

Suppliment tal-Gazzetta tal-Gvern ta' Malta Nru. 20,551, 8 ta' Jannar, 2021

Taqsimha B

L.N. 6 of 2021

**MALTA FINANCIAL SERVICES AUTHORITY ACT
(CAP. 330)**

Recovery and Resolution (Amendment) Regulations, 2021

IN EXERCISE of the powers conferred by article 20A and 20D of the Malta Financial Services Authority Act, the Minister responsible for the regulation of financial services, acting on the advice of the Malta Financial Services Authority and the Resolution Authority, has made the following regulations:

1. The title of these regulations is the Recovery and Resolution (Amendment) Regulations, 2021 and they shall be read and construed as one with the Recovery and Resolution Regulations, hereinafter referred to as the "principal regulations".
Citation.
S.L. 330.09.
2. Sub-regulation (1) of regulation 2 of the principal regulations shall be amended as follows:
Amends regulation 2 of the principal regulations.
 - (a) in the definition "aggregate amount", the words "eligible liabilities", shall be substituted the words "bail-inable liabilities";
 - (b) immediately after the definition "back-to-back transaction", there shall be added the following new definition:

" "bail-inable liabilities" means the liabilities and capital instruments that do not qualify as Common Equity Tier 1, Additional Tier 1 or Tier 2 instruments of an institution or entity referred to in paragraphs (b), (c) and (d) of the definition "entity", that are not excluded from the scope of the bail-in tool by virtue of regulation 44(2);";
 - (c) immediately after the definition "central counterparty", there shall be added the following new definitions:

" "combined buffer requirement" shall have the same meaning as that assigned to it in point (6) of Article 128 of the CRD;

"Common Equity Tier 1 capital" means Common Equity Tier 1 capital as calculated in accordance with Article 50 of the CRR;";

(d) the definition "covered bond" shall be substituted by the following:

" "covered bond" means a covered bond as defined in point (1) of Article 3 of Directive (EU) 2019/2162 of the European Parliament and of the Council of 27 November 2019 on the issue of covered bonds and covered bond public supervision and amending Directives 2009/65/EC and 2014/59/EU or, with regard to an instrument that is issued before 8 July 2022, a bond as referred to in Article 52(4) of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), as applicable on the date of its issue;"

(e) the definition "eligible liabilities" shall be substituted by the following:

" "eligible liabilities" means bail-inable liabilities that fulfil, as applicable, the conditions of regulation 45B or paragraph (a) of regulation 45F(2) and Tier 2 instruments that meet the conditions of point (b) of Article 72a(1) of the CRR;"

(f) immediately after the definition "financial instrument", there shall be added the following new definition:

" "global systemically important institution" or "G-SII" has the same meaning as that assigned to it in point (133) of Article 4(1) of the CRR;"

(g) immediately after the definition "investor", there shall be added the following new definition:

" "material subsidiary" has the same meaning as that assigned to it in point (135) of Article 4(1) of the CRR;"

(h) immediately after the definition "Resolution Committee", there shall be added the following new definitions:

" "resolution entity" means either of the following:

(a) a legal person established in the European Union, that in accordance with regulation 12, is identified by the Resolution Committee 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 CRD, in respect of which the resolution plan drawn up pursuant to regulation 10 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;"

(i) immediately after the definition "significant branch", there shall be added the following new definition:

" "subordinated eligible instruments" means instruments that meet all the conditions referred to in Article 72a of the CRR with the exception of paragraphs (3) to (5) of Article 72b of the said Regulation;"

(j) the definition "subsidiary" shall be substituted by the following:

" "subsidiary" shall have the same meaning as that assigned to it in point (16) of Article 4(1) of the CRR, and for the purposes of applying regulations 7, 12, 17, 18, 45 to 45L, 59 to 62, 91 and 92 to resolution groups, includes, where and as appropriate, credit institutions that are permanently affiliated to a central body, by the central body itself, and their respective subsidiaries, taking into account the way in which the resolution groups mentioned above comply with regulation 45E(3);".

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Amends
regulation 10 of
the principal
regulations.

3. Regulation 10 of the principal regulations shall be amended as follows:

(a) in sub-regulation (6) thereof, there shall be added the following new proviso:

"Provided further that, the review referred to in this sub-regulation shall be carried out after the implementation of resolution actions or the exercise of powers referred to in regulation 59.";

(b) paragraph (o) of sub-regulation (7) thereof, shall be substituted by the following:

"(o) the requirements referred to in regulations 45E and 45F and a deadline to reach that level in accordance with regulation 45L;"

(c) paragraph (p) of sub-regulation (7) thereof, shall be substituted by the following:

"(p) where the Resolution Committee applies regulation 45B(4), (5) or (7), a timeline for compliance by the resolution entity in accordance with regulation 45L;"

(d) in sub-paragraph (7) thereof, there shall be added the following new proviso:

"Provided that, when setting the deadlines referred to in paragraphs (o) and (p) in the circumstances referred to in the second proviso of sub-regulation 6, the Resolution Committee shall take into account the deadline to comply with the requirement referred to in article 104b of the CRD.".

Amends
regulation 12 of
the principal
regulations.

4. Regulation 12 of the principal regulations shall be amended as follows:

(a) sub-regulation (1) thereof, shall be substituted by the following:

"(1) The Resolution Committee shall, in its capacity as the group-level resolution authority, together with the European resolution authorities of subsidiaries, or in its capacity as the resolution authority of a subsidiary, together with the European resolution authority acting as the group-level resolution authority and the European resolution

authorities of other subsidiaries, if any, and after consulting the European resolution authorities of significant branches, insofar as is relevant to the significant branch, draw up group resolution plans. The group resolution plan shall identify measures to be taken in respect of:

- (a) the Union parent undertaking;
- (b) the subsidiaries that are part of the group and that are established in the European Union;
- (c) the entities referred to in paragraphs (c) and (d) of the definition "entity" in regulation 2(1); and
- (d) subject to Title VI of the BRRD, the subsidiaries that are part of the group and that are established outside the European Union;

Provided that, the resolution plan shall identify for each group, the resolution entities and the resolution groups.";

(b) paragraph (a) of sub-regulation (3) thereof, shall be substituted by the following:

"(a) set out the resolution actions that are to be taken for resolution entities in the scenarios referred to in regulation 10(3), and the implications of those resolution actions in respect of other group entities referred to in paragraphs (b), (c) and (d) of the definition "entity" in regulation 2(1), the parent undertaking and subsidiary institutions;"

(c) immediately after paragraph (a) of sub-regulation (3) thereof, there shall be added the following new paragraph:

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

- (i) other group entities that belong to the same resolution group; and
- (ii) other resolution groups;"

(d) paragraph (b) of sub-regulation (3) thereof, shall be

substituted by the following:

"(b) examine the extent to which the resolution tools could be applied and the resolution powers exercised, with respect to resolution entities established in the European 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;"

(e) paragraph (e) of sub-regulation (3) thereof, shall be substituted by the following:

"(e) set out any additional actions, not referred to in these regulations, which the relevant European resolution authorities intend to take in relation to the entities within each resolution group;"

Amends
regulation 13 of
the principal
regulations.

5. Regulation 13 of the principal regulations shall be amended as follows:

(a) the two provisos in sub-regulation (6) thereof, shall be substituted by the following:

"Provided that, the joint decision shall be made within four months of the date of the transmission by the group-level resolution authority of the information referred to in sub-regulation (2):

Provided further that, the Resolution Committee may also request the EBA to assist the authorities mentioned in this sub-regulation in reaching a joint decision in accordance with Article 31(c) of Regulation (EU) No 1093/2010:

Provided further that, where a group is composed of more than one resolution group, the planning of the resolution actions referred to in paragraph (aa) of regulation 12(3) shall be included in a joint decision as referred to in this sub-regulation.";

(b) the introductory paragraph to sub-regulation (8) thereof, shall be substituted by the following:

"(8) Where the Resolution Committee is responsible for a subsidiary, in the absence of a joint decision between

the authorities mentioned in sub-regulation (6) within four months, the Resolution Committee shall, if it disagrees with the group resolution plan, 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. When in disagreement, the Resolution Committee, in its capacity as the resolution authority responsible for the subsidiary, shall substantiate its disagreement and shall provide full reasons for each individual decision. It shall set out the reasons for disagreeing with the proposed group resolution plan and shall take into account the views and reservations of the Authority and the other European regulatory authorities and European resolution authorities. The Resolution Committee shall notify its decision to the other members of the resolution college:".

6. Regulation 16 of the principal regulations shall be amended as follows:

Amends
regulation 16
of the principal
regulations.

(a) the proviso to sub-regulation (1) thereof, shall be substituted by the following:

"Provided that, a group shall be deemed to be resolvable if it is feasible and credible for the Resolution Committee and the relevant European resolution authorities to either wind up group entities under normal insolvency proceedings or to resolve group entities by applying resolution tools and powers to resolution entities of that group while avoiding, to the maximum extent possible, any significant adverse consequences on the financial system, including in circumstances of broader financial instability or system wide events of Malta and, or of the Member States in which the other group entities or branches are situated, or other Member States or the European Union, with a view to ensuring the continuity of critical functions carried out by the group entities, where they can be easily separated in a timely manner or by other means. Where the Resolution Committee acts as the group-level resolution authority, it shall notify the EBA in a timely manner whenever a group is deemed not to be resolvable.";

(b) immediately after the proviso of sub-regulation (2) thereof, there shall be added the following new sub-regulation:

"(3) Where a group is composed of more than one resolution group, the Resolution Committee shall, together

with the authorities referred to in sub-regulation (1), assess the resolvability of each group in accordance with this regulation:

Provided that, the assessment referred to in this sub-regulation shall be performed in addition to the assessment of resolvability of the entire group and shall be made within the decision-making procedure laid down in regulation 13."

Adds new regulation 16A to the principal regulations.

7. Immediately after regulation 16 of the principal regulations there shall be added the following new regulation:

"Power to prohibit certain distributions.

16A. (1) Where an entity meets the combined buffer requirement when considered in addition to each of the requirements referred to in points (a), (b) and (c) of Article 141a(1) of the CRD, but it fails to meet the combined buffer requirement when considered in addition to the requirements referred to in regulations 45C and 45D, when calculated in accordance with paragraph (a) of regulation 45(2), the Resolution Committee shall have the power, in accordance with sub-regulations (2) and (3), to prohibit an entity from distributing more than the Maximum Distributable Amount related to the minimum requirement for own funds and eligible liabilities, as calculated in accordance with sub-regulation (4), through any of the following actions:

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

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

(c) make payments on Additional Tier 1 instruments:

Provided that, the entity shall immediately notify the Resolution Committee thereof.

(2) In the instances referred to in sub-regulation (1), the Resolution Committee, after consulting the Authority, shall without unnecessary delay assess whether to exercise the power referred to in sub-regulation (1), taking into account all of the following elements:

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

(b) the development of the entity's financial situation and the likelihood of it fulfilling, in the foreseeable future, the condition referred to in paragraph (a) of regulation 32(1);

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

(d) where the entity is unable to replace liabilities that no longer meet the eligibility or maturity criteria laid down in Articles 72b and 72c of the CRR, or in regulations 45B or 45F(2), if that inability is idiosyncratic or is due to market-wide disturbance;

(e) whether the exercise of the power referred to in sub-regulation (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.

Provided that, the Resolution Committee shall repeat its assessment of whether to exercise the power referred to in sub-regulation (1) at least every month for as long as the entity continues to be in the situation referred to in sub-regulation (1).

(3) If the Resolution Committee finds that the entity is still in the situation referred to in sub-regulation (1) nine months after such situation has been notified by the entity, the Resolution Committee, after consulting the Authority, shall exercise the power referred to in sub-regulation (1), except where the Resolution Committee finds, following an assessment, that at least two of the following conditions are met:

(a) the failure 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;

(b) the disturbance referred to in paragraph (a) 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;

(c) the market closure referred to in paragraph (b) is observed not only for the concerned entity but also for several other entities;

(d) the disturbance referred to in paragraph (a) prevents the concerned entity from issuing own funds instruments and eligible liabilities instruments sufficient to remedy the failure; or

(e) an exercise of the power referred to in sub-regulation (1) leads to negative spill-over effects for part of the banking sector, thereby potentially undermining financial stability:

Provided that, where the exception referred to in this sub-regulation applies, the Resolution Committee shall notify the Authority of its decision and shall explain its assessment in writing:

Provided further that, every month, the Resolution Committee shall repeat its assessment of whether the said exception applies.

(4) The Maximum Distributable Amount related to the minimum requirement for own funds and eligible liabilities shall be calculated by multiplying the sum calculated in accordance with sub-regulation (5) by the factor determined in accordance with sub-regulation (6). The Minimum Distributable Amount related to the minimum requirement for own funds of eligible liabilities shall be reduced by any amount resulting from any of the actions referred to in sub-regulation (1)(a), (b) or (c).

