Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2014/59/EU as regards early intervention measures, conditions for resolution and financing of resolution action

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2014/59/EU

Directive 2014/59/EU is amended as follows:

(1) Article 2(1) is amended as follows:

(a) the following point (29a) is inserted:

'(29a) 'alternative private sector measure' means any support not qualifying as extraordinary public financial support;';

(b) point (35) is replaced by the following:

'(35) 'critical functions' means activities, services or operations the discontinuance of which is likely in one or more Member States to lead to the disruption of services that are essential to the real economy or to disrupt financial stability at national ***level,*** or ***where relevant,*** regional level, due to the size, market share, external and internal interconnectedness, complexity or cross-border activities of an institution or group, with particular regard to the substitutability of those activities, services or operations***. For the purposes of this point, the regional level [may/shall] be assessed by reference to the territorial unit corresponding to level 1 or 2 of territorial units of the Nomenclature of territorial units for statistics (NUTS level 1 or level 2) within the meaning of Regulation (EC) No 1059/2003 of the European Parliament ****;'; *(Niedermayer 149)*

(c) point (71) is replaced by the following:

'(71) 'bail-inable liabilities' means the liabilities, including those giving rise to accounting provisions, and capital instruments that do not qualify as Common Equity Tier 1, Additional Tier 1 or Tier 2 instruments of an institution or entity as referred to Article 1(1), points (b), (c) or (d), and that are not excluded from the scope of the bail-in tool pursuant to Article 44(2);';

(d) the following points (83d) and (83e) are inserted:

‘(83d) ‘non-EU G-SII’ means a non-EU G-SII as defined in Article 4(1), point (134), of Regulation (EU) No 575/2013;

(83e) ‘G-SII entity’ means a G-SII entity as defined in Article 4(1), point (136), of Regulation (EU) No 575/2013;’;

(e) the following point (93a) is inserted:

‘(93a) ‘deposit’ means, for the purposes of Articles 108 and 109, deposit as defined in Article 2(1), point (3), of Directive 2014/49/EU;’;

(2) in Article 5, paragraphs 2, 3 and 4 are replaced by the following:

‘2. Competent authorities shall ensure that the institutions update their recovery plans at least annually or after a change to the legal or organisational structure of the institution, its business, or its financial situation, which could have a material effect on, or necessitates a material change to, the recovery plan. Competent authorities may require institutions to update their recovery plans more frequently.

In the absence of changes referred to in the first subparagraph in 12 months following the latest annual update of the recovery plan, the competent authorities may exceptionally waive, until the subsequent 12-month period, the obligation to update the recovery plan.

3. Recovery plans shall not assume any access to or receipt of any of the following:

(a) extraordinary public financial support;

(b) central bank emergency liquidity assistance;

(c) central bank liquidity assistance provided under non-standard collateralisation, tenor or interest rate terms.

4. Recovery plans shall include, where applicable, an analysis of how and when an institution may apply, in the conditions addressed by the plan, for the use of central bank facilities not excluded from the scope of the recovery plan pursuant to paragraph 3 and identify those assets which would be expected to qualify as collateral.’;

(3) in Article 6, paragraph 5 is replaced by the following:

‘5. Where the competent authority assesses that there are material deficiencies in the recovery plan, or material impediments to its implementation, it shall notify the institution or the parent undertaking of the group of its assessment and shall require the institution to submit, within 3 months, extendable with the authorities’ approval by 1 month, a revised plan demonstrating how those deficiencies or impediments are addressed.’;

(4) in Article 8(2), the third subparagraph is replaced by the following:

‘EBA may, at the request of a competent authority, assist the competent authorities in reaching a joint decision in accordance with Article 31(2), point (c), of Regulation (EU) No 1093/2010.’;

(5) ~~in~~ Article 10 ***is amended as follows:***

(a) in paragraph 7 the following points are inserted:

(aa) where applicable, a detailed description of the reasons for determining that an institution is to be qualified as a liquidation entity, including an explanation of how the resolution authority came to the conclusion that the institution lacks critical functions; *(AM 184 Urtasun, partially; AM 187 Fernandez, partially);*

(ja) a description of how the different resolution strategies would best achieve the resolution objectives set out to in Article 31 *(part of AM 278 Boyer, Yon-Courtin, tabled to Art 32 but may be more appropriate here)*

(pa) a detailed and quantified list of covered deposits and eligible deposits from natural persons and micro, small and medium-sized enterprises; *AM 128 SRMR Urtasun, partially)*

(b) the following paragraph 8a is inserted:

'8a. Resolution authorities shall not adopt resolution plans where ***insolvency proceedings have been initiated with regard to*** an entity ~~is being wound up~~ in accordance with the applicable national law pursuant to Article 32b or where Article 37(6) applies.';

(c) In paragraph 9, the second subparagraph is replaced by the following:

EBA shall submit those draft regulatory technical standards to the Commission by ~~3 July 2015~~ ***[12 months after entry into force of this amending Directive] (****AM190 Fernandez****)***

(6) Article 12 is amended as follows:

(a) in paragraph 1, the following third ***and fourth*** subparagraph***s are*** ~~is~~ added:

'The identification of the measures to be taken in respect of the subsidiaries referred to in the first subparagraph, point (b), that are not resolution entities may be subject to a simplified approach by resolution authorities if such approach does not negatively affect the resolvability of the group, taking into account the size of the subsidiary, its risk profile, the absence of critical functions and the group resolution strategy.

The group resolution plan shall determine whether entities within a resolution group other than the resolution entity, qualify as liquidation entities. Without prejudice to other factors that may be deemed relevant by resolution authorities, entities that provide critical functions shall not qualify as liquidation entities. *(AM193 Urtasun partially)*';

(aa) paragraph 2 is replaced by the following:

'2. ***The group resolution plan shall be drawn up on the basis of the requirements under Article 10 and the information provided pursuant to Article 11.'*** *(AM 194 Urtasun)*

(ab) in paragraph 3, the following point is added:

'(-aa) a detailed description of the reasons for determining that a group entity referred to in points (a) to (d) of paragraph 1 is to be qualified as a liquidation entity, including explaining how the resolution authority came to the conclusion that the institution lacks critical functions, and how the ratio of its total risk exposure amount and operating income in the group's total risk exposure amount and operating income, as well as the leverage ratio of the group entity in the context of the group have been taken into account;' *(AM195 Fernandez, 196 Urtasun (part))*

(b) the following paragraph 5a is inserted:

‘5a. Resolution authorities shall not adopt resolution plans where ***insolvency proceedings have been initiated with regard to*** an entity ~~is being wound up~~ in accordance with the applicable national law pursuant to Article 32b or where Article 37(6) applies.’;

(7) in Article 13(4), the fourth subparagraph is replaced by the following:

‘EBA may, at the request of a resolution authority, assist the resolution authorities in reaching a joint decision in accordance with Article 31(2), point (c), of Regulation (EU) No 1093/2010.’;

(8) in Article 15, the following paragraph 5 is added:

‘5. EBA shall monitor the drawing up of internal policies for and implementation of the resolvability assessments of institutions or groups provided for in this Article and in Article 16 by resolution authorities. EBA shall report to the Commission on the existing practices on resolvability assessments and possible divergences across Member States by … [PO please insert the date = 2 years after the date of entry into force of this Directive] and monitor the implementation of any recommendation set out in that report, where appropriate.

The report referred to in the first subparagraph shall cover at least the following:

(a) an assessment of the methodologies developed by resolution authorities to carry out resolvability assessments, including the identification of areas of possible divergence across Member States;

(b) an assessment of the testing capabilities required by resolution authorities to ensure an effective implementation of the resolution strategy;

(c) the level of transparency towards relevant stakeholders of the methodologies developed by resolution authorities to perform resolvability assessments and their outcome.’;

(9) in Article 16a, the following paragraph 7 is added:

‘7. Where an entity is not subject to the combined buffer requirement on the same basis as the basis on which it is required to comply with the requirements referred to in Articles 45c and 45d, resolution authorities shall apply paragraphs 1 to 6 of this Article on the basis of the estimation of the combined buffer requirement calculated in accordance with Commission Delegated Regulation (EU) 2021/1118*. Article 128, fourth paragraph, of Directive 2013/36/EU shall apply.

The resolution authority shall include the estimated combined buffer requirement referred to in the first subparagraph in the decision determining the requirements referred to in Articles 45c and 45d of this Directive. The entity shall make the estimated combined buffer requirement publicly available together with the information referred to in Article 45i(3).

