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NOTE

From:	Presidency
To:	Delegations
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) No 806/2014 as regards loss-absorbing and Recapitalisation Capacity for credit institutions and investment firms *- Presidency compromise*

Delegations will find below a Presidency compromise text on the above mentioned proposal, to be presented to Coreper on 7 March 2018.

2016/0361 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EU) No 806/2014 as regards loss-absorbing and Recapitalisation Capacity for credit institutions and investment firms

(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 Financial Stability Board (FSB) published the Total Loss-Absorbing Capacity (TLAC) Term Sheet ('the TLAC standard') on 9 November 2015, which was endorsed by the G-20 in November 2015. The objective of the TLAC standard is to ensure that global systemically important banks ('G-SIBs'), referred to as global systemically important institutions ('G-SIIs') in the Union framework, have loss-absorbing and recapitalisation capacity to help ensure that in and immediately following resolution critical functions can be continued without taxpayers' funds (public funds) or financial stability being put at risk. In its Communication of 24 November 2015[3], the Commission committed itself to bring forward a legislative proposal by the end of 2016 that would enable the TLAC standard to be implemented by the internationally agreed deadline of 2019.

(2) The implementation of the TLAC standard in the Union needs to take into account the existing institution-specific minimum requirement for own funds and eligible liabilities ('MREL') applicable to all Union institutions as laid down in Directive 2014/59/EU of the European Parliament and of the Council[4]. As TLAC and MREL pursue the same objective of ensuring that Union institutions have sufficient loss-absorbing and recapitalisation capacity, the two requirements should be complementary elements of a common framework.

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

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, OJ L 173, 12.6.2014, p. 190

Operationally, the Commission proposed that the harmonised minimum level of the TLAC standard for G-SIIs ('TLAC minimum requirement') should be introduced in Union legislation through amendments to Regulation (EU) No 575/2013[5], while the institution-specific add-on for G-SIIs and the institution-specific requirement for non-G-SIIs, referred to as minimum requirement for own funds and eligible liabilities, should be addressed through targeted amendments to Directive 2014/59/EU and Regulation (EU) No 806/2014[6]. The relevant provisions of this Regulation as regards loss absorbing and recapitalisation capacity of institutions should be applied together with those in the aforementioned pieces of legislation and in Directive 2013/36/EU[7] in a consistent way.

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

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5 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

6 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

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

(4) Regulation (EU) No 806/2014 should continue to recognise the Single Point of Entry (SPE), as well as the Multiple Point of Entry (MPE) resolution strategy. Under the SPE strategy, only one group entity, usually the parent undertaking, is resolved whereas other group entities, usually operating subsidiaries, are not put in resolution, but upstream their losses and recapitalisation needs to the entity to be resolved. Under the MPE strategy, more than one group entity may be resolved. A clear identification of entities to be resolved ('resolution entities') on which resolution actions could be applied together with subsidiaries that belong to them ('resolution groups') is important to apply the desired resolution strategy effectively. That identification is also relevant for determining the level of application of the rules on loss absorbing and recapitalisation capacity that financial firms should apply. It is therefore necessary to introduce the concepts of 'resolution entity' and 'resolution group' and to amend Regulation (EU) No 806/2014 concerning group resolution planning in order to explicitly require the Single Resolution Board ('the Board') to identify the resolution entities and resolution groups within a group and to consider the implications of any planned action within the group appropriately to ensure an effective group resolution.

(5) The Board should ensure that institutions have sufficient loss absorbing and recapitalisation capacity to ensure smooth and fast absorption of losses and recapitalisation with a minimum impact on financial stability and taxpayers. That should be achieved through compliance by institutions with an institution-specific minimum requirement for own funds and eligible liabilities as provided in Regulation (EU) No 806/2014.

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

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

(8) The scope of liabilities used to meet the MREL includes, in principle, all liabilities resulting from claims arising from ordinary unsecured creditors (non-subordinated liabilities) unless they do not meet specific eligibility criteria provided in this Regulation. To enhance the resolvability of institutions through an effective use of the bail-in tool, the Board should be able to require that the firm-specific requirement is met with subordinated liabilities, in particular when there are clear indications that bailed-in creditors are likely to bear losses in resolution that would exceed their potential losses in insolvency. The Board should assess the need for requiring institutions to meet MREL with subordinated liabilities where the amount of liabilities excluded from the application of the bail-in tool reaches a certain threshold within a class of liabilities that incudes MREL eligible liabilities. The requirement to meet MREL with subordinated liabilities should be requested for a level necessary to prevent that losses of creditors in resolution are above losses that they would otherwise incur under insolvency. Any subordination of debt instruments requested by the Board for the MREL should be without prejudice to the possibility to partly meet the TLAC minimum requirement with non-subordinated debt instruments in accordance with Regulation (EU) No 575/2013 as permitted by the TLAC standard.

In line with the TLAC standard, for resolution entities of G-SIIs or top-tier banks [with assets above 75 / 100 billion Euro and discretionarily, on the basis of certain criteria related to prevalence of deposits and the absence of debt instruments in the funding model, limited access to capital markets for eligible liabilities and reliance on Common Equity Tier 1 to meet MREL], the Board should be able to require that MREL is met with subordinated liabilities also when necessary and appropriate to implement an orderly resolution, minimise the impact on financial stability, ensure the continuity of critical functions, or avoid exposing public funds to loss.

In accordance with the principle of proportionality, the power to require that MREL is met with subordinated liabilities shall be exercised by the Board to the extent that the overall level of the required subordination in the form of own funds and eligible liabilities items due to the obligation of institutions to comply with TLAC, MREL and, where applicable, the combined capital buffer requirement under Directive 2013/36/EU is not higher than a certain level expressed as the higher of the levels of loss absorption and recapitalisation referred to in Article 27(7) and a percentage of the risk weighted assets and combined capital buffers.

