

Proposal for a directive of the European Parliament and of the Council.

Establishing a framework for the recovery and resolution of the credit institutions and investment firms (Directive)

Athens, 5/6 October 2012

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1. Legislation process.

6 June 2012: Publication of a proposal for a directive of the European Parliament and of the Council by the European Commission establishing a framework for the recovery and resolution of credit institutions and investment firms (Draft Directive)

The Directive to be adopted with the involvement of the European Parliament and the European Council

By 31 December 2014: Member States to adopt the laws, regulations and administrative provisions necessary to comply with the Directive

From 1 January 2015: Member States to apply national laws, regulations and administering powers adopted to comply with the Directive except for the bail-in tool

From 1 January 2018: Member States to apply national laws, regulations and administering powers adopted to implement the bail-in tool

Note

This Directive will certainly come

Exact timing and contents subject to European process and discussions

2. Objectives.

Provide authorities with the tools to intervene sufficiently early and quickly in respect of an unsound or failing institution

Ensure the continuity of the institution's critical functions, while minimizing the impact of an institution's failure on the financial system

Protect depositors

Shareholders and creditors to bear an appropriate share of the losses and minimizing taxpayer exposure to losses from insolvency support to institutions

Funds should come primarily from financial industry rather than from national budgets

Strengthen the internal market in the field of the financial market through harmonisation of the procedures for resolving institutions at the European Union level

Note

No more 'too big to fail' – the Directive reintroduces insolvency to banking

3. Scope (Art. 1).

Credit institutions

undertakings whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account or

electronic money institution within the meaning of Directive 2000/46/EC

Investment firms

Certain financial institutions if they are subsidiaries of a credit institution, investment firm, financial holding company, mixed financial holding company, mixed-activity holding company, parent financial holding company in a Member State, Union parent financial holding company, parent mixed financial holding company in a Member State and Union parent mixed financial holding company

Parent financial holding companies in a Member State, Union parent financial holding companies, parent mixed financial holding companies in a Member State and Union parent mixed financial holding companies

Branches of institutions having their head office outside the Union in accordance with the specific conditions laid down in the Directive – reinforces tendency to branch ring-fencing

