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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	COMMISSION DELEGATED REGULATION (EU) …/... of 23.5.2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria relating to the methodology for setting the minimum requirement for own funds and eligible liabilities

Delegations will find attached document C(2016) 2976 final.

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EUROPEAN
COMMISSION

Brussels, 23.5.2016
C(2016) 2976 final

COMMISSION DELEGATED REGULATION (EU) …/...

of 23.5.2016

supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria relating to the methodology for setting the minimum requirement for own funds and eligible liabilities

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Article 45(2) of Directive 2014/59/EU empowers the Commission to adopt, following submission of draft standards by the European Banking Authority (EBA), and in accordance with Articles 10 to 14 of Regulation No (EU) 1093/2010, delegated acts specifying assessment criteria relating to the methodology for setting the minimum requirement for own funds and eligible liabilities (MREL).

In accordance with Article 10(1) of Regulation No (EU) 1093/2010 establishing the EBA, the Commission may endorse the draft standards in part only, or with amendments, where the Union's interests so require, having regard to the specific procedure laid down in that Article.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In accordance with the third subparagraph of Article 10(1) of Regulation No (EU) 1093/2010, the EBA has carried out a public consultation on the draft technical standards submitted to the Commission in accordance with Article 45 of Directive 2014/59/EU. A consultation paper was published on the EBA internet site on 28 November 2014, and the consultation closed on 27 February 2015. Moreover, the EBA invited the EBA's Banking Stakeholder Group set up in accordance with Article 37 of Regulation No (EU) 1093/2010 to provide advice on them. Together with the draft technical standards, the EBA has submitted an explanation on how the outcome of these consultations has been taken into account in the development of the final draft technical standards submitted to the Commission.

Together with the draft technical standards, and in accordance with the third subparagraph of Article 10(1) of Regulation No (EU) 1093/2010, the EBA has submitted its Impact Assessment, including its analysis of the costs and benefits, related to the draft technical standards submitted to the Commission. This analysis is available at https://www.eba.europa.eu/regulation-and-policy/recovery-and-resolution/regulatory-technical-standards-on-minimum-requirement-for-own-funds-and-eligible-liabilities-mrel-, pages 16-35 of the Final Draft Regulatory Technical Standards package.

In accordance with recital (23) and Article 10(1) Regulation No (EU) 1093/2010, on 17 December 2015 the Commission endorsed the draft regulatory technical standards with amendments. Several amendments were proposed with the aim to make the standards compatible with the Directive 2014/59/EU by addressing inconsistencies between the standards and that directive. The Commission also took an opportunity to make a number of minor technical adjustments in order to clarify the standards, where necessary.

The main areas of inconsistency that needed to be addressed included the introduction of a harmonized minimum level of MREL for certain types of banks, a determination of transitional period for compliance with MREL and certain new obligations for resolution authorities. In the Commission's view, none of the above requirements can be introduced by a 'level 2' implementing measure in the absence of a corresponding empowerment to the EBA in the Directive 2014/59/EU.

In particular, Article 45(18) of the Directive 2014/59/EU does not set a harmonized minimum level of MREL, but provides that the Commission, if appropriate, will submit to the European

Parliament and the Council a legislative proposal to introduce one or more minimum levels for MREL.

On 9 February 2016, the EBA issued a legal opinion on the amendments proposed by the Commission. While the EBA agreed with a large part of the proposed amendments, it disagreed on others, including on some of those where, in the Commission's view, the draft standards were incompatible with the Directive 2014/59/EU. In this regard, in the Annex to its legal opinion, the EBA proposed revisions to the amendments of the Commission.

Subsequently, the Commission, in accordance with the seventh sub-paragraph of Article 10(1) Regulation No (EU) 1093/2010 and taking into account the revisions to its amendments proposed by the EBA, adopted the delegated act by making changes that it considered relevant in order to ensure compatibility of the act with the Directive 2014/59/EU. The amendments proposed by the Commission address the inconsistencies without weakening the overall objective of having a robust MREL, an objective which is fully shared with the EBA.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The draft regulatory technical standards further specify criteria for determining MREL as described in Article 45(6) of Directive 2014/59/EU.

