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INFORMATION NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) No 575/2013 and Directive 2014/59/EU as regards the prudential treatment of global systemically important institution groups with a multiple point of entry resolution strategy and a methodology for the indirect subscription of instruments eligible for meeting the minimum requirement for own funds and eligible liabilities - Outcome of the European Parliament's first reading (Strasbourg, 12 to 15 September 2022)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the Joint declaration on practical arrangements for the codecision procedure[1], a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this file at first reading.

In this context, the Chair of the Committee on Economic and Monetary Affairs (ECON), Irene TINAGLI (S&D, IT), presented on behalf of the Committee a compromise amendment (amendment number 2) to the abovementioned proposal for a Regulation. This amendment had been agreed during the informal contacts referred to above. No other amendments were tabled.

[1] OJ C 145, 30.6.2007, p. 5.

II. VOTE

When it voted on 13 September 2022, the plenary adopted the compromise amendment (amendment number 2) to the abovementioned proposal for a Regulation. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto[2].

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

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[2] The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics.*** The symbol " ▌ " indicates deleted text.

ANNEX
(13.9.2022)

P9_TA(2022)0307

Amendments to the Capital Requirements Regulation in the area of resolution ("daisy chain" proposal) ***I

European Parliament legislative resolution of 13 September 2022 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 575/2013 and Directive 2014/59/EU as regards the prudential treatment of global systemically important institution groups with a multiple point of entry resolution strategy and a methodology for the indirect subscription of instruments eligible for meeting the minimum requirement for own funds and eligible liabilities (COM(2021)0665 – C9-0398/2021 – 2021/0343(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2021)0665),

– having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0398/2021),

– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

– having regard to the opinion of the European Central Bank of 13 January 2022,[3]

– having regard to the opinion of the European Economic and Social Committee of 9 December 2021,[4]

– having regard to the provisional agreement approved by the committee responsible under Rule 74(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 15 June 2022 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

– having regard to Rule 59 of its Rules of Procedure,

– having regard to the report of the Committee on Economic and Monetary Affairs (A9-0020/2022),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;

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[3] OJ C 122, 17.3.2022, p. 33.
[4] OJ C 152, 6.4.2022, p. 111.

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P9_TC1-COD(2021)0343

Position of the European Parliament adopted at first reading on 13 September 2022 with a view to the adoption of Regulation (EU) 2022/… of the European Parliament and of the Council amending Regulation (EU) No 575/2013 and Directive 2014/59/EU as regards the prudential treatment of global systemically important institutions with a multiple-point-of-entry resolution strategy and methods for the indirect subscription of instruments eligible for meeting the minimum requirement for own funds and eligible liabilities

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank[5],

Having regard to the opinion of the European Economic and Social Committee[6],

Acting in accordance with the ordinary legislative procedure[7],

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5 OJ C 122, 17.3.2022, p. 33.

6 OJ C 152, 6.4.2022, p. 111.

7 Position of the European Parliament of 13 September 2022.

Whereas:

(1) Regulation (EU) 2019/876 of the European Parliament and of the Council[8], Regulation (EU) 2019/877 of the European Parliament and of the Council[9] and Directive (EU) 2019/879 of the European Parliament and of the Council[10] amended the Union resolution framework for credit institutions and investment firms through amendments to Regulation (EU) No 575/2013 of the European Parliament and of the Council[11], Regulation (EU) No 806/2014 of the European Parliament and of the Council[12] and Directive 2014/59/EU of the European Parliament and of the Council[13], respectively.

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8 Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012 (OJ L 150, 7.6.2019, p. 1).

9 Regulation (EU) 2019/877 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 806/2014 as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms (OJ L 150, 7.6.2019, p. 226).

10 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 (OJ L 150, 7.6.2019, p. 296).

11 Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

12 Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ L 225, 30.7.2014, p. 1).

13 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 (OJ L 173, 12.6.2014, p. 190).

Those amendments were necessary to implement in the Union the international "Total Loss-absorbing Capacity (TLAC) Term Sheet", published by the Financial Stability Board on 9 November 2015 (the 'TLAC standard'), for global systemically important banks, referred to in the Union framework as global systemically important institutions (G-SIIs), and to enhance the application of the minimum requirement for own funds and eligible liabilities (MREL) for all banks. The revised Union bank resolution framework should better ensure that the loss absorption and recapitalisation of banks occurs through private means when those banks become financially unviable and are, subsequently, placed in resolution.

