

Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (Text with EEA relevance)

#### TITLE IV

### RESOLUTION

#### CHAPTER IV

#### *Resolution tools*

##### *Section 5*

#### *The bail-in tool*

##### *Subsection 2*

#### *Minimum requirement for own funds and eligible liabilities*

##### *f<sup>FI</sup> Article 45c*

#### **Determination of the minimum requirement for own funds and eligible liabilities**

1 The requirement referred to in Article 45(1) shall be determined by the resolution authority, after consulting the competent authority, on the basis of the following criteria:

- a the need to ensure that the resolution group can be resolved by the application of the resolution tools to the resolution entity, including, where appropriate, the bail-in tool, in a way that meets the resolution objectives;
- b the need to ensure, where appropriate, that the resolution entity and its subsidiaries that are institutions or entities referred to in points (b), (c) and (d) of Article 1(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, respectively, were to be applied to them, losses could be absorbed and that it is possible to restore the total capital ratio and, as applicable, the leverage ratio, of the relevant entities to a level necessary to enable them to continue to comply with the conditions for authorisation and to carry on the activities for which they are authorised under Directive 2013/36/EU 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 Article 44(3) of this Directive 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

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- 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 Directive 2013/36/EU or Directive 2014/65/EU;
- d the size, the business model, the funding model and the risk profile of the entity;
  - e the extent to which the failure of the entity would have an adverse effect on financial stability, including through contagion to other institutions or entities, due to the interconnectedness of the entity with those other institutions or entities or with the rest of the financial system.

2 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 Article 59 is to be exercised in accordance with the relevant scenario referred to in Article 10(3), the requirement referred to in Article 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 ('loss absorption');
- b the resolution entity and its subsidiaries that are institutions or entities referred to points (b), (c) and (d) of Article 1(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 Directive 2013/36/EU, Directive 2014/65/EU or an equivalent legislative act for an appropriate period not longer than one year ('recapitalisation').

Where the resolution plan provides that the entity is to be wound up under normal insolvency proceedings or other equivalent national procedures, the resolution authority shall assess whether it is justified to limit the requirement referred to in Article 45(1) for that entity, so that it does not exceed an amount sufficient to absorb losses in accordance with point (a) of the first subparagraph.

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

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

- a for the purpose of calculating the requirement referred to in Article 45(1), in accordance with point (a) of Article 45(2), the sum of:
  - (i) the amount of the losses to be absorbed in resolution that corresponds to the requirements referred to in point (c) of Article 92(1) of Regulation (EU) No 575/2013 and Article 104a of Directive 2013/36/EU of the resolution entity at the consolidated resolution group level; and
  - (ii) a recapitalisation amount that allows the resolution group resulting from resolution to restore compliance with its total capital ratio requirement referred to in point (c) of Article 92(1) of 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 Article 45(1), in accordance with point (b) of Article 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

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Article 92(1) of Regulation (EU) No 575/2013 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 Regulation (EU) No 575/2013 at the consolidated resolution group level after the implementation of the preferred resolution strategy.

For the purposes of point (a) of Article 45(2), the requirement referred to in Article 45(1) shall be expressed in percentage terms as the amount calculated in accordance with point (a) of the first subparagraph of this paragraph, divided by the total risk exposure amount.

For the purposes of point (b) of Article 45(2), the requirement referred to in Article 45(1) shall be expressed in percentage terms as the amount calculated in accordance with point (b) of the first subparagraph of this paragraph, divided by the total exposure measure.

When setting the individual requirement provided in point (b) of the first subparagraph of this paragraph, the resolution authority shall take into account the requirements referred to in Articles 37(10), 44(5) and 44(8).

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

- a use the most recently reported values for the relevant total risk exposure amount or total exposure measure, adjusted for any changes resulting from resolution actions set out in the resolution plan; and
- b after consulting the competent authority, adjust the amount corresponding to the current requirement referred to in Article 104a of Directive 2013/36/EU downwards or upwards to determine the requirement that is to apply to the resolution entity after the implementation of the preferred resolution strategy.

The resolution authority shall be able to increase the requirement provided in point (a) (ii) of the first subparagraph 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.

Where the sixth subparagraph of this paragraph applies, the amount referred to in that subparagraph 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 point (a) of point (6) of Article 128 of Directive 2013/36/EU.

The amount referred to in the sixth subparagraph of this paragraph shall be adjusted downwards if, after consulting the competent authority, the resolution authority determines that it would be feasible and credible for a lower amount to be sufficient to sustain market confidence and to ensure both the continued provision of critical economic functions by the institution or entity referred to in points (b), (c) and (d) of Article 1(1) and its access to funding without recourse to extraordinary public financial support other than contributions from resolution financing arrangements, in accordance with Article 44(5) and (8) and Article 101(2), after implementation of the resolution strategy. That amount shall be adjusted upwards if, after consulting the competent authority, the resolution authority determines that a higher amount is necessary to sustain sufficient market confidence and to ensure both the continued provision of critical economic functions by the institution or entity referred to in points (b), (c) and (d) of

Article 1(1) and its access to funding without recourse to extraordinary public financial support other than contributions from resolution financing arrangements, in accordance with Article 44(5) and (8) and Article 101(2), for an appropriate period which shall not exceed one year.

4 EBA shall develop draft regulatory technical standards specifying the methodology to be used by resolution authorities to estimate the requirement referred to in Article 104a of Directive 2013/36/EU and the combined buffer requirement for resolution entities at the resolution group consolidated level where the resolution group is not subject to those requirements under that Directive.

EBA shall submit those draft regulatory technical standards to the Commission by 28 December 2019.

