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INFORMATION NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
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 - Outcome of the European Parliament's first reading (Strasbourg, 22 to 25 April 2024)

I. INTRODUCTION

The rapporteur, Luděk NIEDERMAYER (EPP, CZ), presented a report on the above proposal for a Directive on behalf of the Committee on Economic and Monetary Affairs (ECON) which contained one amendment (amendment 1) to the proposal.

In addition, the Left group tabled one amendment (amendment 2), a number of MEPs from different political groups tabled three amendments (amendments 3 to 5) and the EPP group tabled three amendments (amendments 6 to 8).

II. VOTE

When it voted on 24 April 2024, the plenary of the European Parliament adopted amendment 1 to the proposal for a Directive. No other amendments were adopted.

The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto.

P9_TA(2024)0327

Early intervention measures, conditions for resolution and financing of resolution action (BRRD3)

European Parliament legislative resolution of 24 April 2024 on the 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 (COM(2023)0227 – C9-0135/2023 – 2023/0112(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2023)0227),

– having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0135/2023),

– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

– having regard to the opinion of the European Central Bank of 5 July 2023[1],

– having regard to the opinion of the European Economic and Social Committee of 13 July 2023[2],

– having regard to Rule 59 of its Rules of Procedure,

– having regard to the report of the Committee on Economic and Monetary Affairs (A9-0153/2024),

[1] OJ C 307, 31.8.2023, p. 19.
[2] OJ C 349, 29.9.2023, p. 161.

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

AMENDMENTS BY THE EUROPEAN PARLIAMENT*

to the Commission proposal

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

(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[3],

Having regard to the opinion of the European Economic and Social Committee[4],

Acting in accordance with the ordinary legislative procedure,

Whereas:

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* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol ▌.

3 OJ C , , p. .

4 OJ C , , p. .

(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[5] of the Financial Stability Board. The Union resolution framework consists of Directive 2014/59/EU of the European Parliament and of the Council[6] and Regulation (EU) No 806/2014 of the European Parliament and of the Council[7].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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5 Financial Stability Board, Key Attributes of Effective Resolution Regimes for Financial Institutions, 15 October 2014.

6 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).

7 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 deliver as intended with respect of 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. ***Regrettably,*** taxpayer money is ***still*** used rather than ***industry-funded safety nets, including*** 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 and 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 ***when*** that is in the public interest, including for certain smaller and medium-sized institutions .

(2a) The objective of reviewing Directive 2014/59/EU is to better safeguard taxpayers' money and establish new systemic mechanisms for institutions and entities not covered by the existing resolution framework. That framework is designed to curtail the economic burden on society by reducing the overall costs associated with bank failures. The use of taxpayers' money should, with the introduction of a revised framework, be significantly reduced in order to ensure that the resolution financing arrangement is more often and more effectively used.

(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 and risk profile of the institutions and entities concerned, the presence of critical functions, and the group resolution strategy. 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 simplified approach where appropriate.

(3a) One of the key objectives of this amending Directive is to introduce an updated approach to empower authorities to handle effectively the potential failure of some banks or a group of banks. That approach should promote transparency and predictability, while minimising adverse economic consequences. Such an approach is aligned with the overarching bail-in principle of Directive 2014/59/EU, while also maintaining the practical feasibility of dealing with the failure of medium-sized banks.

(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 in case of failure is not 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[8]. 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.

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[8] 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).

(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[9] and in Directive (EU) 2019/2034 of the European Parliament and of the Council[10] 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. 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.

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

[10] Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU (OJ L 314, 5.12.2019, p. 64).

(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 an 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 should not be a condition for 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. ***When conducting that assessment, the need to preserve the ability for the resolution authority and for the entity concerned to implement effectively the resolution strategy where that is ultimately needed should also be taken into account but should not prevent alternative measures from being taken. In particular, the envisaged timeframe for the alternative measures should be such that it does not put at risk the effectiveness of a potential implementation of the resolution strategy.*** 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, and the resolution authority should decide on frequency of those meetings considering the circumstances of the case.

(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. To ensure such outcome, the criteria to apply the public interest assessment to a failing institution or entity should be specified. In ***that respect***, it is necessary to clarify that, depending on the specific circumstances, certain functions of the institution or entity can be considered critical even if their discontinuance would impact financial stability or critical services ▌at regional level***, in particular where the substitutability of the critical functions is determined by the relevant geographic market***.

(9a) To ensure that the assessment of the impact at a regional level can be based on data that is available in a consistent way across the Union, regional level should be understood with reference to the level 1 or the level 2 territorial units of the Nomenclature of territorial units for statistics (NUTS level 1 or 2) within the meaning of Regulation (EC) No 1059/2003 of the European Parliament and of the Council[11].

(10) The assessment of whether the resolution of an institution or entity is in the public interest should reflect the consideration that depositors are better protected when deposit guarantee scheme ('DGS') funds are used more efficiently and the losses for those funds are minimised. Therefore, in the public interest assessment, the resolution objective of protecting depositors should be considered better achieved in resolution if opting for insolvency would be more costly for the DGS.

(10a) Where national insolvency and resolution frameworks achieve effectively the objectives of the framework to the same extent, preference should be given to the option that minimises the risk for taxpayers and the economy. That approach ensures a prudent and responsible course of action, aligned with the overarching goal of safeguarding both the interests of taxpayers and broader economic stability.

(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. Funding provided by Member States bears a higher risk of moral hazard and a lower incentive for market discipline. Therefore, when assessing the objective of minimising reliance on extraordinary public financial support, resolution authorities should find funding through the resolution financing arrangements or the DGS preferable ***and*** funding through an equal amount of resources from the budget of Member States ***should be considered only under extraordinary circumstances***.

