Council of the European Union

Brussels, 5 March 2026
(OR. en)

15445/1/25
REV 1

Interinstitutional File:
2023/0112(COD)

EF 371
ECOFIN 1519
CODEC 1820
PARLNAT
ECB

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject:	Position of the Council at first reading with a view to the adoption of a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2014/59/EU as regards early intervention measures, conditions for resolution and funding of resolution action and Directive 2014/24/EU as regards valuation services in resolution – Adopted by the Council on 5 March 2026

DIRECTIVE (EU) 2026/…
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of …

amending Directive 2014/59/EU as regards early intervention measures, conditions for resolution and funding of resolution action and Directive 2014/24/EU as regards valuation services in resolution

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank[1],

Having regard to the opinion of the European Economic and Social Committee[2],

Acting in accordance with the ordinary legislative procedure[3],

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1 OJ C 307, 31.8.2023, p. 19.
2 OJ C 349, 29.9.2023, p. 161.
3 Position of the European Parliament of 24 April 2024 (OJ C, C/2025/3753, 17.9.2025, ELI: http://data.europa.eu/eli/C/2025/3753/oj) and position of the Council at first reading of 5 March 2026 (not yet published in the Official Journal). Position of the European Parliament of … (not yet published in the Official Journal).

Whereas:

(1) The Union resolution framework for credit institutions and investment firms ('institutions') was established in the aftermath of the 2008-2009 global financial crisis and following the Key Attributes of Effective Resolution Regimes for Financial Institutions first published by the Financial Stability Board in October 2011. The Union resolution framework consists of Directive 2014/59/EU of the European Parliament and of the Council[4] and Regulation (EU) No 806/2014 of the European Parliament and of the Council[5]. Both legislative acts apply to institutions and to other entities that fall under the scope of that Directive or of that Regulation ('entities'). The Union resolution framework aims to deal in an orderly manner with failures of institutions and entities by preserving their critical functions and avoiding threats to financial stability, and at the same time protecting depositors and public funds. In addition, the Union resolution framework is intended to foster the development of the internal market in banking by creating a harmonised regime to address cross-border crises in a coordinated way and by avoiding issues of distortions of competition and risks of unequal treatment.

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4 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, 12.6.2014, p. 190, ELI: http://data.europa.eu/eli/dir/2014/59/oj).

5 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, 30.7.2014, p. 1, ELI: http://data.europa.eu/eli/reg/2014/806/oj).

(2) Several years into its implementation, the Union resolution framework does not deliver as intended with respect to some of those objectives. In particular, while institutions and entities have made significant progress towards resolvability and have dedicated significant resources to that end, in particular through the build-up of the loss absorption and recapitalisation capacity and the filling-up of resolution financing arrangements, the Union resolution framework is seldom resorted to. Instead, failures of certain smaller and medium-sized institutions and entities are typically addressed through unharmonised national measures. Taxpayers' money is still used rather than industry-funded safety nets, such as resolution financing arrangements. That situation appears to arise from inadequate incentives. Those inadequate incentives are the result of the interplay of the Union resolution framework with national rules, whereby the broad discretion of resolution authorities when carrying out the public interest assessment is not always exercised in a way that reflects the intended application of the Union resolution framework.

At the same time, the Union resolution framework has seen little use due to the risk for depositors of deposit-funded institutions of having to bear losses to ensure that those institutions can access external funding in resolution, in particular in the absence of other bail-inable liabilities. Finally, the fact that there are less stringent rules on access to funding outside resolution than in resolution has discouraged the application of the Union resolution framework in favour of other solutions, which often entail the use of taxpayers' money instead of the use of own resources of institutions or entities or of industry-funded safety nets. That situation, in turn, generates risks of fragmentation, risks of suboptimal outcomes in managing institutions and entities' failures, in particular in the case of smaller and medium-sized institutions and entities, and opportunity costs from unused financial resources. It is therefore necessary to ensure a more effective and coherent application of the Union resolution framework and to ensure that it can be applied whenever doing so is in the public interest, including for certain smaller and medium-sized institutions which are primarily funded through deposits and do not have sufficient other bail-inable liabilities.

(3) One of the main objectives of reviewing Directive 2014/59/EU is to better safeguard taxpayers' money by ensuring that the resolution framework can be applied whenever necessary. The use of taxpayers' money should, with the introduction of a revised framework, be significantly reduced in order to ensure that industry-funded safety nets, including resolution financing arrangements, are more often and more effectively used.

(4) The intensity and level of detail of the resolution planning work needed with respect to subsidiaries that have not been identified as resolution entities varies depending on the size of the institutions and entities concerned, their risk profile, their role in the provision of critical functions, their core business lines, their importance for the operational continuity of the group after resolution and the group resolution strategy, and on the importance of the subsidiary in the Member State where it is established, including its potential systemic importance and its potential impact on the available financial means of the deposit guarantee scheme (DGS) in the event of winding up under normal insolvency proceedings. Resolution authorities should therefore be able to consider those factors when identifying the measures to be taken in respect of such subsidiaries and follow a commensurate approach, where appropriate.

(5) An institution or entity that is being wound up under national law, following a determination that the institution or entity is failing or is likely to fail and a conclusion by the resolution authority that its resolution is not in the public interest, is ultimately heading towards market exit. In such cases a plan for resolving that institution or entity is no longer needed, irrespective of whether the competent authority has already withdrawn the authorisation of that institution or entity. The same applies with regard to a residual institution under resolution after the transfer of assets, rights and liabilities in the context of a transfer strategy. It is therefore appropriate to specify that in such situations the adoption of resolution plans is not required.

(6) The procedure for the submission of information, by entities that are part of a group, to resolution authorities for the preparation of resolution plans should be aligned with the procedure set out in Directive 2014/59/EU for the submission of information for the monitoring of the minimum requirement for own funds and eligible liabilities (MREL) to avoid unnecessary costs and complexity.

(7) Resolution authorities can currently decide to prohibit certain distributions where an institution or entity, whether or not it is a resolution entity, fails to meet the combined buffer requirement when considered in addition to the MREL. However, in certain situations, an institution or entity might be required to comply with the MREL on a different basis than the basis on which that institution or entity is required to comply with the combined buffer requirement. That situation creates uncertainties as to the conditions for the exercise of the powers of resolution authorities to prohibit distributions and for the calculation of the Maximum Distributable Amount related to the MREL. It should therefore be laid down that, in those cases, resolution authorities should exercise the power to prohibit certain distributions on the basis of the estimated combined buffer requirement resulting from the methodology set out in the delegated act adopted pursuant to Article 45c(4) of Directive 2014/59/EU. To ensure transparency and legal certainty, resolution authorities should communicate the estimated combined buffer requirement to the institution or entity, which should then make that estimated combined buffer requirement publicly available.

(8) Early intervention measures were introduced to enable competent authorities to remedy the deterioration of the financial and economic situation of an institution or entity and to reduce, to the extent possible, the risk and impact of a possible resolution. However, due to a lack of certainty regarding the triggers for the application of those early intervention measures and partial overlaps with supervisory measures, early intervention measures have seldom been used. The conditions for the application of those early intervention measures should therefore be simplified and further specified. To dispel uncertainties concerning the conditions and timing for the removal of an institution or entity's management body and the appointment of temporary administrators, those measures should be explicitly identified as early intervention measures and their application should be subject to the same triggers. Under specific conditions, a gradual wind-down of activities can be a cost-effective solution facilitating an institution or entity with a weak business model to exit the market, thus avoiding a protracted decline that culminates in the failure of the institution or entity.

Competent authorities should have the early intervention power to request the submission of a plan to be implemented in the case of a voluntary wind-down of an institution or entity's activities, while leaving the decision about the implementation of such plan to the institution or entity concerned. When applying early intervention powers, competent authorities should be required to choose the appropriate measures to address a specific situation in compliance with the principle of proportionality. To enable competent authorities to take into account reputational risks or risks related to money laundering or information and communication technology, competent authorities should assess the conditions for the application of early intervention measures not only on the basis of quantitative indicators, such as capital or liquidity requirements, level of leverage, non-performing loans or concentration of exposures, but also on the basis of qualitative triggers. The decision-making process in relation to early intervention measures should allow for their swift consideration and, if appropriate, their application, in order to avoid any further worsening of the situation of the institution or entity.

(9) To improve legal certainty, the early intervention measures laid down in Directive 2014/59/EU that overlap with existing powers under the prudential framework laid down in Directives 2013/36/EU[6] and (EU) 2019/2034[7] of the European Parliament and of the Council should be removed. In addition, it is necessary to ensure that resolution authorities are able to prepare for the possible resolution of an institution or entity. The competent authority should therefore inform the resolution authorities of the deterioration of the situation of an institution or entity sufficiently early, and resolution authorities should have the necessary powers for the implementation of preparatory measures. Importantly, to enable the resolution authorities to react as swiftly as possible to a deterioration of the situation of an institution or entity, the prior application of early intervention measures should not be a condition for the resolution authority to make arrangements for the marketing of the institution or entity or to request information to update the resolution plan and prepare the valuation.

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6 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, ELI: http://data.europa.eu/eli/dir/2013/36/oj).

7 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, 5.12.2019, p. 64, ELI: http://data.europa.eu/eli/dir/2019/2034/oj).

When marketing an institution that is a member of an institutional protection scheme (IPS), the resolution authority should consider measures that the IPS could take prior to resolution to avert the material risk that the institution will fail or become likely to fail. To ensure a consistent, coordinated, effective and timely reaction to the deterioration of the situation of an institution or entity and to prepare properly for a possible resolution, it is necessary to enhance the interaction and coordination between competent authorities and resolution authorities. As soon as an institution or entity meets the conditions for the application of early intervention measures, competent authorities and resolution authorities should increase their exchanges of information, including provisional information, and monitor the situation of the institution or entity jointly.

(10) It is necessary to ensure timely action and early coordination between the competent authority and the resolution authority while an institution or entity is still a going concern but there is a material risk that the institution or entity might fail. The competent authority should therefore notify the resolution authority as early as possible of such a risk. That notification should contain the reasons for the competent authority's assessment and a non-exhaustive overview of the alternative private sector measures, supervisory action or early intervention measures that are available to prevent the failure of the institution or entity within a reasonable timeframe. Such early notification does not affect any alternative private sector measures, including measures by an IPS, that would prevent the failure or the likely failure of the institution or entity within a reasonable timeframe or prejudice the procedures to determine whether the conditions for resolution are met. The prior notification by the competent authority to the resolution authority of a material risk that an institution or entity is failing or is likely to fail or the end of the specified timeframe for the implementation of the measures to address such material risk should not be a condition for, or otherwise necessarily imply, a subsequent determination that an institution or entity is failing or is likely to fail.

Moreover, if at a later stage the institution or entity is assessed to be failing or likely to fail and there are no alternative solutions to prevent such failure within a reasonable timeframe, the resolution authority has to take a decision on whether to take resolution action. In such a case, the timeliness of the decision to apply resolution action to the institution or entity can be fundamental to the successful implementation of the resolution strategy, in particular because an earlier intervention in the institution or entity can contribute to ensuring sufficient levels of loss absorption capacity and liquidity to execute that strategy. It is therefore appropriate to enable the resolution authority to assess, in close cooperation with the competent authority, what constitutes a reasonable timeframe to implement alternative measures to avoid the failure of the institution or entity. To ensure a timely outcome and to enable the resolution authority to prepare properly for the potential resolution of an institution or entity, the resolution authority and the competent authority should meet regularly, and the resolution authority should decide on the frequency of those meetings, having regard to the circumstances of the case.

(11) The resolution framework is meant to have the potential to be applied to any institution or entity, irrespective of its size and business model, if the tools available under national law are not adequate to manage its failure. However, some objectives of the framework need to be further specified to increase harmonisation and to promote convergence. The resolution objective of ensuring continuity of critical functions aims to safeguard financial stability and the real economy. It is therefore necessary to ensure that the provision of critical functions is not discontinued. In particular, it is necessary to clarify that, depending on the specific circumstances, resolution authorities should be able to conclude that certain functions of an institution or entity are considered to be critical even if their discontinuance would disrupt financial stability or services that are essential to the real economy only at regional level. As regards deposit taking, resolution authorities are to pay due attention to the risk of a loss of confidence of depositors holding deposits not covered by Directive 2014/49/EU of the European Parliament and of the Council[8]. Public funds should be protected by minimising reliance on extraordinary public financial support, in particular when provided from the budget of a Member State. Depositors covered by Directive 2014/49/EU, investors covered by Directive 97/9/EC of the European Parliament and of the Council[9], client funds and client assets are also to be protected.

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8 Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ L 173, 12.6.2014, p. 149, ELI: http://data.europa.eu/eli/dir/2014/49/oj).

9 Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes (OJ L 84, 26.3.1997, p. 22, ELI: http://data.europa.eu/eli/dir/1997/9/oj).

(12) During the resolution planning stage, when deciding whether an institution should be earmarked for resolution, the fact that an institution is subject to simplified obligations should, in general, be used by the resolution authorities as an indicator that resolving it in the case of failure would not be in the public interest. Conversely, the fact that an institution is not subject to simplified obligations could indicate that resolving it in the case of failure would be in the public interest.

(13) The winding up of an entity under normal insolvency proceedings might, in some cases, jeopardise financial stability and interrupt the provision of critical functions. This could be the case, for instance, where insolvency would likely result in losses on a material share of deposits or significant difficulties in the continuity of access to deposits, and where the resolution authority considers that those losses or those difficulties could have a significant impact on the provision of critical functions, on financial stability through contagion or on the real economy. In such cases it is highly likely that there would be a public interest in placing the institution or entity under resolution rather than winding it up under normal insolvency proceedings. The assessment of whether the resolution of an institution or entity is in the public interest should also reflect, to the extent possible, the difference between, on the one hand, funding provided through industry-funded safety nets, namely the resolution financing arrangements or the DGSs, and, on the other hand, funding provided by Member States from taxpayers' money. Such funding provided by Member States bears a higher risk of moral hazard and a lower incentive for market discipline. Therefore, when assessing the objective of minimising reliance on extraordinary public financial support, resolution authorities should prefer funding through the resolution financing arrangements or the DGSs to funding through an equal amount of resources from the budget of Member States.

(14) When carrying out the public interest assessment, resolution authorities should assess whether any of the resolution objectives would be at risk if the failing institution or entity were wound up under normal insolvency proceedings. Resolution action should not be considered to be necessary in the public interest if none of the resolution objectives is at risk if the institution or entity were wound up under normal insolvency proceedings. If at least one resolution objective is assessed by the resolution authority to be at risk in the case of winding up under normal insolvency proceedings, the outcome of the public interest assessment should be negative only where the winding up of the failing institution or entity under normal insolvency proceedings would achieve the resolution objectives not only to the same extent as resolution but more effectively.

(15) Where a failing institution or entity is not placed under resolution, it should be wound up in accordance with the procedures available under national law. Such procedures might vary substantially from one Member State to the other. While it is appropriate to allow for sufficient flexibility to use the existing national procedures, certain aspects should be clarified to ensure that the institutions or entities concerned exit the market.

(16) It should be ensured that the competent authority or the resolution authority initiates or requests the initiation of a procedure under national law to wind up an institution or entity that is determined to be failing or likely to fail but not placed under resolution. Where voluntary winding up of the institution or entity upon a decision of shareholders is available under national law, such option should remain available and the relevant authority should be empowered to request the initiation of such a procedure. However, it should be ensured that, in the absence of swift action from the shareholders, the relevant national authority takes action.

(17) It should also be laid down that the final outcome of winding up procedures is the termination of banking activities leading to the exit of the failing institution or entity from the market. Depending on the national law applied, that outcome can be achieved in different ways. Those can include the sale of the institution or entity or parts of it, the sale of specific assets or liabilities or a gradual wind-down, including of payments and deposit-taking, with a view to selling its assets gradually to repay the affected creditors. A termination of banking activities might also require, inter alia, a limitation on the issuance of new liabilities to cover only the refinancing needs arising from existing assets so that the maturity of the liabilities is not extended. To enhance the predictability of the procedures, that outcome should be reached within a reasonable timeframe.

(18) Competent authorities should be empowered to withdraw the authorisation of an institution or entity solely on the basis of the fact that the institution or entity is failing or is likely to fail but is not placed under resolution. Competent authorities should be able to withdraw the authorisation to support the objective of winding up the institution or entity in accordance with national law, particularly in cases where the available procedures under national law cannot be initiated at the moment at which the institution or entity is determined to be failing or likely to fail, including the cases where the institution or entity is not yet balance-sheet insolvent. To further ensure that the objective of winding up the institution or entity can be achieved, Member States should ensure that the withdrawal of authorisation by the competent authority is also included among the possible conditions to initiate at least one of the procedures available under national law and is applicable to institutions or entities that are failing or likely to fail but which are not placed under resolution.

(19) In light of the experience acquired in the implementation of Regulation (EU) No 806/2014 and Directives 2014/49/EU and 2014/59/EU, it is necessary to further specify the conditions under which measures of a precautionary nature that qualify as extraordinary public financial support may exceptionally be granted. It should be ensured that precautionary measures are taken sufficiently early. Moreover, measures to provide relief for impaired assets, including asset management vehicles or asset guarantee schemes, can prove effective and efficient in addressing the causes of possible financial distress faced by institutions and entities and preventing their failure and could therefore constitute relevant precautionary measures. It should therefore be specified that precautionary measures can take the form of impaired asset measures.

(20) To preserve market discipline, protect public funds and avoid distortions of competition, precautionary measures should remain the exception and only be applied to address situations of serious disturbance in the market and to preserve financial stability, in particular in the event of a systemic crisis. Moreover, precautionary measures should not be used to address losses incurred or likely to be incurred. The most reliable instrument to quantify losses incurred or likely to be incurred is an asset quality review by the European Central Bank (ECB), the European Supervisory Authority (European Banking Authority) (EBA) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council[10] or by national competent authorities. Competent authorities should use such a review or, where appropriate, on-site inspections, to quantify losses incurred or likely to be incurred where such a review or inspections can be carried out within a reasonable timeframe. Where that is not possible, competent authorities should quantify losses incurred or likely to be incurred in the most reliable way possible under the prevailing circumstances, where appropriate on the basis of the institution or entity's balance sheet, provided that the balance sheet complies with the applicable accounting rules and standards, as confirmed by an independent external auditor.

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[10] 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, ELI: http://data.europa.eu/eli/reg/2010/1093/oj).

The consideration that an institution or entity is solvent, for the purposes of support measures in the form of precautionary recapitalisation and of State guarantees of newly issued liabilities, should be based on a forward-looking assessment of whether the institution or entity can comply with the own funds requirements laid down in Regulation (EU) No 575/2013[11] or Regulation (EU) 2019/2033[12] of the European Parliament and of the Council, and the additional own funds requirement laid down in Directive 2013/36/EU or (EU) 2019/2034.

[11] Regulation (EU) 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, 27.6.2013, p. 1, ELI: http://data.europa.eu/eli/reg/2013/575/oj).

[12] 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, ELI: http://data.europa.eu/eli/reg/2019/2033/oj).