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

(a) any interim profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of the CRR, net of any distribution of profits or any payment resulting from the actions referred to in sub-regulation (1)(a), (b) or (c); plus

(b) any year-end profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of the CRR, net of any distribution of profits or any payment resulting from the actions referred to in sub-regulation (1)(a), (b) or (c); minus

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

(6) The factor referred to in sub-regulation 4 shall be determined as follows:

(a) 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 CRR and in regulations 45C and 45D, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of the CRR, is within the first (that is, the lowest) quartile of the combined buffer requirement, the factor shall be 0;

(b) where the Common Equity Tier 1 capital maintained by the entity which is not used to meet any of the requirements set out in Article 92a of the CRR and in regulations 45C and 45D, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of the CRR, is within the second quartile of the combined buffer requirement, the factor shall be 0,2;

(c) where the Common Equity Tier 1 capital maintained by the entity which is not used to meet the requirements set out in Article 92a of the CRR and in regulations 45C and 45D, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of the CRR, is within the third quartile of the combined buffer requirement, the factor shall be 0,4;

(d) where the Common Equity Tier 1 capital maintained by the entity which is not used to meet the requirements set out in Article 92a of the CRR and in regulations 45C and 45D, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of the CRR, is within the fourth (that is, the highest) quartile of the combined buffer requirement, the factor shall be 0,6;

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

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

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

where "Q_n" refers to the ordinal number of the quartile concerned."

Amends
regulation 17 of
the principal
regulations.

8. Regulation 17 of the principal regulations shall be amended as follows:

(a) sub-regulation (1) thereof, shall be substituted by the following:

"(1) Where an assessment of resolvability for an

entity is carried out in accordance with regulations 15 and 16, and where the Resolution Committee, after consulting the Authority, determines that there are substantive impediments to the resolvability of that entity, the Resolution Committee shall notify in writing such determination to the entity concerned, to the Authority and to the European resolution authorities of the jurisdictions in which significant branches are located.";

(b) sub-regulations (3) and (4) thereof, shall be substituted by the following:

"(3) Within four months of the date of receipt of a notification made in accordance with sub-regulation (1), the entity shall propose to the Resolution Committee possible measures to address or remove the substantive impediments identified in the said notification.

Provided that, the entity shall within two weeks of the date of receipt of a notification made in accordance with sub-regulation (1), propose to the Resolution Committee possible measures and the timeline for their implementation to ensure that the entity complies with regulations 45E or 45F and the combined buffer requirement, where a substantive impediment to resolvability is due to either of the following situations:

(a) the entity meets the combined buffer requirement when considered in addition to each of the requirements referred to in points (a), (b) and (c) of Article 141a(1) of the CRD, but it does not meet the combined buffer requirement when considered in addition to the requirements referred to in regulations 45C and 45D when calculated in accordance with paragraph (a) of regulation 45(2); or

(b) the entity does not meet the requirements referred to in Articles 92a and 494 of the CRR or the requirements referred to in regulations 45C and 45D:

Provided further that, the timeline for the implementation of measures proposed under paragraph (b) of the first proviso hereof shall take into account the reasons for the substantive impediment:

Provided further that, the Resolution

Committee shall, after consulting the Authority, assess whether the measures proposed under paragraphs (a) and (b) of the first proviso hereof effectively address or remove the substantive impediment in question.

(4) Where the Resolution Committee finds that the measures proposed by an entity in accordance with sub-regulation (3) do not effectively reduce or remove the impediments in question, it shall either directly or indirectly through the Authority, require the entity to take alternative measures that may achieve that objective, and notify in writing those measures to the said entity, which shall propose within one month a plan to comply with them:

Provided that, in identifying alternative measures, the Resolution Committee shall demonstrate how the measures proposed by the entity would not be able to remove the impediments to resolvability and how the alternative measures proposed are proportionate in removing them. The Resolution Committee shall take into account the threat that those impediments to resolvability present for financial stability and the effect of the measures on the business of the entity, its stability and its ability to contribute to the economy.";

(c) in paragraphs (a), (b), (d), (e), (g) and (h) of sub-regulation (5) thereof, the word "institution", wherever it occurs, shall be substituted by the word "entity";

(d) immediately after paragraph (h) of sub-regulation (5) thereof, there shall be added the following new paragraph:

"(ha) require an institution or entity referred to in paragraphs (b), (c) or (d) of the definition "entity" in regulation 2(1) to submit a plan to restore compliance with the requirements of regulations 45E or 45F, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of the CRR and, where applicable, with the combined buffer requirement and with the requirements referred to in regulations 45E or 45F, expressed as a percentage of the total exposure measure referred to in Articles 429 and 429a of the CRR;"

(e) paragraphs (i), (j) and (k) of sub-regulation (5) thereof, shall be substituted by the following:

"(i) require an institution or entity referred to in paragraphs (b), (c) or (d) of the definition "entity" in regulation 2(1) to issue eligible liabilities to meet the requirements of regulations 45E or 45F;

(j) require an institution or entity referred to in paragraphs (b), (c) or (d) of the definition "entity" in regulation 2(1), to take other steps to meet the minimum requirement for own funds and eligible liabilities under regulations 45E or 45F, including in particular to attempt to renegotiate any eligible liability, additional Tier 1 or Tier 2 instruments it has issued, with a view to ensuring that any decision of the Resolution Committee to write down or convert that liability or instrument would be effected under the law of the jurisdiction governing that liability or instrument;

(k) where an entity is the subsidiary of a mixed-activity holding company, requiring 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 regulations 31 to 86, both inclusive, having an adverse effect on the non-financial part of the group.";

(f) immediately after paragraph (j) of sub-regulation 5 thereof, there shall be added the following new paragraph:

(ja) for the purpose of ensuring ongoing compliance with regulations 45E or 45F, require an institution or entity referred to in paragraphs (b), (c) or (d) of the definition "entity" in regulation 2(1), to change the maturity profile of:

(i) own funds instruments, after having obtained the consent of the Authority, and

(ii) eligible liabilities referred to in regulation 45B and in paragraph (a) of regulation 45F(2);

(g) sub-regulation (7) thereof, shall be substituted by the following:

"(7) Before identifying any measure referred to in sub-regulation (4), the Resolution Committee, after consulting the Authority and, if appropriate, the Central Bank, 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."

Amends
regulation 18 of
the principal
regulations.

9. Sub-regulations (1) to (7) of regulation 18 of the principal regulations shall be substituted by the following:

"(1) The Resolution Committee shall:—

(a) where it is the group-level resolution authority, together with the European resolution authorities of subsidiaries; or

(b) where it is responsible for a subsidiary, together with the European resolution authority acting as the group-level resolution authority and the European resolution authorities of other subsidiaries, if any,

after consulting the supervisory college and the European resolution authorities of the jurisdictions in which significant branches are located insofar as is relevant to the significant branch, consider the assessment required by regulation 16 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 17(4) in relation to all resolution entities and their subsidiaries that are entities as referred to in the definition of "entity" under regulation 2(1) and are part of the group.

(2) The Resolution Committee shall, in its capacity as the group-level resolution authority, in cooperation with the consolidating supervisor and the EBA in accordance with Article 25(1) of Regulation (EU) No 1093/2010, prepare and submit a report to the Union parent undertaking, to the European resolution authorities of subsidiaries, which will provide it to the subsidiaries within their remit, and to the European resolution authorities of jurisdictions in which significant branches are located. The report shall be prepared after consulting the Authority and the relevant European regulatory authorities, and shall analyse the substantive impediments to the effective application of the resolution tools and the exercising of the resolution powers in relation to the group and in relation to resolution groups where a group is composed of more than one

resolution group. The report shall consider the impact on the group's business model and recommend any proportionate and targeted measures that, in the Resolution Committee's view, in its capacity as the group-level resolution authority, are necessary or appropriate to remove those impediments:

Provided that, where an impediment to the resolvability of the group is due to a situation of a group entity referred to in the proviso of regulation 17(3), the Resolution Committee shall, in its capacity as the group-level resolution authority, notify its assessment of the said impediment to the Union parent undertaking, after consulting the European resolution authorities of the resolution entity and of its subsidiary institutions.

(3) Where the Resolution Committee is responsible for a subsidiary, it shall, after receiving a report from the European resolution authority acting as the group-level resolution authority in accordance with Article 18(2) of the BRRD, provide such a report to the subsidiary under its supervision.

(4) Within four months of the date of receipt of the report referred to in sub-regulation (2), the Union parent undertaking may submit observations and propose to the Resolution Committee in its capacity as the group-level resolution authority alternative measures to remedy the impediments identified in the report:

Provided that, where the impediments identified in the report are due to a situation of a group entity referred to in the first proviso of regulation 17(3), the Union parent undertaking shall, within two weeks of the date of receipt of a notification made in accordance with the proviso of sub-regulation (2), propose to the Resolution Committee, in its capacity as the group-level resolution authority possible measures and the timeline for their implementation to ensure that the group entity complies with the requirements referred to in regulations 45E or 45F expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of the CRR and, where applicable, with the combined buffer requirement, and with the requirements referred to in the said regulations 45E and 45F expressed as a percentage of the total exposure measure referred to in Articles 429 and 429a of the CRR:

Provided further that, the timeline for the implementation of the measures proposed the first proviso shall

take into account the reasons for the substantive impediment. The Resolution Committee shall, after consulting the Authority, assess whether those measures effectively address or remove the substantive impediment.

Provided further that, the Resolution Committee shall, in its capacity as the group-level resolution authority, communicate any measure proposed by the Union parent undertaking to the consolidating supervisor, the EBA, the European resolution authorities of the subsidiaries and the European resolution authorities of the jurisdictions in which significant branches are located insofar as is relevant to the significant branch.

(5) The Resolution Committee shall:—

(a) where it is the group-level resolution authority, together with the European resolution authorities of the subsidiaries; or

(b) where it is responsible for a subsidiary, together with the European resolution authority acting as the group-level resolution authority and the European resolution authorities responsible for the other subsidiaries, if any,

after consulting the Authority and the European regulatory and resolution authorities of jurisdictions in which significant branches are located, do everything within their power to reach a joint decision within the resolution college regarding the identification of the substantive impediments, and if necessary, the assessment of the measures proposed by the Union parent undertaking and the measures required by the authorities in order to address or remove the impediments, which shall take into account the potential impact of the measures in Malta and in all the Member States where the group operates:

Provided that, the joint decision shall be reached within four months of submission of any observations by the Union parent undertaking. Where the Union parent undertaking has not submitted any observations, the joint decision shall be reached within one month from the expiry of the four-month period referred to in sub-regulation (4):

Provided further that, the joint decision concerning the impediment to resolvability due to a situation referred to in the first proviso of sub-regulation 17(3), shall be reached within two weeks of the submission of any observations by the Union parent undertaking in

accordance with sub-regulation (3):

Provided further that, the joint decision shall be reasoned and set out in a document which, where the Resolution Committee is the group-level resolution authority, shall be provided by the Resolution Committee to the Union parent undertaking:

Provided further that, the Resolution Committee may request the EBA to assist the authorities referred to in this sub-regulation in reaching a joint decision in accordance with point (c) of the second paragraph of Article 31 of Regulation (EU) No 1093/2010.

(6) Where the Resolution Committee is the group-level resolution authority, in the absence of a joint decision within the period referred to in the first proviso to sub-regulation (5), the Resolution Committee shall make its own decision on the appropriate measures to be taken in accordance with regulation 17(4) at the group level. The decision shall be fully reasoned, shall take into account the views and reservations of European resolution authorities and shall be provided to the Union parent undertaking by the Resolution Committee in its capacity as the group-level resolution authority:

Provided that, if at the end of the relevant period referred to in sub-regulation (5), any of the resolution authorities mentioned in the said sub-regulation (5) have referred a matter mentioned in sub-regulation (9) to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the Resolution Committee shall, in its capacity as the group-level resolution authority, defer its decision and await any decision that the EBA may take in accordance with Article 19(3) of the said Regulation, and shall take its decision in accordance with the decision of the EBA. The relevant period referred to in sub-regulation (5) shall be deemed to be the conciliation period within the meaning of the said Regulation. The matter shall not be referred to the EBA after the end of the relevant period referred to in sub-regulation (5) or after a joint decision has been reached. In the absence of an EBA decision, the decision of the Resolution Committee in its capacity as the group-level resolution authority shall apply.