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* 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).;’

(10) in Article 17(4), the following third subparagraph is added:

'If the measures proposed by the entity concerned effectively reduce or remove the impediments to resolvability, the resolution authority shall take a decision, after consulting the competent authority. That decision shall indicate that the measures proposed effectively reduce or remove the impediments to resolvability and require the entity to implement the measures proposed.';

(11) Article 18 is amended as follows:

(a) paragraph 4 is replaced by the following:

'4. The group-level resolution authority shall communicate any measure proposed by the Union parent undertaking to the consolidating supervisor, EBA, the resolution authorities of the subsidiaries and the resolution authorities of the jurisdictions in which significant branches are located insofar as is relevant to the significant branch. The group-level resolution authority and the resolution authorities of the subsidiaries, after consulting the competent authorities and the resolution authorities of jurisdictions in which significant branches are located, shall do everything within their power to reach a joint decision within the resolution college regarding the identification of substantive impediments, and if necessary, the assessment of the measures proposed by the Union parent undertaking and the measures required by the authorities in order to address or remove the impediments, which shall take into account the potential impact of the measures in all Member States where the group operates.';

(b) paragraph 9 is replaced by the following:

'9. In the absence of a joint decision on the taking of any measures referred to in Article 17(5), point (g), (h) or (k), EBA may, upon the request of a resolution authority in accordance with paragraphs 6, 6a or 7 of this Article, assist the resolution authorities in reaching an agreement in accordance with Article 19(3) of Regulation (EU) No 1093/2010.';

(12) Articles 27 and 28 are replaced by the following:

'*Article 27*

Early intervention measures

1. Member States shall ensure that competent authorities ~~may~~ ***consider without undue delay, and if appropriate,*** apply early intervention measures where an institution or entity referred to in Article 1(1), points (b), (c) or (d) meets any of the following conditions: *(207 Boyer, 208 Urtasun)*

(a) the institution or entity meets the conditions referred to in Article 102 of Directive 2013/36/EU or in Article 38 of Directive (EU) 2019/2034, or the competent authority has determined that the arrangements, strategies, processes and mechanisms implemented by the institution or entity and the own funds and liquidity held by that institution or entity do not ensure a sound management and coverage of its risks, and either of the following applies:

(i) the institution or entity has not taken the remedial actions required by the competent authority, including the measures referred to in Article 104 of Directive 2013/36/EU or in Article 49 of Directive (EU) 2019/2034;

(ii) the competent authority deems that remedial actions other than early intervention measures are insufficient to address the problems ~~due *inter alia* to a rapid and significant deterioration of the financial condition of the institution or entity;~~

(b) the institution or entity infringes or is likely to infringe in the 12 months following the assessment of the competent authority the requirements laid down in Title II of Directive 2014/65/EU, in Articles 3 to 7, Articles 14 to 17, or Articles 24, 25 and 26 of Regulation (EU) No 600/2014, or in Articles 45e or 45f of this Directive.

Where there is a significant deterioration of conditions, adverse circumstances arise or new information is obtained about an entity, the competent authority 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 39 of Directive (EU) 2019/2034. ***(****AM 172 SRMR Niedermayer)*

For the purposes of point (b) of the first subparagraph, Member States shall ensure that the competent authorities under Directive 2014/65/EU or under Regulation (EU) No 600/2014, or, as appropriate, the resolution authority informs the competent authority without delay of the infringement or likely infringement. *(211 Boyer)*

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

(a) the requirement for the management body of the institution or entity referred to in Article 1(1), points (b), (c) or (d), 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) where the circumstances that led to the early intervention are different from the assumptions set out in the initial recovery plan and implement one or more of the arrangements or measures set out in the updated recovery plan within a specific timeframe;

(b) the requirement for the management body of the institution or entity referred to in Article 1(1), points (b), (c) or (d) to convene or, if the management body fails to comply with that requirement, convene directly, a meeting of shareholders of the institution or 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 institution or entity referred to in Article 1(1), points (b), (c) or (d), to draw up ***an action*** plan, in accordance with the recovery plan where applicable, for negotiation on restructuring of debt with some or all of its creditors; ***(****AM 173 SRMR Niedermayer)*

(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 institution or entity referred to in Article 1(1), points (b), (c) or (d), in its entirety or with regard to individuals, in accordance with Article 28;

(f) appointment of one or more temporary administrators to the institution or entity referred to in Article 1(1), points (b), (c) or (d), in accordance with Article 29.

(fa) the requirement for the management body of the entity to draw up a plan that the entity can implement in case the relevant corporate body of the entity decides to initiate the voluntary winding down of the entity. *(215 Marques, 216 Zile)*

2. Competent authorities shall choose the appropriate ***and timely*** 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 institution or entity referred to in Article 1(1), points (b), (c) or (d), among other relevant information. ***(****AM 176 SRMR Niedermayer)*

3. For each of the measures referred to in paragraph 1a, competent authorities shall set a deadline that is appropriate for completion of that measure and that enables the competent authority to evaluate its effectiveness.

The evaluation of the measure shall be carried out immediately after the deadline is reached and shared with the resolution authority. In case the evaluation concludes that the measures have not been fully implemented or are not effective, the competent authority shall make an assessment of the condition referred to in Article 32(1), point (a) of this Directive, after having consulted the resolution authority. *(217 Boyer)*

4. EBA shall, by … [PO please insert the date = 12 months from the date of entry into force of this amending Directive], issue ***draft regulatory technical standards*** ~~guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010~~ to promote the consistent application of the triggers ***for the use of the measures*** referred to in paragraph 1 of this Article.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010. *[AM218 Urtasun]*

Article 28

Replacement of the senior management or management body

For the purposes of Article 27(1a), point (e), Member States shall ensure that the new senior management or management body, or individual members of those bodies, is appointed in accordance with Union and national law and is subject to the approval or consent of the competent authority.';

(13) Article 29 is amended as follows:

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

'1. For the purposes of Article 27(1a), point (f), Member States shall ensure that competent authorities 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 institution or entity referred to in Article 1(1), points (b), (c) or (d);

(b) work temporarily with the management body of the institution or entity referred to in Article 1(1), points (b), (c) or (d).

The competent authority 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 competent authority 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 institution or entity to consult or

to obtain the consent of the temporary administrator prior to taking specific decisions or actions.

Member States shall require the competent authority to make public the appointment of any temporary administrator, except where the temporary administrator does not have the power to represent ***or make decisions on behalf of*** the institution or entity referred to in Article 1(1), points (b), (c) or (d).

Member States shall further ensure that any temporary administrator fulfils the requirements set out in Article 91(1), (2) and (8) of Directive 2013/36/EU. The assessment by competent authorities of whether the temporary administrator complies with those requirements shall be an integral part of the decision to appoint that temporary administrator.

2. The competent authority 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 institution or entity referred to in Article 1(1), points (b), (c) or (d), under the statutes of the institution or entity and under national law, including the power to exercise some or all of the administrative functions of the management body of the institution or entity. The powers of the temporary administrator in relation to the institution or entity shall comply with the applicable company law. ***Such powers may be adjusted, upon the change in circumstances, by the competent authority.*** *(AM 180 SRMR Niedermayer)*

3. The competent authority shall specify the role and functions of the temporary administrator at the time of appointment. Such roles and functions may include:

(a) ascertaining the financial position of the institution or entity referred to in Article 1(1), points (b), (c) or (d);

(b) managing the business or part of the business of the institution or entity referred to in Article 1(1), points (b), (c) or (d) to preserve or restore its financial position;

(c) taking measures to restore the sound and prudent management of the business of the institution or entity referred to in Article 1(1), points (b), (c) or (d).

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

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

'In any case, the temporary administrator may exercise the power to convene a general meeting of the shareholders of the institution or entity referred to in Article 1(1), points (b), (c) or (d) and to set the agenda of such a meeting only with the prior consent of the competent authority.';

(c) paragraph 6 is replaced by the following:

'6. At the request of the competent authority, the temporary administrator shall draw up reports on the financial position of the institution or entity referred to in Article 1(1), points (b), (c) or (d) and on the acts performed in the course of his or her appointment, at intervals set by the competent authority, ***at least once after the first six months,*** and in any case at the end of his or her mandate.'; *(AM 181 SRMR Niedermayer)*

(ca) paragraph 7 is replaced by the following:

'7. The temporary administrator shall be appointed for maximum 1 year. That period may be exceptionally renewed once if the conditions for appointing the temporary administrator continue to be met. The competent authority shall be responsible for determining whether conditions are appropriate to maintain a temporary administrator and justifying any such decision to the shareholders.' *(AM 182 SRMR Niedermayer)*

(14) Article 30 is amended as follows:

(a) the title is replaced by the following:

'**Coordination of early intervention measures in relation to groups**';

(b) paragraphs 1 to 4 are replaced by the following:

'1. Where the conditions for the imposition of early intervention measures under Article 27 are met in relation to a Union parent undertaking, the consolidating supervisor shall notify EBA and consult the other competent authorities within the supervisory college before deciding to apply an early intervention measure.

