EUROPEAN UNION

THE EUROPEAN PARLIAMENT **THE COUNCIL**

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DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING DIRECTIVE 2014/59/EU AND REGULATION (EU) NO 806/2014 AS REGARDS CERTAIN ASPECTS OF THE MINIMUM REQUIREMENT FOR OWN FUNDS AND ELIGIBLE LIABILITIES

DIRECTIVE (EU) 2024/…
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 11 April 2024

amending Directive 2014/59/EU and Regulation (EU) No 806/2014 as regards certain aspects of the minimum requirement for own funds and eligible liabilities

(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 27 February 2024 (not yet published in the Official Journal) and decision of the Council of 26 March 2024.

Whereas:

(1) Directive (EU) 2019/879 of the European Parliament and of the Council[4] and Regulation (EU) 2019/877 of the European Parliament and of the Council[5] amended the framework for the minimum requirement for own funds and eligible liabilities ('MREL') set out in Directive 2014/59/EU of the European Parliament and of the Council[6] and in Regulation (EU) No 806/2014 of the European Parliament and of the Council[7], which applies to credit institutions and investment firms ('institutions') established in the Union as well as to any other entity that falls within the scope of Directive 2014/59/EU or Regulation (EU) No 806/2014 ('entities'). Those amendments provided that internal MREL, that is, the MREL applicable to institutions and entities that are subsidiaries of resolution entities but are not themselves resolution entities, may be met by those institutions and entities using instruments issued to and bought by the resolution entity, either directly or indirectly, through other entities in the same resolution group.

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4 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).

5 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).

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

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

(2) The Union framework for the MREL was further amended by Regulation (EU) 2022/2036 of the European Parliament and of the Council[8], which introduced specific deduction rules in the case of an indirect subscription of instruments eligible for meeting the internal MREL. That Regulation introduced in Directive 2014/59/EU a requirement for the Commission to review the impact of the indirect subscription of instruments eligible for meeting the MREL on a level playing field between different types of banking group structures, including where banking groups have an operating company between the holding company identified as a resolution entity and its subsidiaries. The Commission was asked to assess whether entities that are not themselves resolution entities should be allowed to comply with the MREL on a consolidated basis. Furthermore, the Commission was asked to evaluate the treatment, under the rules governing the MREL, of entities whose resolution plan provides that those entities are to be wound up under normal insolvency proceedings. Finally, the Commission was asked to evaluate the appropriateness of limiting the amount of deductions required pursuant to Article 72e(5) of Regulation (EU) No 575/2013 of the European Parliament of the Council[9]. The new provisions should therefore respect the principles of the original review mandate given to the Commission by the European Parliament and the Council to ensure proportionality and a level playing field between different types of banking group structures.

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8 Regulation (EU) 2022/2036 of the European Parliament and of the Council of 19 October 2022 amending Regulation (EU) No 575/2013 and Directive 2014/59/EU as regards the prudential treatment of global systemically important institutions with a multiple-point-of-entry resolution strategy and methods for the indirect subscription of instruments eligible for meeting the minimum requirement for own funds and eligible liabilities (OJ L 275, 25.10.2022, p. 1).

9 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).

(3) The review carried out by the Commission found that it would be appropriate and proportionate to the objectives pursued by the rules on internal MREL to allow resolution authorities to set the internal MREL on a consolidated basis for a range of entities that is wider than the range resulting from the application of Directive 2014/59/EU and Regulation (EU) No 806/2014, where such wider range covers institutions and entities that are not resolution entities themselves, but that are subsidiaries of resolution entities and that control other subsidiaries ('intermediate entities') within the same resolution group. That would be in particular the case for those banking groups that are headed by a holding company. In such cases, the intermediate entities naturally centralise intragroup exposures and channel the internal MREL eligible resources pre-positioned by the resolution entity. Due to that structure, such intermediate entities could be disproportionately affected by the existing deduction rules. The Commission also concluded that the framework for the MREL would be made more proportionate by adjusting the rules on the scope of exposures that an intermediate entity is required to deduct, where those exposures are to a liquidation entity not subject to a decision determining the MREL. In those cases, it is not expected that write-down and conversion powers will need to be exercised in respect of those liquidation entities. By contrast, the remaining entities of the resolution group will need to be recapitalised by the resolution entity in the case of distress or failure. The necessary MREL eligible resources should therefore be present at all levels of the resolution group, and their availability for loss absorption and recapitalisation should be ensured through the deduction mechanism. Thus, in its review, the Commission concluded that intermediate entities should continue to deduct the full amount of their holdings of internal MREL eligible resources issued by other non-liquidation entities in the same resolution group.