The standards require the resolution authority to determine an MREL which is sufficient to ensure that an institution under resolution can, through write down or conversion into equity of capital instruments and eligible liabilities, absorb losses, and be recapitalized sufficiently to restore its Common Equity Tier 1 ratio to a level sufficient to comply with conditions for authorisation under Directive 2013/36/EU and Directive 2014/65/EU, continue to carry out its activities, and maintain market confidence.

Article 45(6)(b) of Directive 2014/59/EU establishes that a criterion for setting the MREL should be whether an institution subject to bail-in has sufficient eligible liabilities to absorb losses and be adequately recapitalised. A similar assessment is required for the purposes of ensuring that an institution can be resolved by application of other resolution tools, established as a criterion for setting MREL by Article 45(6)(a) of Directive 2014/59/EU. The assessment of the amount of loss absorption should be closely linked to the current capital requirements of the institution. The assessment of the amount of recapitalisation should be closely linked to the capital requirements which would be applied after the effects of the preferred resolution strategy identified in the resolution plan for the institution are taken into account. Prudential requirements are set by competent authorities following a supervisory review and evaluation process which takes into account, among other factors, the size, business model, funding model, and risk profile of the institution. Resolution authorities should therefore request sufficient information from competent authorities to ensure that these factors are adequately reflected in the MREL due to this close link with capital requirements.

Resolution authorities are required to consider the extent to which the Deposit Guarantee Scheme could contribute to the financing of resolution when setting the MREL. The standards specify that resolution authorities may reduce the MREL from the level which they would otherwise set to take account of such contributions, but the extent to which they do so should be limited by the strict caps on contributions to the cost of resolution by the Deposit Guarantee Scheme provided by Article 109 of Directive 2014/59/EU and also by the overall risk to the Deposit Guarantee Scheme.

Resolution authorities are required to consider the effect of exclusion of some liabilities from the scope of application of the bail-in tool under Article 44(3) of Directive 2014/59/EU when setting MREL. The standards provide that where such exclusions exceed a *de minimis* percentage of any given insolvency class, the resolution authority must conduct an assessment of whether the MREL set is sufficient to prevent a breach of the protections for creditors provided under Article 73 of Directive 2014/59/EU.

The standards provide that for institutions which are determined to be of systemic importance, the resolution authority should take account in setting MREL of the conditions provided in Article 101(2) of Directive 2014/59/EU for use of resolution financing arrangements in ways which indirectly result in part of the losses of an institution or entity being passed onto the resolution fund, in order to ensure that the European system of resolution financing arrangements fulfils its purpose of contributing to financial stability in cases where a systemically important institution is subject to resolution actions.

The standards describe specific considerations for setting MREL when institutions are part of groups, when institutions are subject to capital and prudential requirements pursuant to Regulation (EU) No 648/2012 or Regulation (EU) No 909/2014, and during transitional periods following the initial application of MREL or following resolution of the institution.

COMMISSION DELEGATED REGULATION (EU) …/...

of 23.5.2016

supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria relating to the methodology for setting the minimum requirement for own funds and eligible liabilities

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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[1], and in particular Article 45(2) thereof,

Whereas:

(1) Effective resolution can only be feasible and credible if adequate internal financial resources are available to an institution to absorb losses and for recapitalisation purposes without affecting certain liabilities, in particular those excluded from bail-in. Directive 2014/59/EU provides that institutions should meet a minimum requirement for own funds and eligible liabilities ('MREL') to avoid that institutions excessively rely on forms of funding that are excluded from bail-in, since failure to meet MREL would impact negatively institutions' loss absorption and recapitalisation capacity and, ultimately, the overall effectiveness of resolution.

(2) When determining MREL in accordance with points (a) and (b) of Article 45(6) of Directive 2014/59/EU, the resolution authority should consider the need, in case of application of the bail-in tool, to ensure that the institution is capable of absorbing an adequate amount of losses and being recapitalised by an amount sufficient to restore its Common Equity Tier 1 ratio to a level sufficient to maintain the capital requirements for authorisation and at the same time to sustain sufficient market confidence. This close relationship with supervisory decisions requires that such assessments are made by the resolution authority in close consultation with the competent authority consistently with the framework set out in Article 45(6) of Directive 2014/59/EU, and that accordingly the resolution authority should, in the framework of the obligation of the resolution authority to consult the competent authority under Article 45(6) of Directive 2014/59/EU, take account of the assessments made by the competent authority on the business model, funding model, and risk profile of the institution for the purposes of setting prudential requirements.

