EUROPEAN UNION

THE EUROPEAN PARLIAMENT **THE COUNCIL**

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REGULATION
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
AMENDING REGULATION (EU) NO 806/2014
AS REGARDS EARLY INTERVENTION MEASURES,
CONDITIONS FOR RESOLUTION AND FUNDING OF RESOLUTION ACTION

REGULATION (EU) 2026/…
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 30 March 2026

amending Regulation (EU) No 806/2014
as regards early intervention measures,
conditions for resolution and funding of resolution action

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank[1],

Having regard to the opinion of the European Economic and Social Committee[2],

Acting in accordance with the ordinary legislative procedure[3],

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1 OJ C 307, 31.8.2023, p. 19.
2 OJ C 349, 29.9.2023, p. 161.
3 Position of the European Parliament of 24 April 2024 (OJ C, C/2025/3752, 17.9.2025, ELI: http://data.europa.eu/eli/C/2025/3752/oj) and position of the Council at first reading of 5 March 2026 (not yet published in the Official Journal). Position of the European Parliament of 26 March 2026 (not yet published in the Official Journal).

Whereas:

(1) The Union resolution framework for credit institutions and investment firms ('institutions') was established in the aftermath of the 2008-2009 global financial crisis and following the Key Attributes of Effective Resolution Regimes for Financial Institutions first published by the Financial Stability Board in October 2011. The Union resolution framework consists of Directive 2014/59/EU of the European Parliament and of the Council[4] and Regulation (EU) No 806/2014 of the European Parliament and of the Council[5]. Both legislative acts apply to institutions and to other entities that fall under the scope of that Directive or of that Regulation (collectively 'entities'). The Union resolution framework aims to deal in an orderly manner with failures of entities by preserving their critical functions and avoiding threats to financial stability, and at the same time protecting depositors and public funds. In addition, the Union resolution framework is intended to foster the development of the internal market in banking by creating a harmonised regime to address cross-border crises in a coordinated way and by avoiding issues of distortions of competition and risks of unequal treatment.

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

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

(2) Several years into its implementation, the Union resolution framework does not deliver as intended with respect to some of those objectives. In particular, while entities have made significant progress towards resolvability and have dedicated significant resources to that end, in particular through the build-up of the loss absorption and recapitalisation capacity and the filling-up of resolution financing arrangements, the Union resolution framework is seldom resorted to. Instead, failures of certain smaller and medium-sized entities are typically addressed through unharmonised national measures. Taxpayers' money is still used rather than industry-funded safety nets, such as resolution financing arrangements. That situation appears to arise from inadequate incentives. Those inadequate incentives are the result of the interplay of the Union resolution framework with national rules, whereby the broad discretion of resolution authorities when carrying out the public interest assessment is not always exercised in a way that reflects the intended application of the Union resolution framework. At the same time, the Union resolution framework has seen little use due to the risk for depositors of deposit-funded entities of having to bear losses to ensure that those entities can access external funding in resolution, in particular in the absence of other bail-inable liabilities. Finally, the fact that there are less stringent rules on access to funding outside resolution than in resolution has discouraged the application of the Union resolution framework in favour of other solutions, which often entail the use of taxpayers' money instead of the use of own resources of entities or of industry-funded safety nets. That situation, in turn, generates risks of fragmentation, risks of suboptimal outcomes in managing entities' failures, in particular in the case of smaller and medium-sized entities, and opportunity costs from unused financial resources. It is therefore necessary to ensure a more effective and coherent application of the Union resolution framework and to ensure that it can be applied whenever doing so is in the public interest, including for certain smaller and medium-sized entities which are primarily funded through deposits and do not have sufficient other bail-inable liabilities.

(3) Pursuant to Regulation (EU) No 806/2014, Member States which have established a close cooperation between the European Central Bank (ECB) and the respective national competent authorities are to be considered participating Member States for the purposes of that Regulation. However, that Regulation does not contain any details on the process for preparing the start of the close cooperation on resolution-related tasks. It is therefore appropriate to lay down those details.

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

(5) An entity that is being wound up under national law, following a determination that the entity is failing or is likely to fail and a conclusion by the Board that its resolution is not in the public interest, is ultimately heading towards market exit. In such cases a plan for resolving that entity is no longer needed, irrespective of whether the competent authority has already withdrawn the authorisation of that entity. The same applies with regard to a residual institution under resolution after the transfer of assets, rights, and liabilities in the context of a transfer strategy. It is therefore appropriate to specify that in such situations the adoption of resolution plans is not required.

(6) The Board can currently decide to prohibit certain distributions where an entity, whether or not it is a resolution entity, fails to meet the combined buffer requirement when considered in addition to the minimum requirement for own funds and eligible liabilities (MREL). However, to ensure legal certainty and alignment with the existing procedures for the implementation of decisions taken by the Board, it is necessary to specify more clearly the roles of the authorities involved in the process for prohibiting such distributions. It is therefore appropriate to lay down that the Board should instruct the national resolution authority to prohibit such distributions, which should implement the Board's instruction. In addition, in certain situations, an entity might be required to comply with the MREL on a different basis than the basis on which that entity is required to comply with the combined buffer requirement. That situation creates uncertainties as to the conditions for the exercise of the Board's powers to prohibit distributions and for the calculation of the Maximum Distributable Amount related to the MREL. It should therefore be laid down that, in those cases, the Board should instruct national resolution authorities to prohibit certain distributions on the basis of the estimated combined buffer requirement resulting from the methodology set out in the delegated act adopted pursuant to Article 45c(4) of Directive 2014/59/EU. To ensure transparency and legal certainty, the Board should communicate the estimated combined buffer requirement to the entity, which should then make that estimated combined buffer requirement publicly available.

(7) Directive 2014/59/EU and Regulation (EU) No 575/2013 of the European Parliament and of the Council[6] lay down powers to be exercised by resolution authorities, some of which are not included in Regulation (EU) No 806/2014. In the Single Resolution Mechanism (SRM), that can create uncertainty as to by whom and under what conditions those powers are to be exercised. It is therefore necessary to specify how national resolution authorities should exercise certain powers laid down only in Directive 2014/59/EU in relation to entities and groups that fall under the direct responsibility of the Board. The Board should therefore be able, where it deems it necessary, to instruct national resolution authorities to exercise those powers. In particular, the Board should be able to instruct national resolution authorities to require an entity to maintain detailed records of the financial contracts to which the entity is a party, to exercise the power to suspend some financial obligations pursuant to Article 33a of Directive 2014/59/EU, and to ensure the confidentiality of inside information pursuant to Article 84b of that Directive. However, given that the permissions for the reduction of eligible liabilities instruments granted on the basis of Regulation (EU) No 575/2013, which is also applicable to entities and to liabilities subject to the MREL, do not require the application of national legislation, the Board should be able to grant those permissions to entities directly, without having to instruct national resolution authorities to exercise that power.

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[6] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1, ELI: http://data.europa.eu/eli/reg/2013/575/oj).

(8) Deposits that meet the conditions to qualify as eligible liabilities can be used towards compliance with the MREL. However, given the specific nature of deposits, as well as the role they play in the real economy and in sustaining confidence in the banking system, the inclusion of deposits in the scope of liabilities used to meet the MREL should be subject to stricter requirements, as the MREL-eligible resources should be usable in their entirety to bear the losses and contribute to the recapitalisation of a credit institution in the case of its failure. First, as is the case under the current rules, it should not be possible for the deposits used for the MREL to be held by natural persons or by micro, small and medium-sized enterprises. Second, it should be clarified that deposits that confer upon its owner a right to early reimbursement cannot be eligible for the MREL, including in those cases where the contractual provisions provide that early reimbursement is subject to the payment of a penalty. Third, to ensure transparency and minimise the risks of inappropriate placement of such deposits, the relevant contractual provisions should expressly refer to the credit institution's intention to use those deposits for the purpose of complying with the MREL, as well as to the fact that they do not qualify as eligible deposits and that, therefore, no part of that deposit will be repaid by the DGS in the event of unavailability. Fourth, the use of deposits in the MREL should, as a rule, not be allowed, unless the Board has previously authorised their inclusion in the MREL-eligible resources on the basis of an assessment that such deposits would not need to be shielded from bearing losses in the event of resolution and would not give rise to a substantive impediment to resolvability. The Board should be able to authorise the use of deposits to meet the MREL on a general basis for each resolution entity, without an individual assessment of each deposit, as well as limit the inclusion of deposits to meet the MREL to fixed amounts. Structured deposits, despite being liabilities with embedded derivatives, can also qualify as eligible liabilities of a credit institution, provided all other conditions are met.

(9) In order to avoid cliff-edge effects, it is necessary to grandfather the existing deposits qualifying as eligible liabilities. For deposits taken prior to … [24 months plus one day from the date of entry into force of this amending Regulation], the new eligibility criteria should be waived. The grandfathering should end on … [36 months from the date of entry into force of this amending Regulation].

(10) Regulations (EU) 2019/876[7] and (EU) 2019/877[8] of the European Parliament and of the Council and Directive (EU) 2019/879 of the European Parliament and of the Council[9] implemented in Union law the international 'Total Loss-absorbing Capacity (TLAC) Term Sheet', published by the Financial Stability Board on 9 November 2015 (the 'TLAC standard'), for global systemically important banks, referred to in Union law as global systemically important institutions (G-SIIs). Regulation (EU) 2019/877 and Directive (EU) 2019/879 also amended the MREL set out in Directive 2014/59/EU and in Regulation (EU) No 806/2014. It is necessary to align the provisions on the MREL set out in Regulation (EU) No 806/2014 with the implementation of the TLAC standard for G-SIIs with respect to certain liabilities that could be used to meet the part of the MREL that should be met with own funds and other subordinated liabilities. In particular, liabilities that rank *pari passu* with certain excluded liabilities should be included in the own funds and subordinated eligible instruments of resolution entities where the amount of those excluded liabilities on the balance sheet of the resolution entity does not exceed 5 % of the amount of the own funds and eligible liabilities of the resolution entity and no risks related to the 'no creditor worse off' principle arise from that inclusion.

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

8 Regulation (EU) 2019/877 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 806/2014 as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms (OJ L 150, 7.6.2019, p. 226, ELI: http://data.europa.eu/eli/reg/2019/877/oj).

9 Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC (OJ L 150, 7.6.2019, p. 296, ELI: http://data.europa.eu/eli/dir/2019/879/oj).

(11) For certain resolution entities, the preferred resolution strategy set out in the resolution plan or the group resolution plan primarily relies on the transfer of the business of the institution under resolution to a private purchaser or to a bridge institution. In such cases, it is possible that the DGS could be asked to make a contribution towards resolution action, potentially to ensure the protection of certain deposits that are not covered by the DGS. To minimise moral hazard, it should therefore be specified that, where the resolution plan envisages the application of the sale of business tool or of the bridge institution tool and the resolution entity's exit from the market, the MREL for the resolution entity concerned should not be set at a level below certain thresholds. Where the application of the rules for the calibration of the MREL results in an amount higher than those thresholds, that higher amount should prevail. Those thresholds should not apply to the MREL set for resolution entities the preferred resolution strategy of which consists of the application of the bail-in tool for the purposes of its recapitalisation to an extent sufficient to restore its ability to continue to carry out the activities for which it is authorised, even where the preferred resolution strategy envisages the application of the bail-in tool in combination with other resolution tools, the latter being used in an ancillary manner.

(12) Regulation (EU) No 806/2014 does not include dedicated rules on transitional arrangements and intermediate target levels for meeting the MREL after 2024. However, there are situations in which entities should not be immediately required to comply with a higher MREL set by the Board, including those cases where the increase of the MREL results from material changes to the entity due, for example, to mergers or acquisitions, or from changes to the preferred resolution strategy. In particular, where the preferred resolution strategy changes from a winding up under normal insolvency proceedings to the application of a resolution action, the entity might not be able to immediately meet in full the MREL as set by the Board. The Board should therefore be empowered to determine appropriate transitional periods for complying with the MREL. Moreover, the Board should have the power to determine binding intermediate target levels for such entities, to ensure that they build up their MREL-eligible resources in an appropriate way. To protect legitimate expectations, transitional periods previously determined by the Board on the basis of the rules applicable on the relevant date should not be affected by the new rules.

(13) Pursuant to Article 4 of Council Regulation (EU) No 1024/2013[10], the ECB is competent to carry out supervisory tasks in relation to early intervention. It is necessary to reduce the risks stemming from diverging transpositions into national laws of the early intervention measures set out in Directive 2014/59/EU and to facilitate the effective and consistent application by the ECB of its powers to take early intervention measures. Those early intervention measures were introduced to enable competent authorities to remedy the deterioration of the financial and economic situation of an entity and to reduce, to the extent possible, the risk and impact of a possible resolution. However, due to a lack of certainty regarding the triggers for the application of those early intervention measures and partial overlaps with supervisory measures, early intervention measures have seldom been used. The provisions of Directive 2014/59/EU concerning early intervention measures should therefore be mirrored in Regulation (EU) No 806/2014, thereby ensuring a single and directly applicable legal tool for the ECB, and the conditions for the application of those early intervention measures should be simplified and further specified. To dispel uncertainties concerning the conditions and timing for the removal of an entity's management body and the appointment of temporary administrators, those measures should be explicitly identified as early intervention measures and their application should be subject to the same triggers. Under specific conditions, a gradual wind-down of activities can be a cost-effective solution facilitating an entity with a weak business model to exit the market, thus avoiding a protracted decline that culminates in the failure of the entity.

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[10] Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63, ELI: http://data.europa.eu/eli/reg/2013/1024/oj).

The ECB should have the early intervention power to request the submission of a plan to be implemented in the case of a voluntary wind-down of an entity's activities, while leaving the decision about the implementation of such plan to the entity concerned. When applying early intervention powers, the ECB should be required to choose the appropriate measures to address a specific situation in compliance with the principle of proportionality. To enable the ECB to take into account reputational risks or risks related to money laundering or information and communication technology, the ECB should assess the conditions for the application of early intervention measures not only on the basis of quantitative indicators, such as capital or liquidity requirements, level of leverage, non-performing loans or concentration of exposures, but also on the basis of qualitative triggers. The decision-making process in relation to early intervention measures should allow for their swift consideration and, if appropriate, their application, in order to avoid any further worsening of the situation of the entity.

(14) It is necessary to ensure that the Board is able to prepare for the possible resolution of an entity. The ECB or the relevant national competent authority should therefore inform the Board of the deterioration of the situation of an entity sufficiently early, and the Board should have the necessary powers for the implementation of preparatory measures. Importantly, to enable the Board to react as swiftly as possible to a deterioration of the situation of an entity, the prior application of early intervention measures should not be a condition for the Board to make arrangements for the marketing of the entity or to request information to update the resolution plan and prepare the valuation. When marketing an entity that is a member of an institutional protection scheme (IPS), the Board should consider measures that the IPS could take prior to resolution to avert the material risk that the entity will fail or become likely to fail. To ensure a consistent, coordinated, effective and timely reaction to the deterioration of the situation of an entity and to prepare properly for a possible resolution, it is necessary to enhance the interaction and coordination between the ECB, the national competent authorities and the Board. As soon as an entity meets the conditions for the application of early intervention measures, the ECB, the national competent authorities and the Board should increase their exchanges of information, including provisional information, and monitor the situation of the entity jointly.