(4) Having clarity on what constitutes a liquidation entity is essential for the proper functioning of the deduction and consolidation frameworks and for calculating the MREL for specific entities. To that end, a definition of liquidation entity should be laid down, focusing on the identification of liquidation entities at the stage of resolution planning. Therefore, resolution authorities should carry out a proper assessment of institutions and entities within the scope of Directive 2014/59/EU and Regulation (EU) No 806/2014 when drawing up resolution plans. A central part of that assessment is identifying whether the institution or entity carries out critical functions. Without prejudice to the assessment of the importance of the institution or entity at national or regional level, a thorough analysis of the relevance of the potential liquidation entity within a resolution group is also expected to be carried out. An institution or entity that represents a significant part of the total risk exposure amount, leverage ratio exposure or operating income of a resolution group should not in principle be identified as a liquidation entity.

(5) Under Article 45f of Directive 2014/59/EU and Article 12g of Regulation (EU) No 806/2014, institutions and entities are to comply with the internal MREL on an individual basis. Compliance on a consolidated basis is only allowed in two specific cases: for Union parent undertakings that are not resolution entities and are subsidiaries of third-country entities, and for parent undertakings of institutions or entities waived from complying with the internal MREL. Pursuant to Article 72e(5) of Regulation (EU) No 575/2013, where an intermediate entity complies with its internal MREL on a consolidated basis, that entity is not obliged to deduct holdings of internal MREL eligible resources of other entities belonging to the same resolution group and included in its consolidation perimeter, as compliance with the internal MREL on a consolidated basis achieves a similar effect. The review carried out by the Commission has demonstrated that intermediate entities of banking groups headed by a holding company should also be allowed to comply with the internal MREL on a consolidated basis. In particular, it should be possible to comply with the internal MREL on a consolidated basis where the application of deductions would increase the internal MREL in a disproportionate way. Furthermore, the review demonstrated that, where an intermediate entity is subject to own funds requirements or to a combined buffer requirement on a consolidated basis, compliance with the internal MREL on an individual basis could create the risk that the internal MREL eligible resources pre-positioned at the level of the intermediate entity are not sufficient to restore compliance with the applicable consolidated own funds requirement after the write down and conversion of those resources.

In addition, a key input in the calculation of the MREL for the institution or entity concerned would be missing where the additional own funds requirement or the combined buffer requirement was set at a different level of consolidation, making the calculation of the requirement challenging. Similarly, the power of resolution authorities to prohibit, in accordance with Article 16a of Directive 2014/59/EU and Article 10a of Regulation (EU) No 806/2014, certain distributions above the maximum distributable amount related to the MREL in respect of the individual subsidiary becomes challenging to exercise where the key metric, that is, the combined buffer requirement, is not set on the same basis as the internal MREL. For those reasons, the possibility to comply with the internal MREL on a consolidated basis should also be available to other types of banking group structures, whenever the intermediate entity is subject to additional own funds requirements on a consolidated basis only. The possibility to comply with the internal MREL on a consolidated basis as introduced by this Directive is intended to complement the situations where that is already possible under Directive 2014/59/EU and Regulation (EU) No 806/2014, and does not replace the relevant provisions in those legislative acts.

(6) To ensure that the possibility to comply with the internal MREL on a consolidated basis is available only in the relevant cases and does not lead to a shortage of internal MREL eligible resources across the resolution group, the power to set the internal MREL on a consolidated basis for intermediate entities should be a discretionary power of the resolution authority subject to certain conditions. The intermediate entity should be a direct subsidiary of a resolution entity which is a Union parent financial holding company or a Union parent mixed financial holding company established in the same Member State and part of the same resolution group. That resolution entity should not directly hold subsidiaries, other than the intermediate entity, that are institutions or that are entities subject to the MREL. Alternatively, the intermediate entity concerned should comply with the additional own funds requirement on the basis of its consolidated situation only. In both cases, however, compliance with the internal MREL on a consolidated basis should not, in the assessment of the resolution authority, impair in a material way the credibility and feasibility of the group resolution strategy nor the application by the resolution authority of the power to write down or convert relevant capital instruments and eligible liabilities of the intermediate entity concerned or of other entities in its resolution group. One situation where the setting of the internal MREL on a consolidated basis would be detrimental to the resolvability of the resolution group is where the amount necessary to comply with that MREL would not suffice to ensure compliance with the own funds requirements applicable after the exercise of write-down and conversion powers.