2. Following the notification and consultation referred to in paragraph 1 the consolidating supervisor shall decide whether to apply early intervention measures under Article 27 in respect of the relevant Union parent undertaking, taking into account the impact of those measures on the group entities in other Member States. The consolidating supervisor shall notify the decision to EBA and to the other competent authorities within the supervisory college.

3. Where the conditions for the imposition of early intervention measures under Article 27 are met in relation to a subsidiary of a Union parent undertaking, the competent authority responsible for the supervision on an individual basis that intends to take a measure in accordance with those Articles shall notify EBA and consult the consolidating supervisor.

On receiving the notification, the consolidating supervisor may assess the likely impact of the imposition of early intervention measures under Article 27 to the institution or entity referred to in Article 1(1), points (b), (c) or (d), in question, on the group or on group entities in other Member States. The consolidating supervisor shall communicate that assessment to the competent authority within 3 days.

Following that notification and consultation the competent authority shall decide whether to apply an early intervention measure. The decision shall give due consideration to any assessment of the consolidating supervisor. The competent authority shall notify the decision to EBA, the consolidating supervisor and other competent authorities within the supervisory college.

4. Where more than one competent authority intends to apply an early intervention measure under Article 27 to more than one institution or entity referred to in Article 1(1), points (b), (c) or (d), in the same group, the consolidating supervisor and the other relevant competent authorities shall assess whether it is more appropriate to appoint the same temporary administrator for all the entities concerned or to coordinate the application of the other early intervention measures to more than one institution or entity in order to facilitate solutions restoring the financial position of the institution or entity concerned. The assessment shall take the form of a joint decision of the consolidating supervisor and the other relevant competent authorities. The joint decision shall be reached within 5 days from the date of the notification referred to in paragraph 1. The joint decision shall be reasoned and set out in a document,

which shall be provided by the consolidating supervisor to the Union parent undertaking.

EBA may, at the request of a competent authority, assist the competent authorities in reaching an agreement in accordance with Article 31 of Regulation (EU) No 1093/2010.

In the absence of a joint decision within 5 days the consolidating supervisor and the competent authorities of subsidiaries may take individual decisions on the appointment of a temporary administrator to the institutions or entities referred to in Article 1(1), points (b), (c) or (d), for which they have responsibility and on the application of the other early intervention measures.';

(c) paragraph 6 is replaced by the following:

'6. EBA may at the request of any competent authority assist the competent authorities that intend to apply one or more of the measures in Article 27(1a), point (a), of this Directive with respect to the points (4), (10), (11) and (19) of Section A of the Annex to this Directive, in Article 27(1a), point (c), of this Directive or in Article 27(1a), point (d), of this Directive in reaching an agreement in accordance with Article 19(3) of Regulation (EU) No 1093/2010.';

(15) the following Article 30a is inserted:

'Article 30a

Preparation for resolution

1. Member States shall ensure that competent authorities notify the resolution authorities without delay of any of the following:

(a) any of the measures referred to in Article 104(1) of Directive 2013/36/EU they require an institution or an entity referred to in Article 1(1), points (b), (c) or (d), of this Directive to take ***that aim to address a deterioration in the situation of that entity or group***; *(AM 219 Marques)*;

(b) where supervisory activity shows that the conditions laid down in Article 27(1) of this Directive are met in relation to an institution or entity referred to in Article 1(1), points (b), (c) or (d), of this Directive, the assessment that those conditions are met, irrespective of any early intervention measure;

(c) the application of any of the early intervention measures referred to in Article 27.

Competent authorities shall closely monitor, in ***close*** cooperation with the resolution authorities, the situation of the institution or entity and their compliance with the measures referred to in the first subparagraph, point (a), that aim to address a deterioration in the situation of that institution or entity and with the early intervention measures referred to in the first subparagraph, point (c).

2. Competent authorities shall notify resolution authorities as early as possible where they consider that there is a material risk that one or more of the circumstances in Article 32(4) would apply in relation to an institution or an entity referred to Article 1(1), points (b), (c) or (d). That notification shall contain:

(a) the reasons for the notification;

(b) an overview of the 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 32(4) and the expected timeframe for the implementation of those measures.

After having received the notification referred to in the first subparagraph, resolution authorities shall assess, in close cooperation with competent authorities, what constitutes a reasonable timeframe for the purposes of the assessment of the condition referred to in Article 32(1), point (b), taking into account the speed of the deterioration of the conditions of the institution or entity referred to in Article 1(1), points (b), (c) or (d), ***the potential impact on the financial system and protection of depositors and preservation of client funds, the risk that a prolonged process increases the overall costs for customers and the economy,*** the need to implement effectively the resolution strategy and any other relevant considerations. Resolution authorities shall communicate that assessment to competent authorities as early as possible. *(AM 19 Rapporteur, AM 226 Eroglu, AM 227 Niedermayer, AM 228 Zanni, AM 229 Ferber)*

Following the notification referred to in the first subparagraph, competent authorities and resolution authorities shall, in close cooperation, monitor the situation of the institution or entity referred to in Article 1(1), points (b), (c) or (d), the implementation of the any relevant measures within their expected timeframe and any other relevant developments. For that purpose, resolution authorities and competent authorities shall meet regularly, with a frequency set by resolution authorities considering the circumstances of the case. Competent authorities and resolution authorities shall provide each other with any relevant information without delay.

3. Competent authorities shall provide resolution authorities with all the information requested by resolution authorities necessary for all of the following:

(a) updating the resolution plan and preparing for the possible resolution of the institution or entity referred to in Article 1(1), points (b), (c) or (d);

(b) carrying out the valuation referred to in Article 36.

Where such information is not already available to competent authorities, resolution authorities and competent authorities shall cooperate and coordinate to obtain that information. For that purpose, competent authorities shall have the power to require the institution or entity referred to in Article 1(1), points (b), (c) or (d), to provide such information, including through on-site inspections, and to provide that information to resolution authorities.

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 institution or entity, subject to the conditions laid down in Article 39(2) and the confidentiality provisions laid down in Article 84;

(b) to inform the assessment by the resolution authority of the condition referred to in Article 32(1), point (b).

4a. Where, in the use of the power referred to in paragraph 4, the resolution authority decides to directly market to potential purchasers, it shall have due regard to the circumstances of the case and to the potential impact of the exercise of that power on the entity's overall position. *(235 Marques)*

5. For the purposes of the paragraph 4, resolution authorities shall have the power to request the institution or entity referred to in Article 1(1), points (b), (c) or (d), to put in place a digital platform for sharing the information that is necessary for the marketing of that institution or entity with potential purchasers or with advisors and

valuers engaged by the resolution authority. ***In such a case, Article 84(1), point (e) shall apply.*** *(236 Marques)*

6. The determination that the conditions laid down in Article 27(1) are met and the prior adoption of early intervention measures shall not be necessary conditions for resolution authorities to prepare for the resolution of the institution or entity referred to in Article 1(1), points (b), (c) or (d), or to exercise the power referred to in the paragraphs 4 and 5 of this Article.

7. Resolution authorities shall inform competent authorities of any action taken pursuant to paragraphs 4 and 5 without delay.

8. Member States shall ensure that competent authorities and resolution authorities closely cooperate:

(a) when considering taking the measures referred to in paragraph 1, first subparagraph, point (a) of this Article, that aim to address a deterioration in the situation of an institution or entity referred to in Article 1(1), points (b), (c) or (d), as well as the measures referred to in paragraph 1, first subparagraph, point (c) of this Article;

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

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

Competent authorities and resolution authorities shall ensure that those measures and actions are consistent, coordinated and effective.';

(16) in Article 31(2), points (c) and (d) are 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;

(d) to protect ***covered deposits, and to the extent possible also that uncovered part of eligible deposits of natural persons and micro, small and medium-sized enterprises***~~,depositors, while minimising losses for deposit guarantee schemes~~ and to protect investors covered by Directive 97/9/EC;';

(17) Article 32 is amended as follows:

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

'1. Member States shall ensure that resolution authorities take a resolution action in relation to an institution if resolution authorities determine, upon receiving a communication pursuant to in paragraph 2 or on their own initiative pursuant to the procedure laid down in paragraph 2, that all of the following conditions are met:

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

(b) ~~having regard to the timing, the need to implement effectively the resolution strategy 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 write down or conversion of relevant capital instruments and eligible liabilities as referred to in Article 59(2) taken in respect of the institution would prevent ~~the failure of~~ the institution ***from failing or being likely to fail*** within a reasonable timeframe; (*AM 250 Feber, AM 251 Eroglu, AM 252 Schuster, AM 253 Dorfmann, Karas, AM 21 Niedermayer)*;

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

2. Member States shall ensure that the competent authority makes an assessment of the condition referred to in paragraph 1, point (a), after having consulted the resolution authority.