(15) It is necessary to ensure timely action and early coordination between the Board and the ECB, or the relevant national competent authority, with respect to less significant cross-border groups while an entity is still a going concern but there is a material risk that the entity might fail. The ECB or the relevant national competent authority should therefore notify the Board as early as possible of such a risk. That notification should contain the reasons for the assessment of the ECB or of the relevant national competent authority and a non-exhaustive overview of the alternative private sector measures, supervisory action or early intervention measures that are available to prevent the failure of the entity within a reasonable timeframe. Such early notification does not affect any alternative private sector measures, including measures by an IPS, that would prevent the failure or the likely failure of the entity within a reasonable timeframe or prejudice the procedures to determine whether the conditions for resolution are met. The prior notification by the ECB or by the relevant national competent authority to the Board of a material risk that an entity is failing or is likely to fail or the end of the specified timeframe for the implementation of the measures to address such material risk should not be a condition for, or otherwise necessarily imply, a subsequent determination that an entity is failing or is likely to fail. Moreover, if at a later stage the entity is assessed to be failing or likely to fail and there are no alternative solutions to prevent such failure within a reasonable timeframe, the Board has to take a decision on whether to take resolution action. In such a case, the timeliness of the decision to apply resolution action to the entity can be fundamental to the successful implementation of the resolution strategy, in particular because an earlier intervention in the entity can contribute to ensuring sufficient levels of loss absorption capacity and liquidity to execute that strategy. It is therefore appropriate to enable the Board to assess, in close cooperation with the ECB or the relevant national competent authority, what constitutes a reasonable timeframe to implement alternative measures to avoid the failure of the entity. To ensure a timely outcome and to enable the Board to prepare properly for the potential resolution of an entity, the Board and the ECB, or the relevant national competent authority, should meet regularly, and the Board should decide on the frequency of those meetings, having regard to the circumstances of the case.

(16) To cover material infringements of prudential requirements, it is necessary to further specify the conditions for determining that parent undertakings, including holding companies, are failing or are likely to fail. An infringement of those requirements by a parent undertaking should be material where the type and extent of such infringement is comparable with an infringement that, if committed by a credit institution, would justify the withdrawal of the authorisation by the competent authority in accordance with Article 18 of Directive 2013/36/EU of the European Parliament and of the Council[11].

[11] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338, ELI: http://data.europa.eu/eli/dir/2013/36/oj).

(17) The resolution framework is meant to have the potential to be applied to any entity, irrespective of its size and business model, if the tools available under national law are not adequate to manage its failure. However, some objectives of the framework need to be further specified to increase harmonisation and to promote convergence. The resolution objective of ensuring continuity of critical functions aims to safeguard financial stability and the real economy. It is therefore necessary to ensure that the provision of critical functions is not discontinued. In particular, it is necessary to clarify that, depending on the specific circumstances, the Board is able to conclude that certain functions of an entity are considered to be critical even if their discontinuance would disrupt financial stability or services that are essential to the real economy only at regional level. As regards deposit taking, the Board is to pay due attention to the risk of a loss of confidence of depositors holding deposits not covered by Directive 2014/49/EU of the European Parliament and of the Council[12]. Public funds should be protected by minimising reliance on extraordinary public financial support, in particular when provided from the budget of a Member State. Depositors covered by Directive 2014/49/EU, investors covered by Directive 97/9/EC of the European Parliament and of the Council[13], client funds and client assets are also to be protected.

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12 Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ L 173, 12.6.2014, p. 149, ELI: http://data.europa.eu/eli/dir/2014/49/oj).

13 Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes (OJ L 84, 26.3.1997, p. 22, ELI: http://data.europa.eu/eli/dir/1997/9/oj).

(18) During the resolution planning stage, when deciding whether an entity should be earmarked for resolution, the fact that an entity is subject to simplified obligations should, in general, be used by the Board as an indicator that resolving it in the case of failure would not be in the public interest. Conversely, the fact that an entity is not subject to simplified obligations could indicate that resolving it in the case of failure would be in the public interest.

(19) The winding up of an entity under normal insolvency proceedings might, in some cases, jeopardise financial stability and interrupt the provision of critical functions. This could be the case, for instance, where insolvency would likely result in losses on a material share of deposits or significant difficulties in the continuity of access to deposits, and where the Board considers that those losses or those difficulties could have a significant impact on the provision of critical functions, on financial stability through contagion or on the real economy. In such cases it is highly likely that there would be a public interest in placing the entity under resolution rather than winding it up under normal insolvency proceedings. The assessment of whether the resolution of an entity is in the public interest should also reflect, to the extent possible, the difference between, on the one hand, funding provided through industry-funded safety nets, namely the resolution financing arrangements or the DGSs, and, on the other hand, funding provided by Member States from taxpayers' money. Such funding provided by Member States bears a higher risk of moral hazard and a lower incentive for market discipline. Therefore, when assessing the objective of minimising reliance on extraordinary public financial support, the Board should prefer funding through the Single Resolution Fund (the 'Fund') or the DGSs to funding through an equal amount of resources from the budget of Member States.

(20) When carrying out the public interest assessment, the Board should assess whether any of the resolution objectives would be at risk if the failing entity were wound up under normal insolvency proceedings. Resolution action should not be considered to be necessary in the public interest if none of the resolution objectives is at risk if the entity were wound up under normal insolvency proceedings. If at least one resolution objective is assessed by the Board to be at risk in the case of winding up under normal insolvency proceedings, the outcome of the public interest assessment should be negative only where the winding up of the failing entity under normal insolvency proceedings would achieve the resolution objectives not only to the same extent as resolution but more effectively.

(21) In light of the experience acquired in the implementation of Regulation (EU) No 806/2014 and Directives 2014/49/EU and 2014/59/EU, it is necessary to further specify the conditions under which measures of a precautionary nature that qualify as extraordinary public financial support may exceptionally be granted. It should be ensured that precautionary measures are taken sufficiently early. Moreover, measures to provide relief for impaired assets, including asset management vehicles or asset guarantee schemes, can prove effective and efficient in addressing the causes of possible financial distress faced by entities and preventing their failure and could therefore constitute relevant precautionary measures. It should therefore be specified that precautionary measures can take the form of impaired asset measures.

(22) To preserve market discipline, protect public funds and avoid distortions of competition, precautionary measures should remain the exception and only be applied to address situations of serious disturbance in the market and to preserve financial stability, in particular in the event of a systemic crisis. Moreover, precautionary measures should not be used to address losses incurred or likely to be incurred. The most reliable instrument to quantify losses incurred or likely to be incurred is an asset quality review by the ECB, the European Supervisory Authority (European Banking Authority) (EBA) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council[14] or by national competent authorities. The ECB and national competent authorities should use such a review or, where appropriate, on-site inspections, to quantify losses incurred or likely to be incurred where such a review or inspections can be carried out within a reasonable timeframe. Where that is not possible, the ECB and national competent authorities should quantify losses incurred or likely to be incurred in the most reliable way possible under the prevailing circumstances, where appropriate on the basis of the entity's balance sheet, provided that the balance sheet complies with the applicable accounting rules and standards, as confirmed by an independent external auditor.

[14] Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12, ELI: http://data.europa.eu/eli/reg/2010/1093/oj).

The consideration that an entity is solvent, for the purposes of support measures in the form of precautionary recapitalisation and of State guarantees of newly issued liabilities, should be based on a forward-looking assessment of whether the entity can comply with the own funds requirements laid down in Regulation (EU) No 575/2013 or Regulation (EU) 2019/2033 of the European Parliament and of the Council[15], and the additional own funds requirement laid down in Directive 2013/36/EU or Directive (EU) 2019/2034 of the European Parliament and of the Council[16].

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15 Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014 (OJ L 314, 5.12.2019, p. 1, ELI: http://data.europa.eu/eli/reg/2019/2033/oj).

16 Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU (OJ L 314, 5.12.2019, p. 64, ELI: http://data.europa.eu/eli/dir/2019/2034/oj).

(23) The aim of precautionary recapitalisation is to support viable entities identified as likely to encounter temporary difficulties in the near future and to prevent their situation from deteriorating further. To avoid granting public subsidies to businesses that are already unprofitable, precautionary measures in the form of acquisition of own funds instruments or other capital instruments or through impaired asset measures should not be granted in an amount that exceeds the amount necessary to cover capital shortfalls as identified in the adverse scenario of a stress test or equivalent exercise. To ensure that public financing is ultimately discontinued, those precautionary measures should also be limited in time and contain a clear timeline for their termination ('strategy to exit the support measure'). Perpetual instruments, including Common Equity Tier 1 capital, should only be used in exceptional circumstances and be subject to certain quantitative limits because by their nature they are not well suited for compliance with the condition that they be temporary. The ECB or the relevant national competent authority should request a one-time remediation plan from entities that fail to comply with the terms of the strategy to exit the support measure. To ensure the exit from the market by entities that prove not to be viable, a relevant authority should determine whether the entity is failing or is likely to fail where the ECB or the relevant national competent authority is not satisfied with the remediation plan or where the entity fails to comply with the remediation plan.

(24) Precautionary measures should be limited to the amount that the entity would need to maintain its solvency in the event of an adverse scenario of a stress test or equivalent exercise. In the case of precautionary measures in the form of impaired asset measures, the receiving entity should be able to use the amount granted to cover losses on the transferred assets or in combination with an acquisition of capital instruments, provided that the overall amount of the shortfall identified is not exceeded. It is also necessary to ensure that precautionary measures in the form of impaired asset measures comply with existing State aid rules and best practices, that they restore the entity's long-term viability, that State aid is limited to the minimum necessary and that distortions of competition are avoided. For those reasons, the authorities concerned should, in the case of precautionary measures in the form of impaired asset measures, take into account the specific guidance, including the Commission's blueprint for how national asset management companies can be set up and the communication of the Commission of 16 December 2020 on tackling non-performing loans in the aftermath of the COVID-19 pandemic. Precautionary measures in the form of impaired asset measures should always be subject to the overriding condition that they be temporary. Public guarantees granted for a specified period in relation to the impaired assets of the entity concerned are expected to ensure better compliance with that condition than are transfers of such assets to a publicly supported entity.

(25) It is important to ensure swift and timely resolution action by the Board where such action involves the granting of State aid or Fund aid. It is therefore necessary to enable the Board to adopt the resolution scheme concerned before the Commission has assessed whether such aid is compatible with the internal market. However, to ensure the good functioning of the internal market in such a scenario, resolution schemes involving the granting of State aid or Fund aid should ultimately remain subject to the Commission approving such aid. To enable the Commission to assess as early as practicable whether the Fund aid is compatible with the internal market, and to ensure the smooth flow of information, the Board and the Commission should promptly share all information necessary regarding the possible use of Fund aid. Specific rules should be laid down on when and what information the Board should provide to the Commission in order to inform the Commission's assessment of Fund aid compatibility.

(26) The procedure governing entry into resolution and the procedure governing a decision to apply the write-down and conversion powers are similar. It is therefore appropriate to align the respective tasks of the Board and of either the ECB or the national competent authority, as relevant, when, on the one hand, they assess whether the conditions for the application of the write-down and conversion powers are present, and, on the other hand, when they assess the conditions for adopting a resolution scheme.

(27) It is possible that whereas resolution action is to be applied to a resolution entity that is part of a resolution group, write-down and conversion powers are to be applied to another entity of the same group. Interdependencies between such entities, including the existence of consolidated capital requirements to be restored and the need to activate loss upstream and capital downstream mechanisms, can make it challenging to assess the loss absorption and recapitalisation needs of each entity separately and thus to determine the necessary amounts to be written down and converted for each entity. A procedure whereby the Board should take such interdependencies into account in the application of the power to write down and convert capital instruments and eligible liabilities in those situations should therefore be specified. For that purpose, where one entity meets the conditions for the application of the write-down and conversion powers and another entity within the same group meets at the same time the conditions for resolution, the Board should adopt a single resolution scheme covering both entities.

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

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

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

(31) In certain circumstances, after the Fund has provided a contribution up to the maximum of 5 % of the entity's total liabilities including own funds, the Board is able to use additional sources of funding to further support its resolution action. It should be specified more clearly in which circumstances the Fund could provide further support where all bail-inable liabilities that are not eligible deposits, with a priority ranking lower than that of non-covered deposits of natural persons and micro, small and medium-sized enterprises and that are not discretionarily excluded from bail-in have been written down or converted in full.

(32) The success of resolution hinges on timely access for the Board to relevant information from the entities that fall under the responsibility of the Board and from public institutions and authorities. Within that context, the Board should be able to access information of a statistical nature which the ECB has collected under its central bank function, in addition to the information available to the ECB as a supervisor within the framework of Regulation (EU) No 1024/2013. Pursuant to Council Regulation (EC) No 2533/98[17], the Board should ensure the physical and logical protection of confidential statistical information and should require authorisation from the ECB for the further transmission that might be necessary for the execution of the tasks of the Board. As the provision of information related to the aggregated number of customers for which an entity is the only or principal banking partner, which is held by the centralised automated mechanisms established pursuant to Directive (EU) 2015/849 of the European Parliament and of the Council[18], can be necessary and proportionate to carry out the public interest assessment, the Board should be able to receive that information on a case-by-case basis.

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17 Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank (OJ L 318, 27.11.1998, p. 8, ELI: http://data.europa.eu/eli/reg/1998/2533/oj).

18 Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73, ELI: http://data.europa.eu/eli/dir/2015/849/oj).

The exact timing of indirect access to information by the Board should also be specified. Moreover, where information needed by the Board to perform its tasks is available to a public institution or authority which is required to cooperate with the Board, such institution or authority should provide that information to the Board upon its request. However, if, at that time, the information is not available, irrespective of the reason, the Board should be able to obtain that information from the natural or legal person that has that information through the national resolution authorities or directly, after having informed those national resolution authorities thereof. It should also be possible for the Board to specify the procedure and form according to which it should receive information from entities in order to ensure that such information is that which is most suited to its needs, including in relation to virtual data rooms. In addition, to ensure the broadest cooperation possible with all public institutions and authorities which might hold data relevant to the Board and which are necessary for the performance of the tasks conferred on it, and to avoid duplicating requests, the public institutions and authorities with which the Board should be able to cooperate, check the availability of information and exchange information should include the members of the European System of Central Banks, the relevant DGSs, the European Systemic Risk Board, the European Supervisory Authorities and the European Stability Mechanism. Finally, to ensure a timely intervention of financial arrangements contracted for the Fund in the case of need, the Board should inform the Commission and the ECB as soon as it considers that it might be necessary to activate such financial arrangements and provide the Commission and the ECB with all information necessary for the performance of their tasks in respect of such financial arrangements.

(33) Article 86(1) of Directive 2014/59/EU provides that normal insolvency proceedings in relation to entities within the scope of that Directive are not to be commenced except at the initiative of the resolution authority and that a decision placing an entity into normal insolvency proceedings is to be taken only with the consent of the resolution authority. That provision is not reflected in Regulation (EU) No 806/2014. In line with the division of tasks specified in Regulation (EU) No 806/2014, national resolution authorities should consult the Board before they act in accordance with Article 86(1) of Directive 2014/59/EU in relation to entities that are under the direct responsibility of the Board.

(34) The selection criteria for the position of the Vice-Chair of the Board are the same as those for the selection of the Chair and other full-time members of the Board. It is therefore appropriate to provide the Vice-Chair of the Board with the same voting rights as those enjoyed by the Chair and the full-time members of the Board.

(35) To allow for a preliminary assessment by the Board in its plenary session of the preliminary draft budget before the Chair presents the final draft, the period for the Chair to put forward an initial proposal for the annual budget of the Board should be extended.

