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REPORT

on the proposal for a directive of the European Parliament and of the Council amending Directive 2014/59/EU on loss-absorbing and recapitalisation capacity of credit institutions and investment firms and amending Directive 98/26/EC, Directive 2002/47/EC, Directive 2012/30/EU, Directive 2011/35/EU, Directive 2005/56/EC, Directive 2004/25/EC and Directive 2007/36/EC
(COM(2016)0852 – C8-0481/2016 – 2016/0362(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Gunnar Hökmark

Symbols for procedures

*	Consultation procedure
***	Consent procedure
***I	Ordinary legislative procedure (first reading)
***II	Ordinary legislative procedure (second reading)
***III	Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ▌ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.
By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council amending Directive 2014/59/EU on loss-absorbing and recapitalisation capacity of credit institutions and investment firms and amending Directive 98/26/EC, Directive 2002/47/EC, Directive 2012/30/EU, Directive 2011/35/EU, Directive 2005/56/EC, Directive 2004/25/EC and Directive 2007/36/EC
(COM(2016)0852 – C8-0481/2016 – 2016/0362(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2016)0852),

– 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 (C8-0481/2016),

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

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

– having regard to the report of the Committee on Economic and Monetary Affairs (A8-0218/2018),

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

2016/0362 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,
Having regard to the proposal from the European Commission,
After transmission of the draft legislative act to the national parliaments,
Having regard to the opinion of the European Central Bank[1]
Having regard to the opinion of the European Economic and Social Committee[2],
Acting in accordance with the ordinary legislative procedure,
Whereas:

(1) The Financial Stability Board (FSB) published the Total Loss-Absorbing Capacity (TLAC) Term Sheet ('TLAC standard') on 9 November 2015, which was endorsed by the G-20 in November 2015. The TLAC standard requires global systemically important banks ('G-SIBs'), referred to as global systemically important institutions ('G-SIIs') in the Union framework, to hold a sufficient minimum amount of highly loss

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

1 OJ C , , p. .

2 OJ C , , p. .

absorbing (bailin-able) liabilities to ensure smooth and fast absorption of losses and recapitalisation in resolution. In its Communication of 24 November 2015[1], the Commission committed to bring forward a legislative proposal by the end of 2016 that would enable the TLAC standard to be implemented by the internationally agreed deadline of 2019.

(1a) In order to facilitate long-term planning and establish certainty with regards to the necessary buffers, markets need timely clarity about the eligibility criteria required in order for instruments to be recognised as TLAC/MREL liabilities.

(2) The implementation of the TLAC standard in the Union needs to take account of the existing institution-specific minimum requirement for own funds and eligible liabilities ('MREL') applicable to all Union credit institutions and investment firms as laid down in Directive 2014/59/EU of the European Parliament and of the Council[2]. As TLAC and MREL pursue the same objective of ensuring that Union institutions have sufficient loss absorbing capacity, the two requirements should be complementary elements of a common framework. Operationally, the harmonised minimum level of the TLAC standard for G-SIIs ('TLAC minimum requirement') should be introduced in Union legislation through amendments to Regulation (EU) No 575/2013[3], while the institution-specific add-on for G-SIIs and the institution-specific requirement for non-G-SIIs, referred to as minimum requirement for own funds and eligible liabilities, should be addressed through targeted amendments to Directive 2014/59/EU and Regulation (EU) No 806/2014[4]. The relevant provisions of this Directive as regards loss absorbing and recapitalisation capacity of institutions should be applied together with those in the aforementioned pieces of legislation and in Directive 2013/36/EU[5] in a consistent way.

(3) The absence of harmonised Union rules in respect of the implementation of the TLAC standard in the Union would create additional costs and legal uncertainty ▌ and make the application of the bail-in tool for cross-border institutions more difficult. That absence of harmonised Union rules also results in competitive distortions on the internal market given that the costs for institutions to comply with the existing requirements and the TLAC standard may differ considerably across the Union. It is

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

2 Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms, OJ L 173, 12.6.2014, p. 190

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

4 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

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

therefore necessary to remove those obstacles to the functioning of the internal market and to avoid distortions of competition resulting from the absence of harmonised Union rules in respect of the implementation of the TLAC standard. Consequently, the appropriate legal basis for this Directive is Article 114 of the Treaty on the Functioning of the European Union (TFEU), as interpreted in accordance with the case law of the Court of Justice of the European Union.

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

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

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

(6a) In order to ensure certainty for markets and allow for a build-up of the necessary buffers, markets need timely clarity about the eligibility criteria required in order for instruments to be recognised as TLAC/MREL liabilities.

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

575/2013 should ensure a level playing field for Union institutions on a global level, meaning that the level of the requirements that has to be met specifically with subordinated debt should be set at the level of the requirements for TLAC, as transposed into Union law.

(8) The scope of liabilities to meet the MREL includes, in principle, all liabilities resulting from claims arising from unsecured non-preferred creditors (non-subordinated liabilities) unless they do not meet specific eligibility criteria provided in this Directive. To enhance the resolvability of institutions through an effective use of the bail-in tool, resolution authorities should be able to require that the MREL is met with subordinated liabilities, in particular when there are clear indications that bailed-in creditors are likely to bear losses in resolution that would exceed their potential losses in insolvency. The requirement to meet MREL with subordinated liabilities should be requested only for a level necessary to prevent that losses of creditors in resolution are above losses that they would otherwise incur under insolvency. Any subordination of debt instruments requested by resolution authorities for the MREL should be without prejudice to the possibility to partly meet the TLAC minimum requirement with non-subordinated debt instruments in accordance with Regulation (EU) No 575/2013 as permitted by the TLAC standard. ***At the same time, where institutions have a high level of own capital, that should also be recognised in the application and calculation of the MREL. Institutions should be able to meet the MREL requirements with Common Equity Tier 1 (CET1), Additional Tier 1 or Tier 2 instruments, so that the same requirements on the MREL apply to institutions with both a higher and a lower stock of own capital. The objective of a level playing field between institutions should also be pursued at the global level, in particular when aligning the eligibility criteria for the MREL with those for the TLAC minimum requirement.***

(9) The MREL should allow institutions to absorb losses expected in resolution and recapitalise the institution post-resolution. The resolution authorities should, on the basis of the resolution strategy chosen by them, duly justify the imposed level of the MREL in particular as regards the need and the level of the requirement referred to in Article 104a of Directive 2013/36/EU in the recapitalisation amount. As such, that level should be composed of the sum of the amount of losses expected in resolution that correspond to the institution's own funds requirements and the recapitalisation amount that allows the institution post-resolution to meet its own funds requirements necessary for being authorised to pursue its activities under the chosen resolution strategy. The MREL should be expressed as a percentage of the total risk exposure and leverage ratio measures, and institutions should meet simultaneously the levels resulting from the two measurements. The resolution authority should be able to adjust the recapitalisation amounts in cases duly justified to adequately reflect also increased risks that affect resolvability arising from the resolution group’s business model, funding profile and overall risk profile and therefore in such limited circumstances require that the recapitalisation amounts referred to in the first subparagraph of Article 45c(3) and (4) are exceeded.

(9a) Specifically, eligible liabilities should not be subject to netting rights or set-off which would undermine their loss-absorbing capacity in resolution. It is therefore necessary that eligible liabilities are not subject to netting rights or set-off

arrangements, although the contractual provisions governing the eligible liabilities are not required to contain a clause explicitly stating that the instrument is not subject to such rights. Equally there is no need for the contractual provisions governing the eligible liabilities to specify that those liabilities can be subject to write-down or conversion. The provisions governing the eligible liabilities should not have any incentive to redeem and should not give the holder the right to accelerate the future scheduled payment of interest or principal, other than in the event of liquidation.

(9b) The entire stock of eligible instruments issued before the date of adoption of eligibility criteria should be considered eligible for MREL without needing to fulfil the new eligibility criteria introduced with the risk reduction package. Such a grandfathering rule is required because market participants could not anticipate those changes and need time to adjust their issuances. The grandfathering should encompass all new eligibility criteria, including netting and set-off rights, as well as acceleration rights.

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

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

▌

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

(14) Institutions that are not resolution entities should comply with the MREL at individual level. Loss absorption and recapitalisation needs of those institutions should be generally provided by their respective resolution entities through the acquisition by resolution entities of eligible liabilities issued by those institutions and their write-down or conversion into instruments of ownership at the point where those institutions are no longer viable. As such, the MREL applicable to institutions that are not resolution entities should be applied together and consistently with the requirements applicable to resolution entities. That should allow resolution authorities to resolve a resolution group without placing certain of its subsidiary entities in resolution, thus avoiding potentially disruptive effects on the market. ▌ The resolution authorities of

subsidiaries of a resolution entity should also be able to fully waive the application of the MREL applicable to institutions that are not resolution entities if both the resolution entity and its subsidiaries are established in the same Member State. The application of the MREL to institutions that are not resolution entities should comply with the chosen resolution strategy, in particular it should not change the ownership relationship between institutions and their resolution group after those institutions have been recapitalised.