(9) The MREL should allow institutions to absorb losses expected in resolution or at the point of non-viability as appropriate and recapitalise the institution after the implementation of actions foreseen in the resolution plan and resolution of the resolution group. The Board should, on the basis of the resolution strategy chosen by them, duly justify the imposed level of the MREL and should review without undue delay that level to reflect any changes in the level of the requirement referred to in Article 104a of Directive 2013/36/EU. As such, that level should be composed of the sum of the amount of losses expected in resolution that correspond to the institution's own funds requirements and the recapitalisation amount that allows the institution post-resolution or after the exercise of write down or conversion powers to meet its own funds requirements necessary for being authorised to pursue its activities under the chosen resolution strategy. The MREL should be expressed as a percentage of the total risk exposure and leverage ratio measures, and institutions should meet the levels resulting from the two measurements simultaneously. The Board should adjust downwards or upwards the recapitalisation amounts for any changes resulting from the actions foreseen in the resolution plan.

The Board should also be able to increase the recapitalisation amount to ensure sufficient market confidence in the institution after the implementation of actions foreseen in the resolution plan. The requested level of the market confidence buffer should enable the institution to continue to meet the conditions for authorisation for an appropriate period of time, including by allowing the institution to cover the costs related to the restructuring of its activities following resolution, and to sustain sufficient market confidence. The market confidence buffer should be set by reference to part of the combined capital buffer requirement under Directive 2013/36/EU. The Board should adjust downwards the level of the market confidence buffer if a lower level is sufficient to ensure sufficient market confidence or should adjust upwards that level where a higher level is necessary to ensure that, following the actions provided in the resolution plan, the entity continues to meet the conditions for its authorisation for an appropriate period of time, and to sustain sufficient market confidence.

(9a) In line with Commission Delegated Regulation (EU) 2016/1075, the Board should examine the investor base of individual institution's MREL instruments. If a significant part of an institution's MREL is held by retail investors that might not have received a fair and prominent indication of relevant risks, this can in itself constitutes a potential impediment to resolvability. At the same time, if a large part of an institutions's MREL instruments is held by other institutions, the systematic nature of a write down or conversion could also pose a potential impediment to resolvability. Should the Board find an impediment to resolvability as a result of the size and nature of a certain investor base, it could recommend to aninstitution to address such impediment. At the same time national law might in any case restrict the sale and marketing of certain instruments to certain investors.

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

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

(12)

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

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

(15) The application of the MREL to institutions that are not resolution entities should comply with the chosen resolution strategy. In particular, it should not change the ownership relationship between the institutions and its resolution group after those institutions have been recapitalised.

(15a) Regulation No 575/2013 provides that competent authorities may waive the application of certain solvency and liquidity requirements for credit institutions permanently affiliated to a central body where certain specific conditions are met. To take account of specificities of such cooperative networks, the Board should also be able to waive the application of MREL for such credit institutions under similar conditions to those of Regulation No 575/2013 where credit institutions and the central body are established in the same Member State and treat them as whole when assessing the conditions for resolution. Compliance with the external MREL requirement of the resolution group as a whole may be ensured in different manners depending on the features of the solidarity mechanism of each group, either counting eligible liabilities of the central body only, or counting eligible liabilities of some or all entities in the network.

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

(17) This Regulation complies with the fundamental rights and observes the principles recognised in particular by the Charter, notably the rights to property and the freedom to conduct a business, and has to be applied in accordance with those rights and principles.

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

(19) To allow for an appropriate time for the application of this Regulation, this Regulation should be applied 18 months from its entry into force.

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) No 806/2014

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

(a) the following points are inserted:

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

(24b) 'resolution group' means:

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

(i) resolution entities themselves; or

(ii) subsidiaries of other resolution entities; or

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

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

(24c) 'global systemically important institution' (G-SII) means a G-SII as defined in point (132) of Article 4(1) of Regulation (EU) No 575/2013"

(b) in points (48), (49), point (,(d) of Article 20(5), Articles 27(1), (4), (5), (6), (7) and (13), 'eligible liabilities' are replaced with 'bail-inable liabilities'.

(c) the following point (49a) is inserted:

'(49a) 'eligible liabilities' means bail-inable liabilities that fulfil the conditions of Article 12c or point (a) of Article 12h(3).".

2. In Article 7, point (d) of paragraph (3) is replaced by the following:

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

3. Article 8 is amended as follows:

(a) paragraph (5) is replaced by the following:

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

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

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

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

(c) Points (o) and (p) of paragraph (9) are replaced by the following:

'(o) the requirements referred to in Article 12g and 12h and a deadline to reach that level, where applicable;"

"(p) where the Board applies Article 12c(3), a deadline for compliance by the resolution entity."

(c1) In Article 8(9), the following subparagraph is inserted:

"When setting deadlines referred to in points (o) and (p) of the first subparagraph, the resolution plan shall ensure that such deadlines are appropriate and take into account:

(a) the prevalence of deposits and the absence of debt instruments in the funding model;

(b) the limited access to the capital markets for eligible liabilities;

(c) the reliance on Common Equity Tier 1 to meet the requirement referred to in Article 12g."

(d) paragraph (10) is replaced by the following:

'10 Group resolution plans shall include a plan for the resolution of the group referred to in paragraph 1, headed by the Union parent undertaking established in a participating Member State and shall identify measures to be taken in respect of:

(a) the Union parent undertaking;

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

(c) the entities referred to in Article 2(b); and

(d) subject to Article 33, the subsidiaries that are part of the group and that are established outside the Union.

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

(a) the resolution entities;

(b) the resolution groups.';

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

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

(a1) where a group referred to in paragraph 1 comprises more than one resolution group, set out resolution actions foreseen in relation to the resolution entities of each resolution group and the implications of such actions on both of the following:

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

(ii) other resolution groups;

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

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

"The resolution plan shall be reviewed as appropriate after the implementation of resolution actions or the exercise of powers referred to in Article 21.

Where setting the deadlines referred to in points (o) and (p) of Article 8(9), the Board shall take into account the deadline to comply with the requirement referred to in Article 104b of Directive 2013/36/EU".

