investment firms respectively;

2. income from investment of funds in the BRF and the IFRF;

3. reimbursement amounts received by the BRF, by the IFRF respectively, used for resolution purposes under the terms provided for in the application of appropriate resolution tools and related income and compensation;

4. other sources.

(2) The Bulgarian National Bank shall be the depository of funds of the IFRF.

Annual Contributions

(amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013)

Article 139. (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) (1) The resolution authority under Article 3, shall determine until 31 March of the current year the total amount of annual contributions to the IFRF for the respective year, taking into account the phase of the business cycle and the impact on the financial position of investment firms correspondingly. The resolution authority under Article 3 shall notify the Management Board of the ICF of the total determined amount within the term set out in sentence one.

(2) The resolution authority under Article 3 shall determine until 1 May of the current year individual annual contributions for investment firms, which are licensed in the Republic of Bulgaria and not covered by the scope of Regulation (EU) No 806/2014, as well as for third-country branches within the amount under paragraph 1, and shall notify the Management Board of the ICF of the individually determined contributions in the same period.

(3) The resolution authority under Article 2, paragraph 1 shall until 1 May of the current year notify the branches of third-country credit institutions of the amount of individual annual contributions due to the BRF.

(4) The resolution authority under Article 3 shall notify each investment firm which is licensed in the Republic of Bulgaria and not covered by the scope of Regulation (EU) No 806/2014, and each branch of a third-country investment firm of the amount of individual annual contributions due to the IFRF within the term under paragraph 2.

(5) A branch of a third-country credit institution, an investment firm respectively, which is licensed in the Republic of Bulgaria and not covered by the scope of Regulation (EU) No 806/2014, or a branch of a third-country investment firm shall deposit to the BRF, the IFRF respectively, the individually determined annual contri-

bution within 30 days from the date of notification under paragraph 3, paragraph 4 respectively.

(6) The contribution under paragraph 3 shall be a one-off fixed annual amount determined in accordance with an ordinance of the BNB.

(7) The contribution under paragraph 2 due by investment firms which are not covered by the scope of Regulation (EU) No 806/2014 and by branches of third-country investment firms shall be *pro rata* to the relative amount of the liabilities of the third-country investment firm or branch (with the exception of own funds) to total liabilities of all third-country investment firms and branches (with the exception of own funds). The amount of the contribution shall take into account the risk profile of the investment firm or the branch and shall be calculated in accordance with rules set by the Commission Delegated Regulation (EU) 2015/63 of 21 October 2014 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regards to *ex-ante* contributions to resolution financing arrangements (OJ, L 11/44 of 17 January 2015).

(8) The resolution authority under Article 3 shall control the performance of duties of the investment firms and branches of third-country investment firms. The Management Board of the ICF shall notify the resolution authority under Article 3 of the payment of annual contributions and shall assist it in exercising control under sentence one.

(9) In case of failure to pay the annual contribution within the set term the resolution authority under Article 2, paragraph 1, the Management Board of the ICF respectively, shall charge interest for the period of delay on the amount due at the statutory rate.

(10) Where an investment firm or a branch of a third-country investment firm fails to pay the required contribution within the set term, the Management Board of ICF shall immediately notify the resolution authority under Article 3.

(11) The annual contributions under this Article shall be reported as current year accounting costs.

Extraordinary Contributions

(amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013)

Article 140. (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) (1) Where the available resources accumulated in the BRF, in the IFRF respectively, are not sufficient to cover the costs associated with the financing of the resolution, extraordinary contributions shall be raised from branches of third-country, from investment firms respectively, which are licensed in the Republic of Bulgaria and not covered by the

scope of Regulation (EU) No 806/2014, and from branches of third-country investment firms.

(2) The resolution authority under Article 2, paragraph 1 shall determine the amount of an extraordinary contribution for a branch of a third-country credit institution, which shall not exceed three times the last annual contribution determined under Article 139, paragraph 6.

(3) The resolution authority under Article 3 shall determine the total amount of extraordinary contributions for investment firms which are not covered by the scope of Regulation (EU) No 806/2014, and for branches of third-country investment firms, which shall not exceed three times the last annual contribution determined under Article 139, paragraph 7.

(4) The total amount of individual extraordinary contributions under Article 3 for investment firms which are not covered by the scope of Regulation (EU) No 806/2014, and for branches of third-country investment firms shall be distributed among them in accordance with the rules laid down in Article 139, paragraph 7.

(5) With a decision under paragraph 2, paragraph 3 respectively, the resolution authority under Article 2, Article 3 respectively, shall set up the term in which extraordinary contributions are to be paid in full.

(6) The resolution authority under Article 2, Article 3 respectively, may defer, in whole or in part, the payment of the obligation for a term of up to six months where payment of extraordinary contributions would jeopardise the liquidity of a branch of a third-country credit institution, or the liquidity or solvency of an investment firm which is not covered by the scope of Regulation (EU) No 806/2014, or of a branch of a third-country investment firm. Such a deferral may be renewed up to six months at the request of a branch of a third-country credit institution, an investment firm or of a branch of a third-country investment firm after an assessment of its rationale.

(7) The control requirements under Article 139, paragraph 8 shall apply also to extraordinary contributions for investment firms which are not covered by the scope of Regulation (EU) No 806/2014, and for branches of third-country investment firms.

(8) The rules of Article 139, paragraphs 9 and 10 shall also apply in case of failure to pay the extraordinary contribution within a specified term.

Contributions to the SRF

(new; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013)

Article 140a. (new; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013)(1) Following the receipt of a notification from the SRF the resolution authority under Article 2, paragraph 1, Article 3, paragraph 1 respectively, shall notify each credit institution, investment

firm respectively, which is covered by the scope of Regulation (EU) No 806/2014, on the amount of the contribution due under Articles 69, 70 and 71 of Regulation (EU) No 806/2014.

(2) Credit institutions shall deposit to the BRF and investment firms, which are covered by the scope of Regulation (EU) No 806/2014, to the IFRF the contributions due within a term specified in the notification of the respective resolution authority under paragraph 1.

(3) The resolution authority under Article 2, paragraph 1, correspondingly the ICF *via* the resolution authority under Article 3, paragraph 1, shall in due time transfer to the SRF the contributions raised by credit institutions, investment firms respectively, which are covered by the scope of Regulation (EU) No 806/2014.

Alternative Funding Means

Article 141. Where the available resources raised from annual contributions and extraordinary contributions are not sufficient to cover the costs related to financing the resolution, the BRF and the IFRF, respectively, may be completed by borrowing or other forms of support from banks, financial institutions or other third parties, in case possibilities are immediately accessible on reasonable terms.

Borrowing between Financing Arrangements

Article 142. (1) The Bank Resolution Fund and the IFRF, respectively, may make a request to borrow funds from other resolution financing mechanisms in the European Union, in the event that:

1. the annual contributions amount raised is not sufficient to cover the costs of the BRF and of the IFRF, respectively, in connection with the resolution;

2. the extraordinary contributions are not collected in a timely manner;

3. the borrowing and other forms of support under Article 141 are not immediately accessible on reasonable terms.

(2) (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) Funds of the BRF, the IFRF respectively, can be used to provide loans to other resolution financing arrangements in the European Union. The decision to provide such loans shall be taken by the resolution authority under Article 2, paragraph 1, by the Management Board of the ICF respectively, after the approval of the Ministry of Finance, and where such loans are provided by the IFRF – also of the resolution authority under Article 3, and if such loans are requested as a result of conditions analogous to those described in paragraph 1.

(3) (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) The Ministry of Finance, the resolution authority under Article 2, Article 3 respectively, and the Management

Board of the ICF, shall made their judgements and take appropriate decisions under paragraph 2 in accordance with the time frames pursuant to the request of the financing arrangement of the other Member State.

(4) (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) The interest rate, repayment period and other terms of the loan under paragraphs 1 or 2 shall be agreed between the resolution authority under Article 2, paragraph 1, the Management Board of the ICF respectively, and the management bodies of other participating resolution financing arrangements. The interest, time frame and terms agreed shall apply to all participants to the loan agreement, unless otherwise agreed by the participants.

(5) (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) The amounts with which the BRF, the IFRF respectively, participates in granting loans under paragraph 2 shall be agreed by the resolution authority under Article 2, paragraph 1, the Management Board of the ICF respectively. The agreement provides that the distribution of the funds among the participating resolution financing arrangements is *pro rata* to the relative amount of covered deposits in the relevant Member State to the total amount of covered deposits of the countries participating in the agreement, unless otherwise agreed.

(6) (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) Where granting a loan under paragraph 2, the amount of allocations shall not be reduced taking into account the collected resources in the BRF, in the IFRF respectively.

Use of Resolution Funds in the Case of a Group Resolution

Article 143. (1) (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) In establishing a group resolution scheme under Articles 124–127, which includes an entity under Article 2 of Regulation (EU) No 806/2014 and provides for a financing plan, Regulation (EU) No 806/2014 shall apply. With regard to the entities other than those referred to in the first sentence, the resolution authority under Article 3, paragraph 1 shall take a decision on participation of the Investment Firms Resolution Fund (IFRF) in financing the resolution according to the approved resolution financing plan at a group level.

(2) The financing plan shall include:

1. a valuation in accordance with Article 55 in respect of the affected group entities;

2. the losses to be recognised by each affected group entity at the moment the resolution tools are exercised;

3. for each affected group entity, the losses that would be suffered by each class of shareholders and creditors;

4. any contributions that the BDIF and other deposit guarantee schemes would be required to make in accordance with Article 144;

5. the total contribution by resolution financing mechanisms and the purpose and form of the contribution;

6. (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) the basis for calculating the amounts that the IFRF and other resolution financing mechanisms of the Member States where affected group entities are located shall provide to finance the resolution in order to build up the total contribution under item 5;

7. (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) the amounts that the IFRF and other resolution financing mechanisms of affected group entities shall provide to finance the resolution and the form of such contributions;

8. (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) the amount of borrowings which the IFRF and other resolution financing mechanisms of the Member States where affected group entities are located may contract from institutions, financial institutions and other third parties;

9. (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) the timeframe for using the IFRF and other resolution financing mechanisms of the Member States where affected group entities are located, which may be extended, if necessary.

(3) (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) Unless otherwise agreed in the financing plan, the basis for the proportionate participation of the IFRF in the contribution under paragraph 2, item 5 shall be consistent with the principles under Article 17, paragraph 6, item 6, taking account of:

1. the proportion of the group's risk-weighted assets held at institutions and entities referred to in Article 1, paragraph 1, items 3–5 established in the Republic of Bulgaria;

2. the proportion of the group's assets held at institutions and entities referred to in Article 1, paragraph 1, items 3–5 established in the Republic of Bulgaria;

3. (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) the proportion of the losses which have given rise to the need for the resolution of the group, which originated from entities under the supervision of the Commission; and

4. the proportion of the total contribution under paragraph 2, item 5, which, under the financing plan, is expected to be used directly to benefit group entities established in the Republic of Bulgaria.

(4) (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) In taking a decision under paragraph 1, the resolution authority under Article 3 jointly with the Management Board of the ICF shall provide for measures necessary to ensure the possibilities for an immediate payment of the part of the contribution due under the financing plan upon taking resolution actions.

(5) (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) In performing the obligations under paragraph 4, the Management Board of the ICF may, in accordance with Article 141, contract borrowings or other forms of support and provide guarantees on contracts concluded by the group resolution financing mechanism in line with the agreed financing plan.

(6) Any proceeds or benefits that arise from the use of group resolution financing mechanisms shall be allocated to relevant financing mechanisms in accordance with their contributions under paragraph 2.