(11a) Taxpayer-funded extraordinary financial support to institutions and entities should be granted, if at all, only to remedy a serious disturbance in the economy of an exceptional and systemic nature, as it imposes a significant burden on public finances and disrupts the level playing field in the internal market.

(12) To ensure that the resolution objectives are attained in the most effective way, the outcome of the public interest assessment should be negative only where the winding up of the failing institution or entity under normal insolvency proceedings would achieve the resolution objectives more effectively and not only to the same extent as resolution.

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[11] Regulation (EC) No 1059/2003 of the European Parliament and of the Council of 26 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS) (OJ L 154, 21.6.2003, p. 1).

(12a) In deciding between resolution and liquidation, the option with the lower overall costs should be preferred. That assessment should take into account various costs, including those related to payouts by a deposit guarantee scheme, such as the duration required for asset recovery and the income lost during the process. In cases where the resolution and liquidation options both exhibit similar cost profiles, preference should be given to the option that carries fewer associated risks for the economy, encompassing public finances and the impact on the stability of the economy.

(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 relevant national administrative or judicial authority swiftly initiates a procedure under national law when an institution or entity is considered failing or likely to fail and is 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. However, it should be ensured that, in absence of swift action from the shareholders, the relevant national administrative or judicial authority takes action.

(15) It should also be laid down that the final outcome of such procedures is the exit of the failing institution or entity from the market or the termination of its banking activities. Depending on the national law, that objective can be achieved in different ways, which may include the sale of the institution or entity or parts of it, sale of specific assets or liabilities, a gradual wind down or the termination of its banking activities, including payments and deposit-taking, with a view to selling its assets gradually to repay the affected creditors. However, 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. To further ensure that the objective of winding up the institution or entity can be achieved, Member States should ensure that the withdrawal of the authorisation by the competent authority is also included among the possible conditions to initiate at least one of the procedures available under national law and applicable to institutions or entities that are failing or likely to fail but are not put in resolution.

(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[12], it is necessary to specify further the conditions under which measures of a preventive precautionary nature that qualify as extraordinary public financial support may exceptionally be granted. To minimise distortions of competition arising from differences in nature of DGSs in the Union, interventions of DGSs in the context of preventive measures complying with Directive 2014/49/EU that qualify as extraordinary public financial support should exceptionally be allowed where the beneficiary institution or entity does not meet any of the conditions for being deemed as failing or likely to fail. It should be ensured that precautionary measures are taken sufficiently early. The European Central Bank (ECB) currently bases its consideration that an institution or entity is solvent, for the purposes of precautionary recapitalisation, on a forward-looking assessment for following 12 months of whether the institution or entity can comply with the own funds requirements set out in Regulation (EU) No 575/2013 of the European Parliament and of the Council[13] or in Regulation (EU) 2019/2033 of the European Parliament and of the Council[14], and the additional own funds requirement laid down in Directive 2013/36/EU or Directive (EU) 2019/2034. That practice should be laid down in Directive 2014/59/EU. 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 identify incurred or likely to be incurred 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[15] or national competent authorities. Competent authorities should use such a review to identify incurred or likely to be incurred losses where such review can be carried out within a reasonable timeframe. Where that is not possible, competent authorities should identify incurred or likely to be incurred losses in the most reliable way possible under the prevailing circumstances, based on on-site inspections where appropriate.

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12 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).

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

14 Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014 (OJ L 314, 5.12.2019, p. 1).

15 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).

(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 (***a*** ***'***strategy ***to exit the support measure'***). Perpetual instruments, including Common Equity Tier 1 capital, should only be used in exceptional circumstances and be subject to certain quantitative limits because by their nature they are not well suited for compliance with the condition 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[16] and the Communication on Tackling Non-Performing Loans[17]. 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*** institutions ***receiving*** support ***comply with the*** terms of the support ***measure, competent authorities should request a remediation plan from institutions 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 long-term viability or where*** the institution ***failed to comply with the remediation plan, relevant authorities should carry out an assessment of whether the institution is*** failing or likely to fail***, in accordance with Article 32 of Directive 2014/59/EU***.

(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.

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16 COM(2018) 133 final.

17 COM(2020) 822 final.

(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 have access to an appropriate daily amount from their deposits, to cover, in particular, the cost of living, should their deposits be made inaccessible due to a suspension of payments for reasons other than leading to depositor payout. Such a procedure should remain exceptional, and Member States should ensure that depositors have access to appropriate daily amounts.

(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. The guiding principles in that respect should be those provided in the accounting rules, and particularly the accounting rules laid down in the International Accounting Standard 37 as adopted by Commission Regulation (EC) No 1126/2008[18]. On that basis, resolution authorities should draw a distinction between provisions and contingent liabilities. Provisions are liabilities that relate to a probable outflow of funds and which can be reliably estimated. Contingent liabilities are not recognised as accounting liabilities as they relate to an obligation which cannot be considered probable at the time of the estimate or cannot be reliably estimated.

(24) Since provisions are accounting liabilities, it should be specified that such provisions are to be treated the same way as other liabilities. Such provisions 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 provisions in resolution and to ensure certainty in the application of the bail-in tool, it should be specified that provisions are part of the bail-inable liabilities and that, as a result, the bail-in tool applies to them. It should also be ensured that, after the application of the bail-in tool, those liabilities and any obligations or claims arising in relation to them are treated as discharged for all purposes. That is particularly relevant for liabilities and obligations arising from judicial claims against the institution under resolution.

