STATUTORY INSTRUMENTS.

S.I. No. 713 of 2020

EUROPEAN UNION (BANK RECOVERY AND RESOLUTION) (AMENDMENT) REGULATIONS 2020

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EUROPEAN UNION (BANK RECOVERY AND RESOLUTION) (AMENDMENT) REGULATIONS 2020

I, PASCHAL DONOHOE, Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019[1] amending Directive 2014/59/EU[2] as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC[3], hereby make the following regulations:

Citation and commencement

1. (1) These Regulations may be cited as the European Union (Bank Recovery and Resolution) (Amendment) Regulations 2020.

(2) These Regulations come into operation on 28 December 2020.

Definition

2. In these Regulations "Regulations of 2015" means the European Union (Bank Recovery and Resolution) Regulations 2015 (S.I. No. 289 of 2015).

Amendment of Regulation 3 of Regulations of 2015 (interpretation)

3. Regulation 3 of the Regulations of 2015 is amended in paragraph (1) —

(a) in the definition of "aggregate amount", by the substitution of "bail-inable liabilities" for "eligible securities",

(b) by the substitution of the following definition for the definition of "Bank Recovery and Resolution Directive":

" 'Bank Recovery and Resolution Directive' means Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014[4] establishing a framework for the recovery and resolution of credit institutions and investment firms, as amended by Directive (EU) 2017/2399 of the European Parliament and of the Council of 12 December 2017[5] and Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019[6];",

[1] OJ No. L 150, 7.6.2019, p. 296
[2] OJ No. L 173, 12.6.2014, p. 190
[3] OJ No. L 166, 11.6.1998, p. 45
[4] OJ No. L 173, 12.6.2014, p. 190
[5] OJ No. L 345, 27.12.2017, p. 96
[6] OJ No. L 150, 7.6.2019, p. 296

Notice of the making of this Statutory Instrument was published in "Iris Oifigiúil" of 5*th January,* 2021.

(c) by the substitution of the following definition for the definition of "eligible liabilities":

" 'eligible liabilities' means bail-inable liabilities that satisfy, as applicable, the conditions of Regulation 80D or 80H(6)(a) and Tier 2 instruments that meet the conditions of point (b) of Article 72a(1) of the Union Capital Requirements Regulation;",

(d) by the substitution of the following for the definition of "subsidiary":

" 'subsidiary' means a subsidiary as defined in point (16) of Article 4(1) of the Union Capital Requirements Regulation, and for the purpose of applying Regulations 14, 21, 28, 29, 80B to 80O, 95 to 98, 155 and 156 to resolution groups referred to in subparagraph (b) of the definition in this paragraph of 'resolution group', includes, where and as appropriate, credit institutions that are permanently affiliated to a central body, the central body itself, and their respective subsidiaries, taking into account the way in which such resolution groups comply with Regulation 80G(3);",

and

(e) by the insertion of the following definitions:

" 'bail-inable liabilities' means the liabilities and capital instruments that do not qualify as Common Equity Tier 1, Additional Tier 1 instruments or Tier 2 instruments of an institution or entity referred to in Regulation 2(1)(b) to (i) that are not excluded from the scope of the bail-in tool by virtue of Regulation 80(2);

'combined buffer requirement' has the meaning assigned to it in Regulation 115(g) of the Capital Requirements Regulations;

'Common Equity Tier 1 capital' means Common Equity Tier 1 capital as calculated in accordance with Article 50 of the Union Capital Requirements Regulation;

'ESMA' means the European Securities and Markets Authority (established by Regulation (EU) No 1095/2010[7]);

'global systemically important institution' or 'G-SII' means a G-SII as defined in point (133) of Article 4(1) of the Union Capital Requirements Regulation;

'material subsidiary' means a material subsidiary as defined in point (135) of Article 4(1) of the Union Capital Requirements Regulation;

[7] OJ No. L331, 15.12.2010, p. 84

‘resolution entity’ means ─

(a) a legal person established in the Union, which, in accordance with Regulation 21, is identified by the resolution authority as an entity in respect of which the resolution plan provides for resolution action, or

(b) an institution that is not part of a group that is subject to consolidated supervision pursuant to Articles 111 and 112 of the Capital Requirements Directive, in respect of which the resolution plan drawn up pursuant to Article 10 of the Bank Recovery and Resolution Directive provides for resolution action;

‘resolution group’ means ─

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

(i) resolution entities themselves,

(ii) subsidiaries of other resolution entities,

or

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

or

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

‘subordinated eligible instruments’ means instruments that meet all of the conditions referred to in Article 72a of the Union Capital Requirements Regulation other than paragraphs (3) to (5) of Article 72b of that Regulation;”.

Amendment of Regulation 13 of Regulations of 2015 (assessment of recovery plans)

4. Regulation 13 of the Regulations of 2015 is amended in paragraph (4) by the substitution of “may examine” for “shall examine”.

Amendment of Regulation 17 of Regulations of 2015 (resolution plans)

5. Regulation 17 of the Regulations of 2015 is amended ─

(a) by the insertion of the following paragraph after paragraph (7):

"(7A) The review of resolution plans referred to in paragraphs (6) and (7) shall be carried out after the implementation of resolution actions or the exercise of powers referred to in Regulation 95.",

and

(b) by the insertion of the following paragraph after paragraph (11):

"(12) When setting the deadline referred to in Regulation 18(2)(o) and the timeline referred to in Regulation 18(2)(p) in the circumstances referred to in paragraph (7A), the resolution authority shall take into account any deadline that may be set to comply with the requirement referred to in Regulation 92B of the Capital Requirements Regulations.".

Amendment of Regulation 18 of Regulations of 2015 (contents of resolution plan)

6. Regulation 18(2) of the Regulations of 2015 is amended by the substitution of the following subparagraphs for subparagraphs (o) and (p):

"(o) the requirements referred to in Regulations 80G and 80H and a deadline to reach that level in accordance with Regulation 80O;

(p) where the resolution authority applies paragraphs (7) to (11), paragraphs (12) and (13), or Regulation 80D(16), a timeline for compliance by the resolution entity in accordance with Regulation 80O;".

Amendment of Regulation 21 of Regulations of 2015 (resolution plans for institutions that are part of a group)

7. The following Regulation is substituted for Regulation 21 of the Regulations of 2015:

"21. (1) Where the resolution authority is the group-level resolution authority it shall ─

(a) together with the Union resolution authorities of subsidiaries of the group outside the State, and

(b) having consulted with the Union resolution authorities of significant branches of the group outside the State in so far as is relevant to the significant branch,

prepare the group resolution plan on the basis of information provided to it in accordance with Regulation 20.

(2) A group resolution plan shall identify measures to be taken in respect of ─

(a) the Union parent undertaking,

(b) subsidiaries of the group established in the Union,

(c) entities referred to in Regulation 2(1)(c) to (i), and

(d) subject to Part 6, subsidiaries of the group established outside the Union.

(3) The group resolution plan shall, in accordance with the measures referred to in paragraph (2), identify in respect of the group ─

(a) the resolution entities, and

(b) the resolution groups.

(4) In addition to the matters set out in Regulation 18, a group resolution plan shall -

(a) set out ─

(i) the resolution actions that are to be taken for resolution entities in the scenarios referred to in Regulation 17(9), and

(ii) the implications of the resolution actions referred to in clause (i) in respect of ─

(I) other group entities referred to in Regulation 2(1)(b) to (i),

(II) the parent undertaking, and

(III) subsidiary institutions,

(b) where a group comprises more than one resolution group, set out the resolution actions that are to be taken for the resolution entities of each resolution group and the implications of those actions on both of the following:

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

(ii) other resolution groups,

(c) examine the extent to which the resolution tools could be applied, and the resolution powers exercised, with respect to resolution entities established in the Union in a coordinated manner, including measures to facilitate the purchase by a third party of the group as a whole, of separate business lines or activities that are provided by a

number of group entities, or of particular group entities or resolution groups, and identify any potential impediments to a coordinated resolution,

(d) where a group includes entities incorporated in third countries, identify ─

(i) the implications for the resolution of group entities within the Union, and

(ii) appropriate arrangements for cooperation and coordination with the relevant authorities in those third countries,

(e) identify measures, including the legal and economic separation of particular functions or business lines, that are necessary to facilitate group resolution when the conditions for resolution are met,

(f) set out any additional actions, not referred to in these Regulations, which the relevant resolution authorities intend to take in relation to the entities within each resolution group, and

(g) identify how the group resolution actions could be financed and, where the financing arrangement would be required, set out principles, in accordance with paragraph (5), for sharing responsibility for that financing between sources of funding in different Member States.

(5) The principles referred to in paragraph (4)(g) shall be based on equitable and balanced criteria and shall take into account in particular ─

(a) Regulation 172(5), and

(b) the impact on financial stability in all Member States concerned.

(6) In preparing and assessing a group resolution plan and assessing the resolvability of the group, the resolution authority shall not assume any of the following:

(a) any extraordinary public financial support, other than through the use of the Fund;

(b) any emergency liquidity assistance provided by the Bank or by another central bank;

(c) any liquidity assistance provided by the Bank or by another central bank under non-standard collateralisation, duration and interest rate terms.

(7) When drawing up and updating a group resolution plan, the resolution authority shall also carry out an assessment of the

resolvability of the group pursuant to Regulation 27 and shall include a detailed description of this assessment of resolvability in the group resolution plan.

(8) When preparing a group resolution plan, the resolution authority shall, together with Union resolution authorities of subsidiaries outside the State, have regard to the need to ensure that the group resolution plan does not have a disproportionate impact on any Member State.".

Amendment of Regulation 24 of Regulations of 2015 (assessment of group resolution plan)

8. Regulation 24 of the Regulations of 2015 is amended ─

(a) by the insertion of the following paragraph after paragraph (1):

"(1A) Where a group is composed of more than one resolution group, the planning of the resolution actions referred to in subparagraph (b) of Regulation 21(4) shall be included in a joint decision referred to in paragraph (1).",

(b) by the substitution of the following paragraph for paragraph (9):

"(9) Where the Union resolution authorities and the resolution authority have not made a joint decision within four months under paragraph (8), the resolution authority, where it is responsible for a subsidiary and disagrees with the group resolution plan, shall make its own decision and, where appropriate, identify the resolution entity and draw up and maintain a resolution plan for the resolution group composed of entities under its jurisdiction.",

and

(c) by the substitution of the following paragraph for paragraph (10):

"(10) A decision under paragraph (9) shall ─

(a) be fully substantiated,

(b) set out the reasons for the disagreement with the proposed group resolution plan,

(c) take into account the views and reservations of the other resolution authorities and competent authorities, and

(d) be notified to the other members of the resolution college by the resolution authority.".

Amendment of Regulation 27 of Regulations of 2015 (assessment of resolvability for groups)

9. Regulation 27 of the Regulations of 2015 is amended ─

(a) by the substitution of the following paragraph for paragraph (3):

"(3) A group shall be considered resolvable if the resolution authority, together with the relevant Union resolution authorities of subsidiaries of the group, assesses that it is feasible and credible that the resolution authorities would be capable of ─

(a) either ─

(i) winding up group entities under normal insolvency proceedings, or

(ii) taking resolution action in respect of that group by applying resolution tools to, and exercising resolution powers with respect to, resolution entities of that group,

(b) avoiding to the maximum extent possible any significant adverse consequences for the financial system of the State or other Member State or the Union, including broader financial instability or system-wide events, and

(c) ensuring the continuity of any critical functions carried out by those group entities, where they can easily be separated in a timely manner, or by other means.",

and

(b) by the insertion of the following paragraph after paragraph (7):

"(8) (a) Where a group is composed of more than one resolution group, the resolution authority shall assess the resolvability of each resolution group in accordance with this Regulation.

(b) The resolution authority shall carry out the assessment referred to in subparagraph (a) –

(i) in addition to the assessment of the resolvability of the entire group, and

(ii) in compliance with the decision-making procedure set out in Regulations 22 to 24.".

Power to prohibit certain distributions

10. The following Regulation is inserted after Regulation 27 of the Regulations of 2015:

"27A. (1) (a) This paragraph applies where an entity referred to in Regulation 2(1) meets the combined buffer requirement when considered in addition to each of the requirements referred to in Regulation 129A(1)(a), (b) and (c) of the Capital Requirements Regulations, but fails to meet the combined buffer requirement when considered in addition to the requirements referred to in Regulations 80E and 80F, when calculated in accordance with Regulation 80B(2)(a).

(b) Where this paragraph applies, the resolution authority, where it is the resolution authority of the entity concerned, may, in accordance with paragraphs (2) and (3), prohibit an entity from distributing more than the Maximum Distributable Amount related to the minimum requirement for own funds and eligible liabilities (in this Regulation referred to as 'M-MDA'), calculated in accordance with paragraph (4), through any of the following actions:

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

(ii) creating an obligation to pay variable remuneration or discretionary pension benefits, or to pay variable remuneration if the obligation to pay was created at a time when the entity failed to meet the combined buffer requirement;

(iii) making payments on Additional Tier 1 instruments.

(c) Where this paragraph applies in respect of an entity, the entity shall immediately notify the resolution authority that this paragraph so applies.

(2) (a) Where paragraph (1) applies in respect of an entity, the resolution authority of the entity, after consulting with the competent authority, shall, without unnecessary delay, assess whether to exercise the power referred to in paragraph (1), taking into account all of the following elements:

(i) the reason, duration and magnitude of the failure and its impact on the resolvability of the entity;

(ii) the development of the entity's financial situation and the likelihood of it satisfying, in the foreseeable future, the condition referred to in Regulation 62(1)(a);

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

(iv) where the entity is unable to replace liabilities that no longer meet the eligibility or maturity criteria laid down in Articles 72b and 72c of the Union Capital Requirements Regulation, or in Regulation 80D or 80H(6), if that inability is entity-specific or is due to market-wide disturbance;

(v) whether the exercise of the power referred to in paragraph (1) is the most adequate and proportionate means of addressing the situation of the entity, taking into account its potential impact on both the financing conditions and resolvability of the entity concerned.

(b) The resolution authority shall repeat its assessment of whether to exercise the power referred to in paragraph (1) at least every month for as long as paragraph (1) applies in respect of the entity concerned.

(3) (a) If the resolution authority finds that paragraph (1) continues to apply in respect of an entity 9 months after the entity has notified the resolution authority in accordance with paragraph (1)(c), the resolution authority, after consulting with the

competent authority, shall exercise the power referred to in paragraph (1), except where the resolution authority finds, following an assessment, that at least two of the following conditions are satisfied:

(i) the failure referred to in paragraph (1)(a) is due to a serious disturbance to the functioning of financial markets which leads to broad-based financial market stress across several segments of financial markets;

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

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

(iv) the disturbance referred to in clause (i) prevents the concerned entity from issuing own funds instruments and eligible liabilities instruments sufficient to remedy the failure;

(v) an exercise of the power referred to in paragraph (1) leads to negative spill-over effects for part of the banking sector, thereby potentially undermining financial stability.

(b) Where the exception referred to in subparagraph (a) applies, the resolution authority shall notify the competent authority of its decision and shall explain its assessment in writing.

(c) The resolution authority shall, every month, repeat its assessment of whether the exception referred to in subparagraph (a) applies.

(4) (a) The M-MDA shall be calculated by multiplying the sum calculated in accordance with paragraph (5) by the factor determined in accordance with paragraph (6).

(b) The M-MDA shall be reduced by any amount resulting from any of the actions referred to in clause (i), (ii) or (iii) of paragraph (1)(b).