Member States may provide that, in addition to the competent authority, the assessment of the condition referred to in paragraph 1, point (a), can be made by the resolution authority, after consulting the competent authority, where resolution authorities under national law have the necessary tools for making such an assessment including, in particular, adequate access to the relevant information. In such a case, Member States shall ensure that the competent authority provides the resolution authority without delay with any relevant information that the latter requests to perform its assessment, before or after being informed by the resolution authority of its intention to make that assessment.

The assessment of the condition referred to in paragraph 1, point (b), shall be made by the resolution authority in close cooperation with the competent authority, ***after consulting a designated authority of the DGS, and, where appropriate, an IPS, of which the institution is a member, without delay***. ***The consultation with the IPS shall include the consideration of availability of measures by the IPS that could prevent the failure of the institution within a reasonable timeframe.*** The competent authority shall, without delay, provide the resolution authority with any relevant information that the resolution authority requests to inform its assessment. The competent authority may also inform the resolution authority that it considers the condition laid down in the paragraph 1, point (b), to be met.';

(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 32c;

(ii) the second to fifth subparagraphs are deleted;

(c) paragraph 5 is replaced by the following:

'5. For the purposes of paragraph 1, point (c), a resolution action shall be treated as in the public interest where that resolution action is necessary for the achievement of, and is proportionate to, one or more of the resolution objectives referred to in Article 31 and where winding up of the institution under normal insolvency proceedings would not meet those resolution objectives more effectively. ***Where national insolvency and resolution frameworks achieve the framework objectives in a similar manner, the option that minimises the risk for taxpayers shall be favoured. (AM 22 Niedermayer)***

Resolution action shall be presumed not to be in the public interest for the purposes of paragraph 1, point (c), of this Article where the institution qualifies as a small and non-complex institution as defined in Article 4(1), point 145, of Regulation (EU) No 575/2013. In case the resolution authority assesses that one or more of those resolution objectives would be at risk, the presumption shall not apply.

Member States shall ensure that when carrying out the assessment referred to in the first subparagraph, the resolution authority, based on the information available to it at the time of that assessment, ~~considers~~ ***evaluates*** and compares all extraordinary public financial support ~~that can reasonably be expected~~ to be granted to the institution, both in the event of resolution and in the event of winding up in accordance with the applicable national law.

5 a. EBA shall contribute to monitoring and promoting the effective and consistent application of the public interest assessment referred to in paragraph 5.

By ... [two years after the date of entry into force of this amending Directive], EBA shall provide a report on the scope and application of paragraph 5 across the Union. That report shall be shared with the Commission in order to assess the effectiveness of the measures outlined in paragraph 5 and their impact on the level playing field.

Based on the outcomes of the review, EBA shall develop regulatory techncial standards with the aim of converging practices and levelling the playing field among Member States by ... [two years after the transposition of this Directive].' (AM 280 Niedermayer)

(18) Articles 32a and 32b are replaced by the following:

'*Article 32a*

Conditions for resolution with regard to a central body and credit institutions permanently affiliated to a central body

Member States shall ensure that resolution authorities ~~may~~ take a resolution action in relation to a central body and all credit institutions permanently affiliated to it that are part of the same resolution group ***only*** where the central body and all credit institutions permanently affiliated to it, or the resolution group to which they belong, comply as a whole with the conditions established in Article 32(1).

Article 32b

Proceedings in respect of institutions and entities that are not subject to resolution action

1. Member States shall ensure that, when a resolution authority determines that an institution or entity referred to in Article 1(1), points (b), (c) or (d), meets the conditions laid down in Article 32(1), points (a) and (b), but not the condition laid down in Article 32(1), point (c), the relevant national administrative or judicial authority has the power to initiate without delay the procedure to wind up the institution or entity in an orderly manner in accordance with the applicable national law.

2. Member States shall ensure that an institution or entity referred to in Article 1(1), points (b), (c) or (d), which is wound up in an orderly manner in accordance with the applicable national law exits the market or terminates its banking activities within a reasonable timeframe.

3. Member States shall ensure that when a resolution authority determines that an institution or entity referred to in Article 1(1), points (b), (c) or (d), meets the conditions in Article 32(1), points (a) and (b), but not the condition in Article 32(1), point (c), the determination that the institution or entity is failing or likely to fail

pursuant to Article 32(1), point (a) is a condition for the withdrawal of the authorisation by the competent authority pursuant to Article 18 of Directive 2013/36/EU.

4. Member States shall ensure that the withdrawal of the authorisation of the institution or entity referred to in Article 1(1), points (b), (c) or (d) is a sufficient condition for a relevant national administrative or judicial authority to be able to initiate without delay the procedure to wind up the institution or entity in an orderly manner in accordance with the applicable national law.':

(19) the following Article 32c is inserted:

'Article 32c

Extraordinary public financial support

1. Member States shall ensure that extraordinary public financial support outside of resolution action may be granted to an institution or entity as referred to in Article 1(1), points (b), (c) or (d), 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 ***of an exceptional or systemic nature and*** ~~or~~ to preserve financial stability, the extraordinary public financial support takes any of the following forms: *(combined SRMR AM 234 Niedermayer; AM 299 Heinäluoma);*:

(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 other terms that do not confer an undue advantage upon the institution or entity concerned, ~~where neither~~ ***provided that none of*** the circumstances referred to in Article 32(4), points (a), (b) or (c), nor the circumstances referred to in Article 59(3) are present at the time the public support is granted;

(b) where the extraordinary public financial support takes the form of ~~an~~ ***a cost-effective*** intervention by a deposit guarantee scheme ~~to preserve the financial soundness and long-term viability of the credit institution~~ in compliance with the conditions set out in Articles 11a and 11b of Directive 2014/49/EU, provided that none of the circumstances referred to in Article 32(4) are present;

(c) where the extraordinary public financial support takes the form of ~~an~~ ***a cost-effective*** intervention by a deposit guarantee scheme in the context of the winding up of ~~an~~ ***a credit*** institution pursuant to Article 32b and in accordance with the conditions set out in Article 11(5) of Directive 2014/49/EU; (*combined SRMR AM 237 Niedermayer* and BRRD AM 309 *Marques, Repasi, Lalucq)*

(d) where the extraordinary public financial support takes the form of State aid within the meaning of Article 107(1) TFEU granted in the context of the winding up of the institution or entity pursuant to Article 32b of this Directive, 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 institutions or entities, as confirmed by the competent authority;

(b) the measures are of a precautionary and temporary nature and are based on a pre-defined exit strategy ***to exit the support measure*** approved by the competent authority; ***this information shall not be disclosed until one year after concluding either the strategy to exit the support measure, or the implementation of the remediation plan, or the assessment under subparagraph 7 of this paragraph***~~, including an explicit reference to the 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 institution or entity has incurred or is likely to incur ~~in the near future~~ ***over the next 12 months. (****adapted AM 318 Urtasun****)***

For the purposes of the first subparagraph, point (a), an institution or entity shall be deemed to be solvent where the competent authority has concluded that no breach has occurred, or is likely to occur in the 12 following months, ***based on current expectations,*** of any of the requirements referred to in Article 92(1) of Regulation (EU) No 575/2013, Article 104a of Directive 2013/36/EU, Article 11(1) of Regulation (EU) 2019/2033, Article 40 of Directive (EU) 2019/2034 or the relevant applicable requirements under Union or national law.