(7) Pursuant to Article 45f(2) of Directive 2014/59/EU and Article 12g(2) of Regulation (EU) No 806/2014, intermediate entities may comply with the consolidated internal MREL using own funds and eligible liabilities. To fully deliver on the possibility to comply with the MREL on a consolidated basis, it is necessary to ensure that the eligible liabilities of intermediate entities are computed in a way that is similar to the computation of own funds. The eligibility criteria for liabilities that may be used to comply with the internal MREL on a consolidated basis should therefore take into account the rules on the calculation of consolidated own funds laid down in Regulation (EU) No 575/2013. To ensure consistency with the existing rules on the external MREL, that alignment should also reflect the existing rules laid down in Article 45b(3) of Directive 2014/59/EU and Article 12d(3) of Regulation (EU) No 806/2014 for the calculation of eligible liabilities that resolution entities may use to comply with their consolidated MREL. In particular, it is necessary to ensure that eligible liabilities issued by the subsidiaries of the entity subject to the consolidated internal MREL and held by the resolution entity, either directly or indirectly through other entities of the same resolution group but outside the scope of consolidation, or by existing shareholders not belonging to the same resolution group, count towards the own funds and eligible liabilities of the entity subject to the consolidated internal MREL.

(8) Under the current framework, for entities earmarked for liquidation, the MREL is set, in the majority of cases, at the amount necessary for loss absorption, which corresponds to the own funds requirements. In such cases, the MREL does not entail any additional requirement directly related to the resolution framework for the liquidation entity. That means that a liquidation entity can fully comply with the MREL by complying with the own funds requirements and that a dedicated decision of the resolution authority determining the MREL does not contribute in a meaningful way to the resolvability of that entity. Such a decision entails many procedural obligations for the resolution authority and for the liquidation entity without a corresponding benefit in terms of improved resolvability. For that reason, resolution authorities should not determine the MREL for liquidation entities. The framework for the MREL should be applied on the basis of criteria that ensure that an entity qualifies as a liquidation entity consistently across the Union. Resolution authorities should therefore ensure a consistent application of the new provisions concerning liquidation entities to those entities that are part of a cross-border group, in particular where the group comprises entities located inside and outside the banking union.

(9) When drawing up resolution plans and assessing the resolvability of resolution groups, resolution authorities may consider that a subsidiary institution or entity qualifies as a liquidation entity where the resolution plan foresees that it is feasible and credible that the institution or entity would be wound up under normal insolvency proceedings or where the resolution plan does not envisage the exercise of write-down and conversion powers in respect of that institution or entity. To take into account specificities of entities permanently affiliated to a central body, the resolution authority may consider that such an entity qualifies as a liquidation entity where the resolution plan does not envisage any other measures, such as a merger of affiliates, to be taken by the central body or the resolution authority with respect to such an entity. In those cases, it might not be necessary for a subsidiary institution or entity to hold own funds and eligible liabilities in excess of its own funds requirements. In order to ensure the resolvability of the group while respecting the principle of proportionality, in some cases, depending on the materiality of the holdings of own funds instruments issued by liquidation entities relative to the loss absorbing capacity of the intermediate entity, holdings held in the form of own funds instruments should be subject to deduction. To avoid cliff edge effects, the ratio of those holdings to the loss-absorbing capacity of the intermediate entity should be calculated as of the end of each calendar year as an average over the previous 12 months. However, the intermediate entity should not be required to deduct liabilities that would meet the conditions for compliance with the internal MREL and that do not qualify as own funds instruments. In the event of failure of a liquidation entity, the resolution plan does not envisage that the liquidation entity would be recapitalised by the resolution entity. That means that the upstreaming of losses above the existing own funds from the liquidation entity to the resolution entity, via the intermediate entity, would not be expected, and neither would the downstreaming of capital in the opposite direction. That adjustment to the scope of the holdings to be deducted in the context of the indirect subscription of internal MREL eligible resources would thus not affect the prudential soundness of the framework.

