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NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2014/59/EU as regards early intervention measures, conditions for resolution and financing of resolution action - *Mandate for negotiations with the European Parliament*

2023/0112 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2014/59/EU as regards early intervention measures, conditions for resolution and financing of resolution action and Directive 2014/24/EU as regards services needed for the preparation, application and exercise of resolution tools and powers

(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 Union resolution framework for credit institutions and investment firms ('institutions') was established in the aftermath of the 2008-2009 global financial crisis and following the internationally endorsed Key Attributes of Effective Resolution Regimes for Financial Institutions[3] of the Financial Stability Board. The Union resolution framework consists of Directive 2014/59/EU of the European Parliament and of the Council[4] and Regulation (EU) No 806/2014 of the European Parliament and of the Council[5]. Both acts apply to institutions established in the Union, and to any other entity that falls under the scope of that Directive or of that Regulation ('entities'). The Union resolution framework aims at dealing in an orderly manner with the failure of institutions and entities by preserving institutions and entities' critical functions and avoiding threats to financial stability, and at the same time protecting depositors and public funds. In addition, the Union resolution framework intends to foster the development of the internal market in banking by creating a harmonised regime to address cross-border crises in a coordinated way and by avoiding issues of distortions of competition and risks of unequal treatment.

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3 Financial Stability Board, Key Attributes of Effective Resolution Regimes for Financial Institutions, 15 October 2014.

4 Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

5 Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ L 225, 30.7.2014, p. 1).

(2) Several years into its implementation, the Union resolution framework as currently applicable does not fully deliver as intended with respect to some of those objectives. In particular, while institutions and entities have made significant progress towards resolvability and have dedicated significant resources to that end, in particular through the build-up of the loss absorption and recapitalisation capacity and the filling-up of resolution financing arrangements, the Union resolution framework is seldom resorted to. Failures of certain smaller and medium-sized institutions and entities are instead mostly addressed through unharmonised national measures. Taxpayer money is used rather than resolution financing arrangements. That situation appears to arise from inadequate incentives. Those inadequate incentives result from the interplay of the Union resolution framework with national rules, whereby the broad discretion in the public interest assessment is not always exercised in a way that reflects how the Union resolution framework was intended to apply. At the same time, the Union resolution framework saw little use due to the risks for depositors of deposit-funded institutions to bear losses to ensure that those institutions can access external funding in resolution, in particular in the absence of other bail-inable liabilities. Finally, the fact that there are less stringent rules on access to funding outside resolution than in resolution has discouraged the application of the Union resolution framework in favour of other solutions, which often entail the use of taxpayers' money instead of the own resources of the institution or entity or industry-funded safety nets. That situation in turn generates risks of fragmentation, risks of suboptimal outcomes in managing institutions and entities' failures, in particular in the case of smaller and medium-sized institutions and entities, and opportunity costs from unused financial resources. It is therefore necessary to ensure a more effective and coherent application of the Union resolution framework and to ensure that it can be applied whenever that is in the public interest, including for smaller and medium-sized institutions primarily funded through deposits and without sufficient other bail-inable liabilities.

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

(4) An institution or entity that is being wound up under national law, following a determination that the institution or entity is failing or likely to fail and a conclusion by the resolution authority that its resolution is not in the public interest, is ultimately heading towards market exit. That implies that a plan for actions to be taken to resolve an institution or entity once the failure or likelihood of failure has occurred is no longer needed, irrespective of whether the competent authority has already withdrawn the authorisation of the institution or entity concerned. The same applies for a residual institution under resolution after the transfer of assets, rights and liabilities in the context of a transfer strategy. It is therefore appropriate to specify that in those situations the adoption of resolution plans is not required.

(5) Resolution authorities may currently prohibit certain distributions where an institution or entity fails to meet the combined buffer requirement when considered in addition to the minimum requirement for own funds and eligible liabilities ('MREL'). However, in certain situations, an institution or entity might be required to comply with the MREL on a different basis than the basis on which that institution or entity is required to comply with the combined buffer requirement. That situation creates uncertainties as to the conditions for the exercise of the powers of resolution authorities to prohibit distributions and for the calculation of the Maximum Distributable Amount related to MREL. It should therefore be laid down that, in those cases, resolution authorities should exercise the power to prohibit certain distributions based on the estimate of the combined buffer requirement resulting from Commission Delegated Regulation (EU) 2021/1118 . To ensure transparency and legal certainty, resolution authorities should communicate the estimated combined buffer requirement to the institution or entity, which should then publicly disclose that estimated combined buffer requirement.

(6) Early intervention measures were created to enable competent authorities to remedy the deterioration of the financial and economic situation of an institution or entity and to reduce, to the extent possible, the risk and impact of a possible resolution. However, due to a lack of certainty regarding the triggers for application of those early intervention measures and partial overlaps with supervisory measures, early intervention measures have seldom been used. The conditions for the application of those early intervention measures should therefore be simplified and further specified. To dispel uncertainties concerning the conditions and timing for the removal of the management body and the appointment of temporary administrators, those measures should be explicitly identified as early intervention measures and their application should be subject to the same triggers. At the same time, competent authorities should be required to select the appropriate measures to address a specific situation in compliance with the principle of proportionality.

To enable competent authorities to take into account reputational risks or risks related to money laundering or information and communication technology, competent authorities should assess the conditions for application of early intervention measures not only on the basis of quantitative indicators, such as capital or liquidity requirements, level of leverage, non-performing loans or concentration of exposures, but also on the basis of qualitative triggers. The decision-making process in relation to early intervention measures should allow for their swift consideration and, if necessary, adoption, in order to avoid any further worsening of the situation of the institution.

(7) To improve legal certainty, the early intervention measures laid down in Directive 2014/59/EU that overlap with already existing powers under the prudential framework laid down in Directive 2013/36/EU of the European Parliament and of the Council and in Directive (EU) 2019/2034 of the European Parliament and of the Council should be removed. In addition, it is necessary to ensure that resolution authorities are able to prepare for the possible resolution of an institution or entity. The competent authority should therefore inform the resolution authorities of the deterioration of the financial condition of an institution or entity sufficiently early, and resolution authorities should have the necessary powers for the implementation of preparatory measures. Importantly, to enable the resolution authorities to react as swiftly as possible to a deterioration of the situation of an institution or an entity, the prior application of early intervention measures should not be a condition for the resolution authority to make arrangements for the marketing of the institution or entity or to request information to update the resolution plan and prepare the valuation. When marketing an institution that is a member of an institutional protection scheme (IPS), the resolution authority should consider measures that the IPS could take prior to resolution to avert the material risk that the institution will fail or become likely to fail.

To ensure a consistent, coordinated, effective and timely reaction to the deterioration of the financial situation of an institution or entity and to prepare properly for a possible resolution, it is necessary to enhance the interaction and coordination between competent authorities and resolution authorities. As soon as an institution or entity meets the conditions for application of early intervention measures, competent authorities and resolution authorities should increase their exchanges of information, including provisional information, and monitor the financial situation of the institution or entity jointly.

(8) It is necessary to ensure timely action and early coordination between the competent authority and the resolution authority, when an institution or entity is still a going concern, but where there is a material risk that the institution or entity may fail. The competent authority should therefore notify the resolution authority as early as possible of such risk. That notification should contain the reasons for the competent authority's assessment and a non- exhaustive overview of the alternative private sector measures, supervisory action or early intervention measures that are available to prevent the failure of the institution or entity within a reasonable timeframe. Such early notification should not prejudice the procedures to determine whether the conditions for resolution are met. The prior notification by the competent authority to the resolution authority of a material risk that an institution or entity is failing or likely to fail or the end of the defined timeframe for the implementation of the measures to address such material risk of failure of the institution or entity should not be a condition for, nor otherwise necessarily imply, a subsequent determination that an institution or entity is actually failing or likely to fail.

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

(9) The resolution framework is meant to be applied to potentially any institution or entity, irrespective of its size and business model, if the tools available under national law are not adequate to manage its failure. Some objectives of the framework need to be further specified to increase harmonisation and to promote convergence. The resolution objective of ensuring continuity of critical functions aims at safeguarding financial stability and the real economy. It is therefore necessary to ensure that their provision is not discontinued. In particular, it is necessary to clarify that, depending on the specific circumstances, resolution authorities should be able to conclude that certain functions of the institution or entity are considered as critical even if their discontinuance would disrupt financial stability or services that are essential to the real economy only at regional level. Critical functions can notably, without being exhaustive, include deposit taking, lending and loan services, payment, clearing, custody and settlement services, safekeeping of assets, wholesale funding markets activities, and capital markets and investments activities.

As regards deposit taking, resolution authorities should pay due attention to the risk of a loss of confidence of depositors holding deposits not covered by Directive 2014/49/EU of the European Parliament and of the Council[6]. Moreover, it is reiterated that adverse effects on financial stability should be prevented. Public funds should be protected by minimising reliance on extraordinary public financial support, in particular when provided from the budget of a Member State. Depositors covered by Directive 2014/49/EU, investors covered by Directive 97/9/EC of the European Parliament and of the Council[7], client funds and client assets should also be protected.

