

Applicable law to foreign law instruments subject to subordinated liability exercises

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Spain. Law 9/2012 (5th additional disposition)

The application of instruments of resolution and of management of hybrid instruments of capital and subordinated debt by the FROB will be considered balance sheet cleaning up measures under law 6/2005 [implementing the Winding Up Directive].

(La aplicación de los instrumentos de resolución y las acciones de gestión de instrumentos híbridos de capital y de deuda subordinada por el FROB tendrán la consideración de medidas de saneamiento a efectos de lo dispuesto en la Ley 6/2005, de 22 de abril, sobre saneamiento y liquidación de las entidades de crédito).

Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding-up of credit institutions¹⁰ provides for the mutual recognition and enforcement in all Member States of decisions concerning the reorganization or winding up of credit institutions having branches in Member States other than those in which they have their head offices. That directive ensures that all assets and liabilities of the credit institution, regardless of in which country they are situated, are dealt with in a single process in the home Member State and that creditors in the host Member States are treated in the same way as creditors in the home Member State. In order to achieve an effective resolution, Directive 2001/24/EC should apply also in the event of use of the resolution tools both when these instruments are applied to credit institutions and when they are applied to other entities covered by the resolution regime. Directive 2001/24/EC should therefore be amended accordingly.

In Article 1 the following paragraphs 3 and 4 are added:

"3. This Directive shall also apply to investment firms as defined in point (b) of Article 3(1) of Directive 2006/49/EC of the European Parliament and of the Council () and their branches set up in Member States other than those in which they have their head offices.*

*4. In the event of application of the resolution tools and exercise of the resolution powers provided for by Directive XX/XX/EU of the European Parliament and of the Council(**), the provisions of this Directive shall also apply to the financial institutions, firms and parent undertakings falling within the scope of Directive XX/XX/EU.*

() OJ L 177, 30.6.2006, p.201*

*(**) OJ L....., ...p."*