(10) The main objective of the permission regime for the reduction of eligible liabilities instruments laid down in Article 77(2) and Article 78a of Regulation (EU) No 575/2013, which is also applicable to institutions and entities subject to the MREL and to the liabilities issued to comply with the MREL, is to enable resolution authorities to monitor the actions that result in a reduction of the stock of eligible liabilities and to prohibit any action that would amount to a reduction beyond a level which resolution authorities deem adequate. Where the resolution authority has not adopted a decision determining the MREL in respect of an institution or entity, that objective is not relevant. Institutions or entities for which no decisions determining the MREL have been adopted should therefore not be required to obtain the prior permission of the resolution authority to effect the call, redemption, repayment or repurchase of liabilities that would meet the eligibility requirements for the MREL.

(11) There are liquidation entities for which the resolution authority might consider that the MREL should exceed the amount for loss absorption where such higher amount is necessary to protect financial stability or to address the risk of contagion to the financial system, including regarding the financing capacity of deposit guarantee schemes. Only in those situations should a resolution authority be able to determine in a proportionate way the MREL for the liquidation entity, which should consist of an amount sufficient to absorb losses, increased by the amount strictly necessary to properly address the potential risks identified by the resolution authority. The liquidation entity should then comply with the MREL and should not be exempted from the prior permission regime laid down in Article 77(2) and Article 78a of Regulation (EU) No 575/2013. Intermediate entities that belong to the same resolution group as the liquidation entity concerned should continue to be required to deduct from their internal MREL eligible resources their holdings of internal MREL eligible resources issued by that liquidation entity. In addition, since liquidation proceedings take place at the level of the legal entity, liquidation entities still subject to the MREL should comply with that requirement on an individual basis only. Lastly, certain eligibility requirements related to the ownership of the liability concerned are not relevant since without the exercise of write-down and conversion powers, there would be no need to preserve the control of the subsidiary by the resolution entity. Those eligibility requirements should therefore not apply.

(12) Pursuant to Article 45i of Directive 2014/59/EU, institutions and entities are to report to their competent and resolution authorities the levels of eligible liabilities and bail-inable liabilities and the composition of those liabilities, and to disclose that information to the public, together with the level of their MREL, on a regular basis. For liquidation entities, no such reporting or disclosure is required. However, to ensure the transparent application of the MREL, those reporting and disclosure obligations should also apply to liquidation entities for which the resolution authority determines that the MREL should be higher than the amount sufficient to absorb losses. In accordance with the principle of proportionality, the resolution authority should ensure that those obligations do not go beyond what is necessary to monitor compliance with the MREL.

(13) To ensure consistency, the amendments to Regulation (EU) No 806/2014 and the national measures transposing the amendments to Directive 2014/59/EU should apply from the same date. However, it is appropriate to provide for an earlier application date in respect of the amendments to the provisions concerning the possibility to comply with the consolidated internal MREL, in order to cater for the need of resolution authorities to adopt new decisions determining the MREL for that purpose and to increase legal certainty for the banking groups that would be subject to that provision in view of the general MREL compliance deadline of 1 January 2024 laid down in Directive 2014/59/EU and Regulation (EU) No 806/2014. For that reason, the new rules on the consolidated internal MREL under Regulation (EU) No 806/2014 should apply one day after the date of entry into force of this amending Directive. That would also signal to all banking groups and resolution authorities to which Directive 2014/59/EU and Regulation (EU) No 806/2014 apply that measures may be necessary to bridge the period from 1 January 2024 until the application date of the national measures transposing the provisions of this amending Directive.

(14) Since the objectives of this Directive, namely to adjust the treatment of liquidation entities under the MREL framework and the possibility for resolution authorities to determine the internal MREL on a consolidated basis, cannot be sufficiently achieved by the Member States 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 Directive does not go beyond what is necessary in order to achieve those objectives.