[1] OJ L 173, 12.06.2014, p. 190.

(3) In particular, the assessment of the necessary capacity to absorb losses should be closely linked to the institution's current capital requirements, and the assessment of the necessary capacity to restore capital should be closely linked to likely capital requirements after the application of the resolution strategy, unless there are clear reasons why losses in resolution should be assessed differently than in going concern. A similar assessment is necessary to ensure the MREL is sufficient to ensure resolvability of an institution when resolution tools other than bail-in are to be applied.

(4) Point (c) of Article 45(6) of Directive 2014/59/EU also requires that resolution authorities consider the possibility that certain classes of liabilities, identified in resolution plans and in the resolvability assessment, might be excluded from bail-in. Liabilities of that kind should not be relied on for purposes of meeting the MREL. Resolution authorities should also ensure that, when significant amounts of any insolvency class of liabilities are excluded from bail-in on either a mandatory or discretionary basis, that exclusion would not result in liabilities of the same or a more senior class bearing greater losses than they would in insolvency, as this would be an impediment to resolvability.

(5) Resolution authorities may require part of the MREL referred to in Article 45(1) of Directive 2014/59/EU to be met by subordinated contractual bail-in instruments , or by setting a higher minimum requirement, or by alternative measures to address impediments to resolution. If the risk of a breach of the 'no creditor worse off' safeguard is sufficiently low, no adjustment to the MREL is necessary.

(6) Certain institutions subject to Directive 2014/59/EU, in particular financial market infrastructures which are also authorised as credit institutions, have highly specialised business models and are subject to additional regulations, which should be taken into account when setting MREL.

(7) In order to ensure consistency with prudential supervision, the resolution authority's assessment of the size, business model, funding model, and risk profile of the institution should take into account outcomes of the supervisory review and evaluation process carried out by the competent authority pursuant to Article 97 of Directive 2013/36/EU unless there are clear reasons why losses in resolution should be assessed differently than in going concern. When conducting the supervisory review and evaluation process and subject to Article 16 of Regulation (EU) No 1093/2010, the competent authority should take into account the guidelines on common procedures and methodologies for the supervisory review and evaluation process (EBA/GL/2014/13) issued by the EBA pursuant to Article 107(3) of that Directive by making every effort to comply with those guidelines in line with Article 16(3) of Regulation (EU) No 1093/2010.

(8) Resolution plans may provide for arrangements for loss absorption and recapitalisation within group structures, including through capital instruments or eligible liabilities issued by institutions to other institutions or entities within the same group. Resolution authorities should set MREL consistently with those arrangements where they are integral to the institution or group's preferred resolution strategy.

(9) To ensure that resolvability does not depend on the provision of public financial support and that the Union system of resolution financing arrangements fulfills its purpose of contributing to ensuring financial stability, resolution authorities, when

setting MREL, should take account of the conditions provided in Article 101(2) of Directive 2014/59/EU for use of resolution financing arrangements in ways which indirectly result in part of the losses of an institution or entity being passed on to the resolution financing arrangement.

(10) In accordance with point (f) of Article 45(6) of Directive 2014/59/EU, resolution authorities should also consider the potential adverse impact of an institution's failure on financial stability. Resolution authorities should pay particular attention to ensuring that effective resolution of a systemically important institution is not prevented by the exhaustion of its effective loss absorption and recapitalisation capacity as provided for in Article 44 of Directive 2014/59/EU. This should not, however, result in any reduction or replacement of the need to ensure sufficient loss absorption and recapitalisation capacity through write down and conversion of eligible liabilities, or imply that the resolution financing arrangement should be used for these purposes other than in accordance with the principles governing the use of the resolution financing arrangement set out in Article 44 of Directive 2014/59/EU and in any case exclusively to the extent strictly necessary.