(36) In order to further strengthen cooperation within the SRM between the Board and national resolution authorities, the Board in its executive session should consult the Board in its plenary session regarding guidelines, general instructions and any other instruments of general application within the SRM which set out how the Board expects to implement Regulation (EU) No 806/2014.

(37) The procedure for conducting consultations regarding guidelines, general instructions and any other instruments of general application within the SRM should be understood having regard to the existing procedures for conducting consultations in accordance with the framework referred to in Article 31(1) of Regulation (EU) No 806/2014. Where that framework already provides for specific arrangements regarding guidelines and general instructions, those existing procedures should apply in addition to the new consultation procedure, where appropriate.

(38) After the initial build-up period for the Fund provided for in Regulation (EU) No 806/2014, its available financial means might face slight decreases below its target level, in particular resulting from an increase in covered deposits. The amount of the *ex-ante* contributions likely to be called in those circumstances is thus likely to be small. It is therefore possible that, in some years, the amount of such *ex-ante* contributions would no longer be commensurate with the cost of the collection of those contributions. The Board should therefore be able to defer the collection of the *ex-ante* contributions for up to three years until the amount to be collected reaches an amount that is proportionate to the cost of the collection process, provided that such deferral does not materially affect the capacity of the Board to use the Fund.

(39) Irrevocable payment commitments are one of the components of the available financial means of the Fund. It is therefore necessary to specify the circumstances in which those payment commitments can be called. In the event that an entity ceases to be subject to the obligation to pay contributions to the Fund following a decision to renounce its authorisation, the irrevocable payment commitment should be cancelled. To ensure that the cancellation of the irrevocable payment commitment does not lead to a situation where the available financial means in the Fund fall below a level that the Board deems adequate, the Board should have the power to determine a contribution that the relevant entity should be required to pay. In its decision, the Board should duly consider the need to maintain a level playing field between all participating entities, including the entity that ceases to be within the scope of Article 2 of Regulation (EU) No 806/2014. The Board is to provide detailed reasons for its decision and disclose that decision, including its reasoning, in its annual report. In addition, to provide more transparency and certainty with respect to the share of irrevocable payment commitments in the total amount of *ex-ante* contributions to be raised, the Board should determine such share on an annual basis, subject to the applicable limits. The ECB, or the relevant national competent authority, should aim to ensure that any procyclical effect of irrevocable payment commitments depending on their accounting treatment is mitigated.

(40) The maximum annual amount of extraordinary *ex-post* contributions to the Fund that are allowed to be called is currently limited to three times the amount of the *ex-ante* contributions. After the initial build-up period provided for in Regulation (EU) No 806/2014, such *ex-ante* contributions will, in circumstances other than the use of the Fund, depend only on variations in the level of covered deposits and are therefore likely to become small. Setting the maximum amount of extraordinary *ex-post* contributions on the basis of *ex-ante* contributions could therefore have the effect of drastically limiting the possibility for the Fund to raise *ex-post* contributions, thereby reducing its capacity for action. To avoid such an outcome, a different limit should be provided for and the maximum amount of extraordinary *ex-post* contributions allowed to be called should be set at three times one-eighth of the target level of the Fund.

(41) An adequate link between pay and performance should also be maintained in the event of resolution, in particular where losses are likely to be passed on to the Fund. In such cases, any variable remuneration of the members of the management body and senior management of the institution under resolution that has not been paid out or has not vested should be cancelled. Unless a member of the management body or senior management proves that they did not participate in, or were not responsible for, the conduct that resulted in, or contributed to, the failure of the institution under resolution, the variable remuneration that vested or was paid out in the 24 months preceding the decision to take resolution action should be returned or repaid.

(42) The Fund can be used to support the application of the sale of business tool or of the bridge institution tool whereby a set of assets, rights, and liabilities of the institution under resolution are transferred to a recipient. In such a case, the Board might have a claim against the residual entity in its subsequent winding up under normal insolvency proceedings. That can occur where the Fund is used in connection to losses that creditors would otherwise have borne, including under the form of guarantees to assets and liabilities or coverage of the difference between the transferred assets and liabilities. To ensure that the shareholders and creditors left behind in the residual entity effectively absorb the losses of the institution under resolution and improve the possibility of repayments in insolvency to the Board, those claims of the Board against the residual entity, and claims that arise from reasonable expenses properly incurred by the Board, should benefit from the same priority ranking in insolvency as the ranking of the claims of the national resolution financing arrangements in each participating Member State, which should be higher than the priority ranking of deposits and of DGSs. Since compensation paid to shareholders and creditors from the Fund due to breaches of the 'no creditor worse off' principle aims to compensate them for the results of resolution action, that compensation should not give rise to claims from the Board.

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

(44) The contribution of the DGS in resolution should be subject to certain limits. First, the total amount of the contribution of the DGS in any resolution case should not exceed the amount of covered deposits in the credit institution concerned. Second, it should be ensured that any intervention by the DGS in a resolution action which relies primarily on the bail-in tool for the purposes of recapitalisation of the institution under resolution and of the continuation of its activities does not exceed the loss that the DGS would bear in insolvency if it paid out covered depositors and subrogated to their claims over the institution's assets. Third, where the DGS is used in support of resolution action mainly consisting of the transfer of the business to a purchaser or to a bridge institution, the amount of the contribution of the DGS should not exceed 62,5 % of its target level, unless the designated authority under Directive 2014/49/EU chooses to disapply that limit to avoid adverse effects on financial stability or to preserve the access of depositors to their deposits. Fourth, the amount of the DGS contribution should not exceed the difference between the transferred assets and the transferred deposits and liabilities with the same or a higher priority ranking in insolvency than those deposits. That would ensure that the contribution of the DGS is only used for the purpose of avoiding the imposition of losses on depositors, where appropriate, and not for the protection of creditors that rank below deposits in insolvency. However, where relevant, the contribution might also include an amount necessary to ensure the capital neutrality of the recipient entity.

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

(46) Given the possibility to use DGS in resolution, it is necessary to further specify the conditions under which the DGS contribution can count towards compliance with the requirements to access the Fund. That possibility should only be available for credit institutions with a total value of assets equal to or below EUR 80 billion and in the context of a resolution action primarily relying on the application of the sale of business tool or the bridge institution tool. To ensure that resolution continues to be primarily financed by the credit institution's internal resources and to minimise distortions of competition, the use of the DGS contribution to ensure access to the Fund should only be possible for credit institutions for which, in the preceding 24 months before resolution action is taken, the resolution plan or the group resolution plan does not provide for their winding up in an orderly manner in the event of failure, given that the MREL determined by the Board for those credit institutions has been set at a level that includes both the loss absorption and the recapitalisation amounts. The MREL set by the Board should comply with the minimum levels of the MREL for entities with preferred resolution strategies that envisage primarily the use of transfer tools in resolution, even if the respective resolution plan or group resolution plan had provided for different actions and the MREL of those credit institutions was therefore not subject to those minimum levels. Furthermore, the contribution of the DGS should be preceded by the contribution of own funds and eligible liabilities towards loss absorption and recapitalisation to the maximum extent possible. Finally, the institution under resolution must not have breached its MREL, including the binding intermediate targets, within a certain period preceding resolution action, without prejudice to short-term technical breaches of the MREL.

(47) If the contribution made by shareholders and creditors of the institution under resolution through reductions, write-down or conversion of their liabilities or through the losses that they are expected to bear in the winding up of the residual entity, added to the contribution made by the DGS, amounts to at least 8 % of the institution's total liabilities including own funds, the Board should be able to use the Fund to provide further funding where that is necessary to ensure effective resolution in line with the resolution objectives. In such cases, the contribution of the DGS should be limited to the amount necessary to enable access to the Fund. Additionally, for a credit institution with a total value of assets on an individual basis of between EUR 30 billion and EUR 80 billion, the contribution of the DGS should not exceed 2,5 % of the total liabilities including own funds of the credit institution on an individual basis.

(48) In extraordinary circumstances, it can occur that the contribution of the Fund of 5 % of total liabilities including own funds is not sufficient to cover the financing needs of a given resolution action. In such cases, and where that contribution has been enabled by the intervention of the DGS, the DGS should make an additional contribution, under certain conditions, equal to the amount of losses that covered deposits would have suffered were they not protected. The cost of that additional contribution should not exceed the losses that the DGS would have borne in the hypothetical scenario of a winding up under normal insolvency proceedings and the repayment of covered deposits. Additionally, the sum of the initial contribution and of the additional contribution of the DGS should not exceed the amount of covered deposits in the credit institution concerned. Together with the additional contribution of the DGS, the Board should be able to seek further funding from alternative financing sources, where the conditions for that funding are met.

(49) In light of the mutualised nature of the Fund, it is appropriate to establish a dedicated procedure to be followed once its net accumulated use, where made possible by a prior contribution of the DGS, reaches certain thresholds. Such procedure should not lead to the inability of using the means of the Fund in a subsequent resolution action. Where the net use of the Fund over three years reaches a threshold equivalent to 10 % of its target level, the plenary session must provide guidance for future uses of the Fund facilitated by the contribution of the DGS, until replenishment is complete. If the net use of the Fund over three years reaches 20 % of its target level, the Board must inform the Council and the Commission. At that point, the Commission should review the rules on the contributions of the DGSs in resolution that permit the subsequent use of the Fund, as well as assess whether the applicable arrangements for the collection of contributions to replenish the Fund in those cases are appropriate. Moreover, the timeframe for re-reaching the target level should be extended to 10 years.

(50) Where the funds of the DGS are used in the application of the sale of business tool or the bridge institution tool, in isolation or together with contributions from the Fund, the residual entity remaining after the transfer of the assets, rights and liabilities should be wound up in an orderly manner in accordance with the applicable national law, pursuant to Article 22(5) of Regulation (EU) No 806/2014. Additionally, where the funds of the DGS are used in support of the bridge institution tool, the operations of the bridge institution should be terminated in accordance with Article 41(3), (5) and (6) of Directive 2014/59/EU.

(51) Transparency is key to ensuring market integrity, market discipline, and the protection of investors. To ensure that the Board is able to foster, and participate in, efforts towards greater transparency, it should be allowed to disclose information that results from its own analyses, assessments and determinations, including its resolvability assessments, where such disclosure would not undermine the protection of the public interest as regards financial, monetary or economic policy and where there is an overriding public interest in the disclosure.

(52) To ensure consistency, the amendments introduced to Regulation (EU) No 806/2014 by this Regulation that are similar to the amendments introduced to Directive 2014/59/EU by Directive (EU) 2026/… of the European Parliament and of the Council[19+] should be applied from the same date as the date for the transposition of Directive (EU) 2026/…[++], which is … [24 months from the date of entry into force of this amending Regulation]. However, there is no reason to delay the application of the amendments to Regulation (EU) No 806/2014 introduced by this Regulation that relate exclusively to the functioning of the SRM. Those amendments should therefore apply from … [one month from the date of entry into force of this amending Regulation].

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19 Directive (EU) 2026/… of the European Parliament and of the Council of … amending Directive 2014/59/EU as regards early intervention measures, conditions for resolution and financing of resolution action and Directive 2014/24/EU as regards valuation services in resolution (OJ L, …, ELI: …).

\+ OJ: please insert in the text the number of the directive contained in document PE-CONS 17/26 (2023/0112(COD)) and complete the corresponding footnote.

++ OJ: please insert in the text the number of the directive contained in document PE-CONS 17/26 (2023/0112(COD)).

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

(54) Regulation (EU) No 806/2014 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) No 806/2014

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

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

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

‘(21) “subsidiary” means a subsidiary as defined in Article 4(1), point (16), 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 (24b)(b) of this paragraph, includes, where and as appropriate, credit institutions or financial 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;’;

(b) point (24a) is replaced by the following:

‘(24a) “resolution entity” means a legal person established in a participating Member State, which the Board or the national resolution authority, in accordance with Article 8 of this Regulation, has identified as an entity in respect of which the resolution plan provides for resolution action;’;

(c) in point (24b), point (b) is replaced by the following:

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

(d) the following points are inserted:

‘(24d) “non-EU G-SII” means a non-EU G-SII as defined in Article 4(1), point (134), of Regulation (EU) No 575/2013;

(24e) “G-SII entity” means a G-SII entity as defined in Article 4(1), point (136), of Regulation (EU) No 575/2013;’;

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

‘(49) “bail-inable liabilities” means the liabilities, including liabilities of uncertain timing or amount, and capital instruments that do not qualify as Common Equity Tier 1, Additional Tier 1 or Tier 2 instruments of an entity as 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 point is inserted:

‘(49aa) “liabilities of uncertain timing or amount” means liabilities based on present obligations arising from past events which will result in a loss and the timing or amount of which is uncertain;’;

(g) point (49b) is replaced by the following:

‘(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 Article 72b(3), (4) and (5), of that Regulation, and, where applicable, in Article 12c(1a) of this Regulation;’;

(h) the following point is inserted:

‘(50a) “designated authority” means a designated authority as defined in Article 2(1), point (18), of Directive 2014/49/EU;’;

(2) in Article 4, the following paragraph is inserted:

‘1a. Member States shall inform the Board as soon as possible where they request to enter into a close cooperation with the ECB pursuant to Article 7 of Regulation (EU) No 1024/2013.

Following the notification made pursuant to Article 7 of Regulation (EU) No 1024/2013 and before close cooperation is established, Member States shall provide all information about the entities and groups established in their territory that the Board may require to prepare for the tasks conferred on it by this Regulation and the Agreement.’;

(3) in Article 5, the following paragraph is inserted:

‘1a. Any references to authorities designated in accordance with Article 3 of Directive 2014/59/EU in Article 7(6), point (e), Article 10(3), Article 63(3), point (j), Article 65(2), point (k), and Article 70(4) of Directive (EU) 2025/1 of the European Parliament and of the Council*, shall be read as references to the Board with regard to the entities and groups referred to in Article 7(2) of this Regulation, and to the entities and groups referred to in Article 7(4), point (b), and Article 7(5) of this Regulation where the conditions for the application of those provisions are met.

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* Directive (EU) 2025/1 of the European Parliament and of the Council of 27 November 2024 establishing a framework for the recovery and resolution of insurance and reinsurance undertakings and amending Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132 and Regulations (EU) No 1094/2010, (EU) No 648/2012, (EU) No 806/2014 and (EU) 2017/1129 (OJ L, 2025/1, 8.1.2025, ELI: http://data.europa.eu/eli/dir/2025/1/oj).’;

(4) Article 7 is amended as follows:

(a) in paragraph 3, the fourth subparagraph is replaced by the following:

‘When performing the tasks referred to in this paragraph, the national resolution authorities shall apply the relevant provisions of this Regulation. Any references to the Board in Article 5(2), Article 6(5), Article 8(6), (8), (10), third subparagraph, (11a), (12) and (13), Article 10(1) to (10), Article 10a, Articles 11 to 14, Article 15(1), (2) and (3), Article 16, Article 18(1), (1a), (2), (5) and (6), Article 20, Article 21(1) to (7), Article 21(8), second subparagraph, Article 21(9) and (10), Article 22(1), (3), (5) and (6), Articles 23 and 24, Article 25(3), Article 27(1) to (15), Article 27(16), second subparagraph, second sentence, third subparagraph, and fourth subparagraph, first, third and fourth sentences, Article 30(2b) and (2c), Article 30a(1) and (2), Article 32 and Article 79(1), (2), (7) and (8), shall be read as references to the national resolution authorities with regard to groups and entities referred to in the first subparagraph of this paragraph. For that purpose the national resolution authorities shall exercise the powers conferred on them under national law transposing Directive 2014/59/EU in accordance with the conditions laid down in national law.’;

(b) paragraph 5 is replaced by the following:

‘5. Notwithstanding paragraph 3 of this Article, participating Member States may decide that the Board exercise all of the relevant powers and responsibilities conferred on it by this Regulation in relation to entities and groups established in their territory, other than those referred to in paragraph 2 of this Article. If so, paragraphs 3 and 4 of this Article, Article 9, Article 12(3), and Article 31(1) shall not apply. Member States that intend to make use of that option shall notify the Board and the Commission thereof. The notification shall take effect from the day of its publication in the *Official Journal of the European Union*.