(15) To ensure appropriate levels of the MREL for resolution purposes, the authorities responsible for setting the level of the MREL should be the resolution authority of the resolution entity, the group-level resolution authority, that is the resolution authority of the ultimate parent undertaking, and resolution authorities of other entities of the resolution group. Any disputes between authorities should be subject to the powers of the European Banking Authority (EBA) under Regulation (EU) No 1093/2010 of the European Parliament and of the Council[1] subject to the conditions and limitations provided in this Directive.

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

(17) To ensure a transparent application of the MREL, institutions should report to their competent and resolution authorities and disclose regularly to the public the levels of eligible liabilities and the composition of those liabilities, including their maturity profile and ranking in normal insolvency proceedings. There should be consistency in the frequency of supervisory reporting on compliance with own funds requirements and with MREL.

(18) The requirement to include a contractual recognition of the effects of the bail-in tool in agreements or instruments creating liabilities governed by the laws of third countries should ensure that those liabilities can be bailed in in the event of resolution. Unless and until statutory recognition frameworks to enable effective cross-border resolution are adopted in all third country jurisdictions, contractual arrangements, when properly drafted and widely adopted, should offer a workable solution. Even with statutory recognition frameworks in place, contractual recognition arrangements should help to reinforce the legal certainty and predictability of cross-border recognition of resolution actions. There might be instances, however, where it is impracticable for institutions to include those contractual terms in agreements or instruments creating certain liabilities, in particular liabilities that are not excluded from the bail-in tool under Directive 2014/59/EU, covered deposits or own funds instruments. It is in particular

[1] 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

impracticable for institutions to include in agreements or instruments creating liabilities contractual terms on the recognition of the effects of the bail-in tool, where those contractual terms are unlawful in the third countries concerned or where institutions do not have the bargaining power to impose those contractual terms. Resolution authorities should therefore be able to waive the application of the requirement to include those contractual terms where those contractual terms would entail disproportionate costs for institutions and the resulting liabilities would not provide significant loss absorbing and recapitalisation capacity in resolution. This waiver should however not be relied upon where a number of agreements or liabilities together collectively provide significant loss absorbing and recapitalisation capacity in resolution. In addition, to ensure that the resolvability of institutions is not affected, liabilities benefitting from waivers should not be eligible for MREL.

(19) In order to preserve financial stability, it is important that competent authorities are able to remedy the deterioration of an institution's financial and economic situation before that institution reaches a point at which authorities have no other alternative than to resolve it. To that end, competent authorities should be granted appropriate early intervention powers. Early intervention powers should include the power to suspend, for the minimum time necessary, certain contractual obligations. That power to suspend should be framed accurately and should be exercised only where that is necessary to establish whether early intervention measures are needed or to determine whether the institution is failing or likely to fail. That power to suspend should however not apply to obligations in relation to the participation in systems designated under Directive 98/26/EC of the European Parliament and of the Council[1], central counterparties (CCPs) and central banks including third country CCPs recognised by the European Capital Markets Authority ('ESMA'). It should also not apply to covered deposits. Early intervention powers should comprise the powers already provided for in Directive 2013/36/EU for circumstances other than those considered to be early intervention as well as for situations in which it is considered to be necessary to restore the financial soundness of an institution.

(20) It is in the interest of an efficient resolution, and in particular in the interest of avoiding conflicts of jurisdiction, that no normal insolvency proceedings for the failing institution be opened or continued while the resolution authority is exercising its resolution powers or applying the resolution tools, except at the initiative of, or with the consent of, the resolution authority. It is useful and necessary to suspend, for a limited period, certain contractual obligations so that the resolution authority has sufficient time to carry out the valuation and put into practice the resolution tools. That power should be accurately framed and should be exercised only for the minimum time necessary for the valuation or to put resolution tools into practice. That power should however not apply to covered deposits or to obligations in relation to the participation in systems designated under Directive 98/26/EC, CCPs and central banks, including third country CCPs recognised by ESMA. Directive 98/26/EC reduces the risk associated with participation in payment and securities settlement systems, in particular by reducing disruption in the event of the insolvency of a participant in such a system. To ensure that those protections apply appropriately in

[1] Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ L 166, 11.6.1998, p. 45).

crisis situations, whilst maintaining appropriate certainty for operators of payment and securities systems and other market participants, Directive 2014/59/EU should be amended to provide that a crisis prevention measure or a crisis management measure should not as such be deemed to be insolvency proceedings within the meaning of Directive 98/26/EC, provided that the substantive obligations under the contract continue to be performed. However, nothing in Directive 2014/59/EU should prejudice the operation of a system designated under Directive 98/26/EC or the right to collateral security guaranteed by that same Directive.

(21) In order to avoid a duplication of requirements and to apply the appropriate rules for the effective recovery and resolution of CCPs in accordance with Regulation (EU) No [CCP recovery and resolution], Directive 2014/59/EU should be amended to exclude from its scope those CCPs in respect of which, pursuant to Regulation (EU) No 648/2012[1], Member States apply certain requirements for authorisation under Directive 2013/36/EU and are therefore also authorised as credit institutions.

(22) The exclusion of specific liabilities of credit institutions or investment firms from the application of the bail-in tool or from powers to suspend certain obligations, restrict the enforcement of security interests or temporarily suspend termination rights in Directive 2014/59/EU, should equally cover liabilities in relation to CCPs established in the Union and to third country CCPs recognised by ESMA.

(23) In order to ensure a common understanding of terms used in various legal instruments, it is appropriate to incorporate in Directive 98/26/EC the definitions and concepts introduced by Regulation (EU) No 648/2012 regarding a "central counterparty" or "CCP" and "participant".

(24) To implement resolution of CCPs effectively, the safeguards provided for in Directive 2002/47/EC[2] should not apply to any restriction of the enforcement of a financial collateral arrangement or on the effect of a security financial collateral arrangement, any close-out netting or set-off provision imposed by virtue of Regulation (EU) No [CCP recovery and resolution].

(25) Directive 2012/30/EU[3], Directive 2011/35/EU[4], Directive 2005/56/EC[5], Directive 2004/25/EC[1] and Directive 2007/36/EC[2], contains rules for the protection of

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[1] Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, OJ L 201, 27.7.2012, p.1

[2] Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, OJ L 201, 27.7.2012, p.1

[3] Directive 2012/30/EU of the European Parliament and of the Council of 25 October 2012 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty on the Functioning of the European Union, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent (OJ L 315, 14.11.2012, p. 74).

[4] Directive 2011/35/EU of the European Parliament and of the Council of 5 April 2011 concerning mergers of public limited liability companies (OJ L 110, 29.4.2011, p. 1).

[5] Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies (OJ L 310, 25.11.2005, p. 1).

shareholders and creditors of CCPs that fall within the scope of those Directives. In a situation where resolution authorities need to act rapidly under Regulation (EU) No [CCP recovery and resolution], those rules may hinder effective resolution action and use of resolution tools and powers by resolution authorities. Derogations under Directive 2014/59/EU should therefore be extended to acts taken in accordance with Regulation (EU) No [CCP recovery and resolution]. In order to guarantee the maximum degree of legal certainty for stakeholders, the derogations should be clearly and narrowly defined, and they should only be used in the public interest and when resolution triggers are met. The use of resolution tools presupposes that the resolution objectives and the conditions for resolution laid down in Regulation (EU) No [CCP recovery and resolution] are met. In order to ensure that authorities can impose sanctions when the provisions of Regulation (EU) No [CCP recovery and resolution] have not been complied with and that those sanctions powers are consistent with the recovery and resolution legal framework of other financial institutions, the scope of application of Title VIII of Directive 2014/59/EU should also cover infringements of provisions of Regulation (EU) No [CCP recovery and resolution].

(26) Since the objectives of this Directive, namely to lay down uniform rules on recovery and resolution framework, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(27) To allow an appropriate time for the transposition and application of this Directive, Member States should be given twelve months to transpose this Directive in their national laws from the date of its entry into force and the institutions concerned should be required to comply with the new provisions within six months from the date of transposition.

(27a) Member States should ensure that their national insolvency laws correctly reflect the loss absorption hierarchy under resolution, avoiding major mismatches between the resolution and the insolvency legal frameworks and ensuring that the regulatory capital instruments absorb losses both in resolution and insolvency before the rest of subordinated claims.

HAVE ADOPTED THIS DIRECTIVE:

Article 1
Amendments to Directive 2014/59/EU1

1. In Article 1, the following paragraph (3) is added:

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[1] Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids (OJ L 142, 30.4.2004, p. 12).

[2] Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies (OJ L 184, 14.7.2007, p. 17).

‘3. This Directive shall not apply to those central counterparties in respect of which, pursuant to Article 14(5) of Regulation (EU) No 648/2012, Member States apply certain requirements for authorisation under Directive 2013/36/EU.

However, the provisions laid down in Title VIII of this Directive shall also apply as regards penalties applicable where Regulation [on the recovery and resolution of CCPs] has not been complied with.’

1a. In Article 2(1), point (2) is replaced by the following:

"(2) ‘credit institution’ means a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013, not including the entities referred to in Article 2(5)***, Article 2(5a) and Article 2(5b)*** of Directive 2013/36/EU;"

2. In Article 2(1) point (71), ‘eligible liabilities' is replaced by 'bail-inable liabilities'.

3. In Article 2(1), the following point is added:

'(71a) 'eligible liabilities' means bail-inable liabilities that fulfil, as applicable, the conditions of Article 45b or point (a) of Article 45g(3).'

