



STATUTORY INSTRUMENTS.

S.I. No. 532 of 2024



EUROPEAN UNION (BANK RECOVERY AND RESOLUTION)
(AMENDMENT) (NO. 2) REGULATIONS 2024

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I, JACK CHAMBERS, Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving further effect to Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014¹, as last amended by Directive (EU) 2024/1174 of the European Parliament and of the Council of 11 April 2024², hereby make the following regulations:

1. These Regulations may be cited as the European Union (Bank Recovery and Resolution) (Amendment) (No. 2) Regulations 2024.

2. These Regulations come into operation on 14 November 2024.

3. The European Union (Bank Recovery and Resolution) Regulations 2015 (S.I. No. 289 of 2015) are amended –

(a) in Regulation 3(1) –

(i) by the insertion of the following definition:

“ ‘liquidation entity’ means a legal person established in the Union in respect of which the group resolution plan or, for entities that are not part of a group, the resolution plan, provides that the entity is to be wound up under normal insolvency proceedings, or an entity, within a resolution group other than a resolution entity, in respect of which the group resolution plan does not provide for the exercise of write-down and conversion powers;”, and

(ii) in the definition of “Bank Recovery and Resolution Directive” –

(I) by the deletion of “and” where it occurs at the end of subparagraph (e),

(II) by the deletion of “and” where it occurs at the end of subparagraph (f),

(III) in subparagraph (g), by the substitution of “, and” for “;”, and

(IV) by the insertion of the following subparagraph after subparagraph (g):

¹ OJ No. L 173, 12.06.2014, p.190

² OJ L, 2024/1174, 22.4.2024

“(h) Directive (EU) 2024/1174 of the European Parliament and of the Council of 11 April 2024³”;

- (b) in Regulation 80E –
- (i) by the deletion of subparagraphs (b) and (c) of paragraph (2), and
 - (ii) by the insertion of the following paragraph after paragraph (2):
 - “(2A)(a) The resolution authority shall not determine the requirement referred to in Regulation 80B(1) for liquidation entities.
- (b) (i) Notwithstanding subparagraph (a), the resolution authority may assess whether it is justified to determine the requirement referred to in Regulation 80B(1) for a liquidation entity on an individual basis in an amount exceeding the amount sufficient to absorb losses in accordance with paragraph (2)(a)(i).
- (ii) The resolution authority shall take into account in its assessment under clause (i), in particular, any possible impact on financial stability and on the risk of contagion to the financial system, including with regard to the financing capacity of deposit guarantee schemes.
- (iii) Where the resolution authority determines the requirement referred to in Regulation 80B(1), the liquidation entity shall meet that requirement by using one or more of the following:
- (I) own funds;
 - (II) liabilities that fulfil the eligibility criteria referred to in Article 72a of the Union Capital Requirements Regulation, with the exception of points (b) and (d) of Article 72b(2) of that Regulation;
 - (III) the liabilities referred to in Regulation 80D(3).
- (c) Articles 77(2) and 78a of the Union Capital Requirements Regulation shall not apply to liquidation entities for which the resolution

³ OJ L, 2024/1174, 22.4.2024

authority has not determined the requirement referred to in Regulation 80B(1).

- (d) Holdings of own funds instruments and eligible liabilities instruments issued by subsidiary institutions which are liquidation entities for which the resolution authority has not determined the requirement referred to in Regulation 80B(1) shall not be deducted under Article 72e(5) of the Union Capital Requirements Regulation.
- (e) Notwithstanding subparagraph (d), an institution or entity referred to in paragraphs (b), (c), (d), (e), (f), (g), (h) or (i) of Regulation 2(1) that is not itself a resolution entity but is a subsidiary of a resolution entity, or of a third-country entity that would be a resolution entity if it were established in the Union, shall deduct its holdings of own funds instruments in subsidiary institutions that belong to the same resolution group and that are liquidation entities for which the resolution authority has not determined the requirement referred to in Regulation 80B(1), where the aggregate amount of those holdings is equal to or exceeds 7 per cent of the total amount of its own funds and liabilities instruments that comply with the eligibility criteria set out in Regulation 80H(6), calculated annually as of 31 December as an average over the previous 12 months.”,

(c) in Regulation 80H –

- (i) by the insertion of the following paragraph after paragraph (3):

“(3A) Notwithstanding paragraphs (1) and (2), the resolution authority may decide to determine the requirement referred to in Regulation 80E on a consolidated basis for a subsidiary as referred to in this paragraph where the resolution authority is satisfied that paragraphs (3B) and (3C) apply.