For the purposes of the first subparagraph, point (d), the relevant competent authority shall quantify the losses that the institution or entity has incurred or is likely to incur. That quantification shall be based, as a minimum, ***asset quality reviews conducted by the ECB, EBA or national authorities, or, where appropriate, on on-site inspections conducted by the competent authority. Where such exercises cannot be undertaken in due time, the competent authority can base its evaluation on*** 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~~, and, where available, on asset quality reviews conducted by the European Central Bank, EBA or national authorities, or, where appropriate, on on-site inspections conducted by the competent authority~~. ***The competent authority shall make its best efforts to ensure that the quantification is based on the market value of the institution or entity's assets, liabilities and off-balance sheet items. (AM 323 Niedermayer)***

The support measures referred to in paragraph 1, point (a)(iii), shall be limited to measures that have been assessed by the competent authority as necessary to ***secure*** ~~maintain~~ the solvency of the institution or 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 European Central Bank, EBA or national authorities, where applicable, confirmed by the 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 institution or entity concerned to address its capital shortfall established in the adverse scenario in the relevant stress test or equivalent exercise. The amount of acquired Common Equity Tier 1 instruments shall not exceed 2% of the total risk exposure amount of the institution or entity

concerned calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013.

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 ***to exit the support measure*** established at the time of granting such measure, the competent authority shall ~~conclude that the condition laid down in Article 32(1), point (a), is met in relation to~~ ***request*** the institution or entity ***to submit a one-time remediation plan. The remediation plan shall describe the steps to be taken in order to maintain or restore compliance with supervisory requirements, the long-term viability of the institution or entity and its capacity to repay the amount provided, as well as the associated timeframe***. ~~which has received those support measures, and shall communicate that assessment to the resolution authority concerned.~~

Where the competent authority does not recognise the one-time remediation plan as credible or feasible, or where the institution or entity fails to comply with the remediation plan, an assessment of whether the institution or entity is failing or likely to fail shall be conducted in accordance with Article 32.

3. EBA shall, by [PO please insert the date = 1 year after the date of entry into force of this Directive], issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 on the type of tests, reviews or exercises referred to in paragraph 2, fourth subparagraph, which may lead to the support measures referred to in paragraph 1, point (a)(iii).';

(20) in Article 33, paragraph 2 is replaced by the following:

'2. Member States shall ensure that resolution authorities take a resolution action in relation to an entity referred to in Article 1(1), points (c) or (d), when that entity meets the conditions laid down in Article 32(1).

For those purposes, an entity referred to in Article 1(1), points (c) or (d), shall be deemed to be failing or likely to fail in any of the following circumstances:

(a) the entity meets one or more of the conditions laid down in Article 32(4), points (b), (c) or (d);

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

(21) Article 33a is amended as follows:

(a) in paragraph 8, the first subparagraph is replaced by the following:

'Member States shall ensure that resolution authorities notify the institution or the entity referred to in Article 1(1), points (b), (c) or (d), and the authorities referred to in Article 83(2), points (a) to (h), without delay when exercising the power referred to in paragraph 1 of this Article after a determination has been made that the institution or entity is failing or likely to fail pursuant to Article 32(1), point (a), and before the resolution decision is taken.';

(b) in paragraph 9, the second subparagraph is added:

'By way of derogation from the first subparagraph, Member States shall ensure that where such powers are exercised in respect of eligible deposits and those deposits are not considered unavailable for the purposes of Directive 2014/49/EU, depositors have access to an appropriate daily amount from those deposits.';

(22) Article 35 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Member States shall ensure that resolution authorities may appoint a special manager to replace or to work with the management body of the institution under resolution or the bridge institution. Resolution authorities shall make public the appointment of a special manager. Resolution authorities shall ensure that the special manager has the qualifications, ability and knowledge required to carry out his or her functions.

Article 91 of Directive 2013/36/EU shall not apply to the appointment of special managers.’;

(b) in paragraph 2, the first sentence is replaced by the following:

‘The special manager shall have all the powers of the shareholders and the management body of the institution under resolution or the bridge institution.’;

(c) paragraph 5 is replaced by the following:

‘5. Member States shall require that a special manager draw up reports for the appointing resolution authority on the economic and financial situation of the institution under resolution or the bridge institution and on the acts performed in the conduct of his or her duties, at regular intervals set by the resolution authority and at the beginning and the end of his or her mandate.’;

(23) Article 36 is amended as follows:

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

‘1. Before determining whether the conditions for resolution or the conditions for the write down or conversion of relevant capital instruments and eligible liabilities as referred to in Article 59 are met, resolution authorities shall ensure that a fair, prudent and realistic valuation of the assets and liabilities of the institution or entity referred to in Article 1(1), points (b), (c) or (d), is carried out by a person that is independent from any public authority, including the resolution authority, and the institution or entity referred to in Article 1(1), points (b), (c) or (d).’;

(b) the following paragraph 7a is inserted:

‘7a. Where necessary to inform the decisions referred to in paragraph 4, points (c) and (d), the valuer shall complement the information in paragraph 6, point (c), with an estimate of the value of the off-balance sheet assets and liabilities, including contingent liabilities and assets.’;

(24) in Article 37, the following paragraph 11 is added:

‘11. EBA shall monitor the actions and preparation of resolution authorities to ensure an effective implementation of the resolution tools and powers in the event of resolution. EBA shall report to the Commission on the state of play of existing practices and possible divergences across Member States by … [PO please insert the date = 2 years after the date of entry into force of this Directive] and monitor the implementation of any recommendation set out in that report, where appropriate.

The report referred to in the first subparagraph shall cover at least the following:

(a) the arrangements in place to implement the bail-in tool and the level of engagement with financial market infrastructures and third-country authorities, where relevant;

(b) the arrangements in place to operationalise the use of other resolution tools;

(c) the level of transparency towards relevant stakeholders regarding the arrangements referred to in points (a) and (b).';

(25) Article 40 is amended as follows:

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

'In order to give effect to the bridge institution tool and having regard to the need to maintain critical functions in the bridge institution or to pursue any of the resolution objectives, Member States shall ensure that resolution authorities have the power to transfer to a bridge institution all of the following:';

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

'The application of the bail-in tool for the purpose referred to in Article 43(2), point (b), shall not interfere with the ability of the resolution authority to control the bridge institution. Where the application of the bail-in tool allows for the capital of the bridge institution to be fully provided through the conversion of bail-inable liabilities into shares or other types of capital instruments, the requirement that the bridge institution is wholly or partially owned by one or more public authorities may be waived.';

(26) in Article 42(5), point (b) is replaced by the following:

'(b) such a transfer is necessary to ensure the proper functioning of the institution under resolution, the bridge institution or the asset management vehicle itself; or';

(27) Article 44 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Member States shall ensure that the bail-in tool may be applied to all liabilities, including those giving rise to an accounting provision, of an institution or entity referred to in Article 1(1), points (b), (c) or (d), that are not excluded from the scope of that tool pursuant to paragraphs 2 or 3 of this Article.';

(b) paragraph 5 is replaced by the following:

'5. The resolution financing arrangement may make a contribution as referred to in paragraph 4 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 36, 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 through reduction, write down or conversion pursuant to Article 48(1) and Article 60(1), and by the deposit guarantee scheme pursuant to Article 109 where relevant;

(b) the contribution of the resolution financing arrangement 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 36.';

~~(c) paragraph 7 is replaced by the following:~~

~~'7. The resolution financing arrangement may make a contribution from resources which have been raised through *ex-ante* contributions as referred to in~~

~~Article 100(6) and Article 103 and which have not yet been used, provided that all of the following conditions are met:~~

~~(a) the resolution financing arrangement has made a contribution pursuant to paragraph 4 and the 5 % limit referred to in paragraph 5, point (b), has been reached;~~

~~(b) all liabilities ranking lower than deposits, and not excluded from bail-in pursuant to Article 44(2) and 44(3), have been written down or converted in full.~~

~~In extraordinary circumstances, as an alternative or in addition to the contribution from the resolution financing arrangement referred to in the first subparagraph, where the conditions laid down in the first subparagraph are met, the resolution authority may seek further funding from alternative financing sources.';~~

(28) in Article 44a, the following paragraph 8 is added:

'8. By … [PO please insert the date = 24 months after the date of entry into force of this Directive], EBA shall report to the Commission on the application of this Article. That report shall compare the measures adopted by the Member States to comply with this Article, analyse their effectiveness in protecting retail investors and assess their impact on cross-border operations.

