Council of the European Union
General Secretariat

Brussels, 05 March 2018

WK 2703/2018 INIT

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MEETING DOCUMENT

From:	Presidency
To:	Working Party on Financial Services (Risk Reduction Measures)
Subject:	BRRD Updated consolidated text for discussion at the 5 March WP meeting

2016/0362 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2014/59/EU on loss-absorbing and recapitalisation capacity of credit institutions and investment firms and amending Directive 98/26/EC, Directive 2002/47/EC, Directive 2012/30/EU, Directive 2011/35/EU, Directive 2005/56/EC, Directive 2004/25/EC and Directive 2007/36/EC

(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,

[1] OJ C , , p. .
[2] OJ C , , p. .

Whereas:

(1) The Financial Stability Board (FSB) published the Total Loss-Absorbing Capacity (TLAC) Term Sheet ('TLAC standard') on 9 November 2015, which was endorsed by the G-20 in November 2015. The objective of the TLAC standard is to ensure that global systemically important banks ('G-SIBs'), referred to as global systemically important institutions ('G-SIIs') in the Union framework, have the loss-absorbing and recapitalisation capacity necessary to help ensure that, in and immediately following a resolution, critical functions can be continued without taxpayers' funds (public funds) or financial stability being put at risk. In its Communication of 24 November 2015[3], the Commission committed itself to bring forward a legislative proposal by the end of 2016 that would enable the TLAC standard to be implemented by the internationally agreed deadline of 2019.

[3] Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions, "Towards the completion of the Banking Union", 24.11.2015, COM(2015) 587 final

(2) The implementation of the TLAC standard in the Union needs to take into account the existing institution-specific minimum requirement for own funds and eligible liabilities ('MREL') applicable to all Union institutions as laid down in Directive 2014/59/EU of the European Parliament and of the Council[4]. As TLAC and MREL pursue the same objective of ensuring that Union institutions have sufficient loss absorbing and recapitalisation capacity, the two requirements should be complementary elements of a common framework. Operationally, the Commission proposed that the harmonised minimum level of the TLAC standard for G-SIIs ('TLAC minimum requirement') should be introduced in Union legislation through amendments to Regulation (EU) No 575/2013[5], while the institution-specific add-on for G-SIIs and the institution-specific requirement for non-G-SIIs, referred to as minimum requirement for own funds and eligible liabilities, should be addressed through targeted amendments to Directive 2014/59/EU and Regulation (EU) No 806/2014[6]. The relevant provisions of this Directive as regards loss absorbing and recapitalisation capacity of institutions should be applied together with those in the aforementioned pieces of legislation and in Directive 2013/36/EU[7] in a consistent way.

[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, OJ L 173, 12.6.2014, p. 190

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

[6] 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

[7] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, OJ L 176, 27.6.2013, p. 338

(3) The absence of harmonised Union rules in respect of the implementation of the TLAC standard in the Union would create additional costs and legal uncertainty for institutions and make the application of the bail-in tool for cross-border institutions more difficult. That absence of harmonised Union rules also results in competitive distortions on the internal market given that the costs for institutions to comply with the existing requirements and the TLAC standard may differ considerably across the Union. It is therefore necessary to remove those obstacles to the functioning of the internal market and to avoid distortions of competition resulting from the absence of harmonised Union rules in respect of the implementation of the TLAC standard. Consequently, the appropriate legal basis for this Directive is Article 114 of the Treaty on the Functioning of the European Union (TFEU), as interpreted in accordance with the case law of the Court of Justice of the European Union.

(4) In line with the TLAC standard, Directive 2014/59/EU should continue to recognise the Single Point of Entry (SPE) as well as the Multiple Point of Entry (MPE) resolution strategy. Under the SPE strategy, only one group entity, usually the parent undertaking, is resolved whereas other group entities, usually operating subsidiaries, are not put in resolution, but upstream their losses and recapitalisation needs to the entity to be resolved. Under the MPE strategy, more than one group entity may be resolved. A clear identification of entities to be resolved ('resolution entities') together with subsidiaries that belong to them ('resolution groups') is important to apply the desired resolution strategy effectively. That identification is also relevant for determining the level of application of the rules on loss absorbing and recapitalisation capacity that financial firms should apply. It is therefore necessary to introduce the concepts of 'resolution entity' and 'resolution group' and to amend Directive 2014/59/EU concerning group resolution planning in order to explicitly require resolution authorities to identify the resolution entities and resolution groups within a group and to consider the implications of any planned action within the group appropriately to ensure an effective group resolution.

(5) Member States should ensure that institutions have sufficient loss absorbing and recapitalisation capacity to ensure smooth and fast absorption of losses and recapitalisation with a minimum impact on financial stability and taxpayers. That should be achieved through compliance by institutions with an institution-specific minimum requirement for own funds and eligible liabilities ('MREL') as provided in Directive 2014/59/EU.

(6) In order to align denominators that measure the loss absorbing and recapitalisation capacity of institutions with those provided in the TLAC standard, the MREL should be expressed as a percentage of the total risk exposure amount and of the leverage ratio exposure measure of the relevant institution.

(7) Eligibility criteria for bail-inable liabilities for the MREL should be closely aligned with those laid down in Regulation (EU) No 575/2013 for the TLAC minimum requirement, in line with the complementary adjustments and requirements introduced in this Directive. In particular, certain debt instruments with an embedded derivative component, such as certain structured notes, should be eligible to meet the MREL to the extent that they have a fixed or increasing principal amount repayable at maturity that is known in advance while only an additional return is linked to a derivative and depends on the performance of a reference asset. In view of such principal amount, those instruments should be highly loss-absorbing and easily bail-inable in resolution.

(8) The scope of liabilities used to meet the MREL includes, in principle, all liabilities resulting from claims arising from ordinary unsecured creditors (non-subordinated liabilities) unless they do not meet specific eligibility criteria provided in this Directive. To enhance the resolvability of institutions through an effective use of the bail-in tool, resolution authorities should be able to require that the MREL is met with subordinated liabilities, in particular when there are clear indications that bailed-in creditors are likely to bear losses in resolution that would exceed their potential losses in insolvency. The resolution authorities should assess the need for requiring institutions to meet MREL with subordinated liabilities where the amount of liabilities excluded from the application of the bail-in tool reaches a certain threshold within a class of liabilities that includes MREL eligible liabilities. The requirement to meet MREL with subordinated liabilities should be requested for a level necessary to prevent that losses of creditors in resolution are above losses that they would otherwise incur under insolvency. Any subordination of debt instruments requested by resolution authorities for the MREL should be without prejudice to the possibility to partly meet the TLAC minimum requirement with non-subordinated debt instruments in accordance with Regulation (EU) No 575/2013 as permitted by the TLAC standard.

In line with the TLAC standard, for resolution entities of G-SIIs or top-tier banks with assets above 75 billion Euro, the resolution authorities should be able to require that MREL is met with subordinated liabilities also when necessary and appropriate to implement an orderly resolution, minimise the impact on financial stability, ensure the continuity of critical functions, or avoid exposing public funds to loss. In accordance with the principle of proportionality, the power to require that MREL is met with subordinated liabilities shall be exercised by the resolution authorities to the extent that the overall level of the required subordination in the form of own funds and eligible liabilities items due to the obligation of institutions to comply with TLAC, MREL and, where applicable, the combined capital buffer requirement under Directive 2013/36/EU is not higher **than a certain level expressed as the higher of** the levels of loss absorption and recapitalisation referred to in Articles 37(10), 44(5) and (8) of Directive 2014/59/EU **and a percentage of the risk weighted assets and combined capital buffers.**

(9) The MREL should allow institutions to absorb losses expected in resolution or at the point of non-viability as appropriate and recapitalise the institution after the implementation of actions foreseen in the resolution plan. The resolution authorities should, on the basis of the resolution strategy chosen by them, duly justify the imposed level of the MREL and should review without undue delay that level to reflect any changes in the level of the requirement referred to in Article 104a of Directive 2013/36/EU. As such, that level should be composed of the sum of the amount of losses expected in resolution that correspond to the institution's own funds requirements and the recapitalisation amount that allows the institution post-resolution or after the exercise of write down or conversion powers to meet its own funds requirements necessary for being authorised to pursue its activities under the chosen resolution strategy. The MREL should be expressed as a percentage of the total risk exposure and leverage ratio measures, and institutions should meet simultaneously the levels resulting from the two measurements. The resolution authority should adjust downwards or upwards the recapitalisation amounts for any changes resulting from the actions foreseen in the resolution plan. The resolution authority should also be able to increase the recapitalisation amount to ensure sufficient market confidence in the institution after the implementation of actions foreseen in the resolution plan. The requested level of the market confidence buffer should enable the institution to continue to meet the conditions for authorisation for an appropriate period of time, including by allowing the institution to cover the costs related to the restructuring of its activities following resolution. The market confidence buffer should be set by reference to part of the combined capital buffer requirement under Directive 2013/36/EU. The resolution authorities should adjust downwards the level of the market confidence buffer if a lower level is sufficient to ensure sufficient market confidence or should adjust upwards that level where a higher level is necessary to ensure that, following the actions provided in the resolution plan, the entity continues to meet the conditions for its authorisation for an appropriate period of time.

(9a) In line with Commission Delegated Regulation (EU) 2016/1075 resolution authorities should examine the investor base of individual bank's MREL instruments. If a significant part of a bank's MREL is in the hands of retail investors that might not have received a fair and prominent indication of relevant risks, this can in itself constitutes a potential impediment to resolvability. At the same time, if a large part of a bank's MREL is held by other credit institutions, the systematic nature of a write down or conversion could also pose a potential impediment to resolvability. Should a resolution authority find an impediment to resolvability as a result of the size and nature of a certain investor base, it could recommend to a credit institution to address such impediment. At the same time national law might in any case restrict the sale and marketing of certain instruments to certain investors.

(10) To enhance their resolvability, resolution authorities should be able to impose an institution-specific MREL on G-SIIs in addition to the TLAC minimum requirement laid down in Regulation (EU) No 575/2013. That institution-specific MREL should be imposed where the TLAC minimum requirement is not sufficient to absorb losses and recapitalise a G-SII under the chosen resolution strategy.

(11) When setting the level of MREL, resolution authorities should consider the degree of systemic relevance of an institution and the potential adverse impact of its failure on the financial stability. They should take into account the need for a level playing field between G-SIIs and other comparable institutions with systemic relevance within the Union. Thus, MREL of institutions that are not identified as G-SIIs but the systemic relevance within the Union of which is comparable to the systemic relevance of G-SIIs should not diverge disproportionately from the level and composition of MREL generally set for G-SIIs.

(12)

(13) In line with Regulation No 575/2013, institutions that qualify as resolution entities should only be subject to the MREL at the consolidated resolution group level. That means that resolution entities should be obliged to issue eligible instruments and items to meet the MREL to external third party creditors that would be bailed-in should the resolution entity enter resolution.

(14) Institutions that are not resolution entities should comply with the MREL at individual level. Loss absorption and recapitalisation needs of those institutions should be generally provided by their respective resolution entities through direct or indirect acquisition by resolution entities of own funds instruments and eligible liabilities issued by those institutions and their write-down or conversion into instruments of ownership at the point where those institutions are no longer viable. As such, the MREL applicable to institutions that are not resolution entities should be applied together and consistently with the requirements applicable to resolution entities. That should allow resolution authorities to resolve a resolution group without placing certain of its subsidiary entities in resolution, thus avoiding potentially disruptive effects on the market. If both the resolution entity or the parent and its subsidiaries are established in the same Member State and are part of the same resolution group, the resolution authority should be able to fully waive the application of the MREL applicable to institutions that are not resolution entities or permit them to meet the MREL with collateralised guarantees between the parent and its subsidiaries, that can be triggered when the timing conditions equivalent to those allowing the write down or conversion of eligible liabilities are met. The application of the MREL to institutions that are not resolution entities should comply with the chosen resolution strategy, in particular it should not change the ownership relationship between institutions and their resolution group after those institutions have been recapitalised.

(14a) Regulation No 575/2013 provides that competent authorities may waive the application of certain solvency and liquidity requirements for credit institutions permanently affiliated to a central body where certain specific conditions are met. To take account of specificities of such cooperative networks, resolution authorities should also be able to waive the application of MREL for such credit institutions under similar conditions to those of Regulation No 575/2013 where credit institutions and the central body are established in the same Member State, and treat them as whole when assessing the conditions for resolution. Compliance with the external MREL requirement of the resolution group as a whole may be ensured in different manners depending on the features of the solidarity mechanism of each group, either counting eligible liabilities of the central body only, or counting eligible liabilities of some or all entities in the network.

(15) To ensure appropriate levels of the MREL for resolution purposes, the authorities responsible for setting the level of the MREL should be the resolution authority of the resolution entity, the group-level resolution authority, that is the resolution authority of the ultimate parent undertaking, and resolution authorities of other entities of the resolution group. Any disputes between authorities should be subject to the powers of the European Banking Authority (EBA) under Regulation (EU) No 1093/2010 of the European Parliament and of the Council[8] subject to the conditions and limitations provided in this Directive.

[8] 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

(16) Any breaches of the TLAC minimum requirement and of MREL, including, where applicable, any breaches of the combined level of the TLAC minimum requirement or MREL and the combined capital buffer requirement under Directive 2013/36/EU, should be appropriately addressed and remedied by competent and resolution authorities. Given that a breach of those requirements could constitute an impediment to institution or group resolvability, the existing procedures to remove impediments to resolvability should be shortened to address any breaches of the requirements expediently. Resolution authorities should also be able to prohibit certain distributions, to require institutions to modify the maturity profiles of eligible instruments and items and to prepare and implement plans to restore the level of those requirements.

(17) To ensure a transparent application of the MREL, institutions should report to their competent and resolution authorities and disclose regularly to the public their MREL requirement, the levels of eligible liabilities and the composition of those liabilities, including their maturity profile and ranking in normal insolvency proceedings. For institutions subject to the minimum TLAC requirement, there should be consistency in the frequency of supervisory reporting and disclosure of the institution-specific MREL as provided in this Directive with those provided in Regulation No 575/2013 for the minimum TLAC requirement .