4. In Article 2(1), the following points (83a) and (83b), (109) and (110) are added:

"(83a) 'resolution entity' means an entity established in the Union, which is identified by the resolution authority in accordance with Article 12 as an entity in respect of the resolution plan provides for resolution action;

(83b) 'resolution group' means***:***

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

(i) resolution entities themselves***;***

(ii) subsidiaries of ***other resolution entities; or***

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

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

"(109) ‘clearing member’ means a clearing member as defined in Article 2(14) of Regulation (EU) No 648/2012;

(110) ‘board’ means the administrative or supervisory board, or both, set up pursuant to national company law in accordance with Article 27(2) of Regulation (EU) No 648/2012".

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

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

(a) the Union parent undertaking;

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

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

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

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

(a) the resolution entities;

(b) the resolution groups.".

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

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

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

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

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

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

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

(i) other group entities that belong to the same resolution group;

(ii) other resolution groups.".

9. In Article 13(4), the following subparagraph is inserted after the first subparagraph:

"Where a group is composed of more than one resolution group, the planning of the resolution actions referred to in point (a1) of Article 12(3) shall take the form of a joint decision as referred to in the first subparagraph.".

10. In Article 13(6), the first subparagraph is replaced by the following:

"In the absence of a joint decision between the resolution authorities within four months, each resolution authority that is responsible for a subsidiary and that disagrees with the group resolution plan shall make its own decision and, where appropriate, identify the resolution entity and draw up and maintain a resolution plan for the resolution group composed of entities under its jurisdiction. Each of the individual decisions of disagreeing resolution authorities shall be fully substantiated amongst others by setting out the reasons for the disagreement with the proposed group resolution plan and by taking into account the views and reservations of the other resolution authorities and competent authorities. Each resolution authority shall notify its decision to the other members of the resolution college.".

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

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

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

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

The assessment referred to in the first subparagraph shall be performed in addition to the assessment of the resolvability of the entire group.".

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

"Where a substantive impediment to resolvability is due to a situation referred to in Article 141a(2) of Directive 2013/36/EU the institution shall, within two weeks of the date of receipt of a notification made in accordance with paragraph 1, propose to the resolution authority possible measures to ensure that the institution complies with Articles 45f or 45g and the requirement referred to in Article 128(6) of Directive 2013/36/EU.".

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

"(h1) require an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) to submit a plan to restore compliance with Articles 45f and 45g, and the requirement referred to in Article 128(6) of Directive 2013/36/EU;".

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

'(j1) require an institution or entity referred to in point(b), (c) or (d) of Article 1(1), to change the maturity profile of items referred to in Article 45b or points (a) and (b) of Article 45g(3) to ensure continuous compliance with Article 45f or Article 45g.'.

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

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

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

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

Where the impediment to resolvability of the group is due to a situation referred to in Article 141a(2) of Directive 2013/36/EU, the group-level resolution authority shall notify its assessment of that impediment to the Union parent undertaking after having consulted the resolution authority of the resolution entity and resolution authorities of its subsidiary institutions.

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

Where those impediments are due to a situation referred to in Article 141a(2) of Directive 2013/36/EU, the Union parent undertaking shall, within two weeks of the date of receipt of a notification made in accordance with paragraph 2, propose to the group-level resolution authority possible measures to address or remove those impediments.

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

5. The joint decision shall be reached within four months of submission of any observations by the Union parent undertaking at the expiry of the four-month period referred to in paragraph 3, whichever the earlier.

The joint decision concerning the impediment to resolvability due to a situation referred to in Article 141a(2) of Directive 2013/36/EU shall be reached within two weeks of submission of any observations by the Union parent undertaking in accordance with paragraph 3.

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

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

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

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

If, at the end of the relevant period referred to in paragraph 5, any resolution authority has referred a matter mentioned in paragraph 9 of this Article to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the group-level resolution authority, shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in

accordance with the decision of EBA. The relevant period referred to in paragraph 5 shall be deemed to be the conciliation period within the meaning of that Regulation. EBA shall take its decision within one month or within one week when the referral to the EBA is related to an impediment to resolvability due to a situation referred to in Article 141a(2) of Directive 2013/36/EU. The matter shall not be referred to EBA after the end of the relevant period referred to in paragraph 5 or after a joint decision has been reached. In the absence of an EBA decision, the decision of the group-level resolution authority shall apply.

7. In the absence of a joint decision, the resolution authorities of subsidiaries shall make their own decisions on the appropriate measures to be taken by subsidiaries at individual level in accordance with Article 17(4). The decision shall be fully reasoned and shall take into account the views and reservations of the other resolution authorities. The decision shall be provided to the subsidiary concerned and to the group-level resolution authority.

If, at the end of the relevant period referred to in paragraph 5, any resolution authority has referred a matter mentioned in paragraph 9 of this Article to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the resolution authority of the subsidiary shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in accordance with the decision of EBA. The relevant period referred to in paragraph 5 shall be deemed to be the conciliation period within the meaning of that Regulation. EBA shall take its decision within one month or within one week when the referral to the EBA is related to an impediment to resolvability due to a breach of Articles 45 to 45i. The matter shall not be referred to EBA after the end of the relevant period referred to in paragraph 5 or after a joint decision has been reached. In the absence of an EBA decision, the decision of the resolution authority of the subsidiary shall apply.".

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20. In Article 32(1), point (b) is replaced by the following:

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

20a. The following Article 32a is inserted:

"Article 32a

Insolvency proceedings in respect of institutions not subject to resolution action

Member States shall ensure that, in national law governing normal insolvency proceedings, an institution in relation to which all of the following apply is subject to normal insolvency proceedings:

(a) it is failing or likely to fail under point (a) of Article 32(1); and

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

(c) the resolution authority has determined that a resolution action is not in the public interest under point (c) of Article 32(1).”

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

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

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

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

(a) the entity is a resolution entity;

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

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

21 a. The following Article 33a is inserted:

Article 33a

Power to suspend certain obligations

1. Member States shall ensure that resolution authorities, after consulting the competent authority, have the power to suspend any payment or delivery

obligations pursuant to any contract to which an institution or an entity referred to in points (b), (c) or (d) of Article 1(1) is a party where all of the following conditions are met:

(a) a determination has been made that the institution or entity is failing or likely to fail under point (a) of Article 32(1);

(b) there is no immediately available private sector measure within the meaning of point (b) of Article 32(1) that would prevent the failure of the institution;

(c) the exercise of the suspension power is both:

(1) necessary to avoid the further deterioration of the financial conditions of the institution or entity referred to in points (b), (c) or (d) of Article (1)1; and either

(2)(i) necessary to reach the determination provided for in points (b) and (c) of Article 32(1); or

(2)(ii) necessary to choose the appropriate resolution actions or to ensure the effective application of one or more resolution tools.

2. The duration of the suspension referred to in paragraph 1 shall not exceed the minimum period of time that the resolution authority considers necessary for the purposes indicated in that paragraph and shall in any event not exceed two working days.

3. At the expiry of the period of suspension referred to in paragraph 2, the suspension shall be lifted.

4. Where a suspension has been made in accordance with paragraph 1 of this Article, any exercise of the power referred to in Article 69 in respect of the same entity shall not take place until at least 10 business days have elapsed following the end of the suspension referred to in paragraph 1 of this Article.

5. Any suspension pursuant to paragraph 1 of this Article shall not apply to payment and delivery obligations owed to systems or operators of systems designated in accordance with Directive 98/26/EC, nor to CCPs and third country CCPs recognised by ESMA pursuant to Article 25 of Regulation (EU) No 648/2012, nor to central banks.

6. In determining whether to exercise a power under this Article, a resolution authority shall reach a decision on the basis of an assessment of the impact that the exercise of that power might have on the orderly functioning of financial markets. The resolution authority shall determine the scope of the suspension based on the circumstances of each case. In particular, the resolution authority shall carefully assess the appropriateness of including covered deposits in the scope of the suspension.

7. Where a power to suspend payment or delivery obligations under this Article is exercised in respect of covered deposits, those deposits shall not be considered to be unavailable for the purposes of point (8) of Article 2(1) of Directive 2014/49/EU.

8. Member States may provide that where the power to suspend payment or delivery obligations is exercised in respect of covered deposits, resolution authorities shall allow depositors to withdraw an appropriate daily allowance for the period of suspension.

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

10. When payment or delivery obligations under a contract are suspended pursuant to paragraph 1, the payment or delivery obligations of the entity's counterparties under that contract shall be suspended for the same period of time.

11. For an institution or an entity referred to in points (b), (c) or (d) of Article 1(1) in respect of which the resolution plan provides that the institution or entity is to be wound up under normal insolvency proceedings, Member States may maintain or adopt rules that exceed the scope and duration of the suspension power foreseen in this Article. The conditions set out in this Article for the use of the suspension power are without prejudice to the conditions for such further-reaching national rules.

