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INFORMATION NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) No 806/2014 as regards loss-absorbing and Recapitalisation Capacity for credit institutions and investment firms - Outcome of the European Parliament's first reading (Strasbourg, 15 to 18 April 2019)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

¹ OJ C 145, 30.6.2007, p. 5.

In this context, the rapporteur, Gunnar HÖKMARK (EPP, SE), presented a compromise amendment (amendment 2) to the proposal for a Regulation on behalf of the Committee on Economic and Monetary Affairs. This amendment had been agreed during the informal contacts referred to above.

II. VOTE

When it voted on 16 April 2019, the plenary adopted the compromise amendment (amendment 2) to the proposal for a Regulation. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto².

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

² The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in *bold and italics*. The symbol "■" indicates deleted text.

Loss-absorbing and recapitalisation capacity of credit institutions and investment firms (Regulation)*I**

European Parliament legislative resolution of 16 April 2019 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 806/2014 as regards loss-absorbing and Recapitalisation Capacity for credit institutions and investment firms (COM(2016)0851 – C8-0478/2016 – 2016/0361(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2016)0851),
 - 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 (C8-0478/2016),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the provisional agreement approved by the committee responsible under Rule 69f(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 15 February 2019 to approve Parliament’s position, in accordance with Article 294(4) 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 (A8-0216/2018),
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.

Position of the European Parliament adopted at first reading on 16 April 2019 with a view to the adoption of Regulation (EU) 2019/... of the European Parliament and of the Council amending Regulation (EU) No 806/2014 as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms

(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 Bank¹,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with the ordinary legislative procedure³,

¹ *OJ C 34, 31.1.2018, p. 17.*

² *OJ C 209, 30.6.2017, p. 36.*

³ Position of the European Parliament of 16 April 2019.

Whereas:

- (1) On 9 November 2015, the Financial Stability Board published the Total Loss-Absorbing Capacity (TLAC) Term Sheet ('the TLAC standard'), which was endorsed by the G20 in November 2015. The **objective of the TLAC standard is to ensure that** global systemically important banks, referred to as global systemically important institutions ('G-SIIs') in the Union framework, **have the loss-absorbing and recapitalisation capacity necessary to help ensure that in, and immediately following, a resolution, those institutions can continue to perform critical functions without putting taxpayers' funds, that is public funds or financial stability at risk.** In its Communication of 24 November 2015, "Towards the completion of the Banking Union", the Commission committed *itself* to bringing forward a legislative proposal by the end of 2016 that would enable the TLAC standard to be implemented in Union law by the internationally agreed deadline of 2019.

- (2) The implementation of the TLAC standard in Union law needs to take *into* account the existing institution-specific minimum requirement for own funds and eligible liabilities ('MREL') that applies to all credit institutions and investment firms (institutions) established in the Union, as well as to any other entity as laid down in Directive 2014/59/EU of the European *Parliament* and of the Council¹ (entities). As the TLAC standard and the MREL pursue the same objective of ensuring that institutions and entities established in the Union have sufficient loss-absorbing and recapitalisation 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 575/2013², while the institution-specific add-on for G-SIIs and the institution-specific requirement for non-G-SIIs, referred to as the MREL, should be addressed through targeted amendments to Directive 2014/59/EU and Regulation (EU) No 806/2014 of the European Parliament and of the Council³. The provisions of Regulation (EU) No 806/2014, as amended by this Regulation, on the loss-absorbing and recapitalisation capacity of institutions and entities should be applied in a manner consistent with those in Regulation (EU) No 575/2013 and in Directives 2013/36/EU of the European Parliament and of the Council⁴ and 2014/59/EU.

¹ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

² 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).

³ 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),

⁴ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

- (3) The absence of harmonised rules in the Member States participating in the Single Resolution Mechanism (SRM) in respect of the implementation of the TLAC standard creates additional costs and legal uncertainty ■ and makes the application of the bail-in tool for cross-border institutions and entities more difficult. The absence of harmonised Union rules also results in distortions of competition in the internal market given that the costs for institutions and entities to comply with the existing requirements and the TLAC standard might differ considerably across the Member States participating in the SRM. It is therefore necessary to remove those obstacles to the functioning of the internal market and to avoid distortions of competition resulting from the absence of harmonised rules in respect of the implementation of the TLAC standard. Consequently, the appropriate legal basis for this Regulation is Article 114 of the Treaty on the Functioning of the European Union.

- (4) In line with the TLAC standard, Regulation (EU) No 806/2014 should continue to recognise both the Single Point of Entry (SPE) resolution strategy and the Multiple Point of Entry (MPE) resolution strategy. Under the SPE resolution strategy, only one group entity, usually the parent undertaking, is resolved, whereas other group entities, usually operating subsidiaries, are not put under resolution but transfer their losses and recapitalisation needs to the entity to be resolved. Under the MPE resolution strategy, more than one group entity might be resolved. A clear identification of entities to be resolved ('resolution entities'), **that is the entities to which resolution actions could be applied, together with** subsidiaries that belong to them ('resolution groups'), is important in order 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 institutions and entities should apply. It is therefore necessary to introduce the concepts of 'resolution entity' and 'resolution group' and to amend Regulation (EU) No 806/2014 as regards group resolution planning, in order to explicitly require the Single Resolution Board (the 'Board') to identify the resolution entities and resolution groups within a group and to appropriately consider the implications of any planned **■** action within the group to ensure effective group resolution.

- (5) The Board should ensure that institutions and entities have sufficient loss-absorbing and recapitalisation capacity to ensure a smooth and fast absorption of losses and recapitalisation in the event of resolution, with a minimum impact on taxpayers and financial stability. That should be achieved through compliance by institutions with an institution-specific MREL as set out in Regulation (EU) No 806/2014.
- (6) In order to align denominators that measure the loss-absorbing and recapitalisation capacity of institutions and entities with those provided for in the TLAC standard, the MREL should be expressed as a percentage of the total risk exposure amount and of the total exposure measure of the relevant institution or entity, and institutions or entities should meet simultaneously the levels resulting from the two measurements.

- (7) ***In order to ensure a level playing field for institutions and entities*** established in the Union, ***including on a global level, 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, ***but subject to*** the complementary adjustments and requirements introduced in this Regulation. In particular, certain debt instruments with an embedded derivative component, such as certain structured notes, should be eligible, ***subject to certain conditions***, to meet the MREL to the extent that they have a fixed ***or increasing*** principal amount repayable at maturity ***that is known in advance*** while only an additional return is linked to that derivative component and depends on the performance of a reference asset. In view of ***those conditions***, those debt instruments ***are expected to*** be highly loss-absorbing and easy to bail-in in resolution. ***Where institutions or entities hold own funds in excess of own funds requirements, that fact should not in itself affect decisions concerning the determination of the MREL. Moreover, it should be possible for institutions and entities to meet any part of their MREL with own funds.***

- (8) The scope of liabilities *used* to meet the MREL includes, in principle, all liabilities resulting from claims arising from *ordinary* unsecured ■ creditors (non-subordinated liabilities) unless they do not meet specific eligibility criteria set out in this Regulation. To enhance the resolvability of institutions and entities through an effective use of the bail-in tool, the Board should be able to require that the *MREL* is met with *own funds and* other subordinated liabilities, in particular where there are clear indications that bailed-in creditors are likely to bear losses in resolution that would exceed the losses that they would incur under normal insolvency proceedings. *The Board should assess the need to require institutions and entities to meet the MREL with own funds and other subordinated liabilities where the amount of liabilities excluded from the application of the bail-in tool reaches a certain threshold within a class of liabilities that includes MREL eligible liabilities.*

Institutions and entities should meet the MREL with *own funds and other* subordinated liabilities to the extent that is necessary to prevent their creditors from incurring losses that are greater than those that creditors would otherwise incur under normal insolvency proceedings.

(9) Any subordination of debt instruments requested by the Board 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. *For resolution entities of G-SIIs, resolution entities of resolution groups with assets above EUR 100 billion (top-tier banks), and for resolution entities of resolution groups with assets below EUR 100 billion that are considered by the national resolution authority as being likely to pose a systemic risk in the event of failure, taking into account the prevalence of deposits and the absence of debt instruments in the funding model, limited access to capital markets for eligible liabilities and reliance on Common Equity Tier 1 capital to meet the MREL, the Board should be able to require that a part of the MREL equal to the level of loss absorption and recapitalisation referred to in Article 27(7) of Regulation EU 806/2014 as amended by this Regulation is met with own funds and other subordinated liabilities, including own funds used to comply with the combined buffer requirement set out in Directive 2013/36/EU.*

(10) *At the request of a resolution entity, the Board should be able to reduce the part of the MREL required to be met with own funds and other subordinated liabilities up to a limit that represents the proportion of the reduction possible under Article 72b(3) of Regulation (EU) No 575/2013 in relation to the TLAC minimum requirement laid down in that Regulation., The Board should be able to require, in accordance with the principle of proportionality, that the MREL is met with own funds and other subordinated liabilities to the extent that the overall level of the required subordination in the form of own funds and eligible liabilities items due to the obligation of institutions and entities to comply with the TLAC minimum requirement, the MREL and, where applicable, the combined buffer requirement under Directive 2013/36/EU, does not exceed the greater of the level of loss absorption and recapitalisation referred to in Article 27(7) of Regulation (EU) 806/2014 as amended by this Regulation or the formula set out in this Regulation based on the prudential requirements under Pillar 1 and Pillar 2 and the combined buffer requirement.*