(18) The requirement to include a contractual recognition of the effects of the bail-in tool in agreements or instruments creating liabilities governed by the laws of third countries should facilitate and improve the process for bailing in those liabilities in the event of resolution. Unless and until statutory recognition frameworks to enable effective cross-border resolution are adopted in all third country jurisdictions, contractual arrangements, when properly drafted and widely adopted, can offer a workable solution until a statutory approach under the Union law or incentives to contract in an Union law are developed. Even with statutory recognition frameworks in place, contractual recognition arrangements should help to reinforce the awareness of the non-Union law creditors of possible resolution action on EU institutions under Union law. There might be instances, however, where it is impracticable for institutions to include those contractual terms in agreements or instruments creating certain liabilities, in particular liabilities that are not excluded from the bail-in tool under Directive 2014/59/EU, covered deposits or own funds instruments. For example, under certain circumstances, it may be considered impracticable to include the contractual recognition language in liability contracts where it is illegal in the third country for the institution to include contractual recognition clauses in agreements or instruments creating liabilities governed by the laws of that third country, when the institution has no power at the individual level to amend the contractual terms as they are imposed by international protocols or are based on internationally agreed standard terms or where the liability which would be subject to the contractual recognition requirement is contingent on a breach of contract or arises from guarantees, counter-guarantees or other instruments used in the context of trade finance operations. However, a refusal from the counterparty to agree to be bound by the contractual bail-in recognition clause should not per se be considered as a cause of impracticability.

The EBA should be tasked with adopting a technical standard to identify more precisely cases of impracticability. Building upon this technical standard and substantiating it to the specificities of the market concerned, the Resolution authority shall specify, where it deems it necessary, categories of liabilities where there may be grounds for impracticability. In this framework, it should be for an institution to determine that the insertion of the bail-in recognition cause in a contract or class of contracts is impracticable. Institutions should provide regular updates to resolution authorities, to keep them informed of progress towards implementing contractual recognition terms. In this context, institutions should indicate the contracts or classes of contracts for which the insertion of the bail-in recognition clause is impracticable and indicate a reason for this assessment. Resolution authorities should assess an institution's decision that it is impracticable to include contractual recognition language in a liability in a reasonable timeframe and act to address any wrong assessments and impediments to resolvability as a result of contractual recognition language not being included. Institutions should be prepared to justify their view if asked by the resolution authority. In addition, to ensure that the resolvability of institutions is not affected, liabilities for which the relevant contractual provisions are not included should not be eligible for MREL."

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(20) […] It is useful and necessary to adjust the power of resolution authorities to suspend, for a limited period, certain contractual obligations. In particular, it should be possible to exercise this power before the bank is put under resolution, and particularly from the moment when the determination that the bank is Failing or Likely to Fail is made. This power would allow for example the resolution authority, to prevent a further deterioration of the bank's financial conditions, which may for instance result from a liquidity outflow, as well as to establish whether the conditions to put the bank in resolution are present and to choose the most appropriate resolution tools . The duration of the suspension should be limited to a maximum of 2 business days.. Up to this maximum, the suspension can continue to apply after the resolution decision is taken. In order for the moratorium power to be used in a proportionate way, the authorities should have the flexibility to tailor the scope of the moratorium to the needs of the concrete case. Furthermore, they should be able to authorize certain payments – especially, but not limited to, administrative expenses of the institution - on a case-by-case basis. The power can also apply to eligible deposits. However, the resolution authority should carefully assess the appropriateness of applying the suspension to certain eligible deposits, especially covered deposits held by natural persons and micro, small and medium sized enterprises, and should assess the risk whether application of suspension on such deposits would severely disrupt the functioning of financial markets.

Resolution authorities should also consider in this context, also based on the resolution plan for the institution, the possibility that the institution is ultimately not put into resolution but is wound down under national insolvency laws and should in such cases make the arrangements it deems appropriate, to achieve adequate coordination with the relevant national authorities and to ensure that the moratorium does not impair the effectiveness of the wound down process under national insolvency law.. In order to ensure that, during the suspension period, depositors do not encounter financial difficulties, the resolution authority may determine that they are allowed a certain daily amount of withdrawals.

The power to suspend payment or delivery obligations should not apply to obligations owed to systems or participants in systems designated under Directive 98/26/EC, CCPs and central banks, including third country CCPs recognised by ESMA. Directive 98/26/EC reduces the risk associated with participation in payment and securities settlement systems, in particular by reducing disruption in the event of the insolvency of a participant in such a system. To ensure that those protections apply appropriately in crisis situations, whilst maintaining appropriate certainty for operators of payment and securities systems and other market participants, Directive 2014/59/EU should be amended to provide that a crisis prevention measure or a crisis management measure should not as such be deemed to be insolvency proceedings within the meaning of Directive 98/26/EC, provided that the substantive obligations under the contract continue to be performed. However, nothing in Directive 2014/59/EU should prejudice the operation of a system designated under Directive 98/26/EC or the right to collateral security guaranteed by that same Directive.

(20a) A key aspect of effective resolution is ensuring that, once an institution enters resolution, its counterparties in derivatives and other financial contracts cannot terminate their positions solely as a result of the institution's entry into resolution. Resolution authorities are permitted to suspend payment or delivery obligations due under a contract with an institution under resolution and have the power to restrict counterparties' rights to close out, accelerate or otherwise terminate financial contracts. These requirements do not directly apply to contracts under third country law. In the absence of a statutory cross-border recognition framework, Member States should require institutions and entities referred to in points (b), (c) or (d) of Article 1(1) to include a contractual term in relevant financial contracts recognising that it may be subject to the exercise of powers by resolution authorities to suspend or restrict rights and obligations and to be bound by the requirements of Article 68 as if the financial contract was governed by the law of the relevant Member State. To reduce the risk of contagion Member States may require parent undertakings to ensure that third country subsidiaries which are credit institutions, investment firms (or which would be investment firms if they had a head office in the relevant Member State) or financial institutions amend their financial contracts which are guaranteed or otherwise supported by the parent undertaking or which include cross-default rights in respect of the parent company.

(26) Since the objectives of this Directive, namely to lay down uniform rules on recovery and resolution framework, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, 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 those objectives.

(27) To allow an appropriate time for the transposition and application of this Directive, Member States should be given eighteen months to transpose this Directive in their national laws from the date of its entry into force. However, the provisions concerning the public disclosure should be applied in a uniform way from [uniform MREL compliance deadline] in order to ensure that institutions across the Union are allowed an appropriate period of time to reach the required level of MREL in an orderly fashion.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2014/59/EU1

(2) In Article 2(1), points (70) and (71), Article 36(4)(d), Article 37(10)(a), Article 44(3), 44(4), 44(5)(a), Article 46, Article 47(1)(b)(ii), Article 48, Article 63(1)(e), (f), (j), Article 66(4) and Section B (6) and (17) of the Annex, 'eligible liabilities' is replaced by 'bail-inable liabilities' as appropriate.

(3) In Article 2(1), the following point is added:
'(71a) 'eligible liabilities' means bail-inable liabilities that fulfil, as applicable, the conditions of Article 45b or point (a) of Article 45g(3).'

(4) In Article 2(1), the following points (83a) and (83b), (83c) are added:

(83a)'resolution entity' means:

(a) an entity established in the Union, which is identified by the resolution authority in accordance with Article 12 as an entity in respect of which the resolution plan provides for resolution action; or

(b) an institution that is not part of a group subject to consolidated supervision pursuant to Articles 111 and 112 of Directive 2013/36/EU, in respect of which the resolution plan drawn pursuant to Article 10 provides for resolution action.

(83b) 'resolution group' means:

(a) a resolution entity and its subsidiaries that are not:

(i) resolution entities themselves; or

(ii) subsidiaries of other resolution entities; or

(iii) entities established in a third country that are not included in the resolution group in accordance with the resolution plan and their subsidiaries;

(b) credit institutions affiliated to a central body, the central body and any institution under the control of the central body when one of those entities is a resolution entity.

(83c) 'global systemically important institution' (G-SII) means a G-SII as defined in point (132) of Article 4(1) of Regulation (EU) No 575/2013;..."

(4a) In Article 10(6), the following subparagraph is inserted:

"The resolution plan shall be reviewed as appropriate after the implementation of resolution actions or the exercise of powers referred to in Article 59.

Where setting the deadlines referred to in points (o) and (p) of Article 10(7), the resolution authority shall take into account the deadline to comply with the requirement referred to in Article 104b of Directive 2013/36/EU"

(4b) In Article 10(7), point (o) is replaced by the following:

"(o) the requirements referred to in Article 45g and 45f and a deadline to reach that level, where applicable;"

(4c) In Article 10(7), point (p) is replaced by the following:

"(p) where a resolution authority applies Article 45b(3), a deadline for compliance by the resolution entity."

(4d) In Article 10(7), the following subparagraph is inserted:

"When setting deadlines referred to in points (o) and (p) of the first subparagraph, the resolution plan shall ensure that such deadlines are appropriate and take into account:

(i) the prevalence of deposits and the absence of debt instruments in the funding model;

(ii) the limited access to the capital markets for eligible liabilities;

(iii) the reliance on Common Equity Tier 1 to meet the requirement referred to in Article 45f."

(5) In Article 12, paragraph (1) is replaced by the following:

"1. Member States shall ensure that group-level resolution authorities, together with the resolution authorities of subsidiaries and after consulting the resolution authorities of significant branches insofar as is relevant to the significant branch, draw up group resolution plans. The group resolution plan shall identify measures to be taken in respect of:

(a) the Union parent undertaking;

(b) the subsidiaries that are part of the group and that are located in the Union;

(c) the entities referred to in points (c) and (d) of Article 1(1); and

(d) subject to Title VI, the subsidiaries that are part of the group and that are located outside the Union.

In accordance with the measures referred to in the first subparagraph, the resolution plan shall identify for each group:

(a) the resolution entities;

(b) the resolution groups.".

(6) In Article 12(3), points (a) and (b) are replaced by the following:

a) set out the resolution actions planned to be taken for resolution entities in the scenarios referred to in Article 10(3), and the implications of those resolution actions for the other group entities referred to in points (b), (c) and (d) of Article 1(1), for the parent undertaking and for subsidiary institutions;

b) examine the extent to which the resolution tools and powers could be applied and exercised in a coordinated way to resolution entities established in the Union, including measures to facilitate the purchase by a third party of the group as a whole, or separate business lines or activities that are delivered by a number of group entities, or particular group entities or resolution groups, and identify any potential impediments to a coordinated resolution;".

(7) Article 12(3), point (e) is replaced by the following:

"(e) set out any additional actions, not referred to in this Directive, which the relevant resolution authorities intend to take in relation to the entities within the resolution group;".

(8) In Article 12(3), the following point (a1) is added:

"(a1) where a group comprises more than one resolution group, set out resolution actions planned in relation to the resolution entities of each resolution group and the implications of those actions on:

(i) other group entities that belong to the same resolution group;
(ii) other resolution groups.".

(9) In Article 13(4), the following subparagraph is inserted after the first subparagraph:
"Where a group is composed of more than one resolution group, the planning of the resolution actions referred to in point (a1) of Article 12(3) shall be included in a joint decision referred to in the first subparagraph.".

(10) In Article 13(6), the first subparagraph is replaced by the following:
"In the absence of a joint decision between the resolution authorities within four months, each resolution authority that is responsible for a subsidiary and that disagrees with the group resolution plan shall make its own decision and, where appropriate, identify the resolution entity and draw up and maintain a resolution plan for the resolution group composed of entities under its jurisdiction. Each of the individual decisions of disagreeing resolution authorities shall be fully substantiated set out the reasons for the disagreement with the proposed group resolution plan and take into account the views and reservations of the other resolution authorities and competent authorities. Each resolution authority shall notify its decision to the other members of the resolution college.".

(11) In Article 16(1), the second subparagraph is replaced by the following:

"A group shall be deemed to be resolvable if it is feasible and credible for the resolution authorities to either wind up group entities under normal insolvency proceedings or to resolve that group by applying resolution tools and powers to resolution entities of that group while avoiding to the maximum extent possible any significant adverse consequences for the financial systems, including in circumstances of broader financial instability or system wide events, of the Member States in which group entities or branches are situated, or of other Member States or of the Union and with a view to ensuring the continuity of critical functions carried out by those group entities, where they can be easily separated in a timely manner or by other means. Group-level resolution authorities shall notify EBA in a timely manner whenever a group is deemed not to be resolvable."

(12) In Article 16, the following paragraph (4) is added:

"Member States shall ensure that, where a group is composed of more than one resolution group, the authorities referred to in paragraph 1 assess the resolvability of each resolution group in accordance with this Article.

The assessment referred to in the first subparagraph shall be performed in addition to the assessment of the resolvability of the entire group and shall be made under the decision-making procedure laid down in Article 13.".

(12a) After Article 16 a new Article 16a is inserted:

"Article 16a

Power to prohibit certain distributions

(1) Where an entity meets at the same time the combined buffer requirement defined in Article 128(6) of Directive 2013/36/EU and points (a), (b) and (c) of Article 141a(1) of Directive 2013/36/EU, but at the same time it does not meet the combined buffer requirement defined in Article 128(6) of Directive 2013/36/EU and the requirements referred to in Article 92a of Regulation (EU) No 575/2013 or the requirements referred to in Articles 45c and 45d when calculated in accordance with point (a) of Article 45(2) of this Directive, the resolution authority of that entity shall have the power to prohibit an entity from distributing, in accordance with the conditions in paragraph (2) and (3), more than the Maximum Distributable Amount related to the minimum requirement for own funds and eligible liabilities ('M-MDA') calculated in accordance with paragraph 4 through any of the following actions:

(a) make a distribution in connection with Common Equity Tier 1 capital;

(b) create an obligation to pay variable remuneration or discretionary pension benefits or pay variable remuneration if the obligation to pay was created at a time when the entity failed to meet the combined buffer requirements;

(c) make payments on Additional Tier 1 instruments.

Where the entity is in the situation referred to in sub-paragraph 1, it shall immediately notify the resolution authority about the breach.

(2) In the situation referred to in paragraph 1, the resolution authority of the entity, after consulting the competent authority, may exercise the power referred to in paragraph 1 when it assesses that the exercise of this power is the most adequate and proportionate means to address the situation of the entity based on its potential impact on both the financing conditions and resolvability of the entity concerned.