4. Article 10 is amended as follows:

(a) paragraph (4) is replaced by the following:

'4. A group shall be deemed to be resolvable if it is feasible and credible for the Board to either liquidate group entities under normal insolvency proceedings or to resolve them by applying resolution tools and exercising resolution powers in relation to resolution entities while avoiding, to the maximum extent possible, any significant adverse consequences for financial systems, including circumstances of broader financial instability or system wide events, of the Member States in which group entities are established, or other Member States or the Union and with a view to ensuring the continuity of critical functions carried out by those group entities, where they can be easily separated in a timely manner or by other means.

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

Where a group is composed of more than one resolution group, the Board shall assess the resolvability of each resolution group in accordance with this Article.

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

(b) the following subparagraph is added to paragraph (7):

The Board shall notify its assessment of the impediment to resolvability of the entity or group to the Union parent undertaking, where that impediment is due to a situation where:

(a) the entity meets at the same time the combined buffer requirement defined in Article 128(6) in Directive 2013/36/EU and points (a), (b) and (c) of Article 141a(1) of Directive 2013/36/EU, but at the same time it does not meet the combined buffer requirement defined in Article 128(6) in Directive 2013/36/EU and the requirement referred to in point (d) of Article 141a(1) of Directive 2013/36/EU; or

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

(c) the following subparagraph is added to paragraph (9):

'Where an impediment to resolvability is due to a situation referred to in the second subparagraph of paragraph (7), the Union parent undertaking shall propose to the Board possible measures to address or remove the

impediment identified in accordance with the first subparagraph within two weeks of the date of receipt of a notification made in accordance with paragraph 7.

The timeline for the implementation of measures proposed shall take into account the reasons that have led to the impediment in question. The Board, after consulting the ECB and the competent authorities, shall assess whether those measures effectively address or remove the substantive impediment in question". '

(d) in points (i) and (j) of paragraph (11), 'Article 12' is replaced by 'Articles 12g and Article 12h'.

(e) in paragraph (11) the following points are added:

(k) require an entity to submit a plan to restore compliance with Articles 12g and 12h expressed as a total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 and, where applicable, with the requirement referred to in Article 128(6) of Directive 2013/36/EU or with the requirements referred to in Articles 12g or 12h expressed as a percentage of the total exposure measure referred to in Articles 429 and 429a of Regulation (EU) No 575/2013;

(l) require an entity to change the maturity profile of own funds instruments after having obtained the agreement of the competent authority and eligible liabilities referred to in Article 12c or items referred to in points (a) and (b) of Article 12h(3) to ensure continuous compliance with Article 12g and Article 12h.'

4a. After Article 10, a new Article 10a is inserted:

"Article 10a

Power to prohibit certain distributions

(1) Where an entity meets at the same time the combined buffer requirement defined in Article 128(6) of Directive 2013/36/EU and points (a), (b) and (c) of Article 141a(1) of Directive 2013/36/EU, but at the same time it does not meet the combined buffer requirement defined in Article 128(6) of Directive 2013/36/EU and the requirements referred to in Article 92a of Regulation (EU) No 575/2013 or the requirements referred to in Articles 12d and 12e when calculated in accordance with point (a) of Article 12a(2), the Board shall have the power to prohibit an entity from distributing, in accordance with the conditions in paragraph (2) and (3), 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 through any of the following actions:

(a) make a distribution in connection with Common Equity Tier 1 capital;

(b) create an obligation to pay variable remuneration or discretionary pension benefits or pay variable remuneration if the obligation to pay was created at a time when the entity failed to meet the combined buffer requirements;

(c) make payments on Additional Tier 1 instruments.

Where the entity is in the situation referred to in sub-paragraph 1, it shall immediately notify the Board about the breach.

(2) In the situation referred to in paragraph 1, the Board, after consulting the competent authority, may exercise the power referred to in paragraph 1 when it assesses that the exercise of this power is the most adequate and proportionate means to address the situation of the entity based on its potential impact on both the financing conditions and resolvability of the entity concerned.

The Board shall take into account the following elements:

(a) the reason, duration and magnitude of the breach and its impact on resolvability;

(b) the development of the entity's financial situation and the likelihood that it may, in the foreseeable future, fulfil the condition referred to in Article 18(1)(a);

(c) the prospect that the entity will be able to ensure compliance with the requirements referred to in paragraph 1 in a reasonable timeframe;

(d) where the entity is unable to replace liabilities that no longer meet the eligibility or maturity criteria laid down in Articles 72b and 72c of Regulation (EU) No 575/2013, Article 12c or Article 12h(3), whether this inability is of idiosyncratic nature or due to market-wide disturbance.

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

(3) If the Board assesses that the entity is still in the situation referred to in paragraph 1 six months after such situation has been notified, theBoard, after consultation of the competent authority, shall exercise the power referred to in paragraph 1 except where the Board assesses that at least [two] of the following conditions are fulfilled:

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

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

(iii) the market closure referred to in point (ii) is observed not only for the concerned entity, but also for several other entities;

(iv) the disturbance referred to in point (i) prevents the concerned entity from issuing own funds and eligible liabilities instruments in a volume sufficient to remedy the breach;

(v) an exercise of the power referred to paragraph 1 leads to negative spill-over effects for part of the banking sector which may undermine financial stability.

Where the exception referred to in the previous subparagraph is applied, the Board shall notify the competent authority of its decision and explain its assessment in writing.

The Board shall repeat its assessment of the conditions of the previous subparagraph every month to assess whether the exception may be applied.

(4) The 'M-MDA' shall be calculated by multiplying the sum calculated in accordance with paragraph 5 by the factor determined in accordance with paragraph 6. The 'M-MDA' shall be reduced by any of the actions referred to in point (a), (b) or (c) of paragraph 1.

(5) The sum to be multiplied in accordance with paragraph 4 shall consist of:

(a) interim profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of Regulation (EU) No 575/2013 net of any distribution of profits or any payment related to the actions referred to in point (a), (b) or (c) of paragraph 1 of this Article;

plus

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

minus

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

(6) The factor shall be determined as follows:

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

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

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

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

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

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

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

"Q_n" indicates the ordinal number of the quartile concerned."