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[18] Commission Regulation (EC) No 1126/2008 of 3 November 2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council (OJ L 320, 29.11.2008, p. 1).

(25) According to accounting principles, contingent liabilities cannot be recognised as liabilities and should therefore not be bail-inable. It is however necessary to ensure that a contingent liability that would arise from an event which is improbable or cannot be reliably estimated 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 contingent liabilities that are included in the balance sheet of the institution under resolution 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 because of an improbable event. 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 contingent 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 resolution financing arrangement may provide further support where all liabilities with a priority ranking lower than 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[19], Regulation (EU) 2019/877 of the European Parliament and of the Council[20] and Directive (EU) 2019/879 of the European Parliament and of the Council[21] 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). 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.

(28) The rules for determining the MREL are mostly focused on setting the appropriate level of the MREL with the assumption of the bail-in tool as the preferred resolution strategy. However, Directive 2014/59/EU allows resolution authorities to use other resolution tools, namely those relying on the transfer of the business of the institution under resolution to a private purchaser or to a bridge institution. It should therefore be specified that, in case the resolution plan envisages the use of the sale of business tool or of the bridge institution tool ▌, ***independently or in combination with other resolution tools,*** resolution authorities should determine the level of the MREL for the resolution entity concerned on the basis of the specificities of those resolution tools and of the different loss-absorbing and recapitalisation needs those tools entail.

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19 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).

20 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).

21 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).

(29) The level of the MREL for resolution entities is the sum of the amount of the losses expected in resolution and the recapitalisation amount that enable the resolution entity to continue to comply with its conditions for authorisation and enabling it to pursue its activities for the appropriate period. Certain preferred resolution strategies entail the transfer of assets, rights and liabilities to a recipient, in particular the sale of business tool. In those cases, the objectives pursued by the recapitalisation component might not apply to the same extent, because the resolution authority will not be required to ensure that the resolution entity restores compliance with its own funds requirements after resolution action. Nevertheless, the losses in such cases are expected to exceed the resolution entity's own funds requirements. It is therefore appropriate to lay down that the level of the MREL of those resolution entities continues to include a recapitalisation amount that is adjusted in a way that is proportionate to the resolution strategy.

(30) Where the resolution strategy envisages the use of resolution tools other than ***exclusively*** bail-in, the recapitalisation needs of the entity concerned will generally be smaller after resolution than in case of open bank bail-in. The calibration of the MREL in such a case should take that aspect into account when estimating the recapitalisation requirement. Therefore, when adjusting the level of the MREL for resolution entities the resolution plan of which envisages the sale of business tool or the bridge institution tool , ***independently or in combination with other resolution tools,*** resolution authorities should take into account the features of those tools, including the expected perimeter of the transfer to the private purchaser or to the bridge institution, the types of instruments to be transferred, the expected value and marketability of those instruments and the design of the preferred resolution strategy, including the complementary use of the asset separation tool. 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*, the resolution authorities should not consider the potential contribution of the DGS in resolution when calibrating the level of the MREL.

(32) There are interactions between the resolution framework and the market abuse framework. In particular, while actions taken in preparation for resolution are susceptible of qualifying as inside information under Regulation (EU) No 596/2014 of the European Parliament and of the Council[22], their premature disclosure risks jeopardising the resolution process. Institutions under resolution are able to take steps to address that issue by requesting a delay in the disclosure of inside information under Article 17(5) of Regulation (EU) No 596/2014. However, the right incentives might not always be present at the time of preparing for resolution in order for the institution under resolution to take the initiative to make such a request. To avoid such situations, resolution authorities should have the power to directly request a delay in the disclosure of inside information pursuant to Article 17(5) of Regulation (EU) No 596/2014 on behalf of an institution under resolution.

[22] 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).

(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 establish and chair a resolution college.

(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 ***up to three*** years until the amount to be collected reaches an amount that is proportionate to the cost of the collection process, provided that such deferral does not materially affect the capacity of resolution authorities to use resolution financing arrangements.

(35) Irrevocable payment commitments are one of the components of the available financial means of resolution financing arrangements. It is therefore necessary to specify the circumstances in which those payment commitments may be called and the applicable procedure when terminating the commitments in case an institution or entity ceases to be subject to the obligation to pay contributions to a resolution financing arrangement. In addition, to provide more transparency and certainty with respect to the share of irrevocable payment commitments in the total amount of *ex ante* contributions to be raised, resolution authorities should determine such share on an annual basis, subject to the applicable limits.

(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 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.

(37a) The modification in the ranking of creditors not only enhances the accessibility of DGSs and the single resolution fund rather than the use of public support, but also paves the way for more financially effective solutions in the resolution of financial institutions. That should in turn reduce costs for taxpayers and promote an efficient use of the different tools existing in the Union financial ecosystem.

(38) The ranking of ▌ deposits should be fully harmonised through the implementation of ▌ a ***two***-tiered approach, whereby ▌ deposits ***of natural persons and micro, small and medium-sized enterprises*** benefit from a higher priority ranking over ***eligible deposits of large enterprises and central and regional governments***. ***That tiered approach is designed to provide enhanced protection for a wide range of depositors, reflecting the unique characteristics of their deposits, while opening up the possibility of resolution to entities not covered by the current framework.*** At the same time, the use of the deposit guarantee schemes in resolution, insolvency and in preventive measures should always remain subject to compliance with the relevant conditionality, in particular the so-called 'least cost test'.