The resolution authority shall take into account the following elements:

(a) the reason, duration and magnitude of the breach and its impact on resolvability;

(b) the development of the entity's financial situation and the likelihood that it may, in the foreseeable future, fulfil the condition referred to in Article 32(1)(a);

(c) the prospect that the entity will be able to ensure compliance with the requirements referred to in paragraph 1 in a reasonable timeframe;

(d) where the entity is unable to replace liabilities that no longer meet the eligibility or maturity criteria laid down in Articles 72b and 72c of Regulation (EU) No 575/2013, Article 45b or Article 45g(3), whether this inability is of idiosyncratic nature or due to market-wide disturbance.

The resolution authority shall repeat its assessment of whether to exercise the power referred to paragraph 1 at least every month during the duration of the breach as long as the entity continues to be in situation referred to in paragraph 1.

(3) If the resolution authority assesses that the entity is still in the situation referred to in paragraph 1 six months after such situation has been notified, the resolution authority, after consultation of the competent authority, shall exercise the power referred to in paragraph 1 except where the resolution authority assesses that at least [two] of the following conditions are fulfilled:

(i) the breach is due to a serious disturbance to the functioning of financial markets, which leads to broad-based financial market stress across several segments of financial markets;

(ii) the disturbance referred to in point (i) results not only in increased price volatility of the own funds and eligible liabilities instruments of the entity or increased costs for the entity, but leads to a full or partial closure of markets which prevents the entity from issuing own funds and eligible liabilities instruments on the markets;

(iii) the market closure referred to in point (ii) is observed not only for the concerned entity but also for several other entities;

(iv) the disturbance referred to in point (i) prevents the concerned entity from issuing own funds and eligible liabilities instruments in a volume sufficient to remedy the breach;

(v) an exercise of the power referred to paragraph 1 leads to negative spill-over effects for part of the banking sector which may undermine financial stability.

Where the exception referred to in the previous subparagraph is applied, the resolution authority shall notify the competent authority of its decision and explain its assessment in writing.

The resolution authority shall repeat its assessment of the conditions of the previous subparagraph every month to assess whether the exception may be applied.

(4) The 'M-MDA' shall be calculated by multiplying the sum calculated in accordance with paragraph 5 by the factor determined in accordance with paragraph 6. The 'M-MDA' shall be reduced by any of the actions referred to in point (a), (b) or (c) of paragraph 1.

(5) The sum to be multiplied in accordance with paragraph 4 shall consist of:

(a) interim profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of Regulation (EU) No 575/2013 net of any distribution of profits or any payment related to the actions referred to in point (a), (b) or (c) of paragraph 1 of this Article;

plus

(b) year-end profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of Regulation (EU) No 575/2013 net of any distribution of profits or any payment related to the actions referred to in point (a), (b) or (c) of paragraph 1 of this Article;

minus

(c) amounts which would be payable by tax if the items specified in points (a) and (b) of this paragraph were to be retained.

(6) The factor shall be determined as follows:

(a) where the Common Equity Tier 1 capital maintained by the institution which is not used to meet any of the own funds requirements under Article 92a of Regulation (EU) No 575/2013 and under Articles 45c and 45d of this Directive expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, is within the first (that is, the lowest) quartile of the combined buffer requirement, the factor shall be 0;

(b) where the Common Equity Tier 1 capital maintained by the institution which is not used to meet any of the own funds requirements under Article 92a of Regulation (EU) No 575/2013 and under Articles 45c and 45d of this Directive, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, is within the second quartile of the combined buffer requirement, the factor shall be 0,2;

(c) where the Common Equity Tier 1 capital maintained by the institution which is not used to meet the own funds requirements under Article 92a of Regulation (EU) No 575/2013 and under Articles 45c and 45d of this Directive, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, is within the third quartile of the combined buffer requirement, the factor shall be 0,4;

(d) where the Common Equity Tier 1 capital maintained by the institution which is not used to meet the own funds requirements under Article 92a of Regulation (EU) No 575/2013 and under Articles 45c and 45d of this Directive, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, is within the fourth (that is, the highest) quartile of the combined buffer requirement, the factor shall be 0,6;

The lower and upper bounds of each quartile of the combined buffer requirement shall be calculated as follows:

$$Lower\ bound\ of\ quartile = \frac{Combined\ buffer\ requirement}{4} \times (Qn - 1)$$

$$Upper\ bound\ of\ quartile = \frac{Combined\ buffer\ requirement}{4} \times Qn$$

"Q_n" indicates the ordinal number of the quartile concerned."

(12aa) In Article 17, 'institution' is replaced by 'entity';

(13) In Article 17(3), the following subparagraph is added:

"The entity shall, within two weeks of the date of receipt of a notification made in accordance with paragraph 1, propose to the resolution authority possible measures and their timeline to ensure that the institution complies with Articles 45f or 45g and the requirement referred to in Article 128(6) of Directive 2013/36/EU, where a substantive impediment to resolvability is due to a situation where:

(a) the entity meets at the same time the combined buffer requirement defined in Article 128(6) in Directive 2013/36/EU and points (a), (b) and (c) of Article 141a(1) of Directive 2013/36/EU, but at the same time it does not meet the combined buffer requirement defined in Article 128(6) in Directive 2013/36/EU and the requirements referred to in Article 92a of Regulation (EU) No 575/2013 or the requirements referred to in Articles 45c and 45d when calculated in accordance with point (a) of Article 45(2) of this Directive; or

(b) the entity does not meet the requirements referred to in Articles 92a and 494 of Regulation (EU) No 575/2013 or the requirements referred to in Articles 45c and 45d.

The timeline for the implementation of measures proposed shall take into account the reasons that have led to the impediment in question. The resolution authority, after consulting the competent authority, shall assess whether those measures effectively address or remove the substantive impediment in question".

(14) Article 17(5), the following point (h1) is inserted:

"(h1) , require an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) to submit a plan to restore compliance with Articles 45f or 45g expressed as a total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 and, where applicable, with the requirement referred to in Article 128(6) of Directive 2013/36/EU and with the requirements referred to in Articles 45f or 45g expressed as a percentage of the total exposure measure referred to in Articles 429 and 429a of Regulation (EU) No 575/2013;".

(15) Article 17(5), the following point (j1) is inserted:

'(j1) require an institution or entity referred to in point (b), (c) or (d) of Article 1(1), to change the maturity profile of own funds instruments after having obtained the agreement of the competent authority and eligible liabilities referred to in Article 45b or items referred to in points (a) and (b) of Article 45g(3) to ensure continuous compliance with Article 45f or Article 45g.'.

(16) In points (i) and (j) of Article 17(5), "Article 45" is replaced with "Article 45f and Article 45g".

(17) In Article 18, paragraphs 1 to 7 are replaced by the following:

1. The group-level resolution authority together with the resolution authorities of subsidiaries, after consulting the supervisory college and the resolution authorities of the jurisdictions in which significant branches are located insofar as is relevant to the significant branch, shall consider the assessment required by Article 16 within the resolution college and shall take all reasonable steps to reach a joint decision on the application of measures identified in accordance with Article 17(4) in relation to all resolution entities and their subsidiaries that are entities referred to in Article 1(1) and part of the group

2. The group-level resolution authority, in cooperation with the consolidating supervisor and EBA in accordance with Article 25(1) of Regulation (EU) No 1093/2010, shall prepare and submit a report to the Union parent undertaking, to the resolution authorities of subsidiaries, which will provide it to the subsidiaries under their supervision, and to the resolution authorities of 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 the exercising of the resolution powers in relation to the group and to resolution groups where a group is composed of more than one resolution group. The report shall consider the impact on the institution's business model and recommend any proportionate and targeted measures that, in the authority's view, are necessary or appropriate to remove those impediments.

Where the impediment to resolvability of the group is due to a situation of a group entity referred to in the second subparagraph Article 17(3), the group-level resolution authority shall notify its assessment of that impediment to the Union parent undertaking after having consulted the resolution authority of the resolution entity and resolution authorities of its subsidiary institutions.

3. Within four months of the date of receipt of the report, the Union parent undertaking may submit observations and propose to the group-level resolution authority alternative measures to remedy the impediments identified in the report.

Where those impediments are due to a situation of a group entity referred to in the second subparagraph of Article 17(3), the Union parent undertaking shall, within two weeks of the date of receipt of a notification made in accordance with paragraph 2, propose to the group-level resolution authority possible measures and their timeline to ensure that the group entity complies with Articles 45f or 45g expressed as a total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 and, where applicable, with the requirement referred to in Article 128(6) of Directive 2013/36/EU and with the requirements referred to in Article 45f and 45g expressed as a percentage of the total exposure measure referred to in Articles 429 and 429a of Regulation (EU) No 575/2013.

The timeline for the implementation of measures proposed shall take into account the reasons that have led to the impediment in question. The resolution authority, after consulting the competent authority, shall assess whether those measures effectively address or remove the substantive impediment in question.

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 is relevant to the significant branch. The group-level resolution authorities 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 the material 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 the impediments, which shall take into account the potential impact of the measures in all the Member States where the group operates.

5. The joint decision shall be reached within four months of submission of any observations by the Union parent undertaking. Where the Union parent undertaking has not submitted any observations, the joint decision shall be reached within one month from the expiry of the four-month period referred to in paragraph 3 .

The joint decision concerning the impediment to resolvability due to a situation referred to in the second subparagraph of Article 17(3) shall be reached within two weeks of submission of any observations by the Union parent undertaking in accordance with paragraph 3.

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

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

6. In the absence of a joint decision within the period referred to in paragraph 5, the group-level resolution authority, after consulting the resolution authorities of the resolution entities, where different, shall make its own decision on the appropriate measures to be taken in accordance with Article 17(4) at the group level.

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

If, at the end of the relevant period referred to in paragraph 5, any resolution authority has referred a matter mentioned in paragraph 9 of this Article to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the group-level resolution authority, shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in accordance with the decision of EBA. The relevant period referred to in paragraph 5 shall be deemed to be the conciliation period within the meaning of that Regulation. The EBA shall take its decision within one month . The matter shall not be referred to EBA after the end of the relevant period referred to in paragraph 5 or after a joint decision has been reached. In the absence of an EBA decision, the decision of the group-level resolution authority shall apply.

6a. In the absence of a joint decision within the period referred to in paragraph 5, the resolution authority of the relevant resolution entity shall make its own decision on the appropriate measures to be taken in accordance with Article 17(4) at the resolution group level.

The decision shall be fully reasoned and shall take into account the views and reservations of resolution authorities of other entities of the same resolution group and the group-level resolution authority. The decision shall be provided to the resolution entity by the relevant resolution authorities.

If, at the end of the relevant period referred to in paragraph 5, any resolution authority has referred a matter mentioned in paragraph 9 of this Article to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the resolution authority of the resolution entity shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in accordance with the decision of EBA. The relevant period referred to in paragraph 5 shall be deemed to be the conciliation period within the meaning of that Regulation. The EBA shall take its decision within one month. The matter shall not be referred to EBA after the end of the relevant period referred to in paragraph 5 or after a joint decision has been reached. In the absence of an EBA decision, the decision of the resolution authority of the resolution entity shall apply.

7. In the absence of a joint decision, the resolution authorities of subsidiaries that are not resolution entities shall make their own decisions on the appropriate measures to be taken by subsidiaries at individual level in accordance with Article 17(4). The decision shall be fully reasoned and shall take into account the views and reservations of the other resolution authorities. The decision shall be provided to the subsidiary and to the resolution entity concerned, to the resolution authority of the resolution entity and, where different, to the group-level resolution authority.

If, at the end of the relevant period referred to in paragraph 5, any resolution authority has referred a matter mentioned in paragraph 9 of this Article to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the resolution authority of the subsidiary shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in accordance with the decision of EBA. The relevant period referred to in paragraph 5 shall be deemed to be the conciliation period within the meaning of that Regulation. EBA shall take its decision within one month . The matter shall not be referred to EBA after the end of the relevant period referred to in paragraph 5 or after a joint decision has been reached. In the absence of an EBA decision, the decision of the resolution authority of the subsidiary shall apply.".

(20) In Article 32(1), point (b) is replaced by the following:
'(b) having regard to timing and other relevant circumstances, there is no reasonable prospect that any alternative private sector measures, including measures by an IPS, or supervisory action, including early intervention measures or the write down or conversion of relevant capital instruments or eligible liabilities referred to in point (a) of Article 45g(3) in accordance with Article 59(2) taken in respect of the institution, would prevent the failure of the institution within a reasonable timeframe;'.

(20a) The following Article 32a is inserted:

"Article 32a

Conditions for resolution for credit institutions permanently affiliated to a central body

Member States shall ensure that resolution authorities may take a resolution action in relation to a central body and all affiliated credit institutions, when the central body and the affiliated credit institutions as a whole comply with the conditions established in Article 32(1)."

(21) In Article 33, paragraphs 2, 3 and 4 are replaced with the following:

"2. Member States shall ensure that resolution authorities take a resolution action in relation to an entity referred to in point (c) or (d) of Article 1(1), when that entity meets the conditions laid down in Article 32(1).

3. Where the subsidiary institutions of a mixed-activity holding company are held directly or indirectly by an intermediate financial holding company, the resolution plan shall provide that the intermediate financial holding company is identified as a resolution entity and Member States shall ensure that resolution actions for the purposes of group resolution are taken in relation to the intermediate financial holding company. Member States shall ensure that resolution authorities do not take resolution actions for the purposes of group resolution in relation to the mixed-activity holding company.

4. Subject to paragraph 3 of this Article and notwithstanding the fact that an entity referred to in point (c) or (d) of Article 1(1) does not meet the conditions laid down in Article 32(1), resolution authorities may take resolution action with regard to an entity referred to in point (c) or (d) of Article 1(1) where all of the following conditions are fulfilled:

(a) the entity is a resolution entity;

(b) one or more of the subsidiaries of that entity that are institutions, but not resolution entities comply with the conditions laid down in Article 32(1);

(c) assets and liabilities of those subsidiaries are such that their failure threatens the resolution group as a whole and resolution action with regard to the entity referred to in point (c) or (d) of Article 1(1) is necessary either for the resolution of such subsidiaries which are institutions or for the resolution of the relevant resolution group as a whole.".