Use of the BDIF in the Resolution Process

Article 144. (1) (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) Upon taking a resolution action in respect of a credit institution under Article 1, paragraph 1, item 1 or a branch of a third-country credit institution, the BDIF is obliged to take part in the financing of the resolution by a cash contribution to cover losses, provided that depositors continue to have access to their deposits, and the following constraints are respected:

1. (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) In applying the bail-in tool, the amount of the contribution due by the BDIF shall be based on the sum by which covered deposits would have been written down in order to absorb the losses of the bank under Article 73, paragraph 1, item 1, Regulation (EU) No 806/2014, respectively, had covered deposits been included within the scope of the bail-in tool and been

written down to the same extent as creditors with the same level of priority under Article 94, paragraph 1, item 4 of the Law on Bank Bankruptcy;

2. when other resolution tools are applied, the amount of the BDIF contribution is determined by the amount of losses that covered depositors would have suffered, had covered depositors suffered losses in insolvency proceedings as creditors with the same level of priority under the Article 94, paragraph 1, item 4 of the Law on Bank Bankruptcy.

(2) The contribution under paragraph 1 may not exceed the lesser of the two amounts:

1. the amount of losses that the BDIF would incur in insolvency proceedings under the Law on Bank Bankruptcy;

2. the minimum amount of the available resources of the BDIF under § 8 of the Transitional and Final Provisions of the Law on Bank Deposit Guarantee.

(3) (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) Where the bail-in tool is applied, the BDIF contribution shall not be used for recapitalisation pursuant to Article 73, paragraph 1, item 2, Regulation (EU) No 806/2014, respectively, of the bank or the bridge bank.

(4) (amended; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) Determination of the contribution under paragraph 1 due by the BDIF shall be part of the valuation under Article 55, Regulation (EU) No 806/2014, respectively.

(5) Where eligible deposits at a bank under resolution are transferred to another person through the sale of business tool or the bridge bank tool, the depositors have no claim against the BDIF in relation to any part of their deposits at the bank under resolution that are not transferred, provided that the amount of funds transferred is equal to or more than the total amount of the guarantee under Chapter Three, Section I of the Law on Bank Deposit Guarantee.

Chapter Twenty Three

ADMINISTRATIVE PENALTY PROVISIONS

Administrative Violations and Penalties

Article 145. (1) Where the requirements of Articles 6, 8 or 9 for drawing-up, maintenance or updating of the recovery plans, the requirements of Article 14, paragraphs 9 and 11, the requirements of Article 40, paragraph 1 or Article 113, paragraph 1, have not been complied with, the following penalties are imposed:

1. in case of a natural person, a fine amounting to the equivalent of EUR 5,000,000;

2. in case of a legal entity, a pecuniary sanction of up to 10 per cent of the total annual net turnover; when the entity is a subsidiary, net turnover shall be the turno-

ver according to the consolidated financial statements of the European Union parent undertaking in the preceding business year.

(2) Where the value of the realised gain or loss evaded as a result of the infringement of paragraph 1 can be determined, the person shall be imposed a fine or a pecuniary sanction of up to twice the amount of the realised gain, respectively evaded loss.

(3) Where the natural person under paragraph 1, item 1 is a member of the management body or senior management of the bank, the investment firm or entity referred to in Article 1, paragraph 1, items 3–5 or another natural person liable, a temporary ban for taking positions in banks, investment firms or entities under Article 1, paragraph 1, items 3–5 may be imposed together with the penalty under paragraph 1, item 1 or paragraph 2,

(4) (new; Darjaven Vestnik, issue 12 of 2021) The penalties under paragraphs 1–3 shall also be imposed in the case of breaches of the minimum requirement for own funds and eligible liabilities referred to in Article 70 or Article 70a.

(5) (previous paragraph 4; amended; Darjaven Vestnik, issue 12 of 2021) Besides the cases under paragraphs 1–4 where making or allowing an offense under this Law or a normative act for its implementation, if the action does not constitute a criminal offense, the following shall be imposed:

1. in case of natural person, a fine from BGN 1000 to BGN 4000, and for repeated offense, from BGN 3000 to BGN 12,000;

2. in case of institution, financial institution or parent undertaking, a pecuniary sanction from BGN 50,000 to BGN 200,000, and for repeated offense, from BGN 200,000 to BGN 500,000;

3. in case of legal entity other than institution, financial institution or parent undertaking, a pecuniary sanction from BGN 5000 to BGN 20,000, and for repeated offense, from BGN 20,000 to BGN 50,000.

Determination of Infringements and Imposition of Penalties

Article 146. (1) Statements of the violations found under Articles 145 shall be drawn up by the persons authorised by the Governor of the BNB where the infringement is committed by entities subject of Article 1, paragraph 1, which are under the supervision of the BNB, members of their management bodies or senior management, or natural persons who are responsible for those entities.

(2) In the cases under paragraph 1, penalty enactments shall be issued by the Governor of the BNB or persons authorised by him to the entities, subject under Article 1, paragraph 1, which are under the supervision of the BNB, their management bodies or members of senior management, or natural persons who are responsible for those infringements.

(3) Statements of the violations found under Article 145 shall be drawn up by the persons authorised by the Chairman of the Commission where the infringement is committed by entities subject under Article 1, paragraph 1, which are under the

supervision of the Commission, members of their management bodies or senior management, or natural persons who are responsible for those entities.

(4) In the cases under paragraph 3, penalty enactments shall be issued by the Chairman of the Commission or persons authorised by him to the entities, subject of Article 1, paragraph 1, which are under the supervision of the Commission, their management bodies or members of senior management, or natural persons who are responsible for those infringements.

(5) Drawing up of the statements, issuance, appeal and execution of penalty enactments shall be made pursuant to the Law on Administrative Violations and Penalties.

Publication of Administrative Penalties

Article 147. (1) The Bulgarian National Bank and the Financial Supervision Commission, respectively, shall without delay publish on their official website information on all enacted penalty decrees, penalties imposed for infringing this Law and the regulatory acts governing its enforcement, including the nature of infringement, the offender, and the type and amount of the penalty.

(2) The Bulgarian National Bank and the Financial Supervision Commission, respectively, shall publish the information under paragraph 1 in a summary form where it considers that:

1. publication of personal data for a natural person to whom an administrative penalty is imposed is excessive;

2. publication would jeopardise the stability of financial markets or an ongoing criminal investigations;

3. publication would cause disproportionate damage to the bank, respectively, to the firm or entity referred to in Article 1, paragraph 1, items 3–5 or natural persons involved.

(3) The publication of the data under paragraph 1 may be postponed for a reasonable period of time, if it is foreseeable that the circumstances under paragraph 2 will cease to exist.

(4) The published information shall remain on the official website of the BNB and of the Commission, respectively, for a period of at least five years.

(5) Subject to the requirements of professional secrecy pursuant to Article 111, the BNB and the Commission, respectively, shall inform the EBA of all administrative penalties, including the status of any appeal and the outcome thereof.

ADDITIONAL PROVISIONS

§ 1. Within the meaning of this Law:

1. 'Shareholders' shall be holders of the instruments of ownership.

1a. (new; Darjaven Vestnik, issue 12 of 2021) 'Common Equity Tier 1 capital' shall be Common Equity Tier 1 capital as calculated in accordance with Article 50 of Regulation (EU) No 575/2013.

2. 'Senior management' shall be those natural persons who exercise executive functions within an institution and who are responsible, and accountable to the management body, for the day-to-day management of the institution.

3. 'Depositor' shall mean a concept within the meaning of § 1, item 6 of the Additional provisions of the Law on Bank Deposit Guarantee.

4. 'Intra-group guarantee' shall be a contract by which one group entity guarantees the obligations of another group entity to a third party.

5. 'Covered deposits' shall be the deposits under Chapter Three of the Law on Bank Deposit Guarantee with value to the specified amount.

5a. (new; Darjaven Vestnik, issue 12 of 2021) 'Global systemically important institution' or 'G-SII' shall be a concept as defined in Article 4, paragraph 1, item 133 of Regulation (EU) No 575/2013.

6. 'Group' shall be a parent undertaking and its subsidiaries.

6a. (new; Darjaven Vestnik, issue 12 of 2021) 'Resolution group' shall be:

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

aa) resolution entities themselves;

bb) subsidiaries of other resolution entities;

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

b) credit institutions permanently affiliated to a central body and the central body itself when at least one of those credit institutions or the central body is a resolution entity, and their respective subsidiaries.

7. 'Resolution action' shall be the decision:

a) to place a bank or entity referred to in Article 1, paragraph 1, items 2–4 under resolution pursuant to Article 51 or 52;

b) to apply the resolution tool;

c) to exercise one or more resolution powers.

8. 'Derivatives' shall be a concept within the meaning of Article 2, item 5 of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ, L 201/1 of 27 July 2012), hereinafter referred to as Regulation (EU) No 648/2012.

9. 'Debt instruments' within the meaning of Article 94, paragraph 2, items 7 and 10 shall be bonds and other forms of transferable debt, instruments creating or acknowledging a debt, and instruments giving rights to acquire debt instruments.

10. (amended; Darjaven Vestnik, issue 12 of 2021) 'Subsidiary' shall be a concept within the meaning of Article 4, paragraph 1, item 16 of Regulation (EU) No 575/2013. For the purposes of applying Articles 8, 9, 17, 29–33, 69–72c, 89–93 and 124–128 in relation to the resolution groups under item 6a, letter 'b', the concept of 'subsidiary' shall include, where applicable, credit institutions permanently affiliated to a central body, the central body itself and their relevant subsidiaries.

10a. (new; Darjaven Vestnik, issue 12 of 2021) 'Bail-inable liabilities' shall be the liabilities and capital instruments that do not qualify as Common Equity Tier 1,

Additional Tier 1 or Tier 2 instruments of an institution or entity referred to in Article 1, paragraph 1, items 3–5 and that are not excluded from the scope of the bail-in tool pursuant to Article 66, paragraphs 2–5 and Article 67, paragraph 2.

11. 'Affected creditor' shall be a creditor whose claim relates to a liability that is reduced or converted to shares or other instruments of ownership by the exercise of the write down or conversion power pursuant to the use of the bail-in tool.

12. (amended; Darjaven Vestnik, issue 15 of 2018) 'Significant branch' shall be a branch that would be considered to be significant within the meaning of Article 87a or 87b of the Law on Credit Institutions and of Article 228 of the Law on Markets in Financial Instruments, respectively.

13. 'Extraordinary public financial support' shall be a State aid within the meaning of Article 107 paragraph 1 of the Treaty on the Functioning of the European Union, State Aid Act or any other public financial support at supra-national level, which, if provided for at national level, would constitute State aid, that is provided in order to preserve or restore the viability, liquidity or solvency of an institution or entity referred to in Article 1, paragraph 1, items 3–5 or of a group of which such an institution or entity forms part.

14. 'Emergency liquidity facility' shall be the provision by a central bank of central bank money, or any other assistance that may lead to an increase in central bank money, to a solvent bank, or group of solvent banks, that is facing temporary liquidity problems, without such an operation being part of monetary policy;

15. (amended; Darjaven Vestnik, issue 25 of 2022) 'Investment firm' shall be an investment firm that in accordance with Article 4 (1)(22) of Regulation (EU) 2019/2033:

1. has been licensed under the terms and procedure of the Law on Markets in Financial Instruments and is subject to the requirement of initial capital provided for in Article 10, paragraph 1 of the same Law;

2. is from another Member State licensed to provide investment services and perform investment activities pursuant to its national legislation transposing Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation 2002/92/EC and Directive 2011/61/EU (OJ, L 173/349 of 12 June 2014) and is subject to the requirement of initial capital provided for in Article 9(1) of Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU (OJ, L 314/64 of 5 December 2019).

16. 'Investor' shall be a concept within the meaning of the Law on Public Offering of Securities.

17. 'Institution' shall be a credit institution or an investment firm.

18. 'Parent institution in a Member State' shall be a concept within the meaning of Article 4, paragraph 1, item 28 of Regulation (EU) No 575/2013.

19. 'European Union parent institution' shall be a concept within the meaning of Article 4, paragraph 1, item 29 of Regulation (EU) No 575/2013.

20. 'Institution under resolution' shall be a bank, an investment firm, a financial institution, a financial holding company, a mixed financial holding company, a mixed-activity holding company, a parent financial holding company in a Member State, a European Union parent financial holding company, a parent mixed financial holding company in a Member State, or a European Union parent mixed financial holding company, in respect of which a resolution action is taken

21. 'Third-country institution' shall be an entity, the head office of which is established in a third country, that would, if it were established within the European Union, be covered by the definition of an institution.