(2) Article 12a of Regulation (EU) No 575/2013 provides that G-SIIs with a resolution strategy under which more than one group entity might be resolved ("multiple-point-of-entry resolution strategy" or "MPE resolution strategy") are to calculate their risk-based requirement for own funds and eligible liabilities on the theoretical assumption that only one entity of the group would be resolved, with the losses and recapitalisation needs of any subsidiaries of that group being transferred to the resolution entity ("single-point-of-entry resolution strategy" or "SPE resolution strategy"). ***A similar requirement is provided for in Article 45d(4) of Directive 2014/59/EU, regarding the additional requirement for own funds and eligible liabilities that may be imposed by resolution authorities pursuant to paragraph 3 of that Article.*** In line with the TLAC standard, ***those calculations*** should take into account all third-country entities that are part of a G-SII that would be resolution entities ***if*** they ***were*** established in the Union.

(3) In accordance with Article 45h(2), third subparagraph, of Directive 2014/59/EU, and in line with the TLAC standard, the sum of the actual requirements for own funds and eligible liabilities of a G-SII with an MPE resolution strategy is not to be lower than that group's theoretical requirement under an SPE resolution strategy. In order to align the provisions of Regulation (EU) No 575/2013 with those of Directive 2014/59/EU and to ensure that resolution authorities always act in accordance with that Directive and consider both the requirements for own funds and eligible liabilities laid down in Regulation (EU) No 575/2013 and any additional requirement for own funds and eligible liabilities determined in accordance with Article 45d of Directive 2014/59/EU, Article 12a of Regulation (EU) No 575/2013 should be amended and Article 92a(3) of that Regulation should be deleted. This should not prevent resolution authorities from concluding that any adjustment to minimise or eliminate the difference between the sum of the actual requirements for own funds and eligible liabilities of a G-SII with an MPE resolution strategy and that group's theoretical requirement under an SPE resolution strategy, when the former is higher than the latter, would be inappropriate or inconsistent with the G-SII's resolution strategy***. To ensure consistency between Article 12a of Regulation (EU) No 575/2013 and Article 45h(2) of Directive 2014/59/EU, the calculation referred to in Article 45h(2) of that Directive should also take into account all third-country entities that are part of a G-SII that would be resolution entities if they were established in the Union***.

(4) Article 92b of Regulation (EU) No 575/2013 sets out that the requirement for own funds and eligible liabilities for material subsidiaries of non-EU G-SIIs that are not resolution entities may be met, inter alia, with eligible liabilities instruments. However, the criteria for eligible liabilities instruments laid down in Article 72b(2), points (c), (k), (l) and (m), of Regulation (EU) No 575/2013 presuppose the issuing entity to be a resolution entity. It should be ensured that those material subsidiaries can issue debt instruments that meet all eligibility criteria, as originally intended.

(5) In accordance with Article 72e(4), first subparagraph, of Regulation (EU) No 575/2013, it is possible for resolution authorities to permit a G-SII with an MPE resolution strategy to deduct certain holdings of own funds and eligible liabilities instruments of its subsidiaries that do not belong to the same resolution group by deducting a lower, adjusted amount specified by the resolution authority. Article 72e(4), second subparagraph, of that Regulation requires that in such cases the difference between the adjusted amount and the original amount be deducted from the loss absorbing and recapitalisation capacity of the subsidiaries concerned. In line with the TLAC standard, that approach should take into account the risk-based and non-risk-based requirements for own funds and eligible liabilities of the subsidiary concerned. Furthermore, that approach should be applicable to all third-country subsidiaries that are part of that G-SII, as long as those subsidiaries are subject to a ▌ resolution regime that***, according to the relevant resolution authority in the Union, is legally enforceable and implements internationally agreed standards, more specifically the Financial Stability Board's document 'Key Attributes of Effective Resolution Regimes for Financial Institutions', published in October 2011, and the TLAC standard***.