Note

Not limited to systemic banks

4. Key elements.

4.1 Recovery and resolution plan

4.2 Early intervention

4.3 Resolution

4.2.1 Sale of business tool

4.2.2. Bridge institution tool

4.2.3. Asset separation tool

4.2.4 Bail-in tool

4.4 Write down of capital instrume



4.1 Recovery and resolution planning.

General principles

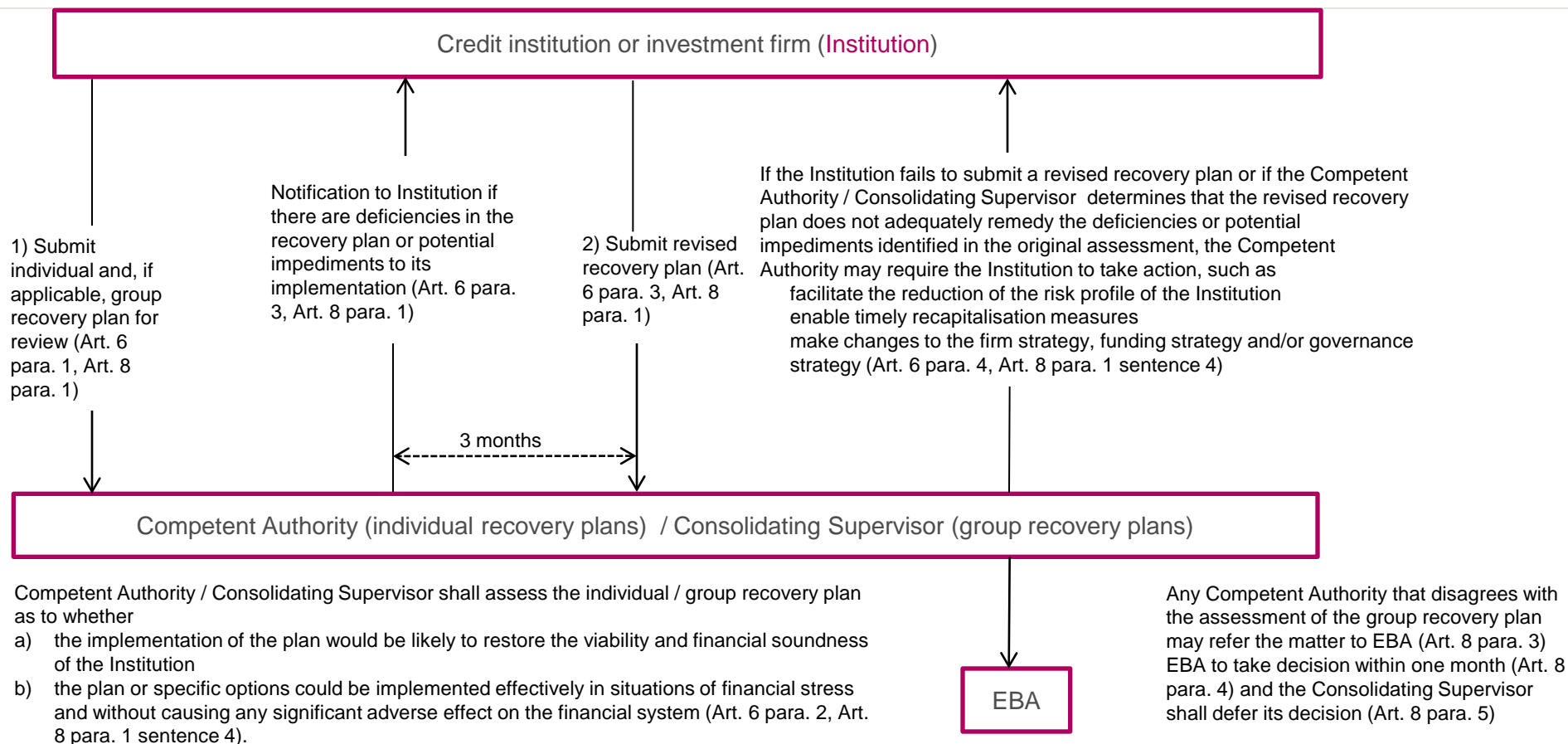
Recovery and resolution plan as preparatory steps to avoid disorderly failure of institutions capable of causing financial instability

Both recovery and resolution plans to be prepared irrespective of the financial condition of the institution in normal times and be updated at least once a year

No extraordinary public financial support to be assumed

Enhanced coordination between the competent authorities from various Member States for institution(s) which are part of a group

Recovery planning/1.



Recovery planning/2.

Note

Recovery planning is not far from what is done already under risk management principles
It boils down to how to improve the equity and liquidation position in stress situations
It differentiates between stand alone stress and stressed market environment

Resolution planning/1.

Overview

Resolution Authorities (such as national central banks, financial supervisors, ministries of finance or special authorities depending on national laws (Art. 3 para. 3)) to draw up (i) resolution plans for each Institution and (ii) group resolution plans (Art. 9 para. 1, Art. 11 para. 1)

Resolution Authorities have the power to require Institutions and Competent Authorities in the relevant Member States to provide them with all the information necessary to draw up and implement resolution plans (Art. 10 para. 1 sentence 2, Section B of the Annex)

Resolution Authorities assess the extent to which Institutions and groups are resolvable. An Institution or group shall be deemed resolvable

“if it is feasible and credible for the resolution authority to either liquidate it under normal insolvency proceedings or to resolve it by applying the different resolution tools and powers to the institution and group without giving rise for significant adverse consequences for the financial systems, including in circumstances of broader financial instability or system wide events, of the Member State in which the institution is situated, having regard to the economy or financial stability in that same or other Member State or the Union and with a view to ensure the continuity of critical functions carried out by the institution or group” (to be specified by EBA, in consultation with ESRB, in regulatory technical standards (Art. 13 paras. 1 and 2, Section C of the Annex))

The resolution plan to provide for resolution actions which the Resolution Authorities and the Competent Authorities may take where the Institution meets the conditions for resolution (Art. 9 para. 1 sentence 2) (see slide 11 below)