▌

(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 necessary to prevent losses being borne by depositors, 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 loss that the DGS would bear in insolvency if it paid out covered depositors and subrogated to their claims over the institution's assets. 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, ***taking into account all relevant factors, including the time value of money as well as delays in the recovery of funds in insolvency proceedings***. 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 of repaying covered depositors 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 to the amount necessary to enable access to the resolution financing arrangement, ***unless the amount contributed by the resolution financing arrangement exceeds the limit of 5% of total liabilities including own funds, in which case the DGS should contribute proportionately to the excess amount***. 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. ***The possibility to use the DGS contribution to ensure access to resolution financing arrangements should also only be available to institutions with a minimum record of compliance with MREL requirements.***

(47) In view of the role of EBA in furthering the convergence of authorities' practices, EBA should monitor and report on the design and implementation of the resolvability assessments 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 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 annual report on MREL, EBA should also assess the policy implementation by resolution authorities of the new rules for the calibration of the MREL for transfer strategies. 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 crisis simulation exercises. Those simulations should cover the coordination and cooperation between competent authorities, resolution authorities and DGSs 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.

(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, resolution authorities, competent authorities, the Single Resolution Board, the ECB and other members of the European System of Central Banks and 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.

(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 (29a) is inserted:

‘(29a) ‘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 lead to the disruption of services that are essential to the real economy or to disrupt financial stability at national ***level*** or, ***where relevant,*** 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. ***For the purposes of this point, the regional level shall be assessed by reference to the territorial unit corresponding to level 1 of territorial units of the Nomenclature of territorial units for statistics (NUTS level 1) within the meaning of Regulation (EC) No 1059/2003 of the European Parliament and of the Council* or to NUTS level 2 where a significant disruption of services at NUTS level 2 implies a material risk of a systemic crisis at national level***

**** Regulation (EC) No 1059/2003 of the European Parliament and of the Council of 26 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS)*** *(OJ L 154, 21.6.2003, p. 1).*';

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

'(71) 'bail-inable liabilities' means the liabilities, including those giving rise to accounting provisions, 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);';

(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;';

(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 in 12 months following the latest annual update of the recovery plan, the competent authorities may exceptionally waive, until the subsequent 12-month period, the obligation to update the recovery plan. ***Such a waiver shall not be granted for more than two consecutive 12-month periods.***

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 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) ▌ Article 10 ***is amended as follows:***

(a) paragraph 7 is amended as follows:

(i) the following point is inserted:

'(aa) where applicable, a detailed description of the reasons for determining that an institution is to be qualified as a liquidation entity, including an explanation of how the resolution authority came to the conclusion that the institution lacks critical functions;';

(ii) the following point is inserted:

'(ja) a description of how the different resolution strategies would best achieve the resolution objectives set out in Article 31;';

(iii) the following point is inserted:

'(pa) a detailed and quantified list of covered deposits and eligible deposits from natural persons and micro, small and medium-sized enterprises;';

(b) the following paragraph 8a is inserted:

'8a. Resolution authorities shall not adopt resolution plans where ***insolvency proceedings have been initiated with regard to*** an ***entity*** in accordance with the applicable national law pursuant to Article 32b or where Article 37(6) applies.';

(c) in paragraph 9, the second subparagraph is replaced by the following:

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

(6) Article 12 is amended as follows:

(a) in paragraph 1, the following third ***and fourth*** subparagraph***s are*** added:

‘The identification of the measures to be taken in respect of the subsidiaries referred to in the first subparagraph, point (b), that are not resolution entities may be subject to a simplified approach by resolution authorities if such approach does not negatively affect the resolvability of the group, taking into account the size of the subsidiary, its risk profile, the absence of critical functions and the group resolution strategy.

The group resolution plan shall determine whether entities within a resolution group, other than the resolution entity, qualify as liquidation entities. Without prejudice to other factors that may be deemed relevant by resolution authorities, entities that provide critical functions shall not qualify as liquidation entities.’;

(aa) paragraph 2 is replaced by the following:

‘*2. The group resolution plan shall be drawn up on the basis of the requirements laid down in Article 10 and the information provided pursuant to Article 11.*’

(ab) in paragraph 3, the following point is inserted:

‘(-aa) contain a detailed description of the reasons for determining that a group entity referred to in paragraph 1, points (a) to (d), is to be qualified as a liquidation entity, including an explanation of how the resolution authority came to the conclusion that the institution lacks critical functions, and how the ratio of its total risk exposure amount and operating income in the group’s total risk exposure amount and operating income, as well as the leverage ratio of the group entity in the context of the group, have been taken into account;’;

(b) the following paragraph 5a is inserted:

‘5a. Resolution authorities shall not adopt resolution plans where ***insolvency proceedings have been initiated with regard to*** an entity ▌ in accordance with the applicable national law pursuant to Article 32b or where Article 37(6) applies.’;

(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 drawing up of internal policies for and implementation of the resolvability assessments of institutions or groups provided for in this Article and in Article 16 by resolution authorities. 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] and monitor the implementation of any recommendation set out in that report, where appropriate.

The report referred to in the first subparagraph shall cover at least 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 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 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).

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* 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) in paragraph 4, the following third subparagraph is added:

'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 measures proposed effectively reduce or remove the impediments to resolvability and require the entity to implement the measures proposed.';

(b) the following paragraph is added:

'8a. The resolution authority shall publish, at the end of each resolution planning cycle, an anonymised list that presents in an aggregated form any identified substantive impediments to resolvability and relevant actions to address them. The confidentiality provisions laid down in Article 84 of this Directive shall apply.';

(11) Article 18 is amended as follows:

(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 ***consider without undue delay and, if appropriate,*** 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 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 49 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 Articles 45e or 45f of this Directive.