(6) Directive (EU) 2019/879 amended Directive 2014/59/EU to introduce specific rules on the indirect subscription of internal MREL eligible ***resources, that is of own funds and liabilities that meet the conditions of Article 45f(2) of Directive 2014/59/EU,*** within resolution groups. In order to operationalise those rules and to ensure that that indirect subscription is carried out in a prudentially sound manner, the European Supervisory Authority (European Banking Authority) (EBA), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council[14], was mandated under Article 45f(6) of ***Directive 2014/59/EU*** to develop draft regulatory technical standards to specify methods for such an indirect ***subscription*** of eligible ***resources***. However, as highlighted by the EBA in its letter to the Commission dated 25 January 2021, there were several inconsistencies between the requirements for the delegation laid down in Directive 2014/59/EU and the existing prudential rules laid down in Regulation (EU) No 575/2013, which did not allow the application of the prudential treatment needed for the mandate to be fulfilled as originally intended. More precisely, the EBA noted that Regulation (EU) No 575/2013 did not allow for the deduction of internal MREL eligible ***resources*** and, subsequently, for the application of an appropriate risk weight in all the cases relevant for the mandate under Directive 2014/59/EU. Similar issues were identified in the area of the leverage ratio requirement laid down in Regulation (EU) No 575/2013. In light of those legal constraints, the methods developed by the EBA should be incorporated directly into Regulation (EU) No 575/2013. Consequently, Article 45f(6) of Directive 2014/59/EU should be deleted.

14 Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

(7) In the context of the indirect subscription of internal MREL eligible ***resources*** by resolution entities pursuant to the revised Union bank resolution framework, intermediate ***entities*** should be required to deduct ▌ the full holding of ***internal MREL*** eligible ***resources*** issued by ***entities that are not themselves resolution entities and which belong*** to the same resolution group. That ensures the proper functioning of the internal loss-absorbing and recapitalisation mechanisms within a group and avoids the double-counting of the internal MREL eligible resources of ***those entities*** for the purposes of compliance by the intermediate ***entity*** with its own internal MREL. ***Without*** those deductions, ▌ the proper implementation of the chosen resolution strategy ***could be compromised*** since the intermediate ***entity*** could use up, not only its own loss absorption ***and recapitalisation capacity but also that of other entities that are not themselves resolution entities and which belong to the same resolution group, before the intermediate entity*** or ***those other entities are no longer viable. To ensure that the obligation to deduct is aligned with the scope of entities that may be used by the resolution entity for the indirect subscription of internal MREL eligible resources, and to avoid regulatory arbitrage, intermediate entities should deduct their holdings of internal MREL eligible resources issued by all entities belonging to the same resolution group and that may be subject to compliance with internal MREL, and not just the holdings of resources issued by their subsidiaries. The same obligations should apply in the case of indirect issuance of resources eligible for compliance with the requirement for own funds and eligible liabilities for material subsidiaries of non-EU G-SIIs laid down in Article 92b of Regulation (EU) No 575/2013, where relevant.***

***(8) To ensure that the deduction regime remains proportionate, intermediate entities should be able to choose the mix of instruments, consisting of own funds or eligible liabilities, with which they fund the acquisition of ownership of internal MREL eligible resources. That would allow intermediate entities to completely avoid any own funds-related deductions as long as they have issued sufficient eligible liabilities. The deductions should therefore first be applied to the eligible liabilities items of the intermediate entities. Where the intermediate entity is required to comply with internal MREL pursuant to Directive 2014/59/EU on an individual basis, the deductions should be applied to the eligible liabilities meeting the conditions of Article 45f(2) of that Directive. In case the amount to be deducted exceeds the amount of the eligible liabilities items of the intermediate entities, the remaining amount should be deducted from their Common Equity Tier 1, Additional Tier 1 and Tier 2 items, starting with Tier 2 items in accordance with Article 66, point (e), of Regulation (EU) No 575/2013. In such a case, it is necessary that the deductions corresponding to the remaining amount are also applied when calculating own funds for the purposes of the requirements laid down in Regulation (EU) No 575/2013 and Directive 2013/36/EU of the European Parliament and of the Council[15]. Otherwise, the solvency ratios of intermediate entities that have issued own funds, rather than eligible liabilities, to fund the acquisition of ownership of internal MREL eligible resources may be overstated. Additionally, by keeping the treatment of holdings of internal MREL eligible resources aligned for prudential and resolution purposes, an undue increase in complexity is avoided, as institutions would be able to continue to calculate, report and disclose one set of total risk exposure amount and total exposure measure for prudential and resolution purposes. Article 49(2) of Regulation (EU) No 575/2013 should therefore be amended accordingly*.