(6A) In the absence of a joint decision within the relevant period referred to in sub-regulation (5), the Resolution Committee, where it is the relevant resolution authority, shall make its own decision on the appropriate measures to be taken in accordance with sub-regulation 17(4) at the resolution group-level:

Provided that, the decision referred to in this sub-

regulation shall be fully reasoned and shall take into account the views and reservations of the European resolution authorities of other entities of the same resolution group and of the Resolution Committee in its capacity as the group-level resolution authority. The decision shall be provided to the resolution entity by the Resolution Committee:

Provided further that, if, at the end of the relevant period referred to in sub-regulation (5), any of the resolution authorities mentioned in the said sub-regulation (5) have referred a matter mentioned in sub-regulation (9) to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the Resolution Committee responsible for the resolution entity shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of the said Regulation, and shall take its decision in accordance with the decision of EBA. The relevant period referred to in sub-regulation (5) shall be deemed to be the conciliation period within the meaning of the said Regulation. EBA shall take its decision within one month. The matter shall not be referred to EBA after the end of the relevant period referred to in sub-regulation (5) or after a joint decision has been reached. In the absence of an EBA decision, the decision of the Resolution Committee shall apply.

(7) Where the Resolution Committee is responsible for a subsidiary that is not a resolution entity, in the absence of a joint decision, the Resolution Committee shall take a decision on the appropriate measures to be taken by subsidiaries at individual level in accordance with regulation 17(4). The decision shall be fully reasoned and shall take into account the views and reservations of the other European resolution authorities. The decision shall be provided to the subsidiary concerned and to the resolution entity of the same resolution group, to the European resolution authority of the said resolution entity and where different, to the European resolution authority acting as the group-level resolution authority:

Provided that, if at the end of the relevant period referred to in sub-regulation (5), any of the resolution authorities mentioned in the said sub-regulation (5) have referred a matter mentioned in sub-regulation (9) to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the Resolution Committee responsible for the subsidiary shall defer its decision and await any decision that the EBA may take in accordance with Article 19(3) of the said Regulation, and shall take its decision in accordance with the decision of the EBA. The relevant period referred to in sub-regulation (5) shall be deemed

to be the conciliation period within the meaning of the said Regulation. EBA shall take its decision within one month. The matter shall not be referred to the EBA after the end of the relevant period referred to in sub-regulation (5) or after a joint decision has been reached. In the absence of an EBA decision, the decision of the Resolution Committee shall apply."

10. In paragraph (b) of sub-regulation (1) of regulation 32 of the principal regulations, the words "conversion of relevant capital instruments in accordance with regulation 59(2)", shall be substituted by the words "conversion of relevant capital instruments and eligible liabilities in accordance with regulation 59(2)";

Amends regulation 32 of the principal regulations.

11. Immediately after regulation 32 of the principal regulations there shall be added the following new regulations:

Adds new regulations 32A and 32B to the principal regulations.

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

32A. When a resolution group complies as a whole with the conditions established in regulation 32(1), the Resolution Committee may take a resolution action in relation to a central body and all credit institutions permanently affiliated to it that are part of that same resolution group.

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

32B. Where an institution or entity referred to in paragraphs (b), (c) or (d) of the definition "entity" in regulation 2(1), in relation to which the Resolution Committee considers that the conditions in paragraphs (a) and (b) of regulation 32(1) are met, but that a resolution action would not be in the public interest in accordance with paragraph (c) of regulation 32(1), the said institution or entity shall be wound up in an orderly manner in accordance with Maltese law."

12. Sub-regulations (2) to (4) of regulation 33 of the principal regulations shall be substituted by the following:

Amends regulation 33 of the principal regulations.

"(2) The Resolution Committee shall take a resolution action in relation to an entity referred to in paragraphs (c) or (d) of the definition "entity" in regulation 2(1), when the conditions laid down in regulation 32(1) are met by the entity mentioned above.

(3) Where the 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) resolution actions for the purposes of group resolution shall be taken in relation to the intermediate financial holding company:

Provided that, the Resolution Committee shall not take resolution actions for the purposes of group resolution in relation to the mixed-activity holding company.

(4) Subject to sub-regulation (3) and notwithstanding the fact that an entity referred to in paragraphs (c) or (d) of the definition "entity" in regulation 2(1) does not meet the conditions laid down in regulation 32(1), the Resolution Committee may take a resolution action with regard to such an entity where all of the following conditions are fulfilled:

(a) such an 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 32(1); and

(c) assets and liabilities of the subsidiaries referred to in paragraph (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.";

Adds new regulation 33B to the principal regulations.

13. Immediately after regulation 33A of the principal regulations there shall be added the following new regulation:

"Power to suspend certain obligations.

33B. (1) The Resolution Committee shall, after consulting the Authority, which shall reply in a timely manner, have the power to suspend any payment or obligations pursuant to any contract to which an institution or entity referred to in paragraphs (b), (c) or (d) of the definition "entity" in regulation 2(1) 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 paragraph (a) of regulation 32(1);

(b) there is no immediately available private sector measure referred to in paragraph (b) of regulation 32(1) 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; and

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

(i) necessary to reach the determination provided for in paragraph (c) of regulation 32(1); or

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

(2) The power referred to in sub-regulation (1) shall not apply to payment or delivery obligations to the following:

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

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

(c) the Central Banks.

Provided that, the Resolution Committee shall set the scope of the power referred to in sub-regulation (1), having regard to the circumstances of each case and shall carefully assess the appropriateness of extending the suspension to eligible deposits in accordance with point (4) of Article 2(1) of Directive 2014/49/EU, in particular, covered deposits held by natural persons and micro, small and medium-sized enterprises.

(3) The Resolution Committee shall, when exercising the power to suspend payment or delivery obligation under sub-regulation (1) in respect of eligible deposits, ensure that depositors have access to an appropriate daily amount from those deposits.

(4) The period of the suspension pursuant to sub-regulation (1) shall be as short as possible and shall not exceed the minimum period of time that the Resolution Committee considers necessary for the purposes indicated in paragraphs (c) and (d) of sub-regulation (1), and in any event shall not last longer than the period from the publication of a notice of suspension pursuant to sub-regulation (8) to midnight at the end of the business day following the day of the publication.

Provided that, at the expiry of the period of suspension referred to in this sub-regulation, the suspension shall cease to have effect.

(5) In exercising the power referred to in sub-regulation (1), the Resolution Committee shall have regard to the impact the exercise of that power might have on the orderly functioning of financial markets and shall consider the existing national rules, as well as supervisory and judicial powers, to safeguard creditors' rights and equal treatment of creditors in normal insolvency proceedings. The Resolution Committee shall have regard to the potential application of national insolvency proceedings to the institution or entity as a result of the determination in paragraph (c) of regulation 32(1) and shall make arrangements that the Resolution Committee deems appropriate to ensure adequate coordination with the relevant national, administrative and, or judicial authorities.

(6) Where the obligations of payment or delivery under a contract are suspended pursuant to sub-regulation (1), the obligations of payment or delivery of any counterparty to the said contract shall be suspended for the same period of time.

(7) Obligations of payment or delivery which would have been due during the period of suspension shall be due immediately upon the expiry of the period of suspension.

(8) The Resolution Committee shall, without delay, notify the institution or entity referred to in paragraphs (b), (c) or (d) of the definition "entity" in regulation 2(1), and the authorities refer to paragraphs (a) to (h) of regulation 83(2) when exercising the power referred to in sub-regulation (1), after a determination has been made that the institution is failing, or likely to fail, pursuant to paragraph (a) of regulation 32(1) and before the resolution decision is taken.

Provided that, the Resolution Committee shall publish or ensure the publication of the order or instrument by which payment or delivery obligations are suspended under this regulation and the terms and period of suspension, by the means referred to in regulation 83(4).

(9) This regulation is without prejudice to Maltese Law granting powers to suspend payment or delivery obligations of the institutions or entities referred to in sub-regulation (1), before a determination is made that those institutions or entities are failing or likely to fail under paragraph (a) of regulation 32(1), or to suspend payment or delivery obligations of institutions or entities which are to be wound up under normal insolvency proceedings and that exceed the scope, duration and conditions provided for in this regulation.

Provided that, the conditions provided for under this regulation shall be without prejudice to the conditions related to the power of the Resolution Committee to suspend the obligations of payment or delivery under any other law.

(10) Where the Resolution Committee exercises the power to suspend payment or delivery obligations with respect to an institution or an entity referred to in paragraphs (b), (c) or (d) of the definition "entity" in regulation 2(1) in accordance with sub-regulation (1), the Resolution Committee may, for the duration of the suspension, exercise the power to:

(a) restrict secured creditors of an institution or an entity referred to in paragraphs (b), (c) or (d) of the definition "entity" in regulation 2(1), from enforcing security interests in relation to any of the assets of the said institution or entity for the same duration, in which case regulation 70(2), (3) and (4) 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 regulation 71(2) to (8) shall apply.

(11) Where the Resolution Committee has exercised the power to suspend payment or delivery obligations in instances set out in sub-regulations (1) to (10), after making a determination that an institution or entity is failing or likely to fail pursuant to paragraph (a) of article 32(1), and if resolution action is subsequently taken with respect to the relevant institution or entity, the Resolution Committee shall not exercise its powers under regulation 69(1), 70(1) or 71(1) with respect to the said relevant institution or entity."

Amends
regulation 36 of
the principal
regulations.

14. Regulation 36 of the principal regulations shall be amended as follows:

(a) in sub-regulation (1) thereof, immediately after the words "convert relevant capital instruments," there shall be added the words "and eligible liabilities in accordance with regulation 59,";

(b) in paragraph (a) of sub-regulation (4) thereof, immediately after the words "conversion of capital instruments", there shall be added the words "and eligible liabilities in accordance with regulation 59";

(c) paragraph (c) of sub-regulation (4) thereof, shall be substituted by the following:

"(c) when the power to write down or convert relevant capital instruments and eligible liabilities in accordance with regulation 59 is applied, to inform the decision on the extent of the cancellation or dilution of shares or other instruments of ownership, and the extent of the write-down or conversion of relevant capital instruments and eligible liabilities in accordance with regulation 59;"

(d) in paragraph (d) of sub-regulation (4) thereof, the words "conversion of eligible liabilities;" shall be substituted by the words "conversion of bail-inable liabilities;"

(e) in paragraph (g) of sub-regulation (4) thereof, immediately after the words "convert relevant capital instruments", there shall be added the words "and eligible liabilities in accordance with regulation 59";

(f) in sub-regulation (5) thereof, immediately after the words "convert relevant capital instruments", there shall be added the words "and eligible liabilities in accordance with

regulation 59";

(g) in sub-regulation (12) thereof, immediately after the words "conversion power of capital instruments", there shall be added the words "and eligible liabilities in accordance with regulation 59."; and

(h) in sub-regulation (13) thereof, immediately after the words "conversion power of capital instruments", there shall be added the words "and eligible liabilities in accordance with regulation 59.".

15. Regulation 37 of the principal regulations shall be amended as follows:

Amends regulation 37 of the principal regulations.

(a) in sub-regulation (2) thereof, immediately after the words "convert capital instruments", there shall be added the words "and eligible liabilities"; and

(b) in paragraph (a) of sub-regulation (10) thereof, the words "and other eligible liabilities";, shall be substituted by the words "and other bail-inable liabilities";.

16. Regulation 44 of the principal regulations shall be amended as follows:

Amends regulation 44 of the principal regulations.

(a) paragraph (f) of sub-regulation (2) thereof, shall be substituted by the following:

"(f) liabilities with a remaining maturity of less than seven days, owed to systems or operators of systems designated in accordance with Directive 98/26/EC or to their participants and arising from the participation in such a system, or to central counterparties authorised in another Member State pursuant to Article 14 of Regulation (EU) No 648/2012 and third-country central counterparties recognised by ESMA pursuant to Article 25 of the said Regulation;"

(b) immediately after paragraph (g) of sub-regulation (2) thereof, there shall be added the following new paragraph:

"(h) liabilities to institutions or entities referred to in paragraphs (b), (c) or (d) of the definition "entity" in regulation 2(1) 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 under article 29A of the

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Banking Act:

Provided that, in cases where the exception applies the Resolution Committee is the resolution authority responsible for the relevant subsidiary that is not a resolution entity, shall assess whether the amount of items complying with regulation 45F(2) is sufficient to support the implementation of the preferred resolution strategy.";

(c) in the second proviso of sub-regulation (2) thereof, the words "the extent to which other institutions hold liabilities eligible for a bail-in tool", shall be substituted by the words "the extent to which other institutions hold bail-inable liabilities";

(d) the proviso of sub-regulation (3) thereof, shall be substituted by the following:

"Provided that, the Resolution Committee shall carefully assess whether liabilities to institutions or entities referred to in paragraphs (b), (c) or (d) of the definition "entity" in regulation 2(1), that are part of the same resolution group without being themselves resolution entities and that are not excluded from the applicable write down and conversion powers under paragraph (h) of sub-regulation (2), should be excluded or partially excluded under paragraphs (a) to (d) to ensure effective implementation of the resolution strategy:

Provided further that, where the Resolution Committee decides to exclude or partially exclude a bail-inable liability or class of bail-inable liabilities under this sub-regulation, 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 in regulation 34(1)(g)."; and

(e) sub-regulation (4) thereof, shall be substituted by the following:

"(4) Where the Resolution Committee decides to exclude or partially exclude a bail-inable liability or class of bail-inable liabilities pursuant to this regulation, and the losses that would have been borne by those liabilities have not been passed on fully to other creditors, the resolution

financing arrangement may make a contribution to the institution under resolution to do one or both of the following:

(a) cover any losses which have not been absorbed by bail-inable liabilities and restore the net asset value of the institution under resolution to zero in accordance with regulation 46(1)(a);

(b) purchase shares or other instruments of ownership or capital instruments in the institution under resolution, in order to recapitalise the institution in accordance with regulation 46(1)(b).";

(f) in paragraph (a) of sub-regulation (5) thereof, the words "eligible liabilities" shall be substituted by the words "bail-inable liabilities".