(21a) The following Article 33a is inserted:

"*Article 33a*

Power to suspend certain obligations

1. Member States shall establish that their respective resolution authorities have the power to suspend payment or delivery obligations to which an institution or an entity referred to in points b), c) or d) of Article 1(1) is party when the resolution authority, after the determination that the institution is failing or likely to fail pursuant to Article 32(1)(a) has been made, decides that the exercise of the suspension power is necessary to avoid the further deterioration of the financial conditions of the institution or entity referred to in points b), c) or d) of Article 1(1) or to reach the determination that the conditions under Article 32(1)(b) and (c) are met or to choose the most appropriate resolution tools.

The decision to exercise the suspension power to avoid the further deterioration of the financial conditions of the institution or to reach the determination that the conditions under Article 32(1)(b) and (c) are met is made by the resolution authority, after consulting the competent authority which shall respond to the consultation in a timely manner to avoid interim liquidity outflows.

2. Any suspension under paragraph 1 shall not apply to payment and delivery obligations owed to systems or operators of systems designated for the purposes of Directive 98/26/EC, central counterparties and third country central counterparties recognised by ESMA pursuant to Article 25 of Regulation (EU) No 648/2012, and central banks.

The resolution authorities shall have the power to suspend payment or delivery obligations and to set the scope of that power relevant to the needs of the concrete case. In particular, resolution authorities shall carefully assess the appropriateness of extending the suspension to eligible deposits according to the definition in Article 2, paragraph 1 (2) of Directive 2014/49/EU, especially to covered deposits held by natural persons and micro, small and medium sized enterprises.
When exercising the power to suspend payment or delivery obligations in relation to eligible deposits, the resolution authorities may decide that depositors have access to an appropriate daily amount .

3. The period of the suspension pursuant to paragraph 1 shall be as short as possible and shall not exceed the minimum period of time that the resolution authority considers absolutely necessary for the purposes indicated in paragraph 1 of this article and in any event shall not last longer than the period of time from the publication of a notice of suspension pursuant to paragraph 7 to the midnight in the Member State of the resolution authority of the institution or entity at the end of the business day following that publication.
4. When exercising a power under this Article, resolution authorities shall have regard to the impact the exercise of that power might have on the orderly functioning of financial markets and shall consider the existing national rules, as well as supervisory and judicial powers, to safeguard creditors' rights and equal treatment of creditors in insolvency proceedings. Resolution authorities shall in particular have regard to the potential application to the institution or entity of national insolvency proceedings as a result of the determination in Article 32(1)(b) and shall make the arrangements it deems appropriate to ensure adequate coordination with the national administrative or judicial authorities.

5. If an institution's payment or delivery obligations under a contract are suspended under paragraph 1, the payment or delivery obligations of the counterparties of this institution under that contract shall be suspended for the same period of time.

6. A payment or delivery obligation that would have been due during the suspension period under paragraph 1 shall be due immediately upon expiry of that period.

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

The resolution authority shall publish or ensure the publication of a copy of the order or instrument by which obligations are suspended under this Article and the terms and period of suspension by the means referred to in Article 83 (4)."

8. This article is without prejudice to the provisions contained in the national law of Member States granting powers to suspend payment or delivery obligations before a determination that the institution is failing or likely to fail pursuant to Article 32(1)(a) or applicable to institutions which are to be wound down under normal insolvency proceedings and that exceed the scope and duration foreseen in this article. Such powers shall be exercised in accordance with the scope, duration and conditions foreseen in the relevant national laws. The conditions provided for in this article shall be without prejudice to the conditions related to such power of suspension payment or delivery obligations."

9. Member States shall establish that when a resolution authority exercises the power to suspend payment or delivery obligations with respect to an institution or an entity referred to in points b), c) or d) of Article 1(1) pursuant to paragraph 1, the resolution authority can also exercise the power to restrict secured creditors of the institution in relation to any of the assets of that institution or entity for the same duration. The provisions in Article 70 paragraphs 2 to 4 apply.

10. Member States shall establish that when a resolution authority exercises the power to suspend payment or delivery obligations with respect to an institution or an entity referred to in points b), c) or d) of Article 1(1) pursuant to paragraph1, the resolution authority can also exercise the power to suspend termination rights of any party to a contract with that institution for the same duration. The provisions in Article 71 paragraphs 2 to 8 apply.

11. In the event that, after making a determination that an institution is failing or likely to fail pursuant to Article 32(1)(a), a resolution authority has exercised any of the power under paragraph 1,or 9 or 10 of this Article, and if resolution action is subsequently taken with respect to that institution, the resolution authority shall not exercise its powers under paragraph 1 of Article 69, 70 or 71 with respect to that institution."

(22) In Article 44(2), point (f) is replaced by the following:

'(f) liabilities with a remaining maturity of less than seven days, owed to systems or operators of systems designated in accordance with Directive 98/26/EC or to their participants and arising from the participation in such a system, or to third country central CCPs recognised by ESMA;'.

(22a) In Article 44(2), point (h) is inserted :

„(h) liabilities to institutions or entities referred to in point (b), (c) or (d) of Article 1(1) of this Directive that are part of the same resolution group without being themselves resolution entity, regardless of their maturities except where these liabilities rank below ordinary unsecured liabilities under the relevant national law setting the hierarchy of claims applicable on the date of transposition of this Directive.

Where the previous subparagraph applies, the resolution authority of the relevant subsidiary that is not a resolution entity shall assess whether the amount of instruments complying with Article 45g(3) is sufficient to support the implementation of the preferred resolution strategy."

(23) Article 45 is replaced by the following Articles:

"*Article 45*

Application and calculation of the minimum requirement for own funds and eligible liabilities

1. Member States shall ensure that institutions and entities referred to in points (b), (c) and (d) of Article 1(1) meet, at all times, the requirements for own funds and eligible liabilities where required by and in accordance with Articles 45 to 45h.

2. The requirement referred to in paragraph 1 shall be calculated in accordance with Article 45c(3), (3a) or (4), as applicable, as the amount of own funds and eligible liabilities and expressed as percentages of:

(a) the total risk exposure amount of the relevant entity referred to in paragraph 1 calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013;

(b) the total exposure measure of the relevant entity referred to in paragraph 1 calculated in accordance with Articles 429 and 429a of Regulation (EU) No 575/2013.

Article 45a

Exemption from the minimum requirement for own funds and eligible liabilities

1. Notwithstanding Article 45, resolution authorities shall exempt from the requirement laid down in Article 45(1) mortgage credit institutions financed by covered bonds which, according to national law are not allowed to receive deposits where all of the following conditions are met:

(a) those institutions will be wound-up through national insolvency procedures, or other types of procedure implemented in accordance with Article 38, 40 or 42, laid down for those institutions;

(b) such national insolvency procedures, or other types of procedure, will ensure that creditors of those institutions, including holders of covered bonds where relevant, will bear losses in a way that meets the resolution objectives.

2. Institutions exempted from the requirement laid down in Article 45(1) shall not be part of the consolidation referred to in Article 45f(1).

Article 45b

Eligible liabilities for resolution entities

1. Eligible liabilities shall be included in the amount of own funds and eligible liabilities of resolution entities only where they satisfy the conditions referred to in Article 72a, except for point (d) of Article 72b(2) of Regulation (EU) No 575/2013.

By way of derogation from the first subparagraph, where this Directive refers to the requirements in Article 92a or Article 92b of Regulation (EU) No 575/2013, eligible liabilities for the purpose of those Articles shall consist of eligible liabilities as defined in Article 72k of Regulation (EU) No 575/2013 and determined in accordance with Chapter 5a of Part Two, Title I of that Regulation.

2. By way of derogation from point (l) of Article 72a(2) of Regulation (EU) No 575/2013, liabilities that arise from debt instruments with derivative features, such as structured notes, shall be included in the amount of own funds and eligible liabilities only where all of the following conditions are met:

(a) **[whole or** a ~~given~~ **part of the] principal** amount of the liability arising from the debt instrument is known in advance at the time of issuance, is fixed or increasing and not affected by a derivative feature **or the debt instrument includes a contractual term which specifies the amount of the claim in an event of resolution;**

(b) [*Option 1*: the position of the liability arising from the debt instrument or of the embedded derivative can be valued daily by reference to an active, liquid two-way market [for an equivalent instrument without credit risk] in line with Articles 104 and 105 of Regulation (EU) No 575/2013 // *Option 2:* the position of the liability arising from the debt instrument or of the embedded derivative can be valued daily according to the requirements for prudent valuation laid down in Articles 104 and 105 of Regulation (EU) No 575/2013] or the debt instrument includes a contractual clause term which specifies the amount of the claim in an event of resolution.

(c) the debt instrument, including its derivative feature, is not subject to any netting agreement and its valuation is not subject to Article 49(3);

The liabilities referred to in the first subparagraph shall only be included in the amount of own funds and eligible liabilities for the part that corresponds with the amount referred to in point (a) of the first subparagraph.

2a. Liabilities issued by a subsidiary established in the Union that is part of the same resolution group as the resolution entity to an existing shareholder that is not part of the same resolution group shall be included in the amount of own funds and eligible liabilities of resolution entities provided that all of the following conditions are met:

a) they are issued in accordance with Article 45g(3)(a);

b) the exercise of the power of write-down or convert in relation to such liabilities in accordance with Articles 59 or 62 does not affect the control of the subsidiary by the resolution entity;

c) they do not exceed an amount determined by subtracting the amount referred to in point (i) from the amount referred to in point (ii):

i. the sum of the liabilities issued to and bought by the resolution entity either directly or indirectly through other entities in the same resolution group and the amount of own funds issued in accordance with Article 45g(3)(b);
ii. the amount required in accordance with Article 45g(1).

3. Resolution authorities may decide that the requirement referred to in Article 45f shall be met by resolution entities with instruments that meet all conditions referred to in Article 72a of Regulation (EU) No 575/2013 **except for paragraphs (3) to (5)** with a view to ensure that the resolution entity can be resolved in a manner suitable to meet the resolution objectives .

4. The resolution authority's decision under ~~this~~ paragraph **(3)** shall contain the reasons for that decision on the basis of the following elements:

(a) non-subordinated liabilities referred to in the first and second paragraphs have the same priority ranking in the national insolvency hierarchy as certain liabilities that are excluded from the application of the write-down or conversion powers in accordance with Article 44(2) or Article 44(3);

(b) the risk that as a result of a planned application of write-down and conversion powers to non-subordinated liabilities that are not excluded from the application of the write-down or conversion powers in accordance with Article 44(2) or Article 44(3), creditors of claims arising from those liabilities incur greater losses than they would incur in a winding up under normal insolvency proceedings.

~~(c) the amount of subordinated liabilities shall not exceed the amount necessary to ensure that creditors referred to in point (b) shall not incur losses above the level of losses that they would otherwise have incurred in a winding up under normal insolvency proceedings.~~

Where the resolution authority determines that, within a class of liabilities which includes eligible liabilities, the amount of liabilities that are reasonably likely to be excluded from the application of the write-down or conversion powers in accordance with Article 44(2) or Article 44(3), totals more than 10% of that class, it shall assess the risk referred to in point (b) of the second subparagraph.

4a. ~~4.~~ The resolution authority may exercise the power referred to in paragraph 3 to the extent where the sum of instruments that meet all conditions referred to in Article 72a of Regulation (EU) No 575/2013 ~~and own funds of an entity due to its obligation to comply with the decision of the resolution authority to exercise that power and with the following requirements:~~

~~(a) the combined buffer requirement defined in Article 128(6) of Directive 2013/36/EU;~~

~~(b) Article 92a of Regulation (EU) No 575/2013; and~~

~~(c) Article 45c(3a),~~

~~does not exceed the requirements referred to in Articles 37(10), 44(5) and 44(8) of Directive 2014/59/EU.~~

~~For the purposes of this paragraph, derivative liabilities shall be included in total liabilities on the basis that full recognition is given to counterparty netting rights.~~

~~Article 45b(1)~~

~~*Specific conditions applicable to resolution entities of G-SIIs and resolution entities subject to Article 45c (3a)*~~

~~1. Resolution authorities may decide that Article 72b(3) of Regulation No 575/2013 does not apply to entities subject to the requirements referred to in Article 92a and 494 of Regulation (EU) No 575/2013 where [only the conditions of point (a) and (b) of Article 45b(3)] are fulfilled.~~

~~2. Resolution authorities may decide that, up to the levels provided in paragraph (3), the requirement referred to in Article 45f may be met by resolution entities with instruments that meet all conditions referred to in Article 72a of Regulation (EU) No 575/2013 except for paragraphs (3) to (5) of Article 72b of that Regulation based on the conditions provided [in points (a) to (c) of Article 45b(3)].~~

~~3. The sum of instruments that meet all conditions referred to in Article 72a of Regulation (EU) No 575/2013~~ except for paragraphs (3) to (5) of Article 72b of that Regulation and own funds of an entity due to its obligation to comply with the requirements referred to in Article 128(6) of Directive 2013/36/EU, Article 92a of Regulation (EU) No 575/2013, Article 45c(3a), and Article 45f ~~shall~~**does** not exceed ~~the greater of~~:

(a) **the amount of subordinated liabilities necessary to ensure that creditors referred to in paragraph 4, point (b) shall not incur losses above the level of losses that they would otherwise have incurred in a winding up under normal insolvency proceedings, and**

(b) the greater of:

(i) 8% of the total liabilities of the entity including own funds;

~~(b)~~ **(ii)** the amount resulting from the application of the formula Ax2+B+C, where:

A=amount resulting from the requirement referred to in Article 92(1)(c) of Regulation (EU) No 575/2013 [Pillar 1]

B= amount resulting from the requirement referred to in Article 104a of Directive 2013/36/EU [Pillar 2R]

C= amount resulting from the requirement referred to in Article 128(6) of Directive 2013/36/EU [combined capital buffer requirement]

For the purposes of point ~~(a) of the first subparagraph.~~ (b)(i), derivative liabilities shall be included in total liabilities on the basis that full recognition is given to counterparty netting rights.