5. Article 12 of Regulation (EU) No 806/2014 is replaced by the following Articles:

"Article 12
Determination of the minimum requirement for own funds and eligible liabilities"

1. The Board shall, after consulting competent authorities, including the ECB, determine the requirements for own funds and eligible liabilities as referred to in Articles 12a to 12i, subject to write-down and conversion powers, which the entities and groups referred to in Article 7(2), and the entities and groups referred to in Article 7(4)(b) and (5) when the conditions for the application of these paragraphs are met, are required to meet at all times.

1a. Any entities and entities that are part of groups referred to in the first paragraph shall report the information referred to in Article 45i(1) of Directive 2014/59/EU to the national resolution authority of the participating Member State in which they are established.

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

2. When drafting resolution plans in accordance with Article 9, national resolution authorities shall, after consulting competent authorities, determine the requirements for own funds and eligible liabilities, as referred to in Articles 12a to 12i, subject to write-down and conversion powers, which the entities referred to in Article 7(3) are required to meet at all times. In that regard the procedure established in Article 31 shall apply.

3. The Board shall take any determination referred to in paragraph 1, in parallel with the development and maintenance of the resolution plans pursuant to Article 8.

4. The Board shall address its determination to the national resolution authorities. The national resolution authorities shall implement the instructions of the Board in accordance with Article 29. The Board shall require that the national resolution authorities verify and ensure that institutions and parent undertakings maintain the requirements for own funds and eligible liabilities laid down in paragraph 1 of this Article.

5. The Board shall inform the ECB and EBA of the requirements for own funds and eligible liabilities that it has determined for each institution and parent undertaking under paragraph 1.

6. In order to ensure effective and consistent application of this Article, the Board shall issue guidelines and address instructions to national resolution authorities relating to specific entities or groups.

Article 12a

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

1. The Board and national resolution authorities shall ensure that entities referred to in Article 12(1) and 12(2) meet, at all times, the requirements for own funds and eligible liabilities where required by and in accordance with Article 12a to 12i.

2. This requirement referred to in paragraph 1 shall be calculated in accordance with, Article 12d(3) or (4) as applicable, as the amount of own funds and eligible liabilities and expressed as a percentage of:

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

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

Article 12b

Exemption from the minimum requirement for own funds and eligible liabilities

1. Notwithstanding Article 12a, the Board shall exempt from the requirement referred to in article 12a(1) mortgage credit institutions financed by covered bonds which, according to national law are not allowed to receive deposits where all of the following conditions are met:

(a) those institutions will be wound-up through national insolvency procedures, or other types of procedure implemented in accordance with Article 38, 40 or 42 of Directive 2014/59/EU laid down for those institutions; and

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

2. Institutions exempted from the requirement laid down in Article 12(1) shall not be part of the consolidation referred to in Article 12g(1).

Article 12c

Eligible liabilities for resolution entities

1. Eligible liabilities shall be included in the amount of own funds and eligible liabilities of resolution entities only where they satisfy the conditions referred to in 72a, except for point (d) of Article 72b(2) of Regulation (EU) No 575/2013.

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

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

(a) [whole or a part of the] principal amount of the liability arising from the debt instrument is known in advance at the time of issuance, is fixed or increasing and not affected by a derivative feature or the debt instrument includes a contractual term which specifies the amount of the claim in an event of resolution;

(b) [Option 1: the position of the liability arising from the debt instrument or of the embedded derivative can be valued daily by reference to an active, liquid two-way market [for an equivalent instrument without credit risk] in line with Articles 104 and 105 of Regulation (EU) No 575/2013 //

Option 2: the position of the liability arising from the debt instrument or of the embedded derivative can be valued daily according to the requirements for prudent valuation laid down in Articles 104 and 105 of Regulation (EU) No 575/2013] or the debt instrument includes a contractual clause term which specifies the amount of the claim in an event of resolution.

(c) the debt instrument, including its derivative feature, is not subject to any netting agreement and its valuation is not subject to Article 49(3) of Directive 2014/59/EU;

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

2a. Liabilities issued by a subsidiary established in the participating Member State that is part of the same resolution group as the resolution entity to an existing shareholder that is not part of the same resolution group shall be included in the amount of own funds and eligible liabilities of resolution entities provided that all of the following conditions are met:

a) they are issued in accordance with Article 12h(3)(a);

b) the exercise of the power of write-down or convert in relation to such liabilities in accordance with Article 21 does not affect the control of the subsidiary by the resolution entity;

c) they do not exceed an amount determined by subtracting the amount referred to in point (i) from the amount referred to in point (ii):

i. the sum of the liabilities issued to and bought by the resolution entity either directly or indirectly through other entities in the same resolution group and the amount of own funds issued in accordance with Article 12h(3)(b);
ii. the amount required in accordance with Article 12h(1).

3. The Board, on its own initiative after consulting the national resolution authority or upon proposal by a national resolution authority, may decide that the requirement referred to in Article 12g shall be met by resolution entities with instruments that meet all conditions referred to in Article 72a of Regulation (EU) No 575/2013 except for paragraphs (3) to (5) with a view to ensure that the resolution entity can be resolved in a manner suitable to meet the resolution objectives.

4. The Board's decision under this paragraph shall contain the reasons for that decision on the basis of the following elements:

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

(b) as a result of a planned application of write-down and conversion powers to non-subordinated liabilities that are not excluded from the application of the write-down or conversion powers in accordance with Article 27(3) or Article 27(5), creditors of claims arising from those liabilities incur greater losses than they would incur in a winding up under normal insolvency proceedings;

(a) (c) the amount of subordinated liabilities necessary to ensure that creditors referred to in paragraph 4, point (b) shall not incur losses above the level of losses that they would otherwise have incurred in a winding up under normal insolvency proceedings.

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

[5. Notwithstanding paragraph 4 the Board may take the decision under paragraph (3) with respect to resolution entities of G-SIIs and resolution entities subject to Article 12d(3a) [and (3b)] if it determines that this is necessary and appropriate to implement an orderly resolution, minimise the impact on financial stability, ensure the continuity of critical functions, or avoid exposing public funds to loss with a high degree of confidence.