(11) In accordance with point (e) of Article 45(6) of Directive 2014/59/EU, resolution authorities should assess the potential size of contributions to the cost of resolution from the deposit guarantee scheme by estimating the amount the deposit guarantee scheme could feasibly and credibly contribute in lieu of covered deposits, had they been included in the scope of bail in. When making this assessment, resolution authorities should ensure that they and the institution have taken all reasonable and necessary measures that are consistent with its funding model to minimise the requirement for a contribution from the deposit guarantee scheme. Should this assessment conclude that such a contribution is likely, resolution authorities may choose to set a lower MREL. Any such assumed contribution should respect the limits on such contributions set out in Directive 2014/59/EU and are therefore likely to be most relevant for institutions funded primarily by covered deposits.

(12) In order to provide institutions or entities to which resolution tools have been applied with sufficient time to reach MREL, it is appropriate to set a transitional period.

(13) This Regulation is based on the draft regulatory technical standards submitted by the European Banking Authority to the Commission.

(14) The European Banking Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council[2],

[2] Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

HAS ADOPTED THIS REGULATION:

Article 1

Determining the amount necessary to ensure loss absorption

1. Resolution authorities shall determine the loss absorption amount which the institution or group should be capable of absorbing.

2. For the purpose of determining the loss absorption amount in accordance with this Article and of any contribution of the deposit guarantee scheme to the resolution costs pursuant to Article 6, the resolution authority shall, consistently with Article 45(6) of Directive 2014/59/EU, request from the competent authority a summary of the capital requirements currently applicable to an institution or group, and in particular the following:

   (a) own funds requirements pursuant to Articles 92 and 458 of Regulation (EU) No 575/2013 of the European Parliament and of the Council[3], which include:

      (i) CET1 capital ratio of 4.5% of the total risk exposure amount;

      (ii) a Tier 1 capital ratio of 6% of the total risk exposure amount;

      (iii) a total capital ratio of 8% of the total risk exposure amount;

   (b) any requirement to hold additional own funds in excess of these requirements, in particular pursuant to point (a) of Article 104(1), of Directive 2013/36/EU of the European Parliament and of the Council[4];

   (c) combined buffer requirements as defined in Article 128(6) of Directive 2013/36/EU;

   (d) the Basel I floor according to Article 500 of Regulation (EU) No 575/2013;

   (e) any applicable leverage ratio requirement.

3. For the purposes of this Regulation, capital requirements shall be interpreted in accordance with the competent authority's application of transitional provisions laid down in Chapters 1, 2 and 4 of Title I of Part Ten of Regulation (EU) No 575/2013 and in the provisions of national legislation exercising the options granted to the competent authorities by that Regulation.

4. The loss absorption amount to be determined by the resolution authority shall be the sum of the requirements referred to in points (a) (b), and (c) of paragraph 2, or any

[3] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

[4] 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 and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

higher amount necessary to comply with the requirements referred to in points (d) or (e) of paragraph 2.

5. The resolution authority may set a loss absorption amount using either of the following methods:

(a) a loss absorption amount equal to the default loss absorption amount determined in accordance with paragraph 4;

(b) a loss absorption amount, which may be either:

(i) higher than the default loss absorption amount determined pursuant to paragraph (4) where:

– the need to absorb losses in resolution is not fully reflected in the default loss absorption amount, taking into account information requested from the competent authority relating to the institution's business model, funding model, and risk profile pursuant to Article 4; or

– it is necessary to reduce or remove an impediment to resolvability or absorb losses on holdings of MREL instruments issued by other group entities;

(ii) lower than the default loss absorption amount determined pursuant to paragraph (4) to the extent that, taking into account information received from the competent authority relating to the institution's business model, funding model, and risk profile pursuant to Article 4:

– additional own funds requirements referred to in paragraph 2(b), which have been determined on the basis of the outcome of stress tests or to cover macroprudential risks, are assessed not to be relevant to the need to ensure losses can be absorbed in resolution; or

– part of the combined buffer requirement referred to in paragraph 2(c) is assessed by the resolution authority not to be relevant to the need to ensure losses can be absorbed in resolution.

