Council of the European Union

Brussels, 14 June 2024
(OR. en)

11146/24

Interinstitutional File:
2023/0111 (COD)

LIMITE

EF 216
ECOFIN 713
CODEC 1528

NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
Subject:	Proposal for a 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 - *Mandate for negotiations with the European Parliament*

2023/0111 (COD)

Proposal for a

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

(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,

[1] OJ C , , p. .
[2] OJ C , , p. .

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 internationally endorsed Key Attributes of Effective Resolution Regimes for Financial Institutions[3] of the Financial Stability Board. 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 acts apply to institutions established in the Union, and to any other entity that falls under the scope of that Directive or that Regulation ('entities'). The Union resolution framework aims at dealing in an orderly manner with the failure of institutions and entities by preserving institutions and entities' critical functions and avoiding threats to financial stability, and at the same time protecting depositors and public funds. In addition, the Union resolution framework intends to foster the development of the internal market in banking by creating a harmonised regime to address cross-border crises in a coordinated way and by avoiding level playing field issues.

[3] Financial Stability Board, Key Attributes of Effective Resolution Regimes for Financial Institutions, 15 October 2014.

[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).

[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).

(2) Several years into its implementation, the Union resolution framework as currently applicable does not fully deliver as intended with respect to some of those objectives. In particular, while institutions and entities have made significant progress towards resolvability and have dedicated significant resources to that end, in particular through the build-up of the loss absorption and recapitalisation capacity and the filling-up of resolution financing arrangements, the Union resolution framework is seldom resorted to. Failures of certain smaller and medium-sized institutions and entities are instead mostly addressed through unharmonised national measures. Taxpayer money is used rather than resolution financing arrangements. That situation appears to arise from inadequate incentives. Those inadequate incentives result from the interplay of the Union resolution framework with national rules, whereby the broad discretion in the public interest assessment is not always exercised in a way that reflects how the Union resolution framework was intended to apply. At the same time, the Union resolution framework saw little use due to the risks for depositors of deposit-funded institutions to bear losses to ensure that those institutions can access external funding in resolution, in particular in the absence of other bail-inable liabilities. Finally, the fact that there are less stringent rules on access to funding outside resolution than in resolution has discouraged the application of the Union resolution framework in favour of other solutions, which often entail the use of taxpayers' money instead of the own resources of the institution or entity or industry-funded safety nets. That situation in turn generates risks of fragmentation, risks of suboptimal outcomes in managing institutions and entities' failures, in particular in the case of smaller and medium-sized institutions and entities, and opportunity costs from unused financial resources. It is therefore necessary to ensure a more effective and coherent application of the Union resolution framework and to ensure that it can be applied whenever that is in the public interest, including for smaller and medium-sized institutions primarily funded through deposits and without sufficient other bail-inable liabilities.

(3) Pursuant to Article 4 of 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 participant Member States for the purposes of that Regulation. However, Regulation (EU) No 806/2014 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 institutions and 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 its Member State, including its potential systemic nature and its potential impact on the available financial means of the deposit guarantee scheme in case of liquidation 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 institution or entity that is being wound up under national law, following a determination that the institution or entity is failing or likely to fail and a conclusion by the Board that its resolution is not in the public interest, is ultimately heading towards market exit. That implies that a plan for actions to be taken to resolve an institution or entity once the failure or likelihood of failure has occurred is no longer needed, irrespective of whether the competent authority has already withdrawn the authorisation of the institution or entity concerned. The same applies for a residual institution under resolution after the transfer of assets, rights, and liabilities in the context of a transfer strategy. It is therefore appropriate to specify that in those situations, the adoption of resolution plans is not required.

(6) The Board may currently prohibit certain distributions where an institution or entity fails to meet the combined buffer requirement when considered in addition to the minimum requirement for own funds and eligible liabilities ('MREL'). However, 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 distributions. It is therefore appropriate to lay down that the Board should address an instruction to prohibit such distributions to the national resolution authority, which should implement the Board's decision. In addition, in certain situations, an institution or entity might be required to comply with the MREL on a different basis than the basis on which that institution or entity is required to comply with the combined buffer requirement. That situation creates uncertainties as to the conditions for the exercise of the Board's powers to prohibit distributions and for the calculation of the Maximum Distributable Amount related to MREL. It should therefore be laid down that, in those cases, the Board should instruct national resolution authorities to prohibit certain distributions based on the estimate of the combined buffer requirement resulting from Commission Delegated Regulation (EU) 2021/1118[6]. To ensure transparency and legal certainty, the Board should communicate the estimated combined buffer requirement to the institution or entity, which should then publicly disclose that estimated combined buffer requirement.

[6] Commission Delegated Regulation (EU) 2021 /1118 of 26 March 2021 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the methodology to be used by resolution authorities to estimate the requirement referred to in Article 104a of Directive 2013/36/EU of the European Parliament and of the Council and the combined buffer requirement for resolution entities at the resolution group consolidated level where the resolution group is not subject to those requirements under that Directive (OJ L 241, 8.7.2021, p. 1).

(7) Directive 2014/59/EU and Regulation (EU) No 575/2013 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, this can create uncertainty as to who should exercise those powers and in what conditions they should be exercised. It is therefore necessary to specify how national resolution authorities should exercise certain powers set out only in Directive 2014/59/EU in relation to entities and groups that fall under the direct responsibility of the Board. In those cases, the Board should be able, where defined in this Regulation, to instruct national resolution authorities to exercise those powers. In particular, the Board should be able to instruct national resolution authorities to require an institution or entity to maintain detailed records of the financial contracts to which the institution or entity is a party, or to apply the power to suspend some financial obligations pursuant to Article 33a of Directive 2014/59/EU. Where, however, a Member State provides that a resolution authority should ensure that depositors have access to an appropriate daily amount from those deposits, this amount should be determined by the national resolution authority. In addition, given that the permissions for the reduction of eligible liabilities instruments are granted on the basis of Regulation (EU) No 575/2013 of the European Parliament and of the Council[7], the Board should, by exception, be able to grant those permissions to institutions or entities directly, without having to instruct national resolution authorities to exercise that power.

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

(8) Regulation (EU) 2019/876 of the European Parliament and of the Council[8], Regulation (EU) 2019/877 of the European Parliament and of the Council[9] and Directive (EU) 2019/879 of the European Parliament and of the Council[10] 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 in Regulation (EU) No 806/2014 on the MREL with the implementation of the TLAC standard for G-SIIs with respect to certain liabilities that could be used to meet the part of the MREL that should be met with own funds and other subordinated liabilities. In particular, liabilities that rank *pari passu* with certain excluded liabilities should be included in the own funds and subordinated eligible instruments of resolution entities where the amount of those excluded liabilities on the balance sheet of the resolution entity does not exceed 5% of the amount of the own funds and eligible liabilities of the resolution entity and no risks related to the 'no creditor worse off' principle arise from that inclusion.

[8] 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).

[9] 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).

[10] 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).

(13) Pursuant to Article 4 of Council Regulation (EU) No 1024/2013[11], 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 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 created to enable competent authorities to remedy the deterioration of the financial and economic situation of an institution or entity and to reduce, to the extent possible, the risk and impact of a possible resolution. However, due to a lack of certainty regarding the triggers for 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 the management body and the appointment of temporary administrators, those measures should be explicitly identified as early intervention measures and their application should be subject to the same triggers. At the same time, the ECB should be required to select 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, including 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 necessary, adoption, in order to avoid any further worsening of the situation of the institution or entity.

[11] 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).