(10a) Liquidation under normal insolvency proceedings might, in some cases, jeopardise financial stability and interrupt the provision of critical functions. This could be the case, for instance, where insolvency would likely imply losses on a material share of deposits or significant difficulties in the continuity of access to deposits, and where those losses or those difficulties are deemed by the resolution authority as having a significant impact on the provision of critical functions, or on financial stability through contagion or on the real economy. In such cases it is highly likely that there would be a public interest in placing the institution under resolution and applying resolution tools rather than resorting to normal insolvency proceedings.

(11) The assessment of whether the resolution of an institution or entity is in the public interest should also reflect, to the extent possible, the difference between, on the one hand, funding provided through industry-funded safety nets (resolution financing arrangements or DGSs) and, on the other hand, funding provided by Member States from taxpayers' money. Therefore, when assessing the objective of minimising reliance on extraordinary public financial support, resolution authorities should find funding through the resolution financing arrangements or the DGS preferable to funding through an equal amount of resources from the budget of Member States.

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6 Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ L 173 12.6.2014, p. 149).

7 Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes (OJ L 84, 26.3.1997, p. 22).

(12) The public interest assessment should be divided in two stages. In the first stage, resolution authorities should assess whether any of the resolution objectives would be at risk in case of winding up of the failing institution or entity under normal insolvency proceedings**.** Resolution action should not be in the public interest if none of the resolution objectives is at risk in case the institution is wound up under normal insolvency proceedings. To ensure that the resolution objectives are attained in the most effective way, the outcome of the second stage of the public interest assessment should be negative only where the winding up of the failing institution or entity under normal insolvency proceedings would achieve the resolution objectives more effectively and not only to the same extent as resolution.

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

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

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

(16) Competent authorities should be empowered to withdraw the authorisation of an institution or entity solely on the basis of the fact that the institution or entity is failing or likely to fail and is not put in resolution. Competent authorities should be able to withdraw the authorisation to support the objective of winding up the institution or entity in accordance with national law, particularly in cases where the available procedures under national law cannot be initiated at the moment the institution or entity is determined to be failing or likely to fail, including the cases where the institution or entity is not yet balance sheet insolvent.

(17) In light of the experience acquired in the implementation of Directive 2014/59/EU, Regulation (EU) No 806/2014 and Directive 2014/49/EU of the European Parliament and of the Council, it is necessary to specify further the conditions under which measures of a preventive precautionary nature, where allowed by the Member States, that qualify as extraordinary public financial support may exceptionally be granted. These rules are interlinked with the State aid framework for banks as laid down, including in Commission's Communication of 30 July 2013 on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis, which is under review. The state aid framework for banks should be consistent with the new improved rules for resolution. It should be ensured that precautionary measures are taken sufficiently early. Moreover, measures to provide relief for impaired assets, including asset management vehicles or asset guarantee schemes, can prove effective and efficient in addressing causes of possible financial distresses faced by institutions and entities and preventing their failure and could therefore constitute relevant precautionary measures. It should be therefore specified that such precautionary measures can take the form of impaired asset measures.

(18) To preserve market discipline, protect public funds and avoid distortions of competition, precautionary measures should remain the exception and only be applied to address situations of serious disturbance in the market or to preserve financial stability, in particular in the event of a systemic crisis. Moreover, precautionary measures should not be used to address incurred or likely losses. The most reliable instrument to quantify losses is an asset quality review by the ECB, the European Supervisory Authority (European Banking Authority) (EBA), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council[8] or national competent authorities.

[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).

Competent authorities should use such a review, or where appropriate, on-site inspections, to quantify losses where such review or inspections can be carried out within a reasonable timeframe. Where that is not possible, competent authorities should quantify losses in the most reliable way possible under the prevailing circumstances, based on the institution or entity's balance sheet, provided that the balance sheet complies with the applicable accounting rules and standards as confirmed by an independent external auditor.

(19) Precautionary recapitalisation is aimed at supporting viable institutions and entities identified as likely to encounter temporary difficulties in the near future and to prevent their situation from deteriorating further. To avoid that public subsidies are granted to businesses that are already unprofitable when the support is granted, precautionary measures granted in the form of acquisition of own funds instruments or other capital instruments or through impaired asset measures should not exceed the amount necessary to cover capital shortfalls as identified in the adverse scenario of a stress test or equivalent exercise. To ensure that public financing is ultimately discontinued, those precautionary measures should also be limited in time and contain a clear timeline for their termination (exit strategy). Perpetual instruments, including Common Equity Tier 1 capital, should only be used in exceptional circumstances because by their nature they are not well suited for compliance with the condition of temporariness.

(20) Precautionary measures should be limited to the amount that the institution or entity would need to maintain its solvency in the case of an adverse scenario event as determined in a stress test or equivalent exercise. In the case of precautionary measures in the form of impaired asset measures, the receiving institution or entity should be able to use that amount to cover losses on the transferred assets or in combination with an acquisition of capital instruments, provided that the overall amount of the shortfall identified is not exceeded. It is also necessary to ensure that such precautionary measures in the form of impaired asset measures comply with existing State aid rules and best practices, that they restore the institution or entity's long-term viability, that State aid is limited to the minimum necessary and that distortions of competition are avoided. For those reasons, the authorities concerned should in case of precautionary measures in the form of impaired asset measures take into account the specific guidance, including the AMC Blueprint[9] and the Communication on Tackling Non-Performing Loans[10]. Those precautionary measures in the form of impaired asset measures should always be subject to the overriding condition of temporariness. Public guarantees granted for a specified period in relation to the impaired assets of the institution or entity concerned are expected to ensure better compliance with the temporariness condition than transfers of such assets to a publicly supported entity. To ensure that the institutions and entities receiving support comply with the terms of the support measure, competent authorities should request a remediation plan from institutions and entities that failed to fulfil their commitments. Where a competent authority is of the opinion that the measures in the remediation plan are not capable of achieving the institution's or entity's long-term viability or where the institution or entity failed to comply with the remediation plan, relevant authorities should carry out an assessment of whether the institution or entity is failing or likely to fail, in accordance with Article 32 of this Directive.

9 COM(2018) 133 final.
10 COM(2020) 822 final.

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

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

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

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

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

When assessing the amount to be written down or converted, the resolution authority should carefully consider the impact of the potential loss on the institution under resolution based on a number of factors, including the likelihood of the event materialising, the time frame for its materialisation and the amount of the liability.

(26) In certain circumstances, after the resolution financing arrangement has provided a contribution up to the maximum of 5 % of the institution or entity's total liabilities including own funds, resolution authorities may use additional sources of funding to further support their resolution action. It should be specified more clearly in which circumstances the deposit guarantee scheme, the resolution financing arrangement or alternative financing sources may provide further support where all liabilities with a priority ranking lower than eligible deposits from natural persons and SMEs other than eligible deposits that are not mandatorily or discretionarily excluded from bail-in have been written down or converted in full.

(27) Regulation (EU) 2019/876 of the European Parliament and of the Council[11], Regulation (EU) 2019/877 of the European Parliament and of the Council[12] and Directive (EU) 2019/879 of the European Parliament and of the Council[13] implemented in the Union the international 'Total Loss-absorbing Capacity (TLAC) Term Sheet', published by the Financial Stability Board on 9 November 2015 (the 'TLAC standard'), for global systemically important banks, referred to in Union law as global systemically important institutions (G-SIIs).

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

12 Regulation (EU) 2019/877 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 806/2014 as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms (OJ L 150, 7.6.2019, p. 226).

13 Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC (OJ L 150, 7.6.2019, p. 296).

Regulation (EU) 2019/877 and Directive (EU) 2019/879 also amended the MREL set out in Directive 2014/59/EU and in Regulation (EU) No 806/2014. It is necessary to align the provisions in Directive 2014/59/EU on the MREL with the implementation of the TLAC standard for G-SIIs with respect to certain liabilities that could be used to meet the part of the MREL that should be met with own funds and other subordinated liabilities. In particular, liabilities that rank *pari passu* with certain excluded liabilities should be included in the own funds and subordinated eligible instruments of resolution entities where the amount of those excluded liabilities on the balance sheet of the resolution entity does not exceed 5 % of the amount of the own funds and eligible liabilities of the resolution entity and no risks related to the 'no creditor worse off' principle arise from that inclusion.

(32) There are interactions between the resolution framework and the market abuse framework. In particular, while actions taken in resolution or in preparation for resolution may qualify as inside information under Regulation (EU) No 596/2014 of the European Parliament and of the Council[14], their premature disclosure risks jeopardising the resolution process. Where such actions are intermediate steps in a protracted process, Regulation (EU) No 596/2014 does not require immediate disclosure. In other cases, institutions are able to take steps to address that issue by delaying disclosure of inside information to the public pursuant to Article 17(4) or (5) of Regulation (EU) No 596/2014. However, the right incentives might not always be present at the time of resolution or preparing for resolution in order for the institution or entity to take the initiative for such a delay.

[14] Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173 12.6.2014, p. 1).

To avoid such situations, resolution authorities should have the power to require an institution or entity, when preparing for resolution or when the institution is placed under resolution, to delay the disclosure of inside information to the public pursuant to Article 17(4) or (5) of Regulation (EU) No 596/2014 and notify its intention to delay disclosure pursuant to Article 17(6) of Regulation (EU) No 596/2014 where such delay requires the consent of the competent market authority.'