The requirements referred to in this paragraph shall be those applicable to the entity at the time of determining the requirement referred to in Article 45(1).

~~4. By derogation from point (b) of paragraph 3~~

6. Notwithstanding paragraph 4, the resolution authority may take the decision under paragraph (3) with respect to resolution entities of G-SIIs and resolution entities subject to Article 45c (3a) if it determines that this is necessary and appropriate to implement an orderly resolution, minimise the impact on financial stability, ensure the continuity of critical functions, or avoid exposing public funds to loss with a high degree of confidence.

In the case under the first subparagraph, the limit under paragraph 6, point (a) does not apply.

7. By derogation from paragraph 5 and 6, the resolution authority may decide that the requirement referred to in Article 45f shall be met with ~~an additional level of~~ instruments **that meet all conditions** referred **to** in ~~paragraph 2~~ **Article 72a of Regulation (EU) No 575/2013 except for paragraphs (3) to (5) of Article 72b of that Regulation** up to the amount ~~[~~**resulting from the application of the formula [Ax2+Bx2+C, where A, B and C are the amounts** referred to in ~~letter B of~~ paragraph ~~3~~ **5**] based on the following conditions:

~~[~~(a) the requirement referred to in Article 104a of Directive 2013/36/EU reflects that the resolution entity is among the (TBD: 10% / 20%) riskiest institutions under the supervision of the same competent authority, or

(b) where, based on the latest resolution plan, substantive impediments to resolvability have been identified in the preceding resolvability assessment and:

(i) no remedial action have been taken following the application of the powers referred to in Article 17 (5) in the timeline required by the resolution authority, or

(ii) the identified impediment cannot be addressed by any of the powers referred to in Article 17 (5)~~.~~**] or**

(iii) an increase in the level of the requirement referred to in Article 45f that shall be met with instruments referred in paragraph 2 would partially or fully

compensate for the negative impact of the substantive impediment on resolvability.

Article 45c

Determination of the minimum requirement for own funds and eligible liabilities

1. The requirement referred to in Article 45(1) shall be determined by the resolution authority, after having consulted the competent authority, on the basis of the following criteria:

(a) the need to ensure that the resolution group can be resolved by the application of the resolution tools including, where appropriate, the bail-in tool, in a way that meets the resolution objectives;

(b) the need to ensure, in appropriate cases, that the resolution entity and its subsidiaries that are institutions, but not resolution entities have sufficient eligible liabilities to ensure that, if the bail-in tool or write down and conversion powers were to be applied to them, respectively, losses could be absorbed and the total capital ratio and the leverage ratio of the relevant entities can be restored to a level necessary to enable them to continue to comply with the conditions for authorisation and to carry on the activities for which they are authorised under Directive 2013/36/EU or Directive 2014/65/EU;

(c) the need to ensure that, if the resolution plan anticipates that certain classes of eligible liabilities might be excluded from bail-in pursuant to Article 44(3) or might be transferred to a recipient in full under a partial transfer, the resolution entity has sufficient other eligible liabilities to ensure that losses could be absorbed and the total capital ratio, or as applicable, the leverage ratio of the resolution entity can be restored to a level necessary to enable it to continue to comply with the conditions for authorisation and to carry on the activities for which it is authorised under Directive 2013/36/EU or Directive 2014/65/EU;

(d) the size, the business model, the funding model and the risk profile of the entity;

(f) the extent to which the failure of the entity would have an adverse effect on financial stability, including, due to the interconnectedness of the entity with other institutions or entities or with the rest of the financial system through contagion to other institutions or entities.

2. Where the resolution plan provides that resolution action is to be taken in accordance with the relevant resolution scenarios referred to in Article 10(3), the requirement referred to in Article 45(1) shall equal an amount sufficient to ensure that:

(a) the losses that are expected to be incurred by the entity are fully absorbed ('loss absorption');

(b) the resolution entity and its subsidiaries that are institutions, but not resolution entities are recapitalised to a level necessary to enable them to continue to comply with the conditions for authorisation and to carry out the activities for which they are authorised under Directive 2013/36/EU, Directive 2014/65/EU or equivalent legislation for an appropriate period of time not longer than one year ('recapitalisation').

Where the resolution plan provides that the entity is to be wound up under normal insolvency proceedings or other equivalent national procedures, the resolution authority shall assess whether it is justified to limit the requirement referred to in Article 45(1) for that entity, so that it does not exceed an amount sufficient to absorb losses in accordance with point (a) of the first subparagraph.

The assessment by the resolution authority shall, in particular, evaluate the limit referred to in the previous subparagraph as regards any possible impact on financial stability and on the risk of contagion to the financial system.

3. For resolution entities, the amount referred to in paragraph 2 shall be composed of the following:

(a) the sum of:

(i) the amount of losses to be absorbed in resolution that corresponds to the requirements referred to in Article 92(1)(c) of Regulation (EU) No 575/2013 and Article 104a of Directive 2013/36/EU of the resolution entity at consolidated resolution group level;

(ii) a recapitalisation amount that allows the resolution group resulting from resolution to restore compliance with its total capital ratio requirement referred in Article 92(1)(c) of Regulation (EU) No 575/2013 and its requirement referred to in Article 104a of Directive 2013/36/EU at consolidated resolution group level after the implementation of resolution action;

(b) the sum of:

(i) the amount of losses to be absorbed in resolution that corresponds to the resolution entity's leverage ratio requirement referred to in Article 92(1)(d) of the Regulation (EU) No 575/2013 at consolidated resolution group level; and

(ii) a recapitalisation amount that allows the resolution group resulting from resolution to restore compliance with the leverage ratio requirement referred to in Article 92(1)(d) of Regulation (EU) No 575/2013 at consolidated resolution group level after the implementation of resolution action.

For the purposes of point (a) of Article 45(2), the requirement referred to in Article 45(1) shall be expressed in percentage terms as the amount calculated in accordance with point (a) of this paragraph divided by the total risk exposure amount.

For the purposes of point (b) of Article 45(2), the requirement referred to in Article 45(1) shall be expressed in percentage terms as the amount calculated in accordance with point (b) of this paragraph divided by the leverage ratio exposure measure.

When setting the individual requirement provided in point (b) of the first sub-paragraph the resolution authority shall take into account the requirements referred to in Articles 37(10), 44(5) and 44(8) of Directive 2014/59/EU.

When setting the recapitalisation amounts referred to in the previous subparagraphs, the resolution authority shall:

(a) use the most recent reported values for the relevant total risk exposure amount or leverage ratio exposure amount as adjusted for any changes resulting from resolution actions foreseen in the resolution plan; and

(b) after having consulted the competent authority, adjust downwards or upwards the current requirement referred to in Article 104a of Directive 2013/36/EU to determine the requirement applicable to the resolution entity after the implementation of the preferred resolution strategy.

The resolution authority shall be able to increase the requirement provided in point (a) [(ii)] of the first sub-paragraph **with an appropriate amount necessary** to ensure that, following resolution, **the entity sustains** ~~a~~ sufficient market confidence ~~in the entity is sustained through capital instruments to enable the entity to continue to meet the conditions for authorisation~~ for an appropriate period of time **[**not longer than one year**]** ('market confidence buffer').

Where the previous sub-paragraph applies, the market confidence buffer shall be set equal to the combined buffer requirement referred to in point (6) of Article 128 of Directive 2013/36/EU, except for the requirement referred to in point (a) of that provision, which would apply after the application of the resolution tools.

Such amount shall be adjusted downwards if, after consulting the competent authority, the resolution authority determines that it would be feasible and credible that a lower amount is sufficient to ~~ensure~~ **sustain** market confidence ~~after implementation~~ **and ensure both the continued provision of critical economic functions by the institution and the access to funding without recourse to extraordinary financial support other than contributions from resolution financing arrangements, consistently with Article 101(2) and paragraphs 5 and 8 of Article 44 of Directive 2014/59/EU, after implementation** of the resolution strategy. Such amount shall be adjusted upwards if, after consulting the competent authority, the resolution authority determines that a higher level is necessary to **sustain sufficient market confidence and** ensure ~~that, following~~**both the continued provision of critical economic functions by the institution and the access to funding without recourse to extraordinary financial support other than contributions from** resolution~~, the entity continues to meet the conditions for its authorisation~~ **financing arrangements, consistently with Article 101(2) and paragraphs 5 and 8 of Article 44 of Directive 2014/59/EU** for an appropriate period of time **[**that is not longer than one year~~.~~**].**

EBA shall develop draft regulatory technical standards specifying the methodology used by resolution authorities to estimate the requirements referred to in Articles 104a and 128(6) of Directive 2013/36/EU for resolution entities at the resolution group consolidated level where the resolution group is not subject as such to those requirements under that Directive.

EBA shall submit those draft regulatory technical standards to the Commission by [6 months after entry into force of this Directive].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

3a. For resolution entities that are not subject to Article 92a of Regulation (EU) No 575/2013 and that are part of a resolution group whose total assets exceed EUR 75 billion and that is led by a Union parent undertaking the level of the requirement referred to in paragraph 3 shall be at least equal to ["Pillar 1 requirement for top tier banks"]:

(a) 13,5 % when calculated in accordance with point (a) of Article 45(2) and

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

By way of derogation from Article 45b, resolution entities referred to in the previous sub-paragraph shall meet the level of the requirement referred to in this paragraph that is equal to 13,5 % when calculated in accordance with point (a) of Article 45(2) and to 5% when calculated in accordance with point (b) of Article 45(2) with eligible liabilities that meet all conditions referred to in Article 72a of Regulation (EU) No 575/2013, except for paragraphs (3) to (5) of Article 72b of that Regulation, liabilities referred to in Article 45b(2a) or own funds.

[3b. *(BE Proposal for alternative criteria)* Resolution authorities may also apply the minimum requirements laid down in paragraph 3a to resolution entities that are not subject to Article 92a of Regulation (EU) No 575/2013 and are part of a resolution group whose total assets are lower than EUR [75] billion, and are considered by the resolution authority to be reasonably likely to pose a systemic risk in case of failure, taking into account the following criteria:

(i) the prevalence of deposits and the absence of debt instruments in the funding model;

(ii) the limited access to the capital markets for eligible liabilities;

(iii) the reliance on Common Equity Tier 1 to meet the requirement referred to in Article 45(1).

The decision not to impose a minimum requirement pursuant to paragraph 3b is without prejudice of the decision to impose that the requirement referred to in Article 45f shall be met with instruments that meet all conditions referred to in Article 72a of Regulation (EU) No 575/2013 pursuant to article 45.b.3.]

4. For entities that are not themselves resolution entities, the amount referred to in paragraph 2 shall be composed of the following:

(a) the sum of:

(i) the amount of losses to be absorbed that corresponds to the requirements referred to in Article 92(1)(c) of Regulation (EU) No 575/2013 and Article 104a of Directive 2013/36/EU of the entity; and

(ii) a recapitalisation amount that allows the entity to restore compliance with its total capital ratio requirement referred in Article 92(1)(c) of Regulation (EU) No 575/2013 and its requirement referred to in Article 104a of Directive 2013/36/EU after the exercise of the power to write down or convert relevant capital instruments and eligible liabilities in accordance with Article 59 and the resolution of the resolution group;

(b) the sum of:

(i) the amount of losses to be absorbed that corresponds to the entity's leverage ratio requirement referred to in the Article 92(1)(d) of Regulation (EU) No 575/2013; and

(ii) a recapitalisation amount that allows the entity to restore compliance with its leverage ratio requirement referred to in the Article 92(1)(d) of Regulation (EU) No 575/2013 after the exercise of the power to write down or convert relevant capital instruments and eligible liabilities in accordance with Article 59 and the resolution of the resolution group.

For the purposes of point (a) of Article 45(2)(a), the requirement referred to in Article 45(1) shall be expressed in percentage terms as the amount calculated in accordance with point (a) divided by the total risk exposure amount.

For the purposes of point (b) of Article 45(2)(b), the requirement referred to in Article 45(1) shall be expressed in percentage terms as the amount calculated in accordance with point (b) divided by the leverage ratio exposure measure.

When setting the recapitalisation amounts referred to in the previous subparagraphs, the resolution authority shall:

(a) use the most recent reported values for the relevant total risk exposure amount or leverage ratio exposure amount as adjusted for any changes resulting from actions foreseen in the resolution plan; and

(b) after having consulted the competent authority, adjust downwards or upwards the current requirement referred to in Article 104a of Directive 2013/36/EU to determine the requirement applicable to the relevant entity after the exercise of the power to write down or convert relevant capital instruments and eligible liabilities in accordance with Article 59 **and the resolution of the resolution group.**

The resolution authority shall be able to increase the requirement provided in point (a~~)~~(~~)~~ [(ii~~)~~)] of the first sub-paragraph **with an appropriate amount necessary** to ensure that, following the exercise of the power to write down or convert relevant capital instruments and eligible liabilities in accordance with Article 59, ~~a sufficient market confidence in the entity is sustained through capital instruments to enable the entity to continue~~ **the entity continues** to meet the conditions for authorisation **and sustains sufficient market confidence** for an appropriate period of time **[**not longer than one year**]** ('market confidence buffer').

Where the previous subparagraph applies, the amount of market confidence buffer shall be set equal to the combined buffer requirement referred to in point (6) of Article 128 of Directive 2013/36/EU, except for the requirement referred to in point (a) of that provision, which would apply after the exercise of the power referred to in Article 59 **and the resolution of the resolution group**.

Such amount shall be adjusted downwards if, after consulting the competent authority, the resolution authority determines that it would be feasible and credible that a lower amount is sufficient to ensure market confidence after the exercise of the power referred to in Article 59~~.~~ **and the resolution of the resolution group.** Such amount shall be adjusted upwards if, after consulting the competent authority, the resolution authority determines that a higher level is necessary to ensure that, following the exercise of the power to write down or convert relevant capital instruments and eligible liabilities in accordance with Article 59 **and the resolution of the resolution group**, the entity continues to meet the conditions for its authorisation **and sustains sufficient market confidence** for an appropriate period of time **[**that is not longer than one year~~.~~**].**

5. Where the resolution authority expects that certain classes of eligible liabilities are reasonably likely to be fully or partially excluded from bail-in pursuant 44(3) or might be transferred to a recipient in full under a partial transfer, the requirement referred to in Article 45(1) shall be met with other eligible liabilities sufficient to:

(a) cover the amount of excluded liabilities identified in accordance with 44(3);

(b) ensure that the conditions referred to in paragraph 2 are fulfilled.