(14) It is necessary to ensure that the Board is able to prepare for the possible resolution of an institution or entity. The ECB or the relevant national competent authority should therefore inform the Board of the deterioration of the financial condition of an institution or 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 institution or entity, the prior application of early intervention measures should not be a condition for the Board to make arrangements for the marketing of the institution or entity or to request information to update the resolution plan and prepare the valuation. To ensure a consistent, coordinated, effective and timely reaction to the deterioration of the financial situation of an institution or entity and to prepare properly for a possible resolution, it is necessary to enhance the interaction and coordination between the ECB, the national competent authorities and the Board. As soon as an institution or entity meets the conditions for 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 financial situation of the institution or 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 when an institution or entity is still a going concern but where there is a material risk that that institution or entity may fail. The ECB or the relevant national competent authority should therefore notify the Board as early as possible of such 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 institution or entity within a reasonable timeframe. Such early notification should not prejudice the procedures to determine whether the conditions for resolution are met. The prior notification by the ECB or by the relevant national competent authority to the Board of a material risk that an institution or entity is failing or likely to fail or the end of the defined timeframe for the implementation of the measures to address such material risk of failure of the institution or entity should not be a condition for, nor otherwise necessarily imply, a subsequent determination that an institution or entity is actually failing or likely to fail. Moreover, if at a later stage the institution or entity is assessed to be failing or likely to fail and there are no alternative solutions to prevent such failure within a reasonable timeframe, the Board has to take a decision whether to take resolution action. In such a case, the timeliness of the decision to apply resolution action to an institution or entity can be fundamental to the successful implementation of the resolution strategy, in particular because an earlier intervention in the institution or entity can contribute to ensuring sufficient levels of loss absorption capacity and liquidity to execute that strategy. It is therefore appropriate to enable the 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 institution or entity. To ensure a timely outcome and to enable the Board to prepare properly for the potential resolution of the institution or entity, the Board and the ECB, or the relevant national competent authority, should meet regularly.

(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 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 have justified the withdrawal of the authorisation by the competent authority in accordance with Article 18 of Directive 2013/36/EU.

(17) The resolution framework is meant to be applied to potentially any institution or entity, irrespective of its size and business model, if the tools available under national law are not adequate to manage its failure. 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 at safeguarding financial stability and the real economy. It is therefore necessary to ensure that their provision is not discontinued. In particular, it is necessary to clarify that, depending on the specific circumstances, resolution authorities should be able to conclude that certain functions of the institution or entity are considered as critical even if their discontinuance would disrupt financial stability or services that are essential to the real economy only at regional level. Critical functions can notably, without being exhaustive, include deposit taking, lending and loan services, payment, clearing, custody and settlement services, safekeeping of assets, wholesale funding markets activities, and capital markets and investments activities. As regards deposit taking, resolution authorities should 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]. Moreover, it is reiterated that adverse effects on financial stability should be prevented. 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 should also 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).

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).

(17a) Liquidation 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 imply losses on a material share of deposits or significant difficulties in the continuity of access to deposits, and where those losses or those difficulties are deemed by the resolution authority as having a significant impact on the provision of critical functions, or 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 institution under resolution and applying resolution tools rather than resorting to normal insolvency proceedings.

(19) The assessment of whether the resolution of an institution or entity is in the public interest should also reflect, to the extent possible, the difference between, on the one hand, funding provided through industry-funded safety nets (resolution financing arrangements or deposit guarantee schemes) and, on the other hand, funding provided by Member States from taxpayers' money. Therefore, when assessing the objective of minimising reliance on extraordinary public financial support, the Board should find funding through the resolution financing arrangements or the deposit guarantee scheme preferable to funding through an equal amount of resources from the budget of Member States.

(20) The public interest assessment should be divided in two stages. In the first stage, resolution authorities should assess whether any of the resolution objectives would be at risk in case of winding up of the failing institution or entity under normal insolvency proceedings. Resolution action should not be in the public interest if none of the resolution objectives is at risk in case the institution is wound up under normal insolvency proceedings. To ensure that the resolution objectives are attained in the most effective way, the outcome of the second stage of the public interest assessment should be negative only where the winding up of the failing institution or entity under normal insolvency proceedings would achieve the resolution objectives more effectively and not only to the same extent as resolution.

(20a) The provisions in the Directive 2014/59/EU concerning the assessment of whether the resolution of an institution or entity is in the public interest were amended by Directive (EU) … /… of the European Parliament and of the Council of … on… (OJ …)[14]. In this context, assessing whether the resolution of an institution or entity is in the public interest or not should continue to require the exercise of discretion by the resolution authority. However, for resolution planning purposes, it should be presumed that the assessment of whether the resolution of a group under the SRB direct remit is in the public interest results in a positive outcome, except where simplified obligations are applied. Moreover, it should be presumed that the public interest assessment for an institution or entity to which the resolution authority applies simplified obligations results in a negative outcome. Both presumptions should remain rebuttable. Other institutions and entities exhibit a wide range of different characteristics and consequently the use of presumptions would not be appropriate in these cases.

(21) In light of the experience acquired in the implementation of Directive 2014/59/EU, Regulation (EU) No 806/2014 and Directive 2014/49/EU, it is necessary to specify further the conditions under which measures of a precautionary nature that qualify as extraordinary public financial support may exceptionally be granted. These rules are interlinked with the State aid framework for banks as laid down, including in Commission's Communication of 30 July 2013 on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis, which is under review. The State aid framework for banks should be consistent with the new improved rules for resolution. 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 causes of possible financial distress faced by institutions and entities and preventing their failure and could therefore constitute relevant precautionary measures. It should therefore be specified that such precautionary measures can take the form of impaired asset measures.

[14] Directive (EU) …/… of the European Parliament and of the Council of … on … (OJ L X, X.X.X, p. X).

(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 serious disturbances in the market or to preserve financial stability, in particular in the event of a systemic crisis. Moreover, precautionary measures should not be used to address incurred or likely losses. The most reliable instrument to quantify losses is an asset quality review by the ECB, the European Supervisory Authority (European Banking Authority) (EBA), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council[15] or national competent authorities. The ECB and national competent authorities should use such a review, or where appropriate, on-site inspections, to quantify losses if such 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 in the most reliable way possible under the prevailing circumstances, based on the institution or entity's balance sheet, provided that the balance sheet complies with the applicable accounting rules and standards as confirmed by an independent external auditor.

(23) Precautionary recapitalisation is aimed at supporting viable institutions and entities identified as likely to encounter temporary difficulties in the near future and to prevent their situation from deteriorating further. To avoid that public subsidies are granted to businesses that are already unprofitable when the support is granted, precautionary measures granted in the form of acquisition of own funds instruments or other capital instruments or through impaired asset measures should not exceed the amount necessary to cover capital shortfalls as identified in the adverse scenario of a stress test or equivalent exercise. To ensure that public financing is ultimately discontinued, those precautionary measures should also be limited in time and contain a clear timeline for their termination (exit strategy). Perpetual instruments, including Common Equity Tier 1 capital, should only be used in exceptional circumstances because by their nature they are not well suited for compliance with the condition of temporariness.

[15] Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

(24) Precautionary measures should be limited to the amount that the institution or entity would need to maintain its solvency in case of an adverse scenario event as determined in a stress test or equivalent exercise. In the case of precautionary measures in the form of impaired asset measures, the receiving institution or entity should be able to use that amount to cover losses on the transferred assets or in combination with an acquisition of capital instruments, provided that the overall amount of the shortfall identified is not exceeded. It is also necessary to ensure that such precautionary measures in the form of impaired asset measures comply with existing State aid rules and best practices, that they restore the institution or entity's long-term viability, that State aid is limited to the minimum necessary and that distortions of competition are avoided. For those reasons, the authorities concerned should, in case of precautionary measures in the form of impaired asset measures, take into account the specific guidance, including the AMC Blueprint[16] and the Communication on Tackling Non-Performing Loans[17]. Those precautionary measures in the form of impaired asset measures should also always be subject to the overriding condition of temporariness. Public guarantees granted for a specified period in relation to the impaired assets of the institution or entity concerned are expected to ensure better compliance with the temporariness condition than transfers of such assets to a publicly supported entity. To ensure that the institutions and entities receiving support comply with the terms of the support measures, the ECB or the relevant national competent authority should request a remediation plan from institutions and entities that failed to fulfil their commitments. Where the ECB or the relevant national competent authority is of the opinion that the measures in the remediation plan are not capable of achieving the institution's or entity's long-term viability or where the institution or entity failed to comply with the remediation plan, the ECB or the relevant national competent authority should carry out an assessment of whether the institution or entity is failing or likely to fail, in accordance with Article 18 of this Regulation.