The resolution plan shall take into consideration a range of scenarios including that the event of failure occur at a time of broader financial instability or system wide events; it shall include similar information as in the recovery plan (see slide 7 above) and in particular (Art. 9 paras. 1, 2 and 4)

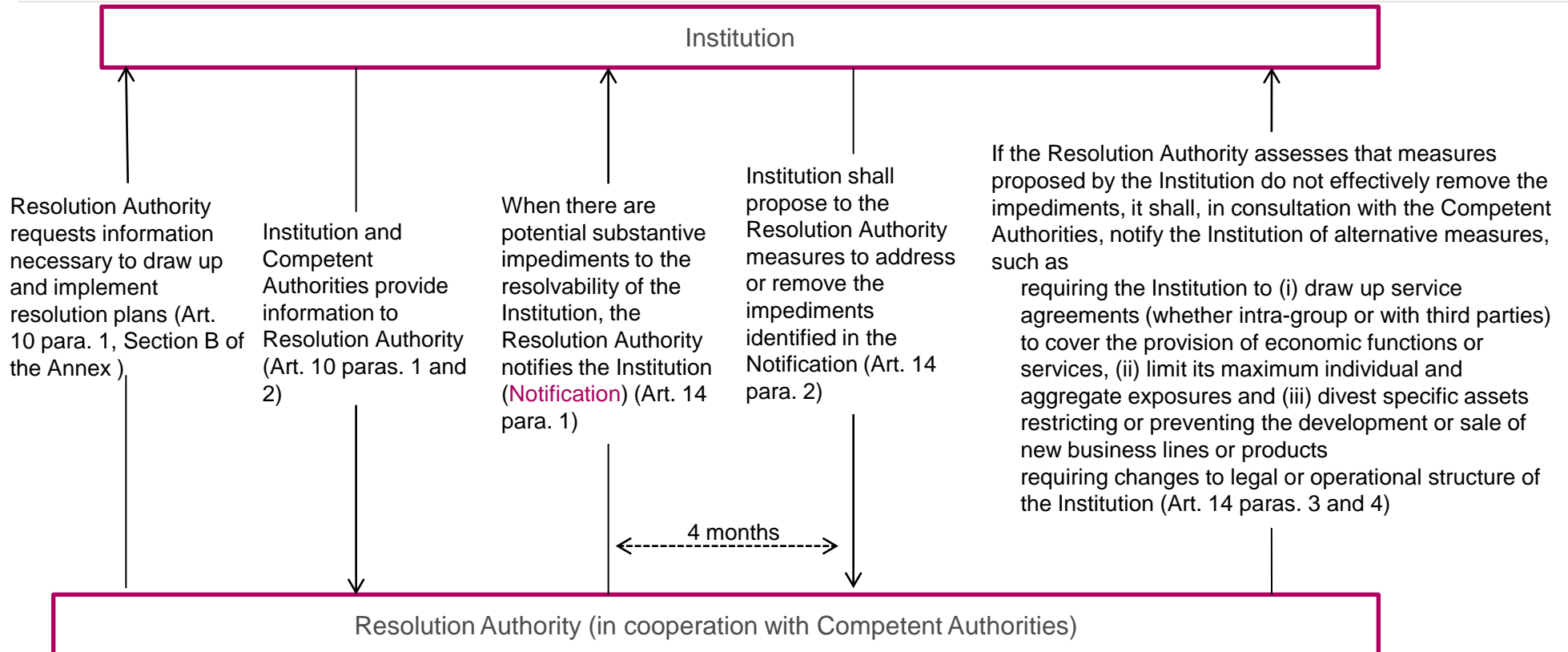
- a demonstration of how critical functions and core business lines could be legally and commercially separated from other functions

- a description of (i) the different resolution strategies that could be applied according to different possible scenarios and (ii) on options for preserving access to payments and clearing services and other infrastructure

- an analysis of the impact of the plan on other Institutions within the group and a plan for communicating with the media and the public

group resolution plans shall in particular set out resolution actions to be taken with regards to the group as a whole or part of the group (Art. 11 para. 3)

Resolution planning/2.