- (11) *For specific top-tier banks, the Board should, subject to conditions to be assessed by the Board, limit the level of the minimum subordination requirement to a certain threshold, taking also into account the possible risk of disproportionately impacting the business model of those institutions. That limitation should be without prejudice to the possibility of setting a subordination requirement above this limit through the requirement for subordination under Pillar 2, subject also to the conditions applying to Pillar 2, on the basis of alternative criteria, namely impediments to resolvability, or the feasibility and credibility of the resolution strategy, or the riskiness of the institution.*

- (12) The MREL should allow institutions and entities to absorb losses expected in resolution *or at the point of non-viability, as appropriate*, and to be recapitalised *after the implementation of actions provided for in the resolution plan or after the resolution of the resolution group*. The Board should, on the basis of the resolution strategy they have chosen, duly justify the imposed level of the MREL **■** and *should, without undue delay, review that level to reflect any changes in* the level of the requirement referred to in Article 104a of Directive 2013/36/EU **■**. As such, the imposed level of the MREL should be **■** the sum of the amount of the losses expected in resolution that correspond to the institution's or entity's own funds requirements and the recapitalisation amount that allows the institution or entity post-resolution, *or after the exercise of write-down or conversion powers*, to meet its own funds requirements necessary for being authorised to pursue its activities under the chosen resolution strategy. The Board should **■** adjust *downwards or upwards* the recapitalisation amounts *for any changes resulting from the actions set out in the resolution plan*. (13) *The Board should be able to increase the recapitalisation amount to ensure sufficient market confidence in the institution or entity after the implementation of actions set out in the resolution plan. The requested level of the market confidence buffer should enable the institution or entity to continue to meet the conditions for authorisation for an appropriate period, including by allowing the institution or entity to cover the costs related to the restructuring of its activities following resolution, and to sustain sufficient market confidence. The market confidence buffer should be set by reference to part of the combined buffer requirement under Directive 2013/36/EU. The Board should adjust downwards the level of the market confidence buffer if a lower level is sufficient to ensure sufficient market confidence or should adjust upwards that level where a higher level is necessary to ensure that, following the actions set out in the resolution plan, the entity continues to meet the conditions for its authorisation for an appropriate period, and to sustain sufficient market confidence.*

- (14) *In line with Commission Delegated Regulation (EU) 2016/1075¹ the Board should examine the investor base of an individual institution's or entity's MREL instruments. If a significant part of an institution's or entity's MREL instruments is held by retail investors that might not have received an appropriate indication of relevant risks, that could in itself constitute an impediment to resolvability. In addition, if a large part of an institution's or entity's MREL instruments is held by other institutions or entities, the systemic implications of a write-down or conversion could also constitute an impediment to resolvability. Where the Board finds an impediment to resolvability resulting from the size and nature of a certain investor base, it should be able to recommend to an institution or entity that it address that impediment.*
- (15) To enhance their resolvability, the Board should be able to impose an institution-specific MREL on G-SIIs in addition to the TLAC minimum requirement set out in Regulation (EU) No 575/2013. That institution-specific MREL *should* be imposed if the TLAC minimum requirement is not sufficient to absorb losses and to recapitalise a G-SII under the chosen resolution strategy.

¹ Commission Delegated Regulation (EU) 2016/1075 of 23 March 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the content of recovery plans, resolution plans and group resolution plans, the minimum criteria that the competent authority is to assess as regards recovery plans and group recovery plans, the conditions for group financial support, the requirements for independent valuers, the contractual recognition of write-down and conversion powers, the procedures and contents of notification requirements and of notice of suspension and the operational functioning of the resolution colleges (OJ L 184, 8.7.2016, p. 1).

- (16) When setting the level of the MREL, the Board should consider the degree of the systemic relevance of an institution or entity and the potential adverse impact of its failure on financial stability. The Board should take into account the need for a level playing field between G-SIIs and other comparable institutions or entities with systemic relevance within the participating Member States. Thus, the MREL of institutions or entities that are not G-SIIs but whose systemic relevance within participating Member States is comparable to the systemic relevance of G-SIIs, should not diverge disproportionately from the level and composition of the MREL generally set for G-SIIs.

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- (17) In line with Regulation (EU) No 575/2013, institutions or entities that are identified as resolution entities should be subject to the MREL only at the consolidated resolution group level. That means that resolution entities should, in order to meet their MREL be obliged to issue eligible instruments and items to external third-party creditors that would be bailed-in in the event that the resolution entity enters resolution.

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

- (20) *Regulation (EU) No 575/2013 provides that competent authorities are able to waive the application of certain solvency and liquidity requirements for credit institutions permanently affiliated to a central body ('cooperative networks') where certain specific conditions are met. To take account of the specificities of such cooperative networks, the Board should also be able to waive the application of the MREL that applies to such credit institutions and the central body under similar conditions to those set out in Regulation (EU) No 575/2013 where credit institutions and the central body are established in the same Member State. The Board should also be able to treat credit institutions and the central body as a whole when assessing the conditions for resolution depending on the features of the solidarity mechanism. The Board should be able to ensure compliance with the external MREL requirement of the resolution group as a whole in different ways, depending on the features of the solidarity mechanism of each group, by counting eligible liabilities of entities that, in accordance with the resolution plan, are required by the Board to issue instruments eligible for the MREL outside the resolution group.*
- (21) Competent authorities, national resolution authorities and the Board should appropriately address and remedy any breaches of the TLAC minimum requirement and of the MREL. 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, in order to address any breaches of *the* requirements expeditiously. The Board should also be able to require institutions or entities to modify the maturity profiles of eligible instruments and items and to prepare and implement plans to restore the level of those requirements. *The Board should also be able to prohibit certain distributions where it considers that an institution or entity is failing to meet the combined buffer requirement under Directive 2013/36/EU when considered in addition to the MREL.*

- (22) This Regulation complies with the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, notably the rights to property and the freedom to conduct a business, and has to be applied in accordance with those rights and principles.
- (23) Since the objective of this Regulation, namely to lay down uniform rules for the purposes of the Union recovery and resolution framework for institutions and entities , 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 this Regulation, 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 Regulation does not go beyond what is necessary in order to achieve that objective.
- (24) To allow for an appropriate time for the application of this Regulation, this Regulation should be applied from ... [18 months after the date of entry into force of this Regulation],

HAVE ADOPTED THIS REGULATION:

Article 1
Amendments to Regulation (EU) No 806/2014

Regulation (EU) No 806/2014 is amended as follows:

I

(I) Article 3(1) is amended as follows:

(a) point (21) is replaced by the following:

"(21) 'subsidiary' means a subsidiary as defined in point (16) of Article 4(1) of Regulation (EU) No 575/2013, and **for the purpose of applying Article 8, Article 10(10), Articles 12 to 12k, 21 and 53 of this Regulation to resolution groups referred to in point (b) of point (24b) of this paragraph, include, where and as appropriate, credit institutions that are permanently affiliated to a central body, the central body itself, and their respective subsidiaries, taking into account the way in which such resolution groups comply with Article 12f(3) of this Regulation;**

(21a) 'material subsidiary' means a material subsidiary as defined in point (135) of Article 4(1) of Regulation (EU) No 575/2013;"

(b) the following points are inserted:

"(24a) 'resolution entity' means a legal person established in **a participating Member State**, which, in accordance with Article 8, is identified by the Board as an entity in respect of which the resolution plan provides for resolution action;

(24b) 'resolution group' means **■** :

(a) **a** resolution entity, together with 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 under the resolution plan, and their subsidiaries; or**

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

(24c) 'global systemically important institution' or 'G-SII' means a G-SII as defined in point (133) of Article 4(1) of Regulation (EU) No 575/2013;";

(c) the following point is inserted:

"(45a) 'Common Equity Tier 1 capital' means Common Equity Tier 1 capital as calculated in accordance with Article 50 of Regulation (EU) No 575/2013;";

(d) in point (48) the words 'eligible liabilities' are replaced by the words 'bail-inable liabilities';

(e) point (49) is replaced by the following:

"(49) 'bail-inable liabilities' means the liabilities and capital instruments that do not qualify as Common Equity Tier 1, Additional Tier 1 or Tier 2 instruments of an entity referred to in Article 2 and that are not excluded from the scope of the bail-in tool pursuant to Article 27(3);";

(f) the following points are inserted:

"(49a) 'eligible liabilities' means bail-inable liabilities that fulfil, as applicable, the conditions of Article 12c or point (a) of Article 12g(2) of this Regulation, **and Tier 2 instruments that meet the conditions of point (b) of Article 72a(1) of Regulation (EU) No 575/2013;**

(49b) 'subordinated eligible instruments' means instruments that meet all of the conditions referred to in Article 72a of Regulation (EU) No 575/2013 other than paragraphs (3) to (5) of Article 72b of that Regulation;";

(g) the following point is added:

"(55) 'combined buffer requirement' means combined buffer requirement as defined in point (6) of Article 128 of Directive 2013/36/EU."

(2) in Article 7(3), point (d) is replaced by the following:

"(d) setting the level of minimum requirement for own funds and eligible liabilities, in accordance with Articles 12 to 12k;";

(3) Article 8 is amended as follows:

(a) paragraph 5 is replaced by the following:

"5. The resolution plan shall set out options for applying the resolution tools and exercising resolution powers referred to in this Regulation to the entities referred to in paragraph 1.";

- (b) the first and second subparagraphs of paragraph 6 are replaced by the following:

"The resolution plan shall provide for the resolution actions which the Board may take where an entity referred to in paragraph 1 meets the conditions for resolution.