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15 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

(9) To further enhance the proportionality of the deduction regime, that regime should not be applicable in the exceptional cases where, pursuant to Article 45f(1), third subparagraph, and (4) of Directive 2014/59/EU, internal MREL is applied on a consolidated basis only, as regards the holdings of internal MREL eligible resources issued by entities included in the perimeter of consolidation. The same exception should apply when the requirement for own funds and eligible liabilities for material subsidiaries of non-EU G-SIIs laid down in Article 92b of Regulation (EU) No 575/2013 is complied with on a consolidated basis, pursuant to Article 11(3a) of that Regulation.

▌

(10) The indirect subscription of internal MREL eligible ***resources*** should ensure that, when a subsidiary reaches the point of non-viability, losses are effectively passed on to, and the subsidiary concerned is recapitalised by, the resolution entity. Those losses should thus not be absorbed by the intermediate ***entity***, which should become a mere vehicle through which those losses are passed on to the resolution entity. Consequently, and to ensure that the outcome of the indirect subscription is equivalent to that of a full direct subscription, as envisaged under the mandate set out in Article 45f(6) of Directive 2014/59/EU, ▌ for the ***purposes*** of ***calculating*** the total risk exposure amount ***of the intermediate entity, risk weights should not be applied to the exposures deducted under the new deduction regime to be introduced in Article 72e of Regulation (EU) No 575/2013. In the same vein, those exposures should*** be excluded from the calculation of the total exposure measure ***of the intermediate entity. The treatment consisting of not applying risk weights and excluding those exposures from the total exposure measure should be strictly limited to exposures that are deducted in accordance with the new deduction regime to be introduced in Article 72e of that Regulation for the sake of operationalising the approach of indirect subscription of internal MREL eligible resources***.

(11) The templates for the public disclosure of harmonised information on MREL and on the requirement for own funds and eligible liabilities for material subsidiaries of non-EU G-SIIs set out in Commission Implementing Regulation (EU) 2021/763[16] should be amended to reflect the new deduction regime for internal MREL eligible resources. The disclosure templates should also be amended to include the total risk exposure amount and the total exposure measure that intermediate entities would have if they did not exclude the exposures deducted under that new deduction regime.

(12) Since the objectives of this Regulation, namely to fully harmonise the prudential treatment of the holdings by intermediate ***entities*** of internal MREL eligible resources of ***entities in the same resolution group*** and to revise in a targeted manner the requirements for own funds and eligible liabilities for G-SIIs and for material subsidiaries of non-EU G-SIIs, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

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[16] ***Commission Implementing Regulation (EU) 2021/763 of 23 April 2021 laying down implementing technical standards for the application of Regulation (EU) No 575/2013 of the European Parliament and of the Council and Directive 2014/59/EU of the European Parliament and of the Council with regard to the supervisory reporting and public disclosure of the minimum requirement for own funds and eligible liabilities (OJ L 168, 12.5.2021, p. 1).***

(13) In order to duly assess potential unintended consequences of the indirect subscription of internal MREL eligible resources, including the new deduction regime, and to ensure a proportionate treatment and level playing field between different types of banking group structures, especially institutions that have an operating company between the holding company and its subsidiaries, and for entities whose resolution plan provides for their winding up under normal insolvency proceedings in the case of failure, the Commission should review the implementation of the indirect subscription of internal MREL eligible resources by the different types of banking group structures as soon as possible. The Commission should duly assess possible structural solutions to any identified issues such as enlarging the possibility for entities that are not themselves resolution entities to comply with their MREL on a consolidated basis. The accompanying legislative proposal that the Commission may adopt should duly consider the date of application of the dedicated treatment for the indirect subscription of internal MREL eligible resources, so that it can be implemented before Article 72e(5) of Regulation (EU) No 575/2013 becomes applicable. Such a legislative proposal should preferably be a dedicated one.