6. The resolution authority's decision to impose a minimum requirement of own funds and eligible liabilities under this Article shall contain the reasons for that decision, including a full assessment of the elements referred to in paragraphs 2 to 5 and shall be reviewed without undue delay to reflect any changes in the level of the requirement referred to in Article 104a of Directive 2013/36/EU.

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

Article 45d

Determination of the minimum requirement for own funds and eligible liabilities for resolution entities of G-SIIs and material subsidiaries of non-EU G-SIIs.

1. The requirement referred to in Article 45(1) of a resolution entity that is a G-SII or part of a G-SII shall consist of the following:

(a) the requirements referred to in Articles 92a and 494 of Regulation (EU) No 575/2013; and

(b) any additional requirement for own funds and eligible liabilities determined by the resolution authority specific to the entity in accordance with paragraph 2, which shall be met with liabilities that meet the conditions of Article 45b.

1a. The requirement referred to in Article 45(1) of an entity subject to the requirement referred to in Articles 92b and 494 of Regulation (EU) No 575/2013 shall consist of the following:

(a) the requirements referred to in Articles 92b and 494 of Regulation (EU) No 575/2013; and

(b) any additional requirement for own funds and eligible liabilities determined by the resolution authority in accordance with paragraph 2, which shall be met with liabilities that meet the conditions of Articles 45g and 89 (2).

2. Without prejudice to Article 45e, the resolution authority shall impose an additional requirement for own funds and eligible liabilities referred to in point (b) of paragraph 1 and point (b) of paragraph 1a only:

(a) where the requirement referred to in point (a) of paragraphs 1 and (1a) is not sufficient to fulfil the conditions set out in Article 45c; and

(b) to an extent that ensures that the conditions of Article 45c are fulfilled.

3. For purposes of Article 45h(2), where more than one G-SII entity belonging to the same G-SII are resolution entities, the relevant resolution authorities shall calculate the amount referred to paragraph 2:

(a) for each resolution entity;

(b) for the Union parent entity as if it was the only resolution entity of the G-SII.

4. The resolution authority's decision to impose an additional requirement of own funds and eligible liabilities under point (b) of paragraph 1, shall contain the reasons for that decision, including a full assessment of the elements referred to in paragraph 2 and shall be reviewed without undue delay to reflect any changes in the level of the requirement referred to in Article 104a of Directive 2013/36/EU applicable to the resolution group.

Article 45f

Application of the minimum requirement for own funds and eligible liabilities to resolution entities

1. Resolution entities shall comply with the requirements laid down in Articles 45b to Article 45d on a consolidated basis at the level of the resolution group.

2. The requirement referred to in Article 45(1) of a resolution entity at the consolidated resolution group level shall be determined in accordance with Article 45h, based on the requirements laid down in Articles 45b to 45d and of whether the third-country subsidiaries of the group are to be resolved separately according to the resolution plan.

3. For resolution groups as defined in point (b) of Article 2(1)(83b), the relevant resolution authority decides , depending on the features of the solidarity mechanism and of the preferred resolution strategy, how the entities in the resolution group shall comply with the requirement referred to in Articles 45c(3) and (3a) to ensure that the resolution group as a whole complies with the requirement referred to in paragraphs (1) and (2).

Article 45g

Application of the minimum requirement for own funds and eligible liabilities to entities that are not themselves resolution entities

1. Institutions that are subsidiaries of a resolution entity or of a third country entity and are not resolution entities themselves shall comply with the requirements laid down in Articles 45c on an individual basis. A resolution authority may, after having consulted the competent authority, decide to apply the requirement laid down in this Article to an entity referred to in points (b), (c) or (d) of Article 1(1) that is a subsidiary of a resolution entity and is not a resolution entity itself.
By derogation from the first subparagraph, Union parent undertakings that are not resolution entities themselves and are subsidiaries of third country entities shall comply with the requirements laid down in Articles 45c to 45d on a consolidated basis.

For resolution groups identified pursuant to subparagraph (b) of Article 2(1)(83b), credit institutions affiliated to a central body and a central body which are not resolution entities, and credit institutions affiliated to a central body and a central body which are resolution entities but are not subject to Article 45f(3), shall comply with the requirements laid down in Articles 45c on an individual basis.

The requirement referred to in Article 45(1) of an entity referred to in this paragraph shall be determined in accordance with Articles 45h and 89, where applicable, and on the basis of the requirements laid down in Articles 45c

2. The requirement referred to in Article 45(1) of entities referred to in the first paragraph shall fulfil the eligibility criteria provided in paragraph 3.

3. The requirement shall be met with one or more of the following:

(a) liabilities that:

(i) are issued to and bought by the resolution entity either directly or indirectly through other entities in the same resolution group that bought the liabilities from the entity subject to this Article or by an existing shareholder that is not part of the same resolution group as long as the exercise of the power of write down or convert in accordance with Articles 59 to 62 does not affect the control of the subsidiary by the resolution entity;

(ii) fulfil the eligibility criteria referred to in Article 72a, except for points (b), (c), (k), (l) and (m) of Article 72b(2) of Regulation (EU) No 575/2013;

(iii) in normal insolvency proceedings have the same ranking as own funds instruments or rank below liabilities that do not meet the condition referred to in point (i) and are not eligible for own funds requirements;

(iv) are subject to the power of write down or conversion in accordance with Articles 59 to 62 that is consistent with the resolution strategy of the resolution group, notably by not affecting the control of the subsidiary by the resolution entity;

(v) the purchase of the liabilities is not funded directly or indirectly by the entity subject to this Article;

(vi) the provisions governing the liabilities do not indicate explicitly or implicitly that the liabilities would be called, redeemed, repurchased or repaid early, as applicable by the entity subject to this Article other than in the case of the insolvency or liquidation of the entity and the entity does not otherwise provide such an indication;

(vii) the provisions governing the liabilities do not give the holder the right to accelerate the future scheduled payment of interest or principal, other than in case of the insolvency or liquidation of the entity subject to this Article;

(viii) the level of distributions payments, as applicable, due on the liabilities is not amended on the basis of the credit standing of the entity subject to this Article or its parent undertaking.

(b) own funds instruments that:

(i) are issued to and bought by entities that are included in the same resolution group, or

(ii) are issued to and bought by entities that are not included in the same resolution group as long as the exercise of the power of write down or convert in accordance with Articles 59 to 62 does not affect the control of the subsidiary by the resolution entity.

5. The resolution authority of a subsidiary that is not a resolution entity may fully waive the application of this Article to that subsidiary where:

(a) the subsidiary and the resolution entity are established in the same Member State and are part of the same resolution group;

(b) the resolution entity complies with the requirement referred to in Article 45f;

(c) there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities by the resolution entity to the subsidiary in respect of which a determination has been made in accordance with Article 59(3), in particular when resolution action is taken in respect of the resolution entity;

(d) the resolution entity satisfies the competent authority regarding the prudent management of the subsidiary and has declared, with the consent of the competent authority, that it guarantees the commitments entered into by the subsidiary, or the risks in the subsidiary are of no significance;

(e) the risk evaluation, measurement and control procedures of the resolution entity cover the subsidiary;

(f) the resolution entity holds more than 50% of the voting rights attached to shares in the capital of the subsidiary or has the right to appoint or remove a majority of the members of the management body of the subsidiary, except for credit institutions permanently affiliated to a central body.

5a.The resolution authority of a subsidiary that is not a resolution entity may also fully waive the application of this Article to that subsidiary where:

(a) the subsidiary and its parent undertaking are established in the same Member State and are part of the same resolution group;

(b) the parent undertaking complies on a sub-consolidated basis, in the Member State of the subsidiary, with the requirement referred to in Article 45;

(c) there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities by the parent undertaking to the subsidiary in respect of which a determination has been made in accordance with Article 59(3), in particular when resolution action or powers referred to in Article 59(1) are taken in respect of the parent undertaking;

(d) the parent undertaking satisfies the competent authority regarding the prudent management of the subsidiary and has declared, with the consent of the competent authority, that it guarantees the commitments entered into by the subsidiary, or the risks in the subsidiary are of no significance;

(e) the risk evaluation, measurement and control procedures of the parent undertaking cover the subsidiary;

(f) the parent undertaking holds more than 50% of the voting rights attached to shares in the capital of the subsidiary or has the right to appoint or remove a majority of the members of the management body of the subsidiary, except for credit institutions permanently affiliated to a central body.

6. Where the conditions laid down in points (a) and (b) of paragraph 5 are met, the resolution authority of a subsidiary may permit the requirement to be met in full [or in part] with a guarantee provided by the resolution entity, which fulfils the following conditions:

(a) the guarantee is provided for at least the equivalent amount as the amount of the requirement for which it substitutes;

(b) the guarantee is triggered when the subsidiary is unable to pay its debts or other liabilities as they fall due or a determination has been made in accordance with Article 59(3) in respect of the subsidiary, whichever is the earliest;

(c) the guarantee is collateralised through a financial collateral arrangement as defined in point (a) of Article 2(1) of Directive 2002/47/EC [for at least 50% of its amount];

(e) the collateral backing the guarantee fulfils the requirements of Article 197 of Regulation (EU) No 575/2013, which, following appropriately conservative haircuts, is sufficient to fully cover the amount guaranteed;

(f) the collateral backing the guarantee is unencumbered and in particular is not used as collateral to back any other guarantee;

(g) the collateral has an effective maturity that fulfils the same maturity condition as that for referred to in Article 72c(1) of Regulation (EU) No 575/2013; and,

(h) there are no legal, regulatory or operational barriers to the transfer of the collateral from the resolution entity to the relevant subsidiary, including when resolution action is taken in respect of the resolution entity. Upon request of the resolution authority the resolution entity shall provide an independent written and reasoned legal opinion or otherwise satisfactorily demonstrate that there are no legal, regulatory or operational barriers to the transfer of collateral to the relevant subsidiary.

8. EBA shall develop draft regulatory technical standards further specifying methods to avoid that instruments recognised for the purposes of Article 45g indirectly subscribed, in part or in full, by the resolution entity hamper the smooth implementation of the resolution strategy. Such methods should notably ensure a proper upstream of loses to the resolution entity and down-streaming of capital to entities that are part of the resolution group but not themselves resolution entities, and provide a mechanism to avoid double counting of eligible instruments recognised for the purpose of Article 45g. They shall consist of a deduction regime or an equivalently robust approach and they shall ensure to entities that are not themselves the resolution entity an outcome equivalent to that of a full direct subscription by the resolution entity of eligible instruments recognised for the purpose of Article 45g.

EBA shall submit those draft regulatory technical standards to the Commission by [6 months after entry into force of this Directive].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

Article 45g1

Waiver for credit institutions permanently affiliated to a central body

The resolution authority may, in accordance with national law, waive the application of Articles 45f or 45g to one or more credit institutions permanently affiliated to a central body, where all the following conditions are met:

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

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

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

(d) the management of the central body is empowered to issue instructions to the management of the affiliated institutions;

(e) the relevant resolution group complies with the requirement referred to in Article 45f(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 affiliated credit institutions in case of resolution.

Article 45h

Procedure for determining the requirement

1. The resolution authority of the resolution entity, the group-level resolution authority, where different from the former, and the resolution authorities responsible for the subsidiaries of a resolution group subject to the requirement referred to in Article 45g on an individual basis shall do everything within their power to reach a single joint decision on all of the following:

(a) the amount of the requirement applied at the consolidated resolution group level for each resolution entity;

(b) the amount of the requirement applied to each subsidiary of the resolution entity on an individual level. The joint decision shall ensure compliance with Article 45f and Article 45g, be fully reasoned and provided to:

(c) the resolution entity by its resolution authority;
(d) the subsidiaries of each resolution entity by their respective resolution authorities;
(e) the Union parent undertaking of the group by the resolution authority of the resolution entity, when that Union parent undertaking is not itself a resolution entity from the same resolution group.

The joint decision taken in accordance with this Article may provide that, where consistent with the resolution strategy and no sufficient instruments complying with Article 45g(3) have been bought directly or indirectly by the resolution entity, the requirements referred to in Article 45c(4) are partially met by the subsidiary in compliance with Article 45g(3) with instruments issued to and bought by entities not belonging to the resolution group.

2. Where more than one G-SII entity belonging to the same G-SII are resolution entities, the resolution authorities referred to in the first subparagraph shall discuss and, where appropriate and consistent with the G-II's resolution strategy, agree on the application of Article 72e of Regulation (EU) Regulation (EU) No 575/2013 and any adjustment to minimise or eliminate the difference between the sum of the amounts referred to in point (a) of Article 45d(3) and Article 12 of Regulation (EU) No 575/2013 for individual resolution entities and the sum of the amounts referred to in point (b) of Article 45d(3) and Article 12 of Regulation (EU) No 575/2013.Such an adjustment may be applied under the following conditions:
(a) the adjustment may be applied in respect of differences in the calculation of the total risk exposure amounts between the relevant Member States by adjusting the level of the requirement;
(b) the adjustment shall not be applied to eliminate differences resulting from exposures between resolution groups. The sum of the amounts referred to in point (a) of Article 45d(3) and Article 12 of Regulation (EU) No 575/2013 for individual resolution entities shall not be lower than the sum of the amounts referred to in point (b) of Article 45d(3) and Article 12 of Regulation (EU) No 575/2013.
3. In the absence of such a joint decision within four months, a decision shall be taken in accordance with paragraphs 4 to 6.

4. Where a joint decision is not taken within four months because of a disagreement concerning the consolidated resolution group requirement, a decision shall be taken on that requirement by the resolution authority of the resolution entity after having duly taken into account:
(a) the assessment of subsidiaries performed by the relevant resolution authorities;
(b) the opinion of the group-level resolution authority, where different from the resolution authority of the resolution entity.