22. 'Common Equity Tier 1 instruments' shall be capital instruments that meet the conditions laid down in Article 28, paragraphs 1–4, Article 29, paragraphs 1–5 or Article 31, paragraph 1 of Regulation (EU) No 575/2013.

23. 'Additional Tier 1 instruments' shall be capital instruments that meet the conditions laid down in Article 52, paragraph 1 of Regulation (EU) No 575/2013.

24. 'Tier 2 instruments' shall be capital instruments or subordinated loans which meet the conditions laid down in Article 63 of Regulation (EU) No 575/2013.

25. 'Instruments of ownership' shall be shares, other instruments that confer ownership, instruments that are convertible into or give the right to acquire shares or other instruments of ownership, and instruments representing interests in shares or other instruments of ownership.

26. 'Capital Requirements' shall be the requirements under Articles 92–98 of Regulation (EU) No 575/2013.

27. 'Branch' shall be a concept within the meaning of Article 4, paragraph 1, item 17 of Regulation (EU) No 575/2013.

28. 'Conversion rate' shall be factor that determines the number of shares into which a liability of a specific class will be converted, by reference either to a single instrument of the class in question or to a specified unit of value of a debt claim.

28a. (new; Darjaven Vestnik, issue 12 of 2021) 'Combined buffer requirement' shall be a concept within the meaning of Article 39, paragraph 2 of the Law on Credit Institutions.

29. 'Competent authority' shall be a concept within the meaning of Article 4, paragraph 1, item 40 of Regulation (EU) No 575/2013, including the European Central Bank with regard to specific tasks conferred on it by Council Regulation (EU) No 1024/2013 of the Council of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ, L 287/63 of 29 October 2013).

30. 'Competent ministries' shall be finance ministries or other ministries of the Member States which are responsible for economic, financial and budgetary decisions at the national level according to national competencies.

31. 'Consolidating supervisor' shall be a concept within the meaning of Article 4, paragraph 1, item 41 of Regulation (EU) No 575/2013.

32. 'Credit institution' shall be a concept within the meaning of Article 4, paragraph 1, item 1 Regulation (EU) No 575/2013.

33. 'Critical functions' shall be activities, services or operations the discontinuance of which is likely in the Republic of Bulgaria or in another Member States, to lead to the disruption of services that are essential to the real economy or to disrupt financial stability due to the size, market share, external and internal interconnectedness, complexity or cross-border activities of an institution or group, with particular regard to the substitutability of those activities, services or operations.

34. 'Group financing mechanisms' shall be financing mechanism or mechanisms of the Member State where the group-level resolution authority is located.

35. 'Micro, small and medium-sized enterprise' shall be an enterprise which annual turnover does not exceed the annual turnover as defined in Article 3, paragraph 1, item 2 of the Law on Small and Medium Enterprises.

36. 'Crisis prevention measure' shall be the exercise of powers to direct removal of deficiencies or impediments to recoverability under Article 7, paragraphs 7 and 8, the exercise of powers to address or remove impediments to resolvability under Article 29, the application of an early intervention measure under Article 44, the appointment of a temporary administrator under Article 46 or the exercise of the write down or conversion powers under Article 89.

37. 'Crisis management measure' shall be a resolution action or the appointment of a special manager under Article 54.

38. 'Consolidated basis' shall be a concept within the meaning of Article 4, paragraph 1, item 48 of Regulation (EU) No 575/2013.

39. 'Supervisory college' shall be a college of supervisors within the meaning of Article 92e or Article 92f of the Law on Credit Institutions.

39a. (new; Darjaven Vestnik, issue 12 of 2021) 'Retail client' shall be a concept within the meaning of § 1, item 11 of the Additional Provisions to the Law on Markets in Financial Instruments.

40. 'Secured liability' shall be a liability where the right of the creditor to payment or other form of performance is secured by a charge, pledge or lien, or collateral arrangements including liabilities arising from repurchase transactions and other title transfer collateral arrangements.

41. 'Back-to-back transaction' shall be a transaction entered into between two group entities for the purpose of transferring, in whole or in part, the risk generated by another transaction entered into between one of those group entities and a third party.

42. 'Resolution authority' shall be the authority designated by a Member State empowered to apply the resolution tools and to exercise resolution powers.

43. 'Group-level resolution authority' shall be the resolution authority in the Member State in which the consolidating supervisor is situated.

44. 'Core business lines' shall be business lines and associated services which represent material sources of revenue, profit or franchise value for an institution or for a group of which an institution forms part.

45. 'Eligible deposits' shall be the deposits within the meaning of § 1, item 5 of the Additional Provisions of the Law on Bank Deposit Guarantee or similar legislation of a Member State.

46. 'Appropriate authority' shall be the authority of a Member State who has powers to write down or convert capital instruments.

46a. (new; Darjaven Vestnik, issue 12 of 2021) 'Subordinated eligible instruments' shall be instruments that meet all of the conditions referred to in Article 72a and Article 72b, paragraphs 1, 2, 6 and 7 of Regulation (EU) No 575/2013.

47.* 'Covered bonds' shall be a concept within the meaning of Article 129 of Regulation (EU) 575/2013.

48. 'Recovery capacity' shall the capability of an institution to restore its financial position following a significant deterioration.

49. 'European Union State aid framework' shall be the framework established by Articles 107, 108 and 109 of the Treaty on the Functioning of the European Union and regulations and other acts, including guidelines, communications and notices, made or adopted pursuant to Article 108, paragraph 4, or Article 109 of the Treaty on the Functioning of the European Union.

50. 'Termination right' shall be a right to terminate a contract, a right to accelerate, close out, set-off or net obligations or any similar provision that suspends, modifies or extinguishes an obligation of a party to the contract or a provision that prevents an obligation under the contract from arising that would otherwise arise.

51. 'Parent undertaking' shall be a concept within the meaning of Article 4, paragraph 1, item 15(a) of the Regulation (EU) No 575/2013.

52. 'European Union parent undertaking' shall be a European Union parent institution, European Union parent financial holding company or European Union parent mixed financial holding company.

53. 'Third country parent undertaking' shall be a parent financial holding company or parent mixed financial holding company established in a third country.

54. 'Resolution' shall be the application of a resolution tool in order to achieve one or more of the resolution objectives.

55. 'Group resolution' shall be:

a) the taking of resolution action at the level of a parent undertaking or of an institution subject to consolidated supervision; or

* 47. (amended; Darjaven Vestnik, issue 25 of 2022, effective as of 8 July 2022) 'Covered bonds' shall be a concept within the meaning of Article 2 of the Law on Covered Bonds or in respect to an instrument issued prior to 8 July 2022, bonds issued by a credit institution with a registered office in a Member State, which is subject to supervision to protect the interests of bondholders, including the requirement for sums deriving from the issue of these bonds to be invested in assets which during the whole period of the issue are capable of covering claims attaching to the bonds and which in the event of a failure of the issuer would be used on a priority basis for the reimbursement of the obligations to the bondholders.

b) the coordination of the application of resolution tools and the exercise of resolution powers by resolution authorities in relation to group entities that meet the conditions for resolution.

56. (amended; Darjaven Vestnik, issue 12 of 2021) 'Eligible liabilities' shall be the bail-inable liabilities and capital instruments that fulfil the conditions of Article 69a or Article 70, paragraph 5, item 1, and Tier 2 instruments that meet the conditions of Article 72a, paragraph 1 (b) of Regulation (EU) No 575/2013.

57. 'Recipient' shall be the entity to which instruments of ownership, debt instruments, assets, rights or liabilities, or any combination of those items are transferred from an institution under resolution.

58. 'Insolvency proceedings' shall be collective insolvency proceedings which entail the partial or total divestment of a debtor and the appointment of a liquidator or an assignee in bankruptcy normally applicable to institutions under national law and either specific to those institutions or generally applicable to any natural or legal person.

59. 'Third-country resolution proceedings' shall be an action under the law of a third country to manage the failure of a third-country institution or a third-country parent undertaking that is comparable, in terms of objectives and anticipated results, to resolution actions under this Law and 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 (OJ, L 173/190 of 12 June 2014).

60. 'Business day' shall be a day other than a Saturday, a Sunday or a public holiday in the Republic of Bulgaria.

61. 'Regulated market' shall be a concept as defined in the Law on Markets in Financial Instruments.

62. 'Recapitalisation' shall be a recovery of the Common Equity Tier 1 ratio.

62a. (new; Darjaven Vestnik, issue 12 of 2021) 'Risk of excessive leverage' shall be a concept within the meaning of Article 4, paragraph 1, item 94 of Regulation (EU) No 575/2013.

63. 'Management body' shall be a management board and the supervisory board, board of directors or any other body appointed in accordance with national legislation, which has the power to define the strategy, objectives and overall direction of the institution or entity referred to in Article 1, paragraph 1, items 3–5 and oversees and monitor management decision-making, and includes the persons who carry out effective management of its activities.

63a. (new; Darjaven Vestnik, issue 12 of 2021) 'Systemic risk' shall be a concept within the meaning of § 1, item 36 of the Additional Provisions of the Law on Credit Institutions.

64. 'Systemic crisis' shall be a disruption in the financial system with the potential to have serious negative consequences for the internal market and the real economy. All types of financial intermediaries, markets and infrastructure may be potentially systemically important to some degree.

65. 'Mixed financial holding company' shall be a concept within the meaning of Article 4, paragraph 1, item 21 of Regulation (EU) No 575/2013.

66. 'Mixed financial holding company in a Member State' shall be a concept within the meaning of Article 4, paragraph 1, item 32 of Regulation (EU) No 575/2013.

67. 'European Union mixed financial holding company' shall be a concept within the meaning of Article 4, paragraph 1, item 33 of Regulation (EU) No 575/2013.

68. 'Own funds' shall be a concept within the meaning of Article 4, paragraph 1, item 118 of Regulation (EU) No 575/2013.

69. (amended; Darjaven Vestnik, issue 20 of 2018) 'Netting agreement' shall be an arrangement under which a number of claims or obligations can be converted into a single net claim, including close-out netting arrangements under which, on the occurrence of an enforcement event (however or wherever defined) the obligations of the parties are accelerated so as to become immediately due or are terminated, and in either case are converted into or replaced by a single net claim, including 'close-out netting provisions' as defined in the Law on Payment Services and Payment Systems and 'netting' as defined in Chapter Eight of the Law on Payment Services and Payment Systems.

70. 'Set-off arrangement' shall be an arrangement under which two or more claims or obligations owed between the institution under resolution and a counterparty can be set off against each other.

71. 'Title transfer financial collateral arrangement' shall be a title transfer financial collateral arrangement as defined in the Law on Payment Services and Payment Systems.

71a. (new; Darjaven Vestnik, issue 12 of 2021) 'Resolution entity' shall be:

a) a legal person established in the European Union, which, in accordance with Article 17, is identified by the resolution authority as an entity in respect of which the resolution plan provides for resolution action; or

b) an institution that is not part of a group that is subject to consolidated supervision pursuant to Articles 90 and 92 of the Law on Credit Institutions or pursuant to Articles 230 and 231 of the Law on markets in financial instruments, in respect of which the resolution plan provides for resolution action.

72. 'Group entity' shall be is a legal entity that is part of a group.

73. 'Deposit guarantee scheme' shall be a deposit guarantee scheme introduced by the Law on Bank Deposit Guarantee or similar law of another Member State.

74. 'Relevant third-country authority' shall be a third-country authority responsible for carrying out functions comparable to those of resolution authorities or competent authorities pursuant to this Law.

75. 'Relevant parent institution' shall be a parent institution in a Member State, a European Union parent institution, a financial holding company, a mixed financial holding company, a mixed-activity holding company, a parent financial holding company in a Member State, a European Union parent financial holding company, a parent mixed financial holding company in a Member State, or a European Union parent mixed financial holding company, in relation to which the bail-in tool is applied.

76. 'Relevant capital instruments' shall be Additional Tier 1 and Tier 2 instruments.

76a. (new; Darjaven Vestnik, issue 12 of 2021) 'Material subsidiary' shall be a concept within the meaning of Article 4, paragraph 1, item 135 of Regulation (EU) No 575/2013.