After the notification referred to in the first subparagraph of this paragraph has taken effect, participating Member States may decide that the responsibility for performing the tasks in relation to entities and groups established in their territory, other than those referred to in paragraph 2, shall be returned to the national resolution authorities, in which case the first subparagraph of this paragraph shall no longer apply. Member States that intend to make use of that option shall notify the Board and the Commission thereof. That notification shall take effect from the day of its publication in the *Official Journal of the European Union*.’;

(5) Article 8 is amended as follows:

(a) in paragraph 2, the following subparagraph is added:

‘The Board may instruct the national resolution authorities to exercise the powers referred to in Article 10(8) of Directive 2014/59/EU. The national resolution authorities shall implement the instructions of the Board in accordance with Article 29 of this Regulation.’;

(b) paragraph 10 is amended as follows:

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

‘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 and, where appropriate, the liquidation entities.’;

(ii) the following subparagraph is added:

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

(c) the following paragraph is inserted:

‘11a. Where proceedings have been initiated to wind up an entity in accordance with applicable national law pursuant to Article 32b of Directive 2014/59/EU, or where Article 22(5) of this Regulation applies, the Board shall not adopt a resolution plan for that entity or shall no longer include that entity in the group resolution plan.’;

(6) Article 10 is amended as follows:

(a) in paragraph 4, the fourth subparagraph is replaced by the following:

‘The assessment referred to in the third subparagraph shall be performed in addition to the assessment of the resolvability of the entire group.’;

(b) paragraph 7 is replaced by the following:

‘7. If, pursuant to an assessment of the resolvability of an entity or a group carried out in accordance with paragraph 3 or 4, the Board, after consulting the competent authorities, including the ECB, determines that there are substantive impediments to the resolvability of that entity or group, the Board shall prepare a report, in cooperation with the competent authorities, addressed to the entity or the parent undertaking analysing the substantive impediments to the effective application of resolution tools and the exercise of resolution powers. That report shall consider the impact on the entity’s or the group’s business model and recommend any proportionate and targeted measures that, in the Board’s view, are necessary or appropriate to remove those impediments in accordance with paragraph 10.’;

(c) the following paragraph is inserted:

‘9a. Where the Board finds that the measures proposed by the entity or the parent undertaking concerned effectively reduce or remove the substantive impediments to resolvability, the Board, after having consulted the ECB or the relevant national competent authority and, where appropriate, the designated macro-prudential authority, shall take a decision. That decision shall indicate that the Board has assessed the measures proposed as adequate for effectively reducing or removing the substantive impediments to resolvability and shall instruct the national resolution authorities to require the entity, the parent undertaking, or any subsidiary of the group concerned to implement the measures proposed.’;

(d) paragraph 10 is replaced by the following:

‘10. Where the Board finds that the measures proposed by the entity or the parent undertaking concerned do not effectively reduce or remove the substantive impediments to resolvability, the Board, after having consulted the competent authorities and, where appropriate, the designated macro-prudential authority, shall take a decision. That decision shall indicate that the Board has assessed that the measures proposed do not effectively reduce or remove the substantive impediments to resolvability and shall instruct the national resolution authorities to require the entity, the parent undertaking, or any subsidiary of the group concerned to take any of the measures listed in paragraph 11.

In identifying alternative measures, the Board shall demonstrate how the measures proposed by the entity or the parent undertaking concerned would not be able to remove the substantive impediments to resolvability and how the alternative measures proposed are proportionate in removing them. The Board shall take into account the threat to financial stability of those impediments to resolvability and the effect of the measures on the business of the entity or the parent undertaking concerned, its stability and its ability to contribute to the economy, on the internal market for financial services and on the financial stability in other Member States and the Union as a whole.

The Board shall also take into account the need to avoid any impact on the entity or the group concerned which would go beyond what is necessary to remove the impediment to resolvability or which would be disproportionate.';

(7) Article 10a is amended as follows:

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

‘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 Article 141a(1), points (a), (b) and (c), of Directive 2013/36/EU, but 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 Article 12a(2), point (a), of this Regulation, the Board shall have the power, in accordance with paragraphs 2 and 3 of this Article, to instruct the national resolution authority 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:’;

(b) the following paragraph is added:

‘7. Where a resolution entity or an entity that is not itself a resolution entity is not subject to the combined buffer requirement on the same basis as the basis on which it is required to comply with the requirements referred to in Articles 12d and 12e of this Regulation, the Board shall apply paragraphs 1 to 6 of this Article on the basis of the estimated combined buffer requirement resulting from the methodology set out in the delegated act adopted pursuant to Article 45c(4) of Directive 2014/59/EU. Article 128, fourth paragraph, of Directive 2013/36/EU shall apply.

The Board shall include the estimated combined buffer requirement referred to in the first subparagraph of this paragraph in the decision determining the requirements referred to in Articles 12d and 12e of this Regulation. The entity shall make the estimated combined buffer requirement publicly available together with the information referred to in Article 45i(3) of Directive 2014/59/EU.’;

(8) in Article 12, the following paragraph is added:

‘8. The Board shall be responsible for granting the permissions referred to in Article 77(2) and Article 78a of Regulation (EU) No 575/2013 to the entities referred to in paragraph 1 of this Article. The Board shall address a decision to the entity concerned.’;

(9) in Article 12a, paragraph 1 is replaced by the following:

‘1. The Board and national resolution authorities shall ensure that the entities referred to in Article 12(1) and (3) meet, at all times, the requirements for own funds and eligible liabilities where required and as determined by the Board in accordance with this Article and Articles 12b to 12i.’;

(10) Article 12c is amended as follows:

(a) the following paragraphs are inserted:

‘1a. Resolution entities shall only include deposits in the amount of own funds and eligible liabilities where such inclusion has been authorised by the Board in accordance with paragraph 1b and where those deposits meet all of the following conditions:

(a) the deposits meet all of the conditions set out in paragraph 1, first subparagraph;

(b) the deposits are not held by natural persons and micro, small and medium-sized enterprises;

(c) the deposits are term deposits with an original maturity of at least one year and do not confer upon the owner a right to early reimbursement even where the early reimbursement is subject to the payment of a penalty;

(d) the relevant contractual documentation explicitly refers to:

(i) the resolution entity's intention to include the deposits in the amount of own funds and eligible liabilities;

(ii) the exclusion of the deposits from any repayment by a deposit guarantee scheme pursuant to Article 5(1), point (l), of Directive 2014/49/EU.

1b. The Board may authorise the resolution entity to fully or partially include deposits in the amount of own funds and eligible liabilities if it is satisfied that all of the following conditions are met:

(a) the Board expects that those deposits would not be fully or partially excluded from bail-in pursuant to Article 27(5) or would not be transferred in full to a recipient under a partial transfer;

(b) the Board has concluded that the inclusion is not, or is not likely to be, a substantive impediment to resolvability, in particular due to the impact on the feasibility of using resolution tools in a way that achieves the resolution objectives.

The Board shall withdraw the authorisation where it concludes that one of the conditions referred to in the first subparagraph is no longer met. In that case, the resolution entity shall cease to include deposits in the amount of own funds and eligible liabilities.';

(b) in paragraphs 4 and 5, the term 'G-SIIs' is replaced by the term 'G-SII entities';

(c) in paragraph 7, the introductory wording is replaced by the following:

'By derogation from paragraph 4 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-SII entities 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:';

(d) paragraph 8 is amended as follows:

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

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

(e) the following paragraph is added:

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

(a) for entities that are G-SII entities or resolution entities that are subject to Article 12d(4) or (5), the Board has not reduced the requirement referred to in paragraph 4 of this Article, pursuant to the first subparagraph of that paragraph;

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

(11) Article 12d is amended as follows:

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

‘(b) liabilities that fulfil the eligibility criteria referred to in Article 72a of Regulation (EU) No 575/2013, except for Article 72b(2), points (b) and (d), of that Regulation, and, where applicable, in Article 12c(1a) of this Regulation;’;

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

(c) the following paragraph is inserted:

‘5a. For resolution entities the preferred resolution strategy of which envisages primarily the application of the sale of business tool or the bridge institution tool and its exit from the market, the level of the requirement referred to in paragraph 3 of this Article shall be at least equal to:

(a) 16 % when calculated in accordance with Article 12a(2), point (a); and

(b) 4,75 % when calculated in accordance with Article 12a(2), point (b).

The first subparagraph of this paragraph shall not apply to resolution entities the preferred resolution strategy of which envisages the application of the bail-in tool for the purpose of Article 27(1), point (a), independently or in combination with other resolution tools.’;

(d) in paragraph 6, eighth subparagraph, the words ‘critical economic functions’ are replaced by the term ‘critical functions’;

(12) in Article 12e(1), the introductory wording is replaced by the following:

‘The requirement referred to in Article 12a(1) for a resolution entity that is a G-SII entity shall consist of the following:’;

(13) Article 12g is amended as follows:

(a) paragraph 1 is amended as follows:

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

‘The Board, after having consulted the competent authorities, including the ECB, may decide to apply the requirement laid down in this Article to an entity as referred to in Article 2, point (b), or to a financial institution as referred to in Article 2, point (c), that is a subsidiary of a resolution entity but is not itself a resolution entity.’;

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

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

(iii) the fifth subparagraph is replaced by the following:

'For resolution groups identified in accordance with Article 3(1), point (24b)(b), those credit institutions or financial institutions that 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.';

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

'(ii) that fulfil the eligibility criteria referred to in Article 72a of Regulation (EU) No 575/2013, except for Article 72b(2), points (b), (c), (k), (l) and (m), and Article 72b(3), (4) and (5) of that Regulation, and, where applicable, in Article 12c(1a) of this Regulation;';

(c) the following paragraph is added:

‘4. Where in accordance with the global resolution strategy subsidiaries established in the Union, or a Union parent undertaking and its subsidiary institutions, are not resolution entities and the members of the European resolution college, where established pursuant to Article 89 of Directive 2014/59/EU, agree with that strategy, subsidiaries established in the Union or, on a consolidated basis, the Union parent undertaking shall comply with the requirement of Article 12a(1) of this Regulation by issuing the instruments referred to in paragraph 2, points (a) and (b), of this Article, to any of the following:

(a) their ultimate parent undertaking established in a third country;

(b) the subsidiaries of that ultimate parent undertaking that are established in the same third country;

(c) other entities under the conditions set out in paragraph 2, points (a)(i) and (b)(ii), of this Article.’;

(14) Article 12i is replaced by the following:

'*Article 12i*
Waiver for a central body, or for credit institutions
or financial 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 or a financial institution that is permanently affiliated to a central body, where all of the following conditions are met:

(a) the credit institution or the financial 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 or financial institutions are joint and several liabilities, or the commitments of its permanently affiliated credit institutions or financial 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 the permanently affiliated credit institutions or financial 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 or a financial institution that 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 or financial institutions in the event of resolution.';

(15) Article 12k is amended as follows:

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

‘1. The Board may determine appropriate transitional periods, not longer than three years, for entities to comply with the requirements laid down in Article 12f or 12g or with the requirements that result from the application of Article 12c(4), (5) or (7), as appropriate, where compliance with those requirements without a transitional period would not be proportionate. The Board may determine intermediate target levels for the requirements laid down in Article 12f or 12g or for the requirements that result from the application of Article 12c(4), (5) or (7), as appropriate, that entities shall comply with at a date set by the Board. The intermediate target levels shall, as a rule, ensure a linear build-up of own funds and eligible liabilities towards the requirement.

2. By way of derogation from paragraph 1, the transitional period determined by the Board for entities for which the preferred resolution strategy changes from winding up under normal insolvency proceedings to the application of resolution action shall not exceed four years.

Where duly justified and appropriate on the basis of the criteria referred to in paragraph 7, the Board may determine a longer transitional period of up to six years.

The Board may determine intermediate target levels for the requirement referred to in Article 12d or for the requirements that result from the application of Article 12c(4), (5) or (7), as appropriate, that entities shall comply with at a date set by the Board. The intermediate target levels shall, as a rule, ensure a linear build-up of own funds and eligible liabilities towards the requirement.';

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

'(a) on which the Board has applied the bail-in tool; or';

(c) paragraph 4 is replaced by the following:

'4. The requirements referred to in Article 12c(4) and (7) and in 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 a non-EU G-SII, or the resolution entity starts to be in the situation referred to in Article 12d(4) or (5).';

(d) paragraphs 5 and 6 are replaced by the following:

'5. By way of derogation from Article 12a(1), the Board shall determine an appropriate transitional period within which to comply with the requirements of Article 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 of this Article, the Board 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.';

(16) Article 13 is replaced by the following:

'*Article 13*
Early intervention measures

1. The ECB shall consider without undue delay and, if appropriate, apply early intervention measures where an entity referred to in Article 7(2), point (a):

(a) meets the conditions referred to in Article 102 of Directive 2013/36/EU or in Article 16(1) of Regulation (EU) No 1024/2013 and either of the following applies:

(i) the entity has not taken the remedial actions required by the ECB, including the measures referred to in Article 104 of Directive 2013/36/EU or in Article 16(2) of Regulation (EU) No 1024/2013;

(ii) the ECB deems that remedial actions other than early intervention measures are insufficient to address the problems of that entity;

(b) breaches the requirements laid down in Article 12f or 12g; or

(c) infringes or is likely to infringe, in the 12 months following the assessment of the ECB, any of the requirements laid down in Title II of Directive 2014/65/EU or in Articles 3 to 7, 14 to 17 or 24, 25 and 26 of Regulation (EU) No 600/2014 of the European Parliament and of the Council*.

The ECB may determine that the condition referred to in the first subparagraph, point (a)(ii), of this paragraph is met without having previously taken other remedial actions, including the exercise of the powers referred to in Article 104 of Directive 2013/36/EU or in Article 16(2) of Regulation (EU) No 1024/2013.

For the purposes of the first subparagraph, points (b) and (c), of this paragraph, the Board or the competent authority as defined in Article 4(1), point (26), of Directive 2014/65/EU shall inform the ECB without delay of the infringement or likely infringement.

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

(a) the requirement for the management body of the entity to either:

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

(ii) update the recovery plan in accordance with Article 5(2) of Directive 2014/59/EU, where the circumstances that led to the early intervention are different from the assumptions set out in the initial recovery plan, and implement one or more of the arrangements or measures set out in the updated recovery plan within a specific timeframe;

(b) the requirement for the management body of the entity to convene or, if the management body fails to comply with that requirement, the direct convening by the ECB of, a meeting of shareholders of the entity, and in both cases set the agenda and require certain decisions to be considered for adoption by the shareholders;

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

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

(e) the requirement to remove, or replace in accordance with Article 13a, the senior management or management body of the entity in its entirety or with regard to individuals;

(f) the appointment of one or more temporary administrators to the entity in accordance with Article 13b;

(g) the requirement for the management body of the entity to draw up a plan that the entity can implement in the event that it decides to initiate a voluntary wind-down of its activities.