Where there is a significant deterioration of conditions, or adverse circumstances arise or new information is obtained about an entity, 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.

For the purposes of the first subparagraph, point (b), of this paragraph, Member States shall ensure that the competent authorities under Directive 2014/65/EU or under Regulation (EU) No 600/2014, or, as appropriate, the resolution authority informs the competent authority without delay of the infringement or likely infringement.

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 ***an action*** 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.

(fa) the requirement for the management body of the entity to draw up a plan that the entity can implement where the relevant corporate body of the entity decides to initiate the voluntary winding down of the entity.

2. Competent authorities shall choose the appropriate ***and timely*** 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 a deadline that is appropriate for completion of that measure and that enables the competent authority to evaluate its effectiveness.

The evaluation of the measure shall be carried out immediately after the deadline is reached and shared with the resolution authority. Where the evaluation concludes that the measures have not been fully implemented or are not effective, the competent authority shall make an assessment of the condition referred to in Article 32(1), point (a), after having consulted the 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 ***draft regulatory technical standards*** to promote the consistent application of the triggers ***for the use of the measures*** referred to in paragraph 1 of this Article.

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

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 ***or make decisions on behalf of*** the institution or entity referred to in Article 1(1), points (b), (c) or (d).

Member States shall further ensure that any temporary administrator fulfils the requirements set out in Article 91(1), (2) and (8) of Directive 2013/36/EU. The assessment by competent authorities of whether the temporary administrator 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. ***Such powers may be adjusted in the event of a change in circumstances by the competent authority.***

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).

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, ***at least once, after the first six months have elapsed,*** and in any case at the end of his or her mandate.’;

(ca) paragraph 7 is replaced by the following:

‘7. The temporary administrator shall be appointed for a maximum of one year. That period may be exceptionally renewed once if the conditions for appointing the temporary administrator continue to be met. The competent authority shall be responsible for determining whether those conditions are met and justifying any such decision to the shareholders.’;

(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 they require an institution or an entity referred to in Article 1(1), points (b), (c) or (d), of this Directive to take ***that aim to address a deterioration in the situation of an institution, that entity or a group***;

(b) where 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, the assessment that those conditions are met, 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 ***close*** 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 the 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.

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), taking 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 potential impact on the financial system, on the protection of depositors and on the preservation of client funds, the risk that a prolonged process increases the overall costs for customers and the economy,*** 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 the any relevant measures within their expected timeframe and any other relevant developments. For that purpose, resolution authorities and competent authorities shall meet regularly, with a frequency set by resolution authorities considering the circumstances of the case. Competent authorities and resolution authorities shall provide each other with any relevant information without delay.

3. Competent authorities shall provide resolution authorities with all the information requested by resolution authorities 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 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 that information to resolution authorities.

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).

4a. Where, in the exercise of the power referred to in paragraph 4, the resolution authority decides to directly market to potential purchasers, it shall have due regard to the circumstances of the case 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. ***In such a case, Article 84(1), point (e), shall apply.***

6. The determination that the conditions laid down in Article 27(1) are met and the prior adoption of early intervention measures shall not be necessary conditions 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 the paragraphs 4 and 5 of this Article.

7. Resolution authorities shall inform competent authorities of any action taken pursuant to paragraphs 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 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), points (c) and (d) are 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;

(d) to protect ***covered deposits and, to the extent possible, also the uncovered part of eligible deposits of natural persons and micro, small and medium-sized enterprises***, and to protect investors covered by Directive 97/9/EC;';

(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 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) ▌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 institution ***from failing or being likely to fail*** 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.

Member States may provide that, in addition to the competent authority, the assessment of the condition referred to in paragraph 1, point (a), can be made by the resolution authority, after consulting the competent authority, where resolution authorities under national law have the necessary tools for making such an assessment including, in particular, adequate access to the relevant information. In such a case, Member States shall ensure that the competent authority provides the resolution authority without delay with any relevant information that the latter requests 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, ***after consulting a designated authority of the DGS, and, where appropriate, an IPS, of which the institution is a member, without delay***. ***The consultation with the IPS shall include a consideration of the availability of measures by the IPS that could prevent the failure of the institution within a reasonable timeframe***. 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 may also inform the resolution authority that it considers the condition laid down in the paragraph 1, point (b), to be met.';

(b) paragraph 4 is amended as follows:

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

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

(ii) the second to fifth subparagraphs are deleted;

(c) paragraph 5 is replaced by the following:

'5. For the purposes of paragraph 1, point (c), a resolution action shall be treated as in the public interest where that 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.

Resolution action shall be presumed not to be in the public interest for the purposes of paragraph 1, point (c), of this Article where the resolution authority has decided to apply simplified obligations to an institution pursuant to Article 4. The presumption shall be rebuttable and shall not apply where the resolution authority assesses that one or more of the resolution objectives would be at risk if the institution were to be wound up under normal insolvency proceedings.

Member States shall ensure that when carrying out the assessment referred to in the first subparagraph, the resolution authority, based on the information available to it at the time of that assessment, ***evaluates*** and compares all extraordinary public financial support ▌ to be granted to the institution, both in the event of resolution and in the event of winding up in accordance with the applicable national law.';

5a. EBA shall contribute to monitoring and promoting the effective and consistent application of the public interest assessment referred to in paragraph 5.

By ... [two years from the date of application of this amending Directive], EBA shall provide a report on the scope and application of paragraph 5 across the Union. That report shall be shared with the Commission in order to assess the effectiveness of the measures outlined in paragraph 5 and their impact on the level playing field.