The information referred to in point (a) of paragraph 9 shall be disclosed to the entity concerned.";

- (c) in paragraph 9, *points (o) and (p) are* replaced by the following:

"(o) the requirements referred to in Article 12f and 12g and a deadline to reach that level, in accordance with Article 12k;

(p) where the Board applies Article 12c(4), (5), or (7), a timeline for compliance by the resolution entity in accordance with Article 12k;";

(d) paragraph 10 is replaced by the following:

"10. Group resolution plans shall include a plan for the resolution of the group referred to in paragraph 1, headed by the Union parent undertaking established in a participating Member State, and 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 established in the Union;
- (c) the entities referred to in Article 2(b); and
- (d) subject to Article 33, the subsidiaries that are part of the group and that are established outside the Union.

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

(e) in paragraph 11, points (a) and (b) are replaced by the following:

"(a) set out the resolution actions that are to be taken for resolution entities in the scenarios referred to in paragraph 6 and the implications of those resolution actions in respect of other group entities, the parent undertaking and subsidiary institutions referred to in paragraph 1;

(aa) where a group referred to in paragraph 1 comprises more than one resolution group, set out the resolution actions that are to be taken for the resolution entities of each resolution group and the implications of those actions on both of the following:

- (i) other group entities that belong to the same resolution group;
 - (ii) other resolution groups;
- (b) examine the extent to which the resolution tools could be applied, and the resolution powers exercised, with respect to resolution entities established in the Union in a coordinated manner, including measures to facilitate the purchase by a third party of the group as a whole, of separate business lines or activities that are provided by a number of group entities, or of particular group entities or resolution groups, and identify any potential impediments to a coordinated resolution;"

(f) in paragraph 12 the following subparagraphs are added:

"The review referred to in the first subparagraph of this paragraph shall be carried out after the implementation of resolution actions or the exercise of powers referred to in Article 21.

When setting the deadlines referred to in points (o) and (p) of paragraph 9, in the circumstances referred to in the third subparagraph of this paragraph, the Board shall take into account the deadline for complying with the requirement referred to in Article 104b of Directive 2013/36/EU."

(4) Article 10 is amended as follows:

(a) paragraph 4 is replaced by the following:

"4. A group shall be deemed to be resolvable if it is feasible and credible for the Board either to wind up group entities under normal insolvency proceedings or to resolve them by applying resolution tools to, and exercising resolution powers with respect to, resolution entities of that group while avoiding, to the maximum extent possible, any significant adverse consequences for the financial systems of the Member States in which group entities are located or of other Member States or the Union, including broader financial instability or system wide events, 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.

The Board shall notify EBA in a timely manner where a group is deemed not to be resolvable.

Where a group is composed of more than one resolution group, the Board shall 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.";

■

- (b) in paragraph 9, the following subparagraphs are added:

"Within two weeks of the date of receipt of a report made in accordance with paragraph 7 of this Article, the entity shall propose to the Board possible measures and a timeline for their implementation to ensure that the entity or the parent undertaking complies with Article 12f or 12g, and the combined buffer requirement, where a substantive impediment to resolvability is due to either of the following situations:

- (i) *the entity meets the combined buffer requirement when considered in addition to each of the requirements referred to in points (a), (b) and (c) of Article 141a(1) of Directive 2013/36/EU, but does not meet the combined buffer requirement when considered in addition to the requirements referred to in Articles 12d and 12e of this Regulation when calculated in accordance with point (a) of Article 12a(2) of this Regulation; or*

- (ii) *the entity does not meet the requirements referred to in Articles 92a and 494 of Regulation (EU) No 575/2013 or the requirements referred to in Articles 12d and 12e of this Regulation.*

When proposing the timeline for the implementation of measures referred to in the second subparagraph, the entity shall take into account the reasons for the substantive impediment. The Board, after consulting the competent authorities, including the ECB, shall assess whether those measures effectively address or remove the substantive impediment in question."

(c) paragraph 11 is amended as follows:

- (i) in points (i) and (j), the words ‘Article 12’ are replaced by the words ‘Articles 12f and 12g’;

(ii) the following points are added:

"(k) to require an entity to submit a plan to restore compliance with *the requirements of Articles 12f and 12g of this Regulation, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 and, where applicable, with the combined buffer requirement and with the requirements of Article 12f or 12g of this Regulation expressed as a percentage of the total exposure measure referred to in Articles 429 and 429a of Regulation (EU) No 575/2013;*

(l) *for the purpose of ensuring ongoing compliance with Article 12f or 12g, to require an entity to change the maturity profile of* ■ *:*

(i) own funds instruments, after having obtained the agreement of the competent authorities, including the ECB, and

(ii) eligible liabilities referred to in Article 12c and point (a) of Article 12g(2).";

(5) *the following Article is inserted:*

"Article 10a

Power to prohibit certain distributions

1. *Where an entity is in a situation where it meets the combined buffer requirement when considered in addition to each of the requirements referred to in points (a), (b) and (c) of Article 141a(1) of Directive 2013/36/EU, but it fails to meet the combined buffer requirement when considered in addition to the requirements referred to in Articles 12d and 12e of this Regulation, when calculated in accordance with point (a) of Article 12a(2) of this Regulation, the Board shall have the power, in accordance with paragraphs 2 and 3 of this Article, to prohibit an entity from distributing more than the Maximum Distributable Amount related to the minimum requirement for own funds and eligible liabilities ('M-MDA'), calculated in accordance with paragraph 4 of this Article, through any of the following actions:*

- (a) make a distribution in connection with Common Equity Tier 1 capital;*
- (b) create an obligation to pay variable remuneration or discretionary pension benefits, or to pay variable remuneration if the obligation to pay was created at a time when the entity failed to meet the combined buffer requirement; or*
- (c) make payments on Additional Tier 1 instruments.*

Where an entity is in the situation referred to in the first subparagraph, it shall immediately notify the national resolution authority and the Board thereof.

- 2. In the situation referred to in paragraph 1, the Board, after consulting the competent authorities, including the ECB, where applicable, shall without unnecessary delay assess whether to exercise the power referred to in paragraph 1, taking into account all of the following elements:*
 - (a) the reason, duration and magnitude of the failure and its impact on resolvability;*

- (b) the development of the entity's financial situation and the likelihood of it fulfilling, in the foreseeable future, the condition referred to in point (a) of Article 18(1) ;*
- (c) the prospect that the entity will be able to ensure compliance with the requirements referred to in paragraph 1 within a reasonable timeframe;*
- (d) where the entity is unable to replace liabilities that no longer meet the eligibility or maturity criteria laid down in Articles 72b and 72c of Regulation (EU) No 575/2013, Article 12c or Article 12g(2) of this Regulation, if that inability is idiosyncratic or is due to market-wide disturbance;*
- (e) whether the exercise of the power referred to in paragraph 1 is the most adequate and proportionate means of addressing the situation of the entity, taking into account its potential impact on both the financing conditions and resolvability of the entity concerned.*

The Board shall repeat its assessment of whether to exercise the power referred to in paragraph 1 at least every month for as long as the entity continues to be in the situation referred to in paragraph 1.

3. If the Board finds that the entity is still in the situation referred to in paragraph 1 nine months after such situation has been notified by the entity, the Board, after consulting the competent authorities, including the ECB, where applicable, shall exercise the power referred to in paragraph 1, except where the Board finds, following an assessment, that at least two of the following conditions are fulfilled:

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

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

- (c) the market closure referred to in point (b) is observed not only for the concerned entity, but also for several other entities;*
- (d) the disturbance referred to in point (a) prevents the concerned entity from issuing own funds instruments and eligible liabilities instruments sufficient to remedy the failure; or*
- (e) an exercise of the power referred to in paragraph 1 leads to negative spill-over effects for part of the banking sector, thereby potentially undermining financial stability.*

Where the exception referred to in the first subparagraph applies, the Board shall notify the competent authorities, including the ECB, where applicable, of its decision and shall explain its assessment in writing.

Every month, the Board shall repeat its assessment of whether the exception referred to in the first subparagraph applies.

4. *The M-MDA shall be calculated by multiplying the sum calculated in accordance with paragraph 5 by the factor determined in accordance with paragraph 6. The M-MDA shall be reduced by any amount resulting from any of the actions referred to in points (a), (b) or (c) of paragraph 1.*
5. *The sum to be multiplied in accordance with paragraph 4 shall consist of:*
 - (a) *any interim profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of Regulation (EU) No 575/2013, net of any distribution of profits or any payment resulting from the actions referred to in points (a), (b) or (c) of paragraph 1 of this Article;*

plus

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

minus

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

6. The factor referred to in paragraph 4 shall be determined as follows:

(a) where the Common Equity Tier 1 capital maintained by the entity which is not used to meet any of the requirements set out in Article 92a of Regulation (EU) No 575/2013 and in Articles 12d and 12e of this Regulation, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, is within the first (that is, the lowest) quartile of the combined buffer requirement, the factor shall be 0;

- (b) *where the Common Equity Tier 1 capital maintained by the entity which is not used to meet any of the requirements set out in Article 92a of Regulation (EU) No 575/2013 and in Articles 12d and 12e of this Regulation, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, is within the second quartile of the combined buffer requirement, the factor shall be 0,2;*
- (c) *where the Common Equity Tier 1 capital maintained by the entity which is not used to meet the requirements set out in Article 92a of Regulation (EU) No 575/2013 and in Articles 12d and 12e of this Regulation, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, is within the third quartile of the combined buffer requirement, the factor shall be 0,4;*

- (d) *where the Common Equity Tier 1 capital maintained by the entity which is not used to meet the requirements set out in Article 92a of Regulation (EU) No 575/2013 and in Articles 12d and 12e of this Regulation, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, is within the fourth (that is, the highest) quartile of the combined buffer requirement, the factor shall be 0,6;*

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

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

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

where "Q_n" = the ordinal number of the quartile concerned.";

(6) Article 12 is replaced by the following:

"Article 12

Minimum requirement for own funds and eligible liabilities

1. The Board, after consulting the competent authorities, including the ECB, shall determine the **requirements** for own funds and eligible liabilities as referred to in Articles 12a to 12i, subject to write-down and conversion powers, which are to be met at all times by the entities and groups referred to in Article 7(2) and by the entities and groups referred to in point (b) of Article 7(4) and in Article 7(5) when the conditions for the application of these paragraphs are met.
2. ***Entities that are referred to in paragraph 1, including entities that are part of groups, shall report the information in accordance with Article 45i(1), (2) and (4) of Directive 2014/59/EU to the national resolution authority of the participating Member State in which they are established.***

The national resolution authority shall transmit the information referred to in the first subparagraph to the Board without undue delay.