(21) The aim of precautionary recapitalisation is to support viable institutions and entities identified as likely to encounter temporary difficulties in the near future and to prevent their situation from deteriorating further. To avoid granting public subsidies to businesses that are already unprofitable, precautionary measures in the form of acquisition of own funds instruments or other capital instruments or through impaired asset measures should not be granted in an amount that exceeds the amount necessary to cover capital shortfalls as identified in the adverse scenario of a stress test or equivalent exercise. To ensure that public financing is ultimately discontinued, those precautionary measures should also be limited in time and contain a clear timeline for their termination (‘strategy to exit the support measure’). Perpetual instruments, including Common Equity Tier 1 capital, should only be used in exceptional circumstances and be subject to certain quantitative limits because by their nature they are not well suited for compliance with the condition that they be temporary. Competent authorities should request a one-time remediation plan from institutions and entities that fail to comply with the terms of the strategy to exit the support measure. To ensure the exit from the market by institutions or entities that prove not to be viable, a relevant authority should determine whether the institution or entity is failing or is likely to fail where the competent authority is not satisfied with the remediation plan or where the institution or entity fails to comply with the remediation plan.

(22) Precautionary measures should be limited to the amount that the institution or entity would need to maintain its solvency in the event of an adverse scenario of a stress test or equivalent exercise. In the case of precautionary measures in the form of impaired asset measures, the receiving institution or entity should be able to use the amount granted to cover losses on the transferred assets or in combination with an acquisition of capital instruments, provided that the overall amount of the shortfall identified is not exceeded. It is also necessary to ensure that precautionary measures in the form of impaired asset measures comply with existing State aid rules and best practices, that they restore the institution or entity's long-term viability, that State aid is limited to the minimum necessary and that distortions of competition are avoided. For those reasons, the authorities concerned should, in the case of precautionary measures in the form of impaired asset measures, take into account the specific guidance, including the Commission's blueprint for how national asset management companies can be set up and the communication of the Commission of 16 December 2020 on tackling non-performing loans in the aftermath of the COVID-19 pandemic. Precautionary measures in the form of impaired asset measures should always be subject to the overriding condition that they be temporary. Public guarantees granted for a specified period in relation to the impaired assets of the institution or entity concerned are expected to ensure better compliance with that condition than are transfers of such assets to a publicly supported entity.

(23) To cover material infringements of prudential requirements, it is necessary to further specify the conditions for determining that holding companies are failing or are likely to fail. An infringement of those requirements by a holding company should be material where the type and extent of such infringement is comparable with an infringement that, if committed by a credit institution, would justify the withdrawal of the authorisation by the competent authority in accordance with Article 18 of Directive 2013/36/EU.

(24) Member States might have, under national law, powers to suspend payment or delivery obligations that can include eligible deposits. Where the suspension of payment or delivery obligations is not directly related to the financial circumstances of the credit institution, deposits might not be unavailable for the purposes of Directive 2014/49/EU. As a consequence, depositors might not be able to access their deposits for an extended period. To maintain depositor trust and confidence in the banking sector and to maintain financial stability, Member States should ensure that depositors have access to an appropriate daily amount from their deposits, to cover, in particular, the cost of living should their deposits be made inaccessible due to a suspension of payments for reasons other than leading to depositor payout. Such a procedure should remain exceptional and Member States should ensure that depositors have access to appropriate daily amounts.

(25) To increase legal certainty, and in view of the potential relevance of liabilities arising from future uncertain events, including the outcome of litigation pending at the time of resolution, it is necessary to lay down the treatment those liabilities should receive for the purposes of the application of the bail-in tool. Resolution authorities should draw a distinction between liabilities based on present obligations arising from past events which will result in a loss but the timing or amount of which is uncertain and liabilities that might arise in the future but would not result in a loss or that might arise in the future only if an uncertain event occurs.

(26) It should also be specified that liabilities of uncertain timing or amount, where those liabilities are based on present obligations arising from past events which will result in a loss, are to be treated the same way as other liabilities. Such liabilities should be bail-inable, unless they meet one of the specific criteria for being excluded from the scope of the bail-in tool. Given the potential relevance of those liabilities in resolution and to ensure certainty in the application of the bail-in tool, it should be specified that they are part of the bail-inable liabilities and that, as a result, the bail-in tool could be applied to them. To ensure the effective application of the bail-in tool to liabilities of uncertain timing or amount, the resolution authority should have the power to reduce, including to reduce to zero, the principal amount due in respect of such liabilities and to convert such liabilities into shares or other instruments of ownership. However, the reduction or conversion can only take effect if and once the liability of uncertain timing or amount is conclusively determined in terms of timing and amount.

(27) It is necessary to ensure that a liability that could arise in the future from an uncertain event or a liability of uncertain timing or amount which is based on a present obligation at the time of resolution does not impair the effectiveness of the resolution strategy and in particular of the bail-in tool. To achieve that objective, the valuer should, as part of the valuation for the purposes of resolution, assess such liabilities and quantify the potential value of those liabilities to the valuer's best abilities. To ensure that, after the resolution process, the institution or entity can sustain sufficient market confidence for an appropriate amount of time, the valuer should take into account that potential value when establishing the amount by which bail-inable liabilities need to be written down or converted to restore the capital ratios of the institution under resolution. In particular, the resolution authority should apply its conversion powers to bail-inable liabilities to the extent necessary to ensure that the recapitalisation of the institution under resolution is sufficient to cover potential losses which might be caused by a liability that could arise in the future from an uncertain event or that is based on a present obligation but is uncertain in terms of timing or amount. When assessing the amount to be written down or converted, the resolution authority should carefully consider the impact of the potential loss on the institution under resolution on the basis of a number of factors, including the likelihood of the event materialising, the timeframe for its materialisation and the amount of the liability.

(28) In certain circumstances, after the resolution financing arrangement has provided a contribution up to the maximum of 5 % of the institution or entity's total liabilities including own funds, resolution authorities are able to use additional sources of funding to further support their resolution action. It should be specified more clearly in which circumstances the resolution financing arrangement could provide further support where all bail-inable liabilities that are not eligible deposits, with a priority ranking lower than that of non-covered deposits of natural persons and micro, small and medium-sized enterprises and that are not discretionarily excluded from bail-in have been written down or converted in full.

(29) Deposits that meet the conditions to qualify as eligible liabilities can be used towards compliance with the MREL. However, given the specific nature of deposits, as well as the role they play in the real economy and in sustaining confidence in the banking system, the inclusion of deposits in the scope of liabilities used to meet the MREL should be subject to stricter requirements, as the MREL-eligible resources should be usable in their entirety to bear the losses and contribute to the recapitalisation of a credit institution in the case of its failure. First, as is the case under the current rules, it should not be possible for the deposits used for the MREL to be held by natural persons or by micro, small and medium-sized enterprises. Second, it should be clarified that deposits that confer upon its owner a right to early reimbursement cannot be eligible for the MREL, including in those cases where the contractual provisions provide that early reimbursement is subject to the payment of a penalty. Third, to ensure transparency and minimise the risks of inappropriate placement of such deposits, the relevant contractual provisions should expressly refer to the credit institution's intention to use those deposits for the purpose of complying with the MREL, as well as to the fact that they do not qualify as eligible deposits and that, therefore, no part of that deposit will be repaid by the DGS in the event of unavailability. Fourth, the use of deposits in the MREL should, as a rule, not be allowed, unless resolution authorities have previously authorised their inclusion in the MREL-eligible resources on the basis of an assessment that such deposits would not need to be shielded from bearing losses in the event of resolution and would not give rise to a substantive impediment to resolvability. Resolution authorities should be able to authorise the use of deposits to meet the MREL on a general basis for each resolution entity, without an individual assessment of each deposit, as well as limit the inclusion of deposits to meet the MREL to fixed amounts. Structured deposits, despite being liabilities with embedded derivatives, can also qualify as eligible liabilities of a credit institution, provided all other conditions are met.

(30) In order to avoid cliff-edge effects, it is necessary to grandfather the existing deposits qualifying as eligible liabilities. For deposits taken prior to … [24 months plus one day from the date of entry into force of this amending Directive], the new eligibility criteria should be waived. The grandfathering should end on … [36 months from the date of entry into force of this amending Directive].

(31) Regulations (EU) 2019/876[13] and (EU) 2019/877[14] of the European Parliament and of the Council and Directive (EU) 2019/879 of the European Parliament and of the Council[15] implemented in Union law the international 'Total Loss-absorbing Capacity (TLAC) Term Sheet', published by the Financial Stability Board on 9 November 2015 (the 'TLAC standard'), for global systemically important banks, referred to in Union law as global systemically important institutions (G-SIIs). Regulation (EU) 2019/877 and Directive (EU) 2019/879 also amended the MREL set out in Directive 2014/59/EU and in Regulation (EU) No 806/2014. It is necessary to align the provisions on the MREL set out in Directive 2014/59/EU with the implementation of the TLAC standard for G-SIIs with respect to certain liabilities that could be used to meet the part of the MREL that should be met with own funds and other subordinated liabilities. In particular, liabilities that rank *pari passu* with certain excluded liabilities should be included in the own funds and subordinated eligible instruments of resolution entities where the amount of those excluded liabilities on the balance sheet of the resolution entity does not exceed 5 % of the amount of the own funds and eligible liabilities of the resolution entity and no risks related to the 'no creditor worse off' principle arise from that inclusion.

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13 Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012 (OJ L 150, 7.6.2019, p. 1, ELI: http://data.europa.eu/eli/reg/2019/876/oj).

14 Regulation (EU) 2019/877 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 806/2014 as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms (OJ L 150, 7.6.2019, p. 226, ELI: http://data.europa.eu/eli/reg/2019/877/oj).

15 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, ELI: http://data.europa.eu/eli/dir/2019/879/oj).

(32) For certain resolution entities, the preferred resolution strategy set out in the resolution plan or the group resolution plan primarily relies on the transfer of the business of the institution under resolution to a private purchaser or to a bridge institution. In such cases, it is possible that the DGS could be asked to make a contribution towards resolution action, potentially to ensure the protection of certain deposits that are not covered by the DGS. To minimise moral hazard, it should therefore be specified that, where the resolution plan envisages the application of the sale of business tool or of the bridge institution tool and the resolution entity's exit from the market, the MREL for the resolution entity concerned should not be set at a level below certain thresholds. Where the application of the rules for the calibration of the MREL results in an amount higher than those thresholds, that higher amount should prevail. Those thresholds should not apply to the MREL set for resolution entities the preferred resolution strategy of which consists of the application of the bail-in tool for the purposes of its recapitalisation to an extent sufficient to restore its ability to continue to carry out the activities for which it is authorised, even where the preferred resolution strategy envisages the application of the bail-in tool in combination with other resolution tools, the latter being used in an ancillary manner.

(33) Directive 2014/59/EU does not include dedicated rules on transitional arrangements and intermediate target levels for meeting the MREL after 2024. However, there are situations in which institutions or entities should not be immediately required to comply with a higher MREL set by the resolution authority, including those cases where the increase of the MREL results from material changes to the institution or entity due, for example, to mergers or acquisitions, or from changes to the preferred resolution strategy. In particular, where the preferred resolution strategy changes from a winding up under normal insolvency proceedings to the application of a resolution action, the institution or entity might not be able to immediately meet in full the MREL as set by the resolution authority. Resolution authorities should therefore be empowered to determine appropriate transitional periods for complying with the MREL. Moreover, resolution authorities should have the power to determine binding intermediate target levels for such institutions or entities, to ensure that they build up their MREL-eligible resources in an appropriate way. To protect legitimate expectations, transitional periods previously determined by resolution authorities on the basis of the rules applicable on the relevant date should not be affected by the new rules.

(34) Institutions and entities are required to include contractual recognition of the effects of the bail-in tool in agreements or instruments creating liabilities governed by the laws of third countries, except where it is legally or otherwise impracticable to do so. However, the experience acquired in the application of the resolution framework has shown that the requirements for those contractual bail-in recognition terms, as well as the procedure for notifying and assessing the impracticability of the inclusion of such terms, are unnecessarily broad, complex and burdensome to deliver on the objective of ensuring the resolvability of institutions that might be subject to resolution action. It is therefore appropriate to narrow the scope of application of the requirement to own funds instruments and bail-inable liabilities, thereby excluding, in particular, contracts creating liabilities that might arise in the future from an uncertain event. Additionally, the scope of institutions and entities subject to the requirement should take into account the strategy envisaged in the resolution plan. For that reason, liquidation entities and subsidiaries of resolution entities that are not themselves resolution entities should not be required to include in their contracts the bail-in recognition term, unless the resolution authority requires them to do so. Finally, while the grounds for institutions and entities to invoke the impracticability of the inclusion in their contracts of the bail-in recognition term do not require adjustments, the procedure for institutions and entities to report such situations to the resolution authority should be simplified and incorporated in the annual reporting for the purposes of resolution planning.

(35) To facilitate resolution planning, the assessment of resolvability and the exercise of the power to address or remove impediments to resolvability, as well as to foster information exchange, the resolution authority of an institution with significant branches in other Member States should be able to establish and chair a resolution college.

(36) As the provision of information related to the aggregated number of customers for which an institution or entity is the only or principal banking partner, which is held by the centralised automated mechanisms established pursuant to Directive (EU) 2015/849 of the European Parliament and of the Council[16], can be necessary and proportionate to carry out the public interest assessment, resolution authorities should be able to receive that information on a case-by-case basis. The exact timing of indirect access to information by the resolution authorities should also be specified.

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16 Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73, ELI: http://data.europa.eu/eli/dir/2015/849/oj).

(37) There are interactions between the resolution framework and the market abuse framework. In particular, while actions taken in resolution or in preparation for resolution might qualify as inside information under Regulation (EU) No 596/2014 of the European Parliament and of the Council[17], their premature disclosure risks jeopardising the resolution process. Where such actions are intermediate steps in a protracted process, Regulation (EU) No 596/2014 does not require immediate disclosure. In other cases, institutions or entities are able to take steps to address that issue by delaying disclosure of inside information to the public pursuant to Article 17(4) or (5) of that Regulation. However, the right incentives might not always be present at the time of resolution or preparing for resolution in order for the institution or entity to take the initiative for such a delay. To avoid such situations, resolution authorities should have the power to require an institution or entity to ensure confidentiality of inside information on the preparation for resolution and on the resolution process or write-down and conversion as long as they deem it necessary to achieve the resolution objectives. Institutions and entities should only be required to disclose such inside information in accordance with Regulation (EU) No 596/2014 once they have been informed by the resolution authority that ensuring confidentiality is no longer necessary to achieve the resolution objectives. Where confidentiality is no longer ensured, however, institutions and entities should be required to disclose the inside information to the public as soon as possible.

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17 Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1, ELI: http://data.europa.eu/eli/reg/2014/596/oj).

(38) An adequate link between pay and performance should also be maintained in the event of resolution, in particular where losses are likely to be passed on to the resolution financing arrangements. In such cases, any variable remuneration of the members of the management body and senior management of the institution under resolution that has not been paid out or has not vested should be cancelled. Unless a member of the management body or senior management proves that they did not participate in, or were not responsible for, the conduct that resulted in, or contributed to, the failure of the institution under resolution, the variable remuneration that vested or was paid out in the 24 months preceding the decision to take resolution action should be returned or repaid.

(39) After the initial build-up period for the resolution financing arrangements provided for in Directive 2014/59/EU, their respective available financial means might face slight decreases below their target level, in particular resulting from an increase in covered deposits. The amount of the *ex-ante* contributions likely to be called in those circumstances is thus likely to be small. It is therefore possible that, in some years, the amount of such *ex-ante* contributions would no longer be commensurate with the cost of the collection of those contributions. Resolution authorities should therefore be able to defer the collection of the *ex-ante* contributions for up to three years until the amount to be collected reaches an amount that is proportionate to the cost of the collection process, provided that such deferral does not materially affect the capacity of resolution authorities to use resolution financing arrangements.

(40) Irrevocable payment commitments are one of the components of the available financial means of resolution financing arrangements. It is therefore necessary to specify the circumstances in which those payment commitments can be called. In the event that an entity ceases to be subject to the obligation to pay contributions to a resolution financing arrangement following a decision to renounce its authorisation, the irrevocable payment commitment should be cancelled. To ensure that the cancellation of the irrevocable payment commitment does not lead to a situation where the available financial means in the resolution financing arrangement fall below a level that the resolution authority deems adequate, the resolution authority should have the power to determine a contribution that the relevant entity should be required to pay. In its decision, the resolution authority should duly consider the need to maintain a level playing field between all participating institutions, including the entity that ceases to be within the scope of Article 1 of Directive 2014/59/EU. The resolution authority is to provide detailed reasons for its decision and disclose that decision, including its reasoning, in its annual report. In addition, to provide more transparency and certainty with respect to the share of irrevocable payment commitments in the total amount of *ex-ante* contributions to be raised, the resolution authority should determine such share on an annual basis, subject to the applicable limits. The competent authority should aim to ensure that any procyclical effect of irrevocable payment commitments depending on their accounting treatment is mitigated.

(41) The maximum annual amount of extraordinary *ex-post* contributions to resolution financing arrangements that are allowed to be called is currently limited to three times the amount of the *ex-ante* contributions. After the initial build-up period provided for in Directive 2014/59/EU, such *ex-ante* contributions will, in circumstances other than the use of the resolution financing arrangements, depend only on variations in the level of covered deposits and are therefore likely to become small. Setting the maximum amount of extraordinary *ex-post* contributions on the basis of *ex-ante* contributions could therefore have the effect of drastically limiting the possibility for resolution financing arrangements to raise *ex-post* contributions, thereby reducing their capacity for action. To avoid such an outcome, a different limit should be provided for and the maximum amount of extraordinary *ex-post* contributions allowed to be called should be set at three times one-eighth of the target level of the resolution financing arrangement concerned.

(42) Directive 2014/59/EU partially harmonised the ranking of deposits under national laws governing normal insolvency proceedings. Those rules provided for a three-tier ranking of deposits, whereby covered deposits had the highest priority ranking, followed by eligible deposits of natural persons and of micro, small and medium-sized enterprises above the coverage level. The remaining deposits, namely the deposits of large corporates exceeding the coverage level and deposits that are not eligible for repayment by the DGS, were required to have a lower priority ranking, but their position was not otherwise harmonised. Finally, the claims of DGSs benefitted from the same higher priority ranking as covered deposits. Nevertheless, that partial harmonisation has not proved to be the optimal solution for depositor protection. Partial harmonisation has created differences in the treatment of remaining depositors across the Member States, in particular as an increasing number of Member States have decided to also grant a legal preference to remaining deposits. Those differences have also created difficulties when determining the insolvency counterfactual for cross-border groups during the resolution valuations. Furthermore, the lack of general depositor preference has had the potential to create problems regarding compliance with the ‘no creditor worse off’ principle, particularly when the deposits the priority of which has not been harmonised by Directive 2014/59/EU are ranked at the same level as senior claims. Therefore, the ranking of deposits in the current hierarchy of claims should be amended.

(43) The ranking of deposits should be fully harmonised through the implementation of a general depositor preference, whereby all deposits benefit from a higher priority ranking over ordinary unsecured claims, with limited exceptions. A general depositor preference will contribute to reinforcing depositors' confidence and to further prevent the risk of bank runs. Enhanced depositor protection is also aligned with the central role deposits play in the real economy as the primary tool for savings and for payments, as well as in banking activity where deposits represent an important source of funding and are a key driver of confidence in the banking system, which becomes of particular relevance in times of market stress. Moreover, a general depositor preference improves the resolvability of credit institutions by increasing their ability to comply with the requirements to access the resolution financing arrangements and decreasing the amount of funding required from those arrangements, due to the lower risk of breaching the 'no creditor worse off' principle where bailing-in ordinary unsecured debt. In particular, the removal of deposits from the insolvency class of ordinary unsecured claims would increase the bail-inability of remaining ordinary unsecured claims by minimising the risk of breaches of the 'no creditor worse off' principle. By reducing the likelihood of deposits being written down or converted to ensure access to resolution financing arrangements, the general depositor preference would contribute to making the bail-in tool more effective and credible and would lead to an increase of the transparency and legal certainty of the resolution framework. The general depositor preference would also contribute to the credibility of transfer strategies in resolution, as it would simplify the inclusion of the entire deposit contract in the perimeter of liabilities to be transferred to a private purchaser or to a bridge institution, to the benefit of the customer relationship and the franchise value of the institution under resolution. Lastly, a full harmonisation of the insolvency ranking of depositors would be beneficial from the cross-border and level playing field perspective.