[16] COM(2018) 133 final.
[17] COM(2020) 822 final.

(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 single market, and to ensure a smooth flow of information, it is also necessary to lay down that the Board and the Commission should promptly share all information necessary regarding the possible use of Fund aid and to provide for specific rules 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 the entry into resolution and the procedure governing the 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 resolution action is to be applied to a resolution entity that is the head of a resolution group, while write down and conversion powers are to be applied to another entity of the same group. Where one entity meets the conditions for the application of the write down and conversion power and another entity within the same group meets at the same time the conditions for resolution, the Board should be able to adopt its decision to apply the write down or conversion power necessary to transfer the losses of the first entity to the head of the resolution group and subsequently recapitalise it, together with its decision to apply resolution tools to the head of the resolution group so that losses are eventually absorbed by its shareholders and external creditors, in a single resolution scheme covering both entities.

(28) To increase legal certainty, and in view of the potential relevance of liabilities which may arise from future uncertain events, including the outcome of litigations pending at the time of resolution, it is necessary to lay down which treatment those liabilities should receive for the application of the bail-in tool. Resolution authorities should draw a distinction between liabilities based on present obligations resulting 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 might arise in the future only if an uncertain event occurs.

(29) It should also be specified that liabilities of uncertain timing or amount based on present obligations resulting 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.

(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 institution or entity can sustain sufficient market confidence for an appropriate amount of time, the valuer should take into account that potential value when establishing the amount by which bail-inable liabilities need to be written down or converted to restore the capital ratios of the institution under resolution. In particular, the resolution authority should apply its conversion powers to bail-inable liabilities to the extent necessary to ensure that the recapitalisation of the institution under resolution is sufficient to cover potential losses which may be caused by a liability that may arise in the future because of an uncertain event or that is based on a present obligation but is uncertain in terms of timing or amount at the time of resolution.

When assessing the amount to be written down or converted, the resolution authority should carefully consider the impact of the potential loss on the institution under resolution based on a number of factors, including the likelihood of the event materialising, the time frame for its materialisation and the amount of the liability.

(31) In certain circumstances, after the resolution financing arrangement has provided a contribution up to the maximum of 5 % of the institution or entity's total liabilities including own funds, resolution authorities may use additional sources of funding to further support their resolution action. It should be specified more clearly in which circumstances the deposit guarantee scheme, the resolution financing arrangement or alternative financing sources may provide further support where all liabilities with a priority ranking lower than eligible deposits from natural persons and SMEs other than eligible deposits that are not mandatorily or 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 institutions and 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 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[18], the Board should ensure the physical and logical protection of confidential statistical information and should require authorisation to the ECB for the further transmission that may be necessary for the execution of the tasks of the Board.

[18] 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).

As information related to the number of customers for which an institution or entity is the only or principal banking partner, which is held by the centralised automated mechanisms set up pursuant to Directive (EU) 2015/849 of the European Parliament and of the Council[19], may 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. The exact timing of indirect access to information by the Board should also be specified. In particular, when the relevant information is available to an institution or authority which is obliged to cooperate with the Board when the Board requests information, such institution or authority should provide that information to the Board. If, at that time, the information is not available, irrespective of the reason for this unavailability, 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 under, and the form in which it should receive information from financial entities to ensure that such information is the most suited to its needs, including virtual data rooms. In addition, to ensure the broadest cooperation possible with all entities susceptible of holding data relevant to the Board, and necessary for the performance of the tasks conferred on it, and to avoid duplicating requests to institutions and entities, 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 deposit guarantee schemes, 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 Single Resolution Fund in case of need, the Board should inform the Commission and the ECB as soon as it considers that it may 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.

[19] 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).

(33) Article 86(1) of Directive 2014/59/EU provides that normal insolvency proceedings in relation to institutions and 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 institution or 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 for institutions and entities that are under the direct responsibility of the Board. In case the Board has not expressed its opinion within two days after the consultation by the national resolution authority, it should be assumed that the Board has no comments.

(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 also 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) In order to ensure institutional continuity and the build-up of institutional expertise, the Chair, the Vice-Chair and the other full-time members of the Board should be allowed to serve for two consecutive terms in their respective positions. It should therefore be possible to renew their term of office for a four-year term, based on an evaluation by the Commission of the discharge of their duties during the first term.

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

(36a) The tasks of the plenary session of the Board should clarify the role of the plenary session in the appointment of the accounting officer and the internal auditor, in the adoption of guidelines, general instructions, guidance notes, or any public document defining resolution practices and resolution planning methodologies and in the definition of rules for organising industry consultations on these guidelines, general instructions, guidance notes, or any public document defining resolution practices and resolution planning methodologies. These modifications are meant at ensuring a closer involvement of the national resolution authorities in the decision-making processes of the Single Resolution Mechanism, thereby further enhancing the existing framework and would be without prejudice to the existing practical arrangements that currently organise the cooperation between the Board and the national resolution authorities. As a result, the modifications cannot be read as allowing for any reduction in the powers of the plenary session under the existing framework and arrangements. The role of the plenary session in the adoption of the guidelines, general instructions or guidance notes or any other public document defining resolution practices and resolution planning methodologies should be further assessed in the context of the review of the state of the Banking Union in order to ensure a sufficiently inclusive governance of the Single Resolution Mechanism, as well as its integrity and efficiency.

(37) After the initial build-up period of the Single Resolution Fund referred to in Article 69(1) of Regulation (EU) No 806/2014, its available financial means may 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 may therefore be possible that, in some years, the amount of those ex ante contributions is no longer commensurate to the cost of the collection of those contributions. The Board should therefore be able to defer the collection of the ex ante contributions for one or more 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 Single Resolution Fund.

(39) The maximum annual amount of extraordinary post contributions to the Single Resolution 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 referred to in Article 69(1) of Regulation (EU) No 806/2014, such *ex ante* contributions will depend only, in circumstances other than the use of the Single Resolution Fund, on variations in the level of covered deposits and are therefore likely to become small. Basing the maximum amount of extraordinary *ex post* contributions on *ex ante* contributions could then have the effect of drastically limiting the possibility for the Single Resolution Fund to raise *ex post* contributions, thereby reducing its capacity for action. To avoid such an outcome, a different limit should be laid down and the maximum amount of extraordinary *ex post* contributions allowed to be called should be set at three times one-eighth of the target level of the Fund.

(40) The Single Resolution 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 that case, the Board may have a claim against the residual institution or entity in its subsequent winding up under normal insolvency proceedings. That may occur where the Single Resolution 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 institution or 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 institution or 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 deposit guarantee schemes. Since compensations paid to shareholders and creditors from the Single Resolution Fund due to breaches of the 'no creditor worse off' principle aim to compensate for the results of resolution action, those compensations should not give rise to claims of the Board.

(41) Since some of the provisions of Regulation (EU) No 806/2014 concerning the role that deposit guarantee schemes may play in resolution are similar to those of Directive 2014/59/EU, the amendments made to those provisions in Directive 2014/59/EU by [OP please insert the number of the directive amending Directive 2014/59/EU] should be mirrored in Regulation (EU) No 806/2014.