Based on the outcome of the report, EBA may develop regulatory technical standards with the aim of converging practices and levelling the playing field among Member States by ... [two years from the date of application of this amending Directive]. '

(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 ▌ take a resolution action in relation to a central body and all credit institutions permanently affiliated to it that are part of the same resolution group ***only*** where the central body and all credit 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 relevant national administrative or judicial authority has the power to initiate without delay the 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 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 condition for the withdrawal of the authorisation by the competent authority pursuant to Article 18 of Directive 2013/36/EU.

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

(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 ***of an exceptional or systemic nature and*** to preserve financial stability, the extraordinary public financial support takes any of the following forms:

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

(ii) a State guarantee of newly issued liabilities;

(iii) an acquisition of own funds instruments other than Common Equity Tier 1 instruments, or of other capital instruments or a use of impaired assets measures, at prices, duration and other terms that do not confer an undue advantage upon the institution or entity concerned, ***provided that none of*** 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 the extraordinary public financial support takes the form of ***a cost-effective*** intervention by a deposit guarantee scheme ▌ in compliance with the conditions set out in Articles 11a and 11b of Directive 2014/49/EU, provided that none of the circumstances referred to in Article 32(4) are present;

(c) where the extraordinary public financial support takes the form of ***a cost-effective*** intervention by a deposit guarantee scheme in the context of the winding up of ***a credit*** institution pursuant to 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 in the context of the winding up of the institution or entity pursuant to 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▌ strategy ***to exit the support measure*** approved by the competent authority, including a clearly specified termination date, sale date or repayment schedule for any of the measures provided; ***this information shall not be disclosed until one year after concluding the strategy to exit the support measure, or the implementation of the remediation plan, or the assessment under the seventh subparagraph of this paragraph***;

(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 ***over the next 12 months***.

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, or is likely to occur in the 12 following months, ***based on current expectations,*** of any of the requirements referred to in Article 92(1) of Regulation (EU) No 575/2013, Article 104a of Directive 2013/36/EU, Article 11(1) of Regulation (EU) 2019/2033, Article 40 of Directive (EU) 2019/2034 or the relevant applicable requirements under Union or national law.

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, as a minimum, ***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 such exercises cannot be undertaken in due time, the competent authority may base its evaluation*** 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 competent authority shall make its best efforts to ensure that the quantification is based on the market value of the institution or entity's assets, liabilities and off-balance sheet items.***

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 ***secure*** 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. The amount of acquired Common Equity Tier 1 instruments shall not exceed 2% of the total risk exposure amount of the institution or entity concerned calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013.

In 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 ▌ strategy ***to exit the support measure*** established at the time of granting such measure, the competent authority shall ***request*** the institution or entity ***to submit a one-time remediation plan. The remediation plan shall describe the steps to be taken in order to maintain or restore compliance with supervisory requirements, the long-term viability of the institution or entity and its capacity to repay the amount provided, as well as the associated timeframe***.

Where the competent authority does not recognise the one-time remediation plan as credible or feasible or where the institution or entity fails to comply with the remediation plan, an assessment of whether the institution or entity is failing or likely to fail shall be conducted 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 have access to an appropriate daily amount from those deposits.';

(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 a 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 a special manager. Resolution authorities shall ensure that the special manager has the qualifications, ability and knowledge required to carry out his or her functions.

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

(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 liabilities, including contingent liabilities and assets.’;

(24) in Article 37, 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] and monitor the implementation of any recommendation set out in that report, where appropriate.

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 maintain critical functions in the bridge institution or 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.’;

(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:

(a) paragraph 1 is replaced by the following:

‘1. Member States shall ensure that the bail-in tool may be applied to all liabilities, including those giving rise to an accounting provision, of an institution or entity referred to in Article 1(1), points (b), (c) or (d), that are not excluded from the scope of that tool pursuant to paragraphs 2 or 3 of this Article.’;

(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.’;

▌

(28) ▌ Article 44a ***is amended as follows:***

(a) the following paragraphs are inserted:

‘***6a. Member States shall ensure that a credit institution issuing eligible instruments qualifying as AT1, Tier 2 instruments or eligible liabilities may sell those instruments to an existing depositor at that credit institution who qualifies as a retail client, as defined in Article 4(1), point (11), of Directive 2014/65/EU, only where the conditions in paragraph 1, points (a), (b) and (c), of this Article are fulfilled and both of the following conditions are met at the time of the purchase:***

(a) the depositor who qualifies as a retail client does not invest an aggregate amount exceeding 10 % of its financial instrument portfolio in instruments referred to in this paragraph;

(b) the initial investment amount invested in one or more instruments referred to in this paragraph is at least EUR 30 000 .

The credit institution shall ensure that the conditions under points (a) and (b) of this paragraph are met at the time of the purchase, on the basis of the information provided by the retail client in accordance with paragraph 3.

6b. Eligible instruments referred to in paragraph 6a sold by the issuing credit institution to its depositors qualifying as retail investors without fulfilling the conditions laid down in that paragraph shall not count towards the requirements under Article 45e or 45f for as long as those instruments are held by the depositor to whom they were sold.