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

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

22 a. In Article 44, the following paragraphs 2a and 2b are inserted:

"2a. Member States shall prohibit the institutions or entities referred to in points (b), (c) or (d) of Article 1(1) from making any suggestion, communication or representation that a liability other than those listed in points (a) to (g) of paragraph 2 of this Article would not be subject to write-down or conversion powers. Any breach of such prohibition shall be subject to administrative penalties and other administrative measures in accordance with Articles 110 and 111.

2b. Member States shall ensure that, for the purposes of Article 25 of Directive 2014/65/EU, the debt instruments referred to in Article 108(2) are considered complex and that the provisions in that Directive concerning conflict of interest are strictly enforced in relation to the sale of such instruments to existing clients of the issuing institution. Member States shall ensure that investment firms are regarded as not fulfilling their obligations under Directive2014/65/EU where they pay or are paid any fee or commission, or provide or are provided with any non-monetary benefit or whenever they do not disclose specific internal sales guidelines in connection with the marketing of senior non-preferred debt to investors not qualifying as professionals under that Directive."

23. Article 45 is replaced by the following Articles:

"Article 45

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

1. Member States shall ensure that institutions and entities referred to in points (b),(c) and (d) of Article 1(1) meet, at all times, a requirement for own funds and eligible liabilities in accordance with Articles 45 to 45i.

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

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

   (b) the leverage ratio exposure measure of the relevant entity referred to in paragraph 1 calculated in accordance with Article 429(3) of Regulation (EU) No 575/2013.

2a. Institutions and entities referred to in points (b), (c) and (d) of Article 1(1) may meet any part of the requirement referred to in paragraph 1 of this Article with Common Equity Tier 1, Additional Tier 1 or Tier 2 instruments.

2b. By way of derogation from paragraph 1 of this Article, resolution authorities shall determine an appropriate transitional period for an institution or entity referred to in points (b), (c) and (d) of Article 1(1) to comply with the requirements in Articles 45f or 45g or with a requirement arising as a result of the application of Article 45b(3), as appropriate. The deadline for compliance with the requirements in Articles 45f or 45g or with a requirement arising as a result of the application of Article 45b(3) shall be 1 January 2024.

The resolution authority shall determine an intermediate target level for the requirements in Articles 45f or 45g or for a requirement arising as a result of the application of Article 45b(3), as appropriate. An institution or entity referred to in points (b), (c) and (d) of Article 1(1) shall comply with that intermediate target level at 1 January 2022. The intermediate target level shall ensure a linear build-up of eligible liabilities and own funds towards compliance with that requirement.

Article 45a

Exemption from the minimum requirement for own funds and eligible liabilities

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

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

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

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

Article 45b
Eligible liabilities for resolution entities

1. Eligible liabilities shall be included in the amount of own funds and eligible liabilities of resolution entities only where they satisfy the conditions referred to in ***the following Articles*** of Regulation (EU) No 575/2013***:***

(a) Article ***72a***;

(b) Article ***72b, with the exception of point (d) of paragraph 2***;

(c) Article ***72c***.

1a. By way of derogation from paragraph 1, liabilities issued before ... [date of entry into force of this amending Directive] which do not meet the conditions set out in points (g) to (o) of Article 72b(2) of Regulation (EU) No 575/2013 may be included in the amount of own funds and eligible liabilities of resolution entities included in MREL.

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

(a) a given amount of the liability arising from the debt instrument is known in advance at the time of issuance, is fixed and not affected by a derivative feature;

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

(ba) the entity has demonstrated to the satisfaction of the resolution authority that the instrument is sufficiently loss absorbing and can be bailed-in without undue complexity, taking into account the principles of prudent valuation laid down in this Directive and in Regulation (EU) No 575/2013.

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

3. ***After consulting competent authorities, r***esolution authorities ***shall assess and*** decide ***whether and to what extent*** the requirement referred to in Article 45f is met by resolution entities with instruments that meet all conditions referred to in Article 72a of Regulation (EU) No 575/2013 with a view to ***ensuring*** that the resolution entity can be resolved in a manner suitable to meet the resolution objectives.

   The resolution authority's decision under this paragraph shall contain the reasons for that decision***. Such reasons shall be based on the following***:

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

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

   The amount of own funds and eligible liabilities required by a decision under this paragraph to be met with instruments that meet all of the conditions referred to in Article 72a of Regulation (EU) No 575/2013 shall not exceed the higher of:

   (a) a risk-based ratio of 18%, representing the own funds and eligible liabilities of the institution expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) and (4) of that Regulation;

   (b) a non-risk-based ratio of 6,75%, representing the own funds and eligible liabilities of the institution expressed as a percentage of the total exposure measure referred to in Article 429(4) of that Regulation,

   subject to the provisions of Article 72b(3) and (4) of Regulation (EU) No 575/2013 and the transitional provisions specified in Article 494 of that Regulation.

   Subject to the third subparagraph, the amount of own funds and eligible liabilities required by a decision under this paragraph shall be sufficient to ensure that creditors referred to in point (b) of the second subparagraph do not

incur losses above the level of losses that they would otherwise have incurred in a winding up under normal insolvency proceedings.

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 115 concerning measures to further specify the conditions referred to in point (a) of the first subparagraph of paragraph 2.

Article 45c

Determination of the minimum requirement for own funds and eligible liabilities

1. The requirement referred to in Article 45(1) of each entity shall be determined by the resolution authority, ***in cooperation with*** the competent authority, on the basis of the following criteria:

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

   (b) the need to ensure, in appropriate cases, that the resolution entity and its subsidiaries that are institutions, but not resolution entities have sufficient eligible liabilities to ensure that, if the bail-in tool or write down and conversion powers were to be applied to them, respectively, losses could be absorbed and the total capital ratio and the leverage ratio in the form of Common Equity Tier 1, of the relevant entities can be restored to a level necessary to enable them to continue to comply with the conditions for authorisation and to carry on the activities for which they are authorised under Directive 2013/36/EU or Directive 2014/65/EU;

   (c) the need to ensure that, if the resolution plan anticipates that certain classes of eligible liabilities might be excluded from bail-in pursuant to Article 44(3) or might be transferred to a recipient in full under a partial transfer, the resolution entity has sufficient other eligible liabilities to ensure that losses could be absorbed and the capital requirements, or as applicable, the leverage ratio in the form of Common Equity Tier 1 of the resolution entity can be restored to a level necessary to enable it to continue to comply with the conditions for authorisation and to carry on the activities for which it is authorised under Directive 2013/36/EU or Directive 2014/65/EU;

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

   ▌

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

The resolution authority shall ensure that the level of the requirement referred to in Article 45(1) is proportionate to the specificities of the business and funding models of the resolution entity, taking into account:

(i) the prevalence of deposits in the funding structure;

(ii) the lack of experience in issuing debt instruments due to the limited access to cross-border and wholesale capital markets;

(iii) the fact that the institution will rely primarily on CET1 and capital instruments to meet the requirement referred to in Article 45(1).

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

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

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

Where the resolution plan provides that the entity shall be wound up under normal insolvency proceedings, the requirement referred to in Article 45(1) for that entity shall not exceed an amount sufficient to absorb losses in accordance with point (a) of the first subparagraph.

2a. Resolution authorities shall ensure that the loss absorption amount referred to in point (a) of paragraph 2 is not automatically considered to be greater than or equal to the actual level of own funds of the entity.

3. Without prejudice to the last subparagraph ***of this paragraph***, for resolution entities, ***in order to determine*** the amount referred to in paragraph 2***, the resolution authority shall calculate*** the greater of the following:

(a) the sum of:

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

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

consolidated resolution group ▌level ***after the implementation of the preferred resolution action***;

(b) the sum of:

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

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

For the purposes of points (a)(ii) and (b)(ii) of the first subparagraph, the recapitalisation amount shall also be supplemented by an additional amount that the resolution authority considers necessary to maintain sufficient market confidence after resolution, taking into account the business model, funding model, and risk profile of the resolution entity.

The amount of the buffer provided for in the second subparagraph of this paragraph shall not exceed the amount of the combined buffer requirement referred to in Article 128(6) of Directive 2013/36/EU, except for the requirement referred to in point (a) of that provision, unless a higher level is necessary to ensure that, following the event of resolution, the entity continues to meet the conditions for its authorisation for an appropriate period of time that is not longer than one year.

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

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

The resolution authority shall set the recapitalisation amounts referred to in the previous subparagraphs in accordance with the resolution actions foreseen in the resolution plan and may adjust those recapitalisation amounts to adequately reflect risks that affect resolvability arising from the resolution group's business model, funding profile and overall risk profile.

3a. Where the resolution authority assesses that an institution, if it were to fail, would be liquidated or otherwise placed under insolvency proceedings, the requirement referred to in Article 45(1) of this Directive shall not exceed the requirements referred to in points (a), (b) and (c) of Article 92(1) of Regulation (EU) No 575/2013 and in Article 104a of Directive 2013/36/EU.