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

(a) any interim profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of the Union Capital Requirements Regulation, net of any distribution of profits or any payment resulting from the actions referred to in clause (i), (ii) or (iii) of paragraph (1)(b),

plus

(b) any year-end profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of the Union Capital Requirements Regulation, net of any distribution of profits or any payment resulting from the actions referred to in clause (i), (ii) or (iii) of paragraph (1)(b),

minus

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

(6) (a) The factor referred to in paragraph (4) shall be determined as follows:

(i) where the Common Equity Tier 1 capital maintained by the entity which is not used to meet any of the requirements set out in Article 92a of the Union Capital Requirements Regulation and in Regulations 80E and 80F, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of the Union Capital Requirements Regulation, is within the first (that is, the lowest) quartile of the combined buffer requirement, the factor shall be 0;

(ii) where the Common Equity Tier 1 capital maintained by the entity which is not used to meet any of the requirements set out in Article 92a of the Union Capital Requirements Regulation and in Regulations 80E and 80F, expressed as a percentage of the total risk exposure amount calculated in

accordance with Article 92(3) of the Union Capital Requirements Regulation, is within the second quartile of the combined buffer requirement, the factor shall be 0.2;

(iii) where the Common Equity Tier 1 capital maintained by the entity which is not used to meet the requirements set out in Article 92a of the Union Capital Requirements Regulation and in Regulations 80E and 80F, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of the Union Capital Requirements Regulation, is within the third quartile of the combined buffer requirement, the factor shall be 0.4;

(iv) where the Common Equity Tier 1 capital maintained by the entity which is not used to meet the requirements set out in Article 92a of the Union Capital Requirements Regulation and in Regulations 80E and 80F, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of the Union Capital Requirements Regulation, is within the fourth (that is, the highest) quartile of the combined buffer requirement, the factor shall be 0.6.

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

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

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

where "Q_n" = the ordinal number of the quartile concerned.".

Amendment of Regulation 28 of Regulations of 2015 (powers to address or remove impediments to resolvability)

11. The following Regulation is substituted for Regulation 28 of the Regulations of 2015:

"28. (1) When, pursuant to an assessment of resolvability for an entity carried out in accordance with Regulations 26 and 27, the resolution authority, after consulting with the competent authority, determines that there are substantive impediments to the resolvability of that entity, that resolution authority shall notify, in writing, that determination to the entity concerned, to the competent authority and to the resolution authorities of the jurisdictions in which significant branches are located.

(2) The entity shall, within four months of the date of receipt of a notification made in accordance with paragraph (1), propose to the resolution authority possible measures to address or remove the substantive impediments identified in the notification.

(3) (a) The entity shall, within 2 weeks of the date of receipt of a notification made in accordance with paragraph (1), propose to the resolution authority possible measures and the timeline for their implementation to ensure that the entity complies with Regulation 80G or 80H and the combined buffer requirement, where a substantive impediment to resolvability is due to either of the following situations:

(i) the entity meets the combined buffer requirement when considered in addition to each of the requirements referred to in Regulation 129A(1)(a), (b) and (c) of the Capital Requirements Regulations, but it does not meet the combined buffer requirement when considered in addition to the requirements referred to in Regulation 80E and 80F when calculated in accordance with Regulation 80B(2)(a);

(ii) the entity does not meet the requirements referred to in Articles 92a and 494 of the Union Capital Requirements Regulation or the requirements referred to in Regulations 80E and 80F.

(b) The timeline for the implementation of measures proposed by the entity under subparagraph (a) shall take into account the reasons for the substantive impediment.

(4) The resolution authority, after consulting with the competent authority, shall assess whether the measures proposed under paragraph (2) or (3)(a), as the case may be, effectively address or remove the substantive impediment concerned.

(5) (a) Where the resolution authority finds that the measures proposed by an entity in accordance with paragraph (2) or (3)(a), as the case may be,

do not effectively reduce or remove the impediments concerned, it shall, either directly or indirectly through the competent authority, direct the entity to take alternative measures that may achieve that objective, and notify, in writing, those alternative measures to the entity.

(b) On receipt of a notification under subparagraph (a), the entity shall propose, within one month of the date of such receipt, a plan in writing to comply with the alternative measures.

(6) (a) In identifying the alternative measures referred to in paragraph (5), the resolution authority shall demonstrate ─

(i) how the measures proposed by the entity under paragraph (2) or (3)(a), as the case may be, would not be sufficient to remove the impediments to resolvability, and

(ii) how the alternative measures proposed are proportionate in removing those impediments.

(b) The resolution authority shall take into account ─

(i) any threat the impediments to resolvability pose to financial stability, and

(ii) the effect of the alternative measures proposed on the business of the entity, its stability and its ability to contribute to the economy.

(7) Before identifying any alternative measure referred to in paragraph (5), the resolution authority, after consulting with the competent authority and, where appropriate, the national macro-prudential authority, shall duly consider the potential effect of those measures on the particular entity, on the internal market for financial services, and on the financial stability in other Member States and in the Union as a whole.

(8) Any determination under paragraph (1) or direction under paragraph (5) shall be supported by reasons for the determination or direction, as the case may be, and, in the case of a direction under paragraph (5), shall indicate how the decision complies with the requirement for proportionate application set out in paragraph (6).

(9) The requirement for the resolution authority to prepare resolution plans and reach a joint decision on group resolution plans in Regulations 17(1) to (4) and 24(1) to (3) shall be suspended following a notification referred to in paragraph (1) until either ─

(a) the measures proposed by the entity pursuant to paragraph (2) or (3)(a), as the case may be, are accepted by the resolution authority, or

(b) the resolution authority directs, pursuant to paragraph (5), the entity to take alternative measures.

(10) For the purposes of paragraph (5), the resolution authority may give a direction requiring the taking of one or more than one of the following measures:

(a) that the entity revise any intra-group financing agreement or review the absence thereof;

(b) that the entity put in place service agreements, whether with other group entities or third parties, to cover the provision of critical functions;

(c) that the entity limit its maximum individual or aggregate exposures;

(d) that the entity provide additional information relevant for resolution purposes, including through regular reporting requirements;

(e) that the entity divest specific assets;

(f) that the entity limit or cease specific existing or proposed activities;

(g) that the entity restrict or prevent the development of new or existing business lines or sale of new or existing products;

(h) that the entity make changes to legal or operational structures of the entity or any group entity, either directly or indirectly under its control, in order to reduce complexity and ensure that critical functions can be legally and operationally separated from other functions through the application of the resolution tools;

(i) that an entity or a parent undertaking establish a parent financial holding company in a Member State or a Union parent financial holding company;

(j) that an institution or an entity referred to in Regulation 2(1)(b) to (i) submit a plan to restore compliance with the requirements of Regulation 80G or 80H, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of the Union Capital Requirements Regulation and, where applicable, with the combined buffer requirement and with the requirements referred to in

Regulations 80G and 80H expressed as a percentage of the total exposure measure referred to in Articles 429 and 429a of the Union Capital Requirements Regulation;

(k) that an institution or entity referred to in Regulation 2(1)(b) to (i) issue eligible liabilities to meet the requirements of Regulation 80G or 80H;

(l) that an institution or entity referred to in Regulation 2(1)(b) to (i) take other steps to meet the minimum requirement for own funds and eligible liabilities under Regulation 80G or 80H, including in particular to attempt to renegotiate any eligible liability, Additional Tier 1 instrument or Tier 2 instrument it has issued, with a view to ensuring that any decision of the resolution authority to write down or convert that liability or instrument would be effected under the law of the jurisdiction governing that liability or instrument;

(m) for the purpose of ensuring ongoing compliance with Regulation 80G or 80H, that an institution or entity referred to in Regulation 2(1)(b) to (i) change the maturity profile of ─

(i) own funds instruments, after having obtained the agreement of the competent authority, and

(ii) eligible liabilities referred to in Regulations 80D and 80H(6)(a);

(n) where an entity is the subsidiary of a mixed-activity holding company, that the mixed-activity holding company set up a separate financial holding company to control the entity, if necessary in order to facilitate the resolution of the entity and to avoid the application of the resolution tools and the exercise of the powers referred to in Part 4 having an adverse effect on the non-financial part of the group.

(11) Each of the following is an appealable decision for the purposes of Part VIIA of the Act of 1942:

(a) a determination under paragraph (1);

(b) an assessment under paragraph (4);

(c) a direction under paragraph (5).”.

Amendment of Regulation 29 of Regulations of 2015 (powers to address or remove impediments to resolvability: group treatment)

12. The following Regulation is substituted for Regulation 29 of the Regulations of 2015:

"29. (1) Where the resolution authority is the group-level resolution authority it shall, together with the relevant Union resolution authorities of subsidiaries, consider the assessment under Regulation 27 within the resolution college and shall take all reasonable steps to reach a joint decision on the application of measures identified in accordance with Regulation 28(5) and (6) in relation to all resolution entities and their subsidiaries that are entities referred to in Regulation 2(1)(b) to (i) and are part of the group.

(2) Before considering the assessment of resolvability under paragraph (1), the resolution authority shall, together with the relevant Union resolution authorities, consult with the supervisory college and the Union resolution authorities of any jurisdictions in which significant branches are located in so far as is relevant to the significant branch.

(3) (a) Where the resolution authority is the group-level resolution authority, it shall, subject to subparagraph (b) and paragraph (13), prepare a report analysing ─

(i) the substantive impediments to the effective application of the resolution tools, and

(ii) the exercise of the resolution powers in relation to the group and also in relation to resolution groups where a group is composed of more than one resolution group.

(b) Where an impediment to the resolvability of the group is due to a situation of a group entity referred to in Regulation 28(3), the resolution authority shall notify its assessment of that impediment to the parent undertaking after consulting with the resolution authority of the resolution entity and the resolution authorities of its subsidiary institutions.

(4) The report referred to in paragraph (3) shall consider the impact on the group's business model and recommend any proportionate and targeted measures that, in the resolution authority's opinion, are necessary or appropriate to remove those impediments.

(5) The resolution authority shall prepare the report referred to in paragraph (3) in cooperation with the consolidating supervisor and the European Banking Authority in accordance with Article 25(1) of Regulation (EU) No 1093/2010, after consulting the Union competent authorities concerned.

(6) The resolution authority shall submit the report referred to in paragraph (3) to ─

(a) the parent undertaking of the group concerned,

(b) the Union resolution authorities of subsidiaries to be provided by them to the subsidiaries under their remit, and

(c) the Union resolution authorities of any jurisdictions in which significant branches are located.

(7) Where the resolution authority is the resolution authority of a subsidiary for the purposes of the Bank Recovery and Resolution Directive, and a group-level resolution authority submits a report to the resolution authority in accordance with Article 18(2) of the Bank Recovery and Resolution Directive, the resolution authority shall transmit that report to the subsidiary.

(8) Within four months of the date of receipt of the report referred to in paragraph (3), the parent undertaking may ─

(a) submit observations, and

(b) propose alternative measures to remedy the impediments identified in the report, to the resolution authority.

(9) Where the impediments identified in the report are due to a situation of a group entity referred to in Regulation 28(3), the parent undertaking shall, within 2 weeks of the date of receipt of a notification under paragraph (3)(b), propose to the resolution authority possible measures and the timeline for their implementation to ensure that the group entity complies ─

(a) with the requirements referred to in Article 45e or 45f of the Bank Recovery and Resolution Directive expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of the Union Capital Requirements Regulation, and

(b) where applicable, with the combined buffer requirement, and with the requirements referred to in Article 45e and 45f of the Bank Recovery and Resolution Directive expressed as a percentage of the total exposure measure referred to in Articles 429 and 429a of the Union Capital Requirements Regulation.

(10) (a) The timeline for the implementation of measures proposed under paragraph (9) shall take into account the reasons for the substantive impediment.

(b) The resolution authority, after consulting with the competent authority, shall assess whether the measures proposed under paragraph (9) effectively address or remove the substantive impediment.

(11) The resolution authority shall communicate any measure proposed by the parent undertaking under paragraph (8)(b) or (9), as the case may be, to ─

(a) the competent authority,

(b) the European Banking Authority,

(c) the Union resolution authorities of subsidiaries of the group, and

(d) the Union resolution authorities of any jurisdictions in which significant branches are located in so far as is relevant to the significant branch.

(12) Following consultation with the Union competent authorities of subsidiaries and the Union resolution authorities of any jurisdictions in which significant branches are located, in so far as is relevant to the significant branch, the resolution authority shall, subject to paragraph (13), do everything within its power to reach a joint decision with the Union resolution authorities of the subsidiaries within the resolution college regarding the identification of substantive impediments and, if necessary, the assessment of the measures proposed by the parent undertaking and the measures required by the authorities 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.

(13) (a) The joint decision referred to in paragraph (12) shall be reached within four months of the submission of any observations by the parent undertaking in accordance with paragraph (8)(a).

(b) Where the parent undertaking has not submitted any observations, the joint decision shall be reached within one month from the expiry of the period referred to in paragraph (8).

(c) The joint decision referred to in paragraph (12) concerning the impediment to resolvability due to a situation referred to in Regulation 28(3) shall be reached within 2 weeks of the submission of any observations by the parent undertaking in accordance with paragraph (8)(a).

(14) Where a joint decision referred to in paragraph (12) is reached, the resolution authority shall provide the decision and reasons for the decision, in writing, to the parent undertaking.

(15) The resolution authority, whether in its role as ─

(a) a group-level resolution authority, or

(b) a resolution authority for a subsidiary for the purposes of the Bank Recovery and Resolution Directive,

may request the European Banking Authority to assist ─

(i) in reaching a joint decision referred to in paragraph (12) in accordance with point (c) of the second paragraph of Article 31 of Regulation (EU) No 1093/2010, or

(ii) where the joint decision referred to in subparagraph (a) concerns any measure referred to in subparagraph (h), (i) or (l) of Regulation 28(10), under Article 19 of Regulation (EU) No 1093/2010.

(16) Where the resolution authority is the group-level resolution authority and it has not reached a joint decision referred to in paragraph (12) within the period referred to in paragraph (13)(a), (b) or (c), as the case may be, it shall make its own decision on the appropriate measures to be taken under Regulation 28(5) at the group level.

(17) The resolution authority's decision under paragraph (16) shall ─

(a) be fully reasoned and take into account the views and reservations of the relevant Union resolution authorities, and

(b) be provided by the resolution authority to the Union parent undertaking.

(18) Where, at the end of the period referred to in paragraph (13)(a), (b) or (c), as the case may be, a matter referred to in Article 18(9) of the Bank Recovery and Resolution Directive has been referred to the European Banking Authority in accordance with Article 19 of Regulation (EU) No 1093/2010, then, where the resolution authority is the group-level resolution authority, it shall defer its decision and await any decision that the European Banking Authority may take in accordance with Article 19(3) of that Regulation, and shall take its decision in accordance with the decision of the European Banking Authority.

(19) (a) The period referred to in paragraph (13)(a), (b) or (c), as the case may be, shall be deemed to be the conciliation period within the meaning of Regulation (EU) No 1093/2010.

(b) The resolution authority shall not refer a matter to the European Banking Authority, under paragraph (15), after the end of the period

referred to in paragraph (13)(a), (b) or (c), as the case may be, or after a joint decision referred to in paragraph (12) has been reached.

(c) In the absence of a decision from the European Banking Authority, the decision of the resolution authority shall apply.

(20) Where the resolution authority is the resolution authority of the relevant resolution entity and it has not reached a joint decision referred to in paragraph (12) within the period referred to in paragraph (13)(a), (b) or (c), as the case may be, it shall make its own decision on the appropriate measures to be taken under Regulation 28(5) at the resolution group level.

(21) The resolution authority's decision under paragraph (20) shall ─

(a) be fully reasoned and take into account the views and reservations of the relevant resolution authorities of other entities of the same resolution group and the group-level resolution authority, and

(b) be provided by the resolution authority to the resolution entity.

(22) Where, at the end of the period referred to in paragraph (13)(a), (b) or (c), as the case may be, a matter referred to in Article 18(9) of the Bank Recovery and Resolution Directive has been referred to the European Banking Authority in accordance with Article 19 of Regulation (EU) No 1093/2010, then, where the resolution authority is the resolution authority of the resolution entity, it shall defer its decision and await any decision that the European Banking Authority may take in accordance with Article 19(3) of that Regulation, and shall take its decision in accordance with the decision of the European Banking Authority.

(23) (a) The period referred to in paragraph (13)(a), (b) or (c), as the case may be, shall be deemed to be the conciliation period within the meaning of Regulation (EU) No 1093/2010.

(b) The resolution authority shall not refer a matter to the European Banking Authority, under paragraph (15), after the end of the period referred to in paragraph (13)(a), (b) or (c), as the case may be, or after a joint decision referred to in paragraph (12) has been reached.

(c) In the absence of a decision from the European Banking Authority, the decision of the resolution authority of the resolution entity shall apply.

(24) Where the resolution authority is the resolution authority of a subsidiary that is not a resolution entity and it has not reached a

joint decision referred to in paragraph (12), it shall make its own decision on the appropriate measures to be taken by subsidiaries under Regulation 28(5) at individual level.