(44) It is appropriate for certain non-eligible deposits to be excluded from the general depositor preference. In particular, deposits taken by a credit institution to be used towards compliance with the MREL should not benefit from a legal preference, as that would be incompatible with the general principle that liabilities included in the MREL should bear losses and contribute to the recapitalisation of a credit institution in the event of its failure. The priority ranking of such deposits should not be harmonised by Directive 2014/59/EU and should instead be determined in accordance with the applicable statutory and contractual provisions. Additionally, the ranking should not vary throughout the duration of the deposit depending on whether the resolution authority has authorised its inclusion in the MREL-eligible resources nor on its residual maturity.

(45) The current three-tier ranking of deposits should be retained, as it strongly protects the claims of DGSs and consequently their financing means. However, in light of amendments to Directive 2014/49/EU introduced by Directive (EU) 2026/… of the European Parliament and of the Council[18+] that include the deposits of certain public authorities in the scope of repayment by DGSs, it is appropriate for the part of those deposits exceeding the coverage level to have the same priority ranking as that of eligible deposits of natural persons and of micro, small and medium-sized enterprises above the coverage level.

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18 Directive (EU) 2026/… of the European Parliament and of the Council of … amending Directive 2014/49/EU as regards the scope of deposit protection, the use of deposit guarantee schemes funds, cross-border cooperation, and transparency (OJ L, …, ELI: …).

\+ OJ: please insert in the text the number of the directive contained in document ST 15484/25 (2023/0115(COD)) and complete the corresponding footnote.

(46) Resolution financing arrangements can be used to support the application of the sale of business tool or of the bridge institution tool whereby a set of assets, rights and liabilities of the institution under resolution are transferred to a recipient. In such a case, the resolution financing arrangement might have a claim against the residual institution or entity in its subsequent winding up under normal insolvency proceedings. That can occur where the resolution financing arrangement is used in connection to losses that creditors would otherwise have borne, including under the form of guarantees to assets and liabilities or coverage of the difference between the transferred assets and liabilities. To ensure that the shareholders and creditors left behind in the residual institution or entity effectively absorb the losses of the institution under resolution and improve the possibility of repayments in insolvency to the resolution-specific safety net, those claims of the resolution financing arrangement against the residual institution or entity, and claims that arise from reasonable expenses properly incurred, should rank in insolvency above the claims of depositors and of the DGSs. Since compensation paid to shareholders and creditors by resolution financing arrangements due to breaches of the ‘no creditor worse off’ principle aims to compensate them for the results of resolution action, that compensation should not give rise to claims from those arrangements.

(47) To ensure sufficient flexibility and to make it easier for DGSs to intervene in support of the use of the resolution tools, where they lead to the exit from the market of the institution under resolution, certain aspects of the use of DGSs in resolution should be specified. In particular, it is necessary to specify that DGS funds can be used to support transfer transactions that include deposits, including eligible deposits above the coverage level provided by the DGS concerned, and also the non-eligible deposits included in the general depositor preference, in certain cases and under clear conditions. The contribution of a DGS should be aimed at covering the shortfall in the value of the assets transferred to a buyer or bridge institution in comparison to the value of the transferred deposits. Where a contribution is required by the buyer as part of the transaction to ensure its capital neutrality and preserve compliance with the buyer's capital requirements, the DGS should also contribute to that effect. The support provided by a DGS to resolution action should take the form of cash or other forms, such as guarantees or loss sharing agreements that can minimise the impact of the support on the available financial means of that DGS while simultaneously allowing the contribution of the DGS to meet its purposes.

(48) The contribution of the DGS in resolution should be subject to certain limits. First, the total amount of the contribution of the DGS in any resolution case should not exceed the amount of covered deposits in the credit institution concerned. Second, it should be ensured that any intervention by the DGS in a resolution action which relies primarily on the bail-in tool for the purposes of recapitalisation of the institution under resolution and of the continuation of its activities does not exceed the loss that the DGS would bear in insolvency if it paid out covered depositors and subrogated to their claims over the institution's assets. Third, where the DGS is used in support of resolution action mainly consisting of the transfer of the business to a purchaser or to a bridge institution, the amount of the contribution of the DGS should not exceed 62,5 % of its target level, unless the designated authority under Directive 2014/49/EU chooses to disapply that limit to avoid adverse effects on financial stability or to preserve the access of depositors to their deposits. EBA should issue guidelines on the conditions for the disapplication of that limit. Fourth, the amount of the DGS contribution should not exceed the difference between the transferred assets and the transferred deposits and liabilities with the same or a higher priority ranking in insolvency than those deposits. That would ensure that the contribution of the DGS is only used for the purpose of avoiding the imposition of losses on depositors, where appropriate, and not for the protection of creditors that rank below deposits in insolvency. However, where relevant, the contribution might also include an amount necessary to ensure the capital neutrality of the recipient entity.

(49) It should be specified that the DGS should only be able to contribute to a transfer of liabilities other than covered deposits in the context of a resolution if the resolution authority concludes, on a case-by-case basis, that deposits included in the general depositor preference other than covered deposits cannot be bailed-in, nor left in the residual institution under resolution which will be wound up, and if the conditions for the use of the resolution financing arrangements are not met through contributions by shareholders and creditors. In particular, the resolution authority should be allowed to avoid allocating losses to those deposits where the exclusion is strictly necessary and proportionate to preserve the continuity of critical functions and core business lines or where necessary to avoid widespread contagion and financial instability, which could cause a serious disturbance in the economy of the Union or of a Member State. The same reasons should apply to the inclusion in the transfer to a buyer or to a bridge institution of other bail-inable liabilities with a priority ranking lower than that of covered deposits. In that case, the transfer of those bail-inable liabilities should not be supported by the contribution of the DGS. If any external financial support to the transfer of those bail-inable liabilities is required, that support should be provided by the resolution financing arrangement.

(50) Given the possibility to use DGS in resolution, it is necessary to further specify the conditions under which the DGS contribution can count towards compliance with the requirements to access resolution financing arrangements. That possibility should only be available for credit institutions with a total value of assets equal to or below EUR 80 billion and in the context of a resolution action primarily relying on the application of the sale of business tool or the bridge institution tool. To ensure that resolution continues to be primarily financed by the credit institution's internal resources and to minimise distortions of competition, the use of the DGS contribution to ensure access to resolution financing arrangements should only be possible for credit institutions for which, in the preceding 24 months before resolution action is taken, the resolution plan or the group resolution plan does not provide for their winding up in an orderly manner in the event of failure, given that the MREL determined by resolution authorities for those credit institutions has been set at a level that includes both the loss absorption and the recapitalisation amounts. The MREL set by the resolution authority for credit institutions with a total value of assets on an individual basis above EUR 30 billion should comply with the minimum levels of the MREL for institutions and entities with preferred resolution strategies that envisage primarily the use of transfer tools in resolution, even if the respective resolution plan or group resolution plan had provided for different actions and the MREL of those credit institutions was therefore not subject to those minimum levels. Furthermore, the contribution of the DGS should be preceded by the contribution of own funds and eligible liabilities towards loss absorption and recapitalisation to the maximum extent possible. Finally, it should be possible for Member States to require that the institution under resolution must not have breached its MREL, including the binding intermediate targets, within a certain period preceding resolution action, without prejudice to short-term technical breaches of the MREL.

(51) If the contribution made by shareholders and creditors of the institution under resolution through reductions, write-down or conversion of their liabilities or through the losses that they are expected to bear in the winding up of the residual entity, added to the contribution made by the DGS, amounts to at least 8 % of the institution's total liabilities including own funds, the resolution authority should be able to use the resolution financing arrangement to provide further funding where that is necessary to ensure effective resolution in line with the resolution objectives. In such cases, the contribution of the DGS should be limited to the amount necessary to enable access to the resolution financing arrangement. Additionally, for a credit institution with a total value of assets on an individual basis of between EUR 30 billion and EUR 80 billion, the contribution of the DGS should not exceed 2,5 % of the total liabilities including own funds of the credit institution on an individual basis.

(52) In extraordinary circumstances, it can occur that the contribution of the resolution financing arrangement of 5 % of total liabilities including own funds is not sufficient to cover the financing needs of a given resolution action. In such cases, and where that contribution has been enabled by the intervention of the DGS, the DGS should make an additional contribution, under certain conditions, equal to the amount of losses that covered deposits would have suffered were they not protected. The cost of that additional contribution should not exceed the losses that the DGS would have borne in the hypothetical scenario of a winding up under normal insolvency proceedings and the repayment of covered deposits. Additionally, the sum of the initial contribution and of the additional contribution of the DGS should not exceed the amount of covered deposits in the credit institution concerned. Together with the additional contribution of the DGS, the resolution authority should be able to seek further funding from alternative financing sources, where the conditions for that funding are met.

(53) Where the funds of the DGS are used in the application of the sale of business tool or the bridge institution tool, in isolation or together with contributions from the resolution financing arrangement, the residual entity remaining after the transfer of the assets, rights and liabilities should be wound up in an orderly manner in accordance with the applicable national law, pursuant to Article 37(6) of Directive 2014/59/EU. Additionally, where the funds of the DGS are used in support of the bridge institution tool, the operations of the bridge institution should be terminated in accordance with Article 41(3), (5) and (6) of Directive 2014/59/EU.

(54) To facilitate the process of adoption of highly technical aspects of reporting requirements, and improve their implementation and monitoring by resolution authorities, mandates given to EBA to develop implementing technical standards should be revised to ensure consistency in the scope and content of the various mandates throughout Directive 2014/59/EU. Those mandates should also be aligned with the provisions governing the reporting and disclosure of supervisory information set out in Regulation (EU) No 575/2013. Those amendments to existing mandates should facilitate future reviews of the implementing technical standards and are not meant to affect reporting and disclosure obligations that are currently applicable. The Commission should be empowered to adopt those implementing technical standards developed by EBA by means of implementing acts pursuant to Article 291 of the Treaty of the Functioning of the European Union (TFEU) and in accordance with Article 15 of Regulation (EU) No 1093/2010. The scope of existing regulatory technical standards on the estimation of the additional own funds requirements and the combined buffer requirement for resolution entities should be expanded to include entities that have not been identified as resolution entities, where those requirements have not been set on the same basis as the MREL. The Commission should be empowered to supplement Directive 2014/59/EU by adopting those regulatory technical standards developed by EBA by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

(55) To allow for a greater integration of reporting and disclosures related to the MREL, EBA should publish institutions and entities' disclosures in a centralised manner, while respecting the right of all institutions and entities to publish data and information themselves. Such centralised disclosures should allow EBA to publish the disclosures of small and non-complex institutions, based on the information reported by those institutions to competent and resolution authorities and should thus significantly reduce the administrative burden to which small and non-complex institutions are subject. At the same time, the centralisation of disclosures should have no cost impact for other institutions and entities, and it should increase transparency and reduce the cost of access to prudential information for market participants. Such increased transparency should facilitate the comparability of data across institutions and entities and promote market discipline. The centralisation of disclosures related to resolution ensures alignment with the procedure applicable to supervisory disclosures as set out in Regulation (EU) No 575/2013 to ensure that all disclosure obligations are treated in a similar manner.

(56) In view of its role in furthering the convergence of authorities' practices, EBA should monitor and report on the internal practices and methodologies adopted by resolution authorities when deciding whether an institution or entity should be earmarked for resolution or for winding up under normal insolvency proceedings, in light of the resolution objectives and of whether resolution would be in the public interest. EBA should also monitor and report on the progress made by resolution authorities to improve the resolvability of institutions and groups and on the actions and preparations of resolution authorities to ensure an effective implementation of the resolution tools and powers. In those reports, EBA should also assess the level of transparency of the measures taken by resolution authorities towards relevant external stakeholders and the extent of their contribution to resolution preparedness and the resolvability of institutions and groups.

(57) In the context of EBA's tasks of contributing to ensuring a coherent and coordinated crisis management and resolution regime in the Union, EBA should coordinate and oversee Union-wide crisis management simulation exercises. Those simulations should cover the coordination and cooperation between competent authorities and resolution authorities during the deterioration of the financial situation of institutions and entities, testing the application of the toolbox in recovery and resolution planning, early intervention, and resolution in a holistic manner. Those crisis simulation exercises should consider in particular the cross-border dimension in the interaction between the relevant authorities and the application of the available tools and powers. Where relevant, the crisis simulation exercises should also capture the adoption and implementation of resolution schemes within the banking union, pursuant to Regulation (EU) No 806/2014.

(58) Notwithstanding currently applicable professional secrecy rules, exchanges of information between resolution authorities and tax authorities should be improved. Such exchanges should take place in accordance with national law. Where the information originates in another Member State, it should only be exchanged with the express consent of the relevant authority which has disclosed it.

(59) Directive (EU) 2019/879 amended Directive 2014/59/EU to introduce dedicated rules to ensure that retail clients do not invest excessively in instruments that are eligible for the MREL of institutions and entities. The excessive holding of MREL instruments by retail clients can be detrimental to the resolvability of an institution or entity and can create problems for financial stability. That can be especially problematic when the retail clients are also depositors of the issuing institution, as those depositors are particularly vulnerable to the inappropriate placement of the institution's own instruments. Authorities should therefore ensure that sellers, institutions and entities comply with the measures adopted by Member States transposing Directive (EU) 2019/879 to ensure the protection of retail clients. Where those measures are not being applied appropriately, authorities should enforce those rules. It is therefore appropriate to introduce dedicated powers in Directive 2014/59/EU to address failures to comply with the dedicated rules on the protection of retail clients, alongside the existing powers in Directive 2014/65/EU.

Moreover, using the existing reporting for resolution planning and MREL purposes, resolution authorities should assess the nature of the investor base in MREL-eligible instruments when carrying out the resolvability assessment of institutions and entities and, where necessary, require the institution or entity to address or remove any impediments found. Finally, EBA, in coordination with the European Supervisory Authority (European Securities and Markets Authority) (ESMA) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council[19], should report on the measures adopted by Member States for the protection of retail clients as regards debt instruments that are eligible for the MREL pursuant to Directive 2014/59/EU, comparing and assessing any potential impact on cross-border operations. On that basis, the Commission might adopt a legislative proposal to ensure a more effective protection of retail clients.

[19] Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84, ELI: http://data.europa.eu/eli/reg/2010/1095/oj).

(60) High-quality impact assessment is crucial for the development of sound and evidence-based legislative proposals, while facts and evidence are key to inform the decisions taken during the legislative procedure. For that reason, EBA, the Single Resolution Board and the ECB should provide the Commission, at its request, with all the information it needs for its policy development related tasks, including the preparation of impact assessments and the preparation and negotiation of legislative proposals. Where that information is not available to EBA, the Single Resolution Board or the ECB, it should be provided by the resolution authorities, competent authorities and other members of the European System of Central Banks.

(61) Considering the need to protect financial stability and to act swiftly, resolution authorities should not be subject to the procedures for procurement with respect to public contracts for valuation services for the purposes of resolution and of assessing whether shareholders and creditors would have received better treatment if the institution under resolution had entered into normal insolvency proceedings. The services provided should therefore be excluded from the scope of Directive 2014/24/EU of the European Parliament and of the Council[20]. As regards legal services that the resolution authorities might need, certain legal services are already excluded from the scope of that Directive and others are included in the list of services set out in Annex XIV to that Directive for which higher thresholds and lighter harmonised rules apply.

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[20] Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65, ELI: http://data.europa.eu/eli/dir/2014/24/oj).

(62) Since the objective of this Directive, namely to improve the effectiveness and efficiency of the recovery and resolution framework for institutions and entities, cannot be sufficiently achieved by the Member States due to the risks that diverging national approaches might entail for the integrity of the internal market but can rather, by amending rules that are already set at Union level, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(63) Directives 2014/59/EU and 2014/24/EU should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2014/59/EU

Directive 2014/59/EU is amended as follows:

(1) Article 2(1) is amended as follows:

(a) point (5) is replaced by the following:

‘(5) “subsidiary” means a subsidiary as defined in Article 4(1), point (16), of Regulation (EU) No 575/2013, and for the purpose of applying Articles 7, 12, 17, 18, 45 to 45m, 59 to 62, 91 and 92 of this Directive to resolution groups referred to in point (83b)(b) of this paragraph, includes, where and as appropriate, credit institutions or financial institutions that are permanently affiliated to a central body, the central body itself, and their respective subsidiaries, taking into account the way in which such resolution groups comply with Article 45e(3) of this Directive;’;

(b) the following point is inserted:

‘(28a) “alternative private sector measure” means any support that does not qualify as extraordinary public financial support;’;

(c) point (35) is replaced by the following:

‘(35) “critical functions” means activities, services or operations the discontinuance of which is likely in one or more Member States, at national or regional level, 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;’;

(d) point (71) is replaced by the following:

‘(71) “bail-inable liabilities” means the liabilities, including liabilities of uncertain timing or amount, and capital instruments that do not qualify as Common Equity Tier 1, Additional Tier 1 or Tier 2 instruments of an institution or entity as referred to in Article 1(1), point (b), (c) or (d), and that are not excluded from the scope of the bail-in tool pursuant to Article 44(2);’;

(e) the following point is inserted:

‘(71aa) “liabilities of uncertain timing or amount” means liabilities based on present obligations arising from past events which will result in a loss and the timing or amount of which is uncertain;’;

(f) point (71b) is replaced by the following:

‘(71b) “subordinated eligible instruments” means instruments that meet all of the conditions referred to in Article 72a of Regulation (EU) No 575/2013 other than Article 72b(3), (4) and (5) of that Regulation, and, where applicable, in Article 45b(1a) of this Directive;’;

(g) the following point is inserted:

‘(72a) “designated authority” means a designated authority as defined in Article 2(1), point (18), of Directive 2014/49/EU;’;

(h) in point (83b), point (b) is replaced by the following:

‘(b) credit institutions or financial institutions permanently affiliated to a central body, and the central body itself when at least one of those credit institutions or financial institutions or the central body is a resolution entity, and their respective subsidiaries;’;

(i) the following points are inserted:

‘(83d) “non-EU G-SII” means a non-EU G-SII as defined in Article 4(1), point (134), of Regulation (EU) No 575/2013;

(83e) “G-SII entity” means a G-SII entity as defined in Article 4(1), point (136), of Regulation (EU) No 575/2013;’;

(j) the following point is inserted:

‘(93a) “deposit” means, for the purposes of Articles 108 and 109 of this Directive, deposit as defined in Article 2(1), point (3), of Directive 2014/49/EU;’;

(2) in Article 5, paragraphs 2, 3 and 4 are replaced by the following:

‘2. Competent authorities shall ensure that the institutions update their recovery plans at least annually or after a change to the legal or organisational structure of the institution, its business or its financial situation, which could have a material effect on, or necessitate a material change to, the recovery plan. Competent authorities may require institutions to update their recovery plans more frequently.

In the absence of the changes referred to in the first subparagraph within 12 months following the latest annual update of the recovery plan, competent authorities may exceptionally waive, until the subsequent 12-month period, the obligation to update the recovery plan. Such a waiver may be granted for a maximum period of 12 months.