In the case under the first subparagraph, the limit under paragraph 5 , point (a) does not apply.

6. The Board may exercise the power referred to in paragraph 3 to the extent where the sum of instruments that meet all conditions referred to in Article 72a of Regulation (EU) No 575/2013 except for paragraphs (3) to (5) of Article 72b of that Regulation and own funds of an entity due to its obligation to comply with the requirements referred to in Article 128(6) of Directive 2013/36/EU, Article 92a of Regulation (EU) No 575/2013, Article 12d(3a), and Article 12g does not exceed the greater of:

(a) 8% of the total liabilities of the entity, including own funds;

(b) the amount resulting from the application of the formula Ax2+B+C, where:

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

B= amount resulting from the requirement referred to in Article 104a of Directive 2013/36/EU (Pillar 2R)

C= amount resulting from the requirement referred to in Article 128(6) of Directive 2013/36/EU (combined capital buffer requirement)

For the purposes of point (b)(i), derivative liabilities shall be included in total liabilities on the basis that full recognition is given to counterparty netting rights.

The requirements referred to in this paragraph shall be those applicable to the entity at the time of determining the requirement referred to in Article 45(1).

7. By derogation from paragraph 6, the Board may exercise the power under paragraph 3 up to the amount resulting from the application of the formula [Ax2+Bx2+C, where A, B and C are the amounts referred to in paragraph 6, item (b)] based on the following conditions:

(a) the requirement referred to in Article 104a of Directive 2013/36/EU reflects that the resolution entity is among the (TBD: 10% / 20%) riskiest institutions under the supervision of the same competent authority, or

(b) where, based on the latest resolution plan, substantive impediments to resolvability have been identified in the preceding resolvability assessment and:

(i) no remedial action have been taken following the application of the powers referred to in Article 10(11) in the timeline required by the resolution authority, or

(ii) the identified impediment cannot be addressed by any of the powers referred to in Article 10(11) or

(iii) an increase in the level of the requirement referred to in Article 12g that shall be met with instruments referred in paragraph 2 would partially or fully compensate for the negative impact of the substantive impediment on resolvability.]

Article 12d

Determination of the minimum requirement for own funds and eligible liabilities

1. The requirement referred to in Article 12a(1) shall be determined by the Board, after having consulted the competent authorities, including the ECB, on the basis of the following criteria:

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

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

(c) the need to ensure that, if the resolution plan anticipates that certain classes of eligible liabilities might be excluded from bail-in pursuant to 27(5) or might be transferred to a recipient in full under a partial transfer, the resolution entity has sufficient other eligible liabilities to ensure that losses could be absorbed and the total capital ratio or, as applicable, the leverage ratio of the resolution entity can be restored to a level necessary to enable it to continue to comply with the conditions for authorisation and to carry on the activities for which it is authorised under Directive 2013/36/EU or Directive 2014/65/EU;

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

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

2. Where the resolution plan provides that resolution action is to be taken or write-down and conversion powers are to be applied, the requirement referred to in Article 12a(1) shall equal an amount sufficient to ensure that:

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

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

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

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

3. For resolution entities, the amount referred to in paragraph 2 shall be composed of the following:

(a) the sum of:

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

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

(b) the sum of:

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

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

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

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

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

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

(a) use the most recent reported values for the relevant total risk exposure amount or leverage ratio exposure amount as adjusted for any changes resulting from resolution actions foreseen in the resolution plan; and

(b) after having consulted the ECB and the competent authorities, adjust downwards or upwards the current requirement referred to in Article 104a of Directive 2013/36/EU to determine the requirement applicable to the resolution entity after the implementation of the preferred resolution strategy.

The Board shall be able to increase the requirement provided in point (a) [(ii)] of the first sub-paragraph with an appropriate amount necessary to ensure that, following resolution, the entity sustains sufficient market confidence for an appropriate period of time [not longer than one year] ('market confidence buffer').

Where the previous sub-paragraph applies, the market confidence buffer shall be set equal to the combined buffer requirement referred to in point (6) of Article 128 of Directive 2013/36/EU, except for the requirement referred to in point (a) of that provision, which would apply after the application of the resolution tools.

Such amount shall be adjusted downwards if, after consulting the competent authority, the Board determines that it would be feasible and credible that a lower amount is sufficient to sustain market confidence and ensure both the continued provision of critical economic functions by the institution and the access to funding without recourse to extraordinary financial support other than contributions from resolution financing arrangements, consistently with Article76(3) and Article 27(7), after implementation of the resolution strategy. Such amount shall be adjusted upwards if, after consulting the competent authority, the Board determines that a higher level is necessary to sustain sufficient market confidence and ensure both the continued provision of critical economic functions by the institution and the access to funding without recourse to extraordinary financial support other than contributions from resolutionfinancing arrangements, consistently with Article 76(3) and Article 27(7), for an appropriate period of time [that is not longer than one year].

3a. For resolution entities that are not subject to Article 92a of Regulation (EU) No 575/2013 and that are part of a resolution group whose total assets exceed [EUR 75 billion / 100 billion] and that is led by a Union parent undertaking the level of the requirement referred to in paragraph 3 shall be at least equal to ("Pillar 1 requirement for top tier banks):

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

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

By way of derogation from Article 12c, resolution entities referred to in the previous sub-paragraph shall meet the level of the requirement referred to in this paragraph that is equal to 13,5 % when calculated in accordance with point (a) of Article 12a(2) and to 5% when calculated in accordance with point (b) of Article 12a(2) with eligible liabilities that meet all conditions referred to in Article 72a of Regulation (EU) No 575/2013, except for paragraphs (3) to (5) of Article 72b of that Regulation, liabilities referred to in Article 12c(2a) or own funds.

[3b. The Board may also apply the minimum requirements laid down in paragraph 3a to resolution entities that are not subject to Article 92a of Regulation (EU) No 575/2013 and are part of a resolution group whose total assets are lower than EUR [75 / 100] billion, and are considered by the Board to be reasonably likely to pose a systemic risk in case of failure, taking into account the following criteria:

(i) the prevalence of deposits and the absence of debt instruments in the funding model;

(ii) the limited access to the capital markets for eligible liabilities;

(iii) the reliance on Common Equity Tier 1 to meet the requirement referred to in Article 45(1).