(41a) The role that deposit guarantee schemes may play in resolution together with the possible impact thereof on the Single Resolution Fund requires the establishment of rules, including on burden-sharing which, taken together, constitute a holistic approach. These rules, including the burden-sharing rules should, in addition to the restrictions to the use of deposit guarantee scheme funds which are set out under Directive 2014/59/EU and also apply under the Single Resolution Mechanism, establish the maximum contribution by the Single Resolution Fund over a period of three years in resolution proceedings in which the contribution of the deposit guarantee scheme is counted towards the 8% threshold of total liabilities including own funds established by Regulation (EU) No 806/2014. Furthermore, these rules together with the burden-sharing rules should provide that this option should be assigned as a priority to institutions with a maximum size of EUR 30 billion and only by way of an exception, for a period of 10 years, to preserve financial stability and avoid significant adverse effects on the financial system, to institutions whose balance sheet total exceeds EUR 30 billion, provided that the institution's business model corresponds to that of an institution financed mainly by deposits. However, this exception should not apply to top-tier banks, G-SIBs or institutions with a balance sheet total exceeding EUR 80 billion or if, twelve months before the determination that the institution or entity is failing or likely to fail, the own funds and eligible liabilities of the institution did not amount to at least 8 % of its total liabilities including own funds.

This comprehensive framework including the burden-sharing rules should also confirm the principle for losses to be absorbed in priority by the shareholders and creditors of the institution and should provide therefore that the intervention of the deposit guarantee scheme, when counted towards the 8% threshold of total liabilities including own funds established by this Regulation, should not exceed 2.5 % of total liabilities including own funds of the institution under resolution where its total assets do not exceed EUR 30 billion, or 1.25 % of total liabilities including own funds of the institution under resolution where its total assets do exceed EUR 30 billion but do not exceed EUR 80 billion. In addition, and without prejudice to the above and to the rules applicable otherwise to the use of the Fund under this Regulation, shareholders and creditors should contribute to loss absorption and recapitalisation for an amount not less than 6.5% of the total liabilities including own funds of the institution under resolution when the institution‘s total assets do not exceed EUR 30 billion, and not less than 8% of the total liabilities including own funds of the institution under resolution otherwise, whereby both of these additional thresholds consider the contribution made by shareholders and creditors for the loss absorption and recapitalisation of the institution including over the 12 months preceding the declaration of the failing or likely to fail. In such cases, a contribution of 1 % of the total liabilities including own funds of losses of the institution under resolution absorbed over the 12 months preceding the declaration of the failing or likely to fail could be counted towards these additional thresholds, when the institution‘s total assets do not exceed EUR 30 billion and 1.25% otherwise. Furthermore, the exceptional nature of a DGS contribution that counts towards the 8 % threshold for institutions whose total assets exceed EUR 30 billion should require a qualified majority decision by the Board of 5 out of its 6 full-time members.

(41b) In addition, given the considerable impact of the resolution decisions on the financial stability of Member States and on the Union as a whole, as well as on the fiscal sovereignty of Member States, it is important that the implementing power to take certain decisions relating to resolution be conferred on the Council. This is particularly justified when it comes to the use of the Single Resolution Fund for an institution of which the total value of assets exceeds EUR 30 billion, in light of its significance and of the potential impact on financial stability of Member States as well as fiscal sovereignty of Member States. It should therefore be for the Council, acting on a proposal by the Commission, to adopt an implementing act over the use of the Single Resolution Fund following an intervention of the deposit guarantee scheme for an institution whose balance sheet total exceeds EUR 30 billion.

(41c) All these elements included in recitals 41a and 41b underlying the burden sharing and governance constitute an integrated approach which aims at achieving the same balance and, as a whole, lead to the same result as in the current legal framework. Any deviation from one of these aspects could fundamentally alter the balance achieved on the burden sharing.

(41d) The inclusion of a possible contribution by deposit guarantee schemes to which that credit institution is affiliated for the purposes and under the conditions laid down in Article 109 of Directive 2014/59/EU to improve resolution processes requires a number of conditions to be met. In applying Article 79 paragraph 1b, second point of the first subparagraph of this Regulation, the Board and national resolution authorities should give consideration to the most recent available reported information on deposits specified in template 1.2 of Annex III and Annex IV of Implementing Regulation (EU) 2021/451.

(42) 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, the Board should be allowed to disclose information that result 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.

(43) Regulation (EU) No 806/2014 should therefore be amended accordingly.

(44) To ensure consistency, the amendments to Regulation (EU) No 806/2014 that are similar to the amendments to Directive 2014/59/EU by … [OP, please insert the number of the directive amending Directive 2014/59/EU] should be applied from the same date as the date for the transposition of … [OP, please insert the number of the directive amending Directive 2014/59/EU], which is … [OP please insert the date = 24 months from the date of entry into force of this amending Regulation]. However, there is no reason to delay the application of those amendments to Regulation (EU) No 806/2014 that relate exclusively to the functioning of the Single Resolution Mechanism. Those amendments should therefore apply from … [OP please insert the date = 1 month from the date of entry into force of this amending Regulation].

(45) Since the objectives of this Regulation, namely to improve the effectiveness and efficiency of the recovery and resolution framework for institutions and entities, cannot be sufficiently achieved by the Member States due to the risks that diverging national approaches might entail for the integrity of the single market but can rather, by amending rules that are already set at Union level, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives,

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 (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;’;

(b) the following points (24d) and (24e) 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;’;

(c) 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);’;

(d) the following point (49aa) is inserted:

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

(2) in Article 4, the following paragraph 1a is inserted:

‘1a. Member States shall inform the Board as soon as possible of their 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.’;

(2a) in Article 5, the following paragraph 1a is inserted:

‘1a. Any references to the concerned resolution authorities, designated in accordance with Article 3 of Directive 2014/59/EU, in Article 7(5), point (da), Article 10(3), Article 61(3), point (j), Article 63(2), point (ja), or Article 68(3a) of Directive XX/XX/EU [IRRD]*, 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.’

* All cross-references to the IRRD are made on the basis of the text resulting from the negotiations concluded in January, and do not take into account the renumbering made in the meantime in the legal-linguistic finalisation process. Those references will be updated at a later stage.

(3) 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), (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) and (6), Article 20, Article 21(1) to (7), Article 21(8), second subparagraph, Article 21(9) and (10), Article 22(1), (3) 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, and Article 32, 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 amended as follows:

(i) the words ‘Article 12(2)’ are replaced by the words ‘Article 12(3)’;

(ii) the following subparagraph is added:

‘After the notification referred to in the first subparagraph has taken effect, participating Member States may decide that the responsibility for performing the tasks related 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 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*.’;

(4) Article 8 is amended as follows:

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

‘With regard to entities referred to in paragraph 1, 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) in paragraph 10, the following subparagraphs are 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 core business lines, its importance for the operational continuity of the group after resolution and the group resolution strategy, and duly considers the importance of the subsidiary in the Member State where it is established, including its potential systemic nature and its potential impact on the available financial means of the deposit guarantee scheme in case of liquidation under normal insolvency proceedings.’;

Where Article 22(5) applies or where an entity is in the process of being wound up in accordance with the applicable national law pursuant to Article 32b of Directive 2014/59/EU, the Board shall not adopt a resolution plan for that entity or no longer include that entity in the group resolution plan.’;

(5) Article 10 is amended as follows:

(a) in paragraph 4, fourth subparagraph, the words ‘first subparagraph’ are replaced by the words ‘third subparagraph’;

(b) in paragraph 7, the words ‘addressed to the institution or the parent undertaking’ are replaced by the words ‘addressed to the entity or the parent undertaking’ and the words ‘impact on the institution’s business model’ are replaced by the words ‘impact on the entity’s or the group’s business model’;

(ba) the following paragraph 9a is inserted:

‘9a. If the measures proposed by the entity concerned effectively reduce or remove the 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 indicating that it has assessed the measures proposed as adequate in order to effectively reduce or remove the impediments to resolvability. Where appropriate, the Board may instruct the national resolution authorities to require the institution, the parent undertaking, or any subsidiary of the group concerned, to implement the measures proposed.’

(c) paragraph 10 is amended as follows:

(ia) in the first subparagraph, the first sentence is deleted;

(i) in the second subparagraph, the word ‘institution’ is replaced by the words ‘entity concerned’;

(ii) in the third subparagraph, the word ‘institution’ is replaced by the word ‘entity’;

(6) Article 10a is amended as follows:

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

‘1. Where an entity is in a situation where it meets the combined buffer requirement when considered in addition to each of the requirements referred to in 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 7 is added:

‘7. Where an entity that is part of a resolution group 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, the Board shall apply paragraphs 1 to 6 of this Article on the basis of the estimation of the combined buffer requirement for resolution entities and entities that are not themselves resolution entities respectively calculated in accordance with Commission Delegated Regulation (EU) 2021/1118*. 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 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.

* Commission Delegated Regulation (EU) 2021/1118 of 26 March 2021 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the methodology to be used by resolution authorities to estimate the requirement referred to in Article 104a of Directive 2013/36/EU of the European Parliament and of the Council and the combined buffer requirement for resolution entities at the resolution group consolidated level where the resolution group is not subject to those requirements under that Directive (OJ L 241, 8.7.2021, p. 1).’;

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

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

(8) 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 by and as determined by the Board in accordance with this Article and Articles 12b to 12i.’;

(9) Article 12c is amended as follows:

(a) in paragraphs 4 and 5, the word ‘G-SIIs’ is replaced by the words ‘G-SII entities’;

(b) in paragraph 7, introductory wording, the words ‘paragraph 3’ are replaced by the words ‘paragraph 4’, and the word ‘G-SIIs’ is replaced by the words ‘G-SII entities’;

(c) paragraph 8 is amended as follows:

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

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

(d) the following paragraph 10 is added:

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

(a) for entities that are G-SII entities or resolution entities that are subject to Article 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.’;

(10) in Article 12d, paragraph 3, eight subparagraph, and paragraph 6, eight subparagraph, the words ‘critical economic functions’ are replaced by the words ‘critical functions’;

(12) in Article 12e(1), the words ‘G-SII or part of a G-SII’ are replaced by the words ‘G-SII entity’;

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), and 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) in the third subparagraph, the words ‘first subparagraph’ are replaced by the words ‘first and second subparagraphs’;

(b) the following paragraph 4 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) 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.’;

(14a) In Article 12k, the following paragraph is inserted:

‘4a. Institutions or entities for which the preferred resolution strategy changes from a liquidation under normal insolvency proceedings or other equivalent national procedures to the application of a resolution tool shall comply with the requirements referred to in Article 12f or Article 12g as appropriate, within a maximum of three years following the date of the approval of the resolution plan including the new preferred resolution strategy. Where duly justified and appropriate on the basis of the criteria referred to in paragraph 7, the Board may determine a longer period for the compliance with that requirement, up to a maximum of five years.’;

(d) in paragraphs 5 and 6, the words ‘the Board and the national resolution authorities’ are replaced by the words ‘the Board’;

(15) Article 13 is replaced by the following:

‘*Article 13*

Early intervention measures

1. The ECB may apply early intervention measures where an entity as referred to in Article 7(2)(a) meets any of the following conditions:

(a) the entity 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, Article 16(2) of Regulation (EU) No 1024/2013 or Article 39 of Directive (EU) 2019/2034;

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

(b) the entity infringes or is likely to infringe in the 12 months following the assessment of the ECB the requirements laid down in Title II of Directive 2014/65/EU, in Articles 3 to 7, 14 to 17, or 24, 25 and 26 of Regulation (EU) No 600/2014, or in accordance with Article 12j(1) point (d), the requirements laid down in Articles 12f or 12g of this Regulation.

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

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 do either of the following:

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

(ii) to update the recovery plan in accordance with Article 5(2) 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 to 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, convene directly, 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 institution;

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

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

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

4. For each of the 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 this evaluation with the Board.

5. Where a group referred to in Article 7(2), point (a), 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 includes entities established in participating Member States and subsidiaries established, or significant branches located, in non-participating Member States, the ECB shall communicate 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.';

(16) the following Articles 13a, 13b and 13c are inserted:

‘*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 of those bodies, shall be appointed in accordance with Union and national law and 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, based on what is proportionate in the circumstances, appoint any temporary administrator to do either of the following:

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

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

The ECB shall specify its choice under points (a) or (b) at the time of appointment of the temporary administrator.

For the purposes of the first subparagraph, point (b), the ECB shall further specify at the time of the appointment of the temporary administrator the role, duties and powers of that temporary administrator and any requirements for the management body of the 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 their 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, based on 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.

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

(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 of the institution or entity referred to in Article 1(1), points (b), (c) or (d) with any requests pursuant to Article 13c(3), subparagraph 2, Article 13c(4) and (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 in the course of his or her appointment, at intervals set by the ECB, and in any case at the end of his or her mandate.

7. The temporary administrator shall be appointed for maximum 1 year. That period may be exceptionally renewed if the conditions for appointing the temporary administrator continue to be met. The ECB shall determine those conditions and shall justify any renewal of the appointment 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 pursuant to paragraphs 1 to 8 of this Article shall not be deemed to be a shadow director or a de facto director 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 any of the following:

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

(b) that supervisory activity shows that 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 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 notify the Commission of notification it has received pursuant to the first subparagraph.

The ECB or the relevant national competent authority shall closely monitor, in 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 in 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 that one or more of the circumstances referred to in Article 18(4) would apply in relation to an entity as referred to in Article 7(2), or an entity as 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 potential measures which would prevent the failure of the institution or entity within a reasonable timeframe, their expected impact on the institution or entity as regards the circumstances referred to in Article 18(4) and the expected timeframe for the implementation of those measures.

The notification in paragraph 1 shall not affect any alternative private sector measure, including measures by an IPS, that would prevent the failure or the likely failure of the institution within a reasonable timeframe.

After having received the notification referred to in the first subparagraph, 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). Such timeframe may be reassessed on a continuous basis and adjusted to the circumstances of the case and shall take into account the speed of the deterioration of the conditions of the entity, the need to implement effectively the resolution strategy and any other relevant considerations. The Board shall communicate that assessment to the ECB or to the relevant national competent authority as early as possible.

Following 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 Board and the ECB or the relevant national competent authority shall meet regularly, and 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 all of the following:

(a) updating the resolution plan and preparing for the possible resolution of an entity as referred to in Article 7(2), or an entity as 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, 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 powers of resolution authorities shall include the power to market to potential purchasers, or make arrangements for such marketing, the institution or entity referred to in Article 1(1), points (b), (c) or (d), to potential purchasers, or require the institution or entity to do so, for the following purposes:

(a) to prepare for the resolution of that entity, subject to the conditions specified 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 inform 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 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 IPS, and to the potential impact of the exercise of that power on the entity's overall position.

5. For the purposes of paragraph 4, the Board shall have the power to:

(a) request the entity concerned to put in place a digital platform for sharing the information that is necessary for the marketing of that entity with potential purchasers or with advisors and valuers engaged by the Board, subject to Article 88 of this Regulation.

(b) require the relevant national resolution authority to draft a preliminary resolution scheme for the entity concerned.

6. The prior notification by the competent authority in accordance with the first subparagraph of paragraph 1 of this Article is not 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 of this Article.

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 national competent authorities, the Board and the relevant national resolution authorities shall closely cooperate:

(a) when considering taking the measures referred to in paragraph 1, first subparagraph, point (a) that aim to address a deterioration in the situation of an entity and 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 national competent authorities, the Board and the relevant national resolution authorities shall ensure that those measures and actions are consistent, coordinated and effective.';

(17) 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;

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

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

For those purposes, a parent undertaking as referred to 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), points (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.';

(19) Article 18 is amended as follows:

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

'1. The Board shall, considering the need to implement effectively the resolution strategy, adopt a resolution scheme pursuant to paragraph 6 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 or on its own initiative, 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 measure, including measures by an IPS, 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), 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), 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 and, having regard to the timing and where necessary, after consulting the IPS of which the institution is member.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, do not make such an assessment themselves. The ECB or the relevant national competent authority shall, without delay, provide the Board with any relevant information that the Board requests to inform 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).

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, they 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, and where relevant, after consulting the IPS of which the institution is a member, without delay. The ECB or the relevant national competent authority shall, without delay, provide the Board with any relevant information that the Board requests to inform its assessment. The ECB or the relevant national competent authority shall also inform the Board when it considers the condition laid down in the first subparagraph, point (b), to be met after consulting the IPS where necessary.

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 all 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 in relation to an entity or group as referred to in Article 7(3), the Board shall communicate its assessment as referred to paragraph 1, fourth subparagraph, 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, to Article 27 of Directive 2014/59/EU, to Article 13 of this Regulation or to 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 and third subparagraphs are deleted;

(c) paragraph 5 is replaced by the following:

5. In order to determine whether a resolution action shall be treated as in the public interest for the purposes of paragraph 1, point (c), the Board shall, in a first stage, assess whether any of the resolution objectives would be at risk in case the institution would be wound up under normal insolvency proceedings. Resolution action shall not be in the public interest if none of the resolution objectives is at risk in case the institution is wound up under normal insolvency proceedings.

Where the outcome of the assessment referred to in the first subparagraph concludes that one or more of the resolution objectives is at risk in case the institution would be wound up under normal insolvency proceedings, the Board shall, in a second stage, conclude that a resolution action is in the public interest where the resolution action is necessary for the achievement of, and is proportionate to, one or more of the resolution objectives referred to in Article 14 and where winding up of the institution under normal insolvency proceedings would not meet those resolution objectives more effectively.

When assessing whether winding up of the institution under normal insolvency proceedings meets the resolution objectives more effectively, the Board shall consider the costs of resolution and normal insolvency proceedings and shall seek to minimise and avoid destruction of value, unless necessary to achieve the resolution objectives.

(d) paragraph 7 is amended as follows:

(i) 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.';

(ii) the following subparagraph is inserted after the existing third subparagraph:

'Where, in accordance with Article 79, paragraph 1b the contribution of the deposit guarantee scheme is counted towards the thresholds in Article 37(10), Article 44(5), point (a) and in Article 44(8), point (a) in accordance with Article 109(2b) of Directive 2014/59/EU for an institution of which the total value of their assets exceeds EUR 30 billion, the Commission within 12 hours from the transmission of the resolution scheme by the Board, shall propose to the Council to approve or object the use of the Fund.';

(iii) in the existing fourth subparagraph: the words ‘third subparagraph’ are replaced by the words ‘third’ and fourth subparagraphs’;

(iv) the following subparagraph is inserted after the existing seventh subparagraph:

‘Where, within 24 hours from the transmission of the resolution scheme by the Board, the Council has objected to the use of the Fund in accordance with Article 79(1b) for an institution whose total value of assets exceeds EUR 30 billion, the Board shall within eight hours modify the resolution scheme in accordance with the reasons expressed.’;

(e) the following paragraph 11 is added:

‘11. Where the conditions referred to in paragraph 1, points (a) and (b), 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.’;

(20) the following Article 18a 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 only in one of the following cases and provided that the extraordinary public financial support complies with the conditions and requirements established in the Union State aid framework:

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

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

(ii) a State guarantee of newly issued liabilities;

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

(b) where an intervention by a deposit guarantee scheme to preserve the financial soundness and long-term viability of the credit institution constitutes extraordinary public financial support in compliance with the conditions set out in Articles 11a, 11b and 11ba of Directive 2014/49/EU;

(c) where the extraordinary public financial support takes the form of an intervention by a deposit guarantee scheme granted to an institution referred to in Article 32b of Directive 2014/59/EU and in accordance with the conditions set out in Article 11(5) of Directive 2014/49/EU;

(d) where the extraordinary public financial support takes the form of State aid within the meaning of Article 107(1) TFEU granted to an institution or 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 fulfil all of the following conditions:

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

(b) the measures are of a precautionary and temporary nature and are based on a pre-defined exit strategy approved by the ECB or the relevant national competent authority, including a clearly specified termination date, sale date or repayment schedule for any of the measures provided;

(c) the measures are proportionate to remedy the consequences of the serious disturbance or to preserve financial stability;

(d) the measures are not used to offset losses that the entity has incurred or is likely to incur in the near future.

For the purposes of the first subparagraph, point (a), an entity shall be deemed to be solvent where the ECB or the relevant national competent authority have concluded that no breach has occurred, 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 national or Union law.

For the purposes of the first subparagraph, point (d), the relevant 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 these exercises within a reasonable time, the ECB or the relevant national competent authority may base its quantification on the institution's balance sheet, provided that the balance sheet complies with the applicable accounting rules and standards, as confirmed by an independent external auditor.

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 maintain the solvency of the entity by addressing its capital shortfall established in the adverse scenario of national, Union or SSM-wide stress tests or equivalent exercises conducted by the ECB, EBA or national authorities, where applicable, confirmed by the ECB or the relevant competent authority.

By way of derogation from paragraph 1, point (a)(iii), acquisition of Common Equity Tier 1 instruments shall be exceptionally permitted where the nature of the shortfall identified is such that the acquisition of any other own funds instruments or other capital instruments would not make it possible for the entity concerned to address its capital shortfall established in the adverse scenario in the relevant stress test or equivalent exercise.

In case any of the support measures referred to in paragraph 1, point (a), is not redeemed, repaid or otherwise terminated in accordance with the terms of the exit strategy established at the time of granting such measure, the ECB or the relevant national competent authority may grant the institution or entity a one-time extension of no longer than 2 years, subject to the submission of a remediation plan by the institution or entity, describing the steps the institution or entity will take to ensure or restore compliance with the supervisory requirements, to ensure its long-term viability and to repay the amount provided, as well as the associated timeframe.

Where the ECB or the relevant national competent authority is not satisfied that the remediation plan is credible or feasible, or where the institution or entity fails to comply with the remediation plan, the relevant authorities shall carry out an assessment of whether the institution or entity is failing or likely to fail, in accordance with Article 18.’;

(21) 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 when 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 take the decision concerning the compatibility of the use of State aid or of Fund aid with the internal market at the latest when it endorses or objects to the resolution scheme pursuant to Article 18(7), second subparagraph, or when the period of 24 hours referred to in Article 18(7), fifth subparagraph, expires, whichever is earlier.

In performing the tasks conferred on them by Article 18 of this Regulation, 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 this 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 legal and economic aspects related to 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 the information that the Commission needs to make its assessments pursuant to this paragraph, and that the Board has in its possession or which the Board 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 to be 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 decide 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 7 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 those 7 days.';

(22) Article 20 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Before determining whether the conditions for resolution, or the conditions for write down or conversion of capital instruments and eligible liabilities as referred to in Article 21(1) are met, the Board shall ensure that a fair, prudent and realistic valuation of the assets and liabilities of an entity as referred to in Article 2 is carried out by a person that is independent from any public authority, including the Board and the national resolution authority, and from the entity concerned.';

(b) the following paragraph 8a is inserted:

‘8a. Where necessary to inform the decisions referred to in paragraph 5, points (c) and (d), the valuer shall complement the information 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.’;

(c) in paragraph 18, the following point (d) is added:

‘(d) when determining the losses that the deposit guarantee scheme would have incurred had the institution been wound up under normal insolvency proceedings for the purpose of Article 109(1), point (b) of Directive 2014/59/EU, apply the criteria and methodology referred to in Article 11e of Directive 2014/49/EU and in any delegated act adopted pursuant to that Article.’;

(23) 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:

‘1. 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, 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 Article7(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 or on its own initiative, that one or more of the following conditions are met:’;

— 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(1).’;

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

‘The assessment of the conditions referred to in the first subparagraph, points (a) to (d), shall be made by the ECB for entities referred to in Article 7(2)(a), or by the relevant national competent authority for entities referred to in Article 7(2)(b), (4)(b) and (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 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. Where necessary, the Board may 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.’;

(23b) Article 22(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 shall be without prejudice to the application of the bail-in tool to an institution under resolution, for the purpose of Article 27(1), point (a) in combination with other resolution tools.’;

(24) 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), has been made by shareholders, the holders of relevant capital instruments and 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 and Article 109 of Directive 2014/59/EU 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) paragraphs 9 and 10 are replaced by the following:

'9. In extraordinary circumstances, the Board may seek further funding subject to the conditions laid down in the second and third subparagraph, and only 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 liabilities ranking lower than deposits referred to in Article 108, paragraph 1, point (b) of Directive 2014/59/EU, other than eligible deposits, and not excluded from bail-in pursuant to paragraphs 3 and 5, have been written down or converted in full.

Where Article 109(2b) of Directive 2014/59/EU applies, the Board may seek further funding from the deposit guarantee scheme. The sum of the contribution of the deposit guarantee scheme under this subparagraph and under Article 109(2b) of Directive 2014/59/EU shall not exceed the counterfactual established under Article 11e(1), point (b) of Directive 2014/49/EU.

The Board may seek further funding from alternative financing sources and the Fund may make a contribution from resources which have been raised through ex-ante contributions as referred to in Article 70 and which have not yet been used. Where Article 109(2b) of Directive 2014/59/EU applies, the Board may only seek further funding from alternative financing sources and the Fund may only make a contribution from resources which have been raised through ex-ante contributions as referred to in Article 70 and which have not yet been used where the sum of the contributions of the deposit guarantee scheme under the second subparagraph and Article 109(2b) of Directive 2014/59/EU has reached the limit set by the counterfactual established under Article 11e(1), point (b) of Directive 2014/49/EU.

c) in paragraph 13, the second subparagraph is replaced by the following:

‘The assessment referred to in the first subparagraph shall establish the amount by which bail-inable liabilities need to be written down or converted:

(a) to restore the Common Equity Tier 1 capital ratio of the institution under resolution, or, where applicable, establish the ratio of the bridge institution, taking into account any contribution of capital by the 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 may 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 the institution under resolution to continue to meet, for at least 1 year, the conditions for authorisation and to continue to carry out the activities for which it is authorised under Directive 2013/36/EU or Directive 2014/65/EU.';

(25) 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 tasks, including the information referred to in paragraphs 2a to 2c of this Article.';

(c) the following paragraphs 2a, 2b and 2c are inserted:

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

2b. Without prejudice to the confidentiality requirements that apply to that information, the ECB and other members of the European System of Central Banks (ESCB) shall cooperate closely with the Board and provide it with all information necessary for the performance of the Board’s tasks, including 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 the exchanges concerned.

2c. The designated authorities referred to in Article 2(1), point (18), of Directive 2014/49/EU and the deposit guarantee schemes shall cooperate closely with the Board and provide it with all information necessary to the performance of its tasks.’;

(d) paragraph 6 is 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.';

(e) paragraph 7 is replaced by the following:

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 referred to in Article 2(1), point (18), of Directive 2014/49/EU and the deposit guarantee schemes describing in general terms how they will cooperate under paragraphs 2, 2a, 2b, 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.';

(26) the following Article is inserted

‘*Article 30a*

Information held by centralised automated mechanism

1. The authorities operating the centralised automated mechanisms established by 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 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 the assessment referred to in Article 18 (5) of this Regulation.

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

** 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).’;

(27) in Article 31, the following paragraph 3 is added:

‘3. For the entities and groups referred to in Article 7(2), and for 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, national resolution authorities shall consult the Board before acting under Article 86 of Directive 2014/59/EU.

In case the Board does not express its views within two days after the submission by the national resolution authority, it shall be assumed that the Board has no comments.’;

(28) 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 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.’;

(29) 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, without prejudice to the confidentiality requirements that apply to that information and including 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 the information available to the national competent authorities, to the ESRB, the EBA, ESMA or EIOPA, require, through the national resolution authorities or directly, after having informed those authorities, the following legal or natural persons to provide it with all the information necessary, in accordance with the procedure requested by the Board and in the form requested by the Board, to perform 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, the 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, the 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, the 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, the EBA, ESMA, EIOPA, or the national resolution authorities shall provide that information to the Board.';

(30) in Article 43(1), the following point (aa) is inserted:

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

(30a) Article 43(2) is amended as follows:

"Each member, including the Chair and the Vice-Chair, shall have one vote."

(31) Article 50(1) is amended as follows:

a) 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;';

(b) the following points are added:

‘(r) be consulted by the Board in its executive session before the adoption of guidelines, general instructions, guidance notes, or any public document defining resolution practices and resolution planning methodologies.’;

‘(s) adopt rules for organising industry consultations where appropriate.’;

(31a) In Article 50(2), the following third subparagraph is added:

For the purpose of point (r) of paragraph 1, the following shall apply:

(i) Following the consultation, the Board in its executive session shall analyse the views expressed during this consultation and, where these views are not taken into account, explain in a reasoned written statement why it deviates from them;

(ii) the Board in its executive session shall adopt the guidelines, general instructions, or any public document where a simple majority of all members as referred to in Article 43(1), points (a) to (c) of this Regulation express their support;

(iii) by exception, the Board in its executive session may adopt guidelines or a public document defining resolution practices or resolution planning methodologies in absence of a simple majority of the members as referred to in Article 43(1), points (a) to (c). The Board in its plenary session may, with a majority of three quarters of the members as referred to in Article 43(1), point (c) of this Regulation, within 10 working days from the submission of the reasoned written statement as referred to in point (i), express a dissenting opinion on the decision of the Board in its executive session on the ground that it may have severe implications for the proper functioning of the Single Resolution Mechanism. In such case, the guidelines or public document shall mention that a dissenting opinion was expressed.

(32) Article 53 is amended as follows:

(a) in paragraph 1, the first sentence 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).';

(b) in paragraph 5, the words 'Article 43(1)(a) and (b)' are replaced by the words 'Article 43(1), points (a), (aa) and (b).';

(33) 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.';

(34) 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 four years. That term shall be renewable once.

A person who has served in total two terms of office as either the Chair, the Vice-Chair or a member referred to in Article 43(1), point (b), shall not be eligible for appointment to any of the positions.';

(c) in paragraph 6, first subparagraph, the following sentence is added:

'The Commission may arrange the names on the shortlist in the order reflecting the Commission's assessment of the suitability of each candidate in light of the criteria referred to in paragraph 4 of this Article.';

(d) the following paragraph 6a is inserted:

'6a. In the 9 months preceding the end of the first term of office of the Chair, of the Vice-Chair and of the members referred to in Article 43(1), point (b), the Commission shall evaluate the results achieved in the first term of office and shall decide whether to put forward a proposal for renewal of the term based on the results of that evaluation.

The Council, acting on a proposal from the Commission, shall adopt an implementing decision to renew the term of office of the Chair, of the Vice-Chair and of the members referred to in Article 43(1), point (b). The Council shall act by qualified majority.';

(e) in paragraph 7, the last sentence is replaced by the following:

‘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.’;

(35) 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 the 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.';

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

'4. If, after the initial period referred to in paragraph 1, the available financial means are not sufficient to meet the target level specified in that paragraph, the regular contributions calculated in accordance with Article 70 shall be raised until the target level is reached. Those contributions shall be set at a level allowing for reaching the target level within a reasonable timeframe, which shall not exceed six years where the available financial means account for less than two thirds of the target level. The Board may defer the collection of the regular contributions raised in accordance with Article 70 for 1 or more 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.';

(38) 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.';

(39) in Article 74, the following paragraph is inserted:

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

(40) In Article 76, the following paragraphs 5 and 6 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) 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.’;

(41) Article 79 is amended as follows:

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

‘1. Participating Member States shall ensure that when the Board takes resolution action with respect to a credit institution, provided that such action ensures that depositors continue to have access to their deposits, the deposit guarantee scheme to which that credit institution is affiliated shall contribute for the purpose and under the conditions laid down in Article 109 of Directive 2014/59/EU.

1a. The amount of the contribution of a deposit guarantee scheme that counts towards the thresholds laid down in Article 27(7) of this Regulation and in Article 44(5), point (a) in accordance with Article 109(2b) of Directive 2014/59/EU:

a. shall be limited to 2.5% of total liabilities including own funds of the institution or entity; and

b. shall count towards these thresholds only where:

i. a contribution to loss absorption or recapitalisation equal to an amount not less than 6.5% of the total liabilities including own funds of the institution under resolution has been made by the shareholders and the holders of other instruments of ownership, the holders of relevant capital instruments and other bail-inable liabilities, excluding the contribution of the deposit guarantee scheme, including over the 12 months preceding the declaration of the failing or likely to fail, through write-down, conversion or otherwise. This condition for the counting of losses only applies to the threshold mentioned in this sub-paragraph and is without prejudice to the rules applicable for the counting of losses for the other thresholds mentioned in the first sub-paragraph; and

ii. the institution has not breached its minimum requirement for own funds and eligible liabilities as referred to in Article 12a(2) during the 8 to 36 months preceding the determination that the institution is failing or likely to fail.

1b. The contribution of the deposit guarantee scheme shall not count towards the thresholds in Article 27(7) of this Regulation and in Article 44(5), point (a) in accordance with Article 109(2b) of Directive 2014/59/EU for institutions whose total value of assets exceeds EUR 30 billion, except where, in exceptional circumstances and only for a temporary period of 10 years starting after the date of entry into force of this regulation, counting this contribution towards the threshold is necessary to preserve financial stability and avoid significant adverse effects on the financial system, and:

- the total value of the assets of the institution does not exceed EUR 80 billion;

- the deposits of the institution exceed 65% of its total liabilities including own funds; and

- the eligible liabilities including own funds counting towards the minimum requirement referred to in Article 45(1) amounted to at least 8% of the total liabilities including own funds twelve months before the determination that the institution or entity is failing or likely to fail.

In such a case, the amount of the contribution of the deposit guarantee scheme that counts towards the thresholds laid down in Article 27(7) of this Regulation and in Article 44(5), point (a) in accordance with Article 109(2b) of Directive 2014/59/EU:

a. shall be limited to 1.25 % of total liabilities including own funds of the institution.

b. shall count towards these thresholds only where:

i. a contribution to loss absorption or recapitalisation equal to an amount not less than 8% of the total liabilities including own funds of the institution under resolution has been made by the shareholders and the holders of other instruments of ownership, the holders of relevant capital instruments and other bail-inable liabilities, with exclusion of the contribution of the deposit guarantee scheme, including over the 12 months preceding the declaration of failing or likely to fail, through write-down, conversion or otherwise. This condition for the counting of losses shall only apply to the threshold referred in this sub-paragraph and shall be without prejudice to the provisions applicable for the counting of losses for the other thresholds referred to in the first sub-paragraph; and

ii. the institution has not breached its minimum requirement for own funds and eligible liabilities as referred to in Article 12a(2) during the 8 to 36 months preceding the determination that the institution is failing or likely to fail.

For institutions of which the total value of their assets exceeds EUR 30 billion, the exception may only be granted provided that at least 5 out of the 6 members referred to in Article 43, paragraph 1, (a) to (b) agree to apply the exception. In such a case, the national resolution authority of the institution together with the Board shall within three months submit a report to the European Commission and to the Council explaining why the recourse to the exception was necessary and why it could not be prevented through adequate measures taken at the planning stage.

2. The Board shall determine the amount of the contribution of the deposit guarantee scheme in accordance with paragraph 1 after having consulted the deposit guarantee scheme, and where necessary the designated authority within the meaning of Article 2(1), point (18), of Directive 2014/49/EU, on the counterfactual established under Article 11e(1), point (b) of Directive 2014/49/EU and in compliance with the conditions referred to in Article 20(1) to (15) of this Regulation.

The amount of the contribution of the deposit guarantee scheme in accordance with paragraph 1 shall not be greater than an amount equal to 62,5% of its target level as defined in Article 10(2) Directive 2014/49/EU.

In the very extraordinary situation of a systemic crisis or to allow the deposit guarantee schemes' contribution to amount to the counterfactual established by Article 11e(1), point (b) of Directive 2014/49/EU and where Article 27, second and third subparagraphs apply, the designated authority may decide, after consulting the designated macro-prudential authority, that the contribution of the deposit guarantee scheme in accordance with paragraph 1 is higher than 62,5% of its target level.

3. The Board shall notify its decision as referred to in the first subparagraph to the designated authority within the meaning of Article 2(1), point (18), of Directive 2014/49/EU and to the deposit guarantee scheme to which the institution is affiliated. The deposit guarantee scheme shall implement that decision without delay.

3a. The application of Article 109(2b) of Directive 2014/59/EU shall no longer be possible where the contribution of the Fund under Article 109(2b) of Directive 2014/59/EU over a three-year period exceeds 17,5% of its target level.

In that case, the Commission shall submit a report to the European Parliament and the Council assessing whether the application of Article 109(2b) of Directive 2014/59/EU threatens the capacity of the Fund to discharge its missions as specified in Article 76. The report shall be accompanied, where appropriate, by a legislative proposal allowing the further use of the Fund under the first subparagraph.';

(b) in paragraph 5, the second and third subparagraphs are deleted;

(42) in Article 85(3), the words 'referred to in' are replaced by the words 'adopted under';

(43) 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 referred to in Article 2(1), point (18), of Directive 2014/49/EU, deposit guarantee schemes, investor compensation schemes, authorities responsible for normal insolvency proceedings, 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 7 is added:

‘7. 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.’;

(44) in Article 94 a new paragraph 4 is added:

‘4. By … [7 years after entry into force of this amending Regulation], the Commission shall submit a report to the European Parliament and to the Council analysing the impact of the application of Article 79(1b), and in particular the necessity to maintain the exception provided for in Article 79(1b). Where appropriate, that report shall be accompanied by a legislative proposal.’

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 … [OP please insert the date = 24 months from the date of entry into force of this amending Regulation].

However, Article 1, points (1)(a), points (2) and, (3), point (4)(a), point (5)(a), (b) and (c)(i) and (ii), point (6)(a), point (7), point (13)(a)(i) and (b), point (14)(a), (b) and (d), point (19)(d) and (e), point (21), point (23)(a)(i), first indent, (b) and (d), points (25) to (35), and points (39), (42) and (43), shall apply from … [OP please insert the date = 1 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 Strasbourg,

For the European Parliament

The President

END