77. 'Cross-border group' shall be a group having group entities established in more than one Member State.

78. 'Conditions for resolution' shall be the conditions specified in Article 51 and 52.

79. 'Financial holding company' shall be a concept within the meaning of Article 4, paragraph 1, item 20 of Regulation (EU) No 575/2013.

80. 'Financial holding company in a Member State' shall be a concept within the meaning of Article 4, paragraph 1, item 30 of Regulation (EU) No 575/2013.

81. 'European Union financial holding company' shall be a concept within the meaning of Article 4, paragraph 1, item 31 of Regulation (EU) No 575/2013.

82. 'Financial institution' shall be a concept within the meaning of Article 4, paragraph 1, item 26 of Regulation (EU) No 575/2013.

83. 'Financial contracts' shall be the following contracts and agreements:

a) securities contracts, including:

aa) contracts for the purchase, sale or loan of a security, a group or index of securities;

bb) options on a security or group or index of securities;

cc) repurchase or reverse repurchase transaction in connection with any such security, group or index;

b) commodities contracts, including:

aa) contracts for the purchase, sale or loan of a commodity or group or index of commodities for future delivery;

bb) options on a commodity or group or index of commodities;

cc) repurchase or reverse repurchase transaction in connection with any such commodity, group or index;

c) futures and forward contracts, including contracts (other than commodity contracts) for the purchase, sale or transfer of commodity or property of another description, service, right or interest for a specific price at a future date;

d) swap agreements, including:

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

bb) total return swaps, credit spread or credit swaps;

cc) any agreements or transactions similar to an agreement referred to in subpoints aa) and bb) which are subject of recurrent dealing in the swaps or derivatives markets;

e) inter-bank borrowing agreements where the term of the borrowing is three months or less;

f) master agreements for any of the contracts or agreements referred to in points a) to e).

84. 'Mixed-activity holding' shall be a concept within the meaning of Article 4, paragraph 1, item 22 of Regulation (EU) No 575/2013.

85. 'Central counterparty' shall be a concept within the meaning of Article 2, item 1 of the Regulation (EU) No 648/2012.

86. 'Resolution objectives' shall be resolution objectives specified in Article 50, paragraph 2.

§ 2. (1) Upon application of the resolution tools and resolution powers by the BNB in relation to financial institutions and parent undertakings subject of this Law, the provisions of Chapter Thirteen of the Law on Credit Institutions shall apply.

(2) (amended; Darjaven Vestnik, issue 15 of 2018) Upon application of the resolution tools and resolution powers by the Commission in relation to financial institutions and parent undertakings subject of this Law, the provisions of Chapter Ten, Sections II–V of the Law on Markets in Financial Instruments shall apply.

§ 3. Upon application of the resolution tools and resolution powers by the BNB and by the Commission, respectively, in relation to financial institutions and parent undertakings subject of this Law, Articles 72, 150, 151, 152, 153, Article 192, paragraphs 2 and 3, Article 192a, 193, 194, Article 196, paragraph 1, Articles 197, 199, 200, 201, 202, Article 222, paragraph 3, Article 231, paragraphs 3 and 4, the provisions concerning conversion under Chapter Sixteen, Section II and Section V of the Commercial Code shall not apply.

§ 4. (amended; Darjaven Vestnik, issue 12 of 2021) This Law introduces the requirements of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/ EC, 2005/56/EC, 2007/36/EC, 2011/35/EU,20112012/30/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 of Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC (OJ L 150, 7.6.2019, p. 296).

§ 4a. (new; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013) This Law provides for measures to implement 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 (OJ, L 225/1 of 30 July 2014).

TRANSITIONAL AND FINAL PROVISIONS

§ 5. The Ministry of Finance shall notify EBA and the European Commission on resolution powers of the BNB and the Financial Supervision Commission and determines the BNB as a point of contact for purposes of cooperation and coordination with the relevant authorities in other Member States.

§ 6. (repealed; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013).

§ 7. The Bulgarian National Bank shall determine the annual contribution under Article 139, paragraph 1 and the individual contributions under Article 139, paragraph 2 for 2015 within three months from the entry into force of this Law.

§ 8. Financial Supervision Commission shall determine the annual contribution under Article 139, paragraph 1 and the individual contributions under Article 139, paragraph 2 for 2017 within 31 March 2017.

§ 9. (1) In order to ensure the effective functioning of the financial system and the need to ensure greater transparency of financial market operations in the Republic of Bulgaria in accordance with the National Reform Programme Europe 2020, adopted by Decision No 28 of the Council of Ministers of 2015, the BNB shall conduct an asset quality review of the banking system, including review of the quality and adequacy of estimates used to value assets, collateral received, impairment and provisioning practices with involvement of independent external persons with high professional reputation. The review under the first sentence shall be made within 12 months from the entry into force of this Law.

(2) The review under paragraph 1 shall be made with methodology, corresponding to the methodology applied by the European Central Bank, in creating the Single Supervisory Mechanism and taking into account the need to ensure financial stability and to strengthen the confidence in the financial system.

(3) After reporting the outcomes of the review under paragraph 1, the BNB shall conduct stress tests of the banking system under Article 80b of the Law on Credit Institutions in order to determine the ability of banks to absorb unexpected losses in extreme stress situations.

(4) Based on the results of the review under paragraph 1 and the stress tests under paragraph 3, the BNB shall take all the necessary measures within its legal

powers to ensure coverage by the banks of the potential capital shortfall identified as a result of the asset quality review, or because of the need to strengthen the ability of the banking system to absorb unexpected losses in extreme stress situations.

(5) Costs associated with the review under paragraph 1 for a particular bank shall be borne by the relevant bank.

§ 10. (1) In order to ensure the effective functioning of the financial system and the need to ensure greater transparency in the operations of the local financial market and in accordance with the National Reform Programme Europe 2020, adopted by Decision No 28 of the Council of Ministers of 2015, the Financial Supervision Commission shall conduct a review of pension fund assets and balance sheets of insurers with the participation of independent external persons and institutions with high professional reputation. The review in the first sentence shall be made within 12 months from the entry into force of this Law.

(2) The review under paragraph 1 is based on a methodology developed by the Financial Supervision Commission in cooperation with the competent authorities of the Member States.

(3) The Financial Supervision Commission shall determine and disclose the persons who will carry out the review under paragraph 1, the cost of performing this review shall be borne by the pension funds and insurers.

(4) (new; Darjaven Vestnik, issue 59 of 2016) By 31 December 2016, the Financial Supervision Commission shall entrust to an independent external person the development of a methodology for stress tests of insurers and reinsurers, their organisation and conduct. The costs related to developing the methodology and conducting stress tests shall be charged to the state budget.

§ 11. The following amendments shall be made to the Law on Bank Bankruptcy (published in Darjaven Vestnik, issue 92 of 2002; amended, Darjaven Vestnik, issue 67 of 2003, issue 36 of 2004, issues 31 and 105 of 2005, issues 30, 34, 59 and 80 of 2006, issues 53 and 59 of 2007, issue 67 of 2008, issue 105 of 2011, issue 98 of 2014, issues 22, 41 and 50 of 2015):

1. In Article 9, paragraph 2, second sentence, the wording 'order issued by the Governor' shall be replaced by 'decision issued by the Governing Council of the Central Bank';

2. In Article 11, paragraph 3, after the word 'conservators', the following text shall be added 'or by the appointed temporary assignees in bankruptcy under Article 12, paragraph 1, item 2';

3. In Article 12, paragraph 1, item 2, after the words 'proposed by the fund', a full stop shall be added and the remaining text shall be deleted;

4. In Article 13, paragraph 4, after the words 'and conservators', the words 'temporary assignees in bankruptcy, respectively' shall be added;

5. In Article 19, paragraph 1, after the word 'conservators', the words 'or temporary assignees in bankruptcy' shall be added;

6. In Article 49:

a) In paragraphs 1 and 2, after the word 'conservators', the words 'or temporary assignees in bankruptcy' shall be added;

b) A new paragraph 5 is created:

'(5) In the cases where no temporary assignees in bankruptcy are appointed, the actions under this Article shall be performed by the conservators upon taking up duty.'

7. In Article 50, paragraphs 2 and 3, after the word 'conservators', the words 'or temporary assignees in bankruptcy' shall be added;

8. In Article 94, paragraph 1:

a) In item 3 at the end the text 'as well as expenses incurred by the central bank, the Ministry of Finance, the Bank Resolution Fund and the Investment Firm Resolution Fund in connection with the Law on the Recovery and Resolution of Credit Institutions and Investment Firms' shall be added;

b) In item 4, after the word 'subrogated', a semicolon shall be added and the remaining text shall be deleted;

c) A new item 4a is created:

'4a. claims of depositors that are natural persons or micro-, small and medium enterprises for the part exceeding the amount of the guarantee under the Law on Bank Deposit Guarantee;'

d) A new item 4b is created:

'4b. claims of other depositors that are not covered by the deposit guarantee scheme;'

e) The previous item 4a becomes item 4c;

9. In § 1 of the Additional Provisions:

a) A new item 6 is created:

'6. 'Micro-, small and medium enterprise' shall be any enterprise whose annual turnover does not exceed the turnover provided for in Article 3, paragraph 1, item 2 of the Law on Small and Medium Sized Enterprises.'

b) The previous item 6 becomes item 7.

§ 12. Paragraph 11, item 8 shall not apply to bankruptcy proceedings opened before the entry into force of this Law.

§ 13. The following amendments are made to the Article 16 of the Law on the Bulgarian National Bank (published, Darjaven Vestnik, issue 46 of 1997; amended, Darjaven Vestnik, issues 49 and 153 of 1998, issues 20 and 54 of 1999, issue 109 of 2001, issue 45 of 2002, issues 10 and 39 of 2005, issues 37, 59 and 108 of 2006, issues 52 and 59 of 2007, issues 24, 42 and 44 of 2009, issues 97 and 101 of 2010 and issue 48 of 2015):

1. A new item 17 is created:

'17. shall take decisions as a resolution authority in the cases provided for in the Law on the Recovery and Resolution of Credit Institutions and Investment Firms;'.

2. A new item 18 is created:

'18. shall take decisions under Article 20, paragraph 1, item 2 of the Law on Bank Deposit Guarantee that bank deposits are unavailable;'.

3. Previous item 17 becomes item 19.

§ 14. The following amendments shall be made in the Law on the Financial Supervision Commission (published, Darjaven Vestnik, issue 8 of 2003; amended, Darjaven Vestnik, issues 31, 67 and 112 of 2003, issue 85 of 2004, issues 39, 103 and 105 of 2005, issues 30, 56, 59 and 84 of 2006, issues 52, 97 and 109 of 2007, issue 67 of 2008, issues 24 and 42 of 2009, issues 43 and 97 of 2010, issue 77 of 2011, issues 21, 38, 60, 102 and 103 of 2012, issues 15 and 109 of 2013, issue 34 of 2015):

1. In Article 1, paragraph 2, item 1, after the words 'Law on Markets in Financial Instruments', a comma and the text 'the Law on the Recovery and Resolution of Credit Institutions and Investment Firms' shall be added;

2. In Article 12, paragraph 1:

a) In item 2, the words 'and the Law on Markets in Financial Instruments' are replaced by 'the Law on Markets in Financial Instruments and the Law on the Recovery and Resolution of Credit Institutions and Investment Firms';

b) A new item 9 is created:

'9. a resolution authority within the meaning of the Law on the Recovery and Resolution of Credit Institutions and Investment Firms;'

c) The previous item 9 becomes item 10;

3. In Article 13, paragraph 1:

a) In item 4, after the words 'Law on Markets in Financial Instruments', the text 'Law on the Recovery and Resolution of Credit Institutions and Investment Firms' shall be added;

b) A new item 13 is created:

'13. shall exercise the powers of resolution authority under the Law on the Recovery and Resolution of Credit Institutions and Investment Firms;'

4. In Article 15, paragraph 1, a new item 12 is created:

'12. shall exercise the powers provided under the Law on the Recovery and Resolution of Credit Institutions and Investment Firms as a competent authority, which are not within the explicit competence of the Commission;'

5. In Article 17a, paragraph 1, a second sentence is created:

'The member of the Committee under Article 3, item 5 shall assist the Commission in carrying out its powers as a resolution authority and shall make proposals to the Commission for making decisions under the Law on the Recovery and Resolution of Credit Institutions and Investment Firms.'