The decision not to impose a minimum requirement pursuant to paragraph 3b is without prejudice of the decision to impose that the requirement referred to in Article 12g shall be met with instruments that meet all conditions referred to in Article 72a of Regulation (EU) No 575/2013 pursuant to Article 12c.(3) to (7).]

4. For entities that are not themselves resolution entities, the amount referred to in paragraph 2 shall be composed of the following:

(a) the sum of:

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

(ii) a recapitalisation amount that allows the entity to restore compliance with its total capital ratio requirement referred in Article 92(1)(c) of Regulation (EU) No 575/2013 and its requirement referred to in Article 104a of Directive 2013/36/EU after the exercise of the power to write down or convert relevant capital instruments and eligible liabilities in accordance with Article 21 and the resolution of the resolution group; or

(b) the sum of:

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

(ii) a recapitalisation amount that allows the entity to restore compliance with its leverage ratio requirement referred to in Article 92(1)(d) of Regulation (EU) No 575/2013 after the exercise of the power to write down or convert relevant capital instruments and eligible liabilities in accordance with Article 21 and the resolution of the resolution group.

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

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

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

(a) use the most recent reported values for the relevant total risk exposure amount or leverage ratio exposure amount as adjusted for any changes resulting from actions foreseen in the resolution plan; and

(b) after having consulted the ECB and the competent authorities, adjust downwards or upwards the current requirement referred to in Article 104a of Directive 2013/36/EU to determine the requirement applicable to the relevant entity after the exercise of the power to write down or convert relevant capital instruments and eligible liabilities.

The Board shall be able to increase the requirement provided in point (a) [(ii)] of the first sub-paragraph with an appropriate amount necessary to ensure that, following the exercise of the power to write down or convert relevant capital instruments and eligible liabilities in accordance with Article 21, the entity continues to meet the conditions for authorisation and sustains sufficient market confidence for an appropriate period of time [not longer than one year] ('market confidence buffer').

Where the previous subparagraph applies, the amount of market confidence buffer shall be set equal to the combined buffer requirement referred to in point (6) of Article 128 of Directive 2013/36/EU, except for the requirement referred to in point (a) of that provision, which would apply after the exercise of the power referred to in Article 21 and the resolution of the resolution group.

Such amount shall be adjusted downwards if, after consulting the competent authority, the Board determines that it would be feasible and credible that a lower amount is sufficient to ensure market confidence after the exercise of the power referred to in Article 21 and the resolution of the resolution group. Such amount shall be adjusted upwards if, after consulting the competent authority, the Board determines that a higher level is necessary to ensure that, following the exercise of the power to write down or convert relevant capital instruments and eligible liabilities in accordance with Article 21 and the resolution of the resolution group, the entity continues to meet the conditions for its authorisation and sustains sufficient market confidence for an appropriate period of time [that is not longer than one year].

5. Where the Board expects that certain classes of eligible liabilities are reasonably likely to be fully or partially excluded from bail-in pursuant to Articles 27(5) or might be transferred to a recipient in full under a partial transfer, the requirement referred to in Article 12a(1) shall be met with other eligible liabilities sufficient to:

(a) cover the amount of excluded liabilities identified in accordance with Article 27(5);

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

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

reviewed without undue delay to reflect any changes in the level of the requirement referred to in Article 104a of Directive 2013/36/EU.

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

Article 12e

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

1. The minimum requirement for own funds and eligible liabilities of a resolution entity that is a G-SII or part of a G-SII shall consist of:

(a) the requirements referred to in Articles 92a and 494 of Regulation (EU) No 575/2013; and

(b) any additional requirement for own funds and eligible liabilities determined by the Board specific to the entity in accordance with paragraph 2, which shall be met with liabilities that meet the conditions of Article 12c.

1a. The requirement referred to in Article 12a(1) of an entity subject to the requirement referred to in Article 92b and 494 of Regulation (EU) No 575/2013 shall consist of the following:

(a) the requirements referred to in Articles 92b and 494 of Regulation (EU) No 575/2013; and

(b) any additional requirement for own funds and eligible liabilities determined by the resolution authority in accordance with paragraph 2, which shall be met with liabilities that meet the conditions of Article 12h.

2. Without prejudice to Article 12f, the Board shall impose an additional requirement for own funds and eligible liabilities referred to in point (b) of paragraph 1 only:

(a) where the requirement referred to in point (a) of paragraphs (1) and (1a) is not sufficient to fulfil the conditions set out in Article 12d; and

(b) to an extent that ensures that the conditions of Article 12d are fulfilled.

3. The decision of the Board to impose an additional requirement of own funds and eligible liabilities under point (b) of paragraph 1 shall contain the reasons for that decision, including a full assessment of the elements referred to in paragraph 2, and shall be reviewed without undue delay to reflect any changes in the level of the requirement referred to in Article 104a of Directive 2013/36/EU applicable to the resolution group.

Article 12g

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

1. Resolution entities shall comply with the requirements laid down in 12c to Article 12f on a consolidated basis at the level of the resolution group.

2. The requirement referred to in Article 12a(1) of a resolution entity established in a participating Member State at the consolidated resolution group level shall be determined by the Board, after consulting the group-level resolution authority where different from the Board and the consolidating supervisor, based on the requirements laid down in Articles 12c to 12f and of whether the third-country subsidiaries of the group are to be resolved separately according to the resolution plan.

3. For resolution groups as defined in point (b) of Article 3(1)(24b), the Board decides, depending on the features of the solidarity mechanism and of the preferred resolution strategy, how the entities in the resolution group shall comply with the requirements referred to in Articles 12d(3) and (3a) to ensure that the resolution group as a whole complies with the requirement referred to in paragraphs (1) and (2).

Article 12h

Application of the requirement to entities that are not themselves resolution entities

1. Institutions that are subsidiaries of a resolution entity or of a third country entity and are not resolution entities themselves or entities that are not subject to Article 12g(3) shall comply with the requirements laid down in Articles 12d and 12f on an individual basis.