Resolution planning/3.

Note

Iterative process between Institution and authorities (even though strictly a plan of authorities)

Huge exercise to update resolution plan each year

4.2 Early intervention.

Powers

Competent Authorities may

- require the management of the Institution to

 - implement measures set out in the recovery plan

 - identify measures to draw up an action program to overcome problems and a timetable for its implementation

 - convene the shareholders' meeting of the Institution

 - replace board members or managing directors and/or

 - draw up a plan for negotiation on restructuring of debt with creditors (Art. 23 para. 1(a)-(f))

- contact potential purchasers to prepare for the resolution of the Institution (Art. 23 para. 1(g))

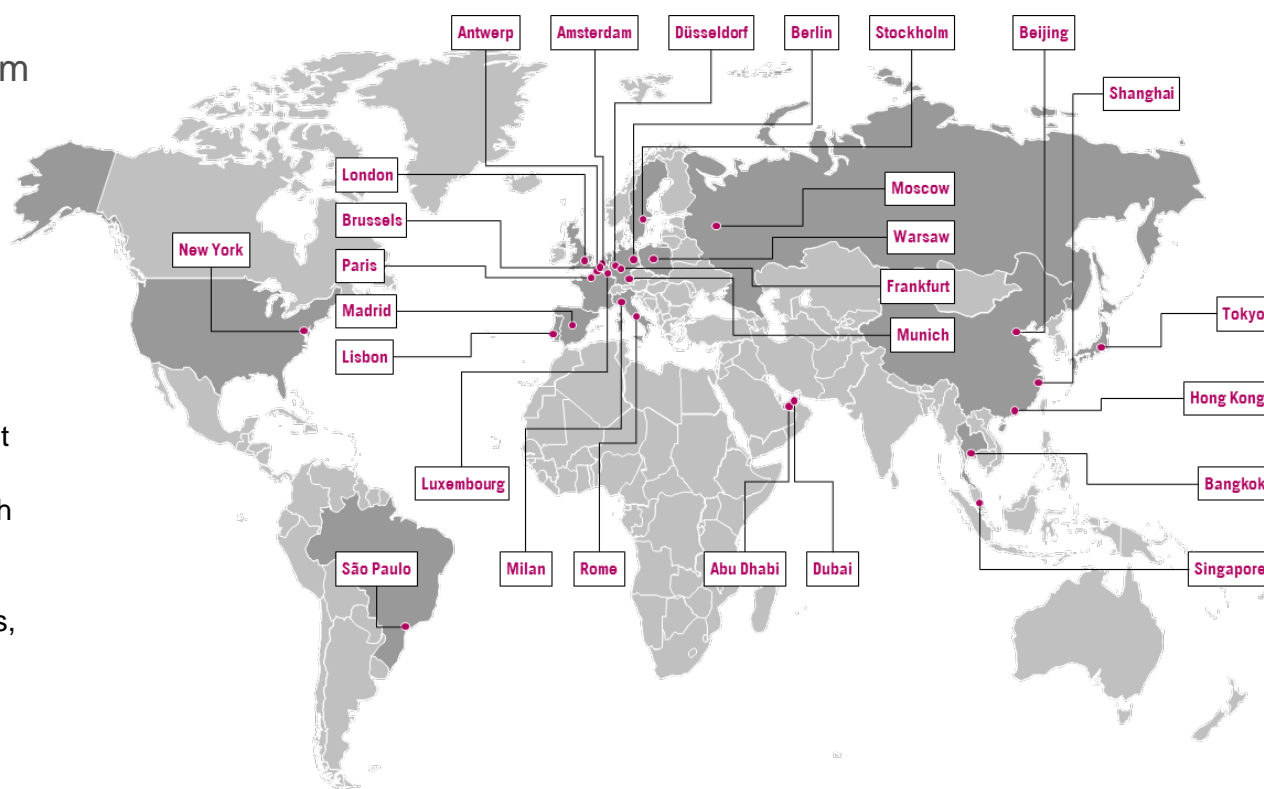
- under certain circumstances appoint a special manager to replace management (Art. 24)

Additional provisions for groups (Art. 25)

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