6. In Article 18 everywhere after the words 'the Law on Markets in Financial Instruments', the text 'the Law on the Recovery and Resolution of Credit Institutions and Investment Firms' shall be added;

7. In Article 19, paragraph 2, item 1, after the words 'the Law on Markets in Financial Instruments', the text 'the Law on the Recovery and Resolution of Credit Institutions and Investment Firms' shall be added;

8. In Article 24, paragraph 5, item 1, after the words 'Law on Markets in Financial Instruments', the text 'the Law on the Recovery and Resolution of Credit Institutions and Investment Firms' shall be added;

9. In Article 27, paragraph 1:

a) In item 1 after the words 'Law on Markets in Financial Instruments', the text 'the Law on the Recovery and Resolution of Credit Institutions and Investment Firms' shall be added;

b) A new item 11 is created:

'11. review and assessment of the recovery plan under the Law on the Recovery and Resolution of Credit Institutions and Investment Firms'.

§ 15. The following amendments are made in Article 16 of the Law on Financial Collateral Arrangements (published, Darjaven Vestnik, issue 68 of 2006; amended, Darjaven Vestnik, issue 24 of 2009, issue 101 of 2010, issue 77 of 2011 and issues 70 and 109 of 2013):

1. The previous text becomes paragraph 1.

2. A new paragraph 2 is created:

'(2) The provisions of Articles 8, 10 and 11 shall not apply to restrictions on performance of financial collateral arrangements, restrictions on the effect of a security financial collateral arrangement, netting or set-off clause, applicable under Chapters Fifteen and Sixteen of the Law on the Recovery and Resolution of Credit Institutions and Investment Firms, or restrictions applicable under the relevant EU Member State legislation, aiming at easier resolution of an entity under Article 3, paragraph 1, items 6 and 15, subject to protection, least equivalent to that under Chapter Seventeen of the Law on the Recovery and Resolution of Credit Institutions and Investment Firms.'

§ 16. The following amendments are made in the Law on Public Offering of Securities (published, Darjaven Vestnik, issue 114 of 1999; amended, Darjaven Vestnik, issues 63 and 92 of 2000, issues 28, 61, 93 and 101 of 2002, issues 8, 31, 67 and 71 of2003, Darjaven Vestnik, issue 37 of 2004, issues 19, 31, 39, 103 and 105 of 2005, issues 30, 33, 34, 59, 63, 80, 84, 86 and 105 of 2006, issues 25, 52, 53 and 109 of 2007, issues 67 and 69 of 2008, issues 23, 24, 42 and 93 of 2009, issues 43 and 101 of 2010, issues 57 and 77 of 2011, issues 21, 94 and 103 of 2012, issue 109 of 2013 and Darjaven Vestnik, issue 34 of 2015):

1. A new Article 120b is created:

'**Article 120b.** (1) The provisions of Articles 115–116 and Article 117 shall not apply in cases where resolution measures are applied, resolution powers are exercised and mechanisms under the Law on the Recovery and Resolution of Credit Institutions and Investment Firms are used.

(2) In case of a capital increase by a public company, necessary to avoid the occurrence of the conditions for resolution under the Law on the Recovery and Resolution of Credit Institutions and Investment Firms, the invitation for the General Assembly may be declared and published in a term shorter than the term provided

for in Article 115, paragraph 4, but not less than ten calendar days if the General Assembly decides to convene with a two-thirds majority of the represented capital or amends the provisions of the Statute concerning the General Assembly, provided that measures under Articles 44 and 46 of Law on the Recovery and Resolution of Credit Institutions and Investment Firms are applied.'

2. In Article 148h:

a) The previous text becomes paragraph 1;

b) A new paragraph 2 is created:

'(2) The obligation to register a tender offer shall not arise in the implementation of resolution measures or exercise of power and mechanisms under the Law on the Recovery and Resolution of Credit Institutions and Investment Firms.'

§ 17. The following amendments are made in the Law on Markets in Financial Instruments (published, Darjaven Vestnik, issue 52 of 2007; amended, Darjaven Vestnik, issue 109 of 2007, issue 69 of 2008, issues 24, 93 and 95 of 2009, issue 43 of 2010, issue 77 of 2011, issues 21, 38 and 103 of 2012, issues 70 and 109 of 2013, issues 22 and 53 of 2014, issues 14 and 34 of 2015):

1. In Article 20:

a) In paragraph 2, a new item 6 is created:

'6. the reorganisation measures under Article 23a have remained without outcome.'

b) A new paragraph 8 is created:

'(8) Extract from the Commission's decision to revoke the license of an investment intermediary under Article 8, paragraphs 1 and 2 shall be published in the 'Official Journal' of the European Union and in two national daily newspapers of each Member State in which the investment firm has a branch. Extract from the decision shall be provided in the Bulgarian language.'

2. In Article 21, a new paragraph 7 is created:

'(7) Liquidation pursuant to paragraph 1 of the investment firm under Article 23a shall not preclude taking reorganisation measures or opening liquidation proceedings.'

3. In Chapter Two, Section IIa is created with Articles 23a–23s:

'**Section IIa**

Reorganisation Measures and Winding-up Proceedings

Article 23a. (1) Reorganisation measures shall mean measures which are intended to preserve or restore the financial situation of an investment firm under Article 8, paragraphs 1 and 2, and which could affect third parties' pre-existing rights, including measures involving the possibility of a suspension of payments, suspension of enforcement or reduction of claims. Those measures include the application of resolution tools and exercising the resolution powers under the Law on the Recovery and Resolution of Credit Institutions and Investment Firms, or under the applicable law of another Member State.

(2) The measures under paragraph 1 shall be applied by the Commission, the Deputy Chairman and the competent authorities of another Member State, respectively, in their capacity as supervisory and resolution authorities.

(3) In case of the application of Article 115 of the Law on the Recovery and Resolution of Credit Institutions and Investment Firms, the provisions under Article 23b, paragraph 3 shall not apply.

(4) The provisions of this Section shall apply to the entities, subject to Article 1, paragraph 1, items 3–7 of the Law on the Recovery and Resolution of Credit Institutions and Investment Firms.

Article 23b. (1) The Commission and the Deputy Chairman, respectively, are competent authorities for imposing reorganisation measures against an investment firm under Article 23a, including against its branches in other Member States.

(2) The terms and procedure for application of such measures and their legal consequences shall be governed by the Bulgarian legislation, unless otherwise provided.

(3) When imposing reorganisation measures against an investment firm under Article 23a, which has branches in other Member States, the Commission shall duly inform the Member State of their decision before imposing any reorganisation measures, if possible, or otherwise immediately thereafter. In the notification, the Commission shall indicate the practical effects of such measures.

(4) Acts of the Commission and of the Deputy Chairman, respectively, for the adoption of reorganisation measures shall be published in the Official Journal of the European Union and in two national newspapers of the Republic of Bulgaria within two working days from the date of issue.

(5) Extract of the acts of the Commission, or the Deputy Chairman, on adoption of reorganisation measures, including acts on the adoption of reorganisation measures against a branch of an investment firm in a Member State, shall be published in the Official Journal of the European Union and in two national newspapers of each Member State in which the investment firm has a branch. The extract of the act shall be provided in Bulgarian language.

(6) Summary of the act under paragraph 4 shall contain a description of the legal and factual basis of the decision taken, the name and full address of the court in which the act shall be appealed and the time-limit for appeal.

Article 23c. Before adopting reorganisation measures in relation to a branch of an investment firm from a third country, which has branches on the territory of one or more Member States, the Commission shall notify the competent authorities of those Member States of its intention to apply reorganisation measures to such branch, as well as of their consequences. If prior notification to the competent authorities is not possible, the Commission shall notify them immediately after the implementation of the measures.

Article 23d. (1) Reorganisation measures adopted by the competent authority of a Member State against an investment firm authorised in that Member State shall be

directly recognised and without formalities in the Republic of Bulgaria and from the moment they are subject to enforcement, they shall have an effect on the branch of this investment firm operating in the Republic of Bulgaria, as well as on third parties in the Republic of Bulgaria. The effects of reorganisation measures shall be governed by the law of the relevant Member State unless otherwise provided for by this Law.

(2) Persons administering reorganisation measures within the territory of the Republic of Bulgaria, which are taken by the competent authority of a Member State, shall have the same status and powers they have under the law of that Member State. Those persons shall apply the Bulgarian legislation in the assets realisation of the investment firm on the territory of the Republic of Bulgaria and the settlement of employment relations, occurred on the territory of the Republic of Bulgaria.

(3) Reorganisation measures taken by the competent authority of a Member State against a branch of an investment firm authorised in a third country shall be directly recognised and without formalities in the Republic of Bulgaria and from the moment they are subject to enforcement, they shall have an effect on third parties in the Republic of Bulgaria.

Article 23e. (1) The Bulgarian judicial or administrative authorities are competent authorities for liquidation or bankruptcy proceedings against an investment firm authorised in the Republic of Bulgaria. The decision of those authorities is effective and shall apply to the branches of the investment firm in other Member States.

(2) Unless otherwise provided for by this Law, regarding the liquidation and bankruptcy proceedings of an investment firm authorised in the Republic of Bulgaria, the Bulgarian legislation shall apply for:

1 the movable goods subject to administration and the treatment of movable goods acquired by the investment firm after the opening of winding-up proceedings;

2 the respective powers of the investment firm and the liquidator;

3. the conditions under which set-offs may be invoked;

4. the effects of winding-up proceedings on current contracts to which the investment firm is a party;

5. the effects of winding-up proceedings on proceedings brought by individual creditors against the investment firm;

6. the claims which are to be lodged against the investment firm and the treatment of claims arising after the opening of winding-up proceedings;

7. the rules governing the lodging, verification and admission of claims;

8. the rules governing the distribution of the proceeds of the realisation of assets, the ranking of claims and the rights of creditors who have obtained partial satisfaction after the opening of bankruptcy proceedings by virtue of realisation of property rights or through a set-off;

9 the conditions for and the effects of the closure of bankruptcy proceedings;

10. creditors' rights after the closure of bankruptcy proceedings;

11. who is to bear the costs and expenses incurred in the winding-up proceedings;

12 the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to all the creditors.

Article 23f. (1) The Commission shall duly notify the competent authority of the Member States, in which the investment firm operates through a branch, about the launch of liquidation proceedings, including the practical effects thereof.

(2) The procedure for notification under paragraph 1 shall also apply in cases of winding up the branch in the Republic of Bulgaria of the investment firm with headquarters in a third country when the same investment firm has a branch in another Member State. In those cases the Commission and the competent authorities shall coordinate their actions in the proceedings with the competent administrative and judicial authorities in other host Member States.

Article 23g. The invitation of the liquidator under Article 267 of the Commercial Law shall be entitled in all official languages of the European Union 'Invitation to lodge a claim. Time-limits to be observed.'

Article 23h. (1) Each creditor in the liquidation proceedings, including public authorities shall have the right to lodge claims or to submit observations related to claims in the official language or one of the official languages of the relevant Member State. In this case, the lodgement of claims shall be entitled in Bulgarian 'Lodge a claim'.

(2) The liquidator shall have the right to require the presentation of the Bulgarian translation of the documents under paragraph 1.

(3) Unless otherwise provided for by law, each creditor in the liquidation proceedings shall send copies of the documents certifying his claim, if any, and shall specify the nature of the claim, the date on which it arose and its amount, as well as whether he alleges preferences, security in re, or reservation of title, and also what assets are covered by the security.

(4) The claims of all creditors of the investment firm under Article 23a, which is under liquidation, shall be treated in the same way and according to the same ranking, regardless of whether they occurred on the territory of the Republic of Bulgaria or in other Member States.

Article 23i. The liquidator shall keep creditors of the investment firm under Article 23a, which is under liquidation, regularly informed, in an appropriate manner, about the progress of the liquidation.