3. When drafting resolution plans in accordance with Article 9, after consulting the competent authorities, national resolution authorities shall determine the *requirements* for own funds and eligible liabilities, as referred to in Articles 12a to 12i, subject to write-down and conversion powers, which are to be met at all times by the entities referred to in Article 7(3). In that regard the procedure established in Article 31 shall apply.
4. The Board shall make any determination referred to in paragraph 1 of this Article in parallel with the development and maintenance of the resolution plans pursuant to Article 8.

5. The Board shall address its determination to the national resolution authorities. The national resolution authorities shall implement the instructions of the Board in accordance with Article 29. The Board shall require that the national resolution authorities verify and ensure that entities and groups maintain the *requirements* for own funds and eligible liabilities laid down in paragraph 1 of this Article.
6. The Board shall inform the ECB and EBA of the *requirements* for own funds and eligible liabilities that it has determined for each entity and group under paragraph 1.
7. In order to ensure the effective and consistent application of this Article, the Board shall issue guidelines, and address instructions, to national resolution authorities relating to specific entities or groups.

Article 12a

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

1. The Board and national resolution authorities shall ensure that entities referred to in Article 12(1) and (3) meet, at all times, **the requirements** for own funds and eligible liabilities **where required by and** in accordance with this Article and Articles 12b to 12i.
2. The requirement referred to in paragraph 1 of this Article shall be calculated in accordance with Article 12d(3), **(4)**, or **(6)**, 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 of this Article, calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013; and
 - (b) the **total** exposure measure of the relevant entity referred to in paragraph 1 of this Article, calculated in accordance with **Articles 429 and 429a** of Regulation (EU) No 575/2013.

Article 12b

Exemption from the minimum requirement for own funds and eligible liabilities

1. Notwithstanding Article 12a, the Board shall exempt from the requirement laid down in Article 12a(1) mortgage credit institutions financed by covered bonds which are not allowed to receive deposits under national law, provided that all of the following conditions are met:
 - (a) those institutions will be wound up in national insolvency proceeding or in other types of proceedings laid down ■ for those institutions and implemented in accordance with Article 38, 40 or 42 of Directive 2014/59/EU; and
 - (b) the proceedings referred to in point (a) ensure that creditors of those institutions, including holders of covered bonds, where relevant, bear losses in a way that meets the resolution objectives.
2. Institutions exempted from the requirement laid down in Article 12(1) shall not be part of the consolidation referred to in Article 12f(1).

Article 12c

Eligible liabilities for resolution entities

1. 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; and

(c) Article 72c.

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

2. ***Liabilities*** that arise from debt instruments with ***embedded derivatives***, such as structured notes, ***that meet the conditions of the first subparagraph of paragraph 1, except for point (l) of Article 72a(2) of Regulation (EU) No 575/2013***, shall be included in the amount of own funds and eligible liabilities only where ***one*** of the following conditions ***is*** met:
- (a) ***the principal*** amount of the liability arising from the debt instrument is known at the time of issue, is fixed ***or increasing***, and ***is*** not affected by ***an embedded derivative feature***, and ***the total amount of the liability arising from the debt instrument, including the embedded derivative, can be valued on a daily basis by reference to an active and liquid two-way market for an equivalent instrument without credit risk, in accordance with Articles 104 and 105 of Regulation (EU) No 575/2013; or***

- (b) *the debt instrument includes a contractual term that specifies that the value of the claim in cases of the insolvency of the issuer and of the resolution of the issuer is fixed or increasing, and does not exceed the initially paid-up amount of the liability.*

Debt instruments referred to in the first subparagraph, including their embedded derivatives, shall not be subject to any netting agreement and the valuation of such instruments shall not be subject to Article 49(3) of Directive 2014/59/EU;

■ The *liabilities* referred to in the first subparagraph shall only be included in the amount of own funds and eligible liabilities with respect to the part of the liability that corresponds *to the principal amount referred to in point (a) of that subparagraph or to the fixed or increasing amount referred to in point (b) of that subparagraph.*

3. *Where liabilities are issued by a subsidiary established in the Union to an existing shareholder that is not part of the same resolution group, and that subsidiary is part of the same resolution group as the resolution entity, those liabilities shall be included in the amount of own funds and eligible liabilities of that resolution entity, provided that all of the following conditions are met:*
- (a) they are issued in accordance with point (a) of Article 12g(2);*
 - (b) the exercise of the write-down or conversion power in relation to those liabilities in accordance with Article 21 does not affect the control of the subsidiary by the resolution entity;*
 - (c) those liabilities do not exceed an amount determined by subtracting:*
 - (i) the sum of the liabilities issued to and bought by the resolution entity either directly or indirectly through other entities in the same resolution group and the amount of own funds issued in accordance with point (b) of Article 12g(2) from*
 - (ii) the amount required in accordance with Article 12g(1).*

4. ***Without prejudice to the minimum requirement in Article 12d(4) or point (a) of Article 12e(1), the Board, on its own initiative after consulting the national resolution authority or upon proposal by a national resolution authority, shall ensure that a part of the requirement referred to in Article 12f equal to 8% of the total liabilities, including own funds, shall be met by resolution entities that are G-SIIs or resolution entities that are subject to Article 12d(4) or (5) using own funds, subordinated eligible instruments, or liabilities as referred to in paragraph 3 of this Article. The Board may permit that a level lower than 8% of the total liabilities, including own funds, but greater than the amount resulting from the application of the formula $(1-(X1/X2)) \times 8\%$ of the total liabilities, including own funds, shall be met by resolution entities that are G-SIIs or resolution entities that are subject to Article 12d(4) or (5) using own funds, subordinated eligible instruments, or liabilities as referred in paragraph 3 of this Article, provided that all the conditions set out in Article 72b(3) of Regulation (EU) No 575/2013 are met, where, in light of the reduction that is possible under Article 72b (3) of that Regulation:***

X1 = 3,5% of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013; and

X2 = the sum of 18% of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 and the amount of the combined buffer requirement.

For resolution entities that are subject to Article 12d(4), where the application of the first subparagraph of this paragraph leads to a requirement greater than 27% of the total risk exposure amount, for the resolution entity concerned, the Board shall limit the part of the requirement referred to in Article 12f which is to be met using own funds, subordinated eligible instruments, or liabilities as referred to in paragraph 3 of this Article, to an amount equal to 27 % of the total risk exposure amount, if the Board has assessed that:

- (a) access to the Fund is not considered to be an option for resolving that resolution entity in the resolution plan; and*
- (b) where point (a) does not apply, the requirement referred to in Article 12f allows that resolution entity to meet the requirement referred to in Article 27(7).*

In carrying out the assessment referred to in the second subparagraph, the Board shall also take into account the risk of disproportionate impact on the business model of the resolution entity concerned.

For resolution entities that are subject to Article 12d(5), the second subparagraph of this paragraph does not apply.

5. For resolution entities that are neither G-SIIs nor resolution entities that are subject to Article 12d(4) or (5), the Board, either on its own initiative after consulting the national resolution authority or on a proposal by a national resolution authority, may decide that a part of the requirement referred to in Article 12f up to the greater of 8% of the total liabilities, including own funds, of the entity and the formula referred to in paragraph 7, shall be met using own funds, subordinated eligible instruments, or liabilities as referred to in paragraph 3 of this Article, provided that the following conditions are met:

- (a) non-subordinated liabilities referred to in paragraphs 1 and 2 of this Article have the same priority ranking in the national insolvency hierarchy as certain liabilities that are excluded from the application of write-down and conversion powers in accordance with Article 27(3) or Article 27(5);

- (b) ***there is a 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 write-down and conversion powers in accordance with Article 27(3) or Article 27(5), creditors whose claims arise from those liabilities incur greater losses than they would incur in a winding up under normal insolvency proceedings;
- (c) the amount of ***own funds and other*** subordinated liabilities ***does*** not exceed the amount necessary to ensure that the creditors referred to in point (b) do not incur losses above the level of losses that they would otherwise have incurred in the winding-up under normal insolvency proceedings.

Where the Board determines that, within a class of liabilities which includes eligible liabilities, the amount of the liabilities that are excluded or reasonably likely to be excluded from the application of write-down and conversion powers in accordance with Articles 27(3) or 27(5) totals more than 10% of that class, the Board shall assess the risk referred to in point (b) of the first subparagraph of this paragraph.

6. *For the purposes of paragraphs 4, 5, and 7, derivative liabilities shall be included in total liabilities on the basis that full recognition is given to counterparty netting rights.*

The own funds of a resolution entity that are used to comply with the combined buffer requirement shall be eligible to comply with the requirements referred to in paragraphs 4, 5 and 7.