3. The ECB shall choose the appropriate early intervention measures referred to in paragraph 2 on the basis of what is proportionate to the objectives pursued, having regard to the seriousness of the infringement or likely infringement and the speed of the deterioration of the financial situation of the entity, among other relevant information.

4. For each of the early intervention measures referred to in paragraph 2, the ECB shall set an implementation deadline which shall be strictly limited to the time necessary to implement the measure concerned under reasonable conditions. The ECB shall conduct an evaluation of the effectiveness of the measure immediately after expiry of the deadline and shall share that evaluation with the Board.

Where the evaluation concludes that the early intervention measures have not been fully implemented or are not effective, the ECB may carry out an assessment of whether the condition referred to in Article 18(1), point (a), is met.

5. Where a group as referred to in Article 7(2), point (a), of this Regulation includes entities established in participating Member States as well as in non-participating Member States, the ECB shall represent the national competent authorities of the participating Member States for the purposes of consultation and cooperation with non-participating Member States in accordance with Article 30 of Directive 2014/59/EU.

Where a group as referred to in Article 7(2), point (a), includes entities established in participating Member States and subsidiaries established, or significant branches located, in non-participating Member States, the ECB shall communicate, in a timely manner, any decisions or measures referred to in Articles 13 to 13c relevant to the group to the competent authorities or the resolution authorities of the non-participating Member States, as appropriate.

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* Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84, ELI: http://data.europa.eu/eli/reg/2014/600/oj)';

(17) the following articles are inserted in Chapter 2:

'*Article 13a*
Replacement of the senior management or management body

For the purposes of Article 13(2), point (e), the new senior management or management body, or individual members thereof, shall be appointed in accordance with Union and national law and such appointments shall be subject to the approval of the ECB.

Article 13b
Temporary administrator

1. For the purposes of Article 13(2), point (f), the ECB may, on the basis of what is proportionate in the circumstances, appoint one or more temporary administrators to either:

   (a) temporarily replace the management body of the entity; or

   (b) work temporarily with the management body of the entity.

   At the time of appointment of the temporary administrator, the ECB shall specify whether that appointment is for the purposes of the first subparagraph, point (a) or (b).

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

The ECB shall make public the appointment of any temporary administrator, except where the temporary administrator does not have the power to represent the entity.

Any temporary administrator shall possess sufficient knowledge, skills and experience to perform his or her duties and shall fulfil the requirements set out in Article 91(2) and (2a) of Directive 2013/36/EU. The assessment by the ECB of whether the temporary administrator possesses such knowledge, skills and experience and complies with those requirements shall be an integral part of the decision to appoint that temporary administrator.

2. The ECB shall specify the powers of the temporary administrator at the time of his or her appointment, on the basis of what is proportionate in the circumstances. Such powers may include some or all of the powers of the management body of the entity, under the statutes of the entity and under national law, including the power to exercise some or all of the administrative functions of the management body of the entity. The powers of the temporary administrator in relation to the entity shall comply with the applicable company law. The ECB may adjust those powers in the event of a change in circumstances.

3. The ECB shall specify the role and functions of the temporary administrator at the time of his or her appointment. Such role and functions may include:

(a) ascertaining the financial position of the entity;

(b) managing the business or part of the business of the entity to preserve or restore its financial position;

(c) taking measures to restore the sound and prudent management of the business of the entity;

(d) ensuring compliance by the entity with any requirements pursuant to Article 13c(3), second subparagraph, (4), first subparagraph, or (5).

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

4. The ECB shall have the exclusive power to appoint and remove any temporary administrator. The ECB may remove a temporary administrator at any time and for any reason. The ECB may vary the terms of appointment of a temporary administrator at any time subject to this Article.

5. The ECB may require that certain acts of a temporary administrator be subject to the prior consent of the ECB. The ECB shall specify any such requirements at the time of appointment of the temporary administrator or at the time of any variation of the terms of appointment of the temporary administrator.

   In any case, the temporary administrator may exercise the power to convene a general meeting of the shareholders of the entity and to set the agenda of such a meeting only with the prior consent of the ECB.

6. At the request of the ECB, the temporary administrator shall draw up reports on the financial position of the entity and on the acts performed during his or her mandate, at intervals set by the ECB. The temporary administrator shall, in any case, draw up such a report at the end of his or her mandate.

7. The temporary administrator shall be appointed for a maximum of one year. The ECB may exceptionally extend that period once for a duration proportionate to the circumstances if the conditions for appointing the temporary administrator continue to be met. The ECB shall be responsible for determining whether those conditions are met and for justifying any extension of the mandate of the temporary administrator to the shareholders.

8. Subject to this Article, the appointment of a temporary administrator shall not prejudice the rights of the shareholders laid down in Union or national company law.

9. A temporary administrator appointed in accordance with paragraphs 1 to 8 shall not be deemed to be a shadow director or a *de facto* director of the entity concerned under national law.

Article 13c

Preparation for resolution

1. For the entities and groups referred to in Article 7(2), and the entities and groups referred to in Article 7(4), point (b), and Article 7(5) where the conditions for the application of those provisions are met, the ECB or national competent authorities shall notify the Board without delay of the following:

   (a) any of the measures referred to in Article 16(2) of Regulation (EU) No 1024/2013, Article 104(1) of Directive 2013/36/EU or in Article 39(2) of Directive (EU) 2019/2034 that they take or require an entity or group to take;

   (b) that, as shown by supervisory activity, the conditions laid down in Article 13(1) of this Regulation or Article 27(1) of Directive 2014/59/EU are met in relation to an entity or group, irrespective of the application of any early intervention measure;

   (c) the application of any of the early intervention measures referred to in Article 13 of this Regulation or Article 27 of Directive 2014/59/EU.

The Board shall inform the Commission of any notification it has received pursuant to the first subparagraph.

The ECB or the relevant national competent authority shall closely monitor, in close cooperation with the Board, the situation of the entities and groups referred to in the first subparagraph and their compliance with the measures referred to in the first subparagraph, point (a), that aim to address a deterioration of the situation of those entities and groups and with the early intervention measures referred to in the first subparagraph, point (c).

2. The ECB or the relevant national competent authority shall notify the Board as early as possible where they consider that there is a material risk of one or more of the circumstances referred to in Article 18(4) applying in relation to an entity referred to in Article 7(2), or an entity referred to in Article 7(4), point (b), and Article 7(5) where the conditions for the application of those provisions are met. That notification shall contain:

   (a) the reasons for the notification;

   (b) an overview of the measures under consideration which would prevent the failure of the entity concerned within a reasonable timeframe, their expected impact on the entity as regards the circumstances referred to in Article 18(4) and the expected timeframe for the implementation of those measures.

Following the receipt of the notification referred to in the first subparagraph of this paragraph, the Board shall assess, in close cooperation with the ECB or the relevant national competent authority, what constitutes a reasonable timeframe for the purposes of the assessment of the condition referred to in Article 18(1), point (b), taking into account the speed of the deterioration of the situation of the entity, the need to implement effectively the resolution strategy, and any other considerations relevant to the case. The Board may, at any time, reassess the timeframe and adjust it to the circumstances of the case. The Board shall communicate that assessment or reassessment to the ECB or to the relevant national competent authority as early as possible.

Following the receipt of the notification referred to in the first subparagraph, the ECB or the relevant national competent authority and the Board shall, in close cooperation, monitor the situation of the entity, the implementation of relevant measures within their expected timeframe and any other relevant developments. For that purpose, the ECB or the relevant national competent authority and the Board shall meet regularly, with a frequency to be determined by the Board having regard to the circumstances of the case. The ECB or the relevant national competent authority and the Board shall provide each other with any relevant information without delay.

The Board shall notify the Commission of any information it has received pursuant to the first subparagraph.

3. The ECB or the relevant national competent authority shall provide the Board with all the information requested by the Board that is necessary for any of the following actions:

(a) updating the resolution plan and preparing for the possible resolution of an entity referred to in Article 7(2), or an entity referred to in Article 7(4), point (b), and Article 7(5) where the conditions for the application of those provisions are met;

(b) carrying out the valuation referred to in Article 20(1) to (15).

Where such information is not already available to the ECB or the national competent authorities, the Board and the ECB and such national competent authorities shall cooperate and coordinate to obtain that information. For that purpose, the ECB, the Board, through the national resolution authorities or directly, after informing them, and the national competent authorities shall have the power to require the entity to provide such information, including through on-site inspections, and to provide each other with that information.

4. The Board shall have the power, through the national resolution authorities or directly, after informing them, to market to potential purchasers the entity referred to in Article 7(2), or the entity referred to in Article 7(4), point (b), and Article 7(5) where the conditions for the application of those provisions are met, to make arrangements for such marketing, or to require the entity to do so, for the following purposes:

(a) to prepare for the resolution of that entity, subject to the criteria laid down in Article 39(2) of Directive 2014/59/EU and the requirements of professional secrecy laid down in Article 88 of this Regulation;

(b) to carry out the assessment by the Board of the condition referred to in Article 18(1), point (b), of this Regulation.

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

5. The Board shall have the power to require the relevant national resolution authority to:

(a) require the entity concerned to put in place the necessary arrangements, including a digital platform, for sharing information with potential purchasers or with advisors and valuers engaged by the Board;

(b) draft a preliminary resolution scheme for the entity concerned.

Where the Board exercises its power under the first subparagraph, point (a), of this paragraph, Article 88 shall apply.

6. The prior notification by the ECB or the relevant national competent authority in accordance with paragraph 1, first subparagraph, shall not be a necessary condition for the Board to prepare for the resolution of the entity or to exercise the powers referred to in the paragraphs 3, 4 and 5.

7. The Board shall inform the Commission, the ECB, the relevant national competent authorities and the relevant national resolution authorities of any action taken pursuant to paragraphs 3, 4 and 5 without delay.

8. The ECB, the relevant national competent authorities, the Board and the relevant national resolution authorities shall closely cooperate in the following cases:

(a) when considering taking the measures referred to in paragraph 1, first subparagraph, point (a), that aim to address a deterioration of the situation of an entity or a group, and the measures referred to in paragraph 1, first subparagraph, point (c);

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

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

The ECB, the relevant national competent authorities, the Board and the relevant national resolution authorities shall ensure that those measures and actions are consistent, coordinated and effective.

9. The Board may instruct the national resolution authorities to exercise the powers referred to in Article 84b(1) of Directive 2014/59/EU. The national resolution authorities shall implement the instructions of the Board in accordance with Article 29 of this Regulation.';

(18) in Article 14(2), point (c) is replaced by the following:

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

(19) in Article 16, paragraph 2 is replaced by the following:

‘2. The Board shall take a resolution action in relation to a parent undertaking referred to in Article 2, point (b), considering the need to implement effectively the resolution strategy, where the conditions laid down in Article 18(1) are met.

For the purpose of taking a resolution action, a parent undertaking referred to in Article 2, point (b), shall be deemed to be failing or likely to fail in any of the following circumstances:

(a) the parent undertaking meets one or more of the conditions laid down in Article 18(4), point (b), (c) or (d);

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

(20) Article 18 is amended as follows:

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

‘1. The Board shall adopt a resolution scheme pursuant to paragraph 6 of this Article in relation to the entities referred to in Article 7(2), and to the entities referred to in Article 7(4), point (b), and Article 7(5) where the conditions for the application of those provisions are met, only when it has determined in its executive session, upon receiving a communication pursuant to the second subparagraph of this paragraph, or on its own initiative, and considering the need to implement effectively the resolution strategy, that all of the following conditions are met:

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

(b) having regard to the timing and other relevant circumstances, there is no reasonable prospect that any alternative private sector measures, including measures by an IPS, preventive measures as referred to in Article 11(3) of Directive 2014/49/EU, supervisory action, early intervention measures, or the write-down or conversion of relevant capital instruments and eligible liabilities as referred to in Article 21(1) of this Regulation, taken in respect of the entity, would prevent the failure of the entity within a reasonable timeframe;

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

The assessment of the condition referred to in the first subparagraph, point (a), of this paragraph shall be made by the ECB for the entities referred to in Article 7(2), point (a), or by the relevant national competent authority for the entities referred to in Article 7(2), point (b), Article 7(3), second subparagraph, Article 7(4), point (b), and Article 7(5), after having consulted the Board. The Board in its executive session may make such an assessment only after having informed the ECB or the relevant national competent authority of its intention to make such an assessment and only if the ECB or the relevant national competent authority, within three calendar days of receipt of that information, does not make such an assessment itself. The ECB or the relevant national competent authority shall, without delay, provide the Board with any relevant information that the Board requests in order to carry out its assessment, before or after being informed by the Board of its intention to make the assessment of the condition referred to in the first subparagraph, point (a), of this paragraph.

Where the ECB or the relevant national competent authority has assessed that the condition referred to in the first subparagraph, point (a), is met in relation to an entity as referred to in the first subparagraph, it shall communicate that assessment to the Commission and to the Board without delay.

The assessment of the condition referred to in the first subparagraph, point (b), shall be made by the Board in its executive session and in close cooperation with the ECB or the relevant national competent authority. The ECB or the relevant national competent authority shall, without delay, provide the Board with any relevant information that the Board requests in order to carry out its assessment. The ECB or the relevant national competent authority may also inform the Board that it considers the condition laid down in the first subparagraph, point (b), to be met.

When assessing the conditions referred to in the first subparagraph, points (a) and (b), the ECB, the relevant national competent authority or the Board shall seek the latest available information from the deposit guarantee scheme or, where relevant, from the IPS of which the entity is a member, that would be relevant for such assessment, including whether the deposit guarantee scheme or the IPS can prevent the failure.

1a. The Board may adopt a resolution scheme in accordance with paragraph 1 in relation to a central body and all credit institutions or financial institutions permanently affiliated to it that are part of the same resolution group where the central body and all credit institutions or financial institutions permanently affiliated to it, or the resolution group to which they belong, comply as a whole with the conditions laid down in paragraph 1, first subparagraph.

2. Without prejudice to cases where the ECB has decided to exercise directly supervisory tasks relating to credit institutions pursuant to Article 6(5), point (b), of Regulation (EU) No 1024/2013, in the event of receipt of a communication pursuant to paragraph 1 of this Article in relation to an entity or group as referred to in Article 7(3) of this Regulation, the Board shall communicate its assessment as referred to paragraph 1, fourth subparagraph, of this Article to the ECB or the relevant national competent authority without delay.

3. The previous adoption of a measure pursuant to Article 16 of Regulation (EU) No 1024/2013, Article 27 of Directive 2014/59/EU, Article 13 of this Regulation or Article 104 of Directive 2013/36/EU shall not be a condition for taking a resolution action.';

(b) paragraph 4 is amended as follows:

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

'(d) extraordinary public financial support is required, except where such support is granted in one of the forms referred to in Article 18a(1).';

(ii) the second, third and fourth subparagraphs are deleted;

(c) paragraph 5 is replaced by the following:

‘5. For the purposes of paragraph 1, first subparagraph, point (c), a resolution action shall not be necessary in the public interest if the Board concludes that none of the resolution objectives would be at risk in the event that the entity is wound up under normal insolvency proceedings.