(32a) When applying resolution tools and exercising resolution powers, resolution authorities should generally not be subject to requirements to obtain approval or consent from any person. In particular, resolution authorities or, depending on national law, entities established by resolution authorities should not be subject to an assessment of an acquisition of a qualifying holding by the relevant authority when exercising control over the institution under resolution.'

(32b) Resolution authorities should, considering the need to protect financial stability and to act swiftly, not be subject to the procedures for procurement with respect to public contracts with service providers for services needed for the preparation, application and exercise of resolution tools and powers. The services provided by, inter alia, independent valuers, legal and financial advisors and, where applicable, special managers that are designated by the resolution authorities should therefore be excluded from the scope of the Directive 2014/24/EU of the European Parliament and of the Council[15].

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

[15] Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 094 28.3.2014, p. 65).

(34) After the initial build-up period of the resolution financing arrangements referred to in Article 102(1) of Directive 2014/59/EU, their respective available financial means may face slight decreases below their target level, in particular resulting from an increase in covered deposits. The amount of the *ex ante* contributions likely to be called in those circumstances is thus likely to be small. It may therefore be possible that, in some years, the amount of such *ex ante* contributions is no longer commensurate to the cost of the collection of those contributions. Resolution authorities should therefore be able to defer the collection of the *ex ante* contributions for 1 or more years until the amount to be collected reaches an amount that is proportionate to the cost of the collection process, provided that such deferral does not materially affect the capacity of resolution authorities to use resolution financing arrangements.

(36) The maximum annual amount of extraordinary *ex post* contributions to resolution financing arrangements that are allowed to be called, is currently limited to three times the amount of the *ex ante* contributions. After the initial build-up period referred to in Article 102(1) of Directive 2014/59/EU, such *ex ante* contributions will depend only, in circumstances other than the use of the resolution financing arrangements, on variations in the level of covered deposits and are therefore likely to become small. Basing the maximum amount of extraordinary *ex post* contributions on *ex ante* contributions could then have the effect of drastically limiting the possibility for resolution financing arrangements to raise *ex post* contributions, thereby reducing their capacity for action. To avoid such an outcome, a different limit should be laid down and the maximum amount of extraordinary *ex post* contributions allowed to be called should be set at three times one-eighth of the target level of the resolution financing arrangement concerned.

(37) Directive 2014/59/EU partially harmonised the ranking of deposits under national laws governing normal insolvency proceedings. Those rules provided for a three-tier ranking of deposits, whereby covered deposits had the highest priority ranking, followed by eligible deposits of natural persons and micro, smaller and medium-sized enterprises above the coverage level. The remaining deposits, i.e. deposits of large corporates exceeding the coverage level and deposits that are not eligible for repayment by the DGS, were required to have a lower priority ranking, but their position was not otherwise harmonised. Finally, the claims of DGSs benefitted from the same higher priority ranking as covered deposits. Nevertheless, this has not proved to be the optimal solution for depositor protection. Partial harmonisation created differences in the treatment of those remaining depositors across Member States, in particular as an increasing number of Member States have decided to also grant a legal preference to the remaining deposits. Those differences also created difficulties when determining the insolvency counterfactual for cross-border groups during the resolution valuations. Furthermore, the lack of general depositor preference along with the three-tiered ranking of depositors' claims had the potential to create problems regarding compliance with the 'no creditor worse off' principle, particularly when the deposits the priority of which had not been harmonised by Directive 2014/59/EU ranked at the same level as senior claims. Lastly, the high priority ranking given to the claims of DGSs had not made it possible for the available financing means of those schemes to be used in a more efficient and effective way in interventions other than the payout of covered deposits in insolvency, namely in the context of resolution, alternative measures in insolvency or preventive measures. The protection of covered deposits does not rely on the priority ranking of the claims of the DGS but is instead ensured through the mandatory exclusions from bail-in in resolution and the prompt repayment from the DGS in case of unavailability of deposits. Therefore, the ranking of deposits in the current hierarchy of claims should be amended.

(38) The ranking of deposits should be fully harmonised through the implementation of a general depositor preference, whereby deposits benefit from a higher priority ranking over ordinary unsecured claims. Nevertheless, it is important not to alter the level of protection from which the covered and eligible deposits currently benefit. Additionally, as far as the remaining deposits are concerned, it is also important to facilitate the write-down and conversion of deposits which would currently be eligible for MREL, justifying the introduction of a junior tier within the general depositor preference. As a consequence, the general depositor preference should comprise four different tiers.

(39) A general depositor preference will contribute to reinforcing depositors' confidence and to further prevent the risk of bank runs. Enhanced depositor protection is also aligned with the central role deposits play in the real economy, being the primary tool for savings and for payments, as well as in the banking activity, where the deposits represent an important source of funding and are a key driver of confidence in the banking system, which becomes of particular relevance in times of market stress. Moreover, a general depositor preference improves the resolvability of institutions and entities by increasing their ability to comply with the requirements to access the resolution financing arrangements and decreasing the amount of funding required from those arrangements, due to the lower risk of breaching the 'no creditor worse off' principle where bailing-in ordinary unsecured debt. In particular, the removal of deposits from the insolvency class of ordinary unsecured claims would increase the bail-inability of remaining ordinary unsecured claims by minimising the risk of breaches of the 'no creditor worse off' principle. By reducing the likelihood of deposits being written down or converted to ensure access to the resolution financing arrangements, the general depositor preference would contribute to making the bail-in tool more effective and credible and would lead to an increase of the transparency and legal certainty of the resolution framework. In that context, the introduction of a general depositor preference should also allow **r**esolution authorities to assess on a case-by-case basis whether the increased bail-inability of the ordinary unsecured claims impacts the amount of recapitalisation needed to ensure the implementation of the bail-in tool.

The general depositor preference would also contribute to the credibility of transfer strategies in resolution, as it would facilitate the inclusion of the entire deposit contract in the perimeter of liabilities to be transferred to a private purchaser or to a bridge institution, to the benefit of the customer relationship and the franchise value of the institution under resolution. Lastly, a full harmonisation of the insolvency ranking of depositors would be beneficial from the cross-border and level playing field perspective.

(41) The changes to the priority ranking of deposits would not negatively affect the protection afforded to covered deposits in the event of failure, as that protection would continue to be guaranteed through the mandatory exclusion of covered deposits from loss absorption in case of resolution and, ultimately, by the payout provided by the DGS in event of unavailability of deposits.

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

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

(44) The contribution of the DGS in resolution should be subject to certain limits. First, it should be ensured that any loss which the DGS may bear as a result of an intervention in resolution does not exceed the cost arising from a liquidation, including the loss that the DGS would bear in insolvency if it paid out covered depositors and subrogated to their claims over the institution's assets, but recognising also that the indirect cost of a liquidation on the real economy may be important in certain circumstances, especially for non-covered depositors and that while it is not the primary mandate of the DGS, a DGS intervention may contribute to minimising these costs as well. That amount should be determined on the basis of the least cost test, in accordance with the criteria and methodology set out in Directive 2014/49/EU.

Those criteria and methodology should also be used when determining the treatment that the DGS would have received had the institution entered normal insolvency proceedings when carrying out the *ex-post* valuation for the purposes of assessing compliance with the 'no creditor worse off' principle and determining any compensation owed to the DGS. Second, the amount of the DGS's contribution aimed at covering the difference between the assets and liabilities to be transferred to a purchaser or to a bridge institution should not exceed the difference between the transferred assets and the transferred deposits and liabilities with the same or a higher priority ranking in insolvency than those deposits. That would ensure that the contribution of the DGS is only used for the purposes of avoiding the imposition of losses on depositors, where appropriate, and not for the protection of creditors that rank below deposits in insolvency. Nevertheless, the sum of the contribution of the DGS to cover the difference between assets and liabilities with the contribution of the DGS towards the own funds of the recipient entity should not exceed the cost as calculated under the least cost test.

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

(46) Given the possibility to use DGS in resolution, it is necessary to specify further the way in which the DGS contribution can count towards the calculation of the requirements to access resolution financing arrangements. If the contribution made by shareholders and creditors of the institution under resolution through reductions, write-down or conversion of their liabilities, summed with the contribution made by the DGS, amounts to at least 8 % of the institution's total liabilities including own funds, the institution should be able to access the resolution financing arrangement to receive further funding, where necessary to ensure effective resolution in line with the resolution objectives. If those conditions are met, the contribution of the DGS should be limited in first instance to the amount necessary to enable access to the resolution financing arrangement. To ensure that resolution continues to be primarily financed by the institution's internal resources and to minimise distortions of competition, the possibility to use the DGS contribution to ensure access to resolution financing arrangements should only be possible for institutions for which the resolution plan or the group resolution plan does not provide for their winding up in an orderly manner in case of failure, given that the MREL determined by resolution authorities for those institutions has been set at a level that includes both the loss absorption and the recapitalisation amounts. In addition, since the resolution authority has to decide on a case-by-case basis on any possible use in resolution of funds from DGS and since such decision cannot be assumed with certainty ex ante, a resolution without the use of industry funded safety nets should remain the preferred scenario.