6c. Resolution authorities shall, as part of the assessment of resolvability in accordance with Articles 15 and 16, monitor annually on a group and institution specific basis the extent to which MREL eligible instruments are held by retail investors and report the results to EBA at least once per year. ’;

(b) the following paragraphs are added:

‘***8. Member States shall not be required to apply paragraphs 6a and 6b of this Article to instruments referred to in paragraph 6a issued before ... [12 months from the date of entry into force of this amending Directive].***

‘9. By … [PO please insert the date = 24 months after the date of entry into force of this Directive], EBA 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 be used by resolution authorities to estimate the requirement referred to in Article 104a of Directive 2013/36/EU and the combined buffer requirement for:

(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';

(32) the following Article 45ca is inserted:

'*Article 45ca*

Determination of the minimum requirement for own funds and eligible liabilities for transfer strategies

1. When applying Article 45c to a resolution entity whose preferred resolution strategy envisages***, independently or in combination with other resolution tools,*** the use of the sale of business tool or the bridge institution tool , the resolution authority shall set the recapitalisation amount provided in Article 45c(3) in a proportionate way on the basis of the following criteria, as relevant:

(a) the size, business model, funding model and risk profile ***of the resolution entity or, as relevant, the size of the part of the resolution entity that is subject to the sale of business tool or bridge institution tool***;

(b) the shares, other instruments of ownership, assets, rights or liabilities to be transferred to a recipient as identified in the resolution plan, taking into consideration:

(i) the core business lines and critical functions of the resolution entity;

(ii) the liabilities excluded from bail-in pursuant to Article 44(2);

(iii) the safeguards referred to in Articles 73 to 80;

(iiia) the expected own funds requirements for any bridge institution that might be needed to implement the market exit of the resolution entity, to ensure compliance by the bridge institution with Regulation (EU) No 575/2013, Directive 2013/36/EU and Directive 2014/65/EU, as applicable;

(iiib) the expected demand by the recipient for the transaction to be capital neutral with regard to the requirements applicable to the acquiring entity;

(c) the expected value and marketability of the shares, other instruments of ownership, assets, rights or liabilities of the resolution entity referred to in point (b), taking into account:

(i) any material impediments to resolvability, identified by the resolution authority, that are ▌ related to the application of the sale of business tool or the bridge institution tool;

(ii) the losses resulting from the assets, rights or liabilities left in the residual institution;

(iia) a potentially adverse market environment at the time of resolution;

(d) whether the preferred resolution strategy envisages the transfer of shares or other instruments of ownership issued by the resolution entity, or of all or part of the assets, rights and liabilities of the resolution entity;

(e) whether the preferred resolution strategy envisages the application of the asset separation tool.

▌

3. The application of paragraph 1 shall not result in an amount that is higher than the amount resulting from application of Article 45c(3) ***or in an amount that is lower than 13,5% of the total risk exposure amount, calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, and lower than 5% of the total exposure measure of the relevant entity referred to in paragraph 1 of this Article, calculated in accordance with Articles 429 and 429a of Regulation (EU) No 575/2013***.';

(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.';

(35) Article 45l is amended as follows:

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

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

(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.’;

(35a) in Article 45m, the following paragraph is inserted:

‘1a. By way of derogation from Article 45(1), resolution authorities shall determine appropriate transitional periods for institutions or entities referred to in Article 1(1), points (b), (c) and (d), to comply with the requirements in Articles 45e or 45f or with the requirements in Article 45b(4), (5) or (7), if institutions or entities are subject to those requirements as a result of the entry into force of ... [this amending Directive]. The deadline for institutions and entities to comply with the requirements in Articles 45e or 45f or the requirements that result from the application of Article 45b(4), (5) or (7) shall be .... [four years from the date of application of this amending Directive].

The resolution authority shall determine intermediate target levels for the requirements in Articles 45e or 45f or for the requirements that result from the application of Article 45b(4), (5) or (7), as appropriate, that institutions or entities referred to in the first subparagraph of this paragraph shall comply with by ... [two years from the date of application of this amending Directive]. The intermediate target levels, as a rule, shall ensure a linear build-up of own funds and eligible liabilities towards the requirement.

The resolution authority may set a transitional period that ends after ... [four years from the date of application of this amending Directive] where duly justified and appropriate on the basis of the criteria referred to in paragraph 7, taking into consideration:

(a) the development of the entity’s financial situation;

(b) the prospect that the entity will be able to ensure compliance in a reasonable timeframe with the requirements in Article 45e or 45f or with a requirement that results from the application of Article 45b(4), (5) or (7); and

(c) whether the entity is able to replace liabilities that no longer meet the eligibility or maturity criteria and if not, whether that inability is of an idiosyncratic nature or is due to market-wide disturbance.’;

(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).’;

(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 contingent liabilities, 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) in Article 47(1), 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) in Article 53, paragraph 3 is 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 giving rise to an accounting provision, 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.';

(41) Article 55 is amended as follows:

(a) in paragraph 1, point (b) is replaced by the following:

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

(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) the following paragraph is inserted:

'2a. Institutions and entities referred to in Article 1(1), point (b), (c) or (d), shall report to the resolution authority on an annual basis the following:

(a)the total outstanding amounts of all liabilities governed by the law of a third country;

(b)for the items referred in point (a):

(i) their composition, including their maturity profile;

(ii) their ranking in normal insolvency proceedings;

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

(iv) whether they include in the contractual provisions the term required by paragraph 1;

(v) where a determination has been made that it is legally or otherwise impracticable to include the contractual recognition of bail-in clause in accordance with paragraph 2, the category of the liability pursuant to paragraph 7.

Where institutions and entities are part of a resolution group, the report shall be done by the resolution entity concerning the resolution group, to the extent required by paragraph 1, second and third subparagraphs.';

(d)the following paragraph is added:

'8a. EBA shall develop draft implementing technical standards to specify procedures and uniform formats and templates for the reporting to resolution authorities referred to in paragraph 2a.