3. Recovery plans shall not assume any access to or receipt of any of the following:

(a) extraordinary public financial support;

(b) central bank emergency liquidity assistance;

(c) central bank liquidity assistance provided under non-standard collateralisation, tenor or interest rate terms.

4. Recovery plans shall include, where applicable, an analysis of how and when an institution may apply, under the conditions addressed by the recovery plan, for the use of central bank facilities which are not excluded from the scope of that plan pursuant to paragraph 3 and identify those assets which would be expected to qualify as collateral.';

(3) in Article 6(5), the first subparagraph is replaced by the following:

'Where the competent authority assesses that there are material deficiencies in the recovery plan, or material impediments to its implementation, it shall notify the institution or the parent undertaking of the group of its assessment and shall require the institution to submit, within three months, extendable with the authority's approval by one month, a revised plan demonstrating how those deficiencies or impediments are to be addressed.';

(4) in Article 8(2), the third subparagraph is replaced by the following:

'EBA may, at the request of a competent authority, assist the competent authorities in reaching a joint decision in accordance with Article 31(2), point (c), of Regulation (EU) No 1093/2010.';

(5) Article 10 is amended as follows:

(a) in paragraph 1, the following subparagraph is added:

‘The resolution authority shall not adopt a resolution plan where proceedings have been initiated to wind up an institution in accordance with the applicable national law pursuant to Article 32b, or where Article 37(6) applies.’;

(b) in paragraph 7, point (j) is replaced by the following:

‘(j) a detailed description of the different resolution strategies that could be applied according to the different possible scenarios and the applicable timescales, and how those strategies would achieve the resolution objectives;’;

(6) in Article 11, paragraph 3 is replaced by the following:

‘3. EBA shall develop draft implementing technical standards specifying:

(a) the methods and arrangements for reporting the information referred to in paragraph 1;

(b) the frequency and submission deadlines of the reporting referred to in point (a).

EBA shall submit those draft implementing technical standards to the Commission by … [12 months from the date of entry into force of this amending Directive].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph of this paragraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

4. EBA shall develop IT solutions, including reporting templates, data standards, formats and instructions, for reporting the information referred to in paragraph 1.';

(7) Article 12 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the second subparagraph is replaced by the following:

'In accordance with the measures referred to in the first subparagraph, the resolution plan shall identify for each group the resolution entities and the resolution groups and, where appropriate, the liquidation entities.';

(ii) the following subparagraphs are added:

‘When identifying the measures to be taken in respect of the subsidiaries referred to in the first subparagraph, point (b), that are not resolution entities, resolution authorities may follow a commensurate approach if such approach does not negatively affect the resolvability of the group, taking into account the size of the subsidiary, its risk profile, its role in the provision of critical functions and of core business lines, its importance for the operational continuity of the group after resolution and the group resolution strategy. Resolution authorities shall duly consider the importance of the subsidiary in the Member State where it is established, including its potential systemic importance, and its potential impact on the available financial means of the deposit guarantee scheme in the case of winding up under normal insolvency proceedings.

Where proceedings have been initiated to wind up an entity in accordance with applicable national law pursuant to Article 32b, or where Article 37(6) applies, resolution authorities shall no longer include that entity in the group resolution plan.’;

(b) paragraph 2 is replaced by the following:

‘2. The group resolution plan shall be drawn up on the basis of the information provided pursuant to Article 11 and shall include the elements referred to in Article 10(4) and (7) insofar as they are relevant from the perspective of a group resolution plan.’;

(c) the following paragraph is added:

‘7. EBA shall monitor the methodologies and practices of resolution authorities for deciding, in the drawing up of resolution plans and group resolution plans, whether to earmark institutions or entities for resolution or for winding up under normal insolvency proceedings and for deciding on the actions to be taken in the scenarios referred to in Article 10(3) and in the circumstances described in Article 32(5).

EBA shall submit a report to the Commission on the existing methodologies and practices of resolution authorities and on any divergences across Member States by … [five years from the date of entry into force of this amending Directive].

The report referred to in the second subparagraph shall cover at least the following:

(a) with respect to institutions that are not part of a group and to entities referred to in paragraph 1, first subparagraph, the internal approaches and methodologies for selecting the measures to be taken, in particular the criteria for the resolution plan or the group resolution plan to provide for resolution action, for the exercise of write-down and conversion powers or for the winding up under normal insolvency proceedings;

(b) with respect to resolution entities, the internal approaches and methodologies for choosing the preferred and variant resolution strategies and the resolution actions to be taken;

(c) the commensurate approaches followed by resolution authorities pursuant to paragraph 1, third subparagraph.';

(8) Article 13 is amended as follows:

(a) in paragraph 1, the first and second subparagraphs are replaced by the following:

'Institutions and entities referred to in Article 1(1), points (b), (c) and (d), shall submit to their resolution authority the information that may be required in accordance with Article 11. The resolution authorities that require information under Article 11 for entities in their remit shall transmit the information they receive to the group-level resolution authority.

The group-level resolution authority shall, provided that the confidentiality requirements laid down in this Directive are complied with, transmit the information provided in accordance with this paragraph to:

(a) EBA;

(b) the resolution authorities of subsidiaries;

(c) the resolution authorities of the jurisdictions in which significant branches are located insofar as is relevant to the significant branch;

(d) the relevant competent authorities referred to in Articles 115 and 116 of Directive 2013/36/EU; and

(e) the resolution authorities of the Member States where the entities referred to in Article 1(1), points (c) and (d), are established.';

(b) in paragraph 4, the fourth subparagraph is replaced by the following:

'EBA may, at the request of a resolution authority, assist the resolution authorities in reaching a joint decision in accordance with Article 31(2), point (c), of Regulation (EU) No 1093/2010.';

(9) in Article 15, the following paragraph is added:

‘5. EBA shall monitor the implementation of the resolvability assessments of institutions and groups by resolution authorities. EBA shall submit a report to the Commission on the existing practices on resolvability assessments and possible divergences across Member States by … [24 months from the date of entry into force of this amending Directive].

The report referred to in the first subparagraph shall cover the following:

(a) an assessment of the methodologies developed by resolution authorities to carry out resolvability assessments, including the identification of areas of possible divergence across Member States;

(b) an assessment of the testing capabilities required by resolution authorities to ensure an effective implementation of the resolution strategy;

(c) the level of transparency towards relevant stakeholders of the methodologies developed by resolution authorities to carry out resolvability assessments and of the outcome of those assessments.’;

(10) in Article 16a, the following paragraph is added:

‘7. Where a resolution entity or an entity that is not itself a resolution entity is not subject to the combined buffer requirement on the same basis as the basis on which it is required to comply with the requirements referred to in Articles 45c and 45d of this Directive, resolution authorities shall apply paragraphs 1 to 6 of this Article on the basis of the estimated combined buffer requirement resulting from the methodology set out in the delegated act adopted pursuant to Article 45c(4) of this Directive. Article 128, fourth paragraph, of Directive 2013/36/EU shall apply.

The resolution authority shall include the estimated combined buffer requirement referred to in the first subparagraph of this paragraph in the decision determining the requirements referred to in Articles 45c and 45d. The entity shall make the estimated combined buffer requirement publicly available together with the information referred to in Article 45i(3).’;

(11) Article 17 is amended as follows:

(a) the following paragraph is inserted:

‘3a. Where the resolution authority finds that the measures proposed by the entity concerned effectively reduce or remove the substantive impediments to resolvability, the resolution authority shall take a decision, after consulting the competent authority. That decision shall indicate that the resolution authority has assessed the measures proposed as adequate for effectively reducing or removing the substantive impediments to resolvability and shall require the entity to implement the measures proposed.’;

(b) in paragraph 5, the introductory wording is replaced by the following

‘For the purposes of paragraph 4, resolution authorities shall have at least the power to take any of the following measures:’;

(12) Article 18 is amended as follows:

(a) in paragraph 2, the first subparagraph is replaced by the following:

‘The group-level resolution authority, in cooperation with the consolidating supervisor, shall prepare and submit a report to the Union parent undertaking, to the resolution authorities of subsidiaries, which shall provide it to the subsidiaries within their remit, and to the resolution authorities of jurisdictions in which significant branches are located. The report shall be prepared after consulting the competent authorities, and shall analyse the substantive impediments to the effective application of the resolution tools and to the exercise of the resolution powers in relation to the group, and also in relation to resolution groups where a group is composed 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 view of the group-level resolution authority, are necessary or appropriate to remove those impediments.’;

(b) paragraph 4 is replaced by the following:

‘4. The group-level resolution authority shall communicate any measure proposed by the Union parent undertaking to the consolidating supervisor, EBA, the resolution authorities of the subsidiaries and the resolution authorities of the jurisdictions in which significant branches are located insofar as that measure is relevant to those significant branches. The group-level resolution authority and the resolution authorities of the subsidiaries, after consulting the competent authorities and the resolution authorities of jurisdictions in which significant branches are located, shall do everything within their power to reach a joint decision within the resolution college regarding the identification of substantive impediments, and if necessary, the assessment of the measures proposed by the Union parent undertaking and the measures required by the authorities in order to address or remove those impediments, which shall take into account the potential impact of the measures in all Member States where the group operates.’;

(c) paragraph 9 is replaced by the following:

‘9. In the absence of a joint decision on the taking of any measures referred to in Article 17(5), point (g), (h) or (k), EBA may, upon the request of a resolution authority in accordance with paragraph 6, 6a or 7 of this Article, assist the resolution authorities in reaching an agreement in accordance with Article 19(3) of Regulation (EU) No 1093/2010.’;

(13) Articles 27 and 28 are replaced by the following:

‘*Article 27*

Early intervention measures

1. Member States shall ensure that competent authorities consider without undue delay and, if appropriate, apply early intervention measures where an institution or entity referred to in Article 1(1), point (b), (c) or (d):

(a) meets the conditions referred to in Article 102 of Directive 2013/36/EU or in Article 38 of Directive (EU) 2019/2034, or the competent authority has determined, in the context of a supervisory review and evaluation process in accordance with Article 97 of Directive 2013/36/EU, that the arrangements, strategies, processes and mechanisms implemented by the institution or entity and the own funds and liquidity held by that institution or entity do not ensure a sound management and coverage of its risks, and either of the following applies:

(i) the institution or entity has not taken the remedial actions required by the competent authority, including the measures referred to in Article 104 of Directive 2013/36/EU or in Article 39 of Directive (EU) 2019/2034;

(ii) the competent authority deems that remedial actions other than early intervention measures are insufficient to address the problems of that institution or entity;

(b) breaches the requirements laid down in Article 45e or 45f of this Directive; or

(c) infringes or is likely to infringe, in the 12 months following the assessment of the competent authority, any of the requirements laid down in Title II of Directive 2014/65/EU or in Articles 3 to 7, 14 to 17 or 24, 25 and 26 of Regulation (EU) No 600/2014 of the European Parliament and of the Council*.

The competent authority may determine that the condition referred to in the first subparagraph, point (a)(ii), of this paragraph is met without having previously taken other remedial actions, including the exercise of the powers referred to in Article 104 of Directive 2013/36/EU or in Article 39 of Directive (EU) 2019/2034.

For the purposes of the first subparagraph, points (b) and (c), of this paragraph, Member States shall ensure that the resolution authorities or the competent authorities as defined in Article 4(1), point (26), of Directive 2014/65/EU inform the competent authority without delay of the infringement or likely infringement.

2. For the purposes of paragraph 1, early intervention measures shall include the following:

(a) the requirement for the management body of the institution or entity to either:

(i) implement one or more of the arrangements or measures set out in the recovery plan; or

(ii) update the recovery plan in accordance with Article 5(2), where the circumstances that led to the early intervention are different from the assumptions set out in the initial recovery plan, and implement one or more of the arrangements or measures set out in the updated recovery plan within a specific timeframe;

(b) the requirement for the management body of the institution or entity to convene or, if the management body fails to comply with that requirement, the direct convening by the competent authority of, a meeting of shareholders of the institution or entity, and in both cases set the agenda and require certain decisions to be considered for adoption by the shareholders;

(c) the requirement for the management body of the institution or entity to draw up a plan, in accordance with the recovery plan where applicable, for negotiation on restructuring of debt with some or all of its creditors;

(d) the requirement to change the legal structure of the institution or entity;

(e) the requirement to remove, or replace in accordance with Article 28, the senior management or management body of the institution or entity in its entirety or with regard to individuals;

(f) the appointment of one or more temporary administrators to the institution or entity in accordance with Article 29;

(g) the requirement for the management body of the institution or entity to draw up a plan that the institution or entity can implement in the event that it decides to initiate a voluntary wind-down of its activities.

3. Competent authorities shall choose the appropriate early intervention measures referred to in paragraph 2 of this Article on the basis of what is proportionate to the objectives pursued, having regard to the seriousness of the infringement or likely infringement and the speed of the deterioration of the financial situation of the institution or entity referred to in Article 1(1), point (b), (c) or (d), among other relevant information.

4. For each of the early intervention measures referred to in paragraph 2, the competent authorities shall set an implementation deadline which shall be strictly limited to the time necessary to implement the measure concerned under reasonable conditions. Competent authorities shall conduct an evaluation of the effectiveness of the measure immediately after expiry of the deadline and shall share that evaluation with the resolution authority.

Where the evaluation concludes that the early intervention measures have not been fully implemented or are not effective, the competent authority may carry out an assessment of whether the condition referred to in Article 32(1), point (a), is met.

5. EBA shall, by … [24 months from the date of entry into force of this amending Directive], issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 to promote the consistent application of the conditions referred to in paragraph 1 of this Article.

Article 28

Replacement of the senior management or management body

For the purposes of Article 27(2), point (e), Member States shall ensure that the new senior management or management body, or individual members thereof, are appointed in accordance with Union and national law and that such appointments are subject to the approval or consent of the competent authority.

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* Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173 12.6.2014, p. 84, ELI: http://data.europa.eu/eli/reg/2014/600/oj).';

(14) Article 29 is amended as follows:

(a) paragraphs 1, 2 and 3 are replaced by the following:

‘1. For the purposes of Article 27(2), point (f), Member States shall ensure that competent authorities may, on the basis of what is proportionate in the circumstances, appoint one or more temporary administrators to either:

(a) temporarily replace the management body of the institution or entity referred to in Article 1(1), point (b), (c) or (d); or

(b) work temporarily with the management body of the institution or entity referred to in Article 1(1), point (b), (c) or (d).

At the time of appointment of the temporary administrator, the competent authority shall specify whether that appointment is for the purposes of the first subparagraph, point (a) or (b).

For the purposes of the first subparagraph, point (b), the competent authority shall further specify at the time of appointment the role, duties and powers of the temporary administrator and any requirements for the management body of the institution or entity to consult or to obtain the consent of the temporary administrator prior to taking specific decisions or actions.

Member States shall require the competent authority to make public the appointment of any temporary administrator, except where the temporary administrator does not have the power to represent the institution or entity referred to in Article 1(1), point (b), (c) or (d).

Member States shall further ensure that any temporary administrator possesses sufficient knowledge, skills and experience to perform his or her duties and fulfils the requirements set out in Article 91(2) and (2a) of Directive 2013/36/EU. The assessment by the competent authority of whether the temporary administrator possesses such knowledge, skills and experience and complies with those requirements shall be an integral part of the decision to appoint that temporary administrator.

2. The competent authority shall specify the powers of the temporary administrator at the time of his or her appointment, on the basis of what is proportionate in the circumstances. Such powers may include some or all of the powers of the management body of the institution or entity referred to in Article 1(1), point (b), (c) or (d), under the statutes of the institution or entity and under national law, including the power to exercise some or all of the administrative functions of the management body of the institution or entity. The powers of the temporary administrator in relation to the institution or entity shall comply with the applicable company law. The competent authority may adjust such powers in the event of a change in circumstances.

3. The competent authority shall specify the role and functions of the temporary administrator at the time of his or her appointment. Such role and functions may include:

(a) ascertaining the financial position of the institution or entity referred to in Article 1(1), point (b), (c) or (d);

(b) managing the business or part of the business of the institution or entity referred to in Article 1(1), point (b), (c) or (d), to preserve or restore its financial position;

(c) taking measures to restore the sound and prudent management of the business of the institution or entity referred to in Article 1(1), point (b), (c) or (d);

(d) ensuring compliance by the institution or entity referred to in Article 1(1), point (b), (c) or (d), with any requirements pursuant to Article 30a(3), second subparagraph, (4), first subparagraph, or (5).

The competent authority shall specify any limits on the role and functions of the temporary administrator at the time of his or her appointment.';

(b) in paragraph 5, the second subparagraph is replaced by the following:

‘In any case, the temporary administrator may exercise the power to convene a general meeting of the shareholders of the institution or entity referred to in Article 1(1), point (b), (c) or (d), and to set the agenda of such a meeting only with the prior consent of the competent authority.’;

(c) paragraphs 6 and 7 are replaced by the following:

‘6. At the request of the competent authority, the temporary administrator shall draw up reports on the financial position of the institution or entity referred to in Article 1(1), point (b), (c) or (d), and on the acts performed during his or her mandate, at intervals set by the competent authority. The temporary administrator shall, in any case, draw up such a report at the end of his or her mandate.

7. The temporary administrator shall be appointed for a maximum of one year. The competent authority may exceptionally extend that period once for a duration proportionate to the circumstances if the conditions for appointing the temporary administrator continue to be met. The competent authority shall be responsible for determining whether those conditions are met and for justifying any extension of the mandate of the temporary administrator to the shareholders.’;

(15) Article 30 is amended as follows:

(a) the title is replaced by the following:

‘*Coordination of early intervention measures in relation to groups*’;

(b) paragraphs 1 to 4 are replaced by the following:

‘1. Where the conditions for the application of early intervention measures under Article 27 are met in relation to a Union parent undertaking, the consolidating supervisor shall notify EBA and consult the other competent authorities within the supervisory college before deciding to apply an early intervention measure.

2. Following the notification and consultation referred to in paragraph 1 of this Article the consolidating supervisor shall decide whether to apply early intervention measures under Article 27 in respect of the relevant Union parent undertaking, taking into account the impact of those measures on the group entities in other Member States. The consolidating supervisor shall notify the decision to EBA and to the other competent authorities within the supervisory college.

3. Where the conditions for the application of early intervention measures under Article 27 are met in relation to a subsidiary of a Union parent undertaking, the competent authority responsible for the supervision on an individual basis that intends to take a measure in accordance with that Article shall notify EBA and consult the consolidating supervisor.

Following the receipt of the notification, the consolidating supervisor may assess the likely impact of the application of early intervention measures under Article 27 to the institution or entity referred to in Article 1(1), point (b), (c) or (d), in question, on the group or on group entities in other Member States. The consolidating supervisor shall communicate that assessment to the competent authority within three days.

Following that notification and consultation, the competent authority shall decide whether to apply an early intervention measure. The decision shall give due consideration to any assessment of the consolidating supervisor. The competent authority shall notify the decision to EBA, the consolidating supervisor and the other competent authorities within the supervisory college.

4. Where more than one competent authority intends to apply an early intervention measure under Article 27 to more than one institution or entity referred to in Article 1(1), point (b), (c) or (d), in the same group, the consolidating supervisor and the other relevant competent authorities shall assess whether it is more appropriate to appoint the same temporary administrator for all the entities concerned or to coordinate the application of the other early intervention measures to more than one institution or entity in order to facilitate solutions restoring the financial position of the institution or entity concerned. The assessment shall take the form of a joint decision of the consolidating supervisor and the other relevant competent authorities. The joint decision shall be reached within five days of the date of the notification referred to in paragraph 1 of this Article. The joint decision shall be reasoned and set out in a document which shall be provided by the consolidating supervisor to the Union parent undertaking.