- 7 *By derogation from paragraph 3 of this Article, the Board may decide that the requirement referred to in Article 12f of this Regulation shall be met by resolution entities that are G-SIIs or resolution entities that are subject to Article 12d(4) or (5) of this Regulation using own funds, subordinated eligible instruments, or liabilities as referred to in paragraph 3 of this Article, to the extent that, due to the obligation of the resolution entity to comply with the combined buffer requirement and the requirements referred to in Article 92a of Regulation (EU) No 575/2013, Article 12d(4) and Article 12f of this Regulation, the sum of those own funds, instruments and liabilities does not exceed the greater of:*

- (a) *8% of total liabilities, including own funds, of the entity; or*
- (b) *the amount resulting from the application of the formula Ax^2+Bx^2+C , where A , B and C are the following amounts:*

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

B = the amount resulting from the requirement referred to in Article 104a of Directive 2013/36/EU;

C = the amount resulting from the combined buffer requirement.

8. *The Board may exercise the power referred to in paragraph 7 of this Article with respect to resolution entities that are G-SIIs or that are subject to Article 12d(4) or (5), and that meet one of the conditions set out in the second subparagraph of this paragraph, up to a limit of 30% of the total number of all resolution entities that are G-SIIs or that are subject to Article 12d(4) or (5) for which the Board determines the requirement referred to in Article 12f.*

The conditions shall be considered by the Board as follows:

- (a) *substantive impediments to resolvability have been identified in the preceding resolvability assessment and either:*
- (i) *no remedial action has been taken following the application of the measures referred to in Article 10(11) in the timeline required by the Board, or*

- (ii) the identified substantive impediments cannot be addressed using any of the measures referred to in Article 10(11), and the exercise of the power referred to in paragraph 7 of this Article would partially or fully compensate for the negative impact of the substantive impediments on resolvability;*
- (b) the Board considers that the feasibility and credibility of the resolution entity's preferred resolution strategy is limited, taking into account the entity's size, its interconnectedness, the nature, scope, risk and complexity of its activities, its legal status and its shareholding structure; or*
- (c) the requirement referred to in Article 104a of Directive 2013/36/EU reflects the fact that the resolution entity that is a G-SII or that is subject to Article 12d(4) or (5) of this Regulation is, in terms of riskiness, among the top 20 % of institutions for which the Board determines the requirement referred to in Article 12a(1) of this Regulation.*

For the purposes of the percentages referred to in the first and second subparagraphs, the Board shall round the number resulting from the calculation up to the closest whole number.

9. *After consulting the competent authorities, including the ECB, the Board shall take the decisions referred to in paragraph 5 or 7.*

When taking those decisions, the Board shall also take into account:

- (a) *the depth of the market for the resolution entity's own funds instruments and subordinated eligible instruments, the pricing of such instruments, where they exist, and the time needed to execute any transactions necessary for the purpose of complying with the decision;*

- (b) the amount of eligible liabilities instruments that meet all of the conditions referred to in Article 72a of Regulation (EU) No 575/2013 that have a residual maturity below one year as of the date of the decision, with a view to making quantitative adjustments to the requirements referred to in paragraphs 5 and 7 of this Article;*
- (c) the availability and the amount of instruments that meet all of the conditions referred to in Article 72a of Regulation (EU) No 575/2013 other than point (d) of Article 72b(2) of that Regulation;*

- (d) whether the amount of liabilities that are excluded from the application of write-down and conversion powers in accordance with Article 27(3) or (5) and that, in normal insolvency proceedings, rank equally with or below the highest ranking eligible liabilities is significant in comparison to the own funds and eligible liabilities of the resolution entity. Where the amount of excluded liabilities does not exceed 5% of the amount of the own funds and eligible liabilities of the resolution entity, the excluded amount shall be considered as not being significant. Above that threshold, the significance of the excluded liabilities shall be assessed by the Board;*
- (e) the resolution entity's business model, funding model, and risk profile, as well as its stability and ability to contribute to the economy; and*
- (f) the impact of possible restructuring costs on the resolution entity's recapitalisation.*

Article 12d

Determination of the minimum requirement for own funds and eligible liabilities

1. The requirement referred to in Article 12a(1) ■ shall be determined by the Board ■ , after *consulting* the competent authorities, including the ECB, on the basis of the following criteria:
 - (a) the need to ensure that the resolution *group* can be resolved by the application of the resolution tools *to the resolution entity*, including, where appropriate, the bail-in tool, in a way that meets the resolution objectives;

- (b) the need to ensure, where appropriate, that the resolution entity and its subsidiaries that *are* institutions or entities referred to in Article 12(1) and (3) but are not resolution entities have sufficient own funds and eligible liabilities to ensure that, if the bail-in tool or write-down and conversion powers, respectively, were to be applied to them, losses could be absorbed and the *total* capital *ratio and*, as applicable, the leverage ratio **■**, of the relevant entities can be restored to a level necessary to enable them to continue to comply with the conditions for authorisation and to carry on the activities for which they are authorised under Directive 2013/36/EU or Directive 2014/65/EU;

- (c) the need to ensure, if the resolution plan anticipates the possibility for certain classes of eligible liabilities to be excluded from bail-in pursuant to Article 27(5) of this Regulation or to be transferred in full to a recipient under a partial transfer, that the resolution entity has sufficient *own funds and* other eligible liabilities to absorb losses and to restore its *total capital ratio and*, as applicable, its leverage ratio **■**, to the 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;

■

- (e) the extent to which the failure of the entity would have an adverse effect on financial stability, including *through contagion to other institutions or entities*, due to the interconnectedness of the entity with those other institutions or entities or with the rest of the financial system ■ .
2. Where the resolution plan provides that resolution action is to be taken or that the power to write down and convert relevant capital instruments and eligible liabilities in accordance with Article 21 is to be exercised in accordance with the relevant scenario referred to in Article 8(6), the requirement referred to in Article 12a(1) shall equal an amount sufficient to ensure that:
- (a) the losses that *are* expected to be incurred by the entity are fully absorbed ('loss absorption');
 - (b) the *resolution* entity *and* its subsidiaries that are institutions or entities referred to in Article 12(1) or (3) but are not resolution entities are recapitalised 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, Directive 2014/65/EU or an equivalent legislative act for an appropriate period not longer than one year ('recapitalisation').

Where the resolution plan provides that the entity is to be wound up under normal insolvency proceedings *or other equivalent national procedures, the Board shall assess whether it is justified to limit* the requirement referred to in Article 12a(1) for that entity, *so that it does* not exceed an amount sufficient to absorb losses in accordance with point (a) of the first subparagraph.

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

3. *For* resolution entities, the amount referred to in the first subparagraph of paragraph 2 shall *be* the following:
 - (a) *for the purpose of calculating the requirement referred to in Article 12a(1), in accordance with point (a) of Article 12a(2),* the sum of:

- (i) the amount of the losses ■ to be absorbed in resolution that corresponds to the requirements referred to in point (c) of Article 92(1) ■ of Regulation (EU) No 575/2013 and Article 104a of Directive 2013/36/EU of the resolution entity at ■ the consolidated resolution group level; **and**
- (ii) a recapitalisation amount that allows the resolution group resulting from resolution to **restore compliance with** its total capital ratio **requirement** referred to in point (c) of Article 92(1) of Regulation (EU) No 575/2013 and its requirement referred to in Article 104a of Directive 2013/36/EU at the **consolidated** resolution group ■ level **after the implementation of the preferred resolution strategy; and**

(b) for the purpose of calculating the requirement referred to in Article 12a(1), in accordance with **point (b) of Article 12a(2)**, the sum of:

- (i) the amount of the losses to be absorbed in resolution that corresponds to the resolution entity's leverage ratio requirement referred to in point (d) of Article 92(1) of Regulation (EU) No 575/2013 at the **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 point (d) of Article 92(1) of Regulation (EU) No 575/2013 at the **consolidated** resolution group **level after the implementation of the preferred** resolution strategy.

For the purposes of point (a) of Article 12a(2), the requirement referred to in Article 12a(1) shall be expressed **in percentage terms** as the amount calculated in accordance with point (a) **of the first subparagraph of this paragraph**, divided by the total risk exposure amount **■** .

For the purposes of point (b) of Article 12a(2), the requirement referred to in Article 12a(1) shall be expressed *in percentage terms* as the amount calculated in accordance with point (b) *of the first subparagraph of this paragraph*, divided by the total exposure measure.

When setting the individual requirement provided in point (b) of the first subparagraph of this paragraph, the Board shall take into account the requirements referred to in Article 27(7).

When setting the recapitalisation amounts referred to in the previous subparagraphs, *the Board shall:*

(a) use the most recently reported values for the relevant total risk exposure amount or total exposure measure, adjusted for any changes resulting from resolution actions set out in the resolution plan; and

(b) after consulting the competent authorities, including the ECB, adjust the amount corresponding to the current requirement referred to in Article 104a of Directive 2013/36/EU downwards or upwards to determine the requirement that is to apply to the resolution entity after the implementation of the preferred resolution strategy.

The Board shall be able to increase the requirement provided in point (a)(ii) of the first subparagraph by an appropriate amount necessary to ensure that, following resolution, the entity is able to sustain sufficient market confidence for an appropriate period, which shall not exceed one year.

Where the sixth subparagraph of this paragraph applies, the amount referred to in that subparagraph shall be equal to the combined buffer requirement that is to apply after the application of the resolution tools, less the amount referred to in point (a) of point (6) of Article 128 of Directive 2013/36/EU.