If the Board concludes that one or more of the resolution objectives would be at risk in the event that the entity is wound up under normal insolvency proceedings, the Board shall conclude that a resolution action is necessary in the public interest where the resolution action is necessary to achieve, and is proportionate to, one or more of the resolution objectives and where the winding up of the entity under normal insolvency proceedings would not meet the resolution objectives which are at risk more effectively.

When carrying out the assessment referred to in the first subparagraph, the Board, on the basis of the information available to it at the time of that assessment, shall consider and compare any extraordinary public financial support that can reasonably be expected to be granted to the entity, both in the event of resolution and in the event of winding up in accordance with the applicable national law.

When carrying out the assessment referred to in the second subparagraph, the Board shall consider the costs of resolution and of normal insolvency proceedings and shall seek to minimise and avoid destruction of value, unless necessary to achieve the resolution objectives.';

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

'Within 24 hours from the transmission of the resolution scheme by the Board, the Commission shall endorse the resolution scheme or object to it, either with regard to the discretionary aspects of the resolution scheme in the cases not covered in the third subparagraph of this paragraph or with regard to the proposed use of State aid or Fund aid that is not considered compatible with the internal market.';

(e) the following paragraphs are added:

'11. Where the conditions referred to in paragraph 1, first subparagraph, points (a) and (b), of this Article are met, the Board may instruct the national resolution authorities to exercise the powers under national law transposing Article 33a of Directive 2014/59/EU in accordance with the conditions laid down in national law. The national resolution authorities shall implement the instructions of the Board in accordance with Article 29 of this Regulation.

12. The Board may instruct the national resolution authorities to exercise the powers referred to in Article 84b(2) of Directive 2014/59/EU. The national resolution authorities shall implement the instructions of the Board in accordance with Article 29 of this Regulation.';

(21) the following article is inserted:

'*Article 18a*
Extraordinary public financial support

1. Extraordinary public financial support outside of resolution action may be granted to an entity as referred to in Article 2, on an exceptional basis, provided that the extraordinary public financial support complies with the conditions and requirements established in the Union State aid framework, only in the following cases:

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

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

(ii) a State guarantee of newly issued liabilities;

(iii) an acquisition of own funds instruments other than Common Equity Tier 1 instruments or of other capital instruments, or a use of impaired asset measures, at prices, duration and other terms that do not confer an undue advantage upon the entity concerned, where none of the circumstances referred to in Article 18(4), point (a), (b) or (c), or Article 21(1) are present at the time the public support is granted;

(b) where the extraordinary public financial support takes the form of an intervention by a deposit guarantee scheme, as referred to in Article 11(3) of Directive 2014/49/EU;

(c) where the extraordinary public financial support takes the form of an intervention by a deposit guarantee scheme, as referred to in Article 11(5) of Directive 2014/49/EU;

(d) where the extraordinary public financial support takes the form of State aid granted to an entity referred to in Article 32b of Directive 2014/59/EU, other than the support granted by a deposit guarantee scheme pursuant to Article 11(5) of Directive 2014/49/EU.

2. The support measures referred to in paragraph 1, point (a), shall:

(a) be confined to solvent entities, as confirmed by the ECB or by the relevant national competent authority;

(b) be of a precautionary and temporary nature and be based on a predefined strategy, approved by the ECB or the relevant national competent authority, to exit the support measures, which includes a clearly specified termination date, sale date or repayment schedule for each of those measures;

(c) be proportionate to remedy the consequences of the serious disturbance in the economy of a Member State of an exceptional or systemic nature and to preserve financial stability; and

(d) not be used to offset losses that the entity has incurred or is likely to incur over at least the following 12 months.

The predefined strategy referred to in the first subparagraph, point (b), of this paragraph shall not be disclosed until after the entity exits the support measures concerned, or until after the assessment referred to in paragraph 6, second subparagraph, of this Article has been completed, subject to non-delayable disclosure obligations as referred to in Article 17 of Regulation (EU) No 596/2014.

3. For the purposes of paragraph 2, first subparagraph, point (a), of this Article, where the extraordinary public financial support takes the form of the support measures referred to in paragraph 1, points (a)(ii) and (iii), of this Article, an entity shall be deemed to be solvent where the ECB or the relevant national competent authority has concluded that no breach has occurred, or is likely to occur in the following 12 months, based on current expectations, of any of the requirements referred to in Article 92(1) of Regulation (EU) No 575/2013, Article 104a of Directive 2013/36/EU, Article 11(1) of Regulation (EU) 2019/2033, Article 40 of Directive (EU) 2019/2034 or the relevant applicable requirements under Union or national law.

When assessing whether a breach of the requirements referred to in the first subparagraph of this paragraph has occurred, the ECB or the relevant national competent authority shall disregard any breaches that have effectively been remedied by the time of the assessment. Where the ECB or the relevant national competent authority concludes that a future breach of the requirements referred to in Article 104a of Directive 2013/36/EU or Article 40 of Directive (EU) 2019/2034 is likely to occur in the following 12 months, it may exceptionally deem an entity to be solvent where it determines that the breach will be of a short-term nature and that effective remediation measures to address it have been planned by the entity and have been assessed as credible by the ECB or the relevant national competent authority by the time of the assessment.

4. For the purposes of paragraph 2, first subparagraph, point (d), the ECB or the relevant national competent authority shall quantify the losses that the entity has incurred or is likely to incur. That quantification shall be based on asset quality reviews conducted by the ECB, EBA or national authorities or, where appropriate, on on-site inspections conducted by the ECB or the relevant national competent authority. Where it is not possible to conduct those reviews or inspections within a reasonable time, the ECB or the relevant national competent authority may base the quantification on the entity's balance sheet, provided that the balance sheet complies with the applicable accounting rules and standards, as confirmed by an independent external auditor. The quantification shall be made as close as possible to the date of the granting of the support measures and by using the most recent information available to the ECB or the relevant national competent authority.

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

By way of derogation from paragraph 1, point (a)(iii), of this Article, the acquisition of Common Equity Tier 1 instruments shall be exceptionally permitted where the nature of the shortfall identified is such that the acquisition of any other own funds instruments or other capital instruments would not make it possible for the entity concerned to address the capital shortfall established in the adverse scenario in the relevant stress test or equivalent exercise. The amount of acquired Common Equity Tier 1 instruments shall not exceed 2 % of the total risk exposure amount of the entity concerned calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013.

In exceptional circumstances, the ECB or the relevant national competent authority may permit the 2 % limit to be exceeded where it has demonstrated that it is necessary and appropriate for the implementation of the support measures, taking into account the specific circumstances of the case. The exceeding of the limit shall be of an amount that does not create any risks for the timely and credible execution of the predefined strategy to exit the support measures. The ECB or the relevant national competent authority shall provide the Commission with the analysis underlying its permission to exceed the 2 % limit for the purposes of any potential State aid assessment.

6. If any of the support measures referred to in paragraph 1, point (a), is not redeemed, repaid or otherwise terminated in accordance with the terms of the strategy to exit the support measure established at the time of granting such measure, the ECB or the relevant national competent authority shall request the entity to submit a one-time remediation plan. The remediation plan shall describe the steps to be taken in order to exit the support measure within two years and to ensure the long-term viability of the entity. The remediation plan shall not constrain the power of the relevant authorities to assess or determine whether the entity is failing or is likely to fail, at any time.

   Where the ECB or the relevant national competent authority is not satisfied that the remediation plan is credible or feasible, or where the entity fails to comply with the remediation plan, the relevant authorities shall assess whether the entity is failing or is likely to fail.

7. The ECB or the relevant national competent authority shall inform the Board of the results of its assessment of whether the conditions referred to in paragraph 2, first subparagraph, points (a), (b) and (d), of this Article are met with respect to the entities and groups referred to in Article 7(2) and to the entities and groups referred to in Article 7(4), point (b), and Article 7(5) where the conditions for the application of those provisions are met.';

(22) Article 19 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Where resolution action involves the granting of State aid pursuant to Article 107(1) TFEU or of Fund aid in accordance with paragraph 3 of this Article, the resolution scheme referred to in Article 18(6) of this Regulation shall not enter into force until such time as the Commission adopts a positive or conditional decision, or a decision not to raise objections, concerning the compatibility of the use of such aid with the internal market. The Commission shall, taking into consideration the need for the timely execution of the resolution scheme by the Board, adopt the decision concerning the compatibility of the use of State aid or of Fund aid with the internal market by, at the latest, the time it endorses the resolution scheme or objects to it pursuant to Article 18(7), second subparagraph, of this Regulation, or before the expiry of the period of 24 hours referred to in Article 18(7), fifth subparagraph, of this Regulation, whichever is earlier.

In performing the tasks conferred on them by Article 18, Union institutions shall have in place structural arrangements that ensure operational independence and avoid conflicts of interest that could arise between the functions entrusted with the performance of those tasks and other functions and shall make public, in an appropriate manner, all relevant information on their internal organisation in that regard.’;

(b) paragraph 3 is replaced by the following:

‘3. As soon as the Board considers that it may be necessary to use the Fund, it shall informally, promptly and in a confidential manner contact the Commission to discuss the possible use of the Fund, including the legal and economic aspects of its use. Once the Board is sufficiently certain that the resolution scheme envisaged will entail the use of Fund aid, the Board shall formally notify the Commission of the proposed use of the Fund. That notification shall contain all of the information that the Commission needs to make its assessments pursuant to this paragraph and that the Board has in its possession or has the power to obtain in accordance with this Regulation.

Upon receiving the notification referred to in the first subparagraph, the Commission shall assess whether the use of the Fund would distort, or threaten to distort, competition by favouring the beneficiary or any other undertaking so as, insofar as it would affect trade between Member States, to be incompatible with the internal market. The Commission shall apply to the use of the Fund the criteria established for the application of State aid rules as enshrined in Article 107 TFEU. The Board shall provide the Commission with the information in its possession, or which the Board has the power to obtain in accordance with this Regulation, and that the Commission deems necessary to carry out that assessment.

When making its assessment, the Commission shall be guided by all the relevant regulations adopted under Article 109 TFEU, all related and relevant communications and guidance of the Commission, and all measures adopted by the Commission in application of the rules of the Treaties relating to State aid as are in force at the time the assessment is to be made. Those measures shall be applied as if references to the Member State responsible for notifying the aid were references to the Board, and with any other necessary modifications.

The Commission shall adopt a decision on the compatibility of the use of the Fund with the internal market and address that decision to the Board and to the national resolution authorities of the Member State or Member States concerned. That decision may be contingent on conditions, commitments or undertakings in respect of the beneficiary and it shall take into account the need for timely execution of resolution action by the Board.

The decision may also lay down obligations on the Board, the national resolution authorities in the participating Member State or Member States concerned or the beneficiary to enable compliance with it to be monitored. This may include requirements for the appointment of a trustee or other independent person to assist in monitoring. A trustee or other independent person may perform such functions as may be specified in the Commission decision.

Any decision pursuant to this paragraph shall be published in the *Official Journal of the European Union*.

The Commission may issue a negative decision, addressed to the Board, where it decides that the proposed use of the Fund would be incompatible with the internal market and cannot be implemented in the form proposed by the Board. On receipt of such a decision the Board shall reconsider its resolution scheme and prepare a revised resolution scheme.';

(c) paragraph 10 is replaced by the following:

'10. By way of derogation from paragraph 3, the Council may, on an application of a Member State or the Board, within seven days of such application being made, unanimously decide that the use of the Fund is to be considered compatible with the internal market, where such a decision is justified by exceptional circumstances. The Commission shall take a decision on the case where the Council has not decided within that seven-day period.';

(23) Article 20 is amended as follows:

(a) the following paragraph is inserted:

'8a. Where necessary to inform the decisions referred to in paragraph 5, points (c) and (d), the valuer shall complement the information referred to in paragraph 7, point (c), with an estimate of the value of the off-balance-sheet assets and the value of the liabilities that could arise in the future from an uncertain event and of the liabilities of uncertain timing or amount.';

(b) in paragraph 17, point (a) is replaced by the following:

‘(a) the treatment that shareholders and creditors, or the relevant deposit guarantee schemes in the cases referred to in Article 79(1), point (a), and Article 79(6), would have received if an institution under resolution with respect to which the resolution action or actions have been effected, had entered normal insolvency proceedings at the time when the decision on the resolution action was taken;’;

(24) Article 21 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the first subparagraph is amended as follows:

– the introductory wording is replaced by the following:

‘The Board, acting under the procedure laid down in Article 18, shall exercise the power to write down or convert relevant capital instruments, and eligible liabilities as referred to in paragraph 7a of this Article, in relation to the entities and groups referred to in Article 7(2), and to the entities and groups referred to in Article 7(4), point (b), and Article 7(5) where the conditions for the application of those provisions are met, only when it has determined in its executive session, upon receiving a communication pursuant to the second subparagraph of this paragraph or on its own initiative and taking into consideration the need to implement effectively the write-down or conversion power or, where applicable, the resolution strategy for the resolution group, that one or more of the following circumstances apply:’;

– point (e) is replaced by the following:

‘(e) extraordinary public financial support is required by the entity or group, except where that support is granted in one of the forms referred to in Article 18a.’;

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

‘The assessment of the conditions referred to in the first subparagraph, points (a) to (d), of this paragraph, shall be made by the ECB for entities referred to in Article 7(2), point (a), or by the relevant national competent authority for entities referred to in Article 7(2), point (b), Article 7(4), point (b), and Article 7(5), and by the Board in its executive session, in accordance with the allocation of tasks pursuant to the procedure laid down in Article 18(1) and (2).’;

(b) paragraph 2 is deleted;

(c) in paragraph 3, point (b) is replaced by the following:

‘(b) having regard to timing and other relevant circumstances, there is no reasonable prospect that any action, including alternative private sector measures, supervisory action or early intervention measures, other than the write-down or conversion of relevant capital instruments, and eligible liabilities as referred to in paragraph 7a, would prevent the failure of that entity or group within a reasonable timeframe.’;

(d) paragraph 9 is replaced by the following:

‘9. Where one or more of the conditions referred to in paragraph 1 of this Article are met in relation to an entity referred to in that paragraph, and the conditions referred to in Article 18(1) are also met in relation to that entity or to an entity belonging to the same group, the procedure laid down in Article 18(6), (7) and (8) shall apply. The Board shall adopt a single resolution scheme covering the entity for which the conditions referred to in Article 18(1) are met as well as any entity referred to in paragraph 1 of this Article.’;

(25) in Article 22, paragraph 5 is replaced by the following:

‘5. Where the resolution tools referred to in paragraph 2, point (a) or (b), are used, independently or in combination with other resolution tools, to transfer only part of the assets, rights or liabilities of the institution under resolution, any residual entity remaining after the transfer of the assets, rights or liabilities, and the application of other resolution tools, where relevant, shall be wound up in an orderly manner in accordance with the applicable national law.

The first subparagraph of this paragraph shall not apply where the bail-in tool is applied to an institution under resolution for the purpose of Article 27(1), point (a), in combination with other resolution tools.