Article 23j. In the adoption of reorganisation measures or winding-up proceedings for the investment firm under Article 23a, legal consequences shall be governed as follows:

1. employment contracts and relationships shall be governed solely by the law of the Member State applicable to the employment contract;

2. a contract conferring the right to make use of or acquire immovable property shall be governed solely by the law of the Member State within the territory of which the immovable property is situated. That law shall determine whether property is movable or immovable;

3. rights in respect of immovable property, a ship or an aircraft subject to registration in a public register shall be governed solely by the law of the Member State under the authority of which the register is kept.

Article 23k. (1) The adoption of reorganisation measures or the opening of winding-up proceedings against an investment firm under Article 23a shall not affect the rights *in re* of creditors or third parties regarding tangible or intangible assets, including movable or immovable assets, individually or generic objects or sets of objects that belong to the investment firm under Article 23a, but in the territory of another Member State at the time of the adoption of such measures or the opening of such winding-up proceedings for the investment firm under Article 23a.

(2) The rights referred to in paragraph 1 shall in particular mean:

1. the right to dispose of assets or have them disposed of and to obtain satisfaction from the proceeds of or income from those assets, in particular by virtue of a lien or a mortgage;

2. the exclusive right to have a claim met, in particular a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of a guarantee;

3. the right to demand the assets from, and/or to require restitution by, anyone having possession or use of them contrary to the wishes of the party so entitled;

4. use of the benefits of the pledged assets.

(3) The right, recorded in a public register and enforceable against third parties, under which a right *in re* within the meaning of paragraph 1 may be obtained, shall be considered a right *in re* under paragraph 1.

(4) Paragraph 1 shall not preclude the actions for voidness, voidability or unenforceability laid down in Article 23e, paragraph 2, item 12.

Article 23l. (1) The adoption of reorganisation measures or the opening of winding-up proceedings concerning an investment firm under Article 23a, purchasing an asset, shall not affect the seller's rights based on a reservation of title, where at the time of the adoption of such measures or opening of such proceedings for the investment firm under Article 23a, the asset has been situated within the territory of a Member State other than the State.

(2) The adoption of reorganisation measures or the opening of winding-up proceedings concerning an investment firm under Article 23a, selling an asset under paragraph 1, shall not constitute grounds for rescinding or terminating the sale after the delivery of the asset and shall not prevent the purchaser from acquiring title where at the time of the adoption of such measures or the opening of such proceedings for the investment firm under Article 23a, the asset sold is situated within the territory of a Member State other than the State.

(3) Paragraphs 1 and 2 shall not preclude the actions for voidness, voidability or unenforceability laid down in Article 23e, paragraph 2, item 12.

Article 23m. (1) The adoption of reorganisation measures or the opening of winding-up proceedings for an investment firm under Article 23a shall not affect the rights of its creditors to demand the set-off of their claims against the claims of

the investment firm under Article 23a, where such set-off is permitted by the law applicable to the claim of the investment firm under Article 23a.

(2) Paragraph 1 shall not preclude the actions for voidness, voidability or unenforceability laid down in Article 23e, paragraph 2, item 12.

Article 23n. In the adoption of reorganisation measures or the opening of winding-up proceedings for an investment firm under Article 23a, the following legislation shall be applied:

1. for the title or any other rights over financial instruments within the meaning of Article 4, paragraph 1, item 50(b) of Regulation (EU) No 575/2013, the existence or transfer of these rights requires their entry in a register, posting to an account, or registration with a centralised depositary institution located or maintained in a Member State – the law of the Member State where the respective register, account or centralised depositary institution is maintained or located;

2. for netting agreements – the law of the contract which governs such agreements, subject to the provisions of Articles 100 and 103 of the Law on the Recovery and Resolution of Credit Institutions and Investment Firms or the relevant legislation of the Member State;

3. for repurchase agreements – the law of the contract which governs such agreements, without prejudice to item 1, subject to the provisions of Articles 100 and 103 of the Law on the Recovery and Resolution of Credit Institutions and Investment Firms or the relevant legislation of the Member State;

4. for transactions on a regulated market – the law of the contract which governs such transactions without prejudice to item 1;

5. for pending lawsuits concerning property or rights taken from the investment firm under Article 23a – the legislation of the Member State holding the appropriate lawsuit.

Article 23o. (1) Persons who administer reorganisation measures, the liquidator or other competent judicial or administrative authorities of the host Member State shall take all necessary steps for the registration of the reorganisation measures or the opening of winding-up proceedings for the investment firm under Article 23a in the respective trade property or other public register of the Republic of Bulgaria where such registration is mandatory under the Bulgarian legislation.

(2) The costs of registration shall be regarded as costs and expenses incurred in the proceedings for the investment firm under Article 23a.

Article 23p. (1) Article 23e, paragraph 2 shall not apply to the rules relating to voidness, voidability or unenforceability of legal acts detrimental to the creditors as a whole, where the beneficiary of the act provides proof that to the act detrimental to all the creditors is subject to the law of another Member State and that law does not allow in this case challenging that act by any means.

(2) When a reorganisation measure, set by a judicial authority, provides rules relating to the voidness, voidability or unenforceability of legal acts detrimental

to the creditors as a whole performed before adoption of the measure, Article 23d, paragraph 1, second sentence shall not apply in cases provided for in paragraph 1.

Article 23q. The validity of an act concluded after the implementation of the reorganisation measure or after the initiation of a winding-up procedure against a bank, by virtue of which the bank disposes for consideration of an immovable property, ship or aircraft subject to registration in a public register, or financial instruments within the meaning of Article 4, paragraph 1, item 50(b) of Regulation (EU) No 575/2013 or rights in such instruments, the existence or transfer of which requires their entry in a register, account or with a centralised depositary institution, which is located or maintained in a Member State, shall be determined under the law of the Member State where this property is located, or the register, account or depositary is maintained.

Article 23r. (1) All persons required to provide or receive information in connection with the notification or consultation procedures shall be obliged to keep professional secrecy.

(2) Paragraph 1 shall apply in case Article 116 of the Law on the Recovery and Resolution of Credit Institutions and Investment Firms does not apply.

Article 23s. (1) The decision of the competent authority in the Member State for the appointment of a person who administers the reorganisation measures or winding-up proceedings for an investment firm under Article 23a licensed in this Member State shall have effect within the territory of the Republic of Bulgaria. Persons shall prove their appointment by providing a verified copy of the act for their appointment, accompanied by a translation into Bulgarian language, which is not subject to legalisation.

(2) Persons appointed under paragraph 1, and as well as the persons authorised by them, shall have the right to exercise their powers ensuing from the law of the Member State, and in relation to the branch of the investment firm under Article 23a located within the territory of the Republic of Bulgaria, unless otherwise provided for in this Law. They shall assist the creditors of the investment firm under Article 23a in the Republic of Bulgaria in relation to exercising their rights.

(3) When the persons appointed under paragraph 1 exercise their powers within the territory of the Republic of Bulgaria, they shall be obliged to comply with the Bulgarian legislation, including with procedures for the realisation of assets and providing information to employees. When exercising their powers, they may not use force or the right to rule on legal proceedings or disputes.'

4. Article 25a shall be amended as follows:

'**Article 25a.** Investment firm, excepting those under Article 1, paragraph 1, item 2 of the Law on the Recovery and Resolution of Credit Institutions and Investment Firms, shall submit to the Commission for approval a reorganisation programme in case of significant deterioration of its financial situation. Requirements to the reorganisation programme and the procedure for its approval and the procedure for the approval of the recovery plans shall be established by an ordinance.'

5. Article 25b is repealed.

6. In Article 122, paragraph 1, item 2, after the word 'firm' the following is added 'in cases where the investment firm does not fall within the scope of Article 1, paragraph 1, item 2 of the Law the Recovery and Resolution of Credit Institutions and Investment Firms or where the conditions for the appointment of a temporary administrator under Article 46 of the same Law are not met.'

§ 18. This Law shall enter into force on the day of its publication in Darjaven Vestnik, except:

1. Article 139, paragraphs 1–4, paragraph 6 and paragraphs 9–11, which shall enter into force in respect of investment firms as of 1 January 2017;

2. (repealed; Darjaven Vestnik, issue 37 of 2019, with effect from the day of enforcement of the ECB decision on close cooperation under Article 7 of Council Regulation (EU) No 1024/2013 of 15 October 2013).

This Law was adopted by the 43rd National Assembly on 30 July 2015 and sealed with the official stamp of the National Assembly.

Annex No 1
to Article 6, paragraph 6

Information to Be Included in the Recovery Plan:

1. A summary of the key elements of the plan and a summary of overall recovery capacity of the institution.

2. A summary of the material changes to the institution since the most recently filed recovery plan, submitted to the BNB and the Commission, respectively.

3. A public communication and disclosure plan outlining how the institution intends to manage any potentially negative market reactions.

4. A range of capital and liquidity actions required to maintain or restore the viability and financial position of the institution.

5. Provisional timetable 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 the critical functions.

8. A detailed description of the processes for determining the value of the main economic activities, operations and assets of the institution and of the possibility of sale.

9. A detailed description of how recovery planning is integrated into the corporate governance structure of the institution, as well as the policies and procedures governing the approval of the recovery plan and identification of the persons in the organisation responsible for preparing and implementing the plan.

10. Policies and measures to conserve or restore the institution own funds.

11. Policies and measures to ensure that the institution has adequate access to contingent funding sources, including potential liquidity sources, an assessment of available assets that can be used as collateral and assessment of the possibility to transfer liquidity between group entities and business lines to ensure continuity of operations and fulfilment of its obligations as they fall due.

12. Policies and measures to reduce risk and leverage.

13. Policies and measures to restructure liabilities.

14. Policies and measures to reorganise business lines.

15. Policies and measures to ensure continuous access to financial markets.

16. Policies and measures to ensure continuous functioning of operational processes in the institution, including access to financial market infrastructures, and information services.

17. Preparatory measures to facilitate the sale of assets or businesses lines in a timeframe to allow quick restoration of financial stability.

18. Other management actions or strategies to restore financial stability and the anticipated financial effect.

19. Preparatory measures that the institution has taken or is planning to take in order to facilitate the implementation of the recovery plan, including those measures to enable 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 No 2
to Article 14, paragraph 15
(amended; Darjaven Vestnik, issue 12 of 2021)

Information to Be Included in the Resolution Plan:

1. A summary of the key elements of the plan.

2. A summary of the material changes to the institution that have occurred after the latest resolution information was filed.

3. (amended; Darjaven Vestnik, issue 12 of 2021) A justification of the approach to legal organisational and functional separation of critical functions and the main business lines from other functions of the institution, so that if necessary, to ensure their continuity in the event of any of the conditions under Article 51, paragraph 4.

4. An evaluation of the implementation timeframe for executing of each material aspect of the plan.

5. A detailed assessment of the resolvability carried out in accordance with Article 14, paragraph 4 and Article 26.

6. A description of all measures required under Article 29 to address or remove impediments to resolvability identified in this assessment pursuant to Article 26.

7. A description of the approach for assessing the value and marketability of the critical functions, core business lines and assets of the institution.

8. A detailed description of the measures which ensure that the information required pursuant to Article 16 is up to date and at the disposal of the BNB and the Commission, respectively, at any time.

9. A justification of the possibilities of financing the resolution options at preventing any of the assumptions set out in Article 14, paragraph 6.

10. A detailed description of the different resolution strategies that could be applied depending on the different scenarios, and the applicable timeframes.

11. A description of significant links between functions and units both within the institution and links with external systems and markets.

12. A description of opportunities to preserve access to payment and clearing services and other important infrastructure, as well as evaluating the possibility for transfer of client positions.

13. An analysis of the impact of the plan on the employees of the institution, including an assessment of all associated costs.

14. A plan for media and public communications.

15. (amended; Darjaven Vestnik, issue 12 of 2021) The requirements under Articles 70 and 70a and a deadline to reach the level of the minimum requirement for own funds and eligible liabilities.

16. (amended; Darjaven Vestnik, issue 12 of 2021) Where applicable, a timeline for compliance with the requirements of Article 69a, paragraphs 7–10, respectively Article 69a, paragraphs 11–13, or Article 69a, paragraph 16 by the resolution entity in accordance with the deadline under item 15.