17. Immediately after regulation 44 of the principal regulations there shall be added the following new regulation:

Adds new regulation 44A to the principal regulations.

"Selling of subordinated eligible liabilities to retail clients.

44A. (1) Where a seller of eligible liabilities meets all the conditions referred to in Article 72a of the CRR with the exception of point (b) of Article 72a(1) and paragraphs 3 to 5 of Article 72b of that Regulation, the sale of the eligible liabilities mentioned above to a retail client as defined in point (11) of Article 4(1) of Directive 2014/65/EU, shall be permitted when the following conditions are fulfilled:

(a) the seller has performed a suitability test in accordance with Article 25(2) of Directive 2014/65/EU;

(b) the seller is satisfied, on the basis of the test referred to in point (a), that such eligible liabilities are suitable for such retail client;

(c) the seller documents the suitability in accordance with Article 25(6) of Directive 2014/65/EU.

(2) Where the conditions laid down in sub-regulation (1) are fulfilled and the financial instrument portfolio of such retail client does not, at the time of the purchase, exceed five hundred thousand euro (€500,000), the seller shall, on the basis of the information provided by the retail client in accordance with sub-regulation (3), ensure that at the time of the purchase, the initial investment amount invested in one or more liabilities instruments referred to in sub-regulation (1) is at least ten thousand euro (€10,000).

(3) The retail client shall provide the seller with accurate information on the financial instrument portfolio of the retail client, including any investments in liabilities referred to in sub-regulation (1).

(4) For the purpose of sub-regulations (2) and (3), the financial instrument portfolio of the retail client shall, with the exception of any financial instruments that have been given as collateral, include cash deposits and financial instruments.

(5) The provisions of this regulation shall not apply to liabilities referred to in sub-regulation (1) issued before 28th December, 2020."

Substitutes regulation 45 of the principal regulations.

18. Regulation 45 of the principal regulations shall be substituted by the following:

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

45. (1) Institutions and entities referred to in paragraphs (b), (c) or (d) of the definition "entity" in regulation 2(1) meet, at all times, the requirements for own funds and eligible liabilities where required by and in accordance with this regulation and regulations 45A to 45I.

(2) The requirement referred to in sub-regulation (1) shall be calculated in accordance with sub-regulations (3), (5) and (7) of regulation 45C, as applicable, as the amount of own funds and eligible liabilities and expressed as percentages of:

(a) the total risk exposure amount of the relevant entity referred to in sub-regulation (1), calculated in accordance with Article 92(3) of the CRR; and

(b) the total exposure measure of the relevant entity referred to in sub-regulation (1), calculated in accordance with Articles 429 and 429a of the CRR."

19. Immediately after regulation 45 of the principal regulations there shall be added the following new regulation:

Adds new regulation 45A to the principal regulations.

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

45A.(1) Notwithstanding regulation 45, the Resolution Committee shall exempt from the requirement laid down in regulation 45(1) mortgage credit institutions financed by covered bonds which are not allowed to receive deposits under Maltese law, provided that all of the following conditions are met:

(a) the mortgage credit institutions will be wound up in national insolvency proceedings or in other types of proceedings laid down for those institutions and implemented in accordance with regulations 38, 40 or 42; and

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

(2) Institutions exempt from the requirement laid down in regulation 45(1) shall not form part of the consolidation referred to in regulation 45E(1)."

20. Immediately after regulation 45A of the principal regulations there shall be added the following new regulation:

Adds new regulation 45B to the principal regulations.

"Eligible liabilities for resolution entities.

45B.(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 CRR:

(a) Article 72a;

(b) Article 72b, with the exception of point (d) of paragraph 2; and

(c) Article 72c.

Provided that, by way of derogation from this sub-regulation, where references to the requirements in Article 92a or Article 92b of the CRR for the purpose of those Articles have been made, eligible liabilities shall consist of eligible liabilities as defined in Article 72k of the said Regulation and determined in accordance with Chapter 5a of Title I of Part Two of the said Regulation.

(2) Liabilities that arise from debt instruments with embedded derivatives, including structured notes, that satisfy the conditions of paragraph (a) of sub-regulation (1), with the exception of point (l) of Article 72a(2) of the CRR, shall be included in the amount of own funds and eligible liabilities when one of the following conditions is met:

(a) the principal amount of the liability arising from the debt instrument known at the time of issue, is fixed or increasing, and is not affected by an embedded derivative feature, and the total amount of 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 CRR; or

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

Provided that, debt instruments referred to in sub-regulation (2), including their embedded derivatives, shall not be subject to any netting agreement and the valuation of such instruments shall not be subject to regulation 49(3):

Provided further that, the liabilities referred to in sub-regulation (2), 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 sub-regulation (2)(a) or to the fixed or increased amount referred to in sub-regulation (2)(b).

(3) Where the liabilities are issued by a subsidiary established in a Member State 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 all of the following conditions are met:

(a) the liabilities are issued in accordance with paragraph (a) of regulation 45F(2);

(b) the exercise of the write down or conversion power in relation to those liabilities in accordance with regulations 59 or 62 does not affect the control of the subsidiary by the resolution entity;

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

(i) the sum of the liabilities issued to and bought by the resolution entity either directly or indirectly through other entities in the same resolution group and the amount of own funds issued in accordance with paragraph (b) of regulation 45F(2) from

(ii) the amount required in accordance with regulation 45F(1).

(4) Without prejudice to the minimum requirement in regulation 45C(5) or paragraph (a) of regulation 45D(1), the Resolution Committee shall ensure that a part of the requirement referred to in regulation 45E equal to eight per cent of the total liabilities, including own funds, shall be met by resolution entities that are G-SIIs or resolution entities that are subject to regulation 45C(5) or (6) using own funds, subordinated eligible instruments, or liabilities as referred to in sub-regulation (3). The Resolution Committee may permit that a level lower than eight per cent of the total liabilities, including own funds, but greater than the amount resulting from the application of the formula $(1-(X1/X2)) \times 8\%$ of the total liabilities, including own funds, shall be met by resolution entities that are G-SIIs or resolution entities that are subject to regulation 45C(5) or (6) using own funds, subordinated eligible instruments, or liabilities as referred in sub-regulation (3), provided that all the conditions set out in Article 72b(3) of the CRR are met, where in light of the reduction that is possible under Article 72b(3) of the said Regulation:

Provided that, for the purposes of this sub-regulation $X1 = 3.5$ per cent of the total risk exposure amount calculated in accordance with Article 92(3) of the CRR:

Provided further that, for the purposes of this sub-regulation $X2 =$ the sum of 18 per cent of the total risk exposure amount calculated in accordance with Article 92(3) of the CRR and the amount of the combined buffer requirement:

Provided further that, for resolution entities that are subject to regulation 45C(5), where the application of this sub-regulation leads to a requirement greater than 27 per cent of the total risk exposure amount, for the resolution entity concerned, the Resolution Committee shall limit the part of the requirement referred to in regulation 45E which is to be met using own funds, subordinated eligible instruments, or liabilities as referred to in sub-regulation (3), to an amount equal to 27 per cent of the total risk exposure amount, if the Resolution Committee 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 paragraph (a) does not apply, the requirement referred to in regulation 45E allows that resolution entity to meet the requirements referred to in regulation 44(5) or 44(8) as applicable:

Provided further that, in carrying out the assessment referred to in the first proviso, the Resolution Committee shall also take into account the risk of disproportionate impact on the business model of the resolution entity concerned. For resolution entities that are subject to regulation 45C(6), the first proviso does not apply.

(5) Where the resolution entities are neither G-SIIs nor resolution entities that are subject to regulation 45C(5) or (6), the Resolution Committee may decide that a part of the requirement referred to in regulation 45E up to the greater of eight per cent of the total liabilities, including own funds, of the entity and the formula referred to in sub-regulation (7), shall be met using own funds, subordinated eligible instruments, or liabilities as referred to in sub-regulation (3), provided that the following conditions are met:

(a) non-subordinated liabilities referred to in sub-regulations (1) and (2) have the same priority ranking in the insolvency hierarchy under article 29A of the Banking Act as certain liabilities that are excluded from the application of write down and conversion powers in accordance with regulation 44(2) or (3);

(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 44(2) or (3), creditors whose claims arise from those liabilities incur greater losses than they would incur in a winding-up under normal insolvency proceedings; and

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

Provided that, where the Resolution Committee 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 and conversion powers in accordance with regulation 44(2) or (3) totals more than ten per cent of that class, the Resolution Committee shall assess the risk referred to in paragraph (b).

(6) For the purposes of sub-regulations (4), (5) and (7), derivative liabilities shall be included in total liabilities on the basis that full recognition is given to counterparty netting rights:

Provided that, 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 sub-regulations (4), (5) and (7).

(7) By derogation from sub-regulation (4), the Resolution Committee may decide that the requirement referred to in regulation 45E shall be met by resolution entities that are G-SIIs or resolution entities that are subject to regulation 45C(5) or (6) using own funds, subordinated eligible instruments, or liabilities as referred to in sub-regulation (3), 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 CRR, regulations 45C(5) and 45E, the sum of those own funds, instruments and liabilities does not exceed the greater of:

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

(b) the amount resulting from the application of the formula Ax^2+Bx^2+C :

Where: A = the amount resulting from the requirement referred to in point (c) of Article 92(1) of the CRR;

Where: B = the amount resulting from the requirement referred to in Article 104a of the CRD;

Where: C = the amount resulting from the combined buffer requirement.

(8) The Resolution Committee may exercise the power referred to in sub-regulation (7), with respect to resolution entities that are G-SIIs or that are subject to regulation 45C(5) or (6), and that meet one of the conditions set out in the first proviso, up to a limit of hundred per cent of the total number of all resolution entities that are G-SIIs or that are subject to regulation 45C(5) or (6) for which the Resolution Committee determines the requirement referred to in regulation 45E:

Provided that, the conditions shall be considered by the Resolution Committee as follows:

(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 17(5) in the timeline required by the Resolution Committee, or

(ii) the identified substantive impediments cannot be addressed using any of the measures referred to in regulation 17(5), and the exercise of the power referred to in sub-regulation (7) of this regulation would partially or fully compensate for the negative impact of the substantive impediments on resolvability;

(b) the Resolution Committee 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; or

(c) the requirement referred to in Article 104a of the CRD reflects the fact that the resolution entity that is a G-SII or that is subject to regulation 45C(5) or (6) is, in terms of riskiness, among the top twenty per cent of institutions for which the Resolution Committee determines the requirement referred to in regulation 45(1):

Provided further that, for the purposes of the percentages referred to in this sub-regulation, the Resolution Committee shall round the number resulting from the calculation up to the closest whole number.

(9) The Resolution Committee shall take the decisions referred to in sub-regulations (5) or (7) after consulting the Authority:

Provided that, when taking those decisions, the Resolution Committee shall 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 CRR 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 sub-regulations (5) and (7);

(c) the availability and the amount of instruments that meet all of the conditions referred to in Article 72a of the CRR with the exception of point (d) of Article 72b(2) of the said Regulation;

(d) whether the amount of liabilities that are excluded from the application of write down and conversion powers in accordance with regulation 44(2) or (3) 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. Where the amount of excluded liabilities does not exceed five 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. Above that threshold, the significance of the excluded liabilities shall be assessed by the Resolution Committee;

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

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

Adds new regulation 45C to the principal regulations.