Where, at the end of the four-month period, any of the resolution authorities concerned has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the resolution authority of the resolution entity shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in accordance with the decision of EBA. The decision of the EBA shall take into account points (a), (b) and (c) of the first subparagraph. The four-month period shall be deemed to be the conciliation period within the meaning of that Regulation. EBA shall take its decision within one month. The matter shall not be referred to EBA after the end of the four-month period or after a joint decision has been reached. In the absence of an EBA decision within one month, the decision of the resolution authority of the resolution entity shall apply.
5. Where a joint decision is not taken within four months because of a disagreement concerning the level of the requirement to be applied to the resolution group's subsidiaries subject to the requirement referred to in Article 45g on an individual basis, the decision shall be taken by the respective resolution authorities of the subsidiaries where all of the following conditions are fulfilled:
(a) the opinion of the resolution authority of the resolution entity has been duly taken into account
(b) the opinion of the group-level resolution authority has been duly taken into account where that authority is different from the resolution authority of the resolution entity;

(c) compliance with Article 45g has been assessed.

Where, at the end of the four-month period, the resolution authority of the resolution entity or the group-level resolution authority has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the resolution authorities responsible for the subsidiaries on an individual basis shall defer their decisions and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take their decisions in accordance with the decision of EBA. The decision of the EBA shall take into account points (a), (b) and (c) of the first subparagraph. The four-month period shall be deemed to be the conciliation period within the meaning of that Regulation. EBA shall take its decision within one month. The matter shall not be referred to EBA after the end of the four-month period or after a joint decision has been reached.

The resolution authority of the resolution entity or the group-level resolution authority shall not refer the matter to the EBA for binding mediation where the level set by the resolution authority of the subsidiary:

(a) is within 2% of RWAs of the requirement referred to in Article 45f; and

(b) the level set by the resolution authority of the subsidiary complies with Article 45c(4) .

In the absence of an EBA decision within one month, the decisions of the resolution authorities of the subsidiaries shall apply. The joint decision and any decisions taken in the absence of a joint decision shall be reviewed and where relevant updated on a regular basis.

6. Where a joint decision is not taken within four months because of a disagreement concerning the level of the consolidated requirement and the level of the requirement to be applied to the resolution group's subsidiaries on an individual basis, the following shall apply:

(a) a decision shall be taken on the level of the requirement to be applied to the resolution group's subsidiaries on an individual basis in accordance with paragraph 5

(b) a decision shall be taken on the consolidated requirement in accordance with paragraph 4.

7. The joint decision referred to in paragraph 1 and any decisions taken by the resolution authorities referred to in paragraphs 4, 5 and 6 in the absence of a joint decision shall be binding on the resolution authorities concerned.

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

8. Resolution authorities, in coordination with competent authorities, shall require and verify that entities meet the requirement referred to in article 45(1), and shall take any decision pursuant to this Article in parallel with the development and the maintenance of resolution plans.

9. The resolution authority of the resolution entity shall inform EBA of the minimum requirement for own funds and eligible liabilities that have been set:
(a) at the consolidated resolution group level;

(b) at the level of the resolution group's subsidiaries on an individual basis.

Article 45i

Supervisory reporting and public disclosure of the requirement

1. Entities referred to in Article 1(1) subject to the requirement referred to in Article 45(1) shall report to their competent and resolution authorities on the following on at least semi-annually basis, or more frequently at the request of the competent authority or resolution authority:

(a) the amounts of available own funds and eligible liabilities that meet the conditions of Article 45b or Article 45g(3) and the expression of those amounts in accordance with Article 45(2) following, where applicable, the deductions in accordance with Articles 72e to 72j of Regulation (EU) No 575/2013;

(b) the composition of the items referred to in point (a), including their maturity profile and ranking in normal insolvency proceedings.

The requirement referred to in the first subparagraph shall not apply to entities referred in the last subparagraph of Article 45c(2).

2. Entities referred to in Article 1(1) subject to the requirement referred to in Article 45(1) shall make the following information publicly available on at least a yearly basis:

(a) the amounts of available own funds and eligible liabilities that meet the conditions of Article 45b or 45g(3);

(b) the composition of the items referred to in point (a), including their maturity profile and ranking in normal insolvency proceedings;

(c) the applicable requirement referred to in Article 45c or Article 45d expressed in accordance with Article 45(2).

3. EBA shall develop draft implementing technical standards to specify uniform formats, templates and frequency and templates for the supervisory reporting and public disclosure referred to in paragraphs (1) and (2) of this Article.

For institutions subject to Article 92a and Article 92b of Regulation (EU) No 575/2013, such draft implementing technical standards shall, where appropriate, be aligned to the implementing technical standards adopted in accordance with [relevant provisions of CRR concerning EBA mandates for reporting and disclosure of MREL Pillar I/TLAC].

EBA shall submit those implementing technical standards to the Commission by [12 months from the entry into force].

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

4. Where resolution actions have been implemented or powers referred to in Article 59 have been exercised, public disclosure requirements referred to in paragraph 2 shall apply from the date of the deadline to comply with the requirements of Article 45c or Article 45d referred to in point (o) of Article 10(7).

Article 45j

Reporting to the EBA

1. Resolution authorities , shall inform EBA of the minimum requirement for own funds and eligible liabilities that have been set for each entity in accordance with Article 45f or Article 45g under its jurisdiction.

2. EBA shall develop draft implementing technical standards to specify uniform formats, templates and definitions for the identification and transmission of information by resolution authorities, in coordination with competent authorities, to EBA for the purposes of paragraph 1.

EBA shall submit those draft implementing technical standards to the Commission by [12 months after entry into force] ...*.

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

Article 45k

Breaches of the minimum requirement for own funds, and eligible liabilities

1. Any breach of the minimum requirement for own funds and eligible liabilities referred to in Article 45c or Article 45d shall be addressed by the relevant authorities on the basis of at least one of the following:

(a) powers to address or remove impediments to resolvability in accordance with Article 17 and Article 18;

(ba) power referred to in Article 16a;

(b) measures referred to in Article 104 of Directive 2013/36/EC;

(c) early intervention measures in accordance with Article 27;

(d) administrative penalties and other administrative measures in accordance with Article 110 and Article 111;

(e) an assessment of whether the institution is failing or is likely to fail, in line with Article 32.

3. Resolution and competent authorities shall consult each other when they exercise their respective powers referred to in points (a) to (e) of paragraph 1.

Article 45l

Reports

1. EBA shall, in cooperation with the competent authorities and resolution authorities, submit a report to the Commission providing assessments on at least of the following:

(a) how the requirement for own funds and eligible liabilities set in accordance with Article 45f or Article 45g has been implemented at national level, and in particular whether there have been divergences in the levels set for comparable entities across Member States;

(b) how the power referred to in Article 45b(2) has been exercised by resolution authorities and whether there have been divergences in the exercise of that power across Member States.

2. The report referred to in paragraph 1 shall take account of the following:

(a) the impact of the minimum requirement, and any proposed harmonised levels of the minimum requirement on the following:

(i) financial markets in general and markets for unsecured debt and derivatives in particular;

(ii) business models and balance sheet structures of institutions, in particular the funding profile and funding strategy of institutions, and the legal and operational structure of groups;

(iii) the profitability of institutions, in particular their cost of funding;

(iv) the migration of exposures to entities which are not subject to prudential supervision;

(v) financial innovation;
(vi) the prevalence of contractual bail-in instruments, and the nature and marketability of such instruments;
(vii) the risk-taking behaviour of institutions;
(viii) the level of asset encumbrance of institutions;
(ix) the actions taken by institutions to comply with minimum requirements, and in particular the extent to which minimum requirements have been met by asset deleveraging, long-term debt issuance and capital raising; and

(x) the level of lending by credit institutions, with a particular focus on lending to micro, small and medium-sized enterprises, local authorities, regional governments and public sector entities and on trade financing, including lending under official export credit insurance schemes;
(b) the interaction of the minimum requirements with the own funds requirements, leverage ratio and the liquidity requirements laid down in Regulation (EU) No 575/2013 and in Directive 2013/36/EU;

(c) the capacity of institutions to independently raise capital or funding from markets in order to meet any proposed harmonised minimum requirements.

3. The report referred to in paragraph 1 shall cover two calendar years and shall be communicated to the Commission by 30 September of the calendar year following the last year covered by the report. The first report shall be submitted to the Commission no later than [by 30 September of the second year following the date of application of this Directive].

Article 45m

Transitional and post-resolution arrangements

1. By way of derogation from Article 45(1), resolution authorities shall determine an appropriate transitional period for an institution or entity referred to in points (b), (c) and (d) of Article 1(1) to comply with the requirements in Articles 45f or 45g or a requirement due to application of Article 45b(3), as appropriate. The deadline to comply with the requirements in Articles 45f or 45g or a requirement due to application of Article 45b(3)g shall not be earlier than 1 January 2024.

In exceptional circumstances, where duly justified and appropriate on the basis of the criteria referred to in paragraph (4) taking into consideration:

(b) the development of the entity's financial situation;

(c) the prospect that the entity will be able to ensure compliance with the requirements in Articles 45f or 45g or a requirement due to application of Article 45b(3) in a reasonable timeframe;

(d) whether the entity is able to replace liabilities that no longer meet the eligibility or maturity criteria laid down in Articles 72b and 72c of Regulation (EU) No 575/2013, Article 45b or Article 45g(3), whether this inability is of idiosyncratic nature or due to market-wide disturbance,

the resolution authority may set a transitional period that is shorter than 1 January 2024.

1a. The deadline to comply with the minimum level of the requirements referred to in Article 45c(3a) [Pillar I for top tier banks] shall not be earlier than 2022.

1b. The minimum level of the requirement referred to in Article 45c(3a) shall not apply in the following cases:

(a) within the three years following the date on which the resolution entity starts to be in the situation referred to in Article 45c(3a);

(b) within the two years following the date on which the resolution authority has applied the bail-in tool;

(c) within the two years following the date on which the resolution entity has put in place an alternative private sector measure referred to in point (b) of Article 32(1) by which capital instruments and other liabilities have been written down or converted into Common Equity Tier 1 in order to recapitalise the resolution entity without the application of resolution tools.

2. By way of derogation from Article 45(1), resolution authorities shall determine an appropriate transitional period to comply with the requirements of Articles 45f or 45g or a requirement due to application of Article 45b(3), as appropriate, for an institution or entity referred to in points (b), (c) and (d) of Article 1(1) to which resolution tools or the power to write down and or convert relevant capital instruments and eligible liabilities have been applied.

3. For the purposes of paragraphs 1, 1a and 2, resolution authorities shall communicate to the institution or entity referred to in points (b), (c) and (d) of Article 1(1) a planned MREL for each 12 months period during the transitional period. At the end of the transitional period, the MREL shall be equal to the amount determined under Articles 45c(3a), 45f 45g or 45b(3).

4. When setting the transitional periods, resolution authorities shall take into account:

(i) the prevalence of deposits and the absence of debt instruments in the funding model;

(ii) the access to the capital markets for eligible liabilities;

(iii) the reliance on Common Equity Tier 1 to meet the requirement referred to in Article 45f.

5. Subject to paragraph 1, resolution authorities shall not be prevented from subsequently revising either the transitional period or any planned MREL set out under paragraph 3."

(23a) In Article 48(1) point (e) is replaced by the following:

"(e) if, and only if, the total reduction of shares or other instruments of ownership, relevant capital instruments and bail-inable liabilities pursuant to points (a) to (d) of this paragraph is less than the sum of the amounts referred to in points (b) and (c) of Article 47(3), authorities reduce to the extent required the principal amount of, or outstanding amount payable in respect of, the rest of bail-inable liabilities, including debt instruments referred to in Article 108(3), in accordance with the hierarchy of claims in normal insolvency proceedings, including the ranking of deposits provided for in Article 108, pursuant to Article 44, in conjunction with the write down pursuant to points (a), (b), (c) and (d) of this paragraph to produce the sum of the amounts referred to in points (b) and (c) of Article 47(3)."

(24) Article 55 is replaced by the following:

"*Article 55*

Contractual recognition of bail-in

1. Member States shall require institutions and entities referred to in points (b), (c) and (d) of Article 1(1) to include a contractual term by which the creditor or party to the agreement or instrument creating the liability recognises that liability may be subject to the 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 liability complies with all of the following conditions:

(a) the liability is not excluded under Article 44(2);

(b) the liability is not a deposit as referred to in point (a) of Article 108;

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

(d) the 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 liabilities or instruments referred to in the first subparagraph can be subject to write down and conversion powers by the resolution authority of a Member State pursuant to the law of the third country or to a binding agreement concluded with that third country.

2.

Member States shall ensure that where an institution or entity referred to in point (b), (c) or (d) of Article 1(1) reaches the determination that it is legally or otherwise impracticable to include the contractual term in paragraph 1 in certain liabilities, such institution or entity referred to in point

(b), (c) or (d) of Article 1(1) notifies its determination, including designation of the category the liability falls into and justification, to the resolution authority or the competent authority, where relevant under national law. The institution or entity shall provide the resolution authority with all information which the resolution authority, after receipt of such notification may request within a reasonable timeframe following the receipt of the notification referred to in subparagraph 1 in order to assess the effect of such notification on the resolvability of that institution or entity referred to in point (b), (c) o (d) of Article 1(1).

Member States shall ensure that, in case of a notification under the first subparagraph, the obligation to include the contractual term in paragraph 1 is automatically suspended from the moment of receipt of the notification by the resolution authority.
Should the resolution authority not be satisfied with such notification, it shall require the inclusion of the contractual term in paragraph 1 where it considers either that there is no impracticability or that a contractual recognition clause is necessary to ensure the resolvability of that institution or entity referred to in point (b), (c) or (d) of Article 1(1).
The liabilities referred to in the first subparagraph shall be senior to liabilities with the ranking referred to in Art. 108 (2) (a), (b) (c) and (3).
Liabilities for which the institution or entity referred to in point (b), (c) or (d) of Article 1(1) does not include in the relevant contractual provisions the term required in accordance with paragraph 1 shall not be counted towards the minimum requirement for own funds and eligible liabilities.

3. Member States shall ensure that resolution authorities may require institutions and entities referred to in points (b), (c) and (d) of Article 1(1) to provide authorities with a legal opinion relating to the legal enforceability and effectiveness of the contractual term referred to in paragraph 1.