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

5 For resolution entities that are not subject to Article 92a of Regulation (EU) No 575/2013 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 paragraph 3 of this Article shall be at least equal to:

- a 13,5 % when calculated in accordance with point (a) of Article 45(2); and
- b 5 % when calculated in accordance with point (b) of Article 45(2).

By way of derogation from Article 45b, the resolution entities referred to in the first subparagraph of this paragraph shall meet a level of the requirement referred to in the first subparagraph of this paragraph that is equal to 13,5 % when calculated in accordance with point (a) of Article 45(2) and to 5 % when calculated in accordance with point (b) of Article 45(2) using own funds, subordinated eligible instruments, or liabilities as referred to in Article 45b(3) of this Directive.

6 A resolution authority may, after consulting the competent authority, decide to apply the requirements laid down in paragraph 5 of this Article to a resolution entity which is not subject to Article 92a of Regulation (EU) No 575/2013 and which is part of a resolution group the total assets of which are lower than EUR 100 billion and which the resolution authority has assessed as reasonably likely to pose a systemic risk in the event of its failure.

When taking a decision as referred to in the first subparagraph of this paragraph, a resolution authority 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 Article 45e.

The absence of a decision pursuant to the first subparagraph of this paragraph is without prejudice to any decision under Article 45b(5).

7 For entities that are not themselves resolution entities, the amount referred to in the first subparagraph of paragraph 2 shall be the following:

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

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- (i) the amount of the losses to be absorbed that corresponds to the requirements referred to in point (c) of Article 92(1) of Regulation (EU) No 575/2013 and Article 104a of Directive 2013/36/EU of the entity; and
  - (ii) a recapitalisation amount that allows the entity to restore compliance with its total capital ratio requirement referred in 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 after the exercise of the power to write down or convert relevant capital instruments and eligible liabilities in accordance with Article 59 of this Directive or after the resolution of the resolution group; and
- b for the purpose of calculating the requirement referred to in Article 45(1), in accordance with point (b) of Article 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 Regulation (EU) No 575/2013; and
  - (ii) a recapitalisation amount that allows the entity to restore compliance with its leverage ratio requirement referred to in point (d) of Article 92(1) of Regulation (EU) No 575/2013 after the exercise of the power to write down or convert relevant capital instruments and eligible liabilities in accordance with Article 59 of this Directive or after the resolution of the resolution group.

For the purposes of point (a) of Article 45(2), the requirement referred to in Article 45(1) shall be expressed in percentage terms as the amount calculated in accordance with point (a) of the first subparagraph of this paragraph, divided by the total risk exposure amount.

For the purposes of point (b) of Article 45(2), the requirement referred to in Article 45(1) shall be expressed in percentage terms as the amount calculated in accordance with point (b) of the first subparagraph of this paragraph, divided by the total exposure measure.

When setting the individual requirement provided in point (b) of the first subparagraph of this paragraph, the resolution authority shall take into account the requirements referred to in Articles 37(10), 44(5) and 44(8).

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

- a use the most recently reported values for the relevant total risk exposure amount or total exposure measure, adjusted for any changes resulting from actions set out in the resolution plan; and
- b after consulting the competent authority, adjust the amount corresponding to the current requirement referred to in Article 104a of Directive 2013/36/EU 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 Article 59 of this Directive or after the resolution of the resolution group.

The resolution authority shall be able to increase the requirement provided in point (a) (ii) of the first subparagraph of this paragraph 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 Article 59, the entity is able to

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sustain sufficient market confidence for an appropriate period which shall not exceed one year.

Where the sixth subparagraph of this paragraph applies, the amount referred to in that subparagraph shall be equal to the combined buffer requirement that is to apply after the exercise of the power referred to in Article 59 of this Directive or after the resolution of the resolution group, less the amount referred to in point (a) of point (6) of Article 128 of Directive 2013/36/EU.

The amount referred to in the sixth subparagraph of this paragraph shall be adjusted downwards if, after consulting the competent authority, the resolution authority determines that it would be feasible and credible for a lower amount to be sufficient to ensure market confidence and to ensure both the continued provision of critical economic functions by the institution or entity referred to in points (b), (c) and (d) of Article 1(1) and its access to funding without recourse to extraordinary public financial support other than contributions from resolution financing arrangements, in accordance with paragraphs 5 and 8 of Article 44 and Article 101(2), after the exercise of the power referred to in Article 59 or after the resolution of the resolution group. That amount shall be adjusted upwards if, after consulting the competent authority, the resolution authority determines that a higher amount is necessary to sustain sufficient market confidence and to ensure both the continued provision of critical economic functions by the institution or entity referred to in points (b), (c) and (d) of Article 1(1) and its access to funding without recourse to extraordinary public financial support other than contributions from resolution financing arrangements, in accordance with Article 44(5) and (8) and Article 101(2) for an appropriate period which shall not exceed one year.

8 Where the resolution authority expects that certain classes of eligible liabilities are reasonably likely to be fully or partially excluded from bail-in pursuant to Article 44(3) or might be transferred in full to a recipient under a partial transfer, the requirement referred to in Article 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 Article 44(3);
- b ensure that the conditions referred to in paragraph 2 are fulfilled.

9 Any decision by the resolution authority to impose a minimum requirement of own funds and eligible liabilities under this Article shall contain the reasons for that decision, including a full assessment of the elements referred to in paragraphs 2 to 8 of this Article, and shall be reviewed by the resolution authority without undue delay to reflect any changes in the level of the requirement referred to in Article 104a of Directive 2013/36/EU.

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

#### **Textual Amendments**

- F1** Substituted by [Directive \(EU\) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC.](#)