21. Immediately after regulation 45B of the principal regulations there shall be added the following new regulation:

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

45C. (1) The Resolution Committee shall, after consulting the Authority, determine the requirement referred to in regulation 45(1) 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 paragraphs (b), (c) or (d) of the definition "entity" in regulation 2(1) 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, were to be applied to the resolution entity and its subsidiaries, 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 CRD 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 44(3) or to be transferred in full to a recipient under a partial transfer, that the resolution entity has sufficient own funds and other 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 CRD or Directive 2014/65/EU;

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

(e) the extent to which the failure of the entity would have adverse effect of the 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) 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 59, is to be exercised in accordance with the relevant scenario referred to in regulation 10(3), the requirement referred to in regulation 45(1) shall equal an amount sufficient to ensure that:

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

(b) the resolution entity and its subsidiaries that are institutions or entities referred to in paragraphs (b), (c) or (d) of the definition "entity" in regulation 2(1) 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 CRD, Directive 2014/65/EU or an equivalent legislative act for an appropriate period not longer than one year:

Provided that, where the resolution plan provides that the entity is to be wound up under normal insolvency proceedings, the Resolution Committee shall assess whether it is justified to limit the requirement referred to in regulation 45(1) for that entity, so that it does not exceed an amount sufficient to absorb losses in accordance with paragraph (a):

Provided further that, the assessment by the Resolution Committee shall, in particular, evaluate the limit referred to in paragraph (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 (a) of regulation 45C(2) shall be the following:

(a) for the purpose of calculating the requirement referred to in regulation 45(1), in accordance with paragraph (a) of regulation 45(2), the sum of:

(i) the amount of losses to be absorbed in resolution that corresponds to the requirements referred to in point (c) of Article 92(1) of the CRR and Article 104a of the CRD Directive 2013/36/EU 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 Regulation (EU) No 575/2013 and its requirement referred to in Article 104a of Directive 2013/36/EU 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 45(1), in accordance with paragraph (b) of regulation 45(2), 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 CRR 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 point (d) of Article 92(1) of the CRR at the consolidated resolution group level, after the implementation of the preferred resolution strategy:

Provided that, for the purposes of paragraph (a) of regulation 45(2), the requirement referred to in regulation 45(1) shall be expressed in percentage terms as the amount calculated in accordance with paragraph (a), divided by the total risk exposure amount:

Provided further that, for the purposes of paragraph (b) of regulation 45(2), the requirement referred to in regulation 45(1) shall be expressed in percentage terms as the amount calculated in accordance with paragraph (b) of this sub-regulation, divided by the total exposure measure.

Provided further that, when setting the individual requirement provided for in paragraph (b), the Resolution Committee shall take into account the requirements referred to in regulations 37(10), 44(5) and (8).

(4) (a) When setting the recapitalisation amounts referred to in sub-regulation (3), the Resolution Committee shall:

(i) 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

(ii) after consulting the Authority, adjust the amount corresponding to the current requirement referred to in Article 104a of the CRD downwards or upwards to determine the requirement that is to apply to the resolution entity after the implementation of the referred resolution strategy.

(b) The Resolution Committee shall be able to increase the requirement provided in paragraph (a)(ii) of sub-regulation (3) 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.

(c) Where paragraph (a) of this sub-regulation applies, the amount referred therein shall be equal to the combined buffer requirement that is to apply after the application of the resolution tools, less the amount referred to in paragraph (a) of point (6) of Article 128 of the CRD.

(d) The amount referred to in paragraph (a) of this sub-regulation shall be adjusted downwards if, after consulting the Authority, the Resolution Committee 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 paragraphs (b), (c) or (d) of the definition "entity" in regulation 2(1), and its access to funding without recourse to extraordinary public financial support, with the exception of contributions from resolution financing arrangements, in accordance with regulation 44(5) and (8) and regulation 101(2), following the implementation of the resolution strategy:

Provided that, the said amount shall be adjusted upwards if, after consulting the Authority, the Resolution Committee 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 paragraphs (b), (c) or (d) of the definition "entity" in regulation 2(1), and its access to funding without recourse to extraordinary public financial support, with the exception of contributions from resolution financing arrangements, in accordance with regulations 44(5) and (8) and regulation 101(2), for an appropriate period which shall not exceed one year.

(5) For resolution entities that are not subject to Article 92a of the CRR and that are part of a resolution group, the total assets of which exceed EUR 100 billion, the level of the requirement referred to in sub-regulation (3) shall be at least equal to:

(a) 13.5 per cent when calculated in accordance with paragraph (a) of regulation 45(2); and

(b) 5 per cent when calculated in accordance with paragraph (b) of regulation 45(2).

Provided that, by way of derogation from regulation 45B, the resolution entities referred to in this sub-regulation shall meet a level of the requirement referred to in this sub-regulation that is equal to 13.5 per cent when calculated in accordance with paragraph (a) of regulation 45(2) and to 5 per cent when calculated in accordance with paragraph (b) of regulation 45(2) using own funds, subordinated eligible instruments, or liabilities as referred to in regulation 45B(3).

(6) The Resolution Committee may, after consulting the Authority, decide to apply the requirements laid down in sub-regulation (5), to a resolution entity which is not subject to Article 92a of the CRR and which is part of a resolution group, the total assets of which are lower than EUR 100 billion and which the Resolution Committee has assessed as reasonably likely to pose a systemic risk in the event of its failure:

Provided that, when taking a decision as referred to in this sub-regulation, the Resolution Committee shall take into account:

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

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

(c) the extent to which the resolution entity relies on Common Equity Tier 1 capital to meet the requirement referred to in regulation 45E:

Provided further that, the absence of a decision pursuant to this sub-regulation is without prejudice to any decision under regulation 45B(5).

(7) For entities that are not themselves resolution entities, the amount referred to in sub-regulation (2) shall be the following:

(a) for the purpose of calculating the requirement referred to in regulation 45(1), in accordance with paragraph (a) of regulation 45(2), 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 CRR and Article 104a of the CRD of the entity; and

(ii) a recapitalisation amount that allows the entity to restore compliance with its total capital ratio requirement referred in point (c) of Article 92(1) of the CRR and its requirement referred to in Article 104a of the CRD, after the exercise of the power to write down or convert relevant capital instruments and eligible liabilities in accordance with regulation 59, or after the resolution of the resolution group; and

(b) for the purpose of calculating the requirement referred to in regulation 45(1), in accordance with paragraph (b) of regulation 45(2), 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 CRR; 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 CRR after the exercise of the power to write down or convert relevant capital instruments and eligible liabilities in accordance with regulation 59, or after the resolution of the resolution group:

Provided that, for the purposes of paragraph (a) of regulation 45(2), the requirement referred to in regulation 45(1) shall be expressed in percentage terms as the amount calculated in accordance with paragraph (a) divided by the total risk exposure amount:

Provided further that, for the purposes of paragraph (b) of regulation 45(2), the requirement referred to in regulation 45(1) shall be expressed in percentage terms as the amount calculated in accordance with paragraph (b) divided by the total exposure measure.

(8) (a) The Resolution Committee shall, when setting the individual requirement provided in paragraph (b) of sub-regulation (7) take into account the requirements referred to in regulations 37(10), 44(5) and 44(8).

(b) For the purpose of setting the recapitalisation amounts referred to in sub-regulation (7), the Resolution Committee shall:

(i) 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

(ii) after consulting the Authority, adjust the amount corresponding to the current requirement referred to in Article 104a of the CRD 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 59, or after the resolution of the resolution group.

(c) The Resolution Committee may increase the requirement provided in paragraph (a)(i) of sub-regulation (7) 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 59, the entity is able to sustain sufficient market confidence for an appropriate period which shall not exceed one year.

(d) Where paragraph (c) of this sub-regulation applies, the amount referred to in the said paragraph (c) shall be equal to the combined buffer requirement that is to apply after the exercise of the power referred to in regulation 59, or after the resolution of the resolution group, less the amount referred to in paragraph (a) of point (6) of Article 128 of the CRD.

(e) The amount referred to in paragraph (c) shall be adjusted downwards if, after consulting the Authority, the Resolution Committee determines that it would be feasible and credible for a lower amount to be sufficient to ensure market confidence, and to ensure both the continuous provision of critical economic functions by the institution or entity referred to in paragraphs (b), (c) or (d) of the definition "entity" in regulation 2(1), and its access to funding without recourse to extraordinary public financial support, with the exception of contributions from resolution financing arrangements, in accordance with regulations 44(5) and 44(8) and regulation 101(2), after the exercise of the power referred to in regulation 59, or after the resolution of the resolution group:

Provided that, the amount shall be adjusted upwards if, after consulting the Authority, the Resolution Committee determines that a higher amount is necessary to sustain sufficient market confidence and to ensure both continued provision of critical economic functions by the institution or entity referred to in paragraphs (b), (c) or (d) of the definition "entity" in regulation 2(1), and its access to funding without recourse to extraordinary public financial support, with the exception of contributions from resolution financing arrangements, in accordance with regulations 44(5) and 44(8) and regulation 101(2) for an appropriate period which shall not exceed one year.

(9) Where the Resolution Committee expects that certain classes of eligible liabilities are reasonably likely to be fully or partially excluded from bail-in pursuant to regulation 44(3), or might be transferred in full to a recipient under a partial transfer, the requirement referred to in regulation 45(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 44(3); and
- (b) ensure that the conditions referred to in sub-regulation (2) are fulfilled.

(10) Any decision by the Resolution Committee 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 sub-regulations (2) to (9), and shall be reviewed by the Resolution Committee without undue delay to reflect any changes in the level of the requirement referred to in Article 104a of the CRD.

(11) For the purposes of sub-regulation (3) and (7), capital requirements shall be interpreted in accordance with the Authority's application of the transitional provisions laid down in Chapters 1, 2 and 4 of Title 1 of Part Ten of the CRR and in the provisions laid down in Maltese law exercising the options granted to the Authority by the said Regulation."

22. Immediately after regulation 45C of the principal regulations there shall be added the following new regulation:

Adds new regulation 45D to the principal regulation.

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

45D. (1) The requirement referred to in regulation 45(1) for a resolution entity that is a G-SI or part of a G-SII shall consist of the following:

- (a) The requirement referred to in Articles 92a and 494 of the CRR; and
- (b) any additional requirement for own funds and eligible liabilities that has been determined by the Resolution Committee specifically in relation to that entity in accordance with sub-regulation (3).

(2) The requirement referred to in regulation 45(1) for a Union material subsidiary of a non-EU G-SII shall consist of the following:

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

(b) any additional requirement for own funds and eligible liabilities that has been determined by the Resolution Committee specifically in relation to that material subsidiary in accordance with sub-regulation (3), which is to be met using own funds and liabilities that meet the conditions of regulations 45F and 89(2).

(3) The Resolution Committee shall impose an additional requirement for own funds and eligible liabilities referred to in sub-regulation (1)(b) and sub-regulation (2)(b) only:

(a) where the requirement referred to in paragraph (a) of sub-regulation (1) or paragraph (a) of sub-regulation (2) is not sufficient to fulfil the conditions set out in regulation 45C; and

(b) to an extent that ensures that the conditions set out in regulation 45C are fulfilled.

(4) For the purposes of regulation 45H(2), where more than one G-SII entity belonging to the same G-SII are resolution entities, the relevant European resolution authorities shall calculate the amount referred to in sub-regulation (3):

(a) for each resolution entity;

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

(5) Any decision by the Resolution Committee to impose an additional requirement for own funds and eligible liabilities under sub-regulation (1)(b) or sub-regulation (2)(b) shall contain the reasons for that decision, including a full assessment of the elements referred to in sub-regulation (3), and shall be reviewed by the Resolution Committee without undue delay to reflect any changes in the level of the requirement referred to in Article 104a of the CRD that applies to the resolution group or the Union material subsidiary of a non-EU G-SII."

Adds new regulation 45E to the principal regulations.

23. Immediately after regulation 45D of the principal

regulations there shall be added the following new regulation:

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

45E. (1) Resolution entities shall comply with the requirements laid down in regulation 45B to regulation 45D on a consolidated basis at the level of the resolution group.

(2) The Resolution Committee shall determine the requirement referred to in regulation 45(1) for a resolution entity at the consolidated resolution group level in accordance with regulation 45H, on the basis of the requirements laid down in regulations 45B to 45D and on the basis of whether the third-country subsidiaries of the group are to be resolved separately under the resolution plan.

(3) For resolution groups identified in accordance with paragraph (b) of the definition "resolution group" in regulation 2(1), the relevant European resolution authority 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 45C(3) and (5) and regulation 45D(1), in order to ensure that the resolution group as a whole complies with sub-regulations (1) and (2) and how such entities are to do so in conformity with the resolution plan."

24. Immediately after regulation 45E of the principal regulations there shall be added the following new regulation:

Adds new regulation 45F to the principal regulations.

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

45F. (1) (a) 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 45C on an individual basis.

(b) The Resolution Committee may, after consulting the Authority, decide to apply the requirement laid down in this regulation to an entity referred to in paragraphs (b), (c) or (d) of the definition "entity" in regulation 2(1) that is a subsidiary of a resolution entity but is not itself a resolution entity.

(c) By way of derogation from paragraph (a), 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 45C and 45D on a consolidated basis.

(d) For resolution groups identified in accordance with paragraph (b) of the definition "resolution group" in regulation 2(1), those credit institutions which are permanently affiliated to a central body, but are not themselves resolution entities, a central body which is not itself a resolution entity, and any resolution entities that are not subject to a requirement under regulation 45E(3), shall comply with regulation 45C(7) on an individual basis.

(e) The requirement referred to in regulation 45(1) for any entity referred to in this sub-regulation, shall be determined in accordance with regulations 45H and 89, where applicable, and on the basis of the requirements laid down in regulation 45C.