(47) In view of the role of EBA in furthering the convergence of authorities' practices, EBA should monitor and report on the progress made by resolution authorities to improve the resolvability of institutions and groups and on the actions and preparations of resolution authorities to ensure an effective implementation of the resolution tools and powers. In those reports, EBA should also assess the level of transparency of the measures taken by resolution authorities towards relevant external stakeholders and the extent of their contribution to resolution preparedness and institutions' resolvability.

EBA, in coordination with ESMA, should furthermore report on the measures adopted by Member States for the protection of retail investors in what concern debt instruments that are eligible for the MREL pursuant to Directive 2014/59/EU, comparing and assessing any potential impact on cross-border operations. The scope of existing regulatory technical standards on the estimation of the additional own funds requirements and the combined buffer requirement for resolution entities should be expanded to include entities that have not been identified as resolution entities, where those requirements have not been set on the same basis as the MREL. In the context of EBA's tasks of contributing to ensure a coherent and coordinated crisis management and resolution regime in the Union, EBA should coordinate and oversee Union-wide crisis simulation exercises. Those simulations should cover the coordination and cooperation between competent authorities and resolution authorities during the deterioration of the financial situation of institutions and entities, testing the application of the toolbox in recovery and resolution planning, early intervention, and resolution in a holistic manner. Those exercises should consider in particular the cross-border dimension in the interaction between the relevant authorities and the application of the available tools and powers. Where relevant, the crisis simulation exercises should also capture the adoption and implementation of resolution schemes within the Banking Union, pursuant to Regulation (EU) No 806/2014.

(47a) Notwithstanding currently applicable professional secrecy rules, information exchanges between resolution authorities and tax authorities should be improved. Such exchanges should be in accordance with national law, and, where the information originates in another Member State, it should only be exchanged with the express agreement of the relevant authority which has disclosed it.'

(48) High-quality impact assessment is crucial for the development of sound and evidence-based legislative proposals, while facts and evidence are key to inform the decisions taken during the legislative procedure. For that reason the Single Resolution Board, the ECB and the EBA, should provide the Commission, at its request, with all the information it needs for its policy development related tasks, including the preparation of impact assessments and the preparation and negotiation of legislative proposals. Where appropriate, the information may also be provided by the national resolution authorities, national competent authorities and other members of the European System of Central Banks.

(49) Directive 2014/59/EU should therefore be amended accordingly.

(50) Since the objectives of this Directive, namely to improve the effectiveness and efficiency of the recovery and resolution framework for institutions and entities, cannot be sufficiently achieved by the Member States due to the risks that diverging national approaches might entail for the integrity of the single market but can rather, by amending rules that are already set at Union level, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the 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,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2014/59/EU

Directive 2014/59/EU is amended as follows:

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

(a) the following point (28a) is inserted:

‘(28a) ‘alternative private sector measure’ means any support not qualifying as extraordinary public financial support;’

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

‘(35) ‘critical functions’ means activities, services or operations the discontinuance of which is likely in one or more Member States to disrupt financial stability, including indirectly, or lead to the disruption of services that are essential to the real economy, and this at national or regional level, due to the size, market share, external and internal interconnectedness, complexity or cross-border activities of an institution or group, with particular regard to the substitutability of those activities, services or operations;’

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

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

(ca) the following point (71aa) is inserted:

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

(d) the following points (83d) and (83e) are inserted:

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

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

(e) the following point (93a) is inserted:

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

(1a) in Article 4(11) the first and second subparagraphs are replaced by the following:

‘11. EBA shall develop draft implementing technical standards to specify the methods and arrangements for delivery of the information to be reported, the frequency and submission and shall develop IT solutions, including, reporting templates, data standards, formats and instructions, for the identification and transmission of information by competent authorities and resolution authorities to EBA for the purposes of paragraph 7, subject to the principle of proportionality.’;

‘EBA shall submit those draft implementing technical standards to the Commission by … [OP please insert the date = 12 months from the date of entry into force of this amending Directive].’;

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

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

In the absence of changes referred to in the first subparagraph within 12 months following the latest annual update of the recovery plan, competent authorities may exceptionally waive, at their own initiative or at the request of the institution concerned, the obligation to update the recovery plan for a maximum period of 12 months.

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

(a) extraordinary public financial support;

(b) central bank emergency liquidity assistance;

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

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

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

'5. Where the competent authority assesses that there are material deficiencies in the recovery plan, or material impediments to its implementation, it shall notify the institution or the parent undertaking of the group of its assessment and shall require the institution to submit, within 3 months, extendable with the authorities' approval by 1 month, a revised plan demonstrating how those deficiencies or impediments are addressed.'

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

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

(5) in Article 10(1), the following subparagraph is added:

'Resolution authorities shall not adopt a resolution plan where an institution is in the process of being wound up in accordance with the applicable national law pursuant to Article 32b or where Article 37(6) applies.

(5a) in Article 11(3), the first and second subparagraphs are replaced by the following:

‘3. EBA shall develop draft implementing technical standards to specify the methods and arrangements for delivery of the information to be reported, the frequency and submission deadlines and shall develop IT solutions, including reporting templates, data standards, formats and instructions for the provision of information under this Article.’

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

(6) in Article 12(1), the following third and fourth subparagraphs are added:

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

Where an entity is in the process of being wound up in accordance with the applicable national law pursuant to Article 32b or where Article 37(6) applies, resolution authorities shall no longer include that entity in the group resolution plan.’

(6b) In Article 13(1), the first and second subparagraphs are replaced by the following:

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

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

(a) EBA;

(b) the resolution authorities of subsidiaries;

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

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

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

The information provided to the EBA shall include all information that is relevant to the role of the EBA in relation to the group resolution plans.'

(7) in Article 13(4), the fourth subparagraph is replaced by the following:

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

(8) in Article 15, the following paragraph 5 is added:

5. EBA shall monitor the progress made by resolution authorities to improve and ensure resolvability of institutions or groups. EBA shall report to the Commission on the existing practices on resolvability assessments and possible divergences across Member States by … [PO please insert the date = 2 years after the date of entry into force of this Directive].

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

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

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

(c) the level of transparency towards relevant stakeholders of the methodologies developed by resolution authorities to perform resolvability assessments and their outcome.';

(9) in Article 16a, the following paragraph 7 is added:

'7. Where an entity that is part of a resolution group is not subject to the combined buffer requirement on the same basis as the basis on which it is required to comply with the requirements referred to in Articles 45c and 45d, resolution authorities shall apply paragraphs 1 to 6 of this Article on the basis of the estimation of the combined buffer requirement for resolution entities and entities that are not themselves resolution entities respectively calculated in accordance with Commission Delegated Regulation (EU) 2021/1118*. Article 128, fourth paragraph of Directive 2013/36/EU shall apply.

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

* Commission Delegated Regulation (EU) 2021/1118 of 26 March 2021 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the methodology to be used by resolution authorities to estimate the requirement referred to in Article 104a of Directive 2013/36/EU of the European Parliament and of the Council and the combined buffer requirement for resolution entities at the resolution group consolidated level where the resolution group is not subject to those requirements under that Directive (OJ L 241, 8.7.2021, p. 1).;'

(10) Article 17 is amended as follows:

a) the following paragraph 3a is inserted:

'3a. If the measures proposed by the entity concerned effectively reduce or remove the impediments to resolvability, the resolution authority shall take a decision, after consulting the competent authority. That decision shall indicate that the resolution authority has assessed the measures proposed as adequate in order to effectively reduce or remove the impediments to resolvability. The resolution authority may require the entity to implement the measures proposed.';

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

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

(11) Article 18 is amended as follows:

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

‘2. The group-level resolution authority, in cooperation with the consolidating supervisor, shall prepare and submit a report to the Union parent undertaking, to the resolution authorities of subsidiaries, which shall provide it to the subsidiaries within their remit, and to the resolution authorities of jurisdictions in which significant branches are located. The report shall be prepared after consulting the competent authorities, and shall analyse the substantive impediments to the effective application of the resolution tools and to the exercise of the resolution powers in relation to the group, and also in relation to resolution groups where a group is composed of more than one resolution group. The report shall consider the impact on the group's business model and recommend any proportionate and targeted measures that, in the view of the group-level resolution authority, are necessary or appropriate to remove those impediments.’

(a) paragraph 4 is replaced by the following:

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

(b) paragraph 9 is replaced by the following:

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

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

‘*Article 27*

Early intervention measures

1. Member States shall ensure that competent authorities may apply early intervention measures where an institution or entity referred to in Article 1(1), points (b), (c) or (d) meets any of the following conditions:

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

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

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

(b) the institution or entity infringes or is likely to infringe in the 12 months following the assessment of the competent authority the requirements laid down in Title II of Directive 2014/65/EU, in Articles 3 to 7, Articles 14 to 17, or Articles 24, 25 and 26 of Regulation (EU) No 600/2014, or in accordance with Article 45k(1) point (d), the requirements laid down in Articles 45e or 45f of this Directive.