(14) In order to ensure that institutions have sufficient time to implement the dedicated treatment for the indirect subscription of ▌ internal MREL ***eligible resources***, including the new deduction regime, ***and that markets can absorb additional issuances of internal MREL eligible resources, where needed,*** the provisions laying down that treatment should become applicable ***on 1 January 2024, in line with the deadline for compliance with MREL***.

(15) Regulation (EU) No 575/2013 and Directive 2014/59/EU should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) No 575/2013

Regulation (EU) No 575/2013 is amended as follows:

(1) in Article 4(1), the following point is inserted:

‘(130a) ‘relevant third-country authority’ means a third-country authority as defined in Article 2(1), point (90), of Directive 2014/59/EU;’;

(2) Article 12a is replaced by the following:

‘Article 12a

Consolidated calculation for G-SIIs with multiple resolution entities

Where at least two G-SII entities that are part of the same G-SII are resolution entities or third-country entities that would be resolution entities if they were established in the Union, the EU parent institution of that G-SII shall calculate the amount of own funds and eligible liabilities referred to in Article 92a(1), point (a)***:***

(a) for each resolution entity or third-country entity that would be a resolution entity if it were established in the Union;

(b) for the EU parent institution as if it were the only resolution entity of the G-SII.

The calculation ***referred to in point (b)*** of the first subparagraph shall be undertaken on the basis of the consolidated situation of the EU parent institution **▌.**

Resolution authorities shall act in accordance with Article 45d(4) and Article 45h(2) of Directive 2014/59/EU.';

(3) in Article 49(2), the following subparagraph is added:

'This paragraph shall not apply with regard to the deductions set out in Article 72e(5).'***;***

(4) in Article 72b(2), the following subparagraph is added:

'For the purposes of Article 92b, references to the resolution entity in points (c), (k), (l) and (m) of the first subparagraph of this paragraph shall also be understood as references to ***an*** institution that is a material subsidiary of ***a*** non-EU G-SII.';

(5) Article 72e is amended as follows:

(a) paragraph 4 is replaced by the following:

‘4. Where an EU parent institution or a parent institution in a Member State that is subject to Article 92a has direct, indirect or synthetic holdings of own funds instruments or eligible liabilities instruments of one or more subsidiaries which do not belong to the same resolution group as that parent institution, the resolution authority of that parent institution, after duly considering the opinion of the resolution authorities or relevant third-country authorities of any subsidiaries concerned, may permit the parent institution to deduct such holdings by deducting a lower amount specified by the resolution authority of that parent institution. That adjusted amount shall be at least equal to the amount (m) calculated as follows:

$$m_i = \max\{0; OP_i + LP_i - \max\{0; \beta \cdot [O_i + L_i - \max\{\boldsymbol{r_i} \cdot aRWA_i; w_i \cdot aLRE_i\}]\}\}$$

where:

i = the index denoting the subsidiary;

OP_i = the amount of own funds instruments issued by subsidiary i and held by the parent institution;

LP_i = the amount of eligible liabilities instruments issued by subsidiary i and held by the parent institution;

β = percentage of own funds instruments and eligible liabilities instruments issued by subsidiary i and held by the parent undertaking, calculated as follows:

$$\beta = \frac{OP_i + LP_i}{\text{the amount of all own funds instruments and eligible liabilities instruments issued by subsidiary i}};$$

O_i = the amount of own funds of subsidiary i, not taking into account the deduction calculated in accordance with this paragraph;

L_i = the amount of eligible liabilities of subsidiary i, not taking into account the deduction calculated in accordance with this paragraph;

r_i = the ratio applicable to subsidiary i at the level of its resolution group in accordance with Article 92a(1), point (a), of this Regulation and Article 45c(3), first subparagraph, point (a), of Directive 2014/59/EU or, for third-country subsidiaries, an equivalent resolution requirement applicable to subsidiary i in the third country where it has its head office, insofar as that requirement is met with instruments that would be considered own funds or eligible liabilities under this Regulation;

$aRWA_i$ = the total risk exposure amount of the G-SII entity i calculated in accordance with Article 92(3), taking into account the adjustments set out in Article 12a ***or, for third-country subsidiaries, calculated in accordance with the applicable local regulations***;

w_i = the ratio applicable to subsidiary i at the level of its resolution group in accordance with Article 92a(1), point (b), of this Regulation and of Article 45c(3), first subparagraph, point (b), of Directive 2014/59/EU or, for third-country subsidiaries, an equivalent resolution requirement applicable to subsidiary i in the third country where it has its head office, insofar as that requirement is met with instruments that would be considered own funds or eligible liabilities under this Regulation;

$aLRE_i$ = the total exposure measure of the G-SII entity i calculated in accordance with Article 429(4) ***or, for third-country subsidiaries, calculated in accordance with the applicable local regulations***.