(25) The resolution authority's decision under paragraph (24) shall ─

(a) be fully reasoned and take into account the views and reservations of the relevant resolution authorities, and

(b) be provided by the resolution authority to the relevant subsidiary, the resolution entity of the same resolution group, the resolution authority of that resolution entity and, where different, the group-level resolution authority.

(26) Where, at the end of the period referred to in paragraph (13)(a), (b) or (c), as the case may be, a matter referred to in Article 18(9) of the Bank Recovery and Resolution Directive has been referred to the European Banking Authority in accordance with Article 19 of Regulation (EU) No 1093/2010, then, where the resolution authority is the resolution authority of a subsidiary that is not a resolution entity, it shall defer its decision and await any decision that the European Banking Authority may take in accordance with Article 19(3) of that Regulation, and shall take its decision in accordance with the decision of the European Banking Authority.

(27) (a) The period referred to in paragraph (13)(a), (b) or (c), as the case may be, shall be deemed to be the conciliation period within the meaning of Regulation (EU) No 1093/2010.

(b) The resolution authority shall not refer a matter to the European Banking Authority, under paragraph (15), after the end of the period referred to in paragraph (13)(a), (b) or (c), as the case may be, or after a joint decision referred to in paragraph (12) has been reached.

(c) In the absence of a decision from the European Banking Authority, the decision of the resolution authority shall apply.

(28) Any joint decision referred to in paragraph (12) or decision taken by a Union resolution authority in the absence of a joint decision shall be recognised as conclusive and applied by the resolution authority.

(29) A decision by the resolution authority under paragraph (16), (20) or (24) is an appealable decision for the purposes of Part VIIA of the Act of 1942.".

Amendment of Regulation 62 of Regulations of 2015 (conditions for resolution)

13. Regulation 62(1) of the Regulations of 2015 is amended in subparagraph (b) by the insertion of "and eligible liabilities" after "relevant capital instruments".

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

14. The following Regulation is inserted after Regulation 62 of the Regulations of 2015:

> "62A. The resolution authority may make a proposed resolution order in relation to a central body and all credit institutions permanently affiliated to it that are part of the same resolution group when that resolution group complies as a whole with the conditions set out in Regulation 62(1)(a), (b) and (c).".

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

15. The following Regulation is inserted after Regulation 62A (inserted by Regulation 14) of the Regulations of 2015:

> "62B. Where, in relation to an institution or entity referred to in Regulation 2(1)(b) to (i), the resolution authority considers that the conditions in Regulation 62(1)(a) and (b) are met, but that a resolution action would not be in the public interest in accordance with Regulation 62(1)(c), the institution or entity, as the case may be, shall be wound up in an orderly manner under normal insolvency proceedings.".

Amendment of Regulation 63 of Regulations of 2015 (conditions for resolution with regard to financial institutions and holding companies)

16. Regulation 63 of the Regulations of 2015 is amended ─

(a) by the substitution of the following paragraphs for paragraphs (2) to (4):

"(2) The resolution authority shall, subject to Regulation 9(2), make a proposed resolution order in relation to an entity referred to in Regulation 2(1)(c) to (i) where the conditions set out in Regulation 62(1)(a), (b) and (c) are met with regard to that entity.

(3) Where any subsidiary institutions of a mixed-activity holding company are held directly or indirectly by an intermediate financial holding company –

(a) the resolution plan shall provide that the intermediate financial holding company is identified as a resolution entity, and

(b) the resolution authority ─

(i) shall only make a proposed resolution order for the purposes of group resolution in relation to the intermediate financial holding company, and

(ii) shall not make a proposed resolution order for the purposes of group resolution in relation to the mixed-activity holding company.

(4) Subject to paragraph (3) and notwithstanding the fact that an entity referred to in Regulation 2(1)(c) to (i) does not meet the conditions set out in Regulation 62(1)(a), (b) and (c), the resolution authority may make a proposed resolution order in relation to the entity concerned where ─

(a) the entity is a resolution entity,

(b) one or more of the subsidiaries of the entity that are institutions, but not resolution entities, comply with the conditions laid down in Regulation 62(1)(a), (b) and (c), and

(c) the assets and liabilities of the subsidiaries referred to in subparagraph (b) are such that the failure of those subsidiaries threatens the resolution group as a whole, and resolution action with regard to the entity is necessary either for the resolution of such subsidiaries which are institutions or for the resolution of the relevant resolution group as a whole.",

and

(b) by the deletion of paragraph (5).

Power to suspend certain obligations

17. The following Regulation is inserted after Regulation 63 of the Regulations of 2015:

"63A. (1) The resolution authority, after consulting with the competent authority which shall reply in a timely manner, may suspend any payment or delivery obligations pursuant to any contract to which an institution or an entity referred to in Regulation 2(1)(b) to (i) is a party, where all of the following conditions are met:

(a) a determination that the institution or entity is failing or likely to fail has been made under Regulation 62(1)(a);

(b) there is no immediately available private sector measure referred to in Regulation 62(1)(b) that would prevent the failure of the institution or entity;

(c) the exercise of the power to suspend is deemed necessary to avoid the further deterioration of the financial conditions of the institution or entity;

(d) the exercise of the power to suspend is either ─

(i) necessary to reach the determination provided for in Regulation 62(1)(c), or

(ii) necessary to choose the appropriate resolution actions or to ensure the effective application of one or more resolution tools.

(2) (a) The power referred to in paragraph (1) shall not apply to payment or delivery obligations to the following:

(i) systems and operators of systems designated in accordance with Directive 98/26/EC;

(ii) central counterparties (in these Regulations referred to as 'CCPs') authorised in the Union pursuant to Article 14 of Regulation (EU) No 648/2012 and third-country CCPs recognised by the ESMA pursuant to Article 25 of that Regulation;

(iii) central banks.

(b) The resolution authority shall ─

(i) exercise the power referred to in paragraph (1) having regard to the circumstances of each case, and

(ii) in particular, carefully assess the appropriateness of extending the suspension to eligible deposits, especially to covered deposits held by natural persons and micro, small and medium-sized enterprises.

(3) Where the power to suspend payment or delivery obligations pursuant to paragraph (1) is exercised in respect of eligible deposits, the resolution authority shall direct any institution or entity in respect of whom that power is exercised to ensure that the depositors concerned have access to an appropriate daily amount (in this Regulation referred to as the 'appropriate daily amount') from those deposits determined by the resolution authority in accordance with paragraphs (4) and (5).

(4) For the purposes of paragraph (3), the resolution authority ─

(a) shall determine the appropriate daily amount having regard to all or any of the factors set out in paragraph (5), and

(b) may direct the entity to provide the resolution authority with such information as the resolution authority considers reasonably necessary for the purpose of determining the appropriate daily amount.

(5) The factors referred to in paragraph (4) are as follows:

(a) the balance sheet position of the institution or entity concerned, including its liquidity position;

(b) the total amount of eligible deposits held by the institution or entity concerned;

(c) the total number of depositors of the institution or entity concerned;

(d) the period of the suspension pursuant to paragraph (1);

(e) the amount which is likely to be required by different classes of depositors to meet reasonable daily expenses under the economic conditions prevailing in the State when the power of suspension pursuant to paragraph (1) is exercised;

(f) such further information as may be provided to the resolution authority pursuant to a direction under paragraph (4)(b).

(6) (a) The period of the suspension pursuant to paragraph (1) ─

(i) shall be as short as possible,

(ii) shall not exceed the minimum period that the resolution authority considers necessary for the purposes indicated in paragraph (1)(c) and (d), and

(iii) in any event shall not last longer than the period from the publication of a notice of suspension pursuant to paragraph (11) to midnight at the end of the business day next following that publication.

(b) On the expiry of the period of suspension referred to in subparagraph (a), the suspension shall cease to have effect.

(7) (a) When exercising the power referred to in paragraph (1), the resolution authority shall ─

(i) have regard to the impact the exercise of that power might have on the orderly functioning of financial markets, and

(ii) consider the existing rules, and supervisory and judicial powers, to safeguard creditors' rights and equal treatment of creditors in normal insolvency proceedings.

(b) The resolution authority shall, in particular, have regard to the potential application of normal insolvency proceedings to the institution or entity as a result of the determination in Regulation 62(1)(c) and shall make the arrangements it deems appropriate to ensure adequate

coordination with the administrative authorities of the State or with the Court, as the case may be.

(c) For the purposes of subparagraph (b), 'administrative authorities' means –

(i) the Minister,

(ii) the Investor Compensation Company DAC (otherwise known as the Investor Compensation Company Limited), and

(iii) the Insurance Compensation Fund.

(8) When payment or delivery obligations under a contract are suspended pursuant to paragraph (1), the payment or delivery obligations of any counterparties to that contract shall be suspended for the same period as provided for under paragraph (6)(a).

(9) A payment or delivery obligation under a contract that would have been due during the period of the suspension provided for under paragraph (6)(a) shall be due immediately upon expiry of that period.

(10) The resolution authority shall notify the institution or the entity referred to in Regulation 2(1)(c) to (i) and the authorities referred to in Regulation 145(1)(a) to (f) without delay when exercising the power referred to in paragraph (1) after a determination has been made that the institution is failing or likely to fail pursuant to Regulation 62(1)(a) and before the resolution decision is taken.

(11) The resolution authority shall publish or ensure the publication of such direction or other instrument by which obligations are suspended under this Regulation and the terms and period of suspension, by the means referred to in Regulation 145(4).

(12) (a) This Regulation is without prejudice to any powers under any enactment (other than these Regulations) to suspend payment or delivery obligations ─

(i) of –

(I) the institutions and entities referred to in paragraph (1) before a determination is made that those institutions or entities are failing or likely to fail under Regulation 62(1)(a), or

(II) institutions or entities which are to be wound up under normal insolvency proceedings,

and

(ii) that exceed the scope and duration provided for in this Regulation.

(b) The conditions provided for in this Regulation shall be without prejudice to the conditions related to the exercise of any such powers to suspend payment or delivery obligations referred to in subparagraph (a).

(13) When the resolution authority exercises the power to suspend payment or delivery obligations pursuant to paragraph (1) with respect to an institution or an entity referred to in Regulation 2(1)(b) to (i), the resolution authority may also, for the duration of that suspension, exercise the power to ─

(a) restrict secured creditors of the institution or entity from enforcing security interests in relation to any of the assets of that institution or entity for the same duration, in which case Regulations 124(2)(d) and 130(2) and (3) shall apply, and

(b) suspend the termination rights of any party to a contract with that institution or entity for the same duration, in which case Regulations 124(2)(e) and (3) and 131 shall apply.

(14) Where, after making a determination that an institution or entity is failing or likely to fail pursuant to Regulation 62(1)(a), the resolution authority has exercised the power to suspend payment or delivery obligations in the circumstances set out in paragraph (1) or (13), and resolution action is subsequently taken with respect to that institution or entity, the resolution authority shall not exercise its powers, with respect to that institution or entity, under ─

(a) Regulation 129(1), and

(b) in the case of the exercise of its powers pursuant to paragraph (13)(a) and (b) or Regulation 130(1) or 131(1).".

Amendment of Regulation 65 of Regulations of 2015 (valuation for the purposes of resolution)

18. Regulation 65 of the Regulations of 2015 is amended ─

(a) in paragraphs (1), by the substitution of "capital instruments and eligible liabilities in accordance with Regulation 95" for "capital instruments, under these Regulations",

(b) in paragraphs (5)(a), (5)(c), (5)(g), (6)(b), (11) and (12)(a), by the substitution of "capital instruments and eligible liabilities in accordance with Regulation 95" for "capital instruments" in each place, and

(c) in paragraph (5)(d), by the substitution of "bail-inable liabilities" for "eligible liabilities".

Amendment of Regulation 68 of Regulations of 2015 (general principles of resolution tools)

19. Regulation 68 of the Regulations of 2015 is amended in paragraph (1) by the substitution of "capital instruments and eligible liabilities" for "capital instruments".

Amendment of regulation 80 of Regulations of 2015 (scope of bail-in tool)

20. Regulation 80 of the Regulations of 2015 is amended ─

(a) in paragraph (2) ─

(i) by the substitution of the following for subparagraph (g):

"(g) liabilities with a remaining maturity of less than 7 days, owed to ─

(i) systems or operators of systems designated in accordance with Directive 98/26/EC or their participants and arising from the participation in such a system, or

(ii) CCPs authorised in the Union pursuant to Article 14 of Regulation (EU) No 648/2012 and third-country CCPs recognised by ESMA pursuant to Article 25 of that Regulation;",

(ii) in subparagraph (k), by the substitution of "Directive 2014/49/EU;" for "Directive 2014/49/EU.", and

(iii) by the insertion of the following subparagraph after subparagraph (k):

"(l) liabilities to institutions or entities referred to in Regulation 2(1)(b) to (i) that are part of the same resolution group without being themselves resolution entities,

regardless of their maturities, except where those liabilities rank below ordinary unsecured liabilities as provided for in section 1428A of the Act of 2014.",

(b) by the insertion of the following paragraph after paragraph (3):

"(3A) In cases where the exception set out in paragraph (2)(l) applies, the resolution authority, where it is the resolution authority of the relevant subsidiary that is not a resolution entity, shall assess whether the number of items complying with Regulation 80H(6) is sufficient to support the implementation of the preferred resolution strategy.",

(c) in paragraph (8), by the substitution of "bail-inable liabilities" for "eligible liabilities",

(d) by the substitution of the following paragraph for paragraph (10):

"(10) (a) The resolution authority shall carefully assess whether liabilities to institutions or entities referred to in Regulation 2(1)(b) to (i) that are part of the same resolution group without being themselves resolution entities and that are not excluded from the application of the write-down and conversion powers under paragraph (2)(l) should be excluded or partially excluded under paragraph (9) to ensure the effective implementation of the resolution strategy.

(b) Where the resolution authority decides to exclude or partially exclude a bail-inable liability or class of bail-inable liabilities under paragraph (9), the level of write-down or conversion applied to other bail-inable liabilities may be increased to take account of such exclusions, provided that the level of write-down and conversion applied to other bail-inable liabilities complies with the

principle set out in Regulation 64(1)(g).",

(e) in paragraph (11) ─

(i) by the substitution of "bail-inable liability" for "eligible liability", and

(ii) by the substitution of "bail-inable liabilities" for "eligible liabilities" in each place,

and

(f) in paragraph (12)(a), by the substitution of "bail-inable liabilities" for "eligible liabilities".

Selling of subordinated eligible liabilities to retail clients

21. The following Regulation is inserted after Regulation 80 of the Regulations of 2015:

"80A. (1) In this Regulation 'relevant instrument', subject to paragraph (4), means an instrument issued on or after 28 December 2020 that is ─

(a) an eligible liability which meets all of the conditions referred to in Article 72a of the Union Capital Requirements Regulation except for point (b) of Article 72a(1) and paragraphs 3 to 5 of Article 72b of that Regulation,

(b) an Additional Tier 1 instrument, or

(c) a Tier 2 instrument.

(2) A relevant instrument shall not be issued with a denomination of less than €100,000.

(3) A relevant instrument with a denomination of less than €100,000 shall not be sold to a retail client (within the meaning of point 11 of Article 4(1) of Directive 2014/65/EU[8]) in the State.

(4) For the purposes of this Regulation, a reference to a relevant instrument shall not include ordinary shares regardless of whether such shares are recognised in Common Equity Tier 1, Additional Tier 1 or Tier 2 capital.".

[8] OJ No. 173, 12.6.2014, p. 349

New provisions in relation to own funds and eligible liabilities

22. The following Regulations are inserted after Regulation 80A (inserted by Regulation 21) of the Regulations of 2015:

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

80B. (1) Institutions and entities referred to in Regulation 2(1)(b) to (i) shall, at all times, meet the requirements for own funds and eligible liabilities where required by and in accordance with this Regulation and Regulations 80C to 80K.

(2) The requirement referred to in paragraph (1) shall be calculated in accordance with Regulation 80E(3) to (11), 80E(12) or 80E(14) to (22), as applicable, as the amount of own funds and eligible liabilities and expressed as percentages of ─

(a) the total risk exposure amount of the institution or entity referred to in paragraph (1), calculated in accordance with Article 92(3) of the Union Capital Requirements Regulation, and

(b) the total exposure measure of the institution or entity referred to in paragraph (1), calculated in accordance with Articles 429 and 429a of the Union Capital Requirements Regulation.