In the cases referred to in the first subparagraph of this paragraph, where resolution action would result in losses being borne by creditors or in their claims being converted, the Board may decide not to exercise the power to write down and convert capital instruments in accordance with Article 21, as referred to in paragraph 1 of this Article, if those instruments are to be left in the residual entity and the application of the resolution tools referred to in paragraph 2, point (a) or (b), of this Article together with the winding up of the residual entity would ensure, on the basis of the valuation referred to in Article 20, that they would bear losses ahead of any other creditors of the institution under resolution.';

(26) Article 27 is amended as follows:

(a) paragraph 7 is replaced by the following:

'7. The Fund may make a contribution as referred to in paragraph 6 only where all of the following conditions are met:

(a) a contribution to loss absorption and recapitalisation equal to an amount not less than 8 % of the total liabilities including own funds of the institution under resolution, measured in accordance with the valuation provided for in Article 20(1) to (15) of this Regulation, has been made by shareholders and the holders of relevant capital instruments and of other bail-inable liabilities through reduction, write-down or conversion pursuant to Article 48(1) of Directive 2014/59/EU and Article 21(10) of this Regulation, and by the deposit guarantee scheme pursuant to Article 79 of this Regulation where relevant;

(b) the contribution from the Fund does not exceed 5 % of the total liabilities including own funds of the institution under resolution, measured in accordance with the valuation provided for in Article 20(1) to (15).';

(b) paragraph 9 is replaced by the following:

'9. In extraordinary circumstances, the Board may seek further funding from alternative financing sources after:

(a) the Fund has made a contribution pursuant to paragraph 6 and the 5 % limit referred to in paragraph 7, point (b), has been reached; and

(b) all bail-inable liabilities that are not eligible deposits, that rank lower than the deposits referred to in Article 108(1), first subparagraph, point (b), of Directive 2014/59/EU, and that have not been excluded from bail-in pursuant to paragraph 5 of this Article, have been written down or converted in full.';

(c) paragraph 13 is replaced by the following:

'13. The Board shall assess, on the basis of a valuation that complies with the requirements of Article 20(1) to (15), the aggregate of:

(a) where relevant, the amount by which bail-inable liabilities must be written down in order to ensure that the net asset value of the institution under resolution is equal to zero; and

(b) where relevant, the amount by which bail-inable liabilities must be converted into shares or other types of capital instruments in order to restore the Common Equity Tier 1 capital ratio of either:

(i) the institution under resolution; or

(ii) the bridge institution.

13a. The assessment referred to in paragraph 13 shall establish the amount by which bail-inable liabilities need to be written down or converted for the following purposes:

(a) to restore the Common Equity Tier 1 capital ratio of the institution under resolution or, where applicable, establish the ratio of the bridge institution, taking into account any contribution of capital by the Fund made pursuant to Article 76(1), point (d);

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

Where the Board intends to use the asset separation tool referred to in Article 26, the amount by which bail-inable liabilities need to be reduced shall take into account a prudent estimate of the capital needs of the asset management vehicle as appropriate.';

(27) Article 30 is amended as follows:

(a) the title is replaced by the following:

'Obligation to cooperate and information exchange';

(b) paragraph 2 is replaced by the following:

'2. In the exercise of their respective responsibilities under this Regulation, the Board, the Council, the Commission, the ECB and the national resolution authorities and national competent authorities shall cooperate closely, in particular in the resolution planning, early intervention and resolution phases pursuant to Articles 8 to 29. They shall provide each other with all information necessary for the performance of their respective tasks, including the information referred to in paragraphs 2a, 2b and 2c of this Article.';

(c) the following paragraphs are inserted:

‘2a. The Board, the ESRB, EBA, ESMA and EIOPA shall cooperate closely and provide each other with all of the information necessary for the performance of their respective tasks.

2b. The ECB and other members of the European System of Central Banks (ESCB) shall cooperate closely with the Board and provide it with all of the information necessary for the performance of the Board’s tasks, including the information collected by them pursuant to the Statute of the European System of Central Banks and of the European Central Bank. Article 88(6) shall apply to all such exchanges of information.

2c. The designated authorities and deposit guarantee schemes shall cooperate closely with the Board. Those designated authorities, deposit guarantee schemes and the Board shall provide each other with all of the information necessary for the performance of their respective tasks. The designated authorities and deposit guarantee schemes shall be subject to the requirements of professional secrecy laid down in Article 88.’;

(d) paragraphs 6 and 7 are replaced by the following:

‘6. The Board shall endeavour to cooperate closely with any public financial assistance facility, including the European Financial Stability Facility (EFSF) and the European Stability Mechanism (ESM), in particular in all of the following situations:

(a) in the extraordinary circumstances referred to in Article 27(9) and where such a facility has granted, or is likely to grant, direct or indirect financial assistance to entities established in a participating Member State;

(b) where the Board has contracted for the Fund a financial arrangement pursuant to Article 74.

7. Where necessary, the Board shall conclude a memorandum of understanding with the ECB and other members of the ESCB, the national resolution authorities and the national competent authorities, and the designated authorities and deposit guarantee schemes describing in general terms how they will cooperate under paragraphs 2 to 2c and 4 of this Article and under Article 74, second paragraph, in the performance of their respective tasks under Union law. The memorandum shall be reviewed on a regular basis and shall be published subject to the requirements of professional secrecy.’;

(28) the following article is inserted:

'*Article 30a*

Information held by centralised automated mechanisms

1. The authorities operating the centralised automated mechanisms established pursuant to Article 32a of Directive (EU) 2015/849 of the European Parliament and of the Council* shall provide the Board, upon its request, with information related to the aggregated number of customers for which an entity as referred to in Article 2 of this Regulation is the only or principal banking partner.

2. The Board shall request the information referred to in paragraph 1 only on a case-by-case basis and where necessary and proportionate for the purpose of performing its tasks under this Regulation.

3. The Board shall share the information obtained pursuant to paragraph 1 with the national resolution authorities concerned in the context of the performance of their tasks under this Regulation.

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

(29) in Article 31, the following paragraph is added:

‘3. For the entities and groups referred to in Article 7(2) of this Regulation and for the entities and groups referred to in Article 7(4), point (b), and Article 7(5), of this Regulation where the conditions for the application of those provisions are met, national resolution authorities shall consult the Board before acting under Article 86 of Directive 2014/59/EU.

National resolution authorities shall set an appropriate time limit for the Board to respond to the request for consultation, which shall not be shorter than two working days after the submission of the request by the national resolution authority. Where the Board does not express its views within that time limit, or request the extension thereof, it shall be assumed that the Board has no comments.’;

(30) in Article 32(1), the first subparagraph is replaced by the following:

‘Where a group includes entities established in participating Member States as well as in non-participating Member States or third countries, without prejudice to any approval by the Council or the Commission required under this Regulation, the Board shall represent the national resolution authorities of the participating Member States for the purposes of consultation and cooperation with non-participating Member States or third countries in accordance with Articles 7, 8, 12, 13, 16, 18, 45h, 55, and 88 to 92 of Directive 2014/59/EU.’;

(31) Article 34 is amended as follows:

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

‘The Board may, making full use of all of the information which is already available to the ECB, including the information collected by the members of the ESCB pursuant to the Statute of the European System of central banks and of the European Central Bank, or of all of the information available to the national competent authorities, to the ESRB, EBA, ESMA or EIOPA, require, through the national resolution authorities or directly, after having informed the national resolution authorities, the following legal or natural persons to provide it with all of the information necessary, in accordance with the procedure and form requested by the Board, for the performance of its tasks:’;

(b) paragraphs 5 and 6 are replaced by the following:

‘5. The Board, the ECB, the members of the ESCB, the national competent authorities, the ESRB, EBA, ESMA, EIOPA and the national resolution authorities may draw up memoranda of understanding setting out a procedure governing the exchange of information. The exchange of information between the Board, the ECB and other members of the ESCB, the national competent authorities, the ESRB, EBA, ESMA, EIOPA and the national resolution authorities shall not be deemed to infringe the requirements of professional secrecy.

6. National competent authorities, the ECB, members of the ESCB, the ESRB, EBA, ESMA, EIOPA, and the national resolution authorities shall cooperate with the Board to verify whether some or all of the information requested is already available at the time the request is made. Where such information is available, the national competent authorities, the ECB and other members of the ESCB, the ESRB, EBA, ESMA, EIOPA or the national resolution authorities shall provide that information to the Board.';

(32) the following article is inserted:

'*Article 41a*
Review by the Court of Justice of the European Union

The Court of Justice of the European Union shall have unlimited jurisdiction to review decisions of the Board imposing a fine or a periodic penalty payment. It may annul, or reduce or increase the amount of, the fine or periodic penalty payment imposed.';

(33) Article 43 is amended as follows:

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

'(aa) the Vice-Chair appointed in accordance with Article 56;';

(b) paragraph 2 is replaced by the following:

'2. Each member, including the Chair and the Vice-Chair, shall have one vote.';

(34) Article 45 is amended as follows:

(a) the title is replaced by the following:

‘Transparency and accountability’;

(b) the following paragraph is inserted:

‘3a. The Board shall publish its policies, guidelines, general instructions and staff working papers on resolution in general and on the resolution practices and methodologies to be applied within the SRM, as long as such publication does not entail the disclosure of confidential information. That publication requirement shall not apply to documents containing guidance or instructions to internal resolution teams or other documents prepared purely for purposes of internal information exchange within the SRM.’;

(35) in Article 50(1), point (n) is replaced by the following:

‘(n) appoint an Accounting Officer and an internal auditor, subject to the Staff Regulations and the Conditions of Employment, who shall be functionally independent in the performance of their duties;’;

(36) Article 53 is amended as follows:

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

‘The Board in its executive session shall be composed of the Chair, the Vice-Chair and the four members referred to in Article 43(1), point (b). The Board in its executive session shall meet as often as necessary.’;

(b) paragraph 5 is replaced by the following:

‘5. The members of the Board referred to in Article 43(1), points (a), (aa) and (b), shall ensure that the resolution decisions and actions, in particular with regard to the use of the Fund, across the different formations of the executive sessions of the Board are coherent, appropriate and proportionate.’;

(37) Article 54 is amended as follows:

(a) paragraph 2 is amended as follows:

(i) the introductory wording is replaced by the following:

‘In exercising its duties pursuant to paragraph 1 of this Article, the Board in its executive session shall:’;

(ii) the following point is added:

‘(f) conduct consultations in accordance with the procedure set out in paragraph 2a regarding guidelines, general instructions and any other instruments of general application within the SRM which set out how the Board expects to implement this Regulation.’;

(b) the following paragraph is inserted:

‘2a. For the purposes of paragraph 2, point (f), the following procedure shall apply:

(a) the Board in its executive session shall present a draft instrument to the Board in its plenary session;

(b) the Board in its plenary session shall ensure that the members of the Board referred to in Article 43(1), point (c), are consulted on the draft instrument;

(c) the Board in its executive session shall review any comments provided as part of the consultation referred to in point (b);

(d) following the review of the comments, the Board in its executive session shall provide its assessment of those comments to the Board in its plenary session for discussion;

(e) the Board in its executive session shall decide on the final version of the instrument following the discussion referred to in point (d) and after due consideration of all comments received.

The Board in its executive session shall provide appropriate reasons to the Board in its plenary session for the choices made regarding the instrument referred to in the first subparagraph of this paragraph. A summary of those reasons shall be published in the annual report of the Board referred to in Article 45(2).';

(38) in Article 55, paragraphs 1 and 2 are replaced by the following:

'1. When deliberating on an individual entity or a group established in only one participating Member State, if all members referred to in Article 53(1) and (3) are not able to reach a joint agreement by consensus within a deadline set by the Chair, the Chair, the Vice-Chair and the members referred to in Article 43(1), point (b), shall take a decision by a simple majority.

2. When deliberating on a cross-border group, if all members referred to in Article 53(1) and (4) are not able to reach a joint agreement by consensus within a deadline set by the Chair, the Chair, the Vice-Chair and the members referred to in Article 43(1), point (b), shall take a decision by a simple majority.';

(39) Article 56 is amended as follows:

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

‘(d) the establishment of a preliminary draft budget and a draft budget of the Board, in accordance with Article 61, and the implementation of the budget of the Board, in accordance with Article 63;’;

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

‘The term of office of the Chair, of the Vice-Chair and of the members referred to in Article 43(1), point (b), shall be five years. That term shall not be renewable.’;

(c) paragraph 7 is replaced by the following:

‘7. The Chair, the Vice-Chair, and the members referred to in Article 43(1), point (b), shall remain in office until their successors are appointed and have taken up their duties in accordance with the Council decision referred to in paragraph 6 of this Article.’;

(d) paragraph 8 is deleted;

(40) Article 61 is replaced by the following:

'*Article 61*
Establishment of the budget

1. By 31 March each year, the Chair shall draw up a preliminary draft budget of the Board, including a statement of estimates of the Board's revenue and expenditure for the following year, together with a draft establishment plan for the following year, and submit it to the Board in its plenary session.

   The Board in its plenary session shall, where necessary, adjust the preliminary draft budget of the Board together with the draft establishment plan.

2. On the basis of the preliminary draft budget, as adopted by the Board in its plenary session, the Chair shall draw up a draft budget of the Board and submit it to the Board in its plenary session for adoption.

   By 30 November each year, the Board in its plenary session shall adjust the draft budget submitted by the Chair, where necessary, and adopt the final budget of the Board together with the establishment plan.';

(41) in Article 62, paragraph 3 is replaced by the following:

'3. The responsibility for adopting internal control standards and putting in place internal control systems and procedures suitable for performing the tasks of the internal auditor shall lie with the Board in its plenary session.';

(42) in Article 69, paragraph 4 is replaced by the following:

‘4. If the available financial means are not sufficient to meet the target level specified in paragraph 1 of this Article, the *ex-ante* contributions calculated in accordance with Article 70 shall be raised until the target level is reached. The Board may defer the collection of the *ex-ante* contributions raised in accordance with Article 70 for up to three years to ensure that the amount to be collected reaches an amount that is proportionate to the costs of the collection process, provided that such deferral does not materially affect the capacity of the Board to use the Fund pursuant to Section 3. Where the available financial means account for less than two thirds of the target level, the contributions shall be set at a level allowing for the target level to be reached within a reasonable timeframe which shall not exceed six years.

However, where the net accumulated use of the Fund in the last three years which has been enabled by the contribution of deposit guarantee schemes in accordance with Article 79(4) reaches the threshold of 20 % of the target level of the Fund and the available financial means have been reduced to less than two thirds of the target level, the *ex-ante* contributions made necessary by such use shall be set at a level allowing for the target level to be reached within 10 years.

The *ex-ante* contribution shall take due account of the phase of the business cycle, and the impact pro-cyclical contributions may have when setting annual contributions in the context of this paragraph.’;

(43) Article 70 is amended as follows:

(a) paragraph 3 is replaced by the following:

‘3. The available financial means to be taken into account in order to reach the target level specified in Article 69 may include irrevocable payment commitments which are fully backed by collateral of low-risk assets unencumbered by any third-party rights, at the free disposal of and earmarked for the exclusive use by the Board for the purposes specified in Article 76(1). The share of irrevocable payment commitments shall not exceed 30 % of the total amount of contributions raised in accordance with this Article. Within that limit, the Board shall determine annually the share of irrevocable payment commitments in the total amount of contributions to be raised in accordance with this Article.’;

(b) the following paragraph is inserted:

‘3a. The Board shall call the irrevocable payment commitments made pursuant to paragraph 3 of this Article where the use of the Fund is needed pursuant to Article 76.

Where an entity ceases to be within the scope of Article 2, the Board shall cancel the irrevocable payment commitments made pursuant to paragraph 3 of this Article and the collateral backing those commitments shall be returned.

Having regard to the need to preserve or restore adequate level of financial means available in the Fund, in the cases referred to in the second subparagraph the Board shall have the power, upon cancellation of the irrevocable payment commitments, to determine an amount that the entity referred to in the second subparagraph shall contribute to the Fund in the form, terms and timing set out in the decision of the Board.