On the basis of that report, the Commission may submit a legislative proposal to amend this Directive.';

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

'1. Member States shall ensure that institutions and entities referred to in Article 1(1), points (b), (c) and (d), meet, at all times, the requirements for own funds and eligible liabilities where required by and as determined by the resolution authority in accordance with this Article and Articles 45a to 45i.';

(30) Article 45b is amended as follows:

(a) in paragraphs 4, 5 and 7, the word 'G-SIIs' is replaced by the words 'G-SII entities';

(b) 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';

(iii) in the fourth subparagraph, the word 'G-SIIs' is replaced by the words 'G-SII entities';

(c) the following paragraph 10 is added:

'10. Resolution authorities 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 45c(5) or (6), the resolution authority 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.';

(31) Article 45c is amended as follows:

(a) in paragraph 3, eighth subparagraph, the words 'critical economic functions' are replaced by the words 'critical functions';

(b) paragraph 4 is replaced by the following:

'4. EBA shall develop draft 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 and the combined buffer requirement for:

(a) resolution entities at the resolution group consolidated level, where the resolution group is not subject to those requirements under Directive 2013/36/EU;

(b) entities that are not themselves resolution entities, where the entity is not subject to those requirements under Directive 2013/36/EU on the same basis as the requirements referred to in Article 45f of this Directive.

EBA shall submit those draft regulatory technical standards to the Commission by … [OP please insert the date = 12 months from the date of entry into force of this amending Directive].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.';

(c) in paragraph 7, eighth subparagraph, the words 'critical economic functions' are replaced by the words 'critical functions';

(32) the following Article 45ca is inserted:

'*Article 45ca*

Determination of the minimum requirement for own funds and eligible liabilities for transfer strategies ~~leading to market exit~~

1. When applying Article 45c to a resolution entity whose preferred resolution strategy envisages ~~primarily~~ the use of the sale of business tool or the bridge institution tool***, independently or in combination with other resolution tools*** ~~and its exit from the market~~, the resolution authority shall set the recapitalisation amount provided in Article 45c(3) in a proportionate way on the basis of the following criteria, as relevant:

(a) the size, ~~resolution entity's size,~~ business model, funding model and risk profile, of the resolution entity or, as relevant, the size of the part of the resolution entity that is subject to the sale of business or bridge institution tool~~, and the depth of the market in which the resolution entity operates;~~

(b) the shares, other instruments of ownership, assets, rights or liabilities to be transferred to a recipient as identified in the resolution plan, taking into consideration:

(i) the core business lines and critical functions of the resolution entity;

(ii) the liabilities excluded from bail-in pursuant to Article 44(2), ***or bail-inable liabilities where Article 44(3) is likely to apply with regard to these liabilities***; *(377 Boyer)*;

(iii) the safeguards referred to in Articles 73 to 80;

(iiia) expected own funds requirements for any bridge institution that may be needed to implement the market exit of the resolution entity, to ensure compliance by the bridge institution with Regulation (EU) No 575/2013, Directive 2013/36/EU and Directive 2014/65/EU, as applicable; *(AM 378 Boyer, Yon-Courtin)****;***

(iiib) expected demand by the recipient for the transaction to be capital neutral with regards to the requirements applicable to the acquiring entity. (*AM 381 Boyer, Yon-Courtin)*

(c) the expected value and marketability of the shares, other instruments of ownership, assets, rights or liabilities of the resolution entity referred to in point (b), taking into account:

(i) any material impediments to resolvability, identified by the resolution authority, that are ~~directly~~ related to the application of the sale of business tool or the bridge institution tool;

(ii) the losses resulting from the assets, rights or liabilities left in the residual institution;

(iia) a potentially adverse market environment at the time of resolution; *(384 Ferber, Dorfmann; 385 Eroglu)*

(d) whether the preferred resolution strategy envisages the transfer of shares or other instruments of ownership issued by the resolution entity, or of all or part of the assets, rights and liabilities of the resolution entity;

(e) whether the preferred resolution strategy envisages the application of the asset separation tool;

(f) ***where the preferred resolution strategy envisages the application of other resolution tools in combination with the sale of business tool or the bridge institution tool, the adjustment of the amount referred to in Article 45c(3), eighth subparagraph, applicable to the resolution group taking into account the reduced size and risk profile of the resolution group resulting from the application of the sale of business tool or the bridge institution tool as relevant.***

2. Where the resolution plan provides that the entity is to be wound up under normal insolvency proceedings or other equivalent national procedures and envisages the use of the deposit guarantee scheme pursuant to Article 11(5) of Directive 2014/49/EU, the resolution authority shall also take into account paragraph 1 of this Article when carrying out the assessment referred to in Article 45c(2a), second subparagraph, of this Directive.

3. The application of paragraph 1 shall not result in an amount that is higher than the amount resulting from application of Article 45c(3) ***or in an amount lower than 13.5%***

of the total risk exposure amount, calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, and lower than 5% of the total exposure measure of the relevant entity referred to in paragraph 1 of this Article, calculated in accordance with Articles 429 and 429a of Regulation (EU) No 575/2013.';

(33) in Article 45d(1), the introductory wording is replaced by the following:

'The requirement referred to in Article 45(1) for a resolution entity that is a G-SII entity shall consist of the following:';

(34) in Article 45f(1), the third subparagraph is replaced by the following:

'By way of derogation from the first and second subparagraphs of this paragraph, Union parent undertakings that are not themselves resolution entities, but are subsidiaries of third-country entities, shall comply with the requirements laid down in Articles 45c and 45d on a consolidated basis.';

(35) Article 45l is amended as follows:

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

'(a) how the requirement for own funds and eligible liabilities set in accordance with Article 45e or Article 45f has been implemented at national level, including Article 45ca, and in particular whether there have been divergences in the levels set for comparable entities across Member States;'

(b) in paragraph 3, second subparagraph, the following sentence is added:

'The obligation referred to in paragraph 2 shall cease to apply after the second report is submitted.';

(35a) in Article 45m, the following paragraph 1a is inserted:

'1a. Institutions or entities referred to in points (b), (c) and (d) of Article 1(1) whose preferred resolution strategy will change on the entry into force of [this amending Directive] shall comply with the requirements referred to in Articles 45e or 45f or with requirements that result from the application of Article 45b(4), (5) or (7), as appropriate, within five years as from the date of the approval of the resolution plan including the new preferred resolution strategy.' *(cf 165 SRMR Fernandez; 399 BRRD Boyer, 498 Tinagli)*

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

'4. The requirements referred to in Article 45b(4) and (7) and in Article 45c(5) and (6), as applicable, shall not apply within the three-year period following the date on which the resolution entity or the group of which the resolution entity is part has been identified as a G-SII or a non-EU G-SII, or the resolution entity starts to be in the situation referred to in Article 45c(5) or (6).';

(37) in Article 46(2), the first subparagraph is replaced by the following:

'The assessment referred to in paragraph 1 of this Article 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 resolution financing arrangement made pursuant to Article 101(1), point (d), of this Directive;

(b) to sustain sufficient market confidence in the institution under resolution or the bridge institution, taking into account any contingent liabilities, 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.';

(38) in Article 47(1), point (b)(i) is replaced by the following:

'(i) relevant capital instruments and eligible liabilities in accordance with Article 59 issued by the institution pursuant to the power referred to in Article 59(2); or';

(39) Article 52 is amended as follows:

(a) in paragraph 1, the following subparagraph is added:

'In exceptional circumstances, the resolution authority may extend the 1 month deadline for submission of the business reorganisation plan by another month.';

(b) in paragraph 5, the following subparagraph is added:

'The resolution authority may require the institution or entity referred to in Article 1(1), points (b), (c) or (d), to include additional elements in the business reorganisation plan.';

(40) in Article 53, paragraph 3 is replaced by the following:

'3. Where a resolution authority reduces to zero the principal amount of, or outstanding amount payable in respect of, a liability, including a liability giving rise to an accounting provision, by means of the power referred to in Article 63(1), point (e), that liability and any obligations or claims arising in relation to it that are not accrued at the time when the power is exercised, shall be treated as discharged for all purposes, and shall not be provable in any subsequent proceedings in relation to the institution under resolution or any successor entity in any subsequent winding up.';

(41) Article 55 is amended as follows:

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

'(b) the liability is not a deposit as referred to in Article 108(1), points (a) or (b)';

(b) in paragraph 2, the fifth and sixth subparagraphs are replaced by the following:

'Where the resolution authority, in the context of the assessment of the resolvability of an institution or entity referred to in Article 1(1), points (b), (c) or (d), in accordance with Articles 15 and 16, or at any other time, determines that, within a class of liabilities which includes eligible liabilities, the amount of liabilities that do not include the contractual term referred to in paragraph 1 of this Article, together with the liabilities which are excluded from the application of the bail-in tool in accordance with Article 44(2) or which are likely to be excluded in accordance with Article 44(3), amounts to more than 10 % of that class, it shall immediately assess the impact of that particular fact on the resolvability of that institution or entity, including the impact on the resolvability resulting from the risk of breaching the creditor safeguards provided in Article 73 when applying write-down and conversion powers to eligible liabilities.