17. A description of the most important operations and support systems for maintaining the continuous functioning of the institution's operational processes.

18. An opinion of the institution in relation to the resolution plan, where applicable.

Annex No 3
to Article 16, paragraph 1, item 2
(amended: Darjaven Vestnik, issue 12 of 2021)

Minimum Information That the Resolution Authority May Request from Institutions to Provide at an Individual and Group Level for the Purposes of Drawing up and Updating Resolution Plans:

1. A detailed description of the institution's organisational structure, including a list of all legal entities of the group.

2. Identification of the shareholders, shares held by them and voting rights, expressed as absolute value and as percentage in each legal entity.

3. The location, jurisdiction of incorporation, licensing and key management of each legal entity in the group.

4. A mapping of the institution's critical operations and core business lines, including any material assets, investments and liabilities related to such operations and business lines, by reference to the relevant legal entities in the group.

5. A detailed description of the liabilities of the institution and the group entities, separating at least by type and amount of short-term and long-term debt, secured, unsecured and subordinated liabilities.

6. (amended; Darjaven Vestnik, issue 12 of 2021) Details of the bail-inable liabilities of the institution.

7. A description of the process for determining to whom the institution has provided collateral, the person that holds collateral and the jurisdiction in which the collateral is located.

8. A description of off-balance sheet positions of the institution and the group entities, including their compliance with the critical operations and core business lines.

9. The material hedges of the institution, including concerned legal entities referred to in item 1.

10. Identification of the major or most important counterparties of the institution, as well as analysis of the impact of the failure of major counterparty on the financial situation of the institution.

11. Each system on which the institution conducts a material number or value amount of trades, including a mapping to the legal entities under item 1, critical operations and core business lines.

12. Each payment, clearing or settlement system of which the institution is directly or indirectly a member, including a mapping to the legal entities under item 1, critical operations and core business lines.

13. A detailed inventory and description of the key management information systems, including those for risk management, accounting, financial and supervisory reporting, including a mapping to the legal entities under item 1, critical operations and core business lines.

14. An identification of the owners of the systems under item 13, service level agreements related thereto and system or software licenses, including mapping to the legal entities under item 1, critical operations and core business lines.

15. Scheme of the legal entities under item 1, interconnections and interdependencies among them, including:

a) common or shared premises, staff and systems;

b) arrangements for the provision of capital, funding and liquidity;

c) existing or contingent credit exposures;

d) cross-guarantees agreements, cross-collateral arrangements, cross-default provisions and netting agreements against the institution and related persons;

e) risk transfers and back-to-back trading arrangements, service level agreements.

16. The name for any legal entities under item 1, the competent authority and the resolution authority.

17. The member of the management body responsible for providing the information necessary for the preparation of the resolution plan of the institution and the persons responsible, where different, for the legal entities under item 1, critical operations and core business lines.

18. (the correction concerns the Bulgarian version only; Darjaven Vestnik, issue 37 of 2019) A description of the mechanisms in the institution that ensure that if a resolution is necessary, the resolution authority will have all the information it deems necessary for the application of the resolution tools and powers.

19. All the agreements between the institution, its legal entities under item 1 and third parties that could be terminated as a result of the decision of the authority to apply a resolution tool, showing whether the consequences of termination may affect the application of the resolution tool.

20. A description of any sources of liquidity for supporting the resolution.

21. Information on asset encumbrances, liquid assets, off-balance sheet activities, hedging strategies and accounting practices.

Annex No 4
to Article 26, paragraph 5 and Article 27, paragraph 6
(amended; Darjaven Vestnik, issue 12 of 2021)

Matters That the Resolution Authority Is to Consider When Assessing the Resolvability of an Institution or a Group:

1. The extent to which the institution is able to map core business lines and critical operations to the legal persons.

2. The extent to which legal and corporate structure corresponds to the core business lines and critical operations.

3. The extent of mechanisms which provide essential staff, infrastructure, funding, liquidity and capital to support and maintain the core business lines and critical operations.

4. The extent to which the service agreements that the institution maintains are fully enforceable in the event of resolution.

5. The extent to which the governance structure of the institution is adequate for managing and ensuring compliance with the internal rules with respect to its service level agreements.

6. The extent to which the institution has a process for transitioning the services provided under services level agreements to third parties in the event of separation of critical functions or of core business lines in a new entity.

7. The extent to which there are contingency plans and measures to ensure continuity of access to payment and settlement systems.

8. The adequacy of the management information systems in ensuring that the resolution authority 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 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 BNB and by the Commission, respectively.

11. The extent to which the institution can ensure the continuity of its management information systems both in the affected institution and a new bank, where there are separate critical operations and core business lines.

12. The extent to which the bank has established adequate processes to ensure that it provides the BNB and other resolution authorities with the information necessary to identify depositors and the amounts covered by the BDIF or by the deposit guarantee schemes in a Member State.

13. When the group uses intra-group guarantees or back-to-back transactions, the extent to which those guarantees or transactions are provided at market condi-

tions, and how robust are the risk management systems regarding those guarantees and transactions.

14. The extent to which the use of guarantees and transactions under item 13 increases the risk of contagion across the group.

15. The extent to which the legal structure of the group prevents the application of resolution tools as a result of the number of legal entities, the complexity of the group structure or the difficulty in aligning business lines to particular group entities.

16. (amended; Darjaven Vestnik, issue 12 of 2021) The amount of bail-inable liabilities of the institution.

17. When the assessment involves a mixed activity holding company, the extent to which the resolution of the institutions and the group financial institutions could have a negative impact on the non-financial part of the group.

18. The existence and robustness of service level agreements.

19. Whether third-country authorities have the resolution tools necessary to support resolution actions of the BNB and other resolution authorities of the European Union and the scope of coordination between the BNB and the authorities of the European Union, and the third country.

20. The feasibility of using resolution tools in a way that meets the resolution objectives, given the tools available and the institution's structure.

21. The extent to which the group structure allows the BNB, the Commission and other resolution authorities, respectively, to resolve the whole group or one or more of its entities without causing a significant direct or indirect adverse effects on the financial system, market confidence or on the economy and with a view to maximising the value of the group as a whole.

22. The mechanisms and means through which resolution could be facilitated if the group has subsidiaries, established in different jurisdictions.

23. The credibility of using resolution tools in a way which meets the resolution objectives, given possible impact on creditors, counterparties, customers and employees and possible actions that third-country authorities may take.

24. The extent to which the impact of the institution's resolution on the financial system and on the financial market's confidence can be adequately evaluated.

25. The extent to which the resolution of the institution could have a significant direct or indirect adverse effects on the financial system, market confidence or on the economy.

26. The extent to which contagion to other banks or to the financial markets could be limited by the application of the resolution tools and powers.

27. The extent to which the resolution of the institution may result in significant effects on the payment and settlement systems.

When assessing the group resolvability, the references to the bank in this Annex is deemed to include any institution or entity referred to in Article 1, paragraph 1, items 3–5 within the group.

Appendix No 5
to Article 28a
(new; Darjaven Vestnik, issue 12 of 2021)

Calculation of the Maximum Distributable Amount Related to the Minimum Requirement for Own Funds and Eligible Liabilities ('M-MDA')

1. The Maximum Distributable Amount related to the minimum requirement for own funds and eligible liabilities ('M-MDA') shall be calculated by multiplying the sum calculated in accordance with item 2 by the factor determined in accordance with item 3. The result shall be reduced by the amount resulting from any of the actions referred to in Article 28a.

2. The sum under item 1 shall consist of the following elements:

a) any interim profits not included in Common Equity Tier 1 capital pursuant to Article 26, paragraph 2 of Regulation (EU) No 575/2013, net of any distribution of profits or any payment resulting from the actions referred to in Article 28a;

b) any year-end profits not included in Common Equity Tier 1 capital pursuant to Article 26, paragraph 2 of Regulation (EU) No 575/2013, net of any distribution of profits or any payment resulting from the actions referred to in Article 28a;

c) amounts which would be payable by tax if the items specified in letters 'a' and 'b' were to be retained.

The sum under item 1 shall be calculated by deducting from the sum of the elements under letters 'a' and 'b' the amount under letter 'c'.

3. The factor referred to in item 1 shall be determined as follows:

a) where the Common Equity Tier 1 capital maintained by the institution or the entity under Article 1, paragraph 1, items 4 and 5, which is not used to meet any of the requirements set out in Article 92a of Regulation (EU) No 575/2013 and in Articles 69b–69f covers up to 25 per cent of the combined buffer requirement, the factor under item 1 shall be 0;

b) where the Common Equity Tier 1 capital maintained by the institution or the entity under Article 1, paragraph 1, items 4 and 5, which is not used to meet any of the requirements set out in Article 92a of Regulation (EU) No 575/2013 and in Articles 69b – 69f covers more than 25 per cent but not more than 50 per cent of the combined buffer requirement, the factor under item 1 shall be 0.2;

c) where the Common Equity Tier 1 capital maintained by the institution or the entity under Article 1, paragraph 1, items 4 and 5, which is not used to meet any of the requirements set out in Article 92a of Regulation (EU) No 575/2013 and in Articles 69b – 69f covers more than 50 per cent, but not more than 75 per cent of the combined buffer requirement, the factor under item 1 shall be 0.4;

d) where the Common Equity Tier 1 capital maintained by the institution or the entity under Article 1, paragraph 1, items 4 and 5, which is not used to meet any of the requirements set out in Article 92a of Regulation (EU) No 575/2013 and in

Articles 69b–69f covers more than 75 per cent of the combined buffer requirement, the factor under item 1 shall be 0.6.

Appendix No 6
to Article 69a, paragraphs 8 and 16
(new; Darjaven Vestnik, issue 12 of 2021)

1. Determination of the part of the requirement which is to be met using own funds, subordinated eligible instruments, or liabilities as referred to in Article 69a, paragraph 6 in the cases under Article 69a, paragraph 8.

When calculating the result under Article 69a, paragraph 8, the following formula shall apply:

(1-(X1/X2)) x 8 per cent of total liabilities, including own funds,

where, in light of the reduction that is possible under Article 72b, paragraph 3 of Regulation (EU) No 575/2013:

X1 = 3,5 per cent of the total risk exposure amount calculated in accordance with Article 92, paragraph 3 of Regulation (EU) No 575/2013; and

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

2. Determination of the sum under Article 69a, paragraph 16.

When calculating the sum under Article 69a, paragraph 16, the following formula shall apply:

2 x A + 2 x B + C,

where:

A = the amount resulting from the requirement referred to in of Article 92, paragraph 1 (c) of Regulation (EU) No 575/2013;

B = the amount resulting from the requirement referred to in Article 103a, paragraph 2 of the Law on Credit Institutions;

C = the amount resulting from the combined buffer requirement.

Law on Amendment of the Law on the Recovery and Resolution of Credit Institutions and Investment Firms

(published in the Darjaven Vestnik, issue 37 of 7 May 2019)

Transitional and Final Provisions

§ 54. (1) For the purposes of establishment of close cooperation with the European Central Bank under Article 7 of Council Regulation (EU) No 1024/2013 and the consequent participation in the Single Resolution Mechanism under Regulation (EU) No 806/2014, as well as in connection with the implementation of the Agreement on the transfer and mutualisation of contributions to the SRF (ratified by a law; Darjaven Vestnik, issue 96 of 2018) (Darjaven Vestnik, issue 4 of 2019) until the date on which close cooperation begins pursuant to the decision of the European Central Bank under Article 7, paragraph 2 of Council Regulation (EU) No 1024/2013, the Bulgarian National Bank, the Commission, respectively, may exchange information with the Single Resolution Board regarding the recovery and resolution of institutions and entities under Article 1, paragraph 1, items 3–5, including information constituting professional, banking or commercial secrecy.

(2) For the purposes of paragraph 1, the institutions and entities under Article 1, paragraph 1, items 3–5 are obliged at the request of the resolution authority under Article 2, paragraph 1 to cooperate and provide the Single Resolution Board with the information required in connection with the resolution preparation and planning process, including information constituting banking and commercial secrecy.