Exemption from the minimum requirement for own funds and eligible liabilities.

80C. (1) Notwithstanding Regulation 80B, the resolution authority shall exempt from the requirement referred to in Regulation 80B(1) mortgage credit institutions financed by covered bonds which, under the law of the State, are not allowed to receive deposits, provided that ─

(a) those institutions will be wound up under normal insolvency proceedings or in proceedings implemented in accordance with Regulation 69, 71 or 74, and

(b) the proceedings referred to in subparagraph (a) ensure that creditors of those institutions, including holders of covered bonds, where relevant, bear losses in a way that meets the resolution objectives.

(2) Institutions exempted in accordance with this Regulation from the requirement referred to in Regulation 80B(1) shall not be part of the consolidation referred to in Regulation 80G(1).

Eligible liabilities for resolution entities.

80D. (1) Liabilities shall be included in the amount of own funds and eligible liabilities of resolution entities only where they satisfy the

conditions referred to in the following Articles of the Union Capital Requirements Regulation:

(a) Article 72a;

(b) Article 72b, other than point (d) of paragraph 2;

(c) Article 72c.

(2) Notwithstanding paragraph (1), where these Regulations refer to the requirements in Article 92a or 92b of the Union Capital Requirements Regulation, for the purpose of those Articles, eligible liabilities shall consist of those eligible liabilities which are defined in Article 72k of the Union Capital Requirements Regulation and determined in accordance with Chapter 5a of Title I of Part Two of that Regulation.

(3) Liabilities that arise from debt instruments with embedded derivatives, such as structured notes, that meet the conditions referred to in paragraph (1), except for point (l) of Article 72a(2) of the Union Capital Requirements Regulation, shall be included in the amount of own funds and eligible liabilities where only one of the following conditions is met:

(a) the principal amount of the liability arising from the debt instrument is ─

(i) known at the time of issue,

(ii) fixed or increasing, and

(iii) not affected by an embedded derivative feature,

and the total amount of the liability arising from the debt instrument, including the embedded derivative, can be valued on a daily basis by reference to an active and liquid two-way market for an equivalent instrument without credit risk, in accordance with Articles 104 and 105 of the Union Capital Requirements Regulation;

(b) the debt instrument includes a contractual term that specifies that the value of the claim in cases of the insolvency and of the resolution of the issuer is fixed or increasing, and does not exceed the initially paid-up amount of the liability.

(4) Debt instruments referred to in paragraph (3), including their embedded derivatives, shall not be subject to any netting agreement and the valuation of such instruments shall not be subject to Regulation 88(4).

(5) The liabilities referred to in paragraph (3) shall only be included in the amount of own funds and eligible liabilities with respect to the part of the liability that corresponds to the principal amount

referred to in paragraph (3)(a) or to the fixed or increasing amount referred to in paragraph (3)(b).

(6) Where liabilities are issued by a subsidiary established in the Union to an existing shareholder that is not part of the same resolution group, and that subsidiary is part of the same resolution group as the resolution entity, those liabilities shall be included in the amount of own funds and eligible liabilities of that resolution entity, provided that the following conditions are met:

(a) the liabilities are issued in accordance with Regulation 80H(6)(a);

(b) the exercise of the write-down or conversion power in relation to those liabilities in accordance with Regulation 95 or 98 does not affect the control of the subsidiary by the resolution entity;

(c) the liabilities do not exceed an amount determined by subtracting:

(i) the sum of ─

(I) the liabilities issued to and bought by the resolution entity either directly or indirectly through other entities in the same resolution group, and

(II) the amount of own funds issued in accordance with Regulation 80H(6)(b),

from

(ii) the amount required in accordance with Regulation 80H(1) to (5).

(7) In the case of resolution entities that are G-SIIs or that are subject to Regulation 80E(12) or (13), as the case may be, subject to paragraph (8) and without prejudice to the minimum requirement in Regulation 80E(12) or referred to in 80F(1)(a), the resolution authority shall ensure that a part of the requirement referred to in Regulation 80G equal to 8 per cent of the total liabilities, including own funds, shall be met by such resolution entities using own funds, subordinated eligible instruments, or liabilities as referred to in paragraph (6).

(8) The resolution authority may permit that a level lower than 8 per cent of the total liabilities, including own funds, but greater than the amount resulting from the application of the formula ─

$$\left(1-\left(\frac{X1}{X2}\right)\right)\times 8\ \textit{per cent of the total liabilities, including own funds}$$

shall be met by resolution entities referred to in paragraph (7) using own funds, subordinated eligible instruments, or liabilities as referred to in paragraph (6), provided that all the conditions set out in Article 72b(3) of the Union Capital Requirements Regulation are met, where, in light of the reduction that is possible under the said Article 72b(3):

X1 equals 3.5 per cent of the total risk exposure amount calculated in accordance with Article 92(3) of the Union Capital Requirements Regulation; and

X2 equals the sum of 18 per cent of the total risk exposure amount calculated in accordance with Article 92(3) of the Union Capital Requirements Regulation and the amount of the combined buffer requirement.

(9) For resolution entities that are subject to Regulation 80E(12), where the application of paragraphs (7) and (8) leads to a requirement greater than 27 per cent of the total risk exposure amount for the resolution entity concerned, the resolution authority shall limit the part of the requirement referred to in Regulation 80G which is to be met using own funds, subordinated eligible instruments, or liabilities as referred to in paragraph (6), to an amount equal to 27 per cent of the total risk exposure amount of that resolution entity if the resolution authority has assessed that ─

(a) access to the resolution financing arrangement is not considered to be an option for resolving that resolution entity in the resolution plan, and

(b) where subparagraph (a) does not apply, the requirement referred to in Regulation 80G allows that resolution entity to meet the requirements referred to in Regulation 80(12).

(10) In carrying out the assessment referred to in paragraph (9), the resolution authority shall also take into account the risk of disproportionate impact on the business model of the resolution entity concerned.

(11) Paragraph (9) shall not apply to resolution entities that are subject to Regulation 80E(13).

(12) For resolution entities other than those referred to in paragraph (7), the resolution authority may decide that a part of the requirement referred to in Regulation 80G up to the greater of 8 per cent of the total liabilities, including own funds, of the resolution entity and the formula referred to in paragraph (16), shall be met using own funds, subordinated eligible instruments, or liabilities as referred to in paragraph (6), provided that the following conditions are met:

(a) non-subordinated liabilities referred to in paragraphs (1) and (3) have the same priority ranking as provided for in section 1428A of the

Act of 2014 as certain liabilities that are excluded from the application of write-down and conversion powers in accordance with Regulation 80(2) to (8) or Regulation 80(9) and (10);

(b) there is a risk that, as a result of a planned application of write-down and conversion powers to non-subordinated liabilities that are not excluded from the application of write-down and conversion powers in accordance with Regulation 80(2) to (8) or Regulation 80(9) and (10), creditors whose claims arise from those liabilities incur greater losses than they would incur in a winding up under normal insolvency proceedings;

(c) the amount of own funds and other subordinated liabilities does not exceed the amount necessary to ensure that the creditors referred to in subparagraph (b) do not incur losses above the level of losses that they would otherwise have incurred in the winding-up of the resolution entity under normal insolvency proceedings.

(13) Where the resolution authority determines that, within a class of liabilities which includes eligible liabilities, the amount of the liabilities that are excluded or reasonably likely to be excluded from the application of write-down or conversion powers in accordance with Regulation 80(2) to (8) or Regulation 80(9) and (10) totals more than 10 per cent of that class, the resolution authority shall assess the risk referred to in paragraph (12)(b).

(14) For the purposes of paragraphs (7) to (13) and (16), derivative liabilities shall be included in total liabilities on the basis that full recognition is given to counterparty netting rights.

(15) The own funds of a resolution entity that are used to comply with the combined buffer requirement shall be eligible to comply with the requirements referred to in paragraphs (7) to (13) and (16).

(16) Notwithstanding paragraphs (7) to (11) and subject to paragraphs (17) to (21), the resolution authority may decide that the requirement referred to in Regulation 80G shall be met by resolution entities referred to in paragraph (7) using own funds, subordinated eligible instruments, or liabilities as referred to in paragraph (6), to the extent that, due to the obligation of the resolution entity to comply with the combined buffer requirement and the requirements referred to in Article 92a of the Union Capital Requirements Regulation and Regulations 80E(12) and 80G, the sum of those own funds, instruments and liabilities does not exceed the greater of ─

(a) 8 per cent of total liabilities, including own funds, of the entity, or

(b) the amount resulting from the application of the formula ─

$$Ax2+Bx2+C$$

where –

A is the amount resulting from the requirement referred to in Article 92(1)(c) of the Union Capital Requirements Regulation,

B is the amount resulting from the requirement referred to in Regulation 92A of the Capital Requirements Regulations, and

C is the amount resulting from the combined buffer requirement.

(17) (a) The resolution authority may exercise the power referred to in paragraph (16) with respect to resolution entities that are G-SIIs or that are subject to Regulation 80E(12) or (13), and that meet one of the conditions specified in paragraph (18), up to a limit of 100 per cent of the total number of all resolution entities that are G-SIIs or that are subject to Regulation 80E(12) or (13) for which the resolution authority determines the requirement referred to in Regulation 80G.

(b) Subject to section 33AK(1A) of the Act of 1942, if the Minister is of the opinion that such information is relevant to the exercise of the power referred to in paragraph (16) as provided for in subparagraph (a), the resolution authority shall provide such information as the Minister may from time to time require on the total number of resolution entities that are G-SIIs or that are subject to Regulation 80E(12) or (13).

(18) The following are the conditions referred to in paragraph (17):

(a) substantive impediments to resolvability have been identified in the preceding resolvability assessment and either:

(i) no remedial action has been taken following the application of the measures referred to in Regulation 28(10) in the timeline required by the resolution authority, or

(ii) the identified substantive impediments cannot be addressed using any of the measures referred to in Regulation 28(10), and the exercise of the power referred to in paragraph (16) would partially or fully compensate for the negative impact of the substantive impediments on resolvability;

(b) the resolution authority considers that the feasibility and credibility of the resolution entity's preferred resolution strategy is limited, taking into account the entity's size, its interconnectedness, the nature, scope, risk and complexity of its activities, its legal status and its shareholding structure;

(c) the requirement referred to in Regulation 92A of the Capital Requirements Regulations reflects the fact that the resolution entity that is a G-SII or that is subject to Regulation 80E(12) or (13) is, in terms of risk, among the top 20 per cent of institutions for which the resolution authority determines the requirement referred to in Regulation 80B(1).

(19) For the purposes of the percentages referred to in paragraphs (17) and (18), the resolution authority shall round the number resulting from the calculation up to the closest whole number.

(20) The resolution authority shall only take a decision referred to in paragraph (12) or (16), as the case may be, after consulting the competent authority.

(21) When taking a decision referred to in paragraph (12) or (16), as the case may be, the resolution authority shall also take into account ─

(a) the depth of the market for the resolution entity's own funds instruments and subordinated eligible instruments, the pricing of such instruments, where they exist, and the time needed to execute any transactions necessary for the purpose of complying with the decision,

(b) the amount of eligible liabilities instruments that meet all of the conditions referred to in Article 72a of the Union Capital Requirements Regulation that have a residual maturity below one year as of the date of the decision, with a view to making quantitative adjustments to the requirements referred to in paragraphs (12) and (16),

(c) the availability and the amount of instruments that meet all of the conditions referred to in Article 72a of the Union Capital Requirements Regulation other than point (d) of Article 72b(2) of that Regulation,

(d) subject to paragraph (22), whether the amount of liabilities that are excluded from the application of write-down and conversion powers in accordance with Regulation 80(2) to (8) or Regulation 80(9) and (10) and that, in normal insolvency proceedings, rank equally with or below the highest ranking eligible liabilities is significant in comparison to the own funds and eligible liabilities of the resolution entity,

(e) the resolution entity's business model, funding model, and risk profile, and its stability and ability to contribute to the economy, and

(f) the impact of possible restructuring costs on the resolution entity's recapitalisation.

(22) For the purposes of paragraph (21)(d):

(a) where the amount of excluded liabilities does not exceed 5 per cent of the amount of the own funds and eligible liabilities of the resolution entity, the excluded amount shall be considered as not being significant;

(b) above the threshold referred to in subparagraph (a), the significance of the excluded liabilities shall be assessed by the resolution authority.

Determination of minimum requirement for own funds and eligible liabilities.

80E. (1) The requirement referred to in Regulation 80B(1) shall be determined by the resolution authority, after consulting the competent authority, on the basis of the following criteria:

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

(b) the need to ensure, where appropriate, that the resolution entity and its subsidiaries that are institutions or entities referred to in Regulation 2(1)(b) to (i) but are not resolution entities have sufficient own funds and eligible liabilities to ensure that, if the bail-in tool or write-down and

conversion powers, respectively, were to be applied to them, losses could be absorbed and that it is possible to restore the total capital ratio and, as applicable, the leverage ratio, of the relevant entities to a level necessary to enable them to continue to comply with the conditions for authorisation and to carry on the activities for which they are authorised under the Capital Requirements Regulations or Directive 2014/65/EU;

(c) the need to ensure, if the resolution plan anticipates the possibility for certain classes of eligible liabilities to be excluded from bail-in pursuant to Regulation 80(9) and (10) or to be transferred in full to a recipient under a partial transfer, that the resolution entity has sufficient own funds and eligible liabilities to absorb losses and to restore its total capital ratio and, as applicable, its leverage ratio, to the level necessary to enable it to continue to comply with the conditions for authorisation and to carry on the activities for which it is authorised under the Capital Requirements Regulations or Directive 2014/65/EU;

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

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

(2) (a) Where the resolution plan provides that resolution action is to be taken or that the power to write-down and convert relevant capital instruments and eligible liabilities in accordance with Regulation 95 is to be exercised in accordance with the relevant scenario referred to in Regulation 17(9) and (10) the requirement referred to in Regulation 80B(1) shall equal an amount sufficient to ensure that ─

(i) the losses that are expected to be incurred by the entity are fully absorbed (‘loss absorption’), and

(ii) the resolution entity and its subsidiaries that are institutions or entities referred to in Regulation 2(1)(b) to (i) but are not

resolution entities are recapitalised to a level necessary to enable them to continue to comply with the conditions for authorisation, and to carry on the activities for which they are authorised under the Capital Requirements Regulations or Directive 2014/65/EU or an equivalent legislative act for an appropriate period not longer than one year (in this Regulation referred to as 'recapitalisation').

(b) Where the resolution plan provides that the entity is to be wound up under normal insolvency proceedings, the resolution authority shall assess whether it is justified to limit the requirement referred to in Regulation 80B(1) for that entity, so that it does not exceed an amount sufficient to absorb losses in accordance with subparagraph (a)(i).

(c) The assessment by the resolution authority shall, in particular, evaluate the limit referred to in subparagraph (b) as regards any possible impact on financial stability and on the risk of contagion to the financial system.

(3) For resolution entities, the amount referred to in paragraph (2)(a) shall be the following:

(a) for the purpose of calculating the requirement referred to in Regulation 80B(1), in accordance with Regulation 80B(2)(a), the sum of ─

(i) the amount of the losses to be absorbed in resolution that corresponds to the requirements referred to in point (c) of Article 92(1) of the Union Capital Requirements Regulation and Regulation 92A of the Capital Requirements Regulations of the resolution entity at the consolidated resolution group level, and

(ii) a recapitalisation amount that allows the resolution group resulting from resolution to restore compliance with its total capital ratio requirement referred to in point (c) of Article 92(1) of the Union Capital Requirements Regulation and its requirement referred to in Regulation 92A of the Capital Requirements Regulations at the consolidated resolution

group level after the implementation of the preferred resolution strategy,

and

(b) for the purpose of calculating the requirement referred to in Regulation 80B(1), in accordance with Regulation 80B(2)(b), the sum of ─

(i) the amount of the losses to be absorbed in resolution that corresponds to the resolution entity's leverage ratio requirement referred to in point (d) of Article 92(1) of the Union Capital Requirements Regulation at the consolidated resolution group level, and

(ii) a recapitalisation amount that allows the resolution group resulting from resolution to restore compliance with the leverage ratio requirement referred to in subparagraph (d) of Article 92(1) of the Union Capital Requirements Regulation at the consolidated resolution group level after the implementation of the preferred resolution strategy.