(2) The requirement referred to in regulation 45(1) for entities referred to in sub-regulation (1), 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 59 to 62, does not affect the control of the subsidiary by the resolution entity;

(ii) that fulfil the eligibility criteria referred to in Article 72a of the CRR, except for points (b), (c), (k), (l) and (m) of Article 72b(3) to (5) of the said Regulation;

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

(iv) that are subject to write down or conversion powers in accordance with regulations 59 to 62, 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, with the exception of the case of insolvency or liquidation of that entity, and the said 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, with the exception of the case of 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, through:

(i) Common Equity Tier 1 capital, and

(ii) other own funds that:

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

- 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 59 to 62, does not affect the control of the subsidiary by the resolution entity.

(3) Where the Resolution Committee is responsible for a subsidiary that is not a resolution entity, the Resolution Committee may waive the application of this regulation to that subsidiary where:

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

(b) the resolution entity complies with the requirement referred to in regulation 45E;

(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 59(3), in particular where resolution action is taken in respect of the resolution entity;

(d) the resolution entity satisfies the Authority regarding the prudent management of the subsidiary and has declared, with the consent of the 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;

(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.

(4) Where the Resolution Committee is responsible for a subsidiary that is not a resolution entity, the Resolution Committee may waive the application of this regulation to such subsidiary where:

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

(b) the parent undertaking complies on a consolidated basis with the requirement referred to in regulation 45(1) in Malta;

(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 59(3), in particular where resolution action or powers referred to in regulation 59(1) are taken in respect of the parent undertaking;

(d) the parent undertaking satisfies the Authority regarding the prudent management of the subsidiary and has declared, with the consent of the 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;

(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.

(5) Where the conditions laid down in paragraphs (a) and (b) of sub-regulation (3) are met, the Resolution Committee responsible of a subsidiary may permit the requirement referred to in regulation 45(1), to be met in full or in part with a guarantee provided by the resolution entity, which fulfils 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 when the subsidiary is unable to pay its debts or other liabilities as they fall due, or a determination has been made in accordance with regulation 59(3) in respect of the subsidiary, whichever is the earliest;

(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 fulfils the requirements of Article 197 of the CRR, which following appropriately conservative haircuts, is sufficient to cover the amount collateralised as referred to in paragraph (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 fulfils the same maturity condition as that referred to in Article 72c(1) of the CRR; and

(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:

Provided that, for the purposes of paragraph (g), at the request of the Resolution Committee, 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."

Adds new regulation 45G to the principal regulations.

25. Immediately after regulation 45F of the principal regulations there shall be added the following new regulation:

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

45G. The Resolution Committee may partially or fully waive the application of regulation 45F, 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 that are subject to supervision by the Authority, are established in Malta 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 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 45E(3); and

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

26. Immediately after regulation 45G of the principal regulations there shall be added the following new regulation:

Adds new regulation 45H to the principal regulations.

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

45H. (1) The Resolution Committee where it is the resolution authority of the resolution entity together with the group-level resolution authority, where different from the former, and the European resolution authorities responsible for the subsidiaries of a resolution group that are subject to the requirement referred to in regulation 45F on an individual basis, shall do everything within their power to reach a joint decision 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.

Provided that, the joint decision shall ensure compliance with regulations 45E and 45F and it shall be fully reasoned and provided to:

(a) the resolution entity by the Resolution Committee or its European resolution authority;

(b) the entities of a resolution group which are not a resolution entity by the Resolution Committee or the relevant European resolution authorities of those entities;

(c) the Union parent undertaking of the group by the Resolution Committee or the European resolution authority of the resolution entity, when that Union parent undertaking is not itself a resolution entity from the same resolution group:

Provided further that, the joint decision taken in accordance with this regulation may provide that, where consistent with the resolution strategy and sufficient instruments complying with regulation 45F(2) have not been bought directly or indirectly by the resolution entity, the requirements referred to in regulation 45C(7) are partially met by the subsidiary in compliance with regulation 45F(2) with instruments issued to and bought by entities not belonging to the resolution group.

(2) The Resolution Committee and the European resolution authorities referred to in sub-regulation (1) shall, where more than one G-SII entity belonging to the same G-SII are resolution entities, discuss and where appropriate and consistent with the G-SII's resolution strategy, agree on the application of Article 72e of the CRR and any adjustment to minimise or eliminate the difference between the sum of the amounts referred to in point (a) of Article 45d(4) and Article 12 of the said CRR for individual resolution entities and the sum of the amounts referred to in point (b) of Article 45d(4) and Article 12 of the said CRR:

Provided that, the adjustment mentioned above may be applied on condition that:

(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; and

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

Provided further that, the sum of the amounts referred to in paragraph (a) of regulation 45D(4) and Article 12 of the CRR for individual resolution entities shall not be lower than the sum of the amounts referred to in paragraph (b) of regulation 45D(4) and Article 12 of the said CRR.

(3) In the absence of such a joint decision within four months, a decision shall be taken in accordance with sub-regulations (4) to (6).

(4) (a) Where a joint decision is not taken within four months because of a disagreement concerning a consolidated resolution group requirement referred to in regulation 45E, a decision shall be taken on that requirement by the Resolution Committee or the European resolution authority responsible for 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 European resolution authorities;

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

(b) The Resolution Committee or the European resolution authority of the resolution entity shall where, at the end of the four-month period, any of the European resolution authorities concerned has referred the matter to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, defer its decision and await any decision that the EBA may take in accordance with Article 19(3) of the said Regulation, and shall take its decision in accordance with the decision of the EBA:

Provided that, the decision of the EBA shall take into account paragraphs (a) and (b) of this sub-regulation. The four-month period shall be deemed to be the conciliation period within the meaning of Regulation (EU) No 1093/2010:

Provided further that, the matter shall not be referred to the EBA after the end of the four-month period or after a joint decision has been reached, and that in the absence of an EBA decision within one month of the referral of the matter, the decision of the Resolution Committee or of the relevant European resolution authority of the resolution entity shall apply.

(5) (a) Where a joint decision is not taken within four months because of a disagreement concerning the level of the requirement referred to in regulation 45F to be applied to any entity of a resolution group on an individual basis, the decision shall be taken by the Resolution Committee or the relevant European resolution authority of the said entity, where all of the following conditions are fulfilled:

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

(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 resolution authority of the resolution entity or the group-level resolution authority has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the resolution authorities responsible for the subsidiaries on an individual basis shall defer their decisions and await any decision that EBA may take in accordance with Article 19(3) of the said Regulation, and shall take their decisions in accordance with the decision of EBA:

Provided that, the four-month period shall be deemed to be the conciliation period within the meaning of Regulation (EU) No 1093/2010:

Provided further that, the matter shall not be referred to the EBA after the end of the four-month period or after a joint decision has been reached:

(c) The relevant European resolution authority of the resolution entity or the group-level resolution authority shall not refer the matter to the EBA for binding mediation where the level set by the resolution authority of the subsidiary:

(a) is within 2 per cent of the total risk exposure amount calculated in accordance with Article 92(3) of the CRR of the requirement referred to in regulation 45E; and

(b) complies with regulation 45C(7):

Provided that, in the absence of an EBA decision within one month, the decisions of the resolution authorities of the subsidiaries shall apply:

Provided further that, the joint decision and any decisions taken in the absence of a joint decision shall be reviewed and where relevant, updated on a regular basis.

(6) Where a joint decision is not taken within four months 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 sub-regulation (5);

(b) a decision shall be taken on the level of the consolidated resolution group requirement in accordance with sub-regulation (4).

(7) The joint decision referred to in sub-regulation (1) and any decisions taken by the resolution authorities referred to in sub-regulations (4), (5) and (6), in the absence of a joint decision shall be binding on the resolution authorities concerned:

Provided that, the joint decision and any decisions taken in the absence of a joint decision shall be reviewed and where relevant, updated on a regular basis.

(8) The Resolution Committee, in coordination with the Authority shall require and verify that entities meet the requirement referred to in regulation 45(1), and shall take any decision pursuant to this regulation in parallel with the development and the maintenance of resolution plans."

27. Immediately after regulation 45H of the principal regulations there shall be added the following new regulation:

Adds new regulation 45I to the principal regulations.

"Supervisory reporting and public disclosure of the requirement.

45I. (1) Institutions and entities referred to in paragraphs (b), (c) or (d) of the definition "entity" in regulation 2(1), that are subject to the requirement referred to in regulation 45(L) shall report to the Authority and the Resolution Committee on the following:

(a) the amounts of own funds that, where applicable, meet the conditions of paragraph (b) of regulation 45F(2), and the amounts of eligible liabilities, and the expression of those amounts in accordance with regulation 45(2) after any applicable deductions in accordance with Articles 72e to 72j of the CRR;

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

(c) for the items referred to in paragraphs (a) and (b) above:

(i) their composition, including their maturity profile;

(ii) their ranking in normal insolvency proceedings in terms of article 29A of the Banking Act; 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 55(1), points (p) and (q) of Article 52(1) and points (n) and (o) of Article 63 of the CRR:

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Provided that, the obligation to report on the amounts of other bail-inable liabilities referred to in paragraph (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 45(1) as calculated in accordance with paragraph (a).

(2) The institutions and entities referred to in sub-regulation (1) shall report:

(a) the information referred to in paragraph (a) of sub-regulation (1), on at least a biannual basis; and

(b) the information referred to in paragraphs (b) and (c) of sub-regulation (1) on at least an annual basis:

Provided that, notwithstanding the provisions of this sub-regulation, at the request of the Authority or the Resolution Committee, the institutions or entities referred to in sub-regulation (1) shall report the information referred to in sub-regulation (1) on a more frequent basis.

*(3) Institutions or entities referred to in sub-regulation (1) shall, on at least an annual basis, make the following information publicly available:

(a) the amounts of own funds that, where applicable, meet the conditions of paragraph (b) of regulation 45F(2) and eligible liabilities;

(b) the composition of the items referred to in paragraph (a), including their maturity profile and ranking in normal insolvency proceedings in terms of article 29A of the Banking Act; and

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(c) the applicable requirement referred to in regulations 45E or 45F expressed in accordance with regulation 45(2).

(*) This sub-regulation shall enter into force on 1 January 2024.

(4) Sub-regulations (1) and (3) shall not apply to institutions or entities whose resolution plan provides that the institution or entity is to be wound up under normal insolvency proceedings.

(5) Where resolution actions have been implemented or the write-down or conversion power referred to in regulation 59 has been exercised, public disclosure requirements referred to in sub-regulation (3) shall apply from the date of the deadline to comply with the requirements of regulations 45E or 45F referred to in regulation 45M."

28. Immediately after regulation 45I of the principal regulations there shall be added the following new regulation:

Adds new regulation 45J to the principal regulations.

"Reporting to the EBA.

45J. The Resolution Committee shall inform the EBA of the minimum requirement for own funds and eligible liabilities that has been set, in accordance with regulations 45E or 45F, for each institution and entity licensed under the Banking Act and Investment Services Act."

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29. Immediately after regulation 45J of the principal regulations there shall be added the following new regulation:

Adds new regulation 45K to the principal regulations.

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

45K. (1) The Authority and the Resolution Committee, as the case may be, shall address any breach of the minimum requirement for own funds and eligible liabilities referred to in regulations 45E or 45F on the basis of at least one of the following:

- (a) powers referred to in regulation 16A;
- (b) powers to address or remove impediments to resolvability in accordance with regulations 17 and 18;
- (c) early intervention measures in accordance with regulation 27;
- (d) administrative penalties and other administrative measures in accordance with regulations 110 and 111;
- (e) measures referred to in Article 104 of the CRD:

Provided that, the Authority and the Resolution Committee, as the case may be, may also carry out an assessment of whether the institution or entity referred to in paragraphs (b), (c) or (d) of the definition "entity" in regulation 2(1) is failing or is likely to fail, in accordance with regulations 32, 32A or 33, as applicable.

(2) The Authority and the Resolution Committee shall consult each other when they exercise their respective powers referred to in sub-regulation (1).";

Adds new regulation 45L to the principal regulations.

30. Immediately after regulation 45K of the principal regulations there shall be added the following new regulation:

"Transitional and post-resolution arrangements.