4. Without prejudice to the last subparagraph ***of this paragraph***, for entities that are not themselves resolution entities, ***in order to determine*** the amount referred to in paragraph 2***, the resolution authority*** shall ***calculate*** the greater ▌of the following:

(a) the sum of:

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

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

(b) the sum of:

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

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

For the purposes of points (a)(ii) and (b)(ii) of the first subparagraph, the recapitalisation amount shall also be supplemented by an additional amount that the resolution authority considers necessary to maintain sufficient market confidence after resolution taking into account the entity's business model, funding model, and risk profile.

The amount of the buffer provided for in the second subparagraph of this paragraph shall not exceed the amount of the combined buffer requirement referred to in Article 128(6) of Directive 2013/36/EU, except for the requirement referred to in point (a) of that provision, unless a higher level is necessary to ensure that, following the event of resolution, the entity continues to meet the conditions for its authorisation for an appropriate period of time that is not longer than one year.

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

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

The resolution authority shall set the recapitalisation amounts referred to the previous subparagraphs in accordance with the resolution actions foreseen in the resolution plan and may adjust those recapitalisation amounts to adequately reflect risks that affect the recapitalisation needs arising from the entity's business model, funding profile and overall risk profile.

5. Where the resolution authority expects that certain classes of eligible liabilities might be excluded from bail-in pursuant to Article 44(3) or might be transferred to a recipient in full under a partial transfer, the requirement referred to in Article 45(1) shall not exceed an amount sufficient to:

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

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

6. The resolution authority's decision to impose a minimum requirement of own funds and eligible liabilities under this Article shall contain the reasons for that decision, including a full assessment of the elements referred to in paragraphs 2 to 5.

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

▌

8. EBA shall draft regulatory technical standards which shall further specify the criteria referred to in paragraph 1 on the basis of which the requirement for own funds and permissible liabilities is to be determined in accordance with this Article.

   EBA shall submit those draft regulatory standards to the Commission by [1 month after the entry into force].

   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 45d

Determination of the minimum requirement for own funds and eligible liabilities for entities of G-SIIs

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

   (a) ***subject to the provisions of Article 72b(3) and (4), and the transitional provisions specified in Article 494 of Regulation (EU) No 575/2013, the higher of:***

   (i) a risk-based ratio of 18%, representing the own funds and eligible liabilities of the institution expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) and (4) of that Regulation;

   (ii) a non-risk-based ratio of 6,75%, representing the own funds and eligible liabilities of the institution expressed as a percentage of the total exposure measure referred to in Article 429(4) of that Regulation; and

   (b) any additional requirement for own funds and eligible liabilities determined by the resolution authority specific to the entity in accordance with paragraph 2, which shall be met with liabilities that meet the conditions of Article 45b***(1) and (2)***.

2. The resolution authority may impose an additional requirement for own funds and eligible liabilities referred to in point (b) of paragraph 1 only:

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

   (b) to an extent that the amount of required own funds and eligible liabilities does not exceed a level that is necessary to fulfil the conditions of Article 45c.

3. Where more than one G-SII entity belonging to the same EU G-SII are resolution entities, the relevant resolution authorities shall calculate the amount referred in paragraph 2,

   (a) for each resolution entity,

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

4. The resolution authority's decision to impose an additional requirement of own funds and eligible liabilities under point (b) of paragraph 1, shall contain the reasons for that decision, including a full assessment of the elements referred to in paragraph 2.

▌

Article 45f

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

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

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

2a. For resolution groups as defined in point (b) of Article 2(1)(83b), the relevant resolution authority shall decide which resolution entities of the resolution group, identified pursuant to that provision, comply with the requirement referred to in Article 45c(3), in order to ensure that the resolution group as a whole complies with the requirement referred to in paragraphs (1) and (2) of this Article.

Article 45g

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

1. Institutions that are subsidiaries of a resolution entity and are not resolution entities themselves shall comply with the requirements laid down in ***Article*** 45c ▌ on an individual basis. A resolution authority may, after having consulted the competent authority, decide to apply the requirement laid down in this Article to an entity referred to in points (b), (c) or (d) of Article 1(1) that is a subsidiary of a resolution entity and is not a resolution entity itself.

   The requirement referred to in Article 45(1) of an entity referred to in the first subparagraph shall be determined in accordance with Article 45h and on the basis of the requirements laid down in ***Article*** 45c ▌ .

2. The requirement referred to in Article 45(1) of entities referred to in the first paragraph shall be subject to the following conditions:

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

   (b) the sum of all requirements to be applied to the resolution group's subsidiaries shall be covered by and not exceed the consolidated requirement referred to in Article 45f unless this is only due to the effects of the consolidation at the level of the resolution group in accordance with Article 45f(1).

(c) the requirement ***shall be set at between 75% and 90% of the requirements calculated in accordance with Article 45(1) and*** shall not exceed the contribution of the subsidiary to the consolidated requirement referred to in Article 45f(1).

(d) it shall fulfil the eligibility criteria provided in paragraph 3.

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

(a) liabilities that:

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

(ii) fulfil the eligibility criteria referred to in Article 72a, except for point (b) of Article 72b(2) of Regulation (EU) No 575/2013;

(iii) are ranking in normal insolvency proceedings below liabilities other than those eligible for own funds requirements that are issued to and bought by other entities than the resolution entity;

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

(b) own funds instruments issued to and bought by other entities than the resolution entity when the exercise of the power of write down or conversion in accordance with Articles 59 to 62 does not affect the control of the subsidiary by the resolution entity.

3a. By way of derogation from point (a)(ii) of paragraph 3 of this Article, liabilities issued before ... [date of entry into force of this amending Directive] which do not meet the conditions set out in points (g) to (o) of Article 72b(2) of Regulation (EU) No 575/2013 may be included in the amount of own funds and eligible liabilities.

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

(a) both the subsidiary and the resolution entity are subject to authorisation and supervision by the same ***competent authority, or are both located in***

participating Member States within the meaning of Regulation (EU) 1024/2013;

(b) the resolution entity, complies on a sub-consolidated basis with the requirement referred to in Article 45f;

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

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

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

(f) the resolution entity holds more than 50 % of the voting rights attached to shares in the capital of the subsidiary or has the right to appoint or remove a majority of the members of the management body of the subsidiary;

▌

5a. The resolution authority of an entity of the resolution group that is not a resolution entity shall consider, and thereafter may partially or fully waive, the application of paragraphs 1 to 5 to that entity where all of the following conditions are met:

(a) the resolution entity of the resolution group is the central body of a network or a cooperative group;

(b) the entity is a credit institution permanently affiliated to that central body;

(c) the members of the network are subject to a legally-based internal solidarity mechanism.

Article 45h
Procedure for determining the requirement

1. The resolution authority of the resolution entity, the group-level resolution authority, where different from the former, and the resolution authorities responsible for the subsidiaries of the resolution group on an individual basis shall do everything within their power to reach a joint decision on:

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

(b) the amount of the requirement applied to each subsidiary of the resolution entity on an individual level.

The joint decision shall ensure compliance with Article 45f and Article 45g, be fully reasoned and provided to:

(a) the resolution entity by its resolution authority;.

(b) the subsidiaries of the resolution entity by their respective resolution authorities;

(c) the Union parent undertaking of the group by the resolution authority of the resolution entity, when that Union parent undertaking is not itself a resolution entity from the same resolution group.

2. Where more than one G-SII entity belonging to the same EU G-SII are resolution entities, the resolution authorities referred to in the first subparagraph shall discuss and, where appropriate and consistent with the G-II's resolution strategy, agree on the application of Article 72e of Regulation (EU) Regulation (EU) No 575/2013 and any adjustment to minimise or eliminate the difference between the sum of the amounts referred to in point (a) of Article 45d(3) and Article 12 of Regulation (EU) No 575/2013 for individual resolution entities and the sum of the amounts referred to in point (b) of Article 45d(3) and Article 12 of Regulation (EU) No 575/2013.

Such an adjustment may be applied under the following conditions:

(a) the adjustment may be applied in respect of differences in the calculation of the total risk exposure amounts between the relevant Member States by adjusting the level of the requirement;

(b) the adjustment shall not be applied to eliminate differences resulting from exposures between resolution groups.

The sum of the amounts referred to in point (a) of Article 45d(3) and Article 12 of Regulation (EU) No 575/2013 for individual resolution entities shall not be lower than the sum of the amounts referred to in point (b) of Article 45d(3) and Article 12 of Regulation (EU) No 575/2013.

3. In the absence of such a joint decision within four months, a decision shall be taken in accordance with paragraphs 4 to 6.

4. Where a joint decision is not taken within four months because of a disagreement concerning the consolidated requirement, a decision shall be taken on the consolidated requirement by the resolution authority of the resolution entity after having duly taken into consideration:

(a) the assessment of subsidiaries performed by the relevant resolution authorities,

(b) the opinion of the group-level resolution authority, where different from the resolution authority of the resolution entity.

Where, at the end of the four-month period, any of the resolution authorities concerned has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the resolution authority of the resolution entity shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in accordance with the decision of EBA.

The decision of the EBA shall take into account points (a) and (b) of the first subparagraph.

The four-month period shall be deemed to be the conciliation period within the meaning of that Regulation. EBA shall take its decision within one month.

The matter shall not be referred to EBA after the end of the four-month period or after a joint decision has been reached.