EBA may, at the request of a competent authority, assist the competent authorities in reaching an agreement in accordance with Article 31 of Regulation (EU) No 1093/2010.

In the absence of a joint decision within five days, the consolidating supervisor and the competent authorities of subsidiaries may take individual decisions on the appointment of a temporary administrator to the institutions or entities referred to in Article 1(1), point (b), (c) or (d), for which they have responsibility and on the application of the other early intervention measures.';

(c) paragraph 6 is replaced by the following:

‘6. EBA may at the request of any competent authority assist the competent authorities that intend to apply one or more of the measures referred to in Article 27(2), point (a), of this Directive with respect to Section A, points (4), (10), (11) and (19), of the Annex to this Directive, in Article 27(2), point (c), of this Directive or in Article 27(2), point (d), of this Directive in reaching an agreement in accordance with Article 19(3) of Regulation (EU) No 1093/2010.’;

(16) the following article is inserted in Title III:

‘*Article 30a*
Preparation for resolution

1. Member States shall ensure that competent authorities notify the resolution authorities without delay of the following:

(a) any of the measures referred to in Article 104(1) of Directive 2013/36/EU or in Article 39(2) of Directive (EU) 2019/2034 that they take or require an institution or entity referred to in Article 1(1), point (b), (c) or (d), of this Directive to take;

(b) that, as shown by supervisory activity, the conditions laid down in Article 27(1) are met in relation to an institution or entity referred to in Article 1(1), point (b), (c) or (d), irrespective of the application of any early intervention measure;

(c) the application of any of the early intervention measures referred to in Article 27.

Competent authorities shall closely monitor, in close cooperation with the resolution authorities, the situation of the institution or entity and its compliance with the measures referred to in the first subparagraph, point (a), that aim to address a deterioration of the situation of that institution or entity and with the early intervention measures referred to in the first subparagraph, point (c).

2. Member States shall ensure that competent authorities notify resolution authorities as early as possible where they consider that there is a material risk of one or more of the circumstances referred to in Article 32(4) applying in relation to an institution or entity referred to Article 1(1), point (b), (c) or (d). That notification shall contain:

(a) the reasons for the notification;

(b) an overview of the measures under consideration which would prevent the failure of the institution or entity concerned within a reasonable timeframe, their expected impact on the institution or entity as regards the circumstances referred to in Article 32(4) and the expected timeframe for the implementation of those measures.

Following the receipt of the notification referred to in the first subparagraph of this paragraph, resolution authorities shall assess, in close cooperation with competent authorities, what constitutes a reasonable timeframe for the purposes of the assessment of the condition referred to in Article 32(1), point (b), taking into account the speed of the deterioration of the situation of the institution or entity referred to in Article 1(1), point (b), (c) or (d), the need to implement effectively the resolution strategy, and any other considerations relevant to the case. Resolution authorities may, at any time, reassess the timeframe and adjust it to the circumstances of the case. Resolution authorities shall communicate that assessment or reassessment to competent authorities as early as possible.

Following the receipt of the notification referred to in the first subparagraph of this paragraph, competent authorities and resolution authorities shall, in close cooperation, monitor the situation of the institution or entity referred to in Article 1(1), point (b), (c) or (d), the implementation of relevant measures within their expected timeframe and any other relevant developments. For that purpose, competent authorities and resolution authorities shall meet regularly, with a frequency to be determined by the resolution authorities having regard to the circumstances of the case. Competent authorities and resolution authorities shall provide each other with any relevant information without delay.

3. Competent authorities shall provide resolution authorities with all the information requested by resolution authorities that is necessary for any of the following actions:

(a) updating the resolution plan and preparing for the possible resolution of the institution or entity referred to in Article 1(1), point (b), (c) or (d);

(b) carrying out the valuation referred to in Article 36.

Where such information is not already available to competent authorities, resolution authorities and competent authorities shall cooperate and coordinate to obtain that information. For that purpose, competent authorities and resolution authorities shall have the power to require the institution or entity referred to in Article 1(1), point (b), (c) or (d), to provide such information, including through on-site inspections, and to provide each other with that information.

4. The powers of resolution authorities shall include the power to market to potential purchasers the institution or entity referred to in Article 1(1), point (b), (c) or (d), to make arrangements for such marketing, or to require the institution or entity to do so for the following purposes:

   (a) to prepare for the resolution of that institution or entity, subject to the criteria laid down in Article 39(2) and the confidentiality requirements laid down in Articles 84 and 84b;

   (b) to carry out the assessment by the resolution authority of the condition referred to in Article 32(1), point (b).

   Where, in the exercise of the power referred to in the first subparagraph, the resolution authority decides to directly market the institution or entity to potential purchasers, it shall have due regard to the circumstances of the case, in particular any preventive measures that may potentially be taken by a deposit guarantee scheme or any measures that may potentially be taken by an IPS, and to the potential impact of the exercise of that power on the institution or entity's overall position.

5. Resolution authorities shall have the power to require the institution or entity referred to in Article 1(1), point (b), (c) or (d), to put in place the necessary arrangements, including a digital platform, for sharing information with potential purchasers or with advisors and valuers engaged by the resolution authority. Where the resolution authority exercises that power, Article 84(1), points (e) and (f), shall apply.

6. The prior notification by the competent authority in accordance with paragraph 1, first subparagraph, of this Article shall not be a necessary condition for resolution authorities to prepare for the resolution of the institution or entity referred to in Article 1(1), point (b), (c) or (d), or to exercise the powers referred to in paragraphs 3, 4 and 5 of this Article.

7. Resolution authorities shall inform competent authorities of any action taken pursuant to paragraphs 3, 4 and 5 without delay.

8. Member States shall ensure that competent authorities and resolution authorities closely cooperate in the following cases:

(a) when considering taking the measures referred to in paragraph 1, first subparagraph, point (a), of this Article, that aim to address a deterioration of the situation of an institution or entity referred to in Article 1(1), point (b), (c) or (d), and the measures referred to in paragraph 1, first subparagraph, point (c), of this Article;

(b) when considering taking any of the actions referred to in paragraphs 3, 4 and 5;

(c) during the implementation of the actions referred to in points (a) and (b) of this subparagraph.

Competent authorities and resolution authorities shall ensure that those measures and actions are consistent, coordinated and effective.’;

(17) in Article 31(2), point (c) is replaced by the following:

‘(c) to protect public funds by minimising reliance on extraordinary public financial support, in particular when provided from the budget of a Member State;’;

(18) Article 32 is amended as follows:

(a) paragraphs 1 and 2 are replaced by the following:

‘1. Member States shall ensure that resolution authorities take a resolution action in relation to an institution if resolution authorities determine, upon receiving a communication pursuant to paragraph 2, or on their own initiative, and considering the need to implement effectively the resolution strategy, that all of the following conditions are met:

(a) the institution is failing or is likely to fail;

(b) having regard to the timing and other relevant circumstances, there is no reasonable prospect that any alternative private sector measures, including measures by an IPS, preventive measures as referred to in Article 11(3) of Directive 2014/49/EU, supervisory action, early intervention measures, or the write-down or conversion of relevant capital instruments and eligible liabilities as referred to in Article 59(2) of this Directive, taken in respect of the institution, would prevent the failure of the institution within a reasonable timeframe;

(c) a resolution action is necessary in the public interest pursuant to paragraph 5.

2. Member States shall ensure that the competent authority makes an assessment of the condition referred to in paragraph 1, point (a), after having consulted the resolution authority.

Member States may provide that, in addition to the competent authority, the assessment of the condition referred to in paragraph 1, point (a), can be made by the resolution authority, after consulting the competent authority, where resolution authorities under national law have the necessary tools for making such an assessment including, in particular, adequate access to the relevant information. In such a case, Member States shall ensure that the competent authority provides the resolution authority, without delay, with any relevant information that the latter requests in order to carry out its assessment, before or after being informed by the resolution authority of its intention to make that assessment.

The assessment of the condition referred to in paragraph 1, point (b), shall be made by the resolution authority in close cooperation with the competent authority. The competent authority shall, without delay, provide the resolution authority with any relevant information that the resolution authority requests in order to carry out its assessment. The competent authority may also inform the resolution authority that it considers the condition laid down in paragraph 1, point (b), to be met.

When assessing the conditions referred to in paragraph 1, points (a) and (b), the competent authority or the resolution authority shall seek the latest available information from the deposit guarantee scheme or, where relevant, from the IPS of which the institution is a member, that would be relevant for such assessment, including whether the deposit guarantee scheme or the IPS can prevent the failure.';

(b) paragraph 4 is amended as follows:

(i) in the first subparagraph, point (d) is replaced by the following:

'(d) extraordinary public financial support is required, except where such support is granted in one of the forms referred to in Article 32c.';

(ii) the second to fifth subparagraphs are deleted;

(c) paragraph 5 is replaced by the following:

'5. For the purposes of paragraph 1, first subparagraph, point (c), a resolution action shall not be necessary in the public interest if the resolution authority concludes that none of the resolution objectives would be at risk in the event that the institution is wound up under normal insolvency proceedings.

If the resolution authority concludes that one or more of the resolution objectives would be at risk in the event that the institution is wound up under normal insolvency proceedings, the resolution authority shall conclude that a resolution action is necessary in the public interest where the resolution action is necessary to achieve, and is proportionate to, one or more of the resolution objectives and where the winding up of the institution under normal insolvency proceedings would not meet the resolution objectives which are at risk more effectively.

Member States shall ensure that when carrying out the assessment referred to in the first subparagraph, the resolution authority, on the basis of the information available to it at the time of that assessment, considers and compares any extraordinary public financial support that can reasonably be expected to be granted to the institution, both in the event of resolution and in the event of winding up in accordance with the applicable national law.

Member States shall ensure that when carrying out the assessment referred to in the second subparagraph, the resolution authority considers the costs of resolution and of normal insolvency proceedings and seeks to minimise and avoid destruction of value, unless necessary to achieve the resolution objectives.’;

(19) Articles 32a and 32b are replaced by the following:

‘*Article 32a*

Conditions for resolution with regard to a central body and credit institutions or financial institutions permanently affiliated to a central body

Member States shall ensure that resolution authorities are able to take a resolution action in relation to a central body and all credit institutions or financial institutions permanently affiliated to it that are part of the same resolution group where the central body and all credit institutions or financial institutions permanently affiliated to it, or the resolution group to which they belong, comply as a whole with the conditions laid down in Article 32(1).

Article 32b

Proceedings in respect of institutions and entities that are not subject to resolution action

1. Member States shall ensure that, when a resolution authority determines that an institution or entity referred to in Article 1(1), point (b), (c) or (d), meets the conditions laid down in Article 32(1), points (a) and (b), but not the condition laid down in Article 32(1), point (c), the competent authority or the resolution authority initiates or requests the initiation of the relevant administrative or judicial procedure, including, where available, a voluntary procedure, to wind up the institution or entity in an orderly manner in accordance with the applicable national law.

2. Member States shall ensure that an institution or entity referred to in Article 1(1), point (b), (c) or (d), which is wound up in an orderly manner in accordance with the applicable national law in the circumstances referred to in paragraph 1, including in a voluntary winding up procedure, exits the market or terminates its banking activities within a reasonable timeframe.

3. Member States shall ensure that when a resolution authority determines that an institution or entity referred to in Article 1(1), point (b), (c) or (d), meets the conditions laid down in Article 32(1), points (a) and (b), but not the condition laid down in Article 32(1), point (c), that determination is a sufficient condition for the competent authority to withdraw that institution or entity's authorisation.

4. Member States shall ensure that the withdrawal of the authorisation of the institution or entity referred to in Article 1(1), point (b), (c) or (d), is a sufficient condition for the relevant national administrative or judicial authority to be able to initiate, without delay, the procedure to wind up the institution or entity in an orderly manner in accordance with the applicable national law.';

(20) the following article is inserted:

‘*Article 32c*

Extraordinary public financial support

1. Member States shall ensure that extraordinary public financial support outside of resolution action may be granted to an institution or entity referred to in Article 1(1), point (b), (c) or (d), on an exceptional basis, provided that the extraordinary public financial support complies with the conditions and requirements established in the Union State aid framework, only in the following cases:

   (a) where, to remedy a serious disturbance in the economy of a Member State of an exceptional or systemic nature and to preserve financial stability, the extraordinary public financial support takes any of the following forms:

      (i) a State guarantee to back liquidity facilities provided by central banks in accordance with the central banks’ conditions;

      (ii) a State guarantee of newly issued liabilities;

      (iii) an acquisition of own funds instruments other than Common Equity Tier 1 instruments or of other capital instruments, or a use of impaired asset measures, at prices, duration and other terms that do not confer an undue advantage upon the institution or entity concerned, where none of the circumstances referred to in Article 32(4), point (a), (b) or (c), or Article 59(3) are present at the time the public support is granted;

(b) where the extraordinary public financial support takes the form of an intervention by a deposit guarantee scheme, as referred to in Article 11(3) of Directive 2014/49/EU;

(c) where the extraordinary public financial support takes the form of an intervention by a deposit guarantee scheme, as referred to in Article 11(5) of Directive 2014/49/EU;

(d) where the extraordinary public financial support takes the form of State aid granted to an institution or entity referred to in Article 32b of this Directive, other than the support granted by a deposit guarantee scheme pursuant to Article 11(5) of Directive 2014/49/EU.

2. The support measures referred to in paragraph 1, point (a), shall:

(a) be confined to solvent institutions or entities, as confirmed by the competent authority;

(b) be of a precautionary and temporary nature and be based on a predefined strategy, approved by the competent authority, to exit the support measures, which includes a clearly specified termination date, sale date or repayment schedule for each of those measures;

(c) be proportionate to remedy the consequences of the serious disturbance in the economy of a Member State of an exceptional or systemic nature and to preserve financial stability; and

(d) not be used to offset losses that the institution or entity has incurred or is likely to incur over at least the following 12 months.

The predefined strategy referred to in the first subparagraph, point (b), of this paragraph shall not be disclosed until after the institution or entity exits the support measures concerned, or until after the assessment referred to in paragraph 6, second subparagraph, of this Article has been completed, subject to non-delayable disclosure obligations as referred to in Article 17 of Regulation (EU) No 596/2014.

3. For the purposes of paragraph 2, first subparagraph, point (a), of this Article, where the extraordinary public financial support takes the form of the support measures referred to in paragraph 1, points (a)(ii) and (iii), of this Article, an institution or entity shall be deemed to be solvent where the competent authority has concluded that no breach has occurred, or is likely to occur in the following 12 months, based on current expectations, of any of the requirements referred to in Article 92(1) of Regulation (EU) No 575/2013, Article 104a of Directive 2013/36/EU, Article 11(1) of Regulation (EU) 2019/2033, Article 40 of Directive (EU) 2019/2034 or the relevant applicable requirements under Union or national law.

When assessing whether a breach of the requirements referred to in the first subparagraph of this paragraph has occurred, the competent authority shall disregard any breaches that have effectively been remedied by the time of the assessment. Where the competent authority concludes that a future breach of the requirements referred to in Article 104a of Directive 2013/36/EU or Article 40 of Directive (EU) 2019/2034 is likely to occur in the following 12 months, it may exceptionally deem an institution or entity to be solvent where it determines that the breach will be of a short-term nature and that effective remediation measures to address it have been planned by the institution or entity and have been assessed as credible by the competent authority by the time of the assessment.

4. For the purposes of paragraph 2, first subparagraph, point (d), the relevant competent authority shall quantify the losses that the institution or entity has incurred or is likely to incur. That quantification shall be based on asset quality reviews conducted by the ECB, EBA or national authorities or, where appropriate, on on-site inspections conducted by the competent authority. Where it is not possible to conduct those reviews or inspections within a reasonable time, the competent authority may base the quantification on the institution or entity's balance sheet, provided that the balance sheet complies with the applicable accounting rules and standards, as confirmed by an independent external auditor. The quantification shall be made as close as possible to the date of the granting of the support measures and by using the most recent information available to the competent authority.

5. The support measures referred to in paragraph 1, point (a)(iii), shall be limited to measures that have been assessed by the competent authority as necessary to preserve the solvency of the institution or entity by addressing the capital shortfall established in the adverse scenario of national, Union or SSM-wide stress tests or equivalent exercises conducted by the ECB, EBA or national authorities, where applicable, and confirmed by the competent authority.

By way of derogation from paragraph 1, point (a)(iii), of this Article, the acquisition of Common Equity Tier 1 instruments shall be exceptionally permitted where the nature of the shortfall identified is such that the acquisition of any other own funds instruments or other capital instruments would not make it possible for the institution or entity concerned to address the capital shortfall established in the adverse scenario in the relevant stress test or equivalent exercise. The amount of acquired Common Equity Tier 1 instruments shall not exceed 2 % of the total risk exposure amount of the institution or entity concerned calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013.

In exceptional circumstances, the competent authority may permit the 2 % limit to be exceeded where it has demonstrated that it is necessary and appropriate for the implementation of the support measures, taking into account the specific circumstances of the case. The exceeding of the limit shall be of an amount that does not create any risks for the timely and credible execution of the predefined strategy to exit the support measures. The competent authority shall provide the Commission with the analysis underlying its permission to exceed the 2 % limit for the purposes of any potential State aid assessment.

6. Member States shall ensure that, if any of the support measures referred to in paragraph 1, point (a), is not redeemed, repaid or otherwise terminated in accordance with the terms of the strategy to exit the support measure established at the time of granting such measure, the competent authority shall request the institution or entity to submit a one-time remediation plan. The remediation plan shall describe the steps to be taken in order to exit the support measure within two years and to ensure the long-term viability of the institution or entity. The remediation plan shall not constrain the power of the relevant authorities to assess or determine whether the institution or entity is failing or is likely to fail, at any time.

Where the competent authority is not satisfied that the remediation plan is credible or feasible, or where the institution or entity fails to comply with the remediation plan, the relevant authorities shall assess whether the institution or entity is failing or is likely to fail.

7. EBA shall, by … [12 months from the date of entry into force of this amending Directive], issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 on the type of tests or exercises referred to in paragraph 5 of this Article, which may lead to the support measures referred to in paragraph 1, point (a)(iii), of this Article.';

(21) in Article 33, paragraph 2 is replaced by the following:

'2. Member States shall ensure that resolution authorities take a resolution action in relation to an entity referred to in Article 1(1), point (c) or (d), considering the need to implement effectively the resolution strategy, where that entity meets the conditions laid down in Article 32(1).

For the purpose of taking a resolution action, an entity shall be deemed to be failing or likely to fail in any of the following circumstances:

(a) the entity meets one or more of the conditions laid down in Article 32(4), point (b), (c) or (d);

(b) the entity infringes materially or there are objective elements that show that the entity will, in the near future, infringe materially the applicable requirements laid down in Regulation (EU) No 575/2013 or in Directive 2013/36/EU.';

(22) Article 33a is amended as follows:

(a) in paragraph 8, the first subparagraph is replaced by the following:

‘Member States shall ensure that resolution authorities notify the institution or the entity referred to in Article 1(1), point (b), (c) or (d), and the authorities referred to in Article 83(2), points (a) to (h), without delay when exercising the power referred to in paragraph 1 of this Article after a determination has been made that the institution or entity is failing or is likely to fail pursuant to Article 32(1), point (a), and before the resolution decision is taken.’;

(b) in paragraph 9, the following subparagraph is added:

‘Notwithstanding the first subparagraph of this paragraph, Member States shall ensure that where the powers referred to therein are exercised in respect of eligible deposits and those deposits are not considered unavailable for the purposes of Directive 2014/49/EU, depositors have access to an appropriate daily amount from those deposits.’;

(23) Article 35 is amended as follows:

(a) paragraphs 1 and 2 are replaced by the following:

‘1. Member States shall ensure that resolution authorities may appoint one or more special managers to replace or to work with the management body of the institution under resolution or the bridge institution. Resolution authorities shall make public the appointment of a special manager. Resolution authorities shall ensure that the special manager has the qualifications, ability and knowledge required to carry out his or her functions.