45L. (1) By way of derogation from regulation 45(1), the Resolution Committee shall determine appropriate transitional periods for institutions or entities referred to in paragraphs (b), (c) or (d) of the definition "entity" in regulation 2(1), to comply with the requirements in regulations 45E or 45F or with requirements that result from the application of regulation 45B(4), (5) or (7), as appropriate. Institutions and entities are obliged to comply with the requirements in regulations 45E or 45F, or the requirements that result from the application of regulation 45B(4), (5) or (7) by not later than 1st January, 2024:

Provided that, the Resolution Committee shall determine intermediate target levels for the requirements set out in regulations 45E or 45F, or for requirements that result from the application of regulation 45B(4), (5) or (7), as appropriate, that institutions or entities referred to in paragraphs (b), (c) or (d) of the definition "entity" in regulation 2(1) shall be required to comply with as at 1 January 2022. The intermediate target levels, as a rule, shall ensure a linear build-up of own funds and eligible liabilities towards the requirement:

Provided further that, the Resolution Committee may set a transitional period that ends after 1st January 2024 where duly justified and appropriate, on the basis of the criteria referred to in sub-regulation (7), taking into account:

(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 45E or 45F, or with a requirement that results from the application of regulation 45B(4), (5) or (7); 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 CRR, and regulation 45B or 45F(2), and if not, whether that inability is of an idiosyncratic nature or is due to market-wide disturbance.

(2) The deadline for resolution entities to comply with the minimum level of the requirements referred to in regulation 45C(5) or (6) shall be 1st January 2022.

(3) The minimum levels of the requirements referred to in regulation 45C(5) and (6) shall not apply within the two-year period following the date:

(a) on which the Resolution Committee has applied the bail-in tool; or

(b) on which the resolution entity has put in place an alternative private sector measure as referred to in paragraph (b) of regulation 32(1) by which capital instruments and other liabilities have been written down or converted into Common Equity Tier 1 instruments, or on which write down or conversion powers in accordance with regulation 59, have been exercised in respect of that resolution entity, in order to recapitalise the resolution entity without the application of resolution tools.

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

(5) By way of derogation from regulation 45(1), the Resolution Committee shall determine an appropriate transitional period within which to comply with the requirements of regulation 45E or 45F, or a requirement resulting from the application of regulation 45B(4), (5) or (7), as appropriate, for institutions or entities referred to in paragraphs (b), (c) or (d) of the definition "entity" in regulation 2(1), to which resolution tools or the write-down or conversion power referred to in regulation 59 have been applied.

(6) For the purposes of sub-regulations (1) to (5), the Resolution Committee shall communicate to the institution or entity referred to in paragraphs (b), (c) or (d) of the definition "entity" in regulation 2(1) a planned minimum requirement for own funds and eligible liabilities for each twelve month period during the transitional period, with a view to facilitating a gradual build-up of its loss-absorbing and recapitalisation capacity:

Provided that, at the end of the transitional period, the minimum requirement for own funds and eligible liabilities shall be equal to the amount determined under regulation 45B(4), (5) or (7), regulation 45C(5) or (6), regulation 45E or regulation 45F, as applicable.

(7) When determining the transitional periods, the Resolution Committee shall take into account:

- (a) the prevalence of deposits and the absence of debt instruments in the funding model;
- (b) the access to the capital markets for eligible liabilities;
- (c) the extent to which the resolution entity relies on Common Equity Tier 1 capital to meet the requirement referred to in regulation 45E.

(8) Subject to sub-regulation (1), the Resolution Committee shall not be prevented from subsequently revising either the transitional period or any planned minimum requirement for own funds and eligible liabilities communicated under sub-regulation (6)."

Amends
regulation 46
of the principal
regulations.

31. In regulation 46 of the principal regulations the words "eligible liabilities", wherever they occur, shall be substituted by the words "bail-inable liabilities";

32. In paragraph (b)(ii) of sub-regulation (1) of regulation 47 of the principal regulations the words "eligible liabilities" shall be substituted by the words "bail-inable liabilities".

Amends regulation 47 of the principal regulations.

33. Regulation 48 of the principal regulations shall be amended as follows:

Amends regulation 48 of the principal regulations.

(a) paragraph (e) of sub-regulation (1) thereof, shall be substituted by the following:

"(e) if, and only if, the total reduction of shares or other instruments of ownership, relevant capital instruments and bail-inable liabilities pursuant to paragraphs (a) to (d) is less than the sum of the amounts referred to in regulation 47(3)(b) and (c), the Resolution Committee reduces 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 article 29A(3A) of the Banking Act, in accordance with the hierarchy of claims in normal insolvency proceedings, including the ranking of deposits provided for in article 29A of the Banking Act, pursuant to regulation 44, in conjunction with the write down pursuant to paragraphs (a) to (d) to produce the sum of the amounts referred to in regulation 47(3) (b) and (c).";

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(b) in sub-regulation (2) thereof, the words "eligible liabilities", wherever they occur, shall be substituted by the words "bail-inable liabilities";

(c) immediately after sub-regulation (5) thereof, there shall be added the following new sub-regulation:

"(6) In relation to institutions or entities referred to in paragraphs (a), (b), (c) or (d) of the definition "entity" in regulation 2(1), all claims resulting from own funds items have, in terms of Maltese insolvency law, a lower priority ranking than any claim that does not result from an own funds item:

Provided that, to the extent that an instrument is only partly recognised as an own funds item, the whole instrument shall be treated as a claim resulting from an own funds item and shall rank lower than any claim that does not result from an own funds item."

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Substitutes
regulation 55 of
the principal
regulations.

34. Regulation 55 of the principal regulations shall be substituted by the following:

"55. (1) Institutions and entities referred to in paragraphs (b), (c) and (d) of the definition "entity" in regulation 2(1) shall include a contractual term by which the creditor or party to the agreement creating the liability recognises that such liability may be subject to 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 the Resolution Committee, provided that such liability complies with all of the following conditions:

(a) the liability is not excluded under regulation 44(2);

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(b) the liability is not a deposit referred to in article 29A(3) of the Banking Act;

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

(d) the liability is issued or entered into after the date on which these regulations shall come into force:

Provided that, the Resolution Committee may decide that the obligation in this regulation shall not apply to institutions or entities in respect of which the requirement under regulation 45(1) equals the loss absorption amount as defined under paragraph (a) of regulation 45C(2). However liabilities that meet the conditions referred to in this sub-regulation and which do not include the contractual term referred to in this sub-regulation are not counted towards that requirement:

Provided further that, this sub-regulation shall not apply where the Resolution committee determines that the liabilities or instruments referred to in this sub-regulation can be subject to write-down and conversion powers by the Resolution Committee pursuant to the law of the third country or to a binding agreement concluded with that third country.

(2) (a) The Resolution Committee shall ensure that where an institution or entity referred to in paragraphs (b), (c) or (d) of the definition "entity" in regulation 2(1) reaches the determination that is legally or otherwise impracticable to include in the contractual

provisions governing a relevant liability a term required in accordance with sub-regulation (1), the institution or entity mentioned above notifies its determination, including the designation of the class of the liability and the justification of that determination, to the Resolution Committee:

Provided that, the institution or entity mentioned above shall submit to the Resolution Committee all information that the said Resolution Committee requests, within a reasonable time frame following the receipt of the notification, in order for the Resolution Committee to assess the effect of such notification on the resolvability of that institution or entity:

Provided further that, in the case of a notification under paragraph (a) of sub-regulation (2), the obligation to include a term required in accordance with sub-regulation (1) in the contractual provisions is automatically suspended from the moment of receipt by the Resolution Committee of the notification.

(b) Where the Resolution Committee concludes that it is not legally or otherwise impracticable to include in the contractual provisions a term required in accordance with sub-regulation (1), taking into account the need to ensure the resolvability of the institution or entity referred to in paragraphs (b), (c) or (d) of the definition "entity" in regulation 2(1), the Resolution Committee shall require, within a reasonable timeframe, the inclusion of such contractual term, following the notification pursuant to paragraph (a), the inclusion of such contractual term:

Provided that, the Resolution Committee may, in addition, require the said institution or entity to amend its practices concerning the application of the exemption from the contractual recognition of bail-in.

(c) The liabilities referred to in paragraph (a) of sub-regulation (2), shall not include Additional Tier 1 instruments, Tier 2 instruments and debt instruments referred to under paragraph (a) of article 29A(5) of the Banking Act, where those instruments are unsecured liabilities: Cap. 371.

Provided that, the liabilities referred to in sub-regulation (2)(a) shall be senior to the liabilities referred to in article 29A(3A) and (4) of the Banking Act. Cap. 371.

(d) Where the Resolution Committee, in the context of the assessment of the resolvability of an institution or entity referred to in paragraphs (b), (c) or (d) of the definition "entity" in regulation 2(1), in accordance with regulations 15 and 16, or

at any other time, determines that, within a class of liabilities which includes eligible liabilities, the amount of liabilities that, in accordance with sub-regulation (2)(a), do not include the contractual term referred to in sub-regulation (1), together with the liabilities which are excluded from the application of the bail-in tool in accordance with regulation 44(2), or which are likely to be excluded in accordance with provided in regulation 73, when applying write-down and conversion powers to eligible liabilities.

(e) Where the Resolution Committee concludes, on the basis of the assessment referred to in paragraph (d), that the liabilities which, in accordance with sub-regulation 2(a), do not include the contractual term referred to in sub-regulation (1), create a substantive impediment to resolvability, it shall apply the powers provided in regulation 17, as appropriate, to remove that impediment to resolvability.

(f) Liabilities resulting from the institution or entity referred to in paragraphs (b), (c) or (d) of the definition "entity" in regulation 2(1), fail to include in the contractual provisions the term required by sub-regulation (1), or for which, in accordance with this sub-regulation, that requirement does not apply, shall not be counted towards the minimum requirement for own funds and eligible liabilities.

(3) The Resolution Committee may require institutions or entities referred to in paragraphs (b), (c) or (d) of the definition "entity" in regulation 2(1), to provide authorities with a legal opinion relating to the legal enforceability and effectiveness of the contractual term referred to in sub-regulation (1).

(4) Where an institution or entity referred to in paragraphs (b), (c) or (d) of the definition "entity" in regulation 2(1), does not include in the contractual provisions governing a relevant liability a contractual term required in accordance with sub-regulation (1), that shall not prevent the Resolution Committee from exercising the write-down and conversion powers in relation to that liability.

(5) The Resolution Committee shall specify, where it deems necessary, the categories of liabilities for which an institution or entity referred to in paragraphs (b), (c) or (d) of the definition "entity" in regulation 2(1), may reach the determination that it is legally or otherwise impracticable to include the contractual term referred to in sub-regulation (1), based on the conditions further specified by the EBA as a result of the application of article 55(6) of the BRRD."

35. Regulation 59 of the principal regulations shall be amended as follows:

Amends
regulation 59 of
the principal
regulations.

(a) in the marginal note thereof, the words "Requirement to write down or convert capital instruments" shall be substituted by the words "Requirement to write-down or convert relevant capital instruments and eligible liabilities.";

(b) sub-regulation (1) thereof, shall be substituted by the following:

"(1) The power to write-down or convert relevant capital instruments and eligible liabilities may be exercised either:

(a) independently of resolution action; or

(b) in combination with a resolution action, where the conditions for resolution specified in regulations 32, 32A or 33 are met:

Provided that, 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:

Provided further that, after the exercise of the power to write-down or convert relevant capital instruments and eligible liabilities independently of resolution action, the valuation provided in regulation 74 shall be carried out, and regulation 75 shall apply.";

(c) immediately after sub-regulation (1) thereof, there shall be added the following new sub-regulations:

"(1A) 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 45F(2), except the condition related to the maturity of liabilities as set out in Article 72c(1) of the CRR:

Provided that, the Resolution Committee shall when the power mentioned above is exercised, ensure that the write-down or conversion is done in accordance with the principle referred to in paragraph (g) of regulation 34(1);

(1b) Where a resolution action 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 or converted in accordance with regulation 60(1) at the level of such entity, shall count towards the thresholds laid down in regulation 37(10) and paragraph (a) of regulation 44(5), or paragraph (a) of regulation 44(8) that apply to the entity concerned.";

(d) in sub-regulation (2) thereof, the words " capital instruments," shall be substituted by the words " capital instruments, and eligible liabilities as referred to in sub-regulation (1A)";

(e) sub-regulation (3) thereof, shall be amended as follows:

(i) The introductory paragraph of sub-regulation (3) thereof, shall be substituted by the following:

"(3) The Resolution Committee shall exercise the write-down or conversion power, in accordance with regulation 60 and without delay, in relation to relevant capital instruments, and eligible liabilities as referred to in sub-regulation (1a), issued by an institution or entity referred to in paragraphs (b), (c) or (d) of the definition "entity" in regulation 2(1), when one or more of the following circumstances apply:";

(ii) paragraphs (a) and (b) of sub-regulation (3) thereof shall be substituted by the following:

"(a) Where the determination has been made that the conditions for resolution specified in regulations 32, 32A or 33 have been met, before any resolution action is taken; or

(b) The appropriate authority determines that unless that power is exercised in relation to the

relevant capital instruments and eligible liabilities as referred to in sub-regulation (1A), the institution or entity referred to in paragraphs (b), (c) or (d) of the definition "entity" in regulation 2(1) will no longer be viable;"

(f) in sub-regulations (4) and (10) thereof, the words "capital instruments", wherever they occur, shall be substituted by the words "capital instruments, or eligible liabilities as referred to in sub-regulation (1A).".