In the absence of an EBA decision within one month, the decision of the resolution authority of the resolution entity shall apply.

5. Where a joint decision is not taken within four months because of a disagreement concerning the level of the requirement to be applied to the resolution group's subsidiaries on an individual basis, the decision shall be taken by the respective resolution authorities of the subsidiaries where all of the following conditions are fulfilled:

(a) the views and reservations expressed by the resolution authority of the resolution entity have been duly taken into account, and

(b) the opinion of the group-level resolution authority has been duly taken into account where that authority is different from the resolution authority of the resolution entity;

(c) compliance with Article 45g(2) has been assessed.

Where, at the end of the four-month period, the resolution authority of the resolution entity or the group-level resolution authority has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the resolution authorities responsible for the subsidiaries on an individual basis shall defer their decisions and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take their decisions in accordance with the decision of EBA. The decision of the EBA shall take into account points (a), (b) and (c) of the first subparagraph.

The four-month period shall be deemed to be the conciliation period within the meaning of that Regulation. EBA shall take its decision within one month.

The matter shall not be referred to EBA after the end of the four-month period or after a joint decision has been reached.

In the absence of an EBA decision within one month, the decisions of the resolution authorities of the subsidiaries shall apply.

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

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

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

   (b) a decision shall be taken on the level of the requirement to be applied to the resolution group's subsidiaries on an individual basis in accordance with paragraph 4 after:

   (i) having duly considered the decision referred to in point (a);

   (ii) having assessed the compliance with Article 45g(2).

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

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

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

9. The resolution authority of the resolution entity shall inform EBA of the minimum requirement for own funds and eligible liabilities that have been set:

   (a) at the consolidated resolution group level;

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

Article 45i

Supervisory reporting and public disclosure of the requirement

1. Entities referred to in Article 1(1) shall report to their competent and resolution authorities on the following, ***upon request and*** on at least a yearly basis:

   (a) the levels of available items that meet the conditions of Article 45b or Article 45g(3)**,** the amounts of own funds and eligible liabilities expressed in accordance with Article 45(2) following the application of deductions in accordance with Articles 72e to 72j of Regulation (EU) No 575/2013 ***and the levels of liabilities that are not excluded from the scope of Article 44 pursuant to paragraph 2 of that Article***;

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

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

   (a) the levels of available items that meet the conditions of Article 45b or 45g(3);

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

2a. Paragraphs 1 and 2 of this Article shall not apply to entities that fulfil the following conditions:

   (a) where the entity is an institution, it meets a leverage ratio of at least 10% within the meaning of Regulation (EU) No 575/2013; and

   (b) the resolution plan provides that the entity is to be wound up under normal insolvency proceedings.

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

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

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

4. ***Member States shall apply paragraph 2 from 1 January 2025***.

Article 45j
Reporting to the EBA

1. Resolution authorities, in coordination with competent authorities, shall inform EBA of the minimum requirement for own funds and eligible liabilities that have been set for each institution under its jurisdiction.

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

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

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

Article 45k

Breaches of the minimum requirement for own funds and eligible liabilities

1. Any breach of the minimum requirement for own funds and eligible liabilities by an entity shall be addressed by the relevant authorities on the basis of at least one of the following:

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

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

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

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

1a. The resolution authorities shall monitor on a quarterly basis the fulfilment of the minimum requirement for own funds and eligible liabilities and shall inform the competent authority of any breaches or other relevant events that could affect the fulfilment of the minimum requirement.

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

2a. By way of derogation from Article 141a(1) of Directive 2013/36/EC, an institution shall not be considered as failing to meet the combined buffer requirement for the purposes of Article 141 of that Directive where it meets the conditions in points (a) and (b) of Article 141a(2) of that Directive, where the failure to meet that requirement concerns only the minimum requirement for own funds and eligible liabilities as specified in Articles 45c and 45d of this Directive, and where the failure to meet that requirement does not last longer than 12 months.

* OJ please insert date: 12 months after the date of entry into force of this Directive.

Article 45l
Reports

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

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

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

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

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

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

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

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

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

   (v) financial innovation;

   (vi) the prevalence of contractual bail-in instruments, and the nature and marketability of such instruments;

   (vii) the risk-taking behaviour of institutions;

   (viii) the level of asset encumbrance of institutions;

   (ix) the actions taken by institutions to comply with minimum requirements, and in particular the extent to which minimum requirements have been met by asset deleveraging, long-term debt issuance and capital raising; and

   (x) the level of lending by credit institutions, with a particular focus on lending to micro, small and medium-sized enterprises, local authorities,

regional governments and public sector entities and on trade financing, including lending under official export credit insurance schemes;

(b) the interaction of the minimum requirements with the own funds requirements, leverage ratio and the liquidity requirements laid down in Regulation (EU) No 575/2013 and in Directive 2013/36/EU;

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

3. The report referred to in paragraph 1 shall cover two calendar years and shall be communicated to the Commission by 30 September of the calendar following the last calendar year covered by the report. "

23a. In Article 48, the following paragraph 6a is added:

"6a. In order to enable the effective application of the bail-in tool and/or the write down or conversion powers without infringing the general principle set forth in Article 34(1)(g), Member States shall ensure that in national law governing normal insolvency proceedings the capital instruments (Common Equity Tier 1 instruments, Additional Tier 1 instruments and Tier 2 instruments) rank in insolvency below the ranking provided for the rest of subordinated claims not qualifying as capital instruments."

24. Article 55 is replaced by the following:

"Article 55
Contractual recognition of bail-in

1. Member States shall require institutions and entities referred to in points (b), (c) and (d) of Article 1(1) to include a contractual term by which the creditor or party to the agreement or instrument creating the liability recognises that liability may be subject to the write-down and conversion powers and agrees to be bound by any reduction of the principal or outstanding amount due, conversion or cancellation that is effected by the exercise of those powers by a resolution authority, provided that that liability complies with all of the following conditions:

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

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

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

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

1a. Paragraph 1 of this Article shall not apply to liabilities of institutions or entities in respect of which the requirement under Article 45(1) equals the loss absorption amount as defined under point (a) of Article 45c(2), provided those liabilities are not counted towards that requirement.

2. The requirement referred to in paragraph 1 may not apply where ***either***:

   (a) ▌the liabilities or instruments ▌can be subject to write down and conversion powers by the resolution authority of a Member State pursuant to the law of the third country or to a binding agreement concluded with that third country; ***or, both***

   (b) ▌it is legally ▌or ***otherwise*** impracticable for an institution or entity referred to in point (b), (c) or (d) of Article 1(1) to include such a contractual term in certain liabilities; ***and***

   (c) ***such a disapplication of*** the requirement referred to in paragraph 1 for ***those*** liabilities does not impede the resolvability of the institutions ***or entity*** referred to in points (b), (c) and (d) of Article 1(1).

   The liabilities referred to in points (b) and (c) shall not include ▌Additional Tier 1 instruments, and Tier 2 instruments. Moreover, they shall be senior to the liabilities ***that meet the conditions laid down in points (a), (b) and (c) of Article 108(2) and, if they are debt instruments, they shall be secured. The sum of liabilities subject to an exemption under points (b) and (c) shall not exceed 15% of the total*** liabilities ***which are both senior to the liabilities that meet the conditions laid down in points (a), (b) and (c) of Article 108(2), and meet the conditions of points (a), (b) and (d) of paragraph 1 of this Article***.

   Liabilities ***that fail to include the contractual term required by paragraph 1 or for*** which, in accordance with points (b) and (c), ▌the contractual term referred to in paragraph 1 ***is not required,*** shall not be counted towards the minimum requirement for own funds and eligible liabilities.

   Resolution authorities shall monitor the use of the exemption from contractual recognition under points (b) and (c) of the first subparagraph. For that purpose, they shall have the right to inspect contracts for which an institution or entity has determined that points (b) and (c) of the first subparagraph apply.

   Where resolution authorities consider that the conditions for the exemption under points (b) and (c) of the first subparagraph are not met, they may address a decision to the institution or entity concerned and require it to amend its policies concerning the application of the exemption from contractual recognition of bail-in.

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

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

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

   EBA shall submit those draft regulatory technical standards to the Commission by***…[....one year after 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 in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

6. EBA shall develop draft regulatory technical standards in order to specify the conditions under which it would be legally or ***otherwise*** impracticable for an institution or entity referred to in point (b), (c) or (d) of Article 1(1) to include the contractual term referred to paragraph 1 in certain liabilities, and under which a ***disapplication of*** the requirement referred to in paragraph 1 would not impede the resolvability of that institution or entity.

   EBA shall submit those draft regulatory technical standards to the Commission ***by ..... [....one year after 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 in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

6a. The Commission is empowered to adopt delegated acts in accordance with Article 115 concerning the amending of the percentage, specified in the second subparagraph of paragraph 2 of this Article, of the sum of liabilities subject to an exemption under points (b) and (c) of the first subparagraph of paragraph 2 of this Article."

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

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

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

(a) independently of resolution action; or

(b) in combination with a resolution action, where the conditions for resolution specified in Articles 32 and 33 are met.