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

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

(a) the requirement for the management body of the institution or entity referred to in Article 1(1), points (b), (c) or (d), to do either of the following:

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

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

(b) the requirement for the management body of the institution or entity referred to in Article 1(1), points (b), (c) or (d) to convene or, if the management body fails to comply with that requirement, convene directly, a meeting of shareholders of the institution or entity, and in both cases set the agenda and require certain decisions to be considered for adoption by the shareholders;

(c) the requirement for the management body of the institution or entity referred to in Article 1(1), points (b), (c) or (d), to draw up a plan, in accordance with the recovery plan where applicable, for negotiation on restructuring of debt with some or all of its creditors;

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

(e) the requirement to remove or replace the senior management or management body of the institution or entity referred to in Article 1(1), points (b), (c) or (d), in its entirety or with regard to individuals, in accordance with Article 28;

(f) appointment of one or more temporary administrators to the institution or entity referred to in Article 1(1), points (b), (c) or (d), in accordance with Article 29.

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

3. For each of the measures referred to in paragraph 1a, competent authorities shall set an implementation deadline, which shall be strictly limited to the time necessary to carry out the measure concerned under reasonable conditions. Competent authorities shall conduct an evaluation of the effectiveness of the measure immediately after expiry of the deadline and shall share this evaluation with the relevant resolution authority.

4. EBA shall, by … [PO please insert the date = 12 months from the date of entry into force of this amending Directive], issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 to promote the consistent application of the conditions referred to in paragraph 1 of this Article.'

Article 28

Replacement of the senior management or management body

For the purposes of Article 27(1a), point (e), Member States shall ensure that the new senior management or management body, or individual members of those bodies, is appointed in accordance with Union and national law and is subject to the approval or consent of the competent authority.';

(13) Article 29 is amended as follows:

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

‘1. For the purposes of Article 27(1a), point (f), Member States shall ensure that competent authorities may, based on what is proportionate in the circumstances, appoint any temporary administrator to do either of the following:

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

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

The competent authority shall specify its choice under points (a) or (b) at the time of appointment of the temporary administrator.

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

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

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

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

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

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

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

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

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

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

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

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

(c) paragraph 6 is replaced by the following:

'6. At the request of the competent authority, the temporary administrator shall draw up reports on the financial position of the institution or entity referred to in Article 1(1), points (b), (c) or (d) and on the acts performed in the course of his or her appointment, at intervals set by the competent authority, and in any case at the end of his or her mandate.';

(14) Article 30 is amended as follows:

(a) the title is replaced by the following:

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

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

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

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

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

On receiving the notification, the consolidating supervisor may assess the likely impact of the imposition of early intervention measures under Article 27 to the institution or entity referred to in Article 1(1), points (b), (c) or (d), in question, on the group or on group entities in other Member States. The consolidating supervisor shall communicate that assessment to the competent authority within 3 days.

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

4. Where more than one competent authority intends to apply an early intervention measure under Article 27 to more than one institution or entity referred to in Article 1(1), points (b), (c) or (d), in the same group, the consolidating supervisor and the other relevant competent authorities shall assess whether it is more appropriate to appoint the same temporary administrator for all the entities concerned or to coordinate the application of the other early intervention measures to more than one institution or entity in order to facilitate solutions restoring the financial position of the institution or entity concerned. The assessment shall take the form of a joint decision of the consolidating supervisor and the other relevant competent authorities. The joint decision shall be reached within 5 days from the date of the notification referred to in paragraph 1. The joint decision shall be reasoned and set out in a document, which shall be provided by the consolidating supervisor to the Union parent undertaking.

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

In the absence of a joint decision within 5 days the consolidating supervisor and the competent authorities of subsidiaries may take individual decisions on the appointment of a temporary administrator to the institutions or entities referred to in Article 1(1), points (b), (c) or (d), for which they have responsibility and on the application of the other early intervention measures.';

(c) paragraph 6 is replaced by the following:

‘6. EBA may at the request of any competent authority assist the competent authorities that intend to apply one or more of the measures in Article 27(1a), point (a), of this Directive with respect to the points (4), (10), (11) and (19) of Section A of the Annex to this Directive, in Article 27(1a), point (c), of this Directive or in Article 27(1a), point (d), of this Directive in reaching an agreement in accordance with Article 19(3) of Regulation (EU) No 1093/2010.’;

(15) the following Article 30a is inserted:

‘Article 30a

Preparation for resolution

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

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

(b) that supervisory activity shows that the conditions laid down in Article 27(1) of this Directive are met in relation to an institution or entity referred to in Article 1(1), points (b), (c) or (d), of this Directive, irrespective of any early intervention measure;

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

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

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

(a) the reasons for the notification;

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

The notification in paragraph 1 shall not affect any alternative private sector measure, including measures by an IPS, that would prevent the failure or the likely failure of the institution within a reasonable timeframe.

After having received the notification referred to in the first subparagraph, resolution authorities shall assess, in close cooperation with competent authorities, what constitutes a reasonable timeframe for the purposes of the assessment of the condition referred to in Article 32(1), point (b). Such timeframe may be reassessed on a continuous basis and adjusted to the circumstances of the case and shall take into account the speed of the deterioration of the conditions of the institution or entity referred to in Article 1(1), points (b), (c) or (d), the need to implement effectively the resolution strategy and any other relevant considerations. Resolution authorities shall communicate that assessment to competent authorities as early as possible.

Following the notification referred to in the first subparagraph, competent authorities and resolution authorities shall, in close cooperation, monitor the situation of the institution or entity referred to in Article 1(1), points (b), (c) or (d), the implementation of relevant measures within their expected timeframe and any other relevant developments. For that purpose, resolution authorities and competent authorities shall meet regularly and shall provide each other with any relevant information without delay.

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

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

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

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

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

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

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

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

5. For the purposes of the paragraph 4, resolution authorities shall have the power to request the institution or entity referred to in Article 1(1), points (b), (c) or (d), to put in place a digital platform for sharing the information that is necessary for the marketing of that institution or entity with potential purchasers or with advisors and valuers engaged by the resolution authority, subject to Article 84(1), points (e) and (f) of this Directive.

5a. Member States shall ensure that, when exercising the powers under paragraphs 4 and 5 of this Article or carrying out a valuation in accordance with Article 36, resolution authorities have the power to require the institution or entity referred to in Article 1(1), points (b), (c) or (d), to delay disclosure to the public of inside information pursuant to Article 17(4) or (5) of Regulation (EU) No 596/2014 and to make the notification referred to in Article 17(6) of Regulation (EU) No 596/2014.

The management of the institution or entity concerned shall not be held liable for delaying such disclosure when acting to comply with a requirement addressed to them by the resolution authority, pursuant to this paragraph.'

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

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

8. Member States shall ensure that competent authorities and resolution authorities closely cooperate:

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

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

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

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

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

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

(17) Article 32 is amended as follows:

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

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

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

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

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

2. Member States shall ensure that the competent authority makes an assessment of the condition referred to in paragraph 1, point (a), after having consulted the resolution authority and where necessary, after consulting the IPS, of which the institution is a member, without delay.

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

The assessment of the condition referred to in paragraph 1, point (b), shall be made by the resolution authority in close cooperation with the competent authority, and where relevant, after consulting the IPS of which the institution is a member, without delay. The competent authority shall, without delay, provide the resolution authority with any relevant information that the resolution authority requests to inform its assessment. The competent authority shall also inform the resolution authority when it considers the condition laid down in the paragraph 1, point (b), to be met after consulting the IPS where necessary.';

(b) paragraph 4 is amended as follows:

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

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

(ii) the second to fifth subparagraphs are deleted;

(c) paragraph 5 is replaced by the following:

5. In order to determine whether a resolution action shall be treated as in the public interest for the purposes of paragraph 1, point (c), the resolution authority shall, in a first stage, assess whether any of the resolution objectives would be at risk in case the institution is wound up under normal insolvency proceedings. Resolution action shall not be in the public interest if none of the resolution objectives is at risk in case the institution is wound up under normal insolvency proceedings.

Where the outcome of the assessment referred to in the first subparagraph concludes that one or more of the resolution objectives is at risk in case the institution is wound up under normal insolvency proceedings, the resolution authority shall, in a second stage, conclude that a resolution action is in the public interest where the resolution action is necessary for the achievement of, and is proportionate to, one or more of the resolution objectives referred to in Article 31 and where winding up of the institution under normal insolvency proceedings would not meet those resolution objectives more effectively.

When assessing whether winding up of the institution under normal insolvency proceedings meets the resolution objectives more effectively, the resolution authority shall consider the costs of resolution and normal insolvency proceedings and shall seek to minimise and avoid destruction of value, unless necessary to achieve the resolution objectives.

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

'*Article 32a*

Conditions for resolution with regard to a central body and 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 credit institutions or financial institutions permanently affiliated to it that are part of the same resolution group where the central body and all credit institutions or all financial institutions permanently affiliated to it, or the resolution group to which they belong, comply as a whole with the conditions established in Article 32(1).

Article 32b

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

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

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

3. Member States shall ensure that when a resolution authority determines that an institution or entity referred to in Article 1(1), points (b), (c) or (d), meets the conditions in Article 32(1), points (a) and (b), but not the condition in Article 32(1), point (c), the determination that the institution or entity is failing or likely to fail pursuant to Article 32(1), point (a) is a sufficient condition for the withdrawal of the authorisation by the competent authority.