6. Where the option in paragraph 5(b) is applied, the resolution authority shall provide the competent authority with a reasoned explanation of the loss absorption amount that has been set, in the framework of the obligation of the resolution authority to consult the competent authority under Article 45(6) of Directive 2014/59/EU**.**

Article 2

Determination of the amount necessary to continue to comply with conditions for authorisation and to carry out activities and sustain market confidence in the institution

1. Resolution authorities shall determine an amount of recapitalisation which would be necessary to implement the preferred resolution strategy, as identified in the resolution planning process.

2. Where the resolvability assessment concludes that liquidation of the institution under normal insolvency proceedings is feasible and credible, the recapitalisation amount shall be zero, unless the resolution authority determines that a positive amount is necessary on the grounds that liquidation would not achieve the resolution objectives to the same extent as an alternative resolution strategy.

3. When estimating the institution's regulatory capital needs after implementation of the preferred resolution strategy, the resolution authority shall use the most recent reported values for the relevant total risk exposure amount or leverage ratio denominator, as applicable, unless all the following factors apply:

   (a) the resolution plan identifies, explains, and quantifies any change in regulatory capital needs immediately as a result of resolution action;

   (b) the change referred to in point (a) is considered in the resolvability assessment to be both feasible and credible without adversely affecting the provision of critical functions by the institution, and without recourse to extraordinary financial support other than contributions from resolution financing arrangements, consistently with Article 101(2) of Directive 2014/59/EU and the principles governing their use set out in paragraphs 5 and 8 of Article 44 of that Directive;

4. Where the changes referred to in paragraph 3 are dependent on the actions of a purchaser of assets or business lines of the institution under resolution, or of third parties, the resolution authority shall prepare a reasoned explanation to the competent authority regarding the feasibility and credibility of that change.

5. The recapitalisation amount shall be at least equal to the amount necessary to satisfy applicable capital requirements necessary to comply with the conditions for authorisation after the implementation of the preferred resolution strategy.

6. The capital requirements referred to in paragraph 5 shall include the following:

   (a) own funds requirements pursuant to Articles 92 and 458 of Regulation (EU) No 575/2013, which include:

      (i) a CET1 capital ratio of 4.5% of the total risk exposure amount;

      (ii) a Tier 1 capital ratio of 6% of the total risk exposure amount;

      (iii) a total capital ratio of 8% of the total risk exposure amount;

   (b) any requirement to hold own funds in excess of the requirement listed in point (a) of this paragraph , in particular pursuant to point (a) of Article 104(1) of Directive 2013/36/EU;

   (c) the Basel I floor according to Article 500 of Regulation (EU) No 575/2013;

(d) any applicable leverage ratio requirement.

7. The recapitalisation amount shall also include any additional amount that the resolution authority considers necessary to maintain sufficient market confidence after resolution.

8. The default additional amount shall be equal to the combined buffer requirement, as specified in Chapter 4, Section 1 of Directive 2013/36/EU which would apply to the institution after the application of resolution tools.

The additional amount required by the resolution authority may be lower than the default amount, if the resolution authority determines that a lower amount would be sufficient to sustain market confidence and ensure both the continued provision of critical economic functions by the institution and the access to funding without recourse to extraordinary financial support other than contributions from resolution financing arrangements, consistently with Article 101(2) and paragraphs 5 and 8 of Article 44 of Directive 2014/59/EU.

The assessment of the amount necessary to support market confidence shall take into account whether the capital position of the institution after the resolution would be appropriate in comparison with the current capital position of peer institutions.

9. The resolution authority may determine, in consultation with the competent authority and taking into account information received from the competent authority relating to the institution's business model, funding model, and risk profile pursuant to Article 4, that, notwithstanding the provisions of paragraph 3, it would be feasible and credible for all or part of any additional own funds requirement or buffer requirements currently applicable to the entity not to apply after implementation of the resolution strategy. In this case that part of the requirement may be disregarded for the purposes of determining the recapitalisation amount.

10. The assessment referred to in paragraph 7 shall take account of capital resources in other group entities which would credibly and feasibly be available to support market confidence in the entity following resolution, in the case of entities which:

(a) are subsidiaries of a group subject to a consolidated MREL;

(b) would continue to fulfil the conditions referred to in point (a) following implementation of the preferred resolution strategy; and

(c) would not be expected to maintain market confidence and access to funding on an individual basis following implementation of the preferred resolution strategy.