Where the parent institution is allowed to deduct the adjusted amount in accordance with the first subparagraph, the difference between the amount of holdings of own funds instruments and eligible liabilities instruments referred to in the first subparagraph and that adjusted amount shall be deducted by the subsidiary.'***;***

(b) the following paragraph ▌ is added:

‘5. Institutions and entities ***referred*** to ***in*** Article ***1(1), points (b), (c) and (d),*** of Directive 2014/59/EU ▌ shall deduct from eligible liabilities items their holdings of own funds ***instruments*** and eligible liabilities ***instruments where all of*** the ***following*** conditions ***are met:***

(a) the own funds instruments and eligible liabilities instruments are held by an institution or entity that is not itself a resolution entity but that 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;

(b) the institution or entity referred to in point (a) is required to comply with the requirements laid down in Article 92b of this Regulation or in Article 45f of Directive 2014/59/EU;

(c) the own funds instruments and eligible liabilities instruments held by the institution or entity referred to in point (a) were issued by an institution or entity referred to in Article 92b(1) of this Regulation or in Article 45f(1) of Directive 2014/59/EU that is not itself a resolution entity and that belongs to the same resolution group as the institution or entity referred to in point (a).

By way of derogation from the first subparagraph, holdings of own funds instruments and eligible liabilities instruments shall not be deducted where the institution or entity referred to in point (a) of the first subparagraph is required to comply with the requirement referred to in point (b) of the first subparagraph on a consolidated basis and the institution or entity referred to in point (c) of the first subparagraph is included in the consolidation of the institution or entity referred to in point (a) of the first subparagraph in accordance with Part One, Title II, Chapter 2.

For the purposes of this paragraph, the reference to eligible liabilities items shall ▌ be understood as a reference to ***any of the following:***

(a) eligible liabilities items taken into account for the purposes of complying with the requirement laid down in ***Article 92b;***

(b) liabilities that meet the conditions set out in Article 45f(2), point (a), of Directive 2014/59/EU.

For the purposes of this paragraph, the reference to own funds instruments and eligible liabilities instruments shall be understood as a reference to any of the following:

(a) own funds instruments and eligible liabilities instruments that meet the conditions set out in Article 92b(2) and (3);

(b) own funds and liabilities that meet the conditions set out in Article 45f(2) of Directive 2014/59/EU.';

(6) in Article 92a, paragraph 3 is deleted;

(7) in Article 113, paragraph 1 is replaced by the following:

‘1. To calculate risk-weighted exposure amounts, risk weights shall be applied to all exposures, unless ***those exposures are*** deducted from own funds or are subject to the treatment set out in Article 72e(5), first subparagraph, in accordance with the provisions of Section 2. The application of risk weights shall be based on the exposure class to which the exposure is assigned and, to the extent specified in Section 2, its credit quality. Credit quality may be determined by reference to the credit assessments of ECAIs or the credit assessments of export credit agencies in accordance with Section 3.’;

(8) in Article 151, paragraph 1 is replaced by the following:

‘1. The risk-weighted exposure amounts for credit risk for exposures belonging to one of the exposure classes referred to in Article 147(2), points (a) to (e) and point (g), shall, unless ***those exposures are*** deducted from own funds or are subject to the treatment set out in Article 72e(5), first subparagraph, be calculated in accordance with Sub-section 2.’;

(9) in Article 429a(1), the following point is added:

'(q) the ***exposures*** that are subject to the treatment set out in Article 72e(5), first subparagraph.'***;***

(10) ***in Part Ten, Title I, Chapter 1, Section 3, the following sub-section is inserted:***

'Sub-Section 3a
Deductions from eligible liabilities items

Article 477a
Deductions from eligible liabilities items

1. By way of