The amount referred to in the sixth subparagraph of this paragraph shall be adjusted downwards if, after consulting the competent authorities, including the ECB, the Board determines that it would be feasible and credible for a lower amount to be sufficient to sustain market confidence and to ensure both the continued provision of critical economic functions by the institution and its access to funding without recourse to extraordinary public financial support other than contributions from the Fund, in accordance with Article 27(7) and Article 76(3), after implementation of the resolution strategy. That amount shall be adjusted upwards if, after consulting the competent authorities, including the ECB, the Board determines that a higher amount is necessary to sustain sufficient market confidence and to ensure both the continued provision of critical economic functions by the institution or entity referred to in Article 12(1) and its access to funding without recourse to extraordinary public financial support other than contributions from the Fund, in accordance with Article 27(7) and Article 76(3), for an appropriate period which shall not exceed one year.

4. *For resolution entities that are not subject to Article 92a of Regulation (EU) No 575/2013 and that are part of a resolution group the total assets of which exceed EUR 100 billion, the level of the requirement referred to in paragraph 3 of this Article shall be at least equal to:*

(a) 13,5 % when calculated in accordance with point (a) of Article 12a(2); and

(b) 5% when calculated in accordance with point (b) of Article 12a(2).

By way of derogation from Article 12c, the resolution entities referred to in the first subparagraph of this paragraph shall meet a level of the requirement referred to in the first subparagraph of this paragraph that is equal to 13,5 % when calculated in accordance with point (a) of Article 12a(2) and to 5% when calculated in accordance with point (b) of Article 12a(2) using own funds, subordinated eligible instruments, or liabilities as referred to in Article 12c(3) of this Regulation.

5. *At the request of the national resolution authority of a resolution entity, the Board shall apply the requirements laid down in paragraph 4 of this Article to a resolution entity which is not subject to Article 92a of Regulation (EU) No 575/2013 and which is part of a resolution group the total assets of which are lower than EUR 100 billion and which the national resolution authority has assessed as reasonably likely to pose a systemic risk in the event of its failure.*

When taking a decision to make a request as referred to in the first subparagraph of this paragraph, the national resolution authority shall take into account:

- (a) the prevalence of deposits, and the absence of debt instruments, in the funding model;*
- (b) the extent to which access to the capital markets for eligible liabilities is limited;*
- (c) the extent to which the resolution entity relies on Common Equity Tier 1 capital to meet the requirement referred to in Article 12f.*

The absence of a request by the national resolution authority pursuant to the first subparagraph of this paragraph is without prejudice to any decision of the Board under Article 12c(5).

6. **For** entities that are not themselves resolution entities, the amount referred to in the first subparagraph of paragraph 2 shall **be** the following:

(a) **for the purpose of calculating the requirement referred to in Article 12a(1), in accordance with point (a) of Article 12a(2)**, the sum of:

- (i) the amount of the losses to be absorbed ■ that corresponds to the requirements referred to in point (c) of Article 92(1) ■ 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 point (c) of Article 92(1) 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 21 of this Regulation or after the resolution of the resolution group; and**

- (b) *for the purpose of calculating the requirement referred to in Article 12a(1), in accordance with point (b) of Article 12a(2), the sum of:*
- (i) the amount of the losses to be absorbed ■ that corresponds to the entity's leverage ratio requirement referred to in point (d) of Article 92(1) 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 point (d) of Article 92(1) 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 21 of this Regulation or after* the resolution *of the resolution group*.

For the purposes of point (a) of Article 12a(2), the requirement referred to in Article 12a(1) shall be expressed in percentage terms as the amount calculated in accordance with point (a) *of the first subparagraph of this paragraph*, divided by the total risk exposure amount ■ .

For the purposes of point (b) of Article 12a(2), the requirement referred to in Article 12a(1) shall be expressed in percentage terms as the amount calculated in accordance with point (b) *of the first subparagraph of this paragraph*, divided by the total exposure measure.

When setting the individual requirement provided in point (b) of the first subparagraph of this paragraph, the Board shall take into account the requirements referred to in Article 27(7).

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

(a) use the most recently reported values for the relevant total risk exposure amount or total exposure measure, adjusted for any changes resulting from actions set out in the resolution plan; and

(b) after consulting the competent authorities including the ECB, adjust the amount corresponding to the current requirement referred to in Article 104a of Directive 2013/36/EU downwards or upwards to determine the requirement that is to apply to the relevant entity after the exercise of the power to write down or convert relevant capital instruments and eligible liabilities in accordance with Article 21 of this Regulation or after the resolution of the resolution group.

The Board shall be able to increase the requirement provided in point (a)(ii) of the first subparagraph of this paragraph by an appropriate amount necessary to ensure that, following the exercise of the power to write down or convert relevant capital instruments and eligible liabilities in accordance with Article 21, the entity is able to sustain sufficient market confidence for an appropriate period which shall not exceed one year.

Where the sixth subparagraph of this paragraph applies, the amount referred to in that subparagraph shall be equal to the combined buffer requirement that is to apply after the exercise of the power referred to in Article 21 of this Regulation or after the resolution of the resolution group, less the amount referred to in point (a) of point (6) of Article 128 of Directive 2013/36/EU.

The amount referred to in the sixth subparagraph of this paragraph shall be adjusted downwards if, after consulting the competent authorities, including the ECB, the Board determines that it would be feasible and credible for a lower amount to be sufficient to ensure market confidence and to ensure both the continued provision of critical economic functions by the institution or entity referred to in Article 12(1) and its access to funding without recourse to extraordinary public financial support other than contributions from the Fund, in accordance with Article 27(7) and Article 76(3), after the exercise of the power referred to in Article 21 or after the resolution of the resolution group. That amount shall be adjusted upwards if, after consulting the competent authorities including the ECB, the Board determines that a higher amount is necessary to sustain sufficient market confidence and to ensure both the continued provision of critical economic functions by the institution or entity referred to in Article 12(1) and its access to funding without recourse to extraordinary public financial support other than contributions from the Fund, in accordance with Article 27(7) and Article 76(3) for an appropriate period which shall not exceed one year.

7. Where the Board expects that certain classes of eligible liabilities *are reasonably likely to be fully or partially* excluded from bail-in *pursuant to* Article 27(5) or might be transferred in full to a recipient under a partial transfer, the requirement referred to in Article 12a(1) shall *be met using own funds or other eligible liabilities* that are sufficient to:
- (a) cover the amount of excluded liabilities identified in accordance with Article 27(5);
 - (b) ensure that the conditions referred to *in* paragraph 2 are fulfilled.
8. Any decision by the Board 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 7 *of this Article, and shall be reviewed by the Board without undue delay to reflect any changes in* the level of the requirement referred to in Article 104a of Directive 2013/36/EU **■** .

9. For the purposes of paragraphs 3 and 6 of this Article, capital requirements shall be interpreted in accordance with the competent authority's application of the transitional provisions laid down in Chapters 1, 2 and 4 of Title I of Part Ten of Regulation (EU) No 575/2013 and in the provisions of national legislation exercising the options granted to the competent authorities by that Regulation.

■

Article 12e

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

1. *The requirement referred to in Article 12a(1)* for a resolution entity that is a G-SII or part of a G-SII shall consist of *the following*:
 - (a) the *requirements* referred to in *Articles 92a and 494* of Regulation (EU) No 575/2013; and
 - (b) any additional requirement for own funds and eligible liabilities that has been determined by the *Board* specifically in relation to that entity in accordance with paragraph 3 *of this Article*.

2. ***The requirement referred to in Article 12a(1) for a Union material subsidiary of a non-EU G-SII shall consist of the following:***
 - (a) ***the requirements referred to in Articles 92b and 494 of Regulation (EU) No 575/2013; and***
 - (b) ***any additional requirement for own funds and eligible liabilities that has been determined by the Board specifically in relation to that material subsidiary in accordance with paragraph 3 of this Article which is to be met using own funds and liabilities that meet the conditions of Article 12g and Article 92b(2) of Regulation (EU) No 575/2013.***

3. The Board ***shall*** impose an additional requirement for own funds and eligible liabilities referred to in point (b) of paragraph ***1 and point (b) of paragraph 2*** only:
 - (a) where the requirement referred to in point (a) of paragraph ***1 or point (a) of paragraph 2 of this Article*** is not sufficient to fulfil the conditions set out in Article 12d; and

- (b) to an extent that *ensures that* the conditions *set out in* Article 12d *are fulfilled*.
4. Any decision by the **Board** to impose an additional requirement for own funds and eligible liabilities under point (b) of paragraph 1 *of this Article or point (b) of paragraph 2 of this Article* shall contain the reasons for that decision, including a full assessment of the elements referred to in paragraph 3 *of this Article, and shall be reviewed by the Board without undue delay to reflect any changes in the level of the requirement referred to in Article 104a of Directive 2013/36/EU that applies to the resolution group or the Union material subsidiary of a non-EU G-SII.*

Article 12f

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 12c to 12e on a consolidated basis at the level of the resolution group.

2. The Board, after consulting the group-level resolution authority, *if that authority is not the Board*, and the consolidating supervisor shall determine the requirement referred to in Article 12a(1) for a resolution entity established in a participating Member State at the consolidated resolution group level on the basis of **■** the requirements laid down in Articles 12c to 12e and *on* the basis of whether the third-country subsidiaries of the group are to be resolved separately under the resolution plan.