11. Where the assets, liabilities or business lines of the institution are to be split between more than one entity following implementation of the preferred resolution strategy, references to risk exposure amounts and capital requirements in paragraphs 1 to 10 should be understood as the aggregate amounts across these entities.

Article 3

Exclusions from bail-in or partial transfer which are an impediment to resolvability

1. The resolution authority shall identify any liabilities which are excluded from bail-in under Article 44(2) of Directive 2014/59/EU or are reasonably likely to be fully or partially excluded from bail-in under Article 44(3) of that Directive, or transferred to a recipient in full, using other resolution tools based on the resolution plan.

2. Without prejudice to Article 6, if any liability which qualifies for inclusion in MREL is identified as being potentially fully or partially excluded pursuant to paragraph 1, the resolution authority shall ensure that the MREL is sufficient for purposes of the loss absorption amount determined pursuant to Article 1 and for achieving the amount of recapitalisation determined pursuant to Article 2 without write down or conversion of those liabilities.

3. The resolution authority shall determine whether liabilities identified in accordance with paragraph 1 rank equally or junior in the insolvency creditor hierarchy to any class of liabilities which includes liabilities that qualify for inclusion in MREL and, for each such class, whether the amount of liabilities identified totals more than 10% of that class.

   Where the resolution authority determines that conditions referred to in the first subparagraph are met, it shall also assess whether the need to absorb losses and to contribute to the recapitalisation which would be borne by the liabilities referred to in the first subparagraph, were they not excluded from bail-in, can be satisfied by liabilities which qualify for inclusion in MREL and are not excluded from loss absorption or recapitalisation without breaching the creditor safeguards provided in Article 73 of Directive 2014/59/EU.

4. The resolution authority shall keep a record of any assumptions, valuations or other information used to determine that the MREL meets the conditions set out in paragraph 3.

Article 4

Business model, funding model and risk profile

1. For purposes of point (d) of Article 45(6) of Directive 2014/59/EU and within the framework of the consultation required by Article 45(6) of Directive 2014/59/EU, the resolution authority shall take into account information received from the competent authority, including the summary and explanation of the outcomes of the supervisory review and evaluation process conducted pursuant to Article 97 of Directive 2013/36/EU and in particular:

   (a) a summary of the assessment of each of the business model, funding model, and overall risk profile of the institution;

   (b) a summary of the assessment of whether capital and liquidity held by an institution ensure sound coverage of the risks posed by the business model, funding model, and overall risk profile of the institution;

(c) information on how risks and vulnerabilities arising from the business model, funding model, and overall risk profile of the institution identified in the supervisory review and evaluation process are reflected, directly or indirectly, in the additional own fund requirements applied to an institution pursuant to point (a) of Article 104(1) of Directive 2013/36/EU, based on the outcomes of the supervisory review and evaluation process;

(d) information on other prudential requirements applied to an institution to address risks and vulnerabilities arising from the business model, funding model and overall risk profile of the institution identified in the supervisory review and evaluation process.

2. The information referred to in paragraph 1 shall be taken into account by the resolution authority where it makes any adjustments to the default loss absorption and recapitalisation amounts, as described in Article 1(5) and Article 2(9), in order to ensure that the adjusted MREL, adequately reflects risks affecting resolvability arising from the institution's business model, funding profile and overall risk profile.

The resolution authority shall provide the competent authority with a reasoned explanation on how that information has been taken into account in any such adjustment, in the framework of the obligation of the resolution authority to consult the competent authority under Article 45 (6) of Directive 2014/59/EU.

3. In the case of an entity or group which is subject to capital and prudential requirements pursuant to Regulation (EU) No 648/2012 of the European Parliament and of the Council[5] or Regulation (EU) No 909/2014 of the European Parliament and of the Council[6], only capital requirements pursuant to Regulation (EU) No 575/2013 and Directive 2013/36/EU should be taken into account for assessing the default loss absorption and recapitalisation requirements pursuant to Articles 1 and 2 of this Regulation.

The resolution authority may adjust the loss absorption amount to take account of feasible and credible contributions to loss absorption or recapitalisation envisaged by specific sources required by Regulation (EU) No 648/2012 or Regulation (EU) No 909/2014.