Where the resolution authority concludes, on the basis of the assessment referred to in the fifth subparagraph of this paragraph, that the liabilities which do not include the contractual term referred to in paragraph 1 of this Article create a substantive impediment to resolvability, it shall apply the powers provided in Article 17 as appropriate to remove that impediment to resolvability.';

(42) Article 59 is amended as follows:

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

‘(e) extraordinary public financial support is required by the institution or the entity referred to in Article 1(1), points (b), (c) or (d), except where that support is granted in one of the forms referred to in Article 32c.’;

(b) in paragraph 4, point (b) is replaced by the following:

‘(b) having regard to timing, the need to implement effectively the write down and conversion powers or the resolution strategy for the resolution group, 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 capital instruments and eligible liabilities as referred to in paragraph 1a, would prevent the failure of the institution or the entity referred to in Article 1(1), points (b), (c) or (d), or the group within a reasonable timeframe.’;

(43) Article 63 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) point (m) is replaced by the following:

‘(m) the power to require the competent authority to assess the acquirer of a qualifying holding in a timely manner by way of derogation from the time-limits laid down in Article 22 of Directive 2013/36/EU and Article 12 of Directive 2014/65/EU;’;

(ii) the following point (n) is added:

‘(n) the power to make requests pursuant to Article 17(5) of Regulation (EU) No 596/2014 on behalf of the institution under resolution.’;

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

‘(a) subject to Article 3(6) and Article 85(1), requirements to obtain approval or consent from any person either public or private, including the shareholders or creditors of the institution under resolution and the competent authorities for the purposes of Articles 22 to 27 of Directive 2013/36/EU;’;

(44) Article 71a(3) is replaced by the following:

‘3. Paragraph 1 shall apply to any financial contract which complies with all of the following:

(a) the contract creates a new obligation, or materially amends an existing obligation after the entry into force of the provisions adopted at national level to transpose this Article;’

(b) the contract provides for the exercise of one or more termination rights or rights to enforce security interests to which Article 33a, 68, 69, 70 or 71 would apply if the financial contract were governed by the laws of a Member State.’;

(45) in Article 74(3), 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, 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.’;

(46) in Article 88, the following paragraph 6a is inserted:

‘6a. To facilitate the tasks referred to in Articles 10(1), 15(1) and 17(1) and to exchange any relevant information, the resolution authority of an institution with significant branches in other Member States shall establish and chair a resolution college.

The resolution authority of the institution referred to in the first subparagraph shall decide which authorities participate in a meeting or in an activity of the resolution college, taking into account the relevance of the activity to be planned or coordinated for those authorities, in particular the potential impact on the stability of the financial system in the Member States concerned and the tasks referred to in the first subparagraph.

The resolution authority of the institution referred to in the first subparagraph shall keep all members of the resolution college fully informed, in advance, of the organisation of such meetings, the main issues to be discussed and the activities to be considered. The resolution authority of the institution referred to in the first subparagraph shall also keep all the members of the college fully informed, in a timely manner, of the actions taken in those meetings or the measures carried out.’;

(47) Article 91 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Where a resolution authority decides that an institution or any entity as referred to in Article 1(1), points (b), (c) or (d), that is a subsidiary in a group, meets the conditions referred to in Article 32 or 33, that authority shall notify without delay to the group-level resolution authority, if different, to the consolidating supervisor, and to the members of the resolution college for the group in question the following information:

(a) the decision that the institution or entity referred to in Article 1(1), points (b), (c) or (d), meets the conditions referred to in Article 32(1), points (a) and (b), or in Article 33(1) or (2) as applicable, or the conditions referred to in Article 33(4);

(b) the outcome of the assessment of the condition referred to in Article 32(1), point (c);

(c) the resolution actions or insolvency measures that the resolution authority considers to be appropriate for that institution or that entity.

The information referred to in the first subparagraph may be included in the notifications communicated pursuant to Article 81(3) to the addressees referred to in the first subparagraph of this paragraph.’;

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

‘EBA may, at the request of a resolution authority, assist the resolution authorities in reaching a joint decision in accordance with Article 31(2), point (c), of Regulation (EU) No 1093/2010.’;

(48) in Article 92(3), the second subparagraph is replaced by the following:

‘EBA may, at the request of a resolution authority, assist the resolution authorities in reaching a joint decision in accordance with Article 31(2), point (c), of Regulation (EU) No 1093/2010.’;

(49) in Article 97, paragraph 4 is replaced by the following:

‘4. Resolution authorities shall conclude non-binding cooperation arrangements with the relevant third-country authorities referred to in paragraph 2 where appropriate. Those arrangements shall be in line with EBA framework arrangement.

Competent authorities shall conclude non-binding cooperation arrangements with the relevant third-country authorities referred to in paragraph 2 where appropriate. Those arrangements shall be in line with EBA framework arrangement and shall ensure that the information disclosed to the third-country authorities is subject to a guarantee that professional secrecy requirements at least equivalent to those referred to in Article 53(1) of Directive 2013/36/EU are complied with.'

(50) in Article 98, paragraph 1 is amended as follows:

(a) the introductory sentence is replaced by the following:

'Member States shall ensure that resolution authorities and competent ministries exchange confidential information, including recovery plans, with relevant third-country authorities only if all of the following conditions are met:';

(b) the following second and third subparagraphs are added:

'Member States shall ensure that competent authorities exchange confidential information with relevant third country authorities only if the following conditions are met:

(a) in relation to recovery and resolution-related information, the conditions set out in the first subparagraph;

(b) in relation to other information available to the competent authorities, the conditions set out in Article 55 of Directive 2013/36/EU.

For the purposes of the second subparagraph, recovery and resolution-related information shall include all information directly related to the tasks of competent authorities under this Directive, in particular recovery planning and recovery plans, early intervention measures and exchanges with resolution authorities regarding resolution planning, resolution plans and resolution action.';

(51) in Article 101, paragraph 2 is replaced by the following:

'2. Where the resolution authority determines that the use of the resolution financing arrangement for the purposes referred to in paragraph 1 of this Article is likely to result in part of the losses of an institution or an entity as referred to in Article 1(1), points (b), (c) or (d), being passed on to the resolution financing arrangement, the principles governing the use of the resolution financing arrangement set out in Article 44 shall apply.';

(52) in Article 102(3), the first subparagraph is replaced by the following:

'If, after the initial period of time referred to in paragraph 1 of this Article, the available financial means diminish below the target level specified in that paragraph, the regular contributions raised in accordance with Article 103 shall resume until the target level is reached. Resolution authorities may defer the collection of the regular contributions raised in accordance with Article 103 for 1 or more years where 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 resolution authority to use the resolution financing arrangements pursuant to Article 101. After the target level has been reached for the first time and where the available financial means have subsequently been reduced to less than two thirds of the target level, those contributions shall be set at a level allowing for reaching the target level within 6 years.';

(53) Article 103 is amended as follows:

(a) paragraph 3 is replaced by the following:

'3. The available financial means to be taken into account in order to reach the target level specified in Article 102 may include irrevocable payment commitments which are fully backed by collateral of low risk assets unencumbered by any third party rights, at the free disposal and earmarked for the exclusive use by the resolution authorities for the purposes specified in Article 101(1). The share of irrevocable payment commitments shall not exceed 50 % of the total amount of contributions raised in accordance with this Article. Within that limit, the resolution authority shall determine annually the share of irrevocable payment commitments in the total amount of contributions to be raised in accordance with this Article.';

(b) the following paragraph 3a is inserted:

'3a. The resolution authority shall call the irrevocable payment commitments made pursuant to paragraph 3 of this Article when the use of the resolution financing arrangements is needed pursuant to Article 101.