The power to write down or convert eligible liabilities independently of resolution action may be exercised only in relation to eligible liabilities that meet the conditions referred to in Article 45g(3)(a), except the condition related to the remaining maturity of liabilities.".

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

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

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

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

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

> "2. Where the principal amount of a relevant capital instrument or a eligible liability is written down:
>
> (a) the reduction of that principal amount shall be permanent, subject to any write up in accordance with the reimbursement mechanism in Article 46(3);
>
> (b) no liability to the holder of the relevant capital instrument and liability referred to in Article 59(1) shall remain under or in connection with that amount of the instrument, which has been written down, except for any liability already accrued, and any liability for damages that may arise as a result of an appeal challenging the legality of the exercise of the write-down power;
>
> (c) no compensation is paid to any holder of the relevant capital instruments and liabilities referred to in Article 59(1) other than in accordance with paragraph 3.".

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

34. In Article 69(4), point (b) is replaced by the following:

> '(b) payment and delivery obligations owed to systems or operators of systems designated for the purposes of Directive 98/26/EC, central counterparties, third country central counterparties recognised by ESMA pursuant to Article 25 of Regulation (EU) No 648/2012, and central banks;'.

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

> "2. Resolution authorities shall not exercise the power referred to in paragraph 1 in relation to any security interest of systems or operators of systems designated for the purposes of Directive 98/26/EC, central counterparties and third country central counterparties recognised by ESMA pursuant to Article

25 of Regulation (EU) No 648/2012, and central banks over assets pledged or provided by way of margin or collateral by the institution under resolution;".

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

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

37. In Article 88, "Article 45" is replaced with the "Articles 45 to 45i".

38. In Article 88(1), the first subparagraph is replaced with the following:

"Subject to Article 89, group-level resolution authorities shall establish resolution colleges to carry out the tasks referred to in Articles 12, 13, 16, 18, 45 to 45i, 91 and 92, and, where appropriate, to ensure cooperation and coordination with third-country resolution authorities.".

39. Article 89 is replaced by the following:

"Article 89
European resolution colleges

1. Where a third country institution or third country parent undertaking has Union subsidiaries or Union parent undertakings, established in two or more Member States, or two or more Union branches that are regarded as significant by two or more Member States, the resolution authorities of Member States where those entities are established or where those significant branches are located shall establish one single European resolution college.

2. The European resolution college referred to in paragraph 1 shall perform the functions and carry out the tasks specified in Article 88 with respect to the entities referred in paragraph 1and, in so far as those tasks are relevant, to branches.

The tasks to be performed by the European resolution college as referred to in paragraph 2 shall include the setting of the requirement referred to in Articles 45 to 45i.

When setting the requirement referred to in Articles 45 to 45i, members of the European resolution college shall take into consideration the global resolution strategy, if any, adopted by third-country authorities.

Where in accordance with the global resolution strategy Union subsidiaries or a Union parent undertaking and its subsidiary institutions are not resolution entities and the members of the European resolution college agree with that strategy, Union subsidiaries or the Union parent undertaking shall comply with the requirement of Article 45g(1) on a consolidated basis by issuing eligible

instruments referred to in Article 45g(3)(a) and (b) to the third-country resolution entity.

3. Where only one Union parent undertaking holds all Union subsidiaries of a third country institution or third country parent undertaking, the European resolution college shall be chaired by the resolution authority of the Member State where the Union parent undertaking is established.

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

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

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

40. Article 110 is amended as follows:

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

‘Without prejudice to the right of Member States to provide for and impose criminal penalties, Member States shall lay down rules on administrative penalties and other administrative measures applicable where the national provisions transposing this Directive or the provisions of Regulation [on the recovery and resolution of CCPs] have not been complied with, and shall take all measures necessary to ensure that they are implemented;

(b) paragraph 2 is replaced by the following:

‘2. Member States shall ensure that, where obligations referred to in the first paragraph apply to institutions, financial institutions or Union parent undertakings within the meaning of this Directive or to CCPs, clearing members of CCPs or parent undertakings within the meaning of Regulation [on the recovery and resolution of CCPs] or, in the event of an infringement, administrative penalties can be applied, subject to the conditions laid down in national law, to the members of the management body within the meaning of this Directive or to the members of the board within the meaning of Regulation [on the recovery and resolution of CCPs], and to other natural persons who under national law are responsible for the infringement.’;

(c) in paragraph 3, the first sentence is replaced by the following:

‘The powers to impose administrative penalties provided for in this Directive Regulation shall be attributed to resolution authorities or, where different, to competent authorities, depending on the type of infringement. ’;

41. Article 111 is amended as follows:

(a) in paragraph 1, points (a), (b) and (c) are replaced by the following:

‘(a) failure to draw up, maintain and update recovery plans and group recovery plans, infringing Article 5 or 7 of this Directive or Article 9 of Regulation [on the recovery and resolution of CCPs];

(b) failure to notify an intention to provide group financial support to the competent authority infringing Article 25 of this Directive;

(c) failure to provide all the information necessary for the development of resolution plans infringing Article 11 of this Directive or Article 14 of Regulation [on the recovery and resolution of CCPs];

(ca) making any suggestion, communication or representation that a liability other than those listed in points (a) to (g) of Article 44(2) would not be subject to write-down or conversion powers, thereby infringing paragraph 2a of that Article;

(d) failure of the management body of an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) of this Directive or of the board of a CCP within the meaning of Regulation [on the recovery and resolution of CCPs] to notify the competent authority when the institution or entity referred to in point (b), (c) or (d) of Article 1(1) of this Directive or the CCP is failing or likely to fail, infringing Article 81 of this Directive or Article 68(1) of Regulation [on the recovery and resolution of CCPs].’;

(b) paragraph 2 is amended as follows:

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

‘(a) a public statement which indicates the natural person, institution, financial institution, Union parent undertaking, CCP or other legal person responsible and the nature of the infringement;’;

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

‘(c) a temporary ban against any member of the management body or senior management of the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) of this Directive or against the board of the CCP or any other natural person, who is held responsible, to exercise functions in institutions or entities referred to in point (b), (c) or (d) of Article 1(1) of this Directive or in CCPs; ’

42. Article 112 is amended as follows:

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

'Member States shall ensure that resolution authorities and competent authorities shall publish on their official website at least any administrative penalties imposed by them for infringing the national provisions transposing this Directive or the provisions laid down in Regulation [on the recovery and resolution of CCPs] where such penalties have not been the subject of an appeal or where the right of appeal has been exhausted.';

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

'(c) where publication would cause, insofar as it can be determined, disproportionate damage to the institutions or entities referred to in point (b), (c) or (d) of Article 1(1) of this Directive or to the CCP or natural persons involved.';

(c) paragraph 4 is amended as follows:

(i) the first sentence is replaced by the following:

'By 3 July 2016, EBA shall submit a report to the Commission on the publication by Member States, on an anonymous basis as provided for under paragraph 2, of penalties for non-compliance with the national provisions transposing this Directive and in particular whether there have been significant divergences between Member States in that respect.';

(ii) the following subparagraph is added:

'By […], ESMA shall submit a similar report to the Commission as regards the publication of penalties for non-compliance with the provisions laid down in Regulation [on the recovery and resolution of CCPs]';

43. Article 113 is replaced by the following:

"Article 113
Maintenance of central databases by EBA and ESMA

1. Subject to the professional secrecy requirements referred to in Article 84, resolution authorities and competent authorities shall inform EBA of all administrative penalties imposed by them under Article 111 for infringements of the national provisions transposing this Directive and of the status of that appeal and outcome thereof.

   Subject to the professional secrecy requirements referred to in Article 71 of Regulation [on the recovery and resolution of CCPs], resolution authorities and competent authorities shall inform ESMA accordingly as regards administrative penalties imposed for infringements of that Regulation.

2. EBA and ESMA shall maintain central databases of penalties reported to them solely for the purpose of exchange of information between resolution authorities

which shall be accessible to resolution authorities only and shall be updated on the basis of the information provided by resolution authorities.

3. EBA and ESMA shall maintain central databases of penalties reported to them solely for the purpose of exchange of information between competent authorities which shall be accessible to competent authorities only and shall be updated on the basis of the information provided by competent authorities.

4. EBA and ESMA shall maintain webpages with links to each resolution authority's publication of penalties and each competent authority's publication of penalties under Article 112 and indicate the period for which each Member State publishes penalties.".

Article 2

Amendment to Directive 98/26/EC

Article 1 is amended as follows:

(a) the following point is inserted:

"(aa) any third country system as defined in point (ma) of Article 2, governed by the law of a country other than a Member State;"

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

"(b) any participant in such systems;"

In Article 2, point (c) is replaced by the following:

"(c) 'central counterparty' or 'CCP' shall mean a CCP as defined in point (1) of Article 2 of Regulation (EC) No 648/2012;".

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

(f) 'participant' shall mean an institution, a central counterparty, a settlement agent, a clearing house, a system operator or a clearing member of a CCP authorised pursuant to Article 17 of Regulation (EU) No 648/2012;".

In Article 2, the following point is added:

"(ma) 'third country system' means a system established in a country other than a Member State that meets the conditions set out in Article 10(2a)."