(19) the following Article 32c is inserted:

'Article 32c

Extraordinary public financial support

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

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

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

(ii) a State guarantee of newly issued liabilities;

(iii) an acquisition of own funds instruments other than Common Equity Tier 1 instruments, or of other capital instruments or a use of impaired assets measures, at prices, duration and other terms that do not confer an undue advantage upon the institution or entity concerned, where neither the circumstances referred to in Article 32(4), points (a), (b) or (c), nor the circumstances referred to in Article 59(3) are present at the time the public support is granted;

(b) where an intervention by a deposit guarantee scheme to preserve the financial soundness and long-term viability of the credit institution constitutes extraordinary public financial support in compliance with the conditions set out in Articles 11a, 11b and 11ba of Directive 2014/49/EU;

(c) where the extraordinary public financial support takes the form of an intervention by a deposit guarantee scheme granted to an institution referred to in Article 32b and in accordance with the conditions set out in Article 11(5) of Directive 2014/49/EU;

(d) where the extraordinary public financial support takes the form of State aid within the meaning of Article 107(1) TFEU granted to an institution or entity referred to in Article 32b of this Directive, other than the support granted by a deposit guarantee scheme pursuant to Article 11(5) of Directive 2014/49/EU.

2. The support measures referred to in paragraph 1, point (a), shall fulfil all of the following conditions:

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

(b) the measures are of a precautionary and temporary nature and are based on a pre-defined exit strategy approved by the competent authority, including a clearly specified termination date, sale date or repayment schedule for any of the measures provided;

(c) the measures are proportionate to remedy the consequences of the serious disturbance or to preserve financial stability;

(d) the measures are not used to offset losses that the institution or entity has incurred or is likely to incur in the near future.

For the purposes of the first subparagraph, point (a), an institution or entity shall be deemed to be solvent where the competent authority has concluded that no breach has occurred of any of the requirements referred to in Article 92(1) of Regulation (EU) No 575/2013, Article 104a of Directive 2013/36/EU, Article 11(1) of Regulation (EU) 2019/2033, Article 40 of Directive (EU) 2019/2034 or the relevant applicable requirements under Union or national law.

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

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

By way of derogation from paragraph 1, point (a)(iii), acquisition of Common Equity Tier 1 instruments shall be exceptionally permitted where the nature of the shortfall identified is such that the acquisition of any other own funds instruments or other capital instruments would not make it possible for the institution or entity concerned to address its capital shortfall established in the adverse scenario in the relevant stress test or equivalent exercise.

Member States shall ensure that, in case any of the support measures referred to in paragraph 1, point (a), is not redeemed, repaid or otherwise terminated in accordance with the terms of the exit strategy established at the time of granting such measure, the competent authority may grant the institution or entity a one-time extension of no longer than 2 years, subject to the submission of a remediation plan by the institution or entity, describing the steps the institution or entity will take to ensure or restore compliance with the supervisory requirements, to ensure its long-term viability and to repay the amount received, as well as the associated timeframe.

Where the competent authority is not satisfied that the remediation plan is credible or feasible, or where the institution or entity fails to comply with the remediation plan, the relevant authorities shall carry out an assessment of whether the institution or entity is failing or likely to fail, in accordance with Article 32.

3. EBA shall, by [PO please insert the date = 1 year after the date of entry into force of this Directive], issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 on the type of tests, reviews or exercises referred to in paragraph 2, fourth subparagraph, which may lead to the support measures referred to in paragraph 1, point (a)(iii).';

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

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

For those purposes, an entity referred to in Article 1(1), points (c) or (d), shall be deemed to be failing or likely to fail in any of the following circumstances:

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

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

(21) Article 33a is amended as follows:

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

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

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

‘By way of derogation from the first subparagraph, Member States shall ensure that where such powers are exercised in respect of eligible deposits and those deposits are not considered unavailable for the purposes of Directive 2014/49/EU, depositors may have access to an appropriate daily amount from those deposits depending on the circumstances of the case.’;

(22) Article 35 is amended as follows:

(a) paragraph 1 is replaced by the following:

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

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

(b) in paragraph 2, the first sentence is replaced by the following:

'The special manager shall have all the powers of the shareholders and the management body of the institution under resolution or the bridge institution.'

(c) paragraph 5 is replaced by the following:

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

(23) Article 36 is amended as follows:

(a) in paragraph 1, the first sentence is replaced by the following:

'1. Before determining whether the conditions for resolution or the conditions for the write down or conversion of relevant capital instruments and eligible liabilities as referred to in Article 59 are met, resolution authorities shall ensure that a fair, prudent and realistic valuation of the assets and liabilities of the institution or entity referred to in Article 1(1), points (b), (c) or (d), is carried out by a person that is independent from any public authority, including the resolution authority, and the institution or entity referred to in Article 1(1), points (b), (c) or (d).';

(b) the following paragraph 7a is inserted:

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

(24) Article 37 is amended as follows:

a) paragraph 6 is replaced by the following:

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

The first subparagraph shall be without prejudice to the application of the bail-in tool to an institution under resolution, for the purpose of Article 43(2), point (a), in combination with other resolution tools.’;

b) the following paragraph 11 is added:

11. EBA shall monitor the actions and preparation of resolution authorities to ensure an effective implementation of the resolution tools and powers in the event of resolution. EBA shall report to the Commission on the state of play of existing practices and possible divergences across Member States by … [PO please insert the date = 2 years after the date of entry into force of this Directive].

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

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

(b) the arrangements in place to operationalise the use of other resolution tools;

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

(25) Article 40 is amended as follows:

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

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

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

‘The application of the bail-in tool for the purpose referred to in Article 43(2), point (b), shall not interfere with the ability of the resolution authority to control the bridge institution. Where the application of the bail-in tool allows for the capital of the bridge institution to be fully provided through the conversion of bail-inable liabilities into shares or other types of capital instruments, the requirement that the bridge institution is wholly or partially owned by one or more public authorities may be waived, without prejudice to the requirement that the control is to be exercised by the resolution authority.’;

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

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

(27) Article 44 is amended as follows:

(b) paragraph 5 is replaced by the following:

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

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

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

(c) paragraph 7 is replaced by the following:

'7. In extraordinary circumstances, the resolution authority may seek further funding subject to the conditions laid down in the second and third subparagraphs, and only after:

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

(b) all liabilities ranking lower than deposits referred to in Article 108(1), point (b) of Directive 2014/59/EU, other than eligible deposits, and not excluded from bail-in pursuant to Article 44(2) and 44(3), have been written down or converted in full.

Where Article 109(2b) applies, the resolution authority may seek further funding from the deposit guarantee scheme. The sum of the contributions of the deposit guarantee scheme under this subparagraph and under Article 109(2b) shall not exceed the counterfactual established under Article 11e(1), point (b) of Directive 2014/49/EU.;

The resolution authority may seek further funding from alternative financing sources and the resolution financing arrangement may make a contribution from resources which have been raised through ex-ante contributions in accordance with Article 100(6) and Article 103 of the Directive and which have not yet been used.

Where Article 109(2b) applies, the resolution authority may only seek further funding from alternative financing sources and the resolution financing arrangement may only make a contribution from resources which have been raised through ex-ante contributions in accordance with Article 100(6) and Article 103 of this Directive and which have not yet been used where the sum of the contributions of the deposit guarantee scheme under the second subparagraph and Article 109(2b) has reached the limit set by the counterfactual established under Article 11e(1), point (b) of Directive 2014/49/EU.

(28) in Article 44a, the following paragraph 8 is added:

'8. By … [PO please insert the date = 24 months after the date of entry into force of this Directive], EBA, in coordination with ESMA, shall report to the Commission on the application of this Article. That report shall compare the measures adopted by the Member States to comply with this Article, analyse their effectiveness in protecting retail investors and assess their impact on cross-border operations.

On the basis of that report, the Commission may submit a legislative proposal to amend this Directive.';

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

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

(30) Article 45b is amended as follows:

(a) in paragraphs 4, 5 and 7, the word ‘G-SIIs’ is replaced by the words ‘G-SII entities’;

(b) paragraph 8 is amended as follows:

(i) in the first subparagraph, the word ‘G-SIIs’ is replaced by the words ‘G-SII entities’;

(ii) in the second subparagraph, point (c), the word ‘G-SII’ is replaced by the words ‘G-SII entity’;

(iii) in the fourth subparagraph, the word ‘G-SIIs’ is replaced by the words ‘G-SII entities’;

(c) the following paragraph 10 is added:

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

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

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

(31) Article 45c is amended as follows:

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

(b) paragraph 4 is replaced by the following:

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

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

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

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

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

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

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

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

(34) in Article 45f(1), the third subparagraph is replaced by the following:

'By way of derogation from the first and second subparagraphs of this paragraph, Union parent undertakings that are not themselves resolution entities, but are subsidiaries of third-country entities, shall comply with the requirements laid down in Articles 45c and 45d on a consolidated basis.';

(34b) in Article 45j(2), the first and second subparagraphs are replaced by the following

'2. EBA shall develop draft implementing technical standards to specify the methods and arrangements for delivery of the information to be reported, the frequency and submission deadlines and shall develop IT solutions, including, reporting templates, data standards, formats and instructions, 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 … [OP please insert the date = 12 months from the date of entry into force of this amending Directive].';

(35) Article 45l is amended as follows:

(b) in paragraph 3, second subparagraph, the following sentence is added:

‘The obligation referred to in paragraph 2 shall cease to apply after the second report is submitted.’;

(36) in Article 45m, paragraph 4 is replaced by the following:

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

(36a) in Article 45m, the following paragraph 4a is inserted:

4a. Institutions or entities referred to in Article 1(1), points (b), (c) and (d) for which the preferred resolution strategy changes from a liquidation under normal insolvency proceedings or other equivalent national procedures to the application of a resolution tool shall comply with the requirements referred to in Article 45e or Article 45f as appropriate, within a maximum of three years following the date of the approval of the resolution plan including the new preferred resolution strategy. Where duly justified and appropriate on the basis of the criteria referred to in paragraph 7, the resolution authority may determine a longer period for the compliance with that requirement, up to a maximum of five years.