3. *For resolution groups identified in accordance with point (b) of point (24b) of Article 3(1), the Board shall decide, depending on the features of the solidarity mechanism and of the preferred resolution strategy, which entities in the resolution group are to be required to comply with Article 12d(3) and (4) and Article 12e(1) , in order to ensure that the resolution group as a whole complies with paragraphs 1 and 2 of this Article, and how such entities are to do so in conformity with the resolution plan.*

Article 12g

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

1. Institutions that are subsidiaries of a resolution entity *or of a third-country entity*, but are not *themselves* resolution entities, shall comply with the requirements laid down in *Article 12d* on an individual basis.

The Board, after *consulting the* competent authorities, *including* the ECB, may decide to apply the requirement laid down in this Article to an entity referred to in point (b) of Article 2 that is a subsidiary of a resolution entity but is not itself a resolution entity.

By way of derogation from the first subparagraph of this paragraph, Union parent undertakings that are not themselves resolution entities, but are subsidiaries of third-country entities, shall comply with the requirements laid down in Articles 12d and 12e on a consolidated basis.

For resolution groups identified in accordance with point (b) of point (24b) of Article 3(1), those credit institutions which are permanently affiliated to a central body, but are not themselves resolution entities, a central body which is not itself a resolution entity, and any resolution entities that are not subject to a requirement under Article 12f(3), shall comply with Article 12d(6) on an individual basis.

The requirement referred to in Article 12a(1) for an entity referred to in this paragraph shall be determined on the basis of the requirements laid down in Article 12d.

2. The requirement referred to in Article 12a(1) *for entities referred to in paragraph 1 of this Article* shall be met using one or more of the following:

(a) liabilities:

- (i) that 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 that is subject to this Article, or are issued to and bought by an existing shareholder that is not part of the same resolution group as long as the exercise of write-down or conversion powers in accordance with Article 21 does not affect the control of the subsidiary* by the resolution entity;
- (ii) that fulfil the eligibility criteria referred to in Article 72a of Regulation (EU) No 575/2013, except for *points (b), (c), (k), (l) and (m)* of Article 72b(2) *and Article 72b(3) to (5)* of that Regulation;
- (iii) ■ that *rank*, in normal insolvency proceedings, below liabilities *that do not meet the condition referred to in point (i) and that are not* eligible for own funds requirements ■ ;

- (iv) that are subject to write-down or conversion powers in accordance with *Article 21* in a manner that is consistent with the resolution strategy of the resolution group, *in particular* by not affecting the control of the subsidiary by the resolution entity;
- (v) *the acquisition of ownership of which is not funded directly or indirectly by the entity that is subject to this Article;*
- (vi) *the provisions governing which do not indicate explicitly or implicitly that the liabilities would be called, redeemed, repaid or repurchased early, as applicable, by the entity that is subject to this Article, other than in the case of the insolvency or liquidation of that entity, and that entity does not otherwise provide such an indication;*
- (vii) *the provisions governing which do not give the holder the right to accelerate the future scheduled payment of interest or principal, other than in the case of the insolvency or liquidation of the entity that is subject to this Article;*

(viii) the level of interest or dividend payments, as applicable, due thereon is not amended on the basis of the credit standing of the entity that is subject to this Article or its parent undertaking;

(b) own funds, as follows:

(i) Common Equity Tier 1 capital , and

(ii) other own funds that:

- *are issued to and bought by ■ entities that are included in the same resolution group, or*
- *are issued to and bought by entities that are not included in the same resolution group as long as the exercise of write-down or conversion powers in accordance with Article 21 does not affect the control of the subsidiary by the resolution entity.*

3. ***The Board may permit*** the requirement referred to in Article 12a(1) ***to*** be met ***in full or in part*** with a guarantee ***provided by*** the resolution entity ■ which fulfils the following conditions:
- (a) ***both the subsidiary and the resolution entity are established in the same participating Member State and are part of the same resolution group;***
 - (b) the resolution entity complies with the requirement referred to in Article 12f;
 - (c) the guarantee is provided for at least an amount that is equivalent to the amount of the requirement for which it substitutes;
 - (d) the guarantee is triggered when the subsidiary is unable to pay its debts or other liabilities as they fall due, or a determination has been made in accordance with Article 21(3) in respect of the subsidiary, whichever is the earliest;
 - (e) the guarantee is collateralised through a financial collateral arrangement as defined in point (a) of Article 2(1) of Directive 2002/47/EC of the European Parliament and of the Council* for at least 50 % of its amount;

■

- (f) the collateral backing the guarantee fulfils the requirements of Article 197 of Regulation (EU) No 575/2013, which, following appropriately conservative haircuts, is sufficient to ■ cover the amount *collateralised as referred to in point (e)*;
- (g) the collateral backing the guarantee is unencumbered and, in particular, is not used as collateral to back any other guarantee;
- (h) the collateral has an effective maturity that fulfils the same maturity condition as that referred to in Article 72c(1) of Regulation (EU) No 575/2013; and
- (i) there are no legal, regulatory or operational barriers to the transfer of the collateral from the resolution entity to the relevant subsidiary, including where resolution action is taken in respect of the resolution entity.

For the purposes of point (i) of the first subparagraph, at the request of the Board, the resolution entity shall provide an independent written and reasoned legal opinion or shall otherwise satisfactorily demonstrate that there are no legal, regulatory or operational barriers to the transfer of collateral from the resolution entity to the relevant subsidiary.

Article 12h Waiver of the minimum requirement for own funds and eligible liabilities applied to entities that are not themselves resolution entities

1. The Board may waive the application of Article 12g in respect of a subsidiary of a resolution entity established in a participating Member State where:
 - (a) ■ both the subsidiary and the resolution entity are established *in* the same participating Member State *and are part of the same resolution group*;
 - (b) the resolution entity complies with the requirement referred to in Article 12f;
 - (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 21(3), in particular where resolution action is taken in respect of the resolution entity.

2. *The Board may waive the application of Article 12g in respect of a subsidiary of a resolution entity established in a participating Member State where:*
- (a) both the subsidiary and its parent undertaking are established in the same participating Member State and are part of the same resolution group;*
 - (b) the parent undertaking complies on a consolidated basis with the requirement referred to in Article 12a(1) in that participating Member State;*
 - (c) there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities by the parent undertaking to the subsidiary in respect of which a determination has been made in accordance with Article 21(3), in particular where resolution action is taken in respect of the parent undertaking.*

Article 12i

Waiver for a central body and credit institutions permanently affiliated to a central body

The Board may partially or fully waive the application of Article 12g in respect of a central body or of a credit institution which is permanently affiliated to a central body, where all of the following conditions are met:

- (a) the credit institution and the central body are subject to supervision by the same competent authority, are established in the same participating Member State and are part of the same resolution group;*
- (b) the commitments of the central body and its permanently affiliated credit institutions are joint and several liabilities, or the commitments of its permanently affiliated credit institutions are entirely guaranteed by the central body;*
- (c) the minimum requirement for own funds and eligible liabilities, and the solvency and liquidity of the central body and of all of the permanently affiliated credit institutions, are monitored as a whole on the basis of the consolidated accounts of those institutions;*

- (d) *in the case of a waiver for a credit institution which is permanently affiliated to a central body, the management of the central body is empowered to issue instructions to the management of the permanently affiliated institutions;*
- (e) *the relevant resolution group complies with the requirement referred to in Article 12f(3); and,*
- (f) *there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities between the central body and the permanently affiliated credit institutions in the event of resolution.*

Article 12j

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

1. Any breach of the minimum requirement for own funds and eligible liabilities *referred to in Article 12f or Article 12g* shall be addressed *on the basis of* at least one of the following ■ :

- (a) powers to address or remove impediments to resolvability in accordance with Article 10;
- (b) powers referred to in Article 10a;**
- (c) measures referred to in Article 104 of Directive 2013/36/EC;
- (d) early intervention measures in accordance with Article 13;
- (e) administrative penalties and other administrative measures in accordance with Articles 110 and 111 of Directive 2014/59/EU.

Furthermore, the Board or the ECB may carry out an assessment of whether the institution is failing or is likely to fail, in accordance with Article 18.

2. The Board, resolution authorities and competent authorities of participating Member States shall consult each other when they exercise their respective powers referred to in **■** paragraph 1.

Article 12k

Transitional and post-resolution arrangements

1. By way of derogation from Article 12a(1), the Board and national resolution authorities shall determine appropriate transitional periods for entities referred to in Article 12(1) and (3) to comply with the requirements in Articles 12f or 12g, or with the requirements that result from the application of Article 12c(4), (5) or (7), as appropriate. The deadline for entities to comply with the requirements in Articles 12f or 12g or the requirements that result from the application of Article 12c(4), (5) or (7) shall be 1 January 2024.

The Board shall determine intermediate target levels for the requirements in Articles 12f or 12g or for requirements that result from the application of Article 12c(4), (5) or (7), as appropriate, that entities referred to in Article 12(1) and (3) shall comply with at 1 January 2022. The intermediate target levels, as a rule, shall ensure a linear build-up of own funds and eligible liabilities towards the requirement.