4. In the case of entities which are subsidiaries of a group subject to a consolidated MREL, the resolution authority may exclude from its assessment of the loss absorption amount and recapitalisation amount any buffer which is set only on a consolidated basis.

5. Where an authority other than the competent authority has been designated as the responsible authority for setting the countercyclical buffer rate, the resolution authority may request additional information from the designated authority.

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5 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 27.7.2012, p. 1).

6 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 28.8.2014, p. 1).

Article 5

Size and systemic risk

1. For institutions and groups which have been designated as G-SIIs or O-SIIs by the relevant competent authorities, and for any other institution which the competent authority or the resolution authority considers reasonably likely to pose a systemic risk in case of failure and which does not fall within Article 2(2) of this Regulation, the resolution authority shall take into account the requirements set out in Article 44 of Directive 2014/59/EU.

2. Where a joint decision on MREL by the resolution college is required in accordance with Article 45 of Directive 2014/59/EU, for institutions which have been designated as G-SIIs or O-SIIs by the relevant competent authorities, and institutions within them, and for any other institution which the competent authority or the resolution authority considers reasonably likely to pose a systemic risk in case of failure, any downward adjustment to estimate capital requirements after resolution pursuant to Article 2(3) shall be documented and explained in the information provided to the members of the resolution college.

Article 6

Contributions by the deposit guarantee scheme to the financing of resolution

1. The resolution authority may reduce the MREL to take account of the amount which a deposit guarantee scheme is expected to contribute to the financing of the preferred resolution strategy in accordance with Article 109 of Directive 2014/59/EU.

2. The size of any such reduction shall be based on a credible assessment of the potential contribution from the deposit guarantee scheme, and shall at least:

   (a) be less than a prudent estimate of the potential losses which the deposit guarantee scheme would have had to bear, had the institution been wound up under normal insolvency proceedings, taking into account the priority ranking of the deposit guarantee scheme pursuant to Article 108 of Directive 2014/59/EU;

   (b) be less than the limit on deposit guarantee scheme contributions set out in the second subparagraph of Article 109(5) of Directive 2014/59/EU;

   (c) take account of the overall risk of exhausting the available financial means of the deposit guarantee scheme due to contributing to multiple bank failures or resolutions; and

   (d) be consistent with any other relevant provisions in national law and the duties and responsibilities of the authority responsible for the deposit guarantee scheme.

3. The resolution authority shall, after consulting the authority responsible for the deposit guarantee scheme, document its approach as regards the assessment of the overall risk of exhausting the available financial means of the deposit guarantee

scheme and apply reductions in accordance with paragraph 1, provided that that risk is not excessive.

Article 7

Combined assessment of MREL

1. Resolution authorities shall ensure that MREL is sufficient to allow the write down or conversion of an amount of own funds and qualifying eligible liabilities at least equal to the sum of loss absorption and the recapitalisation amounts, as determined by the resolution authorities in accordance with Articles 1 and 2, subject to provisions laid down in Articles 3 to 6.

2. Resolution authorities shall express the calculated MREL as a percentage of total liabilities and own funds of the institution, with derivative liabilities included in the total liabilities on the basis that full recognition is given to counterparty netting rights.

3. Resolution authorities shall establish a schedule or process for updating the MREL, taking into account:

   (a) the need to update the MREL in parallel with the assessment of resolvability;

   (b) whether the volatility of the entity or group's total liabilities and own funds as a result of its business model would be likely to result in the MREL no longer being appropriate at an earlier date.

Article 8

Transitional and post-resolution arrangements

1. By way of derogation from Article 7, resolution authorities may determine an appropriate transitional period to reach the final MREL or for an institution or entity to which resolution tools have been applied.

2. For the purposes of paragraph 1, resolution authorities shall determine an appropriate transitional period which is as short as possible. They shall also communicate to the institution a planned MREL for each 12 month period during the transitional period. At the end of the transitional period, the final MREL shall be equal to the amount determined under Article 7.

3. Resolution authorities shall not be prevented from subsequently revising either the transitional period or any planned MREL.

Article 9

Entry into Force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union.*

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 23.5.2016

For the Commission
The President
Jean-Claude JUNCKER