4. Where an institution or entity referred to in point (b), (c) or (d) of Article 1(1) does not include in the contractual provisions governing a relevant liability a contractual term as required in accordance with paragraph 1, that failure shall not prevent the resolution authority from exercising the write down and conversion powers in relation to that liability.

5. EBA shall develop draft regulatory technical standards in order to further determine the list of liabilities to which the exclusion in paragraph 1 applies, and the contents of the contractual term required in that paragraph, taking into account institutions' different business models.

EBA shall submit those draft regulatory technical standards to the Commission by 3 July 2015. Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

6. EBA shall develop draft regulatory technical standards in order to specify the conditions under which it would be legally or otherwise impracticable for an institution or entity referred to in point (b), (c) or (d) of Article 1(1) to include the contractual term referred to in paragraph 1 in certain liabilities. As well as the conditions for the resolution authority to require the inclusion of the clause pursuant to paragraph 2, fourth subparagraph.

EBA shall submit those draft regulatory technical standards to the Commission by […].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

7. The resolution authority shall specify, where it deems it necessary, the categories of liabilities among which an institution or entity referred to in point (b), (c) or (d) of Article 1(1) may reach the determination that it is legally or otherwise impracticable to include the contractual term in paragraph 1, based on the conditions defined under paragraph 6."

(27) In the titles of Article 59 and Article 60 "and eligible liabilities" is inserted.

(28) In Article 59, paragraph 1 is replaced by the following:

"1.The power to write down or convert relevant capital instruments and eligible liabilities may be exercised either:

(i) independently of resolution action; or

(j) in combination with a resolution action, where the conditions for resolution specified in Articles 32 and 33 are met. The power to write down or convert eligible liabilities independently of resolution action may be exercised only in relation to eligible liabilities that meet the conditions referred to in Article 45g(3)(a), except the condition related to the remaining maturity of liabilities and, when exercised, shall comply with point (g) of Article 34(1). After the exercise of the power to write down or convert eligible liabilities independently of resolution action, the valuation provided for in Article 74 shall be carried out and Article 75 shall apply.

Where relevant capital instruments and eligible liabilities have been purchased by the resolution entity indirectly through other entities in the same resolution group, the power to write down or convert shall be exercised together with the exercise of the same power at the level of the parent undertaking of the entity concerned or subsequent parents that are not resolution entities so that the losses are effectively passed on to and the entity concerned is recapitalised by the resolution entity.

Where a resolution action is taken in relation to an entity that is a resolution entity or, in exceptional circumstances in deviation from the resolution plan, in relation to an entity that is not a resolution entity, the amount that is reduced, written down or converted in accordance with Article 60(1) at the level of an such entity shall count towards the thresholds laid down in Articles 37(10) and point (a) of Article 44(5) applicable to the entity concerned.".

(29) "Capital instruments" in Article 59(2) and (3) is replaced with "capital instruments and liabilities referred to in paragraph 1".

(29a) Point (a) of Article 59(3) is replaced with the following:

"where the determination has been made that conditions for resolution specified in Articles 32, 32a and 33 have been met, before any resolution action is taken";

(30) "Capital instruments" in Article 59(4) and (10) is replaced with "capital instruments or liabilities referred to in paragraph 1".

(31) In Article 60(1), the following point (d) is added:

"(d) the principal amount of eligible liabilities referred to in Article 59(1) is written down or converted into Common Equity Tier 1 instruments or both, to the extent required to achieve the resolution objectives of the resolution group set out in Article 31 or to the extent of the capacity of the relevant eligible liabilities, whichever is lower.".

(32) In Article 60, paragraph 2 is replaced by the following:

"2. Where the principal amount of a relevant capital instrument or a eligible liability is written down:

(a) the reduction of that principal amount shall be permanent, subject to any write up in accordance with the reimbursement mechanism in Article 46(3);

(b) no liability to the holder of the relevant capital instrument and liability referred to in Article 59(1) shall remain under or in connection with that amount of the instrument, which has been written down, except for any liability already accrued, and any liability for damages that may arise as a result of an appeal challenging the legality of the exercise of the writedown power;

(c) no compensation is paid to any holder of the relevant capital instruments and liabilities referred to in Article 59(1) other than in accordance with paragraph 3.".

(33) In Article 60(3), "the relevant capital instruments" is replaced by "the relevant capital instruments and liabilities referred to in Article 59(1)".

(33a) In Article 61(3) a new subparagraph is inserted:

”Where the relevant capital instruments or liabilities referred to in Article 59(1) are recognised for the purposes of meeting the requirement referred to in Article 45g on an individual basis, the authority responsible for making the determination referred to in Article 59(3) of this Directive shall be the appropriate authority of the Member State where the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) has been authorised in accordance with Title III of Directive 2013/36/EU.”

(33b) In Article 62, paragraph 1 is replaced with the following:

"Member States shall ensure that, before making a determination referred to in point (b), (c), (d) or (e) of Article 59(3) in relation to a subsidiary that issues relevant capital instruments or liabilities referred to in Article 59(1) for the purposes of meeting the requirement referred to in Article 45g on an individual basis or relevant capital instruments that are recognised for the purposes of meeting the own funds requirements on an individual or consolidated basis, appropriate authorities comply with the following requirements:

(a) an appropriate authority that is considering whether to make a determination referred to in point (b), (c), (d) or (e) of Article 59(3), after having consulted the resolution authority of the relevant resolution entity, notifies, within 24 hours :

(i) the consolidating supervisor and, if different, the appropriate authority in the Member State where the consolidating supervisor is located;

(iii) resolution authorities of other entities within the same resolution group that directly or indirectly purchased liabilities referred to in Article 45g(3) from the entity subject to Article 45g(1);

(b) an appropriate authority that is considering whether to make a determination referred to in point (c) of Article 59(3) notifies, without delay, the competent authority responsible for each institution or entity referred to in point (b), (c) or (d) of Article 1(1) that has issued the relevant capital instruments in relation to which the write down or conversion power is to be exercised if that determination were made, and, if different, the appropriate authorities in the Member States where those competent authorities and the consolidating supervisor are located."

(33c) In Article 62(4), the first sentence is replaced with the following:

"Where a notification has been made pursuant to paragraph 1, the appropriate authority, after consulting the authorities notified, except for the authorities referred to in point (a)(iii) of that paragraph, shall:"

(33d) In Article 68, paragraph 3 is replaced by the following:

Provided that the substantive obligations under the contract, including payment and delivery obligations, and provision of collateral, continue to be performed, a crisis prevention measure, a suspension of obligation under Article 33a or a crisis management measure, including the occurrence of any event directly linked to the application of such a measure, shall not, per se, make it possible for anyone to:

(a) exercise any termination, suspension, modification, netting or set-off rights, including in relation to a contract entered into by:

(i) a subsidiary, the obligations under which are guaranteed or otherwise supported by a group entity;

(ii) any group entity which includes cross-default provisions;

(b) obtain possession, exercise control or enforce any security over any property of the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) concerned or any group entity in relation to a contract which includes cross- default provisions;

(c) affect any contractual rights of the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) concerned or any group entity in relation to a contract which includes cross-default provisions.

(33e) In Article 68, paragraph 5 is replaced by the following:”5. A suspension or restriction under Articles 33a, 69, 70 or 71 shall not constitute non-performance of a contractual obligation for the purposes of paragraphs 1 and 3 of this Article and of Article 71 (1).

(33f) In Article 69, paragraph 4 is replaced by the following:

'Article 69

4. Any suspension under paragraph 1 shall not apply to payment and delivery obligations owed to systems or operators of systems designated for the purposes of Directive 98/26/EC, central counterparties and third country central counterparties recognised by ESMA pursuant to Article 25 of Regulation (EU) No 648/2012, and central banks.

(33g) In Article 69, paragraph 5, the following subparagraphs are added:
The resolution authorities shall carefully assess, the appropriateness of applying the suspension to eligible deposits, especially covered deposits held by natural persons and micro, small and medium sized enterprises.

When exercising the power to suspend payment or delivery obligations in relation to eligible deposits, the resolution authority may decide that depositors have access to an appropriate daily amount .

(35) In Article 70, paragraph 2 is replaced by the following:

"2. Resolution authorities shall not exercise the power referred to in paragraph 1 in relation to any security interest of systems or operators of systems designated for the purposes of Directive 98/26/EC, central counterparties and third country central counterparties recognised by ESMA pursuant to Article 25 of Regulation (EU) No 648/2012, and central banks over assets pledged or provided by way of margin or collateral by the institution under resolution;".

(36) In Article 71, paragraph 3 is replaced by the following:

"3. Any suspension under paragraph 1 or 2 shall not apply to systems or operators of systems designated for the purposes of Directive 98/26/EC, central counterparties and third country central counterparties recognised by ESMA pursuant to Article 25 of Regulation (EU) No 648/2012, or central banks.".

(36a)The following Article 71a is inserted:

"Article 71a

Contractual Recognition of Resolution Stay Powers

1. Member States shall require institutions and entities referred to in points (b), (c), (d) of Article 1(1) to include in any financial contract governed by a third country law, a contractual term by which the parties to such financial contracts recognise that the financial contract may be subject to the exercise of powers by the resolution authority to suspend or restrict rights and obligations under Articles 33a, 69, 70, and 71 and to be bound by the requirements of Article 68.

2. Member States may also require that parent undertakings referred to in paragraph 1 ensure that the contractual term referred to in paragraph 1 is also included in financial contracts entered into by third country subsidiaries which are:

(a) credit institutions;

(b) investment firms (or which would be investment firms if they had a head office in the relevant Member State); or

(c) financial institutions.

3. Paragraphs 1 and 2 apply to any financial contract complying with all the following conditions:

(a) under which a new obligation is created, or an existing obligation is materially amended, after the date on which a Member State applies the provisions adopted in order to transpose this Article;

(b) that provides for the exercise of one or more termination rights or rights to enforce security interests, the exercise or enforcement of which could be suspended or prevented or the application of which would be disregarded under the requirements of Article 68 or under the exercise of powers set out in 33a, 69, 70 and 71 if the financial contract were governed by the laws of the relevant Member State; and,

(c) which is governed by the law of a third country.

4. Paragraph 1 does not apply to financial contracts that are

(a) Defined in point (100) (e) of Article 2(1);

(b) Entered into or concluded with:

(i) a person who has been designated by an EEA State as a system under Article 2(a) of the Directive 98/26/EC of the European Parliament and of the Council on settlement finality in payment and securities settlement systems or an operator of such a system;

(ii) an exchange, other trading facility, payment system, settlement system or other financial market utility or infrastructure established in a third country not within (i);

(iii) a central counterparty;

(iv) a central bank; or

(v) a central government (including any agency or branch of a central government).

5. Where an institution or entity referred to in paragraphs 1 or 2 fails to include in the contractual provisions, as required in accordance with paragraphs 1 or 2, such failure shall not prevent the resolution authority from exercising the powers or imposing the requirements referred to in paragraphs 1 or 2 in relation to that financial contract."

(37) In Article 88, "Article 45" is replaced with the "Articles 45 to 45h".

(38) In Article 88(1), the first subparagraph is replaced with the following:
"Subject to Article 89, group-level resolution authorities shall establish resolution colleges to carry out the tasks referred to in Articles 12, 13, 16, 18, 45 to 45h, 91 and 92, and, where appropriate, to ensure cooperation and coordination with third-country resolution authorities.".

(39) Article 89 is replaced by the following:

"*Article 89*

European resolution colleges

1. Where a third country institution or third country parent undertaking has subsidiaries established in the Union or Union parent undertakings, established in two or more Member States, or two or more Union branches that are regarded as significant by two or more Member States, the resolution authorities of Member States where those entities are established or where those significant branches are located shall establish one single European resolution college.
2. The European resolution college referred to in paragraph 1 shall perform the functions and carry out the tasks specified in Article 88 with respect to the entities referred in paragraph 1and, in so far as those tasks are relevant, to branches.
The tasks to be performed by the European resolution college as referred to in paragraph 2 shall include the setting of the requirement referred to in Articles 45 to 45h.
When setting the requirement referred to in Articles 45 to 45h, members of the European resolution college shall take into consideration the global resolution strategy, if any, adopted by third-country authorities.

Where in accordance with the global resolution strategy subsidiaries established in the Union or a Union parent undertaking and its subsidiary institutions are not resolution entities and the members of the European resolution college agree with that strategy, subsidiaries established in the Union or, on a consolidated basis, the Union parent undertaking shall comply with the requirement of Article 45g(1) by issuing instruments referred to in Article 45g(3)(a) and (b) to the third-country resolution entity, its subsidiaries established in the relevant third country or other entities under the conditions provided in point (i) Article 45g(3)(a) and in point (ii) of Article 45g(3)(b).3. Where only one Union parent undertaking holds all Union subsidiaries of a third country institution or third country parent undertaking, the European resolution college shall be chaired by the resolution authority of the Member State where the Union parent undertaking is established.

Where the first subparagraph does not apply, the resolution authority of a Union parent undertaking or a Union subsidiary with the highest value of total on-balance sheet assets held shall chair the European resolution college.

4. Member States may, by mutual agreement of all the relevant parties, waive the requirement to establish a European resolution college if another group or college, performs the same functions and carries out the same tasks specified in this Article and complies with all the conditions and procedures, including those covering membership and participation in European resolution colleges, established in this Article and in Article 90. In such a case, all references to European resolution colleges in this Directive shall also be understood as references to those other groups or colleges.

5. Subject to paragraphs 3 and 4 of this Article, the European resolution college shall otherwise function in accordance with Article 88.

Article 9

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [date 18 months from the date of entry into force of this Directive]. They shall forthwith communicate to the Commission the text of those measures.

   Member States shall apply those measures as from the date of their entry into force in national law, which shall be no later than [18 months from the date of entry into force of this Directive] .

   Member States shall apply Article 45i(2) from [the uniform MREL compliance deadline referred to in Article 45m] from the entry into force of this Directive.

2. When Member States adopt the measures referred to in paragraph 1, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such a reference is to be made.

3. Member States shall communicate to the Commission and to EBA the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 10

Entry into force

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

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Article 11

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

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