(3B) This paragraph applies where –

- (a) all of the following conditions are satisfied:
 - (i) the subsidiary is held directly by the resolution entity;
 - (ii) the resolution entity is a Union parent financial holding company or a Union parent mixed financial holding company;

- (iii) both the subsidiary and the resolution entity are established in the same Member State and are part of the same resolution group;
- (iv) the resolution entity does not hold directly any subsidiary institution or entity as referred to in paragraphs (b), (c), (d), (e), (f), (g), (h) or (i) of Regulation 2(1) where that entity is subject to the requirements set out in this Regulation or to the requirement referred to in Regulation 80E, other than the subsidiary concerned;
- (v) the subsidiary would be disproportionately affected by the deductions required pursuant to Article 72e(5) the Union Capital Requirements Regulation,

or

- (b) the subsidiary is subject to the requirement referred to in Regulation 92A of the Capital Requirements Regulations on a consolidated basis only and the determination of the requirement referred to in Regulation 80E on a consolidated basis would not lead to overstating the recapitalisation needs, for the purposes of Regulation 80E(1)(b), of the subgroup consisting of entities within the consolidation perimeter concerned, in particular where there is a prevalence of liquidation entities within the same consolidation perimeter.

(3C) This paragraph applies where compliance with the requirement referred to in Regulation 80E on a consolidated basis as a substitute for compliance with that requirement on an individual basis does not impair in a material way any of the following:

- (a) the credibility and feasibility of the group resolution strategy;
- (b) the subsidiary's capacity to comply with its own funds requirement after the exercise of write-down and conversion powers;
- (c) the adequacy of the internal loss transfer and recapitalisation mechanism, including the write-down or conversion, in accordance with Regulation 95, of relevant capital instruments and eligible liabilities of the subsidiary

concerned or of other entities in the resolution group.”,

and

- (ii) by the insertion of the following paragraphs after paragraph (6):

“(6A) Where an entity as referred to in paragraph (1) complies with the requirement referred to in Regulation 80B(1) on a consolidated basis, the amount of own funds and eligible liabilities of that entity shall include the following liabilities issued in accordance with paragraph (6)(a) by a subsidiary established in the Union included in the consolidation of that entity:

- (a) liabilities issued to and bought by the resolution entity, either directly or indirectly through other entities in the same resolution group that are not included in the consolidation of the entity complying with the requirement referred to in Regulation 80B(1) on a consolidated basis;
- (b) liabilities issued to an existing shareholder that is not part of the same resolution group.

(6B) The liabilities referred to in subparagraphs (a) and (b) of paragraph (6A) shall not exceed the amount determined by subtracting from the amount of the requirement referred to in Regulation 80B(1) applicable to the subsidiary included in the consolidation the sum of all of the following:

- (a) the liabilities issued to and bought by the entity complying with the requirement referred to in Regulation 80B(1) on a consolidated basis, either directly or indirectly through other entities in the same resolution group that are included in the consolidation of that entity;
- (b) the amount of own funds that are issued in accordance with paragraph (6)(b).”,

- (d) in Regulation 80K, by the substitution of the following paragraph for paragraph (6):

“(6) (a) Paragraphs (1), (2) and (5) shall not apply to a liquidation entity unless the resolution authority has determined the requirement referred to in Regulation 80B(1) for such entity in accordance with Regulation 80E(2A)(b).

- (b) (i) Where the resolution authority has determined the requirement referred to in Regulation 80B(1) for the entity concerned in accordance with Regulation 80E(2A)(b), the resolution authority shall determine the content and

frequency of the reporting and disclosure obligations referred to in paragraphs 5 and 6 of Article 45i of the Bank Recovery and Resolution Directive for the entity concerned.

- (ii) The resolution authority shall communicate the reporting and disclosure obligations determined under clause (i) to the liquidation entity concerned.
- (iii) The reporting and disclosure obligations determined under clause (i) shall not go beyond what is necessary to monitor compliance with the requirement determined pursuant to Regulation 80E(2A)(b).”,

and

- (e) by the substitution of the following Regulation for Regulation 80L:

“Reporting to European Banking Authority

80L. The resolution authority shall inform the European Banking Authority of the minimum requirement for own funds and eligible liabilities set in accordance with Regulation 80G or Regulation 80H, including by way of decisions taken pursuant to Regulation 80H(3A), for each entity under its jurisdiction.”.



GIVEN under my Official Seal,
15 October, 2024.

JACK CHAMBERS,
Minister for Finance.

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