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

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

For resolution groups identified pursuant to point (b) of Article 3(1)(24b), credit institutions affiliated to a central body and a central body which are not resolution entities, and credit institutions affiliated to a central body and a central body which are resolution entities but are not subject to Article 12g(3), shall comply with the requirements laid down in Articles 12d on an individual basis.
The requirement referred to in Article 12a(1) of an entity referred to in this paragraph shall be determined on the basis of the requirements laid down in Articles 12d.

2. The requirement referred to in Article 12a(1) of entities referred to in the first paragraph shall fulfil the eligibility criteria provided in paragraph 3.

3. The requirement referred to in Article 12a(1) shall be met with one or more of the following:

(a) liabilities that:

(i) are issued to and bought by the resolution entity either directly or indirectly through other entities in the same resolution group that bought the liabilities from the entity subject to this Article or by an existing shareholder that is not part of the same resolution group as long as the exercise of the power of write down or convert in accordance with Articles 21 does not affect the control of the subsidiary by the resolution entity;

(ii) fulfil the eligibility criteria referred to in Article 72a, except for points

(b), (c),(k), (l) and (m) of Article 72b(2) of Regulation (EU) No 575/2013;

(iii) in normal insolvency proceedings have the same ranking as own funds instruments or rank below liabilities that do not meet the condition referred to in point (i) and are not eligible for own funds requirements;

(iv) are subject to the power of write down or conversion in accordance with Articles 21 that is consistent with the resolution strategy of the resolution group, notably by not affecting the control of the subsidiary by the resolution entity;

(v) the purchase of the liabilities is not funded directly or indirectly by the entity subject to this Article;

(vi) the provisions governing the liabilities do not indicate explicitly or implicitly that the liabilities would be called, redeemed, repurchased or repaid early, as applicable by the entity subject to this Article other than in the case of the insolvency or liquidation of the entity and the entity does not otherwise provide such an indication;

(vii) the provisions governing the liabilities do not give the holder the right to accelerate the future scheduled payment of interest or principal, other than in case of the insolvency or liquidation of the entity subject to this Article;

(viii) the level of distributions payments, as applicable, due on the liabilities is not amended on the basis of the credit standing of the entity subject to this Article or its parent undertaking.

(b) own funds instruments that:

(i) are issued to and bought by entities that are included in the same resolution group; or

(ii) are issued to and bought by entities that are not included in the same resolution group as long as the exercise of the power of write down or convert in accordance with Article 21 does not affect the control of the subsidiary by the resolution entity.

4. The Board may permit the requirement to be met in full [or in part] with a guarantee provided by the resolution entity, which fulfils the following conditions:

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

(b) the guarantee is provided for at least the equivalent amount as the amount of the requirement for which it substitutes;

(c) the guarantee is triggered when the subsidiary is unable to pay its debts or other liabilities as they fall due or a determination has been made in accordance with Article 21(3) in respect of the subsidiary, whichever is the earliest;

(d) the guarantee is collateralised through a financial collateral arrangement as defined in point (a) of Article 2(1) of Directive 2002/47/EC [for at least 50% of its amount];

(e) the collateral backing the guarantee fulfils the requirements of Article 197 of Regulation (EU) No 575/2013, which, following appropriately conservative haircuts, is sufficient to fully cover the amount guaranteed;

(f) the collateral backing the guarantee is unencumbered and in particular is not used as collateral to back any other guarantee;

(g) the collateral has an effective maturity that fulfils the same maturity condition as that for referred to in Article 72c(1) of Regulation (EU) No 575/2013; and,

(h) there are no legal, regulatory or operational barriers to the transfer of the collateral from the resolution entity to the relevant subsidiary, including when resolution action is taken in respect of the resolution entity. Upon request of the Board, the resolution entity shall provide an independent written and reasoned legal opinion or otherwise satisfactorily demonstrate that there are no legal, regulatory or operational barriers to the transfer of collateral to the relevant subsidiary.

Article 12i

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

1. The Board may fully waive the application of Article 12h for a subsidiary of a resolution entity established in a participating Member State where:

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

   (b) the resolution entity complies with the requirement referred to in Article 12g;

   (c) there is no current or foreseen material, practical or legal impediment to the prompt transfer of own funds or repayment of liabilities by the resolution entity to the subsidiary in respect of which a determination has been made in accordance with Article 21(3), in particular when resolution action is taken in respect of the resolution entity.

2. The Board may fully waive the application of Article 12h for a subsidiary of a resolution entity established in a participating Member State where:

   (a) both the subsidiary and its parent undertaking that is not a resolution entity are established in the same participating Member State and are part of the same resolution group;

   (b) the parent undertaking complies with the requirement referred to in Article 12a(1) on sub-consolidated basis;

   (c) there is no current or foreseen material, practical or legal impediment to the prompt transfer of own funds or repayment of liabilities by the parent undertaking to the subsidiary in respect of which a determination has been made in accordance with Article 21(3), in particular when resolution action is taken in respect of the parent undertaking.

Article 12i1

Waiver for credit institutions permanently affiliated to a central body

1. The Board may, in accordance with national law of a participating Member State, waive the application of Articles 12g or 12h to one or more credit institutions permanently affiliated to a central body, where all the following conditions are met:

   (a) the credit institutions and the central body are subject to supervision by the same competent authority and are established in the same Member State and are part of the same resolution group;

   (b) the commitments of the central body and affiliated institutions are joint and several liabilities or the commitments of its affiliated institutions are entirely guaranteed by the central body;

   (c) the minimum requirement for own funds and eligible liabilities, solvency and liquidity of the central body and of all the affiliated institutions are monitored as a whole on the basis of consolidated accounts of these institutions;

   (d) the management of the central body is empowered to issue instructions to the management of the affiliated institutions; and,

   (e) the relevant resolution group complies with the requirement referred to in Article 12g(3) and,

   (f) there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities between the central body and the affiliated credit institutions in case of resolution.