36. Regulation 60 of the principal regulations shall be amended as follows:

Amends
regulation 60 of
the principal
regulations.

(a) in the marginal note thereof, the words "Provisions governing the write-down or conversion of capital instruments" shall be substituted by the words "Provisions governing the write-down or conversion of relevant capital instruments and eligible liabilities.";

(b) immediately after paragraph (c) of sub-regulation (1) thereof, there shall be added the following new paragraph:

"(d) The principal amount of eligible liabilities referred to in regulation 59(1A) is written down and converted into Common Equity Tier 1 instruments or both, to the extent required to achieve the resolution objectives set out in regulation 31, or to the extent of the capacity of the relevant eligible liabilities, whichever is lower.";

(c) sub-regulation (2) thereof, shall be substituted by the following:

"(2) Where the principal amount of a relevant capital instrument, or an eligible liability as referred to in regulation 59(1A) 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 46(3);

(b) no liability to the holder of the relevant capital instrument, or of the eligible liability as referred to in regulation 59(1A) 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;

(c) no compensation is paid to any holder of the relevant capital instruments, or of the liabilities as referred to in regulation 59(1A), other than in accordance with sub-regulation (3).";

(d) sub-regulation (3) thereof, shall be amended as follows:

(i) the introductory paragraph of sub-regulation (3) thereof, shall be substituted by the following:

"(3) In order to effect a conversion of relevant capital instruments, and eligible liabilities as referred to in regulation 59(1A), under paragraphs (b), (c) and (d) of sub-regulation (1), the Resolution Committee may require institutions and entities referred to in paragraphs (b), (c) or (d) of the definition "entity" in regulation 2(1), to issue Common Equity Tier 1 instruments to the holders of the relevant capital instruments and such eligible liabilities:

Provided that relevant capital instruments and such liabilities may only be converted where the following conditions are met:"

(ii) in paragraph (d) thereof, the words "each relevant capital instrument" shall be substituted by the words "each relevant capital instrument, or each eligible liability as referred to in regulation 59(1A)".

Amends
regulation 61 of
the principal
regulations.

37. Immediately after sub-regulation (1) of regulation 61 of the principal regulations there shall be added the following new sub-regulation (1A):

"(1A)Where the relevant capital instruments, or eligible liabilities as referred to in regulation 59(1a), are recognised for the purposes of meeting the requirement referred to in regulation 45F(1), the appropriate authority responsible for making the determination referred to in regulation 59(3), shall be the appropriate authority of the Member State where the institution or entity referred to in paragraphs (b), (c) or (d) of the definition "entity" in regulation 2(1), has been authorised in accordance with Title III of the CRD.".

38. Regulation 62 of the principal regulations shall be amended as follows:

Amends
regulation 62
of the principal
regulations.

(a) sub-regulation (1) thereof, shall be substituted by the following:

"(1) Before making a determination referred to in paragraph (b), (c), (d) or (e) of regulation 59(3) in relation to a subsidiary that issues relevant capital instruments, or eligible liabilities as referred to in regulation 59(1a), for the purposes of meeting the requirement referred to in regulation 45F 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, an appropriate authority complies with the following requirements:

(a) when considering whether to make a determination referred to in paragraphs (b), (c), (d) or (e) of regulation 59(3) after consulting the Resolution Committee, or a European regulatory authority acting as the resolution authority of the relevant resolution entity, it notifies, within twenty-four hours of consulting that authority:

(i) where the Authority is the consolidating supervisor, the Authority; or, where the Authority is not the consolidating supervisor, the European regulatory authority acting as the consolidating supervisor and, if different, the appropriate authority in the Member State where the consolidating supervisor is located;

(ii) the Resolution Committee or European Resolution authorities of other entities within the same resolution group, whichever is the case, that directly or indirectly purchased liabilities referred to in regulation 45F(2) from the entity that is subject to regulation 45F(1); and

(b) when considering whether to make a determination referred to in paragraph (c) of regulation 59(3), it notifies, without delay:

(i) where the Authority responsible for

an institution or entity referred to in paragraphs (b), (c) or (d) of the definition "entity" in regulation 2(1), 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, the Authority, the European regulatory authorities responsible for the other institutions or entities referred to in paragraphs (b), (c) or (d) of the definition "entity" in regulation 2(1) 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, if any, and if different, the overseas appropriate authorities in the Member States where those European regulatory authorities and the consolidating supervisor are located; or

(ii) where the Authority is not responsible for such institutions or entities, the European regulatory authorities responsible for the institutions or entities referred to in paragraphs (b), (c), or (d) of the definition "entity" in regulation 2(1) that have issued the relevant capital instruments in relation to which the write down or conversion power is to be exercised if that determination were made; and if different, the overseas appropriate authorities in the Member States where those European regulatory authorities and the consolidating supervisor are located.

(c) in sub-regulation (4) thereof, the words "after consulting the authorities notified, shall assess the following matters:" shall be substituted by the words, "after consulting the authorities notified in accordance with paragraph (a)(i) or (b) of sub-regulation (1), shall assess the following matters:".

Amends
regulation 63 of
the principal
regulations.

39. In paragraphs (e), (f) and (j) of sub-regulation (1) of regulation 63 of the principal regulations the words "eligible liabilities", wherever they occur, shall be substituted by the words "bail-inable liabilities";

Amends
regulation 66 of
the principal
regulations.

40. In sub-regulation (4) of regulation 66 of the principal regulations the words "eligible liabilities" shall be substituted by the words "bail-inable liabilities".

41. Regulation 68 of the principal regulations shall be amended as follows:

Amends regulation 68 of the principal regulations.

(a) the introductory paragraph of sub-regulation (3) thereof, shall be substituted by the following:

"(3) Where the substantive obligations under the contract, including payment and delivery obligations, and provision of collateral, continue to be performed, a crisis prevention measure, a suspension of obligation under regulation 33B or a crisis management measure, including the occurrence of any event directly linked to the application of such a measure, shall not, in itself, make it possible for anyone to:";

(b) sub-regulation (5) thereof, shall be substituted by the following:

"(5) A suspension or restriction under regulations 33B, 69, or 70 shall not constitute non-performance of a contractual obligation for the purposes of sub-regulations (1) and (3) and of regulation 71(1).".

42. Regulation 69 of the principal regulations shall be amended as follows:

Amends regulation 69 of the principal regulations.

(a) sub-regulation (4) thereof, shall be substituted by the following:

"(4) Any suspension under sub-regulation (1), shall not apply to payment and delivery obligations owed to the following:

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

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

(c) central banks.";

(b) immediately after sub-regulation (5) thereof, there shall be added the following new proviso:

"Provided that, the Resolution Committee shall

set the scope of that power having regard to the circumstances of each case and shall 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:

Provided further that, where the power to suspend payment or delivery obligations is exercised in respect of eligible deposits, the Resolution Committee shall ensure that depositors have access to an appropriate daily amount from those deposits."

Amends
regulation 70 of
the principal
regulations.

43. Sub-regulation (2) of regulation 70 of the principal regulations shall be substituted by the following:

"(2) The Resolution Committee shall not exercise the power referred to in sub-regulation (1), in relation to any security interest of systems or operators of systems designated for the purposes of Directive 98/26/EC, central counterparties authorised in the Union pursuant to Article 14 of Regulation (EU) No 648/2012 and third-country central counterparties recognised by ESMA pursuant to Article 25 of Regulation (EU) No 648/2012, and central banks, over assets pledged or provided for by way of margin or collateral by the institution under resolution."

Amends
regulation 71 of
the principal
regulations.

44. Sub-regulation (3) of regulation 71 of the principal regulations shall be substituted by the following:

"(3) Any suspension under sub-regulation (1) or (2) shall not apply to systems or operators designated for the purposes of Directive 98/26/EC, central counterparties authorised in the Union pursuant to Article 14 of Regulation (EU) No 648/2012 and third-country central counterparties recognised by ESMA pursuant to Article 25 of Regulation (EU) No 648/2012, or central banks."

Adds new
regulation 71A
to the principal
regulations.

45. Immediately after regulation 71 of the principal regulations

there shall be added the following new regulation:

"Contractual
recognition of
resolution stay
powers.

71A. (1) The institutions and entities referred to in paragraphs (b), (c) or (d) of the definition "entity" in regulation 2(1) shall include, in any financial contract which they enter into and which is governed by third-country law, terms which the parties recognise that the financial contract may be subject to the exercise of powers by the Resolution Committee to suspend or restrict rights and obligations under regulations 33A, 69, 70 and 71, and recognise that they are bound by the requirements of regulation 68.

(2) The Resolution Committee shall also require that Union parent undertakings ensure that their third-country subsidiaries include, in the financial contracts referred to in sub-regulation (1), terms to exclude that the exercise of the power of the Resolution Committee to suspend or restrict rights and obligations of the Union parent undertaking, in accordance with sub-regulation (1), constitutes a valid ground for early termination, suspension, modification, netting, exercise of set-off rights or enforcement of security interests on those contracts:

Provided that, the requirement in sub-regulation (1) may apply in respect of third-country subsidiaries which are:

- (a) credit institutions;
- (b) investment firms (or which would be investment firms if they had a head office in the relevant Member State); or
- (c) financial institutions.

(3) Sub-regulation (1) shall apply to any financial contract which:

- (a) creates a new obligation, or materially amends an existing obligation after the entry into force of the provisions of this regulation;
- (b) provides for the exercise of one or more termination rights or rights to enforce security interests to which regulation 33B, 68, 69, 70 or 71 would apply if the financial contract were governed by the laws of a Member State.

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(4) Where an institution or entity referred to in paragraphs (b), (c) or (d) of the definition "entity" in regulation 2(1), does not include the contractual term required in accordance with sub-regulation (1), that shall not prevent the Resolution Committee from applying the powers referred to in regulations 33A, 68, 69, 70 or 71 in relation to that financial contract.";

Amends
regulation 88 of
the principal
regulations.

46. Sub-regulation (1) of regulation 88 of the principal regulations, shall be amended as follows:

(a) the words "Where the Resolution Committee is", shall be substituted by the words "Subject to regulation 89, where the Resolution Committee is" and the words " regulations 12, 13, 16, 18, 45, 91 and 92, and" shall be substituted by the words "regulations 12, 13, 16, 45, 45A to 45H, 91 and 92, and"; and

(b) in sub-paragraph (i) thereof, the words "regulation 45" shall be substituted by the words "regulations 45, 45A to 45H.";

Amends
regulation 89 of
the principal
regulations.

47. Regulation 89 shall be substituted by the following:

"89. (1) Where a third-country institution or third-country parent undertaking has subsidiaries established in the Union or Union parent undertakings established in Malta and at least another Member State, or two or more Union branches that are regarded as significant by Malta and at least another Member State, the Resolution Committee together with the European resolution authority where those entities are established or where those significant branches are located shall establish one single European resolution college.

(2) The European resolution college referred to in sub-regulation (1) shall perform the functions and carry out the tasks specified in regulation 88 with respect to the entities referred to in sub-regulation (1) and, in so far as those tasks are relevant, to their branches:

Provided that, the tasks referred to in this sub-regulation shall include the setting of the requirement referred to in regulations 45 and 45A to 45H in relation to which the members of the European resolution college shall take into consideration the global resolution strategy, if any, adopted by third-country authorities when setting the said requirement:

Provided further that, 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 Union or, on a consolidated basis, the Union parent undertaking shall comply with the requirement of regulation 45F(1) by issuing instruments referred to in paragraphs (a) and (b) of regulation 45F(2) 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 paragraphs (a)(i) and (b)(ii) of regulation 45F(2).

(3) Where only one Union parent undertaking holds all Union subsidiaries of a third-country institution or third-country parent undertaking, the European resolution college shall be chaired by the resolution authority of the Member State where the Union parent undertaking is established:

Provided that, where sub-regulation (5) does not apply, the resolution authority of a Union parent undertaking or a Union subsidiary with the highest value of total on-balance sheet assets held shall chair the European resolution college.

(4) Malta together with other relevant Member States may, by mutual agreement of all of the relevant parties, waive the requirement to establish a European resolution college if another group or college performs the same functions and carries out the same tasks specified in this regulation and complies with all of the conditions and procedures, including those covering membership and participation in European resolution colleges, established in Articles 89 and 90 of the BRRD:

Provided that, in such a case, all references to European resolution colleges in these regulations shall also be understood as references to those other groups or colleges.

(5) Subject to sub-regulations (3) and (4), the European resolution college shall otherwise function in accordance with Article 88 of the BRRD."

48. The Schedule annexed to the principal regulations shall be amended as follows:

(a) in paragraph (6) of Section B thereof, the words "eligible liabilities:" shall be substituted by the words "bail-inable liabilities:";

Amends the Schedule annexed to the principal regulations.

(b) in paragraph (17) of Section C thereof, the words "eligible liabilities" shall be substituted by the words "bail-inable liabilities".