The contribution referred to in the third subparagraph shall not exceed the amount of irrevocable payment commitments cancelled pursuant to the second subparagraph.';

(44) in Article 71(1), the second subparagraph is replaced by the following:

'The total amount of extraordinary *ex-post* contributions per year shall not exceed three times 12,5 % of the target level specified in Article 69.';

(45) in Article 74, the following paragraph is added:

'The Board shall inform the Commission and the ECB as soon as it considers that it might be necessary to activate the financial arrangements contracted for the Fund in accordance with this Article, and shall provide the Commission and the ECB with all of the information necessary for the performance of their tasks in respect of those financial arrangements.';

(46) Article 76 is amended as follows:

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

‘(e) to pay compensation to shareholders and creditors, or to the deposit guarantee scheme in the cases referred to in Article 79(1), point (a), and Article 79(6), if, following a valuation pursuant to Article 20(5), they have incurred greater losses than they would have incurred, following a valuation pursuant to Article 20(16), in a winding up under normal insolvency proceedings;’;

(b) the following paragraph is inserted:

‘3a. Where paragraph 3 applies, any variable remuneration, including discretionary pension benefits, of the current and former members of the management body and senior management of the institution under resolution for periods prior to the failure of the institution that has not been paid out or has not vested before the decision to take resolution action shall be cancelled. Variable remuneration, including discretionary pension benefits, that vested or was paid out, in the 24 months preceding the decision to take resolution action, to the current and former members of the management body and senior management shall be returned or repaid by them, unless they prove that they did not participate in, or were not responsible for, the conduct that resulted in, or contributed to, the failure of the institution under resolution.

This paragraph shall not apply to variable remuneration, including discretionary pension benefits, that is regulated by a collective bargaining agreement.’;

(c) the following paragraphs are added:

‘5. Where the resolution tools referred to in Article 22(2), point (a) or (b), are used to transfer only part of the assets, rights or liabilities of the institution under resolution, the Board shall have a claim against the residual entity for any expense and loss incurred by the Fund as a result of any contributions made to resolution pursuant to paragraphs 1 and 2 of this Article in connection to losses which creditors would have otherwise borne.

6. The claims of the Board referred to in paragraph 5 of this Article and in Article 22(6) of this Regulation shall, in each participating Member State, have the same priority ranking as the claims of the national resolution financing arrangements in the national law of that Member State governing normal insolvency proceedings pursuant to Article 108(9) of Directive 2014/59/EU.’;

(47) Article 79 is replaced by the following:

'*Article 79*

Use of deposit guarantee schemes in the context of resolution

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

   (a) where the bail-in tool is applied for the purpose of Article 27(1), first subparagraph, point (a), independently or in combination with other resolution tools, the amount by which covered deposits would have been written down or converted in order to absorb the losses and recapitalise the institution under resolution pursuant to Article 27(13), had covered deposits been included within the scope of bail-in;

   (b) where the sale of business tool or the bridge institution tool is applied, independently or in combination with other resolution tools, leading to the exit from the market of the institution under resolution:

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

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

2. In the cases referred to in paragraph 1, point (b), of this Article, where the transfer to the recipient includes deposits that are not covered deposits or other bail-inable liabilities and the Board has reached the conclusion that the circumstances referred to in Article 27(5) apply to those deposits or liabilities, and where the threshold laid down in Article 27(7), point (a), for the use of the resolution financing arrangements is not met through the contribution to loss absorption and recapitalisation made by the shareholders and the holders of relevant capital instruments and of other bail-inable liabilities, the amount contributed by the deposit guarantee scheme shall be the following:

(a) the amount necessary to cover the difference between, on the one hand, the value of deposits referred to in Article 108(1), first subparagraph, of Directive 2014/59/EU, and of the liabilities with the same or higher priority ranking than covered deposits and, on the other hand, the value of the assets of the institution under resolution which are to be transferred to a recipient; and

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

Once the deposit guarantee scheme has made a contribution in the cases referred to in the first subparagraph, the institution under resolution shall refrain from acquiring stakes in other undertakings as well as from making distributions in connection with Common Equity Tier 1 capital or payments on Additional Tier 1 instruments, and from conducting other activities that may lead to an outflow of funds.

3. Where the funds of the deposit guarantee scheme are used in the application of the bail-in tool in accordance with paragraph 1, point (a), to contribute to the recapitalisation of the institution under resolution, the deposit guarantee scheme shall transfer its holdings of shares or other instruments of ownership in the institution under resolution to the private sector as soon as commercial and financial circumstances allow.

The deposit guarantee scheme shall market the shares or other instruments of ownership referred to in the first subparagraph openly and transparently. Any such sale shall not misrepresent those shares or instruments or discriminate between potential purchasers and shall be made on commercial terms.

4. The contribution of the deposit guarantee scheme to a transfer that includes deposits that are not covered deposits or other bail-inable liabilities pursuant to paragraph 2 of this Article shall count towards the threshold laid down in Article 27(7), point (a), where all of the following conditions are met:

(a) the total value of the assets of the institution under resolution on an individual basis does not exceed EUR 80 billion;

(b) the institution under resolution has not, in the 24 months preceding the decision to take resolution action, been identified as a liquidation entity in the group resolution plan or in the resolution plan;

(c) the own funds instruments and eligible liabilities of the institution under resolution, and any liabilities that no longer qualify as eligible liabilities because they do not satisfy the condition set out in Article 72c(1) of Regulation (EU) No 575/2013, have been used in full for loss absorption and recapitalisation, except those eligible liabilities in relation to which the Board considers that the circumstances referred to in Article 27(5) of this Regulation apply;

(d) the level of the requirement referred to in Article 12(1) for the institution under resolution is at least equal to the level referred to in Article 12d(5a);

(e) the institution under resolution has not breached the requirement referred to in Article 12a(2), point (a), including the corresponding intermediate target levels determined pursuant to Article 12k(1) and (2), for two consecutive quarters in the four-year period which ends on the date prior to the first day of the three full quarters preceding the decision to take resolution action.

For the purposes of the first subparagraph, point (e), of this paragraph, where the ECB or the relevant national competent authority or the Board has applied at least one of the measures referred to in Article 12j(1) to address a breach of the requirement referred to in Article 12a(2), point (a), the Board shall not take into account breaches of that requirement during the four full quarters preceding the decision to take resolution action.

Point (e) of the first subparagraph of this paragraph shall not apply to the requirements that result from the application of Article 12c(4), (5) or (7).

5. Where the contribution of the deposit guarantee scheme to a transfer that includes deposits that are not covered deposits or other bail-inable liabilities, pursuant to paragraphs 2 and 4 of this Article, together with the contribution to loss absorption and recapitalisation made by the shareholders and the holders of relevant capital instruments and of other bail-inable liabilities, enables the use of the Fund, the contribution of the deposit guarantee scheme shall be limited to the amount necessary to meet the threshold laid down in Article 27(7), point (a). Following the contribution of the deposit guarantee scheme, the Fund shall be used in accordance with the principles governing the use of the Fund set out in Articles 27 and 76.

Where an institution under resolution has a total value of assets on an individual basis of between EUR 30 billion and EUR 80 billion, the contribution of the deposit guarantee scheme pursuant to this paragraph shall not exceed 2,5 % of the total liabilities including own funds of the institution under resolution.

6. Where paragraph 4 of this Article applies and the conditions set out in Article 27(9) are met, the deposit guarantee scheme shall make an additional contribution equal to the amount of losses that covered deposits would have suffered, had covered deposits suffered losses in proportion to the losses suffered by creditors with the same priority ranking in the national insolvency hierarchy.

   The cost of the additional contribution of the deposit guarantee scheme referred to in the first subparagraph of this paragraph shall not exceed the losses it would have incurred had the institution been wound up under normal insolvency proceedings, as estimated pursuant to Article 20(9).

7. In all cases, the total amount of the contribution of the deposit guarantee scheme in a resolution action in accordance with this Article shall not exceed the amount referred to in Article 11e, point (a), of Directive 2014/49/EU.

Where the sale of business tool or the bridge institution tools is applied in accordance with paragraph 1, point (b), or paragraph 2 of this Article, the amount of the contribution of the deposit guarantee scheme referred to in those provisions shall not exceed 62,5 % of the target level of the deposit guarantee scheme as referred to in Article 10(2) of Directive 2014/49/EU.

The designated authority may decide that the limit referred to in the second subparagraph of this paragraph shall not apply in the event that the Board provides that designated authority with a justification that a contribution from the deposit guarantee scheme of an amount higher than 62,5 % of its target level is necessary to avoid adverse effects on financial stability or to preserve the access of depositors to their deposits.

Where the bail-in tool is applied in accordance with paragraph 1, point (a), of this Article, the amount of the contribution of the deposit guarantee scheme shall not exceed the losses the deposit guarantee scheme would have incurred had the institution been wound up under normal insolvency proceedings, as estimated pursuant to Article 20(9).

Upon request, the deposit guarantee scheme shall promptly inform the Board of the amounts referred to in the first and second subparagraphs.

8. The Board shall determine the amount of the contribution of the deposit guarantee scheme in accordance with this Article and shall notify its decision to the designated authority and to the deposit guarantee scheme. The deposit guarantee scheme shall implement that decision without delay.

9. Where eligible deposits at an institution under resolution are transferred to another entity through the sale of business tool or the bridge institution tool, the depositors shall have no claim under Directive 2014/49/EU against the deposit guarantee scheme in relation to any part of their deposits at the institution under resolution that are not transferred, provided that the amount of their deposits which are transferred is equal to or more than the aggregate coverage level provided for in Article 6 of that Directive.

10. Where the deposit guarantee scheme makes a contribution to resolution action, Article 76(3a) shall apply.

11. Where the use of the Fund for an institution under resolution with a total value of assets on an individual basis of between EUR 30 billion and EUR 80 billion has been enabled by the contribution of a deposit guarantee scheme in accordance with paragraph 4, the Board shall report to the European Parliament, to the Council and to the Commission on the resolution scheme adopted by the Board, in particular explaining why the contribution of the deposit guarantee scheme and the use of the Fund were needed. That report shall be submitted within three months after the adoption of the resolution scheme.';

(48) the following articles are inserted:

‘*Article 79a*

Accumulated use of the Fund and of deposit guarantee schemes

1. Once the net accumulated use of the Fund in the last three years which has been enabled by the contribution of deposit guarantee schemes in accordance with Article 79(4) reaches the threshold of 10 % of the target level of the Fund, the Board in its plenary session shall provide guidance on the use of the Fund enabled by the contribution of deposit guarantee schemes. The Board in its executive session shall follow that guidance in subsequent resolution decisions until the Fund has been fully replenished.

   The guidance referred to in the first subparagraph of this paragraph shall be adopted by the Board in its plenary session in accordance with Article 52(2).

2. Once the net accumulated use of the Fund in the last three years which has been enabled by the contribution of deposit guarantee schemes in accordance with Article 79(4) reaches the threshold of 20 % of the target level of the Fund, the Board shall inform the Council and the Commission.

After receiving the information referred to in the first subparagraph of this paragraph, the Commission shall review the following:

(a) the functioning of the provisions on contributions of deposit guarantee schemes in resolution enabling the use of the Fund in accordance with Article 79(4);

(b) whether the arrangements set out in Articles 69, 70 and 71 for the raising of contributions after the use of the Fund has been enabled by the contribution of deposit guarantee schemes are appropriate.

The Commission shall submit a report thereon to the European Parliament and to the Council. Where appropriate, that report shall be accompanied by a legislative proposal.

Article 79b
Reporting on liquidity in resolution

By 31 December 2026, the Commission shall submit a report to the European Parliament and to the Council on the issue of liquidity in resolution.

The report referred to in the first subparagraph shall take stock of the existing arrangements for the provision of liquidity in resolution, including both private and public mechanisms, and examine the most efficient ways to address temporary liquidity shortfalls, taking into account any relevant developments at international level. That report shall present policy options.';

(49) in Article 85(3), the first subparagraph is replaced by the following:

‘Any natural or legal person, including resolution authorities, may appeal against a decision of the Board adopted under Article 10(10), Article 11, Article 12(1), Articles 38 to 41, Article 65(3), Article 71 and Article 90(3) which is addressed to that person, or which is of direct and individual concern to that person.’;

(50) Article 88 is amended as follows:

(a) paragraph 6 is replaced by the following:

‘6. This Article shall not prevent the Board, the Council, the Commission, the ECB, the national resolution authorities or the national competent authorities, including their employees and experts, from sharing information with each other and with competent ministries, central banks, designated authorities, deposit guarantee schemes, investor compensation schemes, authorities responsible for normal insolvency proceedings, insurance resolution authorities, insurance supervisory authorities, resolution and competent authorities from non-participating Member States, EBA, or, subject to Article 33, third-country authorities that carry out functions equivalent to those of a resolution authority, or, subject to strict confidentiality requirements, with a potential purchaser for the purposes of planning or carrying out a resolution action.’;

(b) the following paragraph is added:

‘8. This Article shall not prevent the Board from disclosing its analyses or assessments, including when they are based on information provided by the entities referred to in Article 2 or other authorities as referred to in paragraph 6 of this Article, when the Board assesses that the disclosure would not undermine the protection of the public interest as regards financial, monetary or economic policy and that there is a public interest in disclosing which overrides any other interests referred to in paragraph 5 of this Article. Such disclosure shall be considered to be made by the Board in the exercise of its functions under this Regulation for the purposes of paragraph 1 of this Article.’;

(51) the following article is inserted:

‘*Article 93a*
Transitional provisions

1. By way of derogation from Article 12c(1a), deposits taken prior to … [24 months plus one day from the date of entry into force of this amending Regulation] that meet the conditions set out in Article 12c(1), first subparagraph, Article 12d(2a), second subparagraph, or Article 12g(2), point (a), may be included in the amount of own funds and eligible liabilities until … [36 months from the date of entry into force of this amending Regulation].

2. In respect of transitional periods for entities to comply with the requirements laid down in Article 12f or 12g of this Regulation or with requirements that result from the application of Article 12c(4), (5) or (7) of this Regulation, as appropriate, determined by the Board prior to … [24 months plus one day from the date of entry into force of this amending Regulation], Article 1, point (15)(a) of Regulation (EU) 2026/… of the European Parliament and of the Council[*+] shall not apply.

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[*] Regulation (EU) 2026/… of the European Parliament and of the Council of … amending Regulation (EU) No 806/2014 as regards early intervention measures, conditions for resolution and funding of resolution action (OJ L, …, ELI: …).'.

[+] OJ: please insert in the text the number of this amending Regulation and complete the corresponding footnote.

Article 2

Entry into force and application

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

It shall apply from … [24 months from the date of entry into force of this amending Regulation].

However, Article 1, point (1)(b), points (2), (3) and (4), point (5)(a), points (6)(a), (b) and (d)(ii), point (7)(a), point (8), points (13)(a)(i) and (c), points (15)(b) and (d), point (20)(d), point (20)(e) concerning Article 18(11) of Regulation (EU) No 806/2014, point (22), points (24)(a)(ii), (b) and (d), point (27), points (29) to (41), point (45), point (48) concerning Article 79b of Regulation (EU) No 806/2014, and points (49) and (50), of this Regulation shall apply from … [one month from the date of entry into force of this amending Regulation].

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

Done at Brussels,

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