*Article 12*j

Breaches of the minimum requirement for own funds, eligible liabilities and breaches of guidance

1. Any breach of the minimum requirement for own funds and eligible liabilities referred to in Articles 12d or 12e by an entity shall be addressed by the Board and other relevant authorities through at least one of the following:

   (a) powers to address or remove impediments to resolvability in accordance with Article 10;

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

   (ba) power referred to in Article 10a;

   (c) early intervention measures in accordance with Article 13;

   (d) administrative penalties and other administrative measures in accordance with Article 110 and Article 111 of Directive 2014/59/EU;

   (e) an assessment of whether the institution is failing or is likely to fail, in line with Article 18 ".

3. The Board, resolution authorities and competent authorities of participating Member States shall consult each other when they exercise their respective powers referred to in points (a) to (e) of paragraph 1.

Article 12k

Transitional and post-resolution arrangements

1. By way of derogation from Article 12a(1), the Board shall determine an appropriate transitional period for an entity to comply with the requirements in Articles 12g or 12h, as appropriate. The deadline to comply with the requirements in Articles 12g or 12h shall be not be earlier than 1 January 2024.

In exceptional circumstances, where duly justified and appropriate on the basis of the criteria referred to in paragraph (4) the Board may set a transitional period that is shorter than 1 January 2024 by taking into consideration:

(b) the development of the entity's financial situation;

(c) the prospect that the entity will be able to ensure compliance with the requirements in Articles 12g or 12h or a requirement due to application of Article 12c(3) in a reasonable timeframe;

(d) whether the entity is able to replace liabilities that no longer meet the eligibility or maturity criteria laid down in Articles 72b and 72c of Regulation (EU) No 575/2013, Article 12c or Article 12h(3), whether this inability is of idiosyncratic nature or due to market-wide disturbance.

1a. The deadline to comply with the minimum level of the requirements referred to in Article 12d(3a) (Pillar I for top tier banks) shall not be earlier than 2022.

1b. The minimum level of the requirement referred to in Article 12d(3a) shall not apply in the following cases:

(a) within the three years following the date on which the resolution entity starts to be in the situation referred to in Article 12d(3a) [and (3b)];

(b) within the two years following the date on which the Board has applied the bail-in tool;

(c) within the two years following the date on which the resolution entity has put in place an alternative private sector measure referred to in point (b) of Article 18(1) by which capital instruments and other liabilities have been written down or converted into Common Equity Tier 1 in order to recapitalise the resolution entity without the application of resolution tools.

2. By way of derogation from Article 12a(1), resolution authorities shall determine an appropriate transitional period to comply with the requirements of Articles 12g or 12h, as appropriate, for an entity to which resolution tools or the power to write down and or convert relevant capital instruments and eligible liabilities have been applied.

3. For the purposes of paragraphs 1, 1a and 2, the Board shall communicate to the entity a planned MREL for each 12 months period during the transitional period. At the end of the transitional period, the MREL shall be equal to the amount determined under Articles 12g or 12h.

4. When setting the transitional periods, resolution authorities shall take into account:

(a) the prevalence of deposits and the absence of debt instruments in the funding model;

(b) the access to the capital markets for eligible liabilities;

(c) the reliance on Common Equity Tier 1 to meet the requirement referred to in Article 12g.

5. Subject to paragraph 1, the Board shall not be prevented from subsequently revising either the transitional period or any planned MREL set out under paragraph 3."

6. Article 16 is amended as follows:

(a) paragraph (2) is replaced by the following:

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

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

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

7. 'Relevant capital instruments' in point (b) of Article 18(1) is replaced by 'relevant capital instruments and eligible liabilities referred to in point (a) of Article 12h(3) '.

7a. The following paragraph is inserted after Article 18(1):

1a. The Board may adopt a resolution scheme in accordance with Article 18(1) in relation to a central body and all affiliated credit institutions, when the central body and the affiliated credit institutions as a whole comply with the conditions provided in points (a) to (c) of the first subparagraph of Article 18(1).”

8. Point (c) of Article 20(5) is replaced by the following:

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

9. Article 21 is amended as follows:

(a) the title is replaced by the following:

'Write-down and conversion of capital instruments and eligible liabilities'

(b) 'capital instruments' in the first sentence of paragraph (1) is replaced by 'capital instruments and eligible liabilities';

(c) 'capital instruments' in point (b) of paragraph (1) is replaced by 'capital instruments and eligible liabilities';

(d) 'capital instruments' in point (b) of paragraph (3) is replaced by 'capital instruments and eligible liabilities';

(e) 'capital instruments' in the second subparagraph of paragraph (8) is replaced by 'capital instruments and eligible liabilities';

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

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

The power to write down or convert eligible liabilities independently of resolution action may be exercised only in relation to eligible liabilities that meet the conditions referred to in point (a) of Article 12h(3), except the condition related to the remaining maturity of liabilities and, when exercised, shall comply with point (g) of Article 15(1). After the exercise of the power to write down or convert eligible liabilities independently of resolution action, the valuation provided for in Article 20(16) shall be carried out and Article 76(1)(e) shall apply.

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

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

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

'(d) the principal amount of eligible liabilities referred to in paragraph 7 is written down or converted into Common Equity Tier 1 instruments or both, to the extent required to achieve the resolution objectives set out in Article 14 or to the extent of the capacity of the relevant eligible liabilities, whichever is lower.'.

11. In Article 27(3), point (f) is replaced by the following:

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

12. In Article 27(3), point (h) is inserted :

'(h) liabilities to entities that are part of the same resolution group without being themselves resolution entity, regardless of their maturities except where these liabilities rank below ordinary unsecured liabilities under the relevant national law of the participating Member State setting the hierarchy of claims applicable on the [date of application of this Regulation].

Where the previous subparagraph applies, the Board shall assess whether the amount of instruments complying with Article 12h(3) is sufficient to support the implementation of the preferred resolution strategy.“'

13. In Article 31(2), 'Article 45(9) to (13)' is replaced with 'Article 45h'

Article 6

Entry into force

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

2. This Regulation shall apply within 18 months from the date of its entry into force.

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

Done at Brussels,

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