Article 91 of Directive 2013/36/EU shall not apply to the appointment of special managers.

2. The special manager shall have all the powers of the shareholders and the management body of the institution under resolution or the bridge institution. However, the special manager may only exercise such powers under the control of the resolution authority.’;

(b) paragraph 5 is replaced by the following:

‘5. Member States shall require that a special manager draw up reports for the appointing resolution authority on the economic and financial situation of the institution under resolution or the bridge institution and on the acts performed in the conduct of his or her duties, at regular intervals set by the resolution authority and at the beginning and the end of his or her mandate.’;

(24) in Article 36, the following paragraph is inserted:

‘7a. Where necessary to inform the decisions referred to in paragraph 4, points (c) and (d), the valuer shall complement the information referred to in paragraph 6, point (c), with an estimate of the value of the off-balance-sheet assets and the value of the liabilities that could arise in the future from an uncertain event and of the liabilities of uncertain timing or amount.’;

(25) Article 37 is amended as follows:

(a) paragraph 6 is replaced by the following:

‘6. Where the resolution tools referred to in paragraph 3, point (a) or (b), of this Article, are used, independently or in combination with other resolution tools, to transfer only part of the assets, rights or liabilities of the institution under resolution, any residual entity remaining after the transfer of the assets, rights or liabilities, and the application of other resolution tools, where relevant, shall be wound up in an orderly manner in accordance with the applicable national law. Such winding up shall be done within a reasonable timeframe, having regard to any need for that residual entity to provide services or support pursuant to Article 65 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 entity is necessary to achieve the resolution objectives or comply with the principles referred to in Article 34.

The first subparagraph of this paragraph shall not apply where the bail-in tool is applied to an institution under resolution for the purpose of Article 43(2), point (a), in combination with other resolution tools.

In the cases referred to in the first subparagraph of this paragraph, where resolution action would result in losses being borne by creditors or in their claims being converted, the resolution authority may decide not to exercise the power to write down and convert capital instruments in accordance with Article 59, as referred to in paragraph 2 of this Article, if those instruments are to be left in the residual entity and the application of the resolution tools referred to in paragraph 3, point (a) or (b), of this Article, together with the winding up of the residual entity would ensure, on the basis of the valuation referred to in Article 36, that they would bear losses ahead of any other creditors of the institution under resolution.';

(b) the following paragraph is added:

'11. EBA shall monitor the actions and preparation of resolution authorities to ensure the effective implementation of the resolution tools and powers in the event of resolution. EBA shall submit a report to the Commission on the state of play of existing practices and possible divergences across Member States by … [24 months from the date of entry into force of this amending Directive].

The report referred to in the first subparagraph shall cover at least the following:

(a) the arrangements in place to implement the bail-in tool and the level of engagement with financial market infrastructures and third-country authorities, where relevant;

(b) the arrangements in place to put into operation other resolution tools;

(c) the level of transparency towards relevant stakeholders regarding the arrangements referred to in points (a) and (b).';

(26) Article 40 is amended as follows:

(a) in paragraph 1, the introductory wording is replaced by the following:

'In order to give effect to the bridge institution tool and having regard to the need to pursue any of the resolution objectives, Member States shall ensure that resolution authorities have the power to transfer to a bridge institution all of the following:';

(b) in paragraph 2, the following subparagraph is added:

‘Without prejudice to the second subparagraph, where the application of the bail-in tool allows for the capital of the bridge institution to be fully provided through the conversion of bail-inable liabilities into shares or other types of capital instruments, the requirement that the bridge institution is wholly or partially owned by one or more public authorities referred to in the first subparagraph, point (a), may be waived.’;

(27) in Article 42(5), point (b) is replaced by the following:

‘(b) such a transfer is necessary to ensure the proper functioning of the institution under resolution, the bridge institution or the asset management vehicle itself; or’;

(28) Article 44 is amended as follows:

(a) paragraph 5 is replaced by the following:

‘5. The resolution financing arrangement may make a contribution as referred to in paragraph 4 where all of the following conditions are met:

(a) a contribution to loss absorption and recapitalisation equal to an amount not less than 8 % of the total liabilities including own funds of the institution under resolution, measured in accordance with the valuation provided for in Article 36, has been made by the shareholders and the holders of other instruments of ownership, the holders of relevant capital instruments and of other bail-inable liabilities through reduction, write-down or conversion pursuant to Article 48(1) and Article 60(1), and by the deposit guarantee scheme pursuant to Article 109 where relevant;

(b) the contribution of the resolution financing arrangement does not exceed 5 % of the total liabilities including own funds of the institution under resolution, measured in accordance with the valuation provided for in Article 36.’;

(b) in paragraph 7, the first subparagraph is replaced by the following:

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

(a) the resolution financing arrangement has made a contribution pursuant to paragraph 4 and the 5 % limit referred to in paragraph 5, point (b), has been reached; and

(b) all bail-inable liabilities that are not eligible deposits, that rank lower than the deposits referred to in Article 108(1), first subparagraph, point (b), and that have not been excluded from bail-in pursuant to paragraph 3 of this Article, have been written down or converted in full.’;

(29) in Article 44a, the following paragraph is added:

‘8. By … [18 months from the date of entry into force of this amending Directive], EBA, in coordination with ESMA, shall submit a report to the Commission on the application of this Article. That report shall compare the measures adopted by the Member States to comply with this Article, analyse their effectiveness in protecting retail clients and assess their impact on cross-border operations. On the basis of that report, the Commission may submit a legislative proposal to amend this Directive.’;

(30) in Article 45, paragraph 1 is replaced by the following:

‘1. Member States shall ensure that institutions and entities referred to in Article 1(1), points (b), (c) and (d), meet, at all times, the requirements for own funds and eligible liabilities where required and as determined by the resolution authority in accordance with this Article and Articles 45a to 45i.’;

(31) Article 45b is amended as follows:

(a) the following paragraphs are inserted:

‘1a. Resolution entities shall only include deposits in the amount of own funds and eligible liabilities where such inclusion has been authorised by the resolution authority in accordance with paragraph 1b and where those deposits meet all of the following conditions:

(a) the deposits meet all of the conditions set out in paragraph 1, first subparagraph;

(b) the deposits are not held by natural persons and micro, small and medium-sized enterprises;

(c) the deposits are term deposits with an original maturity of at least one year and do not confer upon the owner a right to early reimbursement even where the early reimbursement is subject to the payment of a penalty;

(d) the relevant contractual documentation explicitly refers to:

(i) the resolution entity's intention to include the deposits in the amount of own funds and eligible liabilities;

(ii) the exclusion of the deposits from any repayment by a deposit guarantee scheme pursuant to Article 5(1), point (l), of Directive 2014/49/EU.

1b. The resolution authority may authorise the resolution entity to fully or partially include deposits in the amount of own funds and eligible liabilities if it is satisfied that all of the following conditions are met:

(a) the resolution authority expects that those deposits would not be fully or partially excluded from bail-in pursuant to Article 44(3) or would not be transferred in full to a recipient under a partial transfer;

(b) the resolution authority has concluded that the inclusion is not, or is not likely to be, a substantive impediment to resolvability, in particular due to the impact on the feasibility of using resolution tools in a way that achieves the resolution objectives.

The resolution authority shall withdraw the authorisation where it concludes that one of the conditions referred to in the first subparagraph is no longer met. In that case, the resolution entity shall cease to include deposits in the amount of own funds and eligible liabilities.';

(b) in paragraphs 4, 5 and 7, the term 'G-SIIs' is replaced by the term 'G-SII entities';

(c) paragraph 8 is amended as follows:

(i) in the first subparagraph, the term 'G-SIIs' is replaced by the term 'G-SII entities';

(ii) in the second subparagraph, point (c), the term 'G-SII' is replaced by the term 'G-SII entity';

(iii) in the fourth subparagraph, the term 'G-SIIs' is replaced by the term 'G-SII entities';

(d) the following paragraph is added:

‘10. The resolution authority may permit the resolution entity to comply with the requirements referred to in paragraphs 4, 5 and 7 using own funds or liabilities as referred to in paragraphs 1 and 3 where all of the following conditions are met:

(a) for entities that are G-SII entities or resolution entities that are subject to Article 45c(5) or (6), the resolution authority has not reduced the requirement referred to in paragraph 4 of this Article, pursuant to the first subparagraph of that paragraph;

(b) the liabilities referred to in paragraph 1 of this Article that do not meet the condition referred to in Article 72b(2), point (d), of Regulation (EU) No 575/2013 comply with the conditions set out in Article 72b(4), points (b) to (e), of that Regulation.’;

(32) Article 45c is amended as follows:

(a) in paragraph 2a, second subparagraph, point (b) is replaced by the following:

‘(b) liabilities that fulfil the eligibility criteria referred to in Article 72a of Regulation (EU) No 575/2013, except for Article 72b(2), points (b) and (d), of that Regulation, and, where applicable, in Article 45b(1a) of this Directive;’;

(b) in paragraph 3, eighth subparagraph, the words ‘critical economic functions’ are replaced by the term ‘critical functions’;

(c) paragraph 4 is replaced by the following:

‘4. EBA shall develop draft regulatory technical standards specifying the methodology to be used by resolution authorities to estimate the requirement referred to in Article 104a of Directive 2013/36/EU and the combined buffer requirement, for the purpose of determining the requirement referred to in Article 45(1) of this Directive and exercising the powers referred to in Article 16a of this Directive, for the following entities:

(a) resolution entities at the consolidated resolution group level, where the resolution group is not subject to those requirements under Directive 2013/36/EU;

(b) entities that are not themselves resolution entities, where the entity is not subject to those requirements under Directive 2013/36/EU on the same basis as the requirements referred to in Article 45f of this Directive.

EBA shall submit those draft regulatory technical standards to the Commission by … [12 months from the date of entry into force of this amending Directive].

Power is delegated to the Commission to supplement this Directive by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.';

(d) the following paragraph is inserted:

'6a. For resolution entities that are part of a resolution group the total assets of which exceed EUR 30 billion and the preferred resolution strategy of which envisages primarily the application of the sale of business tool or the bridge institution tool and its exit from the market, the level of the requirement referred to in paragraph 3 of this Article shall be at least equal to:

(a) 15 % when calculated in accordance with Article 45(2), point (a); and

(b) 4,5 % when calculated in accordance with Article 45(2), point (b).

The first subparagraph of this paragraph shall not apply to resolution entities the preferred resolution strategy of which envisages the application of the bail-in tool for the purpose of Article 43(2), point (a), independently or in combination with other resolution tools.';

(e) in paragraph 7, eighth subparagraph, the words 'critical economic functions' are replaced by the term 'critical functions';

(33) in Article 45d(1), the introductory wording is replaced by the following:

‘The requirement referred to in Article 45(1) for a resolution entity that is a G-SII entity shall consist of the following:’;

(34) Article 45f is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the third subparagraph is replaced by the following:

‘By way of derogation from the first and second subparagraphs of this paragraph, 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 45c and 45d on a consolidated basis.’;

(ii) the fifth subparagraph is replaced by the following:

‘For resolution groups identified in accordance with Article 2(1), point (83b)(b), those credit institutions or financial institutions that are permanently affiliated to a central body, but are not themselves resolution entities, a central body which is not itself a resolution entity, and any resolution entities that are not subject to a requirement under Article 45e(3), shall comply with Article 45c(7) on an individual basis.’;

(b) in paragraph 2, point (a), point (ii) is replaced by the following:

‘(ii) that fulfil the eligibility criteria referred to in Article 72a of Regulation (EU) No 575/2013, except for Article 72b(2), points (b), (c), (k), (l) and (m), and Article 72b(3), (4) and (5) of that Regulation, and, where applicable, in Article 45b(1a) of this Directive;’;

(35) Article 45g is replaced by the following:

‘*Article 45g*
Waiver for a central body, or for credit institutions or financial institutions permanently affiliated to a central body

The resolution authority may partially or fully waive the application of Article 45f in respect of a central body, or of a credit institution or a financial institution that is permanently affiliated to a central body, where all of the following conditions are met:

(a) the credit institution or the financial institution and the central body are subject to supervision by the same competent authority, are established in the same Member State and are part of the same resolution group;

(b) the commitments of the central body and its permanently affiliated credit institutions or financial institutions are joint and several liabilities, or the commitments of its permanently affiliated credit institutions or financial institutions are entirely guaranteed by the central body;

(c) the minimum requirement for own funds and eligible liabilities, and the solvency and liquidity of the central body and of all the permanently affiliated credit institutions or financial institutions are monitored as a whole on the basis of the consolidated accounts of those institutions;

(d) in the case of a waiver for a credit institution or a financial institution that is permanently affiliated to a central body, the management of the central body is empowered to issue instructions to the management of the permanently affiliated institutions;

(e) the relevant resolution group complies with the requirement referred to in Article 45e(3); and

(f) there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities between the central body and the permanently affiliated credit institutions or financial institutions in the event of resolution.';

(36) Article 45i is amended as follows:

(a) in paragraph 3, the following subparagraph is added:

'Entities shall disclose the information required under this paragraph in accordance with the arrangements set out in Article 128b.';

(b) paragraphs 5 and 6 are replaced by the following:

‘5. EBA shall develop draft implementing technical standards specifying:

(a) the methods and arrangements for reporting the information referred to in paragraphs 1 and 2;

(b) the frequency and submission deadlines of the reporting referred to in point (a).

The draft implementing technical standards shall specify a standardised way of providing information on the ranking of items referred to in paragraph 1, point (c), applicable in national insolvency proceedings in each Member State.

For institutions and entities referred to in Article 1(1), points (b), (c) and (d), of this Directive that are subject to Articles 92a and 92b of Regulation (EU) No 575/2013, such draft implementing technical standards shall, where appropriate, be made consistent with the implementing act adopted pursuant to Article 430 of that Regulation.

EBA shall submit those draft implementing technical standards to the Commission by … [12 months from the date of entry into force of this amending Directive].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph of this paragraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

5a. EBA shall develop IT solutions, including reporting templates, data standards, formats and instructions, for reporting the information referred to in paragraphs 1 and 2.

6. EBA shall develop draft implementing technical standards specifying:

(a) the methods and arrangements for disclosures referred to in paragraph 3;

(b) the frequency of the disclosures.

The draft implementing technical standards shall convey sufficiently comprehensive and comparable information to assess the risk profiles of institutions and entities referred to in Article 1(1), points (b), (c) and (d), and their degree of compliance with the applicable requirement referred to in Article 45e or 45f.

For institutions and entities referred to in Article 1(1), points (b), (c) and (d), of this Directive that are subject to Articles 92a and 92b of Regulation (EU) No 575/2013, the draft implementing technical standards shall, where appropriate, be made consistent with the implementing act adopted pursuant to Article 434a of that Regulation.

EBA shall submit those draft implementing technical standards to the Commission by … [12 months from the date of entry into force of this amending Directive].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph of this paragraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

6a. EBA shall develop IT solutions, including disclosure formats and instructions, for the disclosures referred to in paragraph 3.';

(37) in Article 45j, paragraph 2 is replaced by the following:

'2. EBA shall develop draft implementing technical standards specifying:

(a) the methods and arrangements for the identification and reporting of information by resolution authorities, in cooperation with competent authorities, to EBA for the purposes of paragraph 1;

(b) the frequency and submission deadlines of the reporting referred to in point (a).

EBA shall submit those draft implementing technical standards to the Commission by … [12 months from the date of entry into force of this amending Directive].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph of this paragraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

3. EBA shall develop IT solutions, including reporting templates, data standards, formats and instructions, for reporting the information referred to in paragraph 1.';

(38) Article 45l(3), the second subparagraph is replaced by the following:

'The report referred to in paragraph 2 shall cover three calendar years and shall be submitted to the Commission by 31 December of the calendar year following the last year covered by the report. The obligation referred to in paragraph 2 shall cease to apply after the second report is submitted.';

(39) Article 45m is amended as follows:

(a) paragraphs 1 and 2 are replaced by the following:

'1. Member States shall ensure that resolution authorities may determine appropriate transitional periods, not longer than three years, for institutions or entities referred to in Article 1(1), point (b), (c) or (d), to comply with the requirements laid down in Article 45e or 45f or with the requirements that result from the application of Article 45b(4), (5) or (7), as appropriate, where compliance with those requirements without a transitional period would not be proportionate.

The resolution authority may determine intermediate target levels for the requirements laid down in Article 45e or 45f or for the requirements that result from the application of Article 45b(4), (5) or (7), as appropriate, that an institution or entity shall comply with at a date set by the resolution authority. The intermediate target levels shall, as a rule, ensure a linear build-up of own funds and eligible liabilities towards the requirement.

2. By way of derogation from paragraph 1 of this Article, the transitional period determined by resolution authorities for an institution or entity referred to in Article 1(1), point (b), (c) or (d), for which the preferred resolution strategy changes from winding up under normal insolvency proceedings to the application of resolution action shall not exceed four years.

Where duly justified and appropriate on the basis of the criteria referred to in paragraph 7, the resolution authority may determine a longer transitional period of up to six years.

The resolution authority may determine intermediate target levels for the requirement referred to in Article 45e or for the requirements that result from the application of Article 45b(4), (5) or (7), as appropriate, that the institution or entity shall comply with at a date set by the resolution authority. The intermediate target levels shall, as a rule, ensure a linear build-up of own funds and eligible liabilities towards the requirement.';

(b) paragraph 4 is replaced by the following:

‘4. The requirements referred to in Article 45b(4) and (7) and in Article 45c(5) and (6), as applicable, shall not apply within the three-year period following 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 a non-EU G-SII, or the resolution entity starts to be in the situation referred to in Article 45c(5) or (6).’;

(40) in Article 46(2), the first subparagraph is replaced by the following:

‘The assessment referred to in paragraph 1 of this Article shall establish the amount by which bail-inable liabilities need to be written down or converted for the following purposes:

(a) to restore the Common Equity Tier 1 capital ratio of the institution under resolution or, where applicable, establish the ratio of the bridge institution, taking into account any contribution of capital by the resolution financing arrangement made pursuant to Article 101(1), point (d), of this Directive;

(b) to sustain sufficient market confidence in the institution under resolution or the bridge institution, taking into account any liabilities that could arise in the future from an uncertain event or liabilities of uncertain timing or amount which have not been written down or converted, and enable that institution to continue to meet, for at least one year, the conditions for authorisation and to continue to carry out the activities for which it is authorised under Directive 2013/36/EU or 2014/65/EU.’;

(41) Article 47(1) is amended as follows:

(a) point (a) is replaced by the following:

‘(a) cancel existing shares or other instruments of ownership or transfer them to:

(i) creditors whose claims are converted into shares or other types of capital instruments;

(ii) the purchaser, when applying this paragraph in combination with the sale of business tool; or

(iii) a bridge institution, when applying this paragraph in combination with the bridge institution tool;’;

(b) point (b)(i) is replaced by the following:

‘(i) relevant capital instruments and eligible liabilities in accordance with Article 59 issued by the institution under resolution pursuant to the power referred to in Article 59(2); or’;

(42) Article 52 is amended as follows:

(a) in paragraph 1, the following subparagraph is added:

‘In exceptional circumstances, the resolution authority may extend the one-month deadline for submission of the business reorganisation plan by another month.’;

(b) in paragraph 5, the following subparagraph is added:

‘The resolution authority may require the institution or entity referred to in Article 1(1), point (b), (c) or (d), to include additional elements in the business reorganisation plan.’;

(43) Article 53 is amended as follows:

(a) paragraphs 3 and 4 are replaced by the following:

‘3. Where a resolution authority reduces to zero the principal amount of, or outstanding amount payable in respect of, a liability, including a liability of uncertain timing or amount, by means of the power referred to in Article 63(1), point (e), 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, including a liability of uncertain timing or amount, by means of the power referred to in Article 63(1), point (e):

(a) the liability shall be discharged to the extent of the amount reduced;

(b) 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 in Article 63(1), point (j).';

(b) the following paragraph is added:

'5. For the purposes of paragraphs 3 and 4, the discharge of the liability of uncertain timing or amount and of any claims arising in relation to it shall be effective if and once the relevant liability is conclusively determined in terms of timing and amount or the claim related to it has arisen.';

(44) Article 55 is amended as follows:

(a) paragraphs 1 and 2 are replaced by the following:

‘1. Member States shall require institutions and entities referred to in Article 1(1), points (b), (c) and (d), to include a contractual term specifying that the creditor or party to the agreement or instrument creating a relevant capital instrument or a bail-inable liability recognises that that instrument or liability may be subject to write- down and conversion powers and agrees 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 instrument or liability complies with all of the following conditions:

(b) the instrument or liability is not a deposit as referred to in Article 108(1), point (b);

(c) the instrument or liability is governed by the law of a third country;

(d) the instrument or liability is issued or entered into after the date on which a Member State applies the provisions adopted in order to transpose this Section.