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

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

(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, the need to implement effectively the write down and conversion powers or the resolution strategy for the resolution group, 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 competent authority to assess the acquirer of a qualifying holding in a timely manner by way of derogation from the time-limits laid down in Article 22 of Directive 2013/36/EU and Article 12 of Directive 2014/65/EU;’;

(ii) the following point (n) is added:

‘(n) the power to make requests pursuant to Article 17(5) of Regulation (EU) No 596/2014 on behalf of the institution under resolution.’;

(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;’;

(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, 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 84, the following paragraph is inserted:

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

(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, the resolution authority of an institution with significant branches in other Member States shall establish and chair a resolution college.

The resolution authority of the institution referred to in the first subparagraph 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 resolution authority of the institution referred to in the first subparagraph 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 resolution authority of the institution referred to in the first subparagraph 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, the following paragraph is added:

‘4a. Article 84 shall not preclude the exchange of information between resolution authorities and tax authorities in the same Member State to the extent that such exchange is laid down in the national law of that Member State. Where that information originates in another Member State, it shall only be disclosed 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 or 33, 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 in Article 33(1) or (2) as applicable, or the conditions referred to in Article 33(4);

(b) the outcome of the assessment of the condition referred to in Article 32(1), point (c);

(c) 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.';

(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 ***of this Article*** 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 ***of this Article*** 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 ***84*** are complied with.'

(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, including recovery plans, 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 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.’;

(51) in Article 101, paragraph 2 is replaced by the following:

‘2. Where the resolution authority determines that the use of the resolution financing arrangement for the purposes referred to in paragraph 1 of this Article is likely to result in part of the losses of an institution or an entity as referred to in Article 1(1), points (b), (c) or (d), being passed on to the resolution financing arrangement, the principles governing the use of the resolution financing arrangement set out in Article 44 shall apply.’;

(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 diminish below the target level specified in that paragraph, the regular contributions raised in accordance with Article 103 shall resume until the target level is reached. Resolution authorities may defer the collection of the regular contributions raised in accordance with Article 103 for ***up to three*** 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. After the target level has been reached for the first time and where the available financial means have subsequently been reduced to less than two thirds of the target level, those contributions shall be set at a level allowing for reaching the target level within ***four*** years.’;

(53) Article 103 is amended as follows:

(a) paragraph 3 is replaced by the following:

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

(b) the following paragraph 3a is inserted:

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

Where an entity stops being within the scope of Article 1 and is no longer subject to the obligation to pay contributions in accordance with paragraph 1 of this Article, the resolution authority shall call the irrevocable payment commitments made pursuant to paragraph 3 and still due. If the contribution linked to the irrevocable payment commitment is duly paid at first call, the resolution authority shall cancel the commitment and return the collateral. If the contribution is not duly paid at first call, the resolution authority shall seize the collateral and cancel the commitment.';

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

'Extraordinary *ex-post* contributions 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***:***

(a) the following have the same priority ranking, which is higher than the ranking provided for the claims of ordinary unsecured creditors:

(***i***) deposits ***that are excluded from coverage under Article 5 of Directive 2014/49/EU***;***(ii) that part of eligible deposits of legal entities that are not micro, small and medium-sized enterprises which exceeds the coverage level provided for in Article 6 of Directive 2014/49/EU;***

(iii) that part of eligible deposits of central and regional governments which exceeds the coverage level provided for in Article 6 of Directive 2014/49/EU;

(iv) that part of deposits of legal persons that are not micro, small or medium-sized enterprises that would be eligible deposits were they not made through branches located outside the Union of institutions established within the Union, ***which exceeds the coverage level provided for in Article 6 of Directive 2014/49/EU;***

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

(i) covered deposits;

(ii) deposit guarantee schemes ***for their claim under Article 9(2) of Directive EU/2014/49***;

(iii) eligible deposits other than those referred to in points (a)(ii) and (iii); and

(iv) deposits that would be eligible deposits were they not made through branches located outside the Union of institutions established within the Union, other than those referred to in point (a)(iv).';

(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 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 shall not be greater than the cost of repaying depositors as calculated by the deposit guarantee scheme under Article 11e of Directive 2014/49/EU.

Where it is determined by a valuation under Article 74 that the cost of the deposit guarantee scheme's contribution to resolution was greater than the losses it would have incurred had the institution been wound up under normal insolvency proceedings, 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 estimated cost of repaying depositors pursuant to Article 11e 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 44(5), point (a), and in Article 44(8), point (a).

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 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.

By way of derogation from the limitation on contributions from the deposit guarantee scheme under the second subparagraph of this paragraph, where the conditions under Article 44(7) are fulfilled, an additional contribution of the deposit guarantee scheme shall be required. That additional contribution shall be equal to the amount contributed by the resolution financing arrangement above the 5% limit specified in Article 44(5), point (b), multiplied by the share of covered deposits as part of the total liabilities in the scope of the transfer.

However, the first and the second subparagraphs shall not apply to institutions that ***meet at least one of the following conditions:***

(i) ***the institution has*** been identified as ***a*** liquidation ***entity*** in the group resolution plan or in the resolution plan.';

(ii) ***the institution has breached its intermediate or final MREL target, as appropriate, in four quarters within four years ending 6 months prior to the determination of failing or likely to fail pursuant to Article 32(1), point (a). The four-year-period does not take into account the two consecutive quarters immediately preceding such determination of failing or likely to fail.***

(c) paragraph 3 is deleted;

(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.';

(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 resolution authorities, competent authorities, the EBA, the Single Resolution Board, the ECB and other members of the European System of Central Banks shall provide the Commission, upon its request and within the specified timeframe, with any 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. 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.’;

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* 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 128a is inserted:

‘Article 128a

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 all of 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 financial institutions, 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 = 18 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*