Where an entity stops being within the scope of Article 1 and is no longer subject to the obligation to pay contributions in accordance with paragraph 1 of this Article, the resolution authority shall call the irrevocable payment commitments made pursuant to paragraph 3 and still due. If the contribution linked to the irrevocable payment commitment is duly paid at first call, the resolution authority shall cancel the commitment and return the collateral. If the contribution is not duly paid at first call, the resolution authority shall seize the collateral and cancel the commitment.';

(54) In Article 104(1), the second subparagraph is replaced by the following:

'Extraordinary *ex-post* contributions shall not exceed three times 12,5 % of the target level specified in Article 102.';

(55) Article 108 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Member States shall ensure that in their national laws governing normal insolvency proceedings:

(a) the following have the same priority ranking, which is higher than the ranking provided for the claims of ordinary unsecured creditors:

(i) deposits ***that are excluded from coverage under Article 5 of Directive 2014/49/EU***;

(ii) that part of eligible deposits of legal entities that are not micro, small and medium-sized enterprises which exceeds the coverage level provided for in Article 6 of Directive 2014/49/EU;

(iii) that part of eligible deposits of central and regional governments which exceeds the coverage level provided for in Article 6 of Directive 2014/49/EU;

(iv) that part of deposits of legal persons that are not micro, small or medium-sized enterprises that would be eligible deposits were they not made through branches located outside the Union of institutions established within the Union***, which exceeds the coverage level provided for in Article 6 of Directive***

2014/49/EU;

(b) the following have the same priority ranking which is higher than the ranking provided for under point (a):

(i) covered deposits;

(ii) deposit guarantee schemes ***for their claim under Article 9(2) of Directive EU/2014/49***;

(iii) eligible deposits other than those referred to in point (a)(ii), and (iii) and

(iv) deposits that would be eligible deposits were they not made through branches located outside the Union of institutions established within the Union, other than those referred to in point (a)(iv).' *(Niedermayer 30, adapted)*;' *(Niedermayer 30, adapted)*;

(b) the following paragraphs 8 and 9 are added:

'8. Where the resolution tools referred to in Article 37(3), point (a) or (b), are used to transfer only part of the assets, rights or liabilities of the institution under resolution, the resolution financing arrangement shall have a claim against the residual institution or entity referred to in Article 1(1), points (b), (c) or (d), for any expense and loss incurred by the resolution financing arrangement as a result of any contributions made to resolution pursuant to Article 101(1) in connection to losses which creditors would have otherwise borne.

9. Member States shall ensure that the claims of the resolution financing arrangement referred to in paragraph 8 of this Article and in Article 37(7) have, in their national laws governing normal insolvency proceedings, a preferred priority ranking, which shall be higher than the ranking provided for the claims of deposits and of deposit guarantee schemes pursuant to paragraph 1 of this Article.';

(56) Article 109 is amended as follows:

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

'1. Member States shall ensure that, where the resolution authorities take resolution action with respect to a credit institution, and provided that such action ensures that depositors continue to have access to their deposits, ~~to prevent depositors from bearing losses~~ the deposit guarantee scheme to which that credit institution is affiliated shall contribute the following amounts:

(a) where the bail-in tool is applied, independently or in combination with the asset separation tool, the amount by which covered deposits would have been written down or converted in order to absorb the losses and recapitalise the institution under resolution pursuant to Article 46(1), had covered deposits been included within the scope of bail-in;

(b) where the sale of business or the bridge institution tools are applied, independently or in combination with other resolution tools:

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

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

In the cases referred to in the first subparagraph, point (b), where the transfer to the recipient includes deposits that are not covered deposits or other bail-inable liabilities and the resolution authority assesses that the circumstances referred to in Article 44(3) apply to those deposits or liabilities, the deposit guarantee scheme shall contribute:

(a) the amount necessary to cover the difference between the value of deposits, including deposits that are not covered, and of the liabilities with the same or higher priority ranking than deposits and the value of the assets of the institution under resolution which are to be transferred to a recipient; and

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

Member States shall ensure that, once the deposit guarantee scheme has made a contribution in the cases referred to in the second subparagraph, the institution under resolution refrains from acquiring stakes in other undertakings as well as distributions in connection with Common Equity Tier 1 capital or payments on Additional Tier 1 instruments, or from other activities that may lead to an outflow of funds.

In all cases, the cost of the contribution of the deposit guarantee scheme shall not be greater than the cost of repaying depositors as calculated by the deposit guarantee scheme under Article 11e of Directive 2014/49/EU.

Where it is determined by a valuation under Article 74 that the cost of the deposit guarantee scheme's contribution to resolution was greater than the losses it would have incurred had the institution been wound up under normal insolvency proceedings, the deposit guarantee scheme shall be entitled to the payment of the difference from the resolution financing arrangement in accordance with Article 75.

2. Member States shall ensure that the resolution authority determines the amount of the contribution of the deposit guarantee scheme in accordance with paragraph 1 after having consulted the deposit guarantee scheme on the estimated cost of repaying depositors pursuant to Article 11e of Directive 2014/49/EU and in compliance with the conditions referred to in Article 36 of this Directive.

The resolution authority shall notify its decision as referred to in the first subparagraph to the deposit guarantee scheme to which the institution is affiliated. The deposit guarantee scheme shall implement that decision without delay.';

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

'2a. Where the funds of the deposit guarantee scheme are used in accordance with paragraph 1, first subparagraph, point (a), to contribute to the recapitalisation of the institution under resolution, Member States shall ensure that the deposit guarantee scheme transfers its holdings of shares or other capital instruments in the institution under resolution to the private sector as soon as commercial and financial circumstances allow.

Member States shall ensure that the deposit guarantee scheme markets the shares and other capital instruments referred to in the first subparagraph openly and

transparently, and that the sale does not misrepresent them or discriminate between potential purchasers. Any such sale shall be made on commercial terms.

2b. The contribution of the deposit guarantee scheme pursuant to paragraph 1, second subparagraph, shall count towards the thresholds laid down in Article 44(5), point (a), and in Article 44(8), point (a).

Where the use of the deposit guarantee scheme pursuant to paragraph 1, second subparagraph, together with the contribution to loss absorption and recapitalisation made by the shareholders and the holders of other instruments of ownership, the holders of relevant capital instruments and other bail-inable liabilities, allows for the use of the resolution financing arrangement, the contribution of the deposit guarantee scheme shall be limited to the amount necessary to meet the thresholds laid down in Article 44(5), point (a), and in Article 44(8), point (a). Following the contribution of the deposit guarantee scheme, the resolution financing arrangement shall be used in accordance with the principles governing the use of the resolution financing arrangement set out in Articles 44 and 101.

By derogation from the limitation on contributions from the deposit guarantee scheme under the second subparagraph, where the conditions under Article 44(7) are fulfilled, an additional contribution of the deposit guarantee scheme shall be required. This additional contribution shall be equal to the amount contributed by the resolution financing arrangement above the 5% limit specified in Article 44(5), point (b), multiplied by the share of covered deposits as part of the total liabilities in the scope of the transfer.

However, the first and the second subparagraphs shall not apply to institutions that ***meet at least one of the following conditions:***

i) the institution has been identified as liquidation entities in the group resolution plan or in the resolution plan;

ii) the institution has breached its intermediate or final MREL target, as appropriate, over a period of ... years, excluding the period of four consecutive quarters prior to the determination of failing or likely to fail.

(c) paragraph 3 is deleted;

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

(57) in Article 111(1), the following point (e) is added:

‘(e) failure to comply with the minimum requirement for own funds and eligible liabilities referred to in Article 45e or 45f.’;

(58) Article 128 is amended as follows:

(a) the title is replaced by the following:

‘**Cooperation and information exchange among institutions and authorities**’;

(b) the following paragraph is added:

‘The resolution authorities, competent authorities, the EBA, the Single Resolution Board, the ECB and other members of the European System of Central Banks shall provide the Commission, upon its request and within the specified timeframe, with any information necessary for the performance of its tasks related to policy development, including the carrying out of impact assessments, the preparation of legislative proposals, and the participation in the legislative process. The Commission and the Commission staff shall be subject to the requirements of professional secrecy laid down in Article 88 of Regulation (EU) No 806/2014 of the European Parliament and of the Council* with regard to the information received.’;

_____

* 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).

(59) the following Article 128a is inserted:

‘Article 128a

Crisis management simulations

1. EBA shall coordinate regular Union-wide exercises to test the application of this Directive, Regulation (EU) No 806/2014 and Directive 2014/49/EU in cross-border situations on all of the following aspects:

(a) cooperation of the competent authorities during recovery planning;

(b) cooperation among resolution authorities and competent authorities before the failure and during the resolution of financial institutions, including in the implementation of resolution schemes adopted pursuant to Article 18 of Regulation (EU) No 806/2014.

2. EBA shall produce a report setting out the key findings and conclusions of the exercises. The report shall be made public.’.

Article 2

Transposition

1. Member States shall adopt and publish, by … [OP please insert the date = 18 months from the date of entry into force of this amending Directive] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from … [OP please insert the date = 1 day after the transposition date of this amending Directive].

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

Entry into force

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

Article 4

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg,

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