(15) Directive 2014/59/EU and Regulation (EU) No 806/2014 should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2014/59/EU

Directive 2014/59/EU is amended as follows:

(1) in Article 2(1), the following point is inserted:

‘(83aa) “liquidation entity” means a legal person established in the Union in respect of which the group resolution plan or, for entities that are not part of a group, the resolution plan, provides that the entity is to be wound up under normal insolvency proceedings, or an entity, within a resolution group other than a resolution entity, in respect of which the group resolution plan does not provide for the exercise of write-down and conversion powers;’;

(2) Article 45c is amended as follows:

(a) in paragraph 2, the second and third subparagraphs are deleted;

(b) the following paragraph is inserted:

‘2a. Resolution authorities shall not determine the requirement referred to in Article 45(1) for liquidation entities.

By way of derogation from the first subparagraph, a resolution authority may assess whether it is justified to determine the requirement referred to in Article 45(1) for a liquidation entity on an individual basis in an amount exceeding the amount sufficient to absorb losses in accordance with paragraph 2, point (a), of this Article. The resolution authority shall take into account in its assessment, in particular, any possible impact on financial stability and on the risk of contagion to the financial system, including with regard to the financing capacity of deposit guarantee schemes. Where the resolution authority determines the requirement referred to in Article 45(1), the liquidation entity shall meet that requirement by using one or more of the following:

(a) own funds;

(b) liabilities that fulfil the eligibility criteria referred to in Article 72a of Regulation (EU) No 575/2013, with the exception of Article 72b(2), points (b) and (d), of that Regulation;

(c) the liabilities referred to in Article 45b(2).

Article 77(2) and Article 78a of Regulation (EU) No 575/2013 shall not apply to liquidation entities for which the resolution authority has not determined the requirement referred to in Article 45(1) of this Directive.

Holdings of own funds instruments and eligible liabilities instruments issued by subsidiary institutions which are liquidation entities for which the resolution authority has not determined the requirement referred to in Article 45(1) shall not be deducted under Article 72e(5) of Regulation (EU) No 575/2013.

By way of derogation from the fourth subparagraph, an institution or entity referred to in Article 1(1), point (b), (c) or (d), that is not itself a resolution entity but is a subsidiary of a resolution entity or of a third-country entity that would be a resolution entity if it were established in the Union shall deduct its holdings of own funds instruments in subsidiary institutions that belong to the same resolution group and that are liquidation entities for which the resolution authority has not determined the requirement referred to in Article 45(1) where the aggregate amount of those holdings is equal to or exceeds 7 % of the total amount of its own funds and liabilities that comply with the eligibility criteria set out in Article 45f(2), calculated annually as of 31 December as an average over the previous 12 months.';

(3) Article 45f is amended as follows:

(a) in paragraph 1, the following subparagraph is inserted after the third subparagraph:

‘By way of derogation from the first and second subparagraphs, a resolution authority may decide to determine the requirement laid down in Article 45c on a consolidated basis for a subsidiary as referred to in this paragraph where the resolution authority concludes that all of the following conditions are met:

(a) the subsidiary meets one of the following conditions:

(i) the subsidiary is held directly by the resolution entity and:

– the resolution entity is a Union parent financial holding company or a Union parent mixed financial holding company;

– both the subsidiary and the resolution entity are established in the same Member State and are part of the same resolution group;

– the resolution entity does not hold directly any subsidiary institution or any subsidiary entity as referred to in Article 1(1), point (b), (c) or (d), where that entity is subject to the requirements set out in this Article or to the requirement referred to in Article 45c, other than the subsidiary concerned;

– the subsidiary would be disproportionately affected by the deductions required pursuant to Article 72e(5) of Regulation (EU) No 575/2013;

(ii) the subsidiary is subject to the requirement referred to in Article 104a of Directive 2013/36/EU on a consolidated basis only and the determination of the requirement laid down in Article 45c of this Directive on a consolidated basis would not lead to overstating the recapitalisation needs, for the purposes of Article 45c(1), point (b), of this Directive, of the subgroup consisting of entities within the consolidation perimeter concerned, in particular where there is a prevalence of liquidation entities within the same consolidation perimeter;

(b) compliance with the requirement laid down in Article 45c on a consolidated basis as a substitute for compliance with that requirement on an individual basis does not impair in a material way any of the following:

(i) the credibility and feasibility of the group resolution strategy;

(ii) the subsidiary's capacity to comply with its own funds requirement after the exercise of write-down and conversion powers; and

(iii) the adequacy of the internal loss transfer and recapitalisation mechanism, including the write-down or conversion, in accordance with Article 59, of relevant capital instruments and eligible liabilities of the subsidiary concerned or of other entities in the resolution group.';