The Board may set a transitional period that ends after 1 January 2024 where duly justified and appropriate on the basis of the criteria referred to in paragraph 7, taking into consideration:

- (a) the development of the entity's financial situation;*
- (b) the prospect that the entity will be able to ensure compliance in a reasonable timeframe with the requirements in Articles 12f or 12g or with a requirement that results from the application of Article 12c(4), (5) or (7); and*
- (c) whether the entity is able to replace liabilities that no longer meet the eligibility or maturity criteria laid down in Articles 72b and 72c of Regulation (EU) No 575/2013, and Article 12c or Article 12g(2) of this Regulation, and if not, whether that inability is of an idiosyncratic nature or is due to market-wide disturbance.*

2. *The deadline for resolution entities to comply with the minimum level of the requirements referred to in Article 12d(4) or (5) shall be 1 January 2022.*
3. *The minimum levels of the requirements referred to in Article 12d(4) and (5) shall not apply within the two-year period following the date:*
 - (a) *on which the Board or the national resolution authority has applied the bail-in tool; or*
 - (b) *on which the resolution entity has put in place an alternative private sector measure as referred to in point (b) of Article 18(1) by which capital instruments and other liabilities have been written down or converted into Common Equity Tier 1 instruments, or on which write down or conversion powers, in accordance with Article 21, have been exercised in respect of that resolution entity, in order to recapitalise the resolution entity without the application of resolution tools.*
4. *The requirements referred to in Article 12c(4) and (7) as well as Article 12d(4) and (5), as applicable, shall not apply within the three-year period following the date on which the resolution entity or the group of which the resolution entity is part has been identified as a G-SII, or the resolution entity starts to be in the situation referred to in Article 12d(4) or (5).*

5. *By way of derogation from Article 12a(1), the Board and the national resolution authorities shall determine an appropriate transitional period within which to comply with the requirements of Articles 12f or 12g, or a requirement resulting from the application of Article 12c(4), (5) or (7), as appropriate, for entities to which resolution tools or the write-down or conversion power referred to in Article 21 have been applied.*

6. *For the purposes of paragraphs 1 to 5, the Board and the national resolution authorities shall communicate to the entity a planned minimum requirement for own funds and eligible liabilities for each 12-month period during the transitional period, with a view to facilitating a gradual build-up of its loss-absorption and recapitalisation capacity. At the end of the transitional period, the minimum requirement for own funds and eligible liabilities shall be equal to the amount determined under Article 12c(4), (5) or (7), Article 12d(4) or (5), Article 12f or Article 12g, as applicable.*

7. *When determining the transitional periods, the Board shall take into account:*
- (a) *the prevalence of deposits and the absence of debt instruments in the funding model;*
 - (b) *the access to the capital markets for eligible liabilities;*
 - (c) *the extent to which the resolution entity relies on Common Equity Tier 1 capital to meet the requirement referred to in Article 12f.*
8. *Subject to paragraph 1, the Board shall not be prevented from subsequently revising either the transitional period or any planned minimum requirement for own funds and eligible liabilities communicated under paragraph 6."*

* Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements (OJ L 168, 27.6.2002, p. 43).;

(7) Article 16 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. The Board shall take a resolution action in relation to a parent undertaking referred to in point (b) of Article 2 where the conditions laid down in Article 18(1) are met.';

(b) paragraph (3) is replaced by the following:

'3. Notwithstanding the fact that a parent undertaking does not meet the conditions established in Article 18(1), the Board may decide on a resolution action with regard to that parent undertaking where it is a resolution entity and where one or more of its subsidiaries which are institutions but are not resolution entities themselves meet the conditions set out in Article 18(1), provided that their assets and liabilities are such that their failure threatens an institution or the group as a whole, and resolution action with regard to that parent undertaking is necessary *either* for the resolution of those subsidiaries which are institutions or for the resolution of the relevant resolution group as a whole.';

(8) Article 18 is amended as follows:

(a) in paragraph 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 and eligible liabilities in accordance with Article 21(1) taken in respect of the entity, would prevent the failure of the entity within a reasonable timeframe;"

(b) the following paragraph is inserted:

"1a. The Board may adopt a resolution scheme in accordance with paragraph 1 in relation to a central body and all credit institutions permanently affiliated to it that are part of the same resolution group when that resolution group complies as a whole with the conditions provided in the first subparagraph of paragraph 1."

(9) Article 20 is amended as follows:

(a) in paragraph 1, the words 'capital instruments' are replaced by the words 'capital instruments and eligible liabilities in accordance with Article 21';

(b) paragraph 5 is amended as follows:

(i) in point (a), the words 'capital instruments' are replaced by the words 'capital instruments and eligible liabilities in accordance with Article 21';

(ii) points (c) and (d) are replaced by the following:

"(c) when the power to write down or convert relevant capital instruments and eligible liabilities in accordance with Article 21(7) is applied, to inform the decision on the extent of the cancellation or dilution of instruments of ownership, and the extent of the write-down or conversion of relevant capital instruments and eligible liabilities;

(d) when the bail-in tool is applied, to inform the decision on the extent of the writing down or conversion of bail-inable liabilities;"

(iii) in point (g), the words 'capital instruments' are replaced by the words 'capital instruments and eligible liabilities in accordance with Article 21';

(c) in paragraphs 6, 13 and 15, the words 'capital instruments' are replaced by the words 'capital instruments and eligible liabilities in accordance with Article 21';

(10) Article 21 is amended as follows:

- (a) the title is replaced by the following:

"Write-down or conversion of capital instruments and eligible liabilities"

- (b)

in the introductory part and in point (b) of paragraph 1 the words 'capital instruments' are replaced by the words 'capital instruments, and eligible liabilities *as referred to in paragraph 7a*';

- (c) in point (b) of paragraph 3 the words 'capital instruments' are replaced by the words 'capital instruments, and eligible liabilities *as referred to in paragraph 7a*';

(d) paragraph (7) is replaced by the following:

"7. If one or more of the conditions referred to in paragraph 1 are met, the Board, acting under the procedure laid down in Article 18, shall determine whether the powers to write down or convert relevant capital instruments and eligible liabilities are to be exercised independently or in combination with a resolution action in accordance with the procedure under Article 18.

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

After the exercise of the power to write down or convert relevant capital instruments or eligible liabilities independently of resolution action, the valuation provided for in Article 20(16) shall be carried out, and point (e) of Article 76(1) shall apply.";

(e) the following paragraphs are inserted:

"7a. 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 point (a) of Article 12g(2) of this Regulation, except the condition related to the remaining maturity of liabilities as set out in Article 72c(1) of Regulation (EU) No 575/2013.

When that power is exercised, the write down or conversion shall be done in accordance with the principle referred to in point (g) of Article 15(1).

7b. Where a resolution action is taken in relation to a resolution entity or, in exceptional circumstances in deviation from the resolution plan, in relation to an entity that is not a resolution entity, the amount that is reduced, written down or converted in accordance with Article 21(10) at the level of such an entity shall count towards the thresholds laid down in point (a) of Article 27(7) that apply to the entity concerned.";

(f) in the second subparagraph of paragraph 8 the words 'capital instruments' are replaced by the words 'capital instruments, and eligible liabilities', **as referred to in paragraph 7a**';

(g) in paragraph 10 the following point is added:

"(d) the principal amount of eligible liabilities as referred to in paragraph 7a 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 14 or to the extent of the capacity of the relevant eligible liabilities, whichever is lower.";

(11) *Article 27 is amended as follows:*

(a) *in paragraph 1, the words ‘eligible liabilities’ are replaced by the words ‘bail-inable liabilities’;*

(b) *paragraph 3 is amended as follows:*

(i) 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 of the European Parliament and of the Council or to their participants and arising from the participation in such a system, or to CCPs authorised in the Union pursuant to Article 14 of Regulation (EU) No 648/2012 and third-country CCPs recognised by ESMA pursuant to Article 25 of that Regulation;*

* 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).";

(ii) the following point is added:

"(h) liabilities to entities referred to in point (a), (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU that are part of the same resolution group without being themselves resolution entities, regardless of their maturities, except where those liabilities rank below ordinary unsecured liabilities under the relevant national law of the participating Member State governing normal insolvency proceedings applicable on ... [18 months after the date of entry into force of this Regulation]; in cases where that exception applies, the Board shall assess whether the amount of items complying with Article 12g(2) is sufficient to support the implementation of the preferred resolution strategy. ";

(c) *in paragraph 4, the words 'liabilities eligible for a bail-in tool' are replaced by the words 'bail-inable liabilities';*

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

"

The Board shall carefully assess whether liabilities to institutions or entities that are part of the same resolution group without themselves being resolution entities and that are not excluded from the application of write-down and conversion powers under point (h) of paragraph (3) should be excluded or partially excluded under points (a) to (d) of the first subparagraph to ensure the effective implementation of the resolution strategy.

Where a bail-inable liability or class of bail-inable liabilities is excluded or partially excluded under this paragraph, the level of write-down or conversion applied to other bail-inable liabilities may be increased to take account of such exclusions, provided that the level of write-down and conversion applied to other bail-inable liabilities complies with the principle laid down in point (g) of Article 15(1).;

(e) paragraph 6 is amended as follows:

“6. Where a bail-inable liability or class of bail-inable abilities is excluded or partially excluded pursuant to paragraph 5, and the losses that would have been borne by those liabilities have not been passed on fully to other creditors, a contribution from the Fund may be made to the institution under resolution to do one or both of the following:

(a) cover any losses which have not been absorbed by bail-inable liabilities and restore the net asset value of the institution under resolution to zero in accordance with point (a) of paragraph 13;

*(b) purchase instruments of ownership or capital instruments in the institution under resolution, in order to recapitalise the institution in accordance with point (b) of paragraph 13.”;**(f) in point (a) of paragraph 7, the words 'eligible liabilities' are replaced by the words 'bail-inable liabilities';*

(g) in paragraph 13, the words 'eligible liabilities' are replaced by the words 'bail-inable liabilities';

(12) in Article 31(2), the words 'Article 45(9) to (13)' are replaced by the words 'Article 45h';

(13) in Article 32(1), the word '12' is replaced by the words '12 to 12k'.

Article 2
Entry into force

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. This Regulation shall apply from ... [18 months after the date of entry into force of this Regulation].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ...,

For the European Parliament

For the Council

The President

The President