§ 55. With effect from the date of enforcement of the ECB decision on close cooperation when the Single Resolution Board in line with Regulation (EU) No 806/2014 performs tasks and exercises powers which under this Law are performed or exercised by the resolution authority under Article 2, paragraph 1, and Article 3, paragraph 1, respectively, for the purposes of implementation of Regulation No 806/2014 and this Law, the Resolution Board shall be considered the national resolution authority under Article 2, paragraph 1 or Article 3, paragraph 1.

§ 56. (1) With effect from the date of enforcement of the ECB decision on close cooperation, the Management Board of the Bulgarian Deposit Insurance Fund shall transfer the funds from the Bank Resolution Fund (BRF) to the resolution authority under Article 2, paragraph 1. In transferring funds to the BRF, the Management Board of the BDIF shall submit to the resolution authority under Article 2, paragraph 1 financial statements as of the transfer date and information on the share of funds representing contributions raised by branches of credit institutions from third countries. On the basis of obtained information, the resolution authority under Article 2, paragraph 1 shall allocate the received funds to the sub-funds under Article 134, paragraph 1.

(2) Upon a relevant notification by the Single Resolution Board with regard to an initial contribution, the resolution authority under Article 2, paragraph 1 shall order a transfer to the Single Resolution Board of a sum from the sub-fund under Article 134, paragraph 1, item 2 in accordance with Article 8 of the Agreement on the transfer and mutualisation of contributions to the SRF. After the transfer of the funds, the remaining funds generated in the sub-fund under Article 134, paragraph 1, item 2, if any, shall be deducted from the obligations of the entities for future contributions to the Single Resolution Fund following a decision of the resolution authority until they are exhausted.

§ 57. In the Law on the Bulgarian National Bank (published; Darjaven Vestnik, issue 46 of 1997; amended, issues 49 and 153 of 1998, issues 20 and 54 of 1999, issue 109 of 2001, issue 45 of 2002, issues 10 and 39 of 2005, issues 37, 59 and 108 of 2006, issues 52 and 59 of 2007, issues 24, 42 and 44 of 2009, issues 97 and 101 of 2010, issues 48 and 62 of 2015, issues 51 and 59 of 2016, issues 97 and 103 of 2017 and issues 7, 20 and 106 of 2018), the following amendments shall be made:

1. In Article 4, paragraph 2 at the end, a comma shall be inserted and the following shall be added 'as well as in the cases of exchange of information with the Single Resolution Board pursuant to 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 (OJ, L 225/1 of 30 July 2014) hereinafter referred to as Regulation (EU) No 806/2014'.

2. Item 17 of Article 16 shall be amended as follows:

'17. take decisions as a resolution authority under the Law on the Recovery and Resolution of Credit Institutions and Investment Firms and Regulation (EU) No 806/2014;'.

§ 58. In the Law on Bank Deposit Guarantee (published; Darjaven Vestnik, issue 62 of 2015; amended, issues 96 and 102 of 2015, issue 103 of 2017, issues 7, 15, 20 and 27 of 2018, issue 17 of 2019) In Article 7, item 5, the words 'Article 134, paragraph 5 and' shall be deleted.

§ 59. In Article 34 of the Law on Accountancy (published; Darjaven Vestnik, issue 95 of 2015; amended, issues 74, 95 and 97 of 2017, issues 85, 92 and 97 of 2017, issues 15, 22 and 98 of 2018 and issue 13 of 2019), the following amendments shall be made:

1. New paragraph 2 shall be created:

'(2) The following entities shall draw up financial statements on the basis of the International Accounting Standards:

1. credit and financial institutions within the meaning of the Law on Credit Institutions;

2. payment service providers within the meaning of the Law on Payment Services and Payment Systems;

3. insurers and reinsurers, as well as insurance holding companies and mixed-activity insurance holding companies heading a group within the meaning of the Insurance Code;

4. pension insurance companies and supplementary pension insurance funds managed by them within the meaning of the Social Security Code;

5. investment intermediaries within the meaning of the Law on Markets in Financial Instruments;

6. management companies and collective investment schemes within the meaning of the Law on the Activities of Collective Investment Schemes and Other Undertakings for Collective Investment;

7. alternative investment fund managers within the meaning of the Law on the Activities of Collective Investment Schemes and Other Undertakings for Collective Investment;

8. national investment funds within the meaning of the Law on the Activities of Collective Investment Schemes and Other Undertakings for Collective Investment;

9. entities whose transferable securities are admitted to trading on a regulated market in a Member State of the European Union;

10. market operators within the meaning of the Law on Markets in Financial Instruments;

11. central securities depositories within the meaning of Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ, L 257/1 of 28 August 2014).'

2. Previous paragraphs 2 and 3 shall become 3 and 4, respectively.

3. Previous paragraph 4 shall become paragraph 5 and the text 'under paragraph 1' shall be added after the word 'undertakings'.

4. Previous paragraph 5 shall become paragraph 6.

5. Previous paragraph 6 shall become paragraph 7 and the words in it 'paragraph 2' shall be replaced by 'paragraph 3'.

§ 60. The undertakings under Article 34, paragraph 2, items 1 and 2 of the Law on Accountancy shall draw up their financial statements for 2018 on the basis of the International Accounting Standards.

§ 61. In the Law on Amendment of the Law on Corporate Income Taxation (Darjaven Vestnik, issue 98 of 2018) in § 56 of the Transitional and Final Provisions, the words 'paragraph 4' shall be replaced by 'paragraph 5'.

§ 62. In the Law on Payment Services and Payment Systems (published in the Darjaven Vestnik, issue 20 of 2018; amended, issue 17 of 2019), the following amendments shall be made:

1. A second sentence shall be inserted in Article 67, paragraph 5: 'An Ordinance shall lay down the procedure for exemption of an account servicing payment service provider from the obligations to maintain a reserve mechanism and implement the

strong customer authentication under the Commission Delegated Regulation (EU) 2018/389 of 27 November 2017 supplementing Directive (EU)2015/2366 of the European Parliament and of the Council with regard to regulatory technical standards for strong customer authentication and common and secure open standards of communication (OB, L 69/23 of 13 March 2018) hereinafter referred to as Delegated Regulation (EU) 2018/389'.

2. In Article 184, the text 'and Article 33, paragraphs 6 and 7 of Regulation (EU) No 2018/389' shall be added after the words 'Article 43, paragraph 3'.

§ 63. In paragraph 4 of Article 103 of the Law on Credit Institutions (published; Darjaven Vestnik, issue 59 of 2006; amended, issue 105 of 2006, issues 52, 59 and 109 of 2007, issue 69 of 2008, issues 23, 24, 44, 93 and 95 of 2009, issues 94 and 101 of 2010, issues 77 and 105 of 2011, issues 38, 44, 52, 70 and 109 of 2013, issues 22, 27, 35 and 53 of 2014, issues 14, 22, 50, 62 and 94 of 2015, issues 33, 59, 62, 81, 95 and 98 of 2016, issues 63, 97 and 103 of 2017 and issues 7, 15, 16, 20, 22, 51, 77, 98 and 106 of 2018), the words 'unless the court decides otherwise' shall be deleted.

§ 64. This Law shall enter into force on the day of enforcement of the ECB decision on close cooperation under Article 7 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, with the exception of § 5, item 1, § 6, § 7, item 1, § 8, 9, 10, 13, 14, § 16, item 2, § 17, § 18, item 1, letter 'b', sub-letter 'aa', § 19, § 20, item 1, letter 'b', sub-letter 'aa', § 21, item 1, letter 'a', § 24, 25, 26, 27, 29, 30, 31, 33, 34, 35, 36, 38, 53, 54, 59, 60, 61, 62 and 63, which shall enter into force on the day of publication of the Law in the Darjaven Vestnik.

This Law is adopted by the 44th National Assembly on 24 April 2019, and the official seal of the National Assembly is affixed on it.

Law on Amendment of the Law on the Recovery and Resolution of Credit Institutions and Investment Firms

(published in the Darjaven Vestnik, issue 12 of 12 February 2021)

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§ 77. (1) Resolution authorities referred to in Articles 2 and 3 shall determine transitional periods for institutions or entities under Article 1, paragraph 1, items 3–5, established until the entry into force of this Law, to comply with the minimum requirement for own funds and eligible liabilities , determined by respectively applying Article 70 or Article 70a, or the requirements that result from the application of Article 69a, paragraphs 7–10, respectively paragraphs 11–13 or paragraph 16. Transitional periods shall be determined within the deadline to comply with the minimum requirements under paragraph 3.

(2) When determining the transitional periods, resolution authorities shall take into account:

1. the prevalence of deposits and the absence of debt instruments in the funding model;

2. the access to the capital markets for eligible liabilities

3. the extent to which the resolution entity relies on Common Equity Tier 1 capital to meet the requirement referred to in Article 70.

(3) The deadline to comply with the minimum requirements under paragraph 1 shall be 1 January 2024. The resolution authority may set a transitional period that ends after 1 January 2024, on the basis of the criteria referred to in paragraph 2, taking into account:

1. the development of the financial situation of the institution or entity under Article 1, paragraph 1, items 3–5;

2. the prospect that the institution or entity under Article 1, paragraph 1, items 3–5 will be able to ensure compliance in a reasonable timeframe with the requirements in Article 70 or 45fd or with a requirement that results from the application of Article 69d, paragraphs 7–10, respectively paragraphs 11–13 or paragraph 16;

3. where the institution or entity under Article 1, paragraph 1, items 3–5 is able to replace liabilities that no longer meet the eligibility or maturity criteria laid down in Articles 72b and 72c of Regulation (EU) No 575/2013, or in Article 69a or Article 70a, paragraph 5;

4. where the institution or the entity, respectively, under Article 1, paragraph 1, items 4 and 5 is unable to meet the conditions under item 3, if that inability is idiosyncratic or is due to market-wide disturbance;

(4) The deadline for resolution entities to comply with the minimum level of the requirements referred to in Article 69d, paragraphs 1 and 2 or paragraphs 3–5, shall be 1 January 2022.

(5) To ensure a linear build-up of own funds and eligible liabilities the resolution authorities shall determine intermediate target levels for the minimum requirements in paragraph 1, that institutions or entities referred to in Article 1, paragraph 1, items 3–5 shall comply with at 1 January 2022.

(6) Resolution authorities shall communicate to the institutions and entities referred to in Article 1, paragraph 1, items 3–5 the planned minimum requirements for own funds and eligible liabilities for each 12-month period during the transitional period, with a view to facilitating a gradual build-up of its loss-absorbing and recapitalisation capacity, and meeting the specified minimum requirements at the end of the transitional period.

(7) Transitional periods under paragraph 1 and planned minimum requirements for own funds and eligible liabilities for the 12-month periods under paragraph 6 may be modified by the resolution authority subject to the requirements under paragraphs 1, 3 and 5.

§ 78. Article 67shall apply to sales of financial instruments issued after 28 December 2020.

§ 79. (1) Institutions and entities under Article 1, paragraph 1, items 3–5 shall perform the obligation of public disclosure of the minimum requirement for own finds and eligible liabilities under Article 72b, paragraph 6, from 1 January 2024.

(2) Where the resolution authority under Article 2 or 3 has set for an institution or entity referred to in Article 1, paragraph 1, items 3–5 a transitional period to comply with the minimum requirement of own funds and eligible liabilities, which ends after 1 January 2024, the institution or entity referred to in Article 1, paragraph 1, items 3–5, shall perform the obligation referred to in Article 72b, paragraph 6 from the date at which the transitional period ends.

§ 80. Article 103a shall apply to financial contracts concluded before the entry into force of this Law, which create new obligations, or materially amend existing obligations after the entry into force of this Law.

§ 81. In the Law on Payment Services and Payment Systems (published in the Darjaven Vestnik, issue 20 of 2018; amended, issue 17, 37, 42 and 94 of 2019 and issues 13 of 2020), the following amendments shall be made:

. . . . . .

§ 82. This Law shall enter into force on the day of its publication in the Darjaven Vestnik.

This Law is adopted by the 44th National Assembly on 3 February 2019, and the official seal of the National Assembly is affixed on it.