The first subparagraph shall not apply where the resolution authority of a Member State determines that the instruments or liabilities referred to therein can be subject to write-down and conversion powers by the resolution authority of a Member State pursuant to the law of a third country or to a binding agreement concluded with that third country.

1a. The requirement laid down in paragraph 1 shall not apply to liquidation entities or to subsidiaries of a resolution entity or of a third-country entity which are not themselves resolution entities.

The instruments or liabilities of the entities referred to in the first subparagraph of this paragraph that meet the conditions referred to in paragraph 1, first subparagraph, of this Article and which do not include the contractual term referred to in that paragraph shall not be counted towards the requirement referred to in Article 45(1).

By way of derogation from the first subparagraph of this paragraph, resolution authorities may decide that the requirement laid down in paragraph 1 applies to the following entities:

(a) a liquidation entity for which the resolution authority has determined the requirement referred to in Article 45(1);

(b) a subsidiary of a resolution entity or of a third-country entity which is not itself a resolution entity.

2. Member States shall ensure that where an institution or entity referred to in Article 1(1), point (b), (c) or (d), determines that it is legally or otherwise impracticable to include in the contractual provisions governing a relevant liability a term required pursuant to paragraph 1 of this Article, the requirement to include that term does not apply.

Where, within a class of liabilities which includes eligible liabilities, the amount of liabilities that do not include the contractual term required pursuant to paragraph 1 of this Article amounts to more than 10 % of that class, the institution or entity referred to in Article 1(1), point (b), (c) or (d), shall notify the resolution authority thereof. That institution or entity shall include in such notification the designation of the class of the liabilities which, pursuant to the first subparagraph of this paragraph, do not include that contractual term and the justification therefor. That institution or entity shall also provide the resolution authority with all information that the resolution authority requests, within a reasonable timeframe following receipt of the notification. The resolution authority shall assess the impact of that information on the resolvability of that institution or entity, including the impact on the resolvability resulting from the risk of breaching the creditor safeguards provided for in Article 73 when applying write-down and conversion powers to eligible liabilities.

In the event that the resolution authority concludes that it is not legally or otherwise impracticable to include in the contractual provisions a term required pursuant to paragraph 1, taking into account the need to ensure the resolvability of the institution or entity, it may require, within a reasonable timeframe, the inclusion of such contractual term. The resolution authority may, in addition, require the institution or entity to amend its practices concerning the application of the exemption from contractual recognition of bail-in.

The liabilities referred to in the first subparagraph of this paragraph shall not include Additional Tier 1 instruments, Tier 2 instruments and debt instruments referred to in Article 2(1), point (48)(ii), where those instruments are unsecured liabilities. Moreover, the liabilities referred to in the first subparagraph of this paragraph shall be senior to the liabilities that meet the conditions set out in Article 108(2).

Where the resolution authority concludes that the liabilities which do not include the contractual term required pursuant to paragraph 1 of this Article create a substantive impediment to resolvability, it shall apply the powers provided for in Article 17, as appropriate, to remove that impediment to resolvability.

Liabilities for which the institution or entity referred to in Article 1(1), point (b), (c) or (d), fails to include in the contractual provisions the term required pursuant to paragraph 1 of this Article or for which, in accordance with this paragraph, that requirement does not apply, shall not be counted towards the minimum requirement for own funds and eligible liabilities.';

(b) in paragraph 6, first subparagraph, points (b) and (c) are deleted;

(c) paragraph 8 is deleted;

(45) Article 59 is amended as follows:

(a) paragraph 3 is amended as follows:

(i) the introductory wording is replaced by the following:

'Member States shall require that resolution authorities exercise the write-down or conversion power, in accordance with Article 60 and without delay, in relation to relevant capital instruments, and eligible liabilities as referred to in paragraph 1a of this Article, issued by an institution or entity referred to in Article 1(1), point (b), (c) or (d), and taking into consideration the need to implement effectively the write-down or conversion power or, where applicable, the resolution strategy for the resolution group, where one or more of the following circumstances apply:';

(ii) point (e) is replaced by the following:

‘(e) extraordinary public financial support is required by the institution or entity referred to in Article 1(1), point (b), (c) or (d), except where that support is granted in one of the forms referred to in Article 32c.’;

(b) in paragraph 4, point (b) is replaced by the following:

‘(b) having regard to timing and other relevant circumstances, there is no reasonable prospect that any action, including alternative private sector measures, supervisory action or early intervention measures, other than the write-down or conversion of relevant capital instruments, and eligible liabilities as referred to in paragraph 1a, would prevent the failure of the institution or the entity referred to in Article 1(1), point (b), (c) or (d), or the group within a reasonable timeframe.’;

(46) Article 63 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) point (m) is replaced by the following:

‘(m) the power to require the relevant authority to assess the acquirer of a qualifying holding in a timely manner by way of derogation from the time-limits referred to in Article 31 of Regulation (EU) No 648/2012, Article 27a of Regulation (EU) No 909/2014 of the European Parliament and of the Council*, Article 11 of Directive 2009/65/EC, Article 58 of Directive 2009/138/EC, Article 22 of Directive 2013/36/EU and Article 12 of Directive 2014/65/EU, and from any time-limits set out in national laws transposing Article 6 of Directive (EU) 2015/2366 of the European Parliament and of the Council**.

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* 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, ELI: http://data.europa.eu/eli/reg/2014/909/oj).

** Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35, ELI: http://data.europa.eu/eli/dir/2015/2366/oj).’;

(ii) the following subparagraph is added:

‘Where the powers referred to in the first subparagraph, point (e) or (f), are exercised with respect to liabilities of uncertain timing or amount, the reduction or conversion shall be effective if and once the relevant liability is conclusively determined in terms of timing and amount or the claim related to it has arisen.’;

(b) in paragraph 2, point (a) is replaced by the following:

‘(a) subject to Article 3(6) and Article 85(1) of this Directive, requirements to obtain approval or consent from any person either public or private, including the shareholders or creditors of the institution under resolution and the competent authorities for the purposes of Articles 22 to 27 of Directive 2013/36/EU;’;

(47) in Article 71a, paragraph 3 is replaced by the following:

‘3. Paragraph 1 shall apply to any financial contract which complies with all of the following conditions:

(a) the contract creates a new obligation, or materially amends an existing obligation after the entry into force of the provisions adopted at national level to transpose this Article;

(b) the contract provides for the exercise of one or more termination rights or rights to enforce security interests to which Article 33a, 68, 69, 70 or 71 would apply if the financial contract were governed by the laws of a Member State.';

(48) in Article 74(2), point (a) is replaced by the following:

'(a) the treatment that shareholders and creditors, or the relevant deposit guarantee schemes in the cases referred to in Article 109(1), point (a), and Article 109(6), would have received if the institution under resolution with respect to which the resolution action or actions have been effected had entered normal insolvency proceedings at the time when the decision referred to in Article 82 was taken;';

(49) Article 75 is replaced by the following:

'*Article 75*
Safeguard for shareholders and creditors

Member States shall ensure that if the valuation carried out under Article 74 determines that any shareholder or creditor referred to in Article 73, or the deposit guarantee scheme in the cases referred to in Article 109(1), point (a), and Article 109(6), has incurred greater losses than it would have incurred in a winding up under normal insolvency proceedings, it is entitled to the payment of the difference from the resolution financing arrangements.';

(50) in Article 84, the following paragraph is inserted:

‘6a. This Article shall not preclude the exchange of information between resolution authorities and tax authorities in the same Member State, in accordance with national law. Where the information originates in another Member State, it shall only be exchanged with the express consent of the relevant authority which has disclosed it.’;

(51) the following articles are inserted in Chapter VIII:

‘*Article 84a*
Information held by centralised automated mechanisms

1. Member States shall ensure that the authorities operating the centralised automated mechanisms established pursuant to Article 32a of Directive (EU) 2015/849 of the European Parliament and of the Council* provide resolution authorities, upon their request, with information related to the aggregated number of customers for which an institution or entity referred to in Article 1(1), point (b), (c) or (d), of this Directive is the only or principal banking partner.

2. Member States shall ensure that resolution authorities request the information referred to in paragraph 1 only on a case-by-case basis and where necessary and proportionate for the purpose of performing their tasks under this Directive.

Article 84b

Confidentiality of inside information

1. Member States shall ensure that, when exercising the powers under Article 30a(3), (4) and (5), of this Directive or carrying out a valuation in accordance with Article 36 of this Directive, resolution authorities have the power to require the institution or entity referred to in Article 1(1), point (b), (c) or (d), of this Directive to take all necessary measures to ensure the confidentiality of inside information, as referred to in Article 7 of Regulation (EU) No 596/2014, on the preparation for resolution, until the resolution authority deems that confidentiality is no longer necessary to achieve the resolution objectives.

2. Member States shall ensure that, when taking resolution action or exercising the power to write down or convert relevant capital instruments and eligible liabilities in accordance with Article 59 of this Directive, resolution authorities have the power to require the institution or entity referred to in Article 1(1), point (b), (c) or (d), of this Directive to take all necessary measures to ensure the confidentiality of inside information, as referred to in Article 7 of Regulation (EU) No 596/2014, on the resolution process or the write-down or conversion in accordance with Article 59 of this Directive, until the resolution authority deems that confidentiality is no longer necessary to achieve the resolution objectives.

3. The resolution authority shall inform the institution or entity referred to in Article 1(1), point (b), (c) or (d), as soon as it deems that compliance with the requirement to take all necessary measures to ensure confidentiality of inside information in accordance with paragraphs 1 and 2 of this Article is no longer necessary to achieve the resolution objectives.

4. During the period in which the institution or entity referred to in Article 1(1), point (b), (c) or (d), of this Directive is required to take all necessary measures to ensure the confidentiality of inside information in accordance with paragraphs 1 and 2 of this Article, Article 17(1) of Regulation (EU) No 596/2014 shall not apply.

5. Where a resolution authority requires an institution or entity referred to in Article 1(1), point (b), (c) or (d), of this Directive to take all necessary measures to ensure the confidentiality of inside information in accordance with paragraph 1 or 2 of this Article, or where a resolution authority informs that institution or entity that confidentiality is no longer necessary to achieve the resolution objectives, that authority shall inform the competent authority specified in the delegated acts adopted pursuant to Article 17(3) of Regulation (EU) No 596/2014 as soon as possible.

6. The institution or entity referred to in Article 1(1), point (b), (c) or (d), of this Directive may disclose the inside information referred to in paragraphs 1 and 2 of this Article to a third party in the normal course of the exercise of an employment, a profession or duties, as set out in Article 10(1) of Regulation (EU) No 596/2014, only if the person receiving that inside information owes a duty of confidentiality, regardless of whether such duty is based on a law, on regulations, on articles of association, or on a contract and ensures that that information is kept confidential for the purposes of paragraphs 1 and 2 of this Article.

7. Where, despite the necessary measures taken to ensure the confidentiality of inside information in accordance with paragraph 1 or 2 of this Article, the confidentiality of that information is no longer ensured, the institution or entity referred to in Article 1(1), point (b), (c) or (d), shall disclose the inside information to the public as soon as possible. This paragraph shall include situations where a rumour explicitly relates to that inside information and that rumour is sufficiently accurate to indicate that the confidentiality of that information is no longer ensured.

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* Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73, ELI: http://data.europa.eu/eli/dir/2015/849/oj).';

(52) Article 88 is amended as follows:

(a) paragraph 2 is amended as follows:

(i) point (g) is replaced by the following:

‘(g) the designated authorities of the deposit guarantee schemes to which the credit institutions that are part of the group are affiliated.’;

(ii) the following subparagraph is added:

‘For the purposes of the first subparagraph, point (b), of this paragraph, where the subsidiary is a financial institution referred to in Article 1(1), point (b), and is also a liquidation entity, the resolution authority of that subsidiary shall decide whether it intends to be a member of the resolution college. If the resolution authority of such a subsidiary considers that membership is not needed, it shall seek the consent of the group-level resolution authority for ceasing to be a member. The group-level resolution authority shall consent to the cessation of membership unless continued membership is necessary for the proper and effective functioning of the resolution college. In the case of material changes which have the potential to affect the credibility of insolvency proceedings, the resolution authority of such a subsidiary shall notify the group-level resolution authority of the need to restore its membership of the resolution college. The group-level resolution authority shall, upon receipt of such notification, restore that membership.’;

(b) the following paragraph is inserted:

‘6a. To facilitate the carrying out of the tasks referred to in Article 10(1), Article 15(1) and Article 17(1) and in order to exchange any relevant information, a resolution college may be established:

(a) in the case of an institution with one or more significant branches located in other Member States, by the resolution authority of that institution;

(b) in the case of a group composed of a parent undertaking and its subsidiaries, which are established in the same Member State, and of significant branches, one or more of which are located in other Member States, by the resolution authority of that parent undertaking.

The resolution authority of the Member State where the institution or the parent undertaking referred to in the first subparagraph of this paragraph is established shall chair the resolution college and establish appropriate rules for its functioning, after consulting the other resolution authorities. A delegated act adopted pursuant to paragraph 7 shall not apply to resolution colleges established under this paragraph but shall be taken into account when the rules for their functioning are established. The Chair of the resolution college shall decide which authorities participate in a meeting or in an activity of the resolution college, taking into account the relevance of the activity to be planned or coordinated for those authorities, in particular the potential impact on the stability of the financial system in the Member States concerned and the tasks referred to in the first subparagraph of this paragraph.

The Chair of the resolution college shall keep all members of the resolution college fully informed, in advance, of the organisation of such meetings, the main issues to be discussed and the activities to be considered. The Chair shall also keep all members of the resolution college fully informed, in a timely manner, of the actions taken in those meetings or the measures carried out.';

(53) Article 91 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Where a resolution authority decides that an institution or entity as referred to in Article 1(1), point (b), (c) or (d), that is a subsidiary in a group, meets the conditions referred to in Article 32(1), points (a) and (b), or Article 33(4), points (a) and (b), as applicable, that authority shall notify without delay to the group-level resolution authority, if different, to the consolidating supervisor and to the members of the resolution college for the group in question the following information:

(a) the decision that the institution or entity referred to in Article 1(1), point (b), (c) or (d), meets the conditions referred to in Article 32(1), points (a) and (b), or Article 33(4), points (a) and (b), as applicable;

(aa) the outcome of the assessment of the condition referred to in Article 32(1), point (c) and Article 33(4), point (c);

(b) the resolution actions or insolvency measures that the resolution authority considers to be appropriate for that institution or entity.

The information referred to in the first subparagraph of this paragraph may be included in the notifications communicated pursuant to Article 81(3) to the group-level resolution authority, if different, to the consolidating supervisor and to the members of the resolution college for the group in question.';

(b) in paragraph 7, the second subparagraph is replaced by the following:

'EBA may, at the request of a resolution authority, assist the resolution authorities in reaching a joint decision in accordance with Article 31(2), point (c), of Regulation (EU) No 1093/2010.';

(54) in Article 92(3), the second subparagraph is replaced by the following:

'EBA may, at the request of a resolution authority, assist the resolution authorities in reaching a joint decision in accordance with Article 31(2), point (c), of Regulation (EU) No 1093/2010.';

(55) in Article 96(3), point (b) is replaced by the following:

'(b) the requirements relating to the application of the resolution tools in Title IV, Chapter IV.';

(56) in Article 98, paragraph 1 is amended as follows:

(a) the introductory wording is replaced by the following:

‘Member States shall ensure that resolution authorities and competent ministries exchange confidential information with relevant third-country authorities only if all of the following conditions are met:’;

(b) the following subparagraphs are added:

‘Member States shall ensure that competent authorities exchange confidential information, including recovery plans, with relevant third-country authorities only if the following conditions are met:

(a) in relation to recovery and resolution-related information, the conditions set out in the first subparagraph of this paragraph;

(b) in relation to other information available to the competent authorities, the conditions set out in Article 55 of Directive 2013/36/EU.

For the purposes of the second subparagraph, recovery and resolution-related information shall include all information directly related to the tasks of competent authorities under this Directive, in particular recovery planning and recovery plans, early intervention measures and exchanges with resolution authorities regarding resolution planning, resolution plans and resolution action.’;

(57) in Article 101, the following paragraph is added:

‘3. Where paragraph 2 applies, any variable remuneration, including discretionary pension benefits, of the current and former members of the management body and senior management of the institution under resolution for periods prior to the failure of the institution that has not been paid out or has not vested before the decision to take resolution action shall be cancelled. Variable remuneration, including discretionary pension benefits, that vested or was paid out, in the 24 months preceding the decision to take resolution action, to the current and former members of the management body and senior management shall be returned or repaid by them, unless they prove that they did not participate in, or were not responsible for, the conduct that resulted in, or contributed to, the failure of the institution under resolution.

This paragraph shall not apply to variable remuneration, including discretionary pension benefits, that is regulated by a collective bargaining agreement.’;

(58) in Article 102(3), the first subparagraph is replaced by the following:

‘If the available financial means are not sufficient to meet the target level specified in paragraph 1 of this Article, the *ex-ante* contributions raised in accordance with Article 103 shall resume until the target level is reached. Resolution authorities may defer the collection of the *ex-ante* contributions raised in accordance with Article 103 for up to three years to ensure that the amount to be collected reaches an amount that is proportionate to the costs of the collection process, provided that such deferral does not materially affect the capacity of the resolution authority to use the resolution financing arrangements pursuant to Article 101. Where the available financial means account for less than two thirds of the target level, the contributions shall be set at a level allowing for the target level to be reached within a reasonable timeframe which shall not exceed six years.’;

(59) Article 103 is amended as follows:

(a) paragraph 3 is replaced by the following:

‘3. The available financial means to be taken into account in order to reach the target level specified in Article 102 may include irrevocable payment commitments which are fully backed by collateral of low-risk assets unencumbered by any third party rights, at the free disposal of and earmarked for the exclusive use by the resolution authorities for the purposes specified in Article 101(1). The share of irrevocable payment commitments shall not exceed 30 % of the total amount of contributions raised in accordance with this Article. Within that limit, the resolution authority shall determine annually the share of irrevocable payment commitments in the total amount of contributions to be raised in accordance with this Article.’;

(b) the following paragraph is inserted:

‘3a. The resolution authority shall call the irrevocable payment commitments made pursuant to paragraph 3 of this Article where the use of the resolution financing arrangements is needed pursuant to Article 101.