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

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

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

(b) to sustain sufficient market confidence in the institution under resolution or the bridge institution, taking into account any liabilities that may arise in the future from an uncertain event or liabilities of uncertain timing or amount which have not been written down or converted, and enable the institution under resolution to continue to meet, for at least 1 year, the conditions for authorisation and to continue to carry out the activities for which it is authorised under Directive 2013/36/EU or Directive 2014/65/EU.

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

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

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

(i) bailed-in creditors;

(ii) to the purchaser, when applying this paragraph in combination with the sale of business tool in Article 38; or

(iii) to a bridge institution, when applying this paragraph in combination with the bridge institution tool in Article 40;'

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

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

(39) Article 52 is amended as follows:

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

'In exceptional circumstances, the resolution authority may extend the 1 month deadline for submission of the business reorganisation plan by another month.';

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

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

(40) Article 53 is amended as follows:

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

‘3. Where a resolution authority reduces to zero the principal amount of, or outstanding amount payable in respect of, a liability, including a liability of uncertain timing or amount, by means of the power referred to in Article 63(1), point (e), that liability and any obligations or claims arising in relation to it that are not accrued at the time when the power is exercised, shall be treated as discharged for all purposes, and shall not be provable in any subsequent proceedings in relation to the institution under resolution or any successor entity in any subsequent winding up.’

‘4. Where a resolution authority reduces in part, but not in full, the principal amount of, or outstanding amount payable in respect of, a liability, including a liability of uncertain timing or amount, by means of the power referred to in Article 63(1), point (e):

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

(b) the relevant instrument or agreement that created the original liability shall continue to apply in relation to the residual principal amount of, or outstanding amount payable in respect of the liability, subject to any modification of the amount of interest payable to reflect the reduction of the principal amount, and any further modification of the terms that the resolution authority might make by means of the power referred to in point (j) of Article 63(1).”

b) paragraph 4a is inserted:

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

(41) Article 55 is amended as follows:

(a) paragraph 1 is amended as follows:

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

‘(b) the liability is not a deposit as referred to in Article 108(1), points (a), (b) or (c)’;

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

‘Resolution authorities may decide that the obligation in the first subparagraph of this paragraph shall not apply to a liquidation entity.

For liquidation entities for which the resolution authority has determined the requirement referred to in Article 45(1), liabilities that meet the conditions referred to in the first subparagraph and which do not include the contractual term referred to in that subparagraph shall not be counted towards that requirement.’

(b) in paragraph 2, the fifth and sixth subparagraphs are replaced by the following:

‘Where the resolution authority, in the context of the assessment of the resolvability of an institution or entity referred to in Article 1(1), points (b), (c) or (d), in accordance with Articles 15 and 16, or at any other time, determines that, within a class of liabilities which includes eligible liabilities, the amount of liabilities that do not include the contractual term referred to in paragraph 1 of this Article, together with the liabilities which are excluded from the application of the bail-in tool in accordance with Article 44(2) or which are likely to be excluded in accordance with Article 44(3), amounts to more than 10 % of that class, it shall immediately assess the impact of that particular fact on the resolvability of that institution or entity, including the impact on the resolvability resulting from the risk of breaching the creditor safeguards provided in Article 73 when applying write-down and conversion powers to eligible liabilities.

Where the resolution authority concludes, on the basis of the assessment referred to in the fifth subparagraph of this paragraph, that the liabilities which do not include the contractual term referred to in paragraph 1 of this Article create a substantive impediment to resolvability, it shall apply the powers provided in Article 17 as appropriate to remove that impediment to resolvability.’;

(c) in paragraph 8, the first and second subparagraph are replaced by the following:

‘8. EBA shall develop draft implementing technical standards to specify the methods and arrangements for delivery of the information to be reported and shall develop IT solutions, including reporting templates, data standards, formats and instructions for the notification to resolution authorities for the purposes of paragraph 2.’;

‘EBA shall submit those draft implementing technical standards to the Commission by [OP please insert the date = 12 months from the date of entry into force of this amending Directive]’

(42) Article 59 is amended as follows:

(a) in paragraph 3, point (e) is replaced by the following:

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

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

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

(43) Article 63 is amended as follows:

(a) paragraph 1 is amended as follows:

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

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

* Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1);

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

(ii) the following second subparagraph is added:

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

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

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

(43a) in Article 64(1) point (g) is inserted:

'(g) to require the institution under resolution to delay disclosure to the public of inside information pursuant to Article 17(4) or (5) of Regulation (EU) No 596/2014 and to make the notification referred to in Article 17(6) of Regulation (EU) No 596/2014.'

The management of the institution or entity concerned shall not be held liable for delaying such disclosure when acting to comply with a requirement addressed to them by the resolution authority, pursuant to this point g).'

(44) Article 71a(3) is replaced by the following:

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

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

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

(45) in Article 74(3), the following point (d) is added:

'(d) when determining the losses that the deposit guarantee scheme would have incurred had the institution been wound up under normal insolvency proceedings for the purpose of Article 109(1), point (b), apply the criteria and methodology referred to in Article 11e of Directive 2014/49/EU and in any delegated act adopted pursuant to that Article.';

(45a) in Article 75 , the existing paragraph is numbered as paragraph 1 and the following paragraph is added:

2. Notwithstanding the valuation carried out under Article 74, a deposit guarantee scheme shall not be entitled to the payment under paragraph 1 of this Article when it intervenes in accordance with Article 109(1), point (b), for an amount which is less than or equal to the amount it has estimated under Article 11e(1), point (b) of Directive 2014/49/EU.

(45b) in Article 84, the following paragraph 6a is inserted:

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

(45c) the following Article 84a is inserted:

‘*Article 84a.*

Exchange of information with centralised automated mechanisms

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

2. Member States shall ensure that resolution authorities shall request the information referred to in paragraph 1 only on a case-by-case basis and where necessary and proportionate for the purpose of performing the assessment referred to in Article 32(5).’

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

(45d) Article 88(2) is amended as follows:

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

‘(b) the resolution authorities of each Member State in which a subsidiary covered by consolidated supervision is established. Where the subsidiary is an entity referred to in point (b) of Article 1(1), the resolution authority of that subsidiary shall decide whether or not to be a member in the resolution college concerned if winding-up of this subsidiary under normal insolvency proceedings is considered credible within the meaning of Article 16(1) and (2). If the resolution authority of such subsidiary considers that a membership in the resolution college is not needed, it should notify the group-level resolution authority thereof. Upon receiving the notification by the group-level resolution authority, the resolution authority of the subsidiary shall no longer be a member of the resolution college.

In case of material changes which have the potential to affect the credibility of insolvency proceedings, the resolution authority of such subsidiary shall notify the group-level resolution authority of the need to restore its membership in the resolution college. The group-level resolution authority shall, upon receipt of such notification, restore the membership of the resolution authority of the subsidiary concerned to the resolution college.’

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

‘(g) the authority responsible for the deposit guarantee scheme of a Member State, where the resolution authority of that Member State is member of a resolution college and a credit institution referred to in Article 1(2)(d) of Directive 2014/49/EU that is part of the group is established in that Member State.

(46) in Article 88, the following paragraph 6a is inserted:

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

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

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

The resolution authority of the Member State where the institution or the parent undertaking referred to in the first subparagraph is established shall chair the college and establish the rules for its functioning, taking into account the principle of proportionality and after consulting the other resolution authorities. Chapter VI of Commission Delegated Regulation (EU) 2016/1075 shall not apply to resolution colleges established under this paragraph. The Chair shall decide which authorities participate in a meeting or in an activity of the resolution college, taking into account the relevance of the activity to be planned or coordinated for those authorities, in particular the potential impact on the stability of the financial system in the Member States concerned and the tasks referred to in the first subparagraph.

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

(46a) in Article 90 a new paragraph 5 is added:

'5. This article shall not preclude the exchange of information between resolution authorities and tax authorities in the same Member State in accordance with national law. Where the information originates in another Member State, it shall only be exchanged with the express agreement of the relevant authority which has disclosed it.';

(47) Article 91 is amended as follows:

(a) paragraph 1 is replaced by the following:

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

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

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

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

The information referred to in the first subparagraph may be included in the notifications communicated pursuant to Article 81(3) to the addressees referred to in the first subparagraph of this paragraph.';

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

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

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

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

(48a) in Article 96(3), point (b) is replaced by the following:

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

(49) in Article 97, paragraph 4 is replaced by the following:

‘4. Resolution authorities shall conclude non-binding cooperation arrangements with the relevant third-country authorities referred to in paragraph 2 where appropriate. Those arrangements shall be in line with EBA framework arrangement.