(b) the following paragraphs are inserted:

'2a. Where an entity as referred to in paragraph 1 complies with the requirement referred to in Article 45(1) on a consolidated basis, the amount of own funds and eligible liabilities of that entity shall include the following liabilities issued in accordance with paragraph 2, point (a), of this Article by a subsidiary established in the Union included in the consolidation of that entity:

(a) liabilities issued to and bought by the resolution entity, either directly, or indirectly through other entities in the same resolution group that are not included in the consolidation of the entity complying with the requirement referred to in Article 45(1) on a consolidated basis;

(b) liabilities issued to an existing shareholder that is not part of the same resolution group.

2b. The liabilities referred to in paragraph 2a, points (a) and (b), of this Article, shall not exceed the amount determined by subtracting from the amount of the requirement referred to in Article 45(1) applicable to the subsidiary included in the consolidation the sum of all of the following:

(a) the liabilities issued to and bought by the entity complying with the requirement referred to in Article 45(1) on a consolidated basis, either directly, or indirectly through other entities in the same resolution group that are included in the consolidation of that entity;

(b) the amount of own funds that are issued in accordance with paragraph 2, point (b), of this Article.';

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

'4. Paragraphs 1 and 3 shall not apply to a liquidation entity unless the resolution authority has determined the requirement referred to in Article 45(1) for such entity in accordance with Article 45c(2a), second subparagraph. In that case, the resolution authority shall determine the content and frequency of the reporting and disclosure obligations referred to in paragraphs 5 and 6 of this Article for that entity. The resolution authority shall communicate those reporting and disclosure obligations to the liquidation entity concerned. Those reporting and disclosure obligations shall not go beyond what is necessary to monitor compliance with the requirement determined pursuant to Article 45c(2a), second subparagraph.';

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

‘1. Resolution authorities shall inform EBA of the minimum requirement for own funds and eligible liabilities set in accordance with Article 45e or Article 45f, including decisions taken pursuant to Article 45f(1), fourth subparagraph, for each entity under their jurisdiction.’.

Article 2

Amendments to Regulation (EU) No 806/2014

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

(1) in Article 3(1), the following point is inserted:

‘(24aa) “liquidation entity” means a legal person established in a participating Member State in respect of which the group resolution plan or, for entities that are not part of a group, the resolution plan, provides that the entity is to be wound up under normal insolvency proceedings, or an entity, within a resolution group other than a resolution entity, in respect of which the group resolution plan does not provide for the exercise of write-down and conversion powers;’;

(2) Article 12d is amended as follows:

(a) in paragraph 2, the second and third subparagraphs are deleted;

(b) the following paragraph is inserted:

‘2a. The Board shall not determine the requirement referred to in Article 12a(1) for liquidation entities.

By way of derogation from the first subparagraph, the Board may assess whether it is justified to determine the requirement referred to in Article 12a(1) for a liquidation entity on an individual basis in an amount exceeding the amount sufficient to absorb losses in accordance with paragraph 2, point (a), of this Article. The Board shall take into account in its assessment, in particular, any possible impact on financial stability and on the risk of contagion to the financial system, including with regard to the financing capacity of deposit guarantee schemes. Where the Board determines the requirement referred to in Article 12a(1), the liquidation entity shall meet that requirement by using one or more of the following:

(a) own funds;

(b) liabilities that fulfil the eligibility criteria referred to in Article 72a of Regulation (EU) No 575/2013, with the exception of Article 72b(2), points (b) and (d), of that Regulation;

(c) the liabilities referred to in Article 12c(2).

Article 77(2) and Article 78a of Regulation (EU) No 575/2013 shall not apply to liquidation entities for which the Board has not determined the requirement referred to in Article 12a(1) of this Regulation.

Holdings of own funds instruments and eligible liabilities instruments issued by subsidiary institutions which are liquidation entities for which the Board has not determined the requirement referred to in Article 12a(1) shall not be deducted under Article 72e(5) of Regulation (EU) No 575/2013.