Where an entity ceases to be within the scope of Article 1, Member States shall ensure that the resolution authority cancels the irrevocable payment commitments made pursuant to paragraph 3 of this Article and the collateral backing those commitments is returned.

Having regard to the need to preserve or restore adequate level of financial means available in the resolution financing arrangements, Member States shall ensure that in the cases referred to in the second subparagraph resolution authorities have the power, upon cancellation of the irrevocable payment commitments, to determine an amount that the entity referred to in the second subparagraph shall contribute to the resolution financing arrangement in the form, terms and timing set out in the decision of the resolution authority.

The contribution referred to in the third subparagraph shall not exceed the amount of irrevocable payment commitments cancelled pursuant to the second subparagraph.';

(60) in Article 104(1), the second subparagraph is replaced by the following:

'The total amount of extraordinary *ex-post* contributions per year shall not exceed three times 12,5 % of the target level specified in Article 102.';

(61) in Article 107(3), point (d) is replaced by the following:

'(d) any contribution that deposit guarantee schemes would be required to make in accordance with Article 109;';

(62) Article 108 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Member States shall ensure that in their national laws governing normal insolvency proceedings:

(a) the following have the same priority ranking which is higher than the ranking provided for under point (b):

(i) covered deposits;

(ii) claims of deposit guarantee schemes referred to in Article 9(2) of Directive 2014/49/EU;

(b) the following have the same priority ranking which is higher than the ranking provided for under point (c):

(i) that part of eligible deposits from natural persons, micro, small and medium-sized enterprises and from public authorities which exceeds the coverage level provided for in Article 6 of Directive 2014/49/EU;

(ii) deposits that would be eligible deposits from natural persons, micro, small and medium-sized enterprises and from public authorities were they not made through branches located outside the Union of institutions established in the Union;

(c) deposits not referred to in points (a) and (b) have the same priority ranking which is higher than the ranking provided for the claims of ordinary unsecured creditors.

The deposits referred to in Article 5(1), points (b), (c), (f), (k) and (l), of Directive 2014/49/EU shall not be included in the first subparagraph, points (a), (b) and (c), of this paragraph, and shall not have a priority ranking higher than the ranking provided for the claims of ordinary unsecured creditors.';

(b) the following paragraphs are added:

'8. Where the resolution tools referred to in Article 37(3), point (a) or (b), are used to transfer only part of the assets, rights or liabilities of the institution under resolution, the resolution financing arrangement shall have a claim against the residual institution or entity referred to in Article 1(1), point (b), (c) or (d), for any expense and loss incurred by the resolution financing arrangement as a result of any contributions made to resolution pursuant to Article 101(1) in connection to losses which creditors would have otherwise borne.

9. Member States shall ensure that the claims of the resolution financing arrangement referred to in paragraph 8 of this Article and in Article 37(7) have, in their national laws governing normal insolvency proceedings, a preferred priority ranking, which shall be higher than the ranking provided for the claims of deposits and of deposit guarantee schemes pursuant to paragraph 1 of this Article.';

(63) Article 109 is replaced by the following:

‘*Article 109*

Use of deposit guarantee schemes in the context of resolution

1. Member States shall ensure that, where the resolution authorities take resolution action with respect to a credit institution, and provided that such action ensures that depositors continue to have access to their deposits, the deposit guarantee scheme to which that credit institution is affiliated contributes the following amounts:

(a) where the bail-in tool is applied for the purpose of Article 43(2), point (a), independently or in combination with other resolution tools, the amount by which covered deposits would have been written down or converted in order to absorb the losses and recapitalise the institution under resolution pursuant to Article 46(1), had covered deposits been included within the scope of bail-in;

(b) where the sale of business tool or the bridge institution tool is applied, independently or in combination with other resolution tools, leading to the exit from the market of the institution under resolution:

(i) the amount necessary to cover the difference between, on the one hand, the value of the covered deposits and of the liabilities with the same or a higher priority ranking than covered deposits and, on the other hand, the value of the assets of the institution under resolution which are to be transferred to a recipient; and

(ii) where relevant, an amount necessary to ensure the capital neutrality of the recipient following the transfer.

2. In the cases referred to in paragraph 1, point (b), of this Article, where the transfer to the recipient includes deposits that are not covered deposits or other bail-inable liabilities and the resolution authority has reached the conclusion that the circumstances referred to in Article 44(3) apply to those deposits or liabilities, and where neither the threshold laid down in Article 44(5), point (a), nor the threshold laid down in Article 44(8), point (a), for the use of the resolution financing arrangements is met through the contribution to loss absorption and recapitalisation made by the shareholders and the holders of other instruments of ownership, the holders of relevant capital instruments and of other bail-inable liabilities, the amount contributed by the deposit guarantee scheme shall be the following:

(a) the amount necessary to cover the difference between, on the one hand, the value of deposits referred to in Article 108(1), first subparagraph, and of the liabilities with the same or higher priority ranking than covered deposits and, on the other hand, the value of the assets of the institution under resolution which are to be transferred to a recipient; and

(b) where relevant, an amount necessary to ensure the capital neutrality of the transfer for the recipient.

Member States shall ensure that, once the deposit guarantee scheme has made a contribution in the cases referred to in the first subparagraph, the institution under resolution refrains from acquiring stakes in other undertakings as well as from making distributions in connection with Common Equity Tier 1 capital or payments on Additional Tier 1 instruments, and from conducting other activities that may lead to an outflow of funds.

3. Where the funds of the deposit guarantee scheme are used in the application of the bail-in tool in accordance with paragraph 1, point (a), to contribute to the recapitalisation of the institution under resolution, Member States shall ensure that the deposit guarantee scheme transfers its holdings of shares or other instruments of ownership in the institution under resolution to the private sector as soon as commercial and financial circumstances allow.

Member States shall ensure that the deposit guarantee scheme markets the shares or other instruments of ownership referred to in the first subparagraph openly and transparently. Any such sale shall not misrepresent those shares or instruments or discriminate between potential purchasers and shall be made on commercial terms.

4. The contribution of the deposit guarantee scheme to a transfer that includes deposits that are not covered deposits or other bail-inable liabilities pursuant to paragraph 2 of this Article shall count towards the thresholds laid down in Article 44(5), point (a), and in Article 44(8), point (a), where all of the following conditions are met:

(a) the total value of the assets of the institution under resolution on an individual basis does not exceed EUR 80 billion;

(b) the institution under resolution has not, in the 24 months preceding the decision to take resolution action, been identified as a liquidation entity in the group resolution plan or in the resolution plan;

(c) the own funds instruments and eligible liabilities of the institution under resolution, and any liabilities that no longer qualify as eligible liabilities because they do not satisfy the condition set out in Article 72c(1) of Regulation (EU) No 575/2013, have been used in full for loss absorption and recapitalisation, except those eligible liabilities in relation to which the resolution authority considers that the circumstances referred to in Article 44(3) of this Directive apply;

(d) for an institution under resolution with a total value of assets on an individual basis above EUR 30 billion, the level of the requirement referred to in Article 45(1) is at least equal to the level referred to in Article 45c(6a).

Member States may decide that the first subparagraph of this paragraph shall only apply where the institution under resolution has not breached the requirement referred to in Article 45(2), point (a), including the corresponding intermediate target levels determined pursuant to Article 45m(1) and (2), for two consecutive quarters in the four-year period which ends on the date prior to the first day of the three full quarters preceding the decision to take resolution action. Where the competent authority or the resolution authority has applied at least one of the measures referred to in Article 45k(1) to address a breach of the requirement referred to in Article 45(2), point (a), the resolution authority shall not take into account breaches of that requirement during the four full quarters preceding the decision to take resolution action.

The second subparagraph of this paragraph shall not apply to the requirements that result from the application of Article 45b(4), (5) or (7).

5. Where the contribution of the deposit guarantee scheme to a transfer that includes deposits that are not covered deposits or other bail-inable liabilities, pursuant to paragraphs 2 and 4 of this Article, together with the contribution to loss absorption and recapitalisation made by the shareholders and the holders of other instruments of ownership, the holders of relevant capital instruments and of other bail-inable liabilities, enables the use of the resolution financing arrangement, the contribution of the deposit guarantee scheme shall be limited to the amount necessary to meet the thresholds laid down in Article 44(5), point (a), and in Article 44(8), point (a). Following the contribution of the deposit guarantee scheme, the resolution financing arrangement shall be used in accordance with the principles governing the use of the resolution financing arrangement set out in Articles 44 and 101.

Where an institution under resolution has a total value of assets on an individual basis of between EUR 30 billion and EUR 80 billion, the contribution of the deposit guarantee scheme pursuant to this paragraph shall not exceed 2,5 % of the total liabilities including own funds of the institution under resolution.

6. Where paragraph 4 of this Article applies and the conditions set out in Article 44(7), first subparagraph, are met, the deposit guarantee scheme shall make an additional contribution equal to the amount of losses that covered deposits would have suffered, had covered deposits suffered losses in proportion to the losses suffered by creditors with the same priority ranking in the national insolvency hierarchy.

The cost of the additional contribution of the deposit guarantee scheme referred to in the first subparagraph of this paragraph shall not exceed the losses it would have incurred had the institution been wound up under normal insolvency proceedings, as estimated pursuant to Article 36(8).

7. Member States shall ensure that, in all cases, the total amount of the contribution of the deposit guarantee scheme in a resolution action in accordance with this Article does not exceed the amount referred to in Article 11e, point (a), of Directive 2014/49/EU.

Where the sale of business tool or the bridge institution tool is applied in accordance with paragraph 1, point (b), or paragraph 2 of this Article, the amount of the contribution of the deposit guarantee scheme referred to in those provisions shall not exceed 62,5 % of the target level of the deposit guarantee scheme as referred to in Article 10(2) of Directive 2014/49/EU.

The designated authority may decide that the limit referred to in the second subparagraph of this paragraph shall not apply in the event that the resolution authority provides that designated authority with a justification that a contribution from the deposit guarantee scheme of an amount higher than 62,5 % of its target level is necessary to avoid adverse effects on financial stability or to preserve the access of depositors to their deposits.

Where the bail-in tool is applied in accordance with paragraph 1, point (a), of this Article, the amount of the contribution of the deposit guarantee scheme shall not exceed the losses the deposit guarantee scheme would have incurred had the institution been wound up under normal insolvency proceedings, as estimated pursuant to Article 36(8).

Upon request, the deposit guarantee scheme shall promptly inform the resolution authority of the amounts referred to in the first and second subparagraphs.

8. The resolution authority shall determine the amount of the contribution of the deposit guarantee scheme in accordance with this Article and shall notify its decision to the designated authority and to the deposit guarantee scheme. The deposit guarantee scheme shall implement that decision without delay.

9. Where eligible deposits at an institution under resolution are transferred to another entity through the sale of business tool or the bridge institution tool, the depositors shall have no claim under Directive 2014/49/EU against the deposit guarantee scheme in relation to any part of their deposits at the institution under resolution that are not transferred, provided that the amount of their deposits which are transferred is equal to or more than the aggregate coverage level provided for in Article 6 of that Directive.

10. Where the deposit guarantee scheme makes a contribution to resolution action, Article 101(3) shall apply.

11. EBA shall, by … [24 months from the date of entry into force of this amending Directive], issue guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010, on the conditions for the designated authority to disapply the limit referred to in paragraph 7, second subparagraph, of this Article.';

(64) in Article 111(1), the following points are added:

'(e) failure to comply with the requirements referred to in Article 44a;

(f) failure to comply with the minimum requirement for own funds and eligible liabilities referred to in Article 45e or 45f.';

(65) Article 128 is replaced by the following

'*Article 128*
Cooperation and information exchange among institutions and authorities

'1. The competent authorities and resolution authorities shall cooperate with EBA for the purposes of this Directive in accordance with Regulation (EU) No 1093/2010.

The competent authorities and resolution authorities shall, without delay, provide EBA with all of the information necessary to carry out its tasks, in accordance with Article 35 of Regulation (EU) No 1093/2010.

2. EBA, the Single Resolution Board and the ECB shall provide the Commission, upon its request, with the information necessary for the performance of its tasks related to policy development, including the carrying out of impact assessments, the preparation of legislative proposals, and the participation in the legislative process. Where appropriate, EBA, the Single Resolution Board and the ECB shall coordinate with resolution authorities, national competent authorities and other members of the European System of Central Bank, in accordance with their cooperation framework.

3. The resolution authorities, the national competent authorities and the members of the European System of Central Banks other than the ECB shall provide the Commission, upon its request, with the information referred to in paragraph 2 of this Article where such information is not available to EBA, the Single Resolution Board or the ECB, or where they cannot provide the information within a reasonable timeframe. The request shall be proportionate, justified and ensure a reasonable timeframe for the provision of the information. The information shall be provided in a form that does not allow for the identification of individual entities and does not contain personal data. The Commission and its staff shall be subject to the requirements of professional secrecy laid down in Article 84 with regard to the information received.';

(66) the following articles are inserted:

‘*Article 128b*

Means of disclosure

1. Institutions other than small and non-complex institutions as defined in Article 4(1), point (145), of Regulation (EU) No 575/2013 and entities referred to in Article 1(1), points (b), (c) and (d), of this Directive shall submit all information required under Article 45i(3) of this Directive in electronic format to EBA no later than the date on which they publish their financial statements or financial reports for the corresponding period, where applicable, or as soon as possible thereafter. EBA shall publish that information, together with its submission date, on its website.

EBA shall ensure that the disclosures made on its website contain information identical to that which institutions and entities submitted to it. Institutions and entities shall have the right to resubmit to EBA the information in accordance with the technical standards referred to in Article 45i(6). EBA shall make available on its website the date when the resubmission took place.

EBA shall prepare and keep up-to-date a tool that specifies the mapping of the templates and tables for disclosures in accordance with Article 45i(3) with those on supervisory reporting in accordance with Article 45i(1). The mapping tool shall be accessible to the public on the EBA website.

Institutions and entities may continue to publish a standalone document that provides a readily accessible source of prudential and resolution information for users of that information or a distinctive section included in or appended to the institutions or entities' financial statements or financial reports containing the required disclosures and being easily identifiable to those users. Institutions and entities may include on their websites a link to the EBA website where the prudential and resolution information is published in a centralised manner.

2. Where Article 45i(1) and (3) of this Directive apply to small and non-complex institutions as defined in Article 4(1), point (145), of Regulation (EU) No 575/2013 EBA shall publish on its website the disclosures of those institutions in accordance with Article 45i(3) on the basis of the information reported by those institutions to competent and resolution authorities in accordance with Article 45i(1).

3. EBA shall publish annual disclosures on its website on the same date as the date on which the institutions and entities publish their financial statements or as soon as possible thereafter.

EBA shall publish semi-annual and quarterly disclosures, where applicable, on its website on the same date as the date on which the institutions and entities publish their financial reports for the corresponding period or as soon as possible thereafter.

Any delay between the date of publication of the disclosures referred to in paragraph 1 and the relevant financial statements shall be reasonable.

4. EBA shall make available on its website an archive of the information required to be disclosed in accordance with this Article. That archive shall be kept accessible for a period that shall be no less than the storage period set by national law for information included in the institutions or entities' financial reports. Ownership of the data and the responsibility for their accuracy shall remain with the institutions or entities that produce them.

Article 128c

Crisis management simulations

1. EBA shall coordinate regular Union-wide exercises to test the application of this Directive, Regulation (EU) No 806/2014 of the European Parliament and of the Council* and Directive 2014/49/EU in cross-border situations on the following aspects:

   (a) cooperation of the competent authorities during recovery planning;

   (b) cooperation among resolution authorities and competent authorities before the failure and during the resolution of institutions and entities referred to in Article 1(1), points (b), (c) and (d), of this Directive, including in the implementation of resolution schemes adopted pursuant to Article 18 of Regulation (EU) No 806/2014.

2. EBA shall prepare a report setting out the key findings and conclusions of the exercises referred to in paragraph 1. The report shall be made public.

Article 128d

Transitional provisions

1. By way of derogation from Article 45b(1a), deposits taken prior to … [24 months plus one day from the date of entry into force of this amending Directive] that meet the conditions set out in Article 45b(1), first subparagraph, Article 45c(2a), second subparagraph, or Article 45f(2), point (a), may be included in the amount of own funds and eligible liabilities until … [36 months from the date of entry into force of this amending Directive].

2. In respect of transitional periods for institutions or entities referred to in Article 1(1), point (b), (c) or (d), of this Directive, to comply with the requirements laid down in Article 45e or 45f of this Directive or with requirements that result from the application of Article 45b(4), (5) or (7) of this Directive, as appropriate, determined by resolution authorities prior to … [24 months plus one day from the date of entry into force of this amending Directive], Article 1, point (39)(a), of Directive (EU) 2026/… of the European Parliament and of the Council[**+] shall not apply.

[+] OJ: please insert in the text the number of this amending Directive and complete the corresponding footnote.

* 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, 30.7.2014, p. 1, ELI: http://data.europa.eu/eli/reg/2014/806/oj).

** Directive (EU) 2026/… of the European Parliament and of the Council of … amending Directive 2014/59/EU as regards early intervention measures, conditions for resolution and financing of resolution action and Directive 2014/24/EU as regards valuation services in resolution (OJ L, …, ELI: …).';

(67) in the Annex, Section B, the following point is inserted:

'(5a) a description of the liabilities of the institution and all of its legal entities governed by the law of a third country, including:

– their amount;

– their composition, including their maturity profile;

– the governing law of the third country;

– their ranking in normal insolvency proceedings;

– whether the liability is excluded under Article 44(2);

– whether they include in the contractual provisions the term required pursuant to Article 55(1) of this Directive and Article 52(1), points (p) and (q), and Article 63, points (n) and (o), of Regulation (EU) No 575/2013;

– where a determination has been reached that it is legally or otherwise impracticable to include the contractual bail-in recognition term in accordance with Article 55(2), the category of the liability pursuant to Article 55(7).'.

Article 2

Amendment to Directive 2014/24/EU

In Article 10 of Directive 2014/24/EU, the following point is added:

'(k) valuation services referred to in Articles 36 and 74 of Directive 2014/59/EU of the European Parliament and of the Council*.

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* 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, 12.6.2014, p. 190, ELI: http://data.europa.eu/eli/dir/2014/59/oj).'.

Article 3

Transposition

1. By … [24 months from the date of entry into force of this amending Directive], Member States shall adopt and publish the measures necessary to comply with this Directive. They shall immediately inform the Commission thereof.

   They shall apply those measures from … [24 months plus one day from the date of entry into force of this amending Directive].

   When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.

Article 4

Entry into force and application

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

Article 1, point (65), shall apply from … [one day from the date of entry into force of this amending Directive] and Article 1, points (44)(b) and (c), shall apply from … [24 months plus one day from the date of entry into force of this amending Directive].

Article 5

Addressees

This Directive is addressed to the Member States.

Done at …,

For the European Parliament	*For the Council*
The President	*The President*