(4) For the purposes of Regulation 80B(2)(a), the requirement referred to in Regulation 80B(1) shall be expressed in percentage terms as the amount calculated in accordance with paragraph (3)(a), divided by the total risk exposure amount.

(5) For the purposes of Regulation 80B(2)(b), the requirement referred to in Regulation 80B(1) shall be expressed in percentage terms as the amount calculated in accordance with paragraph (3)(b), divided by the total exposure measure.

(6) When setting the individual requirement provided in paragraph (3)(b), the resolution authority shall take into account the requirements referred to in Regulation 80(12).

(7) When setting the recapitalisation amounts referred to in subparagraphs (a)(ii) and (b)(ii) of paragraph (3), the resolution authority shall ─

(a) use the most recently reported values for the relevant total risk exposure amount or total exposure measure, adjusted for any changes resulting from resolution actions set out in the resolution plan, and

(b) after consulting with the competent authority, adjust the amount corresponding to the current requirement referred to in Regulation 92A of the Capital Requirements Regulations downwards or upwards to determine the requirement that is to

apply to the resolution entity after the implementation of the preferred resolution strategy.

(8) The resolution authority may increase the requirement provided in paragraph (3)(a)(ii) by an appropriate amount necessary to ensure that, following resolution, the entity is able to sustain sufficient market confidence for an appropriate period, which shall not exceed one year.

(9) Where paragraph (8) applies, the amount referred to in that paragraph shall be equal to the combined buffer requirement applicable after the application of the resolution tools, less the amount referred to in Regulation 115(g)(i) of the Capital Requirements Regulations.

(10) The amount referred to in paragraph (8) shall be adjusted downwards if, after consulting the competent authority, the resolution authority determines that it would be feasible and credible for a lower amount to be sufficient to sustain market confidence and to ensure both the continued provision of critical economic functions by the institution or entity referred to in Regulation 2(1)(b) to (i) and its access to funding without recourse to extraordinary public financial support other than contributions from resolution financing arrangements, in accordance with Regulation 80(12) and Regulation 164(2) and (3), after implementation of the resolution strategy.

(11) The amount referred to in paragraph (8) shall be adjusted upwards if, after consulting with the competent authority, the resolution authority determines that a higher amount is necessary to sustain sufficient market confidence and to ensure both the continued provision of critical economic functions by the institution or entity referred to in Regulation 2(1)(b) to (i) and its access to funding without recourse to extraordinary public financial support other than contributions from resolution financing arrangements, in accordance with Regulation 80(12) and Regulation 164(2) and (3), for an appropriate period which shall not exceed one year.

(12) (a) For resolution entities that are not subject to Article 92a of the Union Capital Requirements Regulation and that are part of a resolution group the total assets of which exceed €100 billion, the level of the requirement referred to in paragraph (3) shall be at least equal to ─

(i) 13.5 per cent when calculated in accordance with Regulation 80B(2)(a), and

(ii) 5 per cent when calculated in accordance with Regulation 80B(2)(b).

(b) Notwithstanding Regulation 80D, the resolution entities referred to in subparagraph (a) shall meet

a level of the requirement referred to in that subparagraph that is equal to -

(i) 13.5 per cent when calculated in accordance with Regulation 80B(2)(a), and

(ii) 5 per cent when calculated in accordance with Regulation 80B(2)(b),

using own funds, subordinated eligible instruments, or liabilities as referred to in Regulation 80D(6).

(13) (a) A resolution authority may, after consulting the competent authority, decide to apply the requirements laid down in paragraph (12) to a resolution entity which is not subject to Article 92a of the Union Capital Requirements Regulation and which is part of a resolution group the total assets of which are lower than €100 billion and which the resolution authority has assessed as reasonably likely to pose a systemic risk in the event of its failure.

(b) When making a decision referred to in subparagraph (a), the resolution authority shall take the following into account:

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

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

(iii) the extent to which the resolution entity relies on Common Equity Tier 1 capital to meet the requirement referred to in Regulation 80G.

(c) The absence of a decision pursuant to subparagraph (a) is without prejudice to any decision under Regulation 80D(12).

(14) For entities that are not themselves resolution entities, the amount referred to in paragraph (2)(a) shall be the following:

(a) for the purpose of calculating the requirement referred to in Regulation 80B(1), in accordance with Regulation 80B(2)(a), the sum of ─

(i) the amount of the losses to be absorbed that corresponds to the requirements referred to in point (c) of Article 92(1) of the Union Capital Requirements Regulation and Regulation 92A of the

Capital Requirements Regulations of the entity, and

(ii) a recapitalisation amount that allows the entity to restore compliance with its total capital ratio requirement referred to in point (c) of Article 92(1) of the Union Capital Requirements Regulation and its requirement referred to in Regulation 92A of the Capital Requirements Regulations after the exercise of the power to write-down or convert relevant capital instruments and eligible liabilities in accordance with Regulation 95 or after the resolution of the resolution group;

(b) for the purpose of calculating the requirement referred to in Regulation 80B(1), in accordance with Regulation 80B(2)(b), the sum of ─

(i) the amount of the losses to be absorbed that corresponds to the entity's leverage ratio requirement referred to in point (d) of Article 92(1) of the Union Capital Requirements Regulation, and

(ii) a recapitalisation amount that allows the entity to restore compliance with its leverage ratio requirement referred to in point (d) of Article 92(1) of the Union Capital Requirements Regulation after the exercise of the power to write-down or convert relevant capital instruments and eligible liabilities in accordance with Regulation 95 or after the resolution of the resolution group.

(15) For the purposes of Regulation 80B(2)(a), the requirement referred to in Regulation 80B(1) shall be expressed in percentage terms as the amount calculated in accordance with paragraph (14)(a), divided by the total risk exposure amount.

(16) For the purposes of Regulation 80B(2)(b), the requirement referred to in Regulation 80B(1) shall be expressed in percentage terms as the amount calculated in accordance with paragraph (14)(b), divided by the total exposure measure.

(17) When setting the individual requirement provided in paragraph (14)(b), the resolution authority shall take into account the requirements referred to in Regulation 80(12).

(18) When setting the recapitalisation amounts referred to in paragraph (14)(a)(ii) and (b)(ii), the resolution authority shall ─

(a) use the most recently reported values for the relevant total risk exposure amount or total exposure measure, adjusted for any changes resulting from actions set out in the resolution plan, and

(b) after consulting with the competent authority, adjust the amount corresponding to the current requirement referred to in Regulation 92A of the Capital Requirements Regulations downwards or upwards to determine the requirement that is to apply to the relevant entity after the exercise of the power to write-down or convert relevant capital instruments and eligible liabilities in accordance with Regulation 95 or after the resolution of the resolution group.

(19) The resolution authority may increase the requirement provided in paragraph (14)(a)(ii) by an appropriate amount necessary to ensure that, following the exercise of the power to write-down or convert relevant capital instruments and eligible liabilities in accordance with Regulation 95, the entity is able to sustain sufficient market confidence for an appropriate period which shall not exceed one year.

(20) Where paragraph (19) applies, the amount referred to in that paragraph shall be equal to the combined buffer requirement applicable after the exercise of the power referred to in Regulation 95 or after the resolution of the resolution group, less the amount referred to in Regulation 115(g)(i) of the Capital Requirements Regulations.

(21) The amount referred to in paragraph (19) shall be adjusted downwards if, after consulting with the competent authority, the resolution authority determines that it would be feasible and credible for a lower amount to be sufficient to ensure market confidence and to ensure both the continued provision of critical economic functions by the institution or entity referred to in Regulation 2(1)(b) to (i) and its access to funding without recourse to extraordinary public financial support other than contributions from resolution financing arrangements, in accordance with Regulation 80(12) and Regulation 164(2) and (3), after the exercise of the power referred to in Regulation 95 or after the resolution of the resolution group.

(22) The amount referred to in paragraph (19) shall be adjusted upwards if, after consulting with the competent authority, the resolution authority determines that a higher amount is necessary to sustain sufficient market confidence and to ensure both the continued provision of critical economic functions by the institution or entity referred to in Regulation 2(1)(b) to (i) and its access to funding without recourse to extraordinary public financial support other than contributions from resolution financing arrangements, in accordance with Regulation 80(12) and Regulation 164(2) and (3), for an appropriate period which shall not exceed one year.

(23) Where the resolution authority expects that certain classes of eligible liabilities are reasonably likely to be fully or partially excluded from bail-in pursuant to Regulation 80(9) and (10) or might be transferred in full to a recipient under a partial transfer, the requirement referred to in Regulation 80B(1) shall be met using own funds or other eligible liabilities that are sufficient to ─

(a) cover the amount of excluded liabilities identified in accordance with Regulation 80(9) and (10), and

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

(24) Any decision by the resolution authority to impose a minimum requirement of own funds and eligible liabilities under this Regulation shall contain the reasons for that decision, including a full assessment of the elements referred to in paragraphs (2) to (23) and shall be reviewed by the resolution authority without undue delay to reflect any changes in the level of the requirement referred to in Regulation 92A of the Capital Requirements Regulations.

(25) For the purposes of paragraphs (3) to (11) and (14) to (22), capital requirements shall be interpreted in accordance with the competent authority's application of the transitional provisions laid down in Chapters 1, 2 and 4 of Title I of Part Ten of the Union Capital Requirements Regulation.

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

80F. (1) The requirement referred to in Regulation 80B(1) for a resolution entity that is a G-SII or part of a G-SII shall consist of ─

(a) the requirements referred to in Articles 92a and 494 of the Union Capital Requirements Regulation, and

(b) any additional requirement for own funds and eligible liabilities that has been determined by the resolution authority specifically in relation to that entity in accordance with paragraph (3).

(2) The requirement referred to in Regulation 80B(1) for a Union material subsidiary of a non-EU G-SII shall consist of ─

(a) the requirements referred to in Articles 92b and 494 of the Union Capital Requirements Regulation, and

(b) any additional requirement for own funds and eligible liabilities that has been determined by the resolution authority specifically in relation to that material subsidiary in accordance with

paragraph (3), which is to be met using own funds and liabilities that meet the conditions of Regulation 80H and Regulation 153(2) to (5).

(3) The resolution authority shall impose an additional requirement for own funds and eligible liabilities referred to in paragraphs (1)(b) and (2)(b) only ─

(a) where the requirement referred to in paragraph (1)(a) or (2)(a) is not sufficient to satisfy the conditions set out in Regulation 80E, and

(b) to an extent that ensures that the conditions set out in Regulation 80E are satisfied.

(4) For the purposes of Regulation 80J(4) to (6),where more than one G-SII entity (within the meaning of point 136 of Article 4(1) of the Union Capital Requirements Regulation) belonging to the same G-SII are resolution entities, the resolution authority shall calculate the amount referred to in paragraph (3):

(a) for each resolution entity;

(b) for the Union parent undertaking as if it was the only resolution entity of the G-SII.

(5) Any decision by the resolution authority to impose an additional requirement for own funds and eligible liabilities under paragraph (1)(b) or (2)(b) shall contain the reasons for that decision, including a full assessment of the elements referred to in paragraph (3), and shall be reviewed by the resolution authority without undue delay to reflect any changes in the level of the requirement referred to in Regulation 92A of the Capital Requirements Regulations that applies to the resolution group or the Union material subsidiary of a non-EU G-SII.

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

80G. (1) Resolution entities shall comply with the requirements laid down in Regulations 80D to 80F on a consolidated basis at the level of the resolution group.

(2) The resolution authority shall determine the requirement referred to in Regulation 80B(1) for a resolution entity at the consolidated resolution group level in accordance with Regulation 80J, on the basis of the requirements laid down in Regulations 80D to 80F and on the basis of whether the third-country subsidiaries of the group are to be resolved separately under the resolution plan.

(3) For a resolution group within the meaning of subparagraph (b) of the definition in Regulation 3(1) of ‘resolution group’, where the resolution authority is the resolution authority for

such a resolution group it shall decide, depending on the features of the solidarity mechanism and of the preferred resolution strategy, which entities in the resolution group are to be required to comply with Regulation 80E(3) to (12) and Regulation 80F(1), in order to ensure that the resolution group as a whole complies with paragraphs (1) and (2), and how such entities are to do so in conformity with the resolution plan.

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

80H. (1) Subject to paragraph (3), institutions that are subsidiaries of a resolution entity or of a third-country entity, but are not themselves resolution entities, shall comply with the requirements laid down in Regulation 80E on an individual basis.

(2) The resolution authority, after consulting with the competent authority, may decide to apply the requirement laid down in this Regulation to an entity referred to in Regulation 2(1)(b) to (i) that is a subsidiary of a resolution entity but is not itself a resolution entity.

(3) Notwithstanding paragraph (1), Union parent undertakings that are not themselves resolution entities, but are subsidiaries of third-country entities, shall comply with the requirements laid down in Regulations 80E and 80F, as applicable, on a consolidated basis.

(4) In the case of a resolution group referred to in subparagraph (b) of the definition in Regulation 3(1) of 'resolution group', the following shall comply with Regulation 80E(14) to (22) on an individual basis:

(a) credit institutions which are permanently affiliated to a central body, but are not themselves resolution entities;

(b) a central body which is not itself a resolution entity;

(c) any resolution entities that are not subject to a requirement under Regulation 80G(3).

(5) The requirement referred to in Regulation 80B(1) for an entity referred to in paragraphs (1) to (4) shall be determined in accordance with Regulations 80J and 153, where applicable, and on the basis of the requirements set out in in Regulation 80E.

(6) The requirement referred to in Regulation 80B(1) for entities referred to in paragraphs (1) to (4) shall be met using one or more of the following:

(a) liabilities ─

(i) that are issued to and bought by the resolution entity, either directly or indirectly through other entities in the

same resolution group that bought the liabilities from the entity that is subject to this Regulation, or are issued to and bought by an existing shareholder that is not part of the same resolution group as long as the exercise of write-down or conversion powers in accordance with Regulations 95 to 98 does not affect the control of the subsidiary by the resolution entity,

(ii) that satisfy the eligibility criteria referred to in Article 72a of the Union Capital Requirements Regulation, except for points (b), (c), (k), (l) and (m) of Article 72b(2) and Article 72b(3) to (5) of that Regulation;

(iii) that rank, in normal insolvency proceedings, below liabilities that do not meet the condition referred to in clause (i) and that are not eligible for own funds requirements,

(iv) that are subject to write-down or conversion powers in accordance with Regulations 95 to 98 in a manner that is consistent with the resolution strategy of the resolution group, in particular by not affecting the control of the subsidiary by the resolution entity,

(v) the acquisition of ownership of which is not funded directly or indirectly by the entity that is subject to this Regulation,

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

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

(viii) the level of interest or dividend payments, as applicable, due thereon is not amended on the basis of the credit standing of the entity that is subject to this Regulation or its parent undertaking;

(b) own funds, as follows:

(i) Common Equity Tier 1 capital, and

(ii) other own funds that ─

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

(II) are issued to and bought by entities that are not included in the same resolution group as long as the exercise of write-down or conversion powers in accordance with Regulations 95 to 98 does not affect the control of the subsidiary by the resolution entity.

(7) The resolution authority may waive the application of this Regulation to a subsidiary that is not a resolution entity where ─

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

(b) the resolution entity complies with the requirement referred to in Regulation 80G,

(c) there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities by the resolution entity to the subsidiary in respect of which a determination has been made in accordance with Regulation 95(8), in particular where resolution action is taken in respect of the resolution entity,

(d) the resolution entity satisfies the competent authority regarding the prudent management of the subsidiary and has declared, with the consent of the competent authority, that it guarantees the commitments entered into by the subsidiary, or the risks in the subsidiary are of no significance,

(e) the risk evaluation, measurement and control procedures of the resolution entity cover the subsidiary, and

(f) the resolution entity holds more than 50 per cent of the voting rights attached to shares in the

capital of the subsidiary or has the right to appoint or remove a majority of the members of the management body of the subsidiary.

(8) The resolution authority may also waive the application of this Regulation to a subsidiary that is not a resolution entity where ─

(a) both the subsidiary and its parent undertaking are established in the State and are part of the same resolution group,

(b) the parent undertaking complies on a consolidated basis with the requirement referred to in Regulation 80B(1) in the State,

(c) there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities by the parent undertaking to the subsidiary in respect of which a determination has been made in accordance with Regulation 95(8), in particular where resolution action or powers referred to in Regulation 95(1) to (4) are taken in respect of the parent undertaking,

(d) the parent undertaking satisfies the competent authority regarding the prudent management of the subsidiary and has declared, with the consent of the competent authority, that it guarantees the commitments entered into by the subsidiary, or the risks in the subsidiary are of no significance,

(e) the risk evaluation, measurement and control procedures of the parent undertaking cover the subsidiary, and

(f) the parent undertaking holds more than 50 per cent of the voting rights attached to shares in the capital of the subsidiary or has the right to appoint or remove a majority of the members of the management body of the subsidiary.

(9) Where the conditions laid down in subparagraphs (a) and (b) of paragraph (7) are met, the resolution authority, where it is the resolution authority of a subsidiary, may permit the requirement referred to in Regulation 80B(1) to be met in full or in part with a guarantee provided by the resolution entity, which satisfies the following conditions:

(a) the guarantee is provided for at least an amount that is equivalent to the amount of the requirement for which it substitutes;

(b) the guarantee is triggered on the occurrence of whichever of the following is the first to occur:

(i) the subsidiary is unable to pay its debts or other liabilities as they fall due;

(ii) a determination has been made in accordance with Regulation 95(8) in respect of the subsidiary;

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

(d) the collateral backing the guarantee satisfies the requirements of Article 197 of the Union Capital Requirements Regulation, which, following appropriately conservative haircuts, is sufficient to cover the amount collateralised as referred to in subparagraph (c);

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

(f) the collateral has an effective maturity that satisfies the same maturity condition as that referred to in Article 72c(1) of the Union Capital Requirements Regulation;

(g) there are no legal, regulatory or operational barriers to the transfer of the collateral from the resolution entity to the relevant subsidiary, including where resolution action is taken in respect of the resolution entity.

(10) For the purposes of paragraph (9)(g), at the request of the resolution authority, the resolution entity shall provide an independent written and reasoned legal opinion or shall otherwise satisfactorily demonstrate that there are no legal, regulatory or operational barriers to the transfer of collateral from the resolution entity to the relevant subsidiary.

Waiver for a central body and credit institutions permanently affiliated to a central body.

80I. The resolution authority may partially or fully waive the application of Regulation 80H in respect of a central body or of a credit institution which is permanently affiliated to a central body, where all of the following conditions are met:

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

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

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

(d) in the case of a waiver for a credit institution which is permanently affiliated to a central body, the management of the central body is empowered to issue instructions to the management of the permanently affiliated institutions;

(e) the relevant resolution group complies with the requirement referred to in Regulation 80G(3);

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

Procedure for determining the minimum requirement for own funds and eligible liabilities.

80J. (1) The resolution authority, where it is the resolution authority of the resolution entity, shall endeavour to reach a joint decision, with the group-level resolution authority (where different from the first-mentioned resolution authority) and, where it is responsible for the subsidiaries of a resolution group that are subject to the requirement referred to in Regulation 80H on an individual basis, with other such relevant authorities, on ─

(a) the amount of the requirement applied at the consolidated resolution group level for each resolution entity, and

(b) the amount of the requirement applied on an individual basis to each entity of a resolution group which is not a resolution entity.

(2) The joint decision referred to in paragraph (1) shall ensure compliance with Regulations 80G and 80H and shall be fully reasoned and provided by the resolution authority to ─

(a) the resolution entity, where the resolution authority is the resolution authority of that entity,

(b) any entity of a resolution group which is not a resolution entity, where the resolution authority is the resolution authority of that entity, and

(c) the Union parent undertaking of the group, by the resolution authority of the resolution entity where that Union parent undertaking is not itself a resolution entity from the same resolution group.

(3) The joint decision taken in accordance with this Regulation may provide that, where consistent with the resolution strategy and sufficient instruments complying with Regulation 80H(6) have not been bought directly or indirectly by the resolution entity, the requirements referred to in Regulation 80E(15) to (23) are partially met by the subsidiary in compliance with Regulation 80H(6) with instruments issued to and bought by entities not belonging to the resolution group.

(4) Where more than one G-SII entity (within the meaning of point (136) of Article 4(1) of the Union Capital Requirements Regulation) belonging to the same G-SII are resolution entities, the resolution authority where it is the resolution authority of the resolution entity as referred to in paragraph (1), shall discuss and, where appropriate and consistent with the G-SII's resolution strategy, agree, with the other resolution authorities referred to in paragraph (1), on the application of Article 72e of the Union Capital Requirements Regulation and any adjustment to minimise or eliminate the difference between ─

(a) the sum of the amounts referred to in Regulation 80F(4)(a) and Article 12a of the Union Capital Requirements Regulation for individual resolution entities, and

(b) the sum of the amounts referred to in Regulation 80F(4)(b) and Article 12a of the Union Capital Requirements Regulation.

(5) Any adjustment referred to in paragraph (4) may be applied subject to the following conditions:

(a) the adjustment may be applied in respect of differences in the calculation of the total risk exposure amounts between the relevant Member States by adjusting the level of the requirement;

(b) the adjustment shall not be applied to eliminate differences resulting from exposures between resolution groups.

(6) The sum of the amounts referred to in Regulation 80F(4)(a) and Article 12a of the Union Capital Requirements Regulation for individual resolution entities shall not be lower than the sum of the amounts referred to in Regulation 80F(4)(b) and Article 12a of the Union Capital Requirements Regulation.

(7) In the absence of the joint decision referred to in paragraph (1) within four months (in this Regulation referred to as the 'four month period'), a decision shall be taken in accordance with paragraphs (8) to (10).

(8) (a) Where the joint decision referred to in paragraph (1) is not taken within the four month period because of a disagreement concerning a consolidated resolution group requirement referred to Regulation 80G, a decision shall be taken on that requirement by the resolution authority where it is the resolution authority of the resolution entity after having duly taken into account ─

(i) the assessment of entities of the resolution group that are not a resolution entity, performed by the relevant resolution authorities, and

(ii) the opinion of the group-level resolution authority, where different from the resolution authority of the resolution entity.

(b) Where, at the end of the four month period, any of the resolution authorities concerned has referred the matter to the European Banking Authority in accordance with Article 19 of Regulation (EU) No 1093/2010, the resolution authority, where it is the resolution authority of the resolution entity, shall defer its decision and await any decision that the European Banking Authority may take in accordance with Article 19(3) of that Regulation, and shall take its decision in accordance with the decision of the European Banking Authority.

(c) The four month period shall be deemed to be the conciliation period within the meaning of Regulation (EU) No 1093/2010.

(d) The matter shall not be referred to the European Banking Authority as referred to in subparagraph (b) after the end of the four month period or after a joint decision referred to in paragraph (1) has been reached.

(e) In the absence of a decision by the European Banking Authority within one month of the referral of the matter concerned, the decision of the resolution authority of the resolution entity shall apply.

(9) (a) Where a joint decision referred to in paragraph (1) is not taken within the four month period because of a disagreement concerning the level of the requirement referred to in Regulation 80H to be applied to any entity of a resolution group on an individual basis, the decision shall be taken by the resolution authority where it is the resolution authority of that entity, where all of the following conditions are satisfied:

(i) the views and reservations expressed in writing by the resolution authority of the resolution entity have been duly taken into account;

(ii) where the group-level resolution authority is different from the resolution authority of the resolution entity, the views and reservations expressed in writing by the group-level resolution authority have been duly taken into account.

(b) Where, at the end of the four month period, the matter has been referred to the European Banking Authority in accordance with Article 19 of Regulation (EU) No 1093/2010, then, the resolution authority, where it is the resolution authority responsible for any subsidiary on an individual basis, shall defer its decision and await any decision that the European Banking Authority may take in accordance with Article 19(3) of that Regulation, and shall take its decision in accordance with the decision of the European Banking Authority.

(c) The four month period shall be deemed to be the conciliation period within the meaning of Regulation (EU) No 1093/2010.

(d) The matter shall not be referred to the European Banking Authority as referred to in subparagraph (b) after the end of the four month period or after a joint decision referred to in paragraph (1) has been reached.

(e) Where the resolution authority is the resolution authority of the resolution entity or the group-level resolution authority it shall not refer the matter to the European Banking Authority for binding mediation where the level set by the resolution authority of the subsidiary ─

(i) is within 2 per cent of the total risk exposure amount calculated in

accordance with Article 92(3) of the Union Capital Requirements Regulation of the requirement referred to in Regulation 80G, and

(ii) complies with Regulation 80E(14) to (22).

(f) In the absence of a decision by the European Banking Authority within one month of the referral to it of the matter concerned, the decision of the resolution authority, where it is the resolution authority for any subsidiary on an individual basis, shall apply.

(10) Where a joint decision referred to in paragraph (1) is not taken within the four month period because of a disagreement concerning the level of the consolidated resolution group requirement and the level of the requirement to be applied to the resolution group's entities on an individual basis, the following shall apply:

(a) a decision shall be taken on the level of the requirement to be applied to the resolution group's subsidiaries on an individual basis in accordance with paragraph (9);

(b) a decision shall be taken on the level of the consolidated resolution group requirement in accordance with paragraph (8).

(11) The joint decision referred to in paragraph (1) and any decisions taken by the resolution authorities referred to in paragraphs (8) to (10) in the absence of a joint decision shall be binding on the resolution authority.

(12) The joint decision referred to in paragraph (1) and any decisions taken in the absence of a joint decision shall be reviewed, and where relevant updated, by the resolution authority following consultation with other resolution authorities, on a regular basis.

(13) The resolution authority, in coordination with the competent authority, shall require and verify that entities meet the requirement referred to in Regulation 80B(1), and shall take any decision pursuant to this Regulation in parallel with the development and the maintenance of resolution plans.

Supervisory reporting and public disclosure of the requirement.

80K. (1) Entities referred to in Regulation 2(1) that are subject to the requirement referred to in Regulation 80B(1) shall report to the competent authority and resolution authority the following information:

(a) the amounts of own funds that, where applicable, meet the conditions of Regulation 80H(6)(b), and the amounts of eligible liabilities, and the

expression of those amounts in accordance with Regulation 80B(2) after any applicable deductions in accordance with Articles 72e to 72j of the Union Capital Requirements Regulation;

(b) the amounts of other bail-inable liabilities;

(c) in the case of the items referred to in subparagraphs (a) and (b) ─

(i) their composition, including their maturity profile,

(ii) their ranking in normal insolvency proceedings, and

(iii) whether they are governed by the laws of a third country and, if so, which third country and whether they contain the contractual terms referred to in Regulation 94(1) to (3) and points (p) and (q) of Article 52(1) and points (n) and (o) of Article 63 of the Union Capital Requirements Regulation.

(2) The obligation to report on the amounts of other bail-inable liabilities referred to in paragraph (1)(b) shall not apply to entities that, at the date of the reporting of that information, hold amounts of own funds and eligible liabilities of at least 150 per cent of the requirement referred to in Regulation 80B(1) as calculated in accordance with paragraph (1)(a).

(3) The entities referred to in paragraph (1) shall report —

(a) at least twice in each year, the information referred to in paragraph (1)(a), and

(b) at least once in each year, the information referred to in paragraph (1)(b) and (c).

(4) At the request of the competent authority or resolution authority, the entities referred to in paragraph (1) shall report the information referred to in that paragraph on a more frequent basis.

(5) The entities referred to in paragraph (1) shall make the following information publicly available at least once in each year:

(a) the amounts of own funds that, where applicable, meet the conditions of Regulation 80H(6)(b) and eligible liabilities;

(b) the composition of the items referred to in subparagraph (a), including their maturity profile and ranking in normal insolvency proceedings;

(c) the applicable requirement referred to in Regulation 80C or 80H expressed in accordance with Regulation 80B(2).

(6) Paragraphs (1), (2) and (5) shall not apply to entities whose resolution plan provides that the entity is to be wound up under normal insolvency proceedings.

(7) Where resolution actions have been implemented or the write-down or conversion power referred to in Regulation 95 have been exercised, public disclosure requirements referred to in paragraph (5) shall apply from the date of the deadline to comply with the requirements of Regulation 80G or 80H which are referred to in Regulation 80O.

Reporting to European Banking Authority.

80L. The resolution authority shall inform the European Banking Authority of the minimum requirement for own funds and eligible liabilities that has been set, in accordance with Regulation 80G or 80H, for each entity under its jurisdiction.

Breaches of the minimum requirement for own funds and eligible liabilities.

80M. (1) Any breach of the minimum requirement for own funds and eligible liabilities referred to in Regulation 80G or 80H shall be addressed by the resolution authority or the competent authority, as the case may be, through the use of at least one of the following:

(a) powers to address or remove impediments to resolvability in accordance with Regulations 28 and 29;

(b) powers referred to in Regulation 27A;

(c) measures referred to in Regulation 92 of the Capital Requirements Regulations;

(d) early intervention measures in accordance with Regulation 39;

(e) administrative penalties and other administrative measures in accordance with Part IIIC of the Act of 1942 or Regulation 174, as the case may be.

(2) The competent authority may also carry out an assessment of whether the institution or entity referred to in Regulation 2(1)(b) to (i) is failing or is likely to fail, in accordance with Regulation 62, 62a or 63, as applicable.

(3) The resolution authority and competent authority, when exercising their respective powers referred to in paragraph (1), shall consult with each other and, as appropriate, with relevant competent authorities and resolution authorities.

Cooperation by resolution authority with European Banking Authority.

80N. The competent authority and resolution authority shall cooperate with the European Banking Authority for the purposes of the submission by the European Banking Authority of a report to the Commission as provided for by Article 45l of the Bank Recovery and Resolution Directive.

Transitional and post-resolution arrangements.

80O. (1) Notwithstanding Regulation 80B(1), subject to paragraphs (2) and (8), the resolution authority shall determine appropriate transitional periods for institutions or entities referred to in Regulation 2(1)(b) to (i) to comply with the requirements in Regulation 80G or 80H or with requirements that result from the application of Regulation 80D(7), (8), (9), (10), (11), (12), (13) or (16), as appropriate.

(2) Subject to paragraph (4), institutions and entities referred to in Regulation 2(1)(b) to (i) shall comply with the requirements in Regulation 80G or 80H or with requirements that result from the application of Regulation 80D(7), (8), (9), (10), (11), (12), (13) of (16) by 1 January 2024.

(3) (a) The resolution authority shall determine intermediate target levels for the requirements in Regulation 80G or 80H or for requirements that result from the application of Regulation 80B(7), (8), (9), (10), (11), (12), (13) or (16), as appropriate, that institutions or entities referred to in Regulation 2(1)(b) to (i) shall comply with before 1 January 2022.

(b) The intermediate target levels referred to in subparagraph (a) shall ensure a linear build-up of own funds and eligible liabilities towards the requirements referred to in that subparagraph.

(4) The resolution authority may set a transitional period, as provided for by paragraph (1), that ends after 1 January 2024 where duly justified and appropriate on the basis of the criteria referred to in paragraph (11), taking into consideration ─

(a) the development of the entity's financial situation,

(b) the prospect that the entity will be able to ensure compliance in a reasonable timeframe with the requirements in Regulation 80G or 80H or with a requirement that results from the application of Regulation 80D(7), (8), (9), (10), (11), (12), (13) or (16), and

(c) whether the entity is able to replace liabilities that no longer meet the eligibility or maturity criteria laid down in Articles 72b and 72c of the Union Capital Requirements Regulation, and Regulation 80D or 80H(6) and, if not, whether that inability is of an entity-specific nature or is due to market-wide disturbance.

(5) Resolution entities shall comply with the minimum level of the requirements referred to in Regulation 80E(12) or (13) by 1 January 2022.

(6) The minimum levels of the requirements referred to in Regulation 80E(12) and (13) shall not apply during the period of 2 years after ─

(a) the date on which the resolution authority has applied the bail-in tool, or

(b) the date on which ─

(i) the resolution entity has put in place an alternative private sector measure as referred to in Regulation 62(1)(b) by which capital instruments and other liabilities have been written down or converted into Common Equity Tier 1 instruments, or

(ii) write-down or conversion powers, in accordance with Regulation 95, have been exercised in respect of that resolution entity,

in order to recapitalise the resolution entity without the application of resolution tools.

(7) The requirements referred to in Regulations 80D(7), (8), (9), (10), (11) and (16) and Regulation 80E(12) and (13), as applicable, shall not apply during the period of 3 years after the date on which ─

(a) the resolution entity or the group of which the resolution entity is part has been identified as a G-SII, or

(b) the resolution entity starts to be in the situation referred to in Regulation 80E(12) or (13).

(8) Notwithstanding Regulation 80B(1), the resolution authority shall determine an appropriate transitional period within which to comply with the requirements of Regulation 80G or 80H, or a requirement resulting from the application of Regulation 80D(7), (8), (9), (10), (11), (12), (13) or (16), as appropriate, for institutions or entities referred to in Regulation 2(1)(b) to (i) to which resolution tools

or the write-down or conversion power referred to in Regulation 95 have been applied.

(9) For the purposes of paragraphs (1) to (8), the resolution authority shall communicate to the institution or entity referred to in Regulation 2(1)(b) to (i) a planned minimum requirement for own funds and eligible liabilities for each 12 month period during the transitional period concerned, with a view to facilitating a gradual build-up of its loss-absorbing and recapitalisation capacity.

(10) At the end of the transitional period concerned, the minimum requirement for own funds and eligible liabilities shall be equal to the amount determined under Regulation 80D(7), (8), (9), (10), (11), (12), (13) or (16), 80E(12) or (13), 80G or 80H, as applicable.

(11) When determining the transitional periods in accordance with paragraphs (1) to (8), the resolution authority shall take into account ─

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

(b) the access to the capital markets for eligible liabilities, and

(c) the extent to which the resolution entity relies on Common Equity Tier 1 capital to meet the requirement referred to in Regulation 80G.

(12) Subject to paragraphs (1) to (4), the resolution authority shall not be prevented from subsequently revising either the transitional period concerned or any planned minimum requirement for own funds and eligible liabilities communicated under paragraph (9).".

Amendment of Regulation 84A of Regulations of 2015

23. The following Regulation is substituted for Regulation 84A of the Regulations of 2015:

"Non-application of Regulation 80J to certain entities.

84A. Regulation 80J, insofar as it concerns a joint decision or any decision taken in the absence of a joint decision, shall not apply to the entities referred to in Article 2 of the SRM Regulation.".

Amendment of Regulation 85 of Regulations of 2015 (assessment of amount of bail-in)

24. Regulation 85 of the Regulations of 2015 is amended in paragraphs (1) to (4) by the substitution of "bail-inable liabilities" for "eligible liabilities" in each place where it occurs.

Amendment of Regulation 86 of Regulations of 2015 (treatment of shareholders in bail-in or write-down or conversion of capital instruments)

25. Regulation 86 of the Regulations of 2015 is amended in paragraph (1)(c)(ii) by the substitution of "bail-inable liabilities" for "eligible liabilities".

Amendment of Regulation 87 of Regulations of 2015 (sequence of write-down and conversion)

26. Regulation 87 of the Regulations of 2015 is amended ─

(a) in paragraph (1), by the substitution of the following for subparagraph (e):

"(e) where the total reduction of shares or other instruments of ownership, relevant capital instruments and bail-inable liabilities pursuant to subparagraphs (a) to (d) is less than the sum of the amounts referred to in Regulation 86(4)(b) and (c), the resolution authority shall reduce, to the extent required, the principal amount of, or outstanding amount payable in respect of, the rest of bail-inable liabilities, including debt instruments referred to in section 1428A(1)(d) of the Act of 2014, in accordance with the hierarchy of claims in normal insolvency proceedings, including the ranking of deposits provided for in the said section 1428A(1)(d) , pursuant to Regulation 80, in conjunction with the write-down pursuant to subparagraphs (a) to (d) to produce the sum of the amounts referred to in Regulation 86(4)(b) and (c).",

and

(b) in paragraphs (2) and (3), by the substitution of "bail-inable liabilities" for "eligible liabilities" in each place where it occurs.

Contractual recognition of bail-in

27. The following Regulation is substituted for Regulation 94 of the Regulations of 2015:

"94. (1) Institutions and entities referred to in Regulation 2(1)(b) to (i) shall include a contractual term by which the creditor or party to the agreement or instrument creating the liability recognises that such liability may be subject to the write-down and conversion powers, and agrees to be bound by any reduction of the principal or outstanding amount due, conversion or cancellation that is effected by the exercise of those powers by a resolution authority (within the meaning of the Bank Recovery and Resolution Directive), provided that that liability complies with all of the following conditions:

(a) the liability is not excluded under Regulation 80(2) to (8);

(b) the liability is not a deposit referred to in section 1428A(1)(b)(i) or (ii) of the Act of 2014;

(c) the liability is governed by the law of a third country;

(d) the liability is issued or entered into on or after 28 December 2020.

(2) The resolution authority may decide that the obligation in paragraph (1) shall not apply to institutions or entities in respect of which the requirement under Regulation 80B(1) equals the loss-absorption amount (within the meaning of Regulation 80E(2)(a)(i)), provided that liabilities that meet the conditions referred to in paragraph (1) and which do not include the contractual term referred to in that paragraph are not counted towards that requirement.

(3) Paragraph (1) shall not apply where the resolution authority determines that the liabilities or instruments referred to in paragraph (1) can be subject to write-down and conversion powers by the resolution authority, or by the resolution authority of another Member State, pursuant to the law of the third country or to a binding agreement concluded with that third country.

(4) Where an institution or entity referred to in Regulation 2(1)(b) to (i) determines that it is legally or otherwise impracticable to include in the contractual provisions governing a relevant liability a term required in accordance with paragraph (1), such institution or entity shall notify its determination, including the designation of the class of the liability and the justification for that determination, to the resolution authority.

(5) The institution or entity shall provide the resolution authority with all information that the resolution authority requests, within a reasonable timeframe following the receipt of the notification under paragraph (4), in order for the resolution authority to assess the effect of such notification on the resolvability of that institution or entity.

(6) Where there is a notification under the paragraph (4), the obligation to include in the contractual provisions a term required in

accordance with paragraph (1) is suspended immediately on receipt by the resolution authority of the notification.

(7) Where the resolution authority concludes that it is not legally or otherwise impracticable to include in the contractual provisions a term required in accordance with paragraph (1), taking into account the need to ensure the resolvability of the institution or entity, it shall require, within a reasonable timeframe after the notification under to paragraph (4), the inclusion of such contractual term.

(8) The resolution authority may, in addition to requiring the inclusion of a contractual term under paragraph (7), require the institution or entity to amend its practices concerning the application of the exemption from contractual recognition of bail-in.

(9) The liabilities referred to in paragraph (4) shall not include Additional Tier 1 instruments, Tier 2 instruments and debt instruments within the meaning of section 1428A of the Act of 2014, where those instruments are unsecured liabilities.

(10) The liabilities referred to in paragraph (4) shall be senior to the liabilities referred to in section 1428A(1)(c) and (d) of the Act of 2014.

(11) Where the resolution authority, in the context of the assessment of the resolvability of an institution or entity referred to in Regulation 2(1)(b) to (i) in accordance with Regulations 26 and 27, or at any other time, determines that, within a class of liabilities which includes eligible liabilities, the amount of liabilities that, in accordance with the paragraph (4), do not include the contractual term required in accordance with paragraph (1), together with the liabilities which are excluded from the application of the bail-in tool in accordance with Regulation 80(2) to (8) or which are likely to be excluded in accordance with Regulation 80(9) and (10) amounts to more than 10 per cent 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 Regulation 132 when applying write-down and conversion powers to eligible liabilities.

(12) Where the resolution authority concludes, on the basis of the assessment referred to in paragraph (11), that the liabilities which, in accordance with paragraph (4), do not include the contractual term required in accordance with paragraph (1), create a substantive impediment to resolvability, it shall apply the powers provided in Regulation 28, as appropriate, to remove that impediment to resolvability.

(13) Liabilities for which the institution or entity referred to in Regulation 2(1)(b) to (i) fails to include in the contractual provisions the term required in accordance with paragraph (1) or for which, in accordance with paragraphs (4) to (12) that requirement does not apply, shall not be counted towards the minimum requirement for own funds and eligible liabilities.

(14) The resolution authority may require institutions and entities referred to in Regulation 2(1)(b) to (i) to provide it with a legal opinion relating to the legal enforceability and effectiveness of the contractual term referred to in paragraph (1).

(15) Where an institution or entity referred to in Regulation 2(1)(b) to (i) does not include in the contractual provisions governing a relevant liability a contractual term required in accordance with paragraph (1), that shall not prevent the resolution authority from exercising the write-down and conversion powers in relation to that liability.

(16) The resolution authority shall specify, where it deems it necessary, the categories of liabilities for which an institution or entity referred to in Regulation 2(1)(b) to (i) may reach the determination referred to in paragraph (4) that it is legally or otherwise impracticable to include the contractual term required in accordance with paragraph (1), based on the conditions further specified in the regulatory technical standards referred to in Article 55(6) of the Bank Recovery and Resolution Directive.".

Amendment of title to Chapter 4 of Part 4 of Regulations of 2015

28. The following title is substituted for the title to Chapter 4 of Part 4 of the Regulations of 2015:

"*Write-down or conversion of capital instruments and eligible liabilities*".

Amendment of Regulation 95 of Regulations of 2015 (requirement to write down or convert capital instruments)

29. The following Regulation is substituted for Regulation 95 of the Regulations of 2015:

"**Requirement to write down or convert relevant capital instruments and eligible liabilities.**

95. (1) The Court shall, on the application of the resolution authority, have the power to make an order (in these Regulations referred to as a 'capital instruments order') to write-down or convert relevant capital instruments and eligible liabilities into shares or other instruments of ownership of institutions and entities referred to in Regulation 2(1)(b) to (i).

(2) The power to write down or convert relevant capital instruments and eligible liabilities referred to in paragraph (1) may be exercised either ─

(a) independently of resolution action, or

(b) in combination with a resolution action, where the conditions for resolution specified in Regulation 62, 62A or 63 are met.

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

(4) After the exercise of the power to write-down or convert relevant capital instruments and eligible liabilities independently of resolution action, the valuation provided for in Regulation 133 shall be carried out, and Regulation 134 shall apply.

(5) (a) The power to write-down or convert eligible liabilities independently of resolution action may be exercised only in relation to eligible liabilities that meet the conditions referred to in Regulation 80H(6)(a), except the condition related to the remaining maturity of liabilities as set out in Article 72c(1) of the Union Capital Requirements Regulation.

(b) When the power referred to in subparagraph (a) is exercised, the write-down or conversion shall be done in accordance with the principle referred to in Regulation 64(1)(g).

(6) Where a resolution action is taken in relation to a resolution entity or, in exceptional circumstances in deviation from the resolution plan, in relation to an entity that is not a resolution entity, the amount that is reduced, written down or converted in accordance with Regulation 96(1) at the level of such an entity shall count towards the thresholds laid down in Regulation 80(12)(a) that apply to the entity concerned.

(7) Where a determination has been made that conditions for resolution specified in Regulations 62 and 63 have been met, the proposed resolution order made in accordance with Regulation 104 shall provide for the write-down and conversion of relevant capital instruments and eligible liabilities referred to in paragraph (5).

(8) The resolution authority shall exercise the write-down or conversion power, in accordance with Regulation 96 and without delay, in relation to relevant capital instruments, and eligible liabilities referred to in paragraph (5), issued by an institution or entity referred to in Regulation 2(1)(b) to (i) when one or more of the following circumstances apply:

(a) where the determination has been made that the conditions for resolution specified in Regulation 62, 62A or 63 have been met, before any proposed resolution order is made;

(b) the competent authority determines that unless that power is exercised in relation to the relevant capital instruments, and eligible liabilities as referred to in paragraph (5), the institution or entity referred to in Regulation 2(1)(b) to (i) will no longer be viable;

(c) in the case of relevant capital instruments issued by a subsidiary and where those capital instruments are recognised for the purposes of meeting own funds requirements on an individual and on a consolidated basis, the competent authority and the appropriate authority of another Member State have made a joint determination taking the form of a joint decision in accordance with Regulation 156(5) to (9) that unless the write-down or conversion power is exercised in relation to those instruments, the group will no longer be viable;

(d) in the case of relevant capital instruments issued at the level of the parent undertaking and where those capital instruments are recognised for the purposes of meeting own funds requirements on an individual basis at the level of the parent undertaking or on a consolidated basis, the competent authority, where it is the consolidating supervisor of the group concerned, has made a determination that unless the write-down or conversion power is exercised in relation to those instruments, the group will no longer be viable;

(e) extraordinary public financial support is required by the institution or entity referred to in Regulation 2(1)(b) to (i) other than in any of the circumstances set out in Regulation 62(3)(d)(iii).

(9) For the purposes of paragraph (8), an institution or entity referred to in Regulation 2(1)(b) to (i) or a group shall be considered to be no longer viable only if both of the following conditions are met:

(a) the institution or entity referred to in Regulation 2(1)(b) to (i) or the group is failing or likely to fail;

(b) having regard to timing and other relevant circumstances, there is no reasonable prospect that any action, including alternative private sector measures or supervisory action (including

early intervention measures), other than the write-down or conversion of capital instruments, or eligible liabilities as referred to in paragraph (5), independently or in combination with a resolution action would prevent the failure of the institution or entity referred to in Regulation 2(1)(b) to (i) or the group within a reasonable timeframe.

(10) For the purposes of paragraph (9)(a) ─

(a) an institution or entity referred to in Regulation 2(1)(b) to (i) shall be considered to be failing or likely to fail where one or more of the circumstances set out in Regulation 62(3) occurs, and

(b) a group shall be considered to be failing or likely to fail where the group infringes or there are objective elements to support a determination that the group, in the near future, will infringe its consolidated prudential requirements in a way that would justify action by the competent authority including but not limited to because the group has incurred or is likely to incur losses that will deplete all or a significant amount of its own funds.

(11) A relevant capital instrument issued by a subsidiary shall not be written down to a greater extent or converted pursuant to paragraph (8)(b) on worse terms than equally ranked capital instruments at the level of the parent undertaking which have been written down or converted.

(12) Before making a determination referred to in paragraph (8)(c) in relation to a subsidiary that issues relevant capital instruments that are recognised for the purposes of meeting the own funds requirements on an individual and on a consolidated basis, the competent authority shall comply with the notification and consultation requirements set out in Regulation 98.

(13) Before making a proposed capital instruments order, the resolution authority shall ensure that a valuation of the assets and liabilities of the institution or entity referred to in Regulation 2(1)(b) to (i) has been carried out in accordance with Regulation 65 or 66 and that valuation shall form the basis of the calculation of the write-down to be applied to the relevant capital instruments, or eligible liabilities as referred to in paragraph (5) in order to absorb losses and the level of conversion to be applied to relevant capital instruments, or eligible liabilities as referred to in paragraph (5) in order to recapitalise the institution or the entity concerned.”.

Amendment of Regulation 96 of Regulations of 2015 (provisions governing write-down or conversion of capital instruments)

30. Regulation 96 of the Regulations of 2015 is amended ─

(a) in paragraph (1) ─

(i) in subparagraph (c), by the substitution of "lower;" for "lower.", and

(ii) by the insertion of the following subparagraph after subparagraph (c):

"(d) the principal amount of eligible liabilities referred to in Regulation 95(5)(a) is written down or converted into Common Equity Tier 1 instruments or both, to the extent required to achieve the resolution objectives or to the extent of the capacity of the relevant eligible liabilities, whichever is lower.",

(b) by the substitution of the following paragraph for paragraph (2):

"(2) Where the principal amount of a relevant capital instrument, or an eligible liability as referred to in Regulation 95(5)(a) is written down ─

(a) the reduction of that principal amount shall be permanent, subject to any write up in accordance with the reimbursement mechanism in Regulation 85(4) and (5),

(b) no liability to the holder of the relevant capital instrument, or of the eligible liability as referred to in Regulation 95(5)(a), shall remain under or in connection with that amount of the instrument, which has been written down, except for any liability already accrued, and any liability for damages that may arise as a result of an appeal challenging the legality of the exercise of the write-down power, and

(c) no compensation is paid to any holder of the relevant capital instruments, or of the liabilities as

referred to in Regulation 95(2)(a), other than in accordance with paragraph (4).",

(c) by the substitution of the following paragraph for paragraph (4):

"(4) In order to effect a conversion of relevant capital instruments, and eligible liabilities as referred to in Regulation 95(5)(a), under paragraph (1)(b), (c) and (d), the resolution authority may direct institutions and entities referred to in Regulation 2(1)(b) to (i) to issue Common Equity Tier 1 instruments to the holders of the relevant capital instruments and such eligible liabilities.",

(d) in paragraph (5), by the substitution of "The relevant capital instruments and liabilities referred to in paragraph (4) may only be converted where the Common Equity Tier 1 instruments referred to in that paragraph are ─ " for "The Common Equity Tier 1 instruments referred to in paragraph (4) shall be ─ ", and

(e) in paragraph (6), by the substitution of "each relevant capital instrument, or each eligible liability as referred to in Regulation 95(5)(a)" for "each relevant capital instrument".