By way of derogation from the fourth subparagraph, an institution or entity referred to in Article 2 that is not itself a resolution entity but is a subsidiary of a resolution entity or of a third-country entity that would be a resolution entity if it were established in the Union shall deduct its holdings of own funds instruments in subsidiary institutions that belong to the same resolution group and that are liquidation entities for which the Board has not determined the requirement referred to in Article 12a(1) where the aggregate amount of those holdings is equal to or exceeds 7 % of the total amount of its own funds and liabilities that comply with the eligibility criteria specified in Article 12g(2), calculated annually as of 31 December as an average over the previous 12 months.';

(3) Article 12g is amended as follows:

(a) in paragraph 1, the following subparagraph is inserted after the third subparagraph:

'By way of derogation from the first and second subparagraphs, the Board may decide to determine the requirement laid down in Article 12d on a consolidated basis for a subsidiary as referred to in this paragraph where the Board concludes that all of the following conditions are met:

(a) the subsidiary meets one of the following conditions:

(i) the subsidiary is held directly by the resolution entity and:

– the resolution entity is a Union parent financial holding company or a Union parent mixed financial holding company;

– both the subsidiary and the resolution entity are established in the same participating Member State and are part of the same resolution group;

– the resolution entity does not hold directly any subsidiary institution, as referred to in Article 1(1), point (a), of Directive 2014/59/EU, or any subsidiary entity, as referred to in Article 1(1), point (b), (c) or (d), of that Directive, where that entity is subject to the requirement referred to in Article 45c or 45f of that Directive or in Article 12d or 12g of this Regulation, other than the subsidiary concerned;

– the subsidiary would be disproportionately affected by the deductions required pursuant to Article 72e(5) of Regulation (EU) No 575/2013;

(ii) the subsidiary is subject to the requirement referred to in Article 104a of Directive 2013/36/EU on a consolidated basis only and the determination of the requirement laid down in Article 12d of this Regulation on a consolidated basis would not lead to overstating the recapitalisation needs, for the purposes of Article 12d(1), point (b), of this Regulation, of the subgroup consisting of entities within the consolidation perimeter concerned, in particular where there is a prevalence of liquidation entities within the same consolidation perimeter;

(b) compliance with the requirement laid down in Article 12d on a consolidated basis as a substitute for compliance with that requirement on an individual basis does not impair in a material way any of the following:

(i) the credibility and feasibility of the group resolution strategy;

(ii) the subsidiary's capacity to comply with its own funds requirement after the exercise of write-down and conversion powers; and

(iii) the adequacy of the internal loss transfer and recapitalisation mechanism, including the write down or conversion, in accordance with Article 21, of relevant capital instruments and eligible liabilities of the subsidiary concerned or of other entities in the resolution group.';

(b) the following paragraphs are inserted:

'2a. Where an entity as referred to in paragraph 1 complies with the requirement referred to in Article 12a(1) on a consolidated basis, the amount of own funds and eligible liabilities of that entity shall include the following liabilities issued in accordance with paragraph 2, point (a), of this Article by a subsidiary established in the Union included in the consolidation of that entity:

(a) liabilities issued to and bought by the resolution entity, either directly, or indirectly through other entities in the same resolution group that are not included in the consolidation of the entity complying with the requirement referred to in Article 12a(1) on a consolidated basis;

(b) liabilities issued to an existing shareholder that is not part of the same resolution group.

2b. The liabilities referred to in paragraph 2a, points (a) and (b), of this Article, shall not exceed the amount determined by subtracting from the amount of the requirement referred to in Article 12(1) applicable to the subsidiary included in the consolidation the sum of all of the following:

(a) the liabilities issued to and bought by the entity complying with the requirement referred to in Article 12a(1) on a consolidated basis either directly, or indirectly through other entities in the same resolution group that are included in the consolidation of that entity;

(b) the amount of own funds that are issued in accordance with paragraph 2, point (b), of this Article.'.

Article 3

Transposition

1. By … [6 months from the date of entry into force of this amending Directive], Member States shall adopt and publish the measures necessary to comply with Article 1. They shall immediately inform the Commission thereof.

They shall apply those measures from … [6 months and 1 day from the date of entry into force of this amending Directive].

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by Article 1.

Article 4

Entry into force and application

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

2. Article 2, points (1) and (2), shall apply from … [6 months and 1 day from the date of entry into force of this amending Directive].

   Article 2, point (3), shall apply from … [one day from the date of entry into force of this amending Directive].

3. Article 2 shall be binding in its entirety and directly applicable in all Member States.

Article 5

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

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