Competent authorities shall conclude non-binding cooperation arrangements with the relevant third-country authorities referred to in paragraph 2 where appropriate. Those arrangements shall be in line with EBA framework arrangement and shall ensure that the information disclosed to the third-country authorities is subject to a guarantee that professional secrecy requirements at least equivalent to those referred to in Article 53(1) of Directive 2013/36/EU are complied with.

This Article shall not prevent Member States or their competent authorities from concluding bilateral or multilateral arrangements with third countries, in accordance with Article 33 of Regulation (EU) No 1093/2010.’

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

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

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

(b) the following second and third subparagraphs are added:

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

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

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

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

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

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

(54) In Article 104(1), the second subparagraph is replaced by the following:

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

(55) Article 108 is amended as follows:

(a) paragraph 1 is replaced by the following:

1. Member States shall ensure that in their national laws governing normal insolvency proceedings, deposits have a higher ranking than the ranking of ordinary unsecured liabilities, except where the relevant national law governing normal insolvency proceedings applicable on the date of transposition of this Directive or the relevant contractual documentation provides explicitly that these deposits rank below ordinary unsecured liabilities. Moreover, Member States shall ensure that in their national laws governing normal insolvency proceedings:

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

(i) covered deposits;

(ii) deposit guarantee schemes subrogating to the rights and obligations of covered depositors in insolvency.

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

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

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

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

(i) that part of eligible deposits which exceeds the coverage level provided for in Article 6 of Directive 2014/49/EU other than those referred to in point (b)(i) and with an original maturity of less than one year;

(ii) deposits other than eligible deposits with an original maturity of less than one year.

(d) the following have the same priority ranking:

(i) that part of eligible deposits which exceeds the coverage level provided for in Article 6 of Directive 2014/49/EU other than those referred to in point (b)(i) and with an original maturity of one year or more;

(ii) deposits other than eligible deposits with an original maturity of one year or more.

(b) the following paragraphs 8 and 9 are added:

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

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

(56) Article 109 is amended as follows:

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

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

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

(b) where the sale of business or the bridge institution tools are applied, independently or in combination with other resolution tools:

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

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

In the cases referred to in the first subparagraph, point (b), where the transfer to the recipient includes deposits that are not covered deposits or other bail-inable liabilities and the resolution authority assesses that the circumstances referred to in Article 44(3) apply to those deposits or liabilities, the deposit guarantee scheme shall contribute:

(a) the amount necessary to cover the difference between the value of deposits, including deposits that are not covered, and of the liabilities with the same or higher priority ranking than deposits and the value of the assets of the institution under resolution which are to be transferred to a recipient; and

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

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

In all cases, the cost of the contribution of the deposit guarantee scheme pursuant to the first paragraph, point (b) shall not be greater than the counterfactual established by the deposit guarantee scheme under Article 11e(1), point (b) of Directive 2014/49/EU.

Where it is determined by a valuation under Article 74 that for the purpose of Article 109(1), point (b), the cost of the deposit guarantee scheme's contribution to resolution was greater than the counterfactual established under Article 11e(1), point (b) of Directive 2014/49/EU, the deposit guarantee scheme shall be entitled to the payment of the difference from the resolution financing arrangement in accordance with Article 75.

2. Member States shall ensure that the resolution authority determines the amount of the contribution of the deposit guarantee scheme in accordance with paragraph 1 after having consulted the deposit guarantee scheme on the counterfactual established under Article 11e(1), point (b) of Directive 2014/49/EU and in compliance with the conditions referred to in Article 36 of this Directive.

The resolution authority shall notify its decision as referred to in the first subparagraph to the deposit guarantee scheme to which the institution is affiliated. The deposit guarantee scheme shall implement that decision without delay.';

(b) the following paragraphs 2a and 2b are inserted:

'2a. Where the funds of the deposit guarantee scheme are used in accordance with paragraph 1, first subparagraph, point (a), to contribute to the recapitalisation of the institution under resolution, Member States shall ensure that the deposit guarantee scheme transfers its holdings of shares or other capital instruments in the institution under resolution to the private sector as soon as commercial and financial circumstances allow.

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

2b. The contribution of the deposit guarantee scheme pursuant to paragraph 1, second subparagraph, shall count towards the thresholds laid down in Article 37(10), Article 44(5), point (a), and in Article 44(8), point (a), provided that:

(a) the liabilities and own funds of the institution included in the amount of own funds and eligible liabilities to comply with the requirement as referred to in Article 45(1) have been written down or converted in full, where a maximum share of 2.5% of these liabilities can be excluded pursuant to Article 44(3); and

(b) the residual institution, if any, from which the assets, rights or liabilities have been transferred is wound up under normal insolvency proceedings and, where the bridge institution tool is applied, its operations are terminated as soon as possible in accordance with Article 41(5) and 41(6).

Member States may provide that the contribution of the deposit guarantee scheme pursuant to paragraph 1, second subparagraph, only counts towards the thresholds laid down in Article 37(10), Article 44(5), point (a), and in Article 44(8), point (a) where an institution has not breached its minimum requirement for own funds and eligible liabilities as referred to in Article 45(1) during the 8 to 36 months preceding the determination that the institution is failing or likely to fail.

Where the use of the deposit guarantee scheme pursuant to paragraph 1, second subparagraph, together with the contribution to loss absorption and recapitalisation made by the shareholders and the holders of other instruments of ownership, the holders of relevant capital instruments and other bail-inable liabilities, allows for the use of the resolution financing arrangement, the contribution of the deposit guarantee scheme shall be limited to the amount necessary to meet the thresholds laid down in Article 37(10), Article 44(5), point (a), and in Article 44(8), point (a). Following the contribution of the deposit guarantee scheme, the resolution financing arrangement shall be used in accordance with the principles governing the use of the resolution financing arrangement set out in Articles 44 and 101.

The first and the third subparagraphs shall not apply to:

(i) institutions that have been identified as liquidation entities in the group resolution plan or in the resolution plan or institutions that have been identified as liquidation entities in a previous group resolution plan or a previous resolution plan in the two years preceding the resolution action; or

(ii) institutions subject to the transitional arrangement referred to in Article 45m(4a).

In the very extraordinary situation of a systemic crisis, the resolution authority may count the contribution of the deposit guarantee scheme pursuant to paragraph 1, second subparagraph, point (a) and (b) towards the thresholds laid down in Article 37(10), Article 44(5), point (a), and in Article 44(8), point (a) for institutions subject to the transitional arrangement referred to in Article 45m(4a).

Member States may, by taking into account the specificities of their national banking sector, provide that the amount of the contribution of the deposit guarantee scheme in accordance with this paragraph shall not be greater than an amount equal to 62,5% of its target level as defined in Article 10(2) Directive 2014/49/EU.

(c) paragraph 3 is replaced by the following:

3. Member States shall ensure that where this Article, or Article 44(4) or 44(8) is applied, variable remuneration or discretionary pension benefits paid by and on behalf of the institution to the management body and senior management during the last 24 months are subject to a compulsory reimbursement claim.

(d) in paragraph 5, the second and third subparagraphs are deleted;

(57) in Article 111(1), the following point (e) is added:

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

(57a) the following Article 126a is inserted:

‘Article 126a

Amendment to Directive 2014/24/EU

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

‘(k) Services needed for the preparation, application and exercise of resolution tools and powers provided for in Title IV of Directive 2014/59/EU of the European Parliament and of the Council*.

* Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).;

(58) Article 128 is amended as follows:

(a) the title is replaced by the following:

‘**Cooperation and information exchange among institutions and authorities**’;

(b) the following paragraph is added:

‘The EBA, the Single Resolution Board and the ECB shall provide the Commission, upon its request, with the information necessary for the performance of its tasks related to policy development, including the carrying out of impact assessments, the preparation of legislative proposals, and the participation in the legislative process. Where appropriate, the EBA, the Single Resolution Board and the ECB shall coordinate with national resolution authorities, national competent authorities and other members of the European System of Central Bank, in accordance with their usual cooperation framework. The Commission may address requests directly to national resolution authorities, national competent authorities and other members of the European System of Central Bank, which may provide the Commission with the necessary information. The information request has to be proportionate, justified and provided in a reasonable timeframe in a form that does not allow the identification of individual entities and does not contain personal data. The Commission and the Commission staff shall be subject to the requirements of professional secrecy laid down in Article 88 of Regulation (EU) No 806/2014 of the European Parliament and of the Council* with regard to the information received.’;

* 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).

(59) the following Article 128b is inserted:

'*Article 128b*

Crisis management simulations

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

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

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

2. EBA shall produce a report setting out the key findings and conclusions of the exercises. The report shall be made public.'.

Article 2

Transposition

1. Member States shall adopt and publish, by … [OP please insert the date = 24 months from the date of entry into force of this amending Directive] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from … [OP please insert the date = 1 day after the transposition date of this amending Directive].

When Member States adopt those provisions, 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 reference is to be made.

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

Article 3

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*.

Article 4

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg,

For the European Parliament For the Council

The President The President

END