Amendment of Regulation 97 of Regulations of 2015 (authorities responsible for determination)

31. Regulation 97 of the Regulations of 2015 is amended by the insertion of the following paragraph after paragraph (3):

"(4) Where ─

(a) the relevant capital instruments, or eligible liabilities as referred to in Regulation 95(5)(a), have been issued by an institution or entity referred to in Regulations 2(1)(b) to (i), and

(b) those relevant capital instruments or eligible liabilities are recognised for the purposes of meeting the requirement referred to in Regulation 80H(1) to (5),

the competent authority shall be responsible for making the determination referred to in Regulation 95(8)(b).".

Amendment of Regulation 98 of Regulations of 2015 (consolidated application: procedure for determination)

32. Regulation 98 of the Regulations of 2015 is amended ─

(a) by the substitution of the following paragraph for paragraph (1):

"(1) The competent authority, before making a determination referred to in Regulation 95(8)(b), (c), (d) or (e) in relation to a subsidiary that issues relevant capital instruments, or eligible liabilities as referred to in Regulation 95(5)(a), for the purposes of meeting the requirement referred to in Regulation 80H on an individual basis or relevant capital instruments that are recognised for the purposes of meeting the own funds requirements on an individual or consolidated basis, shall comply with the following requirements:

(a) when considering whether to make a determination referred to in Regulation 95(8) (b), (c), (d) or (e), after consulting with the resolution authority of the relevant resolution entity, it shall notify, within 24 hours of consulting with that resolution authority ─

(i) the consolidating supervisor and, if different, the appropriate authority in the Member State where the consolidating supervisor is located, and

(ii) resolution authorities of other entities within the same resolution group that directly or indirectly purchased liabilities referred to in Regulation 80H(6) from the entity that is subject to Regulation 80H(1) to (5);

(b) when considering whether to make a determination referred to in Regulation 95(8)(c), it shall notify, without delay, the competent authority responsible for each institution or entity referred to in Regulation 2(1)(b) to (i) that has issued the relevant capital instruments in relation to which the write-down or conversion powers are to be exercised if that determination were made, and, if different, the appropriate authorities in the Member States where those competent authorities and the consolidating supervisor are located.",

and

(b) in paragraph (3), by the substitution of the following for "The competent authority, after consulting with the authorities notified under paragraph (1), shall assess the following matters:":

"Where a notification has been made pursuant to paragraph (1), the competent authority, after consulting with the authorities notified in accordance with subparagraph (a)(i) or (b) of that paragraph, shall assess the following matters:".

Amendment of Regulation 111 of Regulations of 2015 (powers of Court in making resolution order — general)

33. Regulation 111(1) of the Regulations of 2015 is amended in subparagraphs (c), (d) and (h) by the substitution of "bail-inable liabilities" for "eligible liabilities" in each place where it occurs.

Amendment of Regulation 126 of Regulations of 2015 (power of another Member State to enforce crisis management measures or crisis prevention measures)

34. Regulation 126 of the Regulations of 2015 is amended in paragraph (4) by the substitution of "bail-inable liabilities" for "eligible liabilities".

Amendment of Regulation 128 of Regulations of 2015 (exclusion of certain contractual terms in early intervention and resolution)

35. Regulation 128 of the Regulations of 2015 is amended —

(a) in paragraph (4), by the substitution of "a crisis prevention measure, a suspension of obligation under Regulation 63A" for "a crisis prevention measure", and

(b) by the substitution of the following paragraph for paragraph (6):

"(6) A suspension or restriction under Regulation 63A, 129 or 130 shall not constitute non-performance of a contractual obligation for the purposes of paragraphs (1), (2) and (4) and of Regulation 131(1).".

Amendment of Regulation 129 of Regulations of 2015 (power to suspend certain obligations)

36. Regulation 129 of the Regulations of 2015 is amended —

(a) by the substitution of the following paragraph for paragraph (4):

"(4) The power referred to in paragraph (1) shall not apply to payment or delivery obligations owed to the following:

(a) systems and operators of systems designated in accordance with Directive 98/26/EC;

(b) CCPs authorised in the Union pursuant to Article 14 of Regulation (EU) No 648/2012 and third-country CCPs recognised by ESMA pursuant to Article 25 of that Regulation;

(c) central banks.",

and

(b) by the insertion of the following paragraphs after paragraph (4):

"(5) The resolution authority shall ─

(a) exercise the power referred to in paragraph (1) having regard to the circumstances of each case, and

(b) in particular, carefully assess the appropriateness of extending the suspension to eligible deposits, especially to covered deposits held by natural persons and micro, small and medium-sized enterprises.

(6) Where the power to suspend payment or delivery obligations pursuant to paragraph (1) is exercised in respect of eligible deposits, the resolution authority shall direct any institution or entity in respect of whom that power is exercised to ensure that the depositors concerned have access to an appropriate daily amount (in this Regulation referred to as the 'appropriate daily amount') from those deposits determined by the resolution authority in accordance with paragraphs (7) and (8).

(7) For the purposes of paragraph (6), the resolution authority ─

(a) shall determine the appropriate daily amount having regard to all or any of the factors set out in paragraph (8), and

(b) may direct the entity to provide the resolution authority with such

information as the resolution authority considers reasonably necessary for the purpose of determining the appropriate daily amount.

(8) The factors referred to in paragraph (7) are as follows:

(a) the balance sheet position of the institution or entity concerned, including its liquidity position;

(b) the total amount of eligible deposits held by the institution or entity concerned;

(c) the total number of depositors of the institution or entity concerned;

(d) the period of the suspension pursuant to paragraph (1);

(e) the amount which is likely to be required by different classes of depositors to meet reasonable daily expenses under the economic conditions prevailing in the State when the power of suspension pursuant to paragraph (1) is exercised;

(f) such further information as may be provided to the resolution authority pursuant to a direction under paragraph (7)(b).".

Amendment of Regulation 130 of Regulations of 2015 (power to restrict enforcement of security interests)

37. Regulation 130 of the Regulations of 2015 is amended by the substitution of the following paragraph for paragraph (2):

"(2) The resolution authority shall not exercise the power referred to in paragraph (1) in relation to any of the following:

(a) security interest of systems or operators of systems designated for the purposes of Directive 98/26/EC;

(b) CCPs authorised in the Union pursuant to Article 14 of Regulation (EU) No 648/2012 and third-country CCPs recognised by ESMA pursuant to Article 25 of Regulation (EU) No 648/2012;

(c) central banks, over assets pledged or provided by way of margin or collateral by the institution under resolution.".

Amendment of Regulation 131 of Regulations of 2015 (power to temporarily suspend termination rights)

38. Regulation 131 of the Regulations of 2015 is amended by the substitution of the following paragraph for paragraph (4):

"(4) Any suspension under paragraph (1) or (2) shall not apply to ─

(a) systems or operators of systems designated for the purposes of Directive 98/26/EC,

(b) CCPs authorised in the Union pursuant to Article 14 of Regulation (EU) No 648/2012 and third-country CCPs recognised by ESMA pursuant to Article 25 of that Regulation, or

(c) central banks.".

Contractual recognition of resolution stay powers

39. The following Regulation is inserted after Regulation 131 of the Regulations of 2015:

"131A. (1) Institutions and entities referred to in Regulation 2(1)(b) to (i) shall include in any financial contract which they enter into and which is governed by third-country law, terms by which the parties recognise that the financial contract may be subject to the exercise of powers by the resolution authority to suspend or restrict rights and obligations under Regulations 63A, 129, 130 and 131 and recognise that they are bound by the requirements of Regulation 128.

(2) Union parent undertakings shall ensure that their third-country subsidiaries which are credit institutions, financial institutions, investment firms, or those firms which would be investment firms if they had a head office in the State, include, in the financial contracts referred to in paragraph (1), terms to exclude that the exercise of the power of the resolution authority to suspend or restrict rights and obligations of the Union parent undertaking, in accordance with paragraph (1), constitutes a valid ground for early termination, suspension, modification, netting, exercise of set-off rights or enforcement of security interests on those contracts.

(3) Paragraph (1) shall apply to any financial contract which ─

(a) creates a new obligation or materially amends an existing obligation on or after 28 December 2020, or

(b) provides for the exercise of one or more termination rights or rights to enforce security

interests to which Regulation 63A, 128, 129, 130 or 131 would apply if the financial contract were governed by the laws of the State.

(4) Where an institution or entity does not include the contractual term required in accordance with paragraph (1), it shall not prevent the resolution authority from applying the powers referred to in Regulation 63A, 128, 129, 130 or 131 in relation to that financial contract.".

Amendment of Regulation 152 of Regulations of 2015 (resolution colleges)

40. Regulation 152 of the Regulations of 2015 is amended ─

(a) by the substitution of the following paragraph for paragraph (1):

"(1) Subject to Regulation 153, where the resolution authority is a group-level resolution authority it shall establish resolution colleges to carry out the tasks referred to in Regulations 21 22, 27, 29, 80B to 80J, 155 and 156 and, where appropriate, to ensure cooperation and coordination with third-country resolution authorities.",

and

(b) in paragraph (2) ─

(i) by the substitution of "Resolution colleges" for "The resolution college", and

(ii) in subparagraph (c)(ix), by the substitution of "Regulations 80B to 80J" for "Regulations 82 and 83".

Amendment of Regulation 153 of Regulations of 2015 (European resolution colleges)

41. The following Regulation is substituted for Regulation 153 of the Regulations of 2015:

"153. (1) Where a third-country institution or third-country parent undertaking has -

(a) subsidiaries established in the Union or Union parent undertakings, established in two or more Member States, or

(b) two or more Union branches that are regarded as significant by two or more Member States,

the resolution authority, where it is the resolution authority of any such entity, shall, in cooperation with any other relevant resolution authority, establish one single European resolution college.

(2) Where the resolution authority is a member of the European resolution college referred to in paragraph (1) it shall perform the functions and carry out the tasks specified in Regulation 152 with respect to the entities referred in paragraph (1) and, in so far as those tasks are relevant, to their branches.

(3) The tasks referred to in paragraph (2) shall include the setting of the requirement referred to in Regulations 80B to 80J.

(4) When setting the requirement referred to in Regulations 80B to 80J, members of the European resolution college shall take into consideration the global resolution strategy, if any, adopted by third-country authorities.

(5) Where, in accordance with the global resolution strategy, subsidiaries established in the Union or a Union parent undertaking and its subsidiary institutions are not resolution entities and the members of the European resolution college agree with that strategy, subsidiaries established in the State or, on a consolidated basis, the Union parent undertaking, where it is established in the State, shall comply with the requirement of Regulation 80H(1) to (5) by issuing instruments referred to in subparagraphs (a) and (b) of Regulation 80H(6) to their ultimate parent undertaking established in a third country, or to the subsidiaries of that ultimate parent undertaking that are established in the same third country or to other entities under the conditions set out in subparagraphs (a)(i) and (b)(ii) of Regulation 80H(6).

(6) Where only one Union parent undertaking holds all Union subsidiaries of a third-country institution or third-country parent undertaking and such Union parent undertaking is established in the State, the resolution authority shall chair the European resolution college.

(7) Where paragraph (6) does not apply and the resolution authority is the resolution authority of a Union parent undertaking or a Union subsidiary with the highest value of total on-balance sheet assets held, the resolution authority shall chair the European resolution college.

(8) Where the resolution authority and Union resolution authorities of other Member States concerned agree that another group or college, including a resolution college established under Regulation 152, performs the same functions, carries out the same tasks and complies with all conditions and procedures, including those covering membership and participation in European resolution colleges, specified in this Regulation and in Regulation 154, the resolution authority shall not be required to establish a European resolution college.

(9) Where paragraph (8) applies, all references in this Regulation to a European resolution college shall also be understood as references to that other group or college.

(10) Subject to paragraphs (6) to (9), the European resolution college shall otherwise function in accordance with Regulation 152.

(11) The resolution authority, the competent authority and the Minister may act as a member of, or participate in, the European resolution college, in the manner specified in Regulation 152.".

Amendment of Regulation 174 of Regulations of 2015 (penalties: specific provisions)

42. Regulation 174 of the Regulations of 2015 is amended in paragraph (3) ─

(a) in subparagraph (d), by the substitution of "Regulation 143(1);" for "Regulation 143(1).", and

(b) by the insertion of the following subparagraph after subparagraph (d):

"(e) failure to comply with the minimum requirement for own funds and eligible liabilities referred to in Regulation 80G or 80H.".

Amendment of Schedule to Regulations of 2015

43. The Schedule to the Regulations of 2015 is amended by the substitution of "bail-inable liabilities" for "eligible liabilities" in ─

(a) paragraph 6 of Part 2, and

(b) paragraph 17 of Part 3.

Revocation

44. Regulations 81 to 84 of the Regulations of 2015 are revoked.

Amendment of Regulation 2 of European Communities (Settlement Finality) Regulations 2010

45. Regulation 2 of the European Communities (Settlement Finality) Regulations 2010 (S.I. No. 624 of 2010) is amended in paragraph (1) ─

(a) in the definition of "participant", by the substitution of the following subparagraph for subparagraph (a):

"(a) an institution, a central counterparty, a settlement agent, a clearing house, a system operator or a clearing member of a CCP authorised pursuant to Article 17 of Regulation (EU) No 648/2012

of the European Parliament and of the Council of 4 July 2012[9], or",

(b) by the substitution of the following for the definition of "Settlement Finality Directive":

" 'Settlement Finality Directive' means Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998[10] as amended by Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009[11], Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 [12], Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012[13], Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014[14] and Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019[15];",

and

(c) by the insertion of the following definition:

" 'central counterparty' or 'CCP' means a CCP as defined in point (1) of Article 2 of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012[16]; ".

Amendment of Companies Act 2014

46. The Companies Act 2014 (No. 38 of 2014) is amended ─

(a) in section 1428A ─

(i) in subsection (1)(d), by the substitution of "the item listed in subparagraph (d)" for "the items listed in subparagraphs (a) to (d)",

(ii) by the insertion of the following subsection after subsection (1):

"(1A) Claims resulting from an instrument the whole or part only of which is recognised as an item listed in subparagraph (a), (b) or (c) of Regulation 87(1) of the Bank Recovery and Resolution Regulations shall rank lower than any claim that does not result from such instrument.",

[9] OJ No. L 201, 27.07.2012, p. 1
[10] OJ No. L 166, 11.6.1998, p. 45
[11] OJ No. L 146, 10.6.2009, p. 37
[12] OJ No. L 31, 15.12.2010, p. 120
[13] OJ No. L 201, 27.7.2012, p. 1
[14] OJ No. L 257, 28.8.2014, p. 1
[15] OJ No. L 150, 7.6.2019, p. 296
[16] OJ No. L 201, 27.7.2012, p. 1

and

(iii) in subsection (3), by the insertion of "(other than claims referred to in subsection (1A))" after "claims",

and

(b) by the insertion of "and Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019[17]" after "2017" in each place where it occurs in the following provisions:

(i) section 998A;

(ii) section 1122A;

(iii) section 1280A;

(iv) section 1328(1);

(v) section 1428A(5).

L.S.

GIVEN under my Official Seal,
22 December, 2020.

PASCHAL DONOHOE,
Minister for Finance.

[17] OJ No, L150, 7.6.2019, p. 296

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