In Article 10, the following paragraph (2a) is added:

"A third country system, and the system operator thereof, shall be included in the scope of this Directive pursuant to paragraph 1 where all of the following conditions are met:

(a) at least one actual or potential direct participant in the third country system has its head office in the Union;

(b) in the case of a third country system for the clearing and settlement of financial instruments, ESMA is satisfied as to the adequacy of the rules applying to that third country system;

(c) in the case of a third country system for the processing of payments, a cooperative oversight arrangement has been established between the relevant Union central bank of issue of each Union currency processed in that system and the competent authorities supervising that system in the third country concerned.

The central bank of issue shall notify ESMA of the oversight arrangement referred to in this point.

ESMA shall publish on its website a list of third country systems included in the scope of this Directive."

Article 3

Amendments to Directive 2002/47/EC

Directive 2002/47/EC is amended as follows:

In Article 1, paragraph 6 is replaced by the following:

'6. Articles 4 to 7 of this Directive shall not apply to any restriction on the enforcement of financial collateral arrangements or any restriction on the effect of a security financial collateral arrangement, any close out netting or set-off provision that is imposed by virtue of Title IV, Chapter V or VI of Directive 2014/59/EU of the European Parliament and of the Council, or of Title V, Chapter IV of Regulation (EU) No [CCP recovery and resolution] or to any such restriction that is imposed by virtue of similar powers in the law of a Member State to facilitate the orderly resolution of any entity referred to in point (c)(iv) of paragraph 2 which is subject to safeguards at least equivalent to those set out in Title IV, Chapter VII of Directive 2014/59/EU and in Title V, Chapter V of Regulation (EU) No [CCP recovery and resolution].'

Article 9a is replaced by the following:

'Article 9a

Directives 2008/48/EC, Directive 2014/59/EU and Regulation (EU) No [CCP recovery and resolution]

This Directive shall be without prejudice to Directives 2008/48/EC, Directive 2014/59/EU and Regulation (EU) No [on CCP recovery and resolution].'

Article 4

Amendment to Directive 2004/25/EC

In Article 4, paragraph 5 is replaced by the following:

"5. Member States shall ensure that Article 5(1) of this Directive does not apply in the case of use of resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU of the European Parliament and of the Council or in Title V of Regulation (EU) No [CCP recovery and resolution]".

Article 5

Amendment to Directive 2005/56/EC

In Article 3, paragraph 4 is replaced by the following:

"4. Member States shall ensure that this Directive does not apply to the company or companies that are the subject of the use of resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU of the European Parliament and of the Council or in Title V of Regulation (EU) No [CCP recovery and resolution]".

Article 6

Amendments to Directive 2007/36/EC

Directive 2007/36/EU is amended as follows:

(a) In Article 1, paragraph 4 is replaced by the following:

"4. Member States shall ensure that this Directive does not apply in the case of the use of resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU of the European Parliament and of the Council or in Title V of Regulation (EU) No [CCP recovery and resolution]".

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

‘5. Member States shall ensure that for the purposes of Directive 2014/59/EU and Regulation (EU) No [CCP recovery and resolution] the general meeting may, by a majority of two-thirds of the votes validly cast, issue a convocation to a general meeting, or modify the statutes to prescribe that a convocation to a general meeting is issued, at shorter notice than as laid down in paragraph 1 of this Article, to decide on a capital increase, provided that that meeting does not take place within ten calendar days of the convocation, that the conditions of Article 27 or 29 of Directive 2014/59/EU or of Article 19 of Regulation (EU)

No [CCP recovery and resolution] are met, and that the capital increase is necessary to avoid the conditions for resolution laid down in Articles 32 and 33 of Directive 2014/59/EU or in Article 22 of Regulation (EU) No [CCP recovery and resolution].'

Article 7

Amendment to Directive 2011/35/EU

In Article 1, paragraph 4 is replaced by the following:

"4. Member States shall ensure that this Directive does not apply to the company or companies which are the subject of the use of resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU of the European Parliament and of the Council or in Title V of Regulation (EU) No [CCP recovery and resolution]".

Article 8

Amendment to Directive 2012/30/EU

In Article 45, paragraph 4 is replaced by the following:

"4. Member States shall ensure that Article 10, Article 19(1), Article 29(1), (2) and (3), the first subparagraph of Article 31(2), Articles 33 to 36 and Articles 40, 41 and 42 of this Directive do not apply in the case of use of the resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU of the European Parliament and of the Council or in Title V of Regulation (EU) No [CCP recovery and resolution].".

Article 9
Transposition

1. Member States shall adopt and publish by [date 12 months from the date of entry into force] the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those measures.

   Member States shall apply those measures from [date – 6 months from transposition date].

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

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

Article 10
Entry into force

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

Articles 1(1), 1(40), 1(41), 1(42), 1(43), 2, 3, 4, 5, 6, 7 and 8 shall enter into force on [date - when the Regulation [CCP Recovery and Resolution enters into force].

Article 11
Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament	For the Council
The President	The President

PROCEDURE – COMMITTEE RESPONSIBLE

Title	Loss-absorbing and recapitalisation capacity of credit institutions and investment firms and amending Directive 98/26/EC, Directive 2002/47/EC, Directive 2012/30/EU, Directive 2011/35/EU, Directive 2005/56/EC, Directive 2004/25/EC and Directive 2007/36/EC			
References	COM(2016)0852 – C8-0481/2016 – 2016/0362(COD)			
Date submitted to Parliament	23.11.2016			
Committee responsible Date announced in plenary	ECON 1.2.2017			
Committees asked for opinions Date announced in plenary	EMPL 1.2.2017	ITRE 1.2.2017	JURI 1.2.2017	
Not delivering opinions Date of decision	EMPL 15.12.2016	ITRE 12.1.2017	JURI 25.1.2017	
Rapporteurs Date appointed	Gunnar Hökmark 24.11.2016			
Discussed in committee	28.2.2017	25.4.2017	3.5.2017	11.12.2017
	22.2.2018			
Date adopted	19.6.2018			
Result of final vote	+: –: 0:	38 14 5		
Members present for the final vote	Gerolf Annemans, Burkhard Balz, Hugues Bayet, Pervenche Berès, David Coburn, Thierry Cornillet, Esther de Lange, Markus Ferber, Jonás Fernández, Sven Giegold, Neena Gill, Roberto Gualtieri, Brian Hayes, Gunnar Hökmark, Cătălin Sorin Ivan, Petr Ježek, Barbara Kappel, Wolf Klinz, Georgios Kyrtsos, Philippe Lamberts, Werner Langen, Olle Ludvigsson, Ivana Maletić, Fulvio Martusciello, Marisa Matias, Gabriel Mato, Alex Mayer, Bernard Monot, Caroline Nagtegaal, Luděk Niedermayer, Stanisław Ożóg, Sirpa Pietikäinen, Anne Sander, Alfred Sant, Martin Schirdewan, Pedro Silva Pereira, Peter Simon, Theodor Dumitru Stolojan, Kay Swinburne, Paul Tang, Ramon Tremosa i Balcells, Ernest Urtasun, Marco Valli, Miguel Viegas, Jakob von Weizsäcker, Marco Zanni			
Substitutes present for the final vote	Andrea Cozzolino, Ashley Fox, Doru-Claudian Frunzulică, Syed Kamall, Alain Lamassoure, Thomas Mann, Luigi Morgano, Michel Reimon, Joachim Starbatty			
Substitutes under Rule 200(2) present for the final vote	Christofer Fjellner, Agnieszka Kozłowska-Rajewicz			
Date tabled	25.6.2018			

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

38	+
ALDE	Thierry Cornillet, Petr Ježek, Wolf Klinz, Ramon Tremosa i Balcells
ENF	Barbara Kappel
PPE	Burkhard Balz, Markus Ferber, Christofer Fjellner, Brian Hayes, Gunnar Hökmark, Agnieszka Kozłowska-Rajewicz, Georgios Kyrtsos, Alain Lamassoure, Esther de Lange, Werner Langen, Ivana Maletić, Thomas Mann, Fulvio Martusciello, Gabriel Mato, Luděk Niedermayer, Sirpa Pietikäinen, Anne Sander, Theodor Dumitru Stolojan
S&D	Pervenche Berès, Andrea Cozzolino, Jonás Fernández, Doru-Claudian Frunzulică, Neena Gill, Roberto Gualtieri, Cătălin Sorin Ivan, Olle Ludvigsson, Alex Mayer, Luigi Morgano, Alfred Sant, Pedro Silva Pereira, Peter Simon, Paul Tang, Jakob von Weizsäcker

14	-
ALDE	Caroline Nagtegaal
ECR	Ashley Fox, Syed Kamall, Stanisław Ożóg, Joachim Starbatty, Kay Swinburne
EFDD	David Coburn, Bernard Monot, Marco Valli
ENF	Gerolf Annemans, Marco Zanni
GUE/NGL	Marisa Matias, Martin Schirdewan, Miguel Viegas

5	0
S&D	Hugues Bayet
VERTS/ALE	Sven Giegold, Philippe Lamberts, Michel Reimon, Ernest Urtasun

Key to symbols:
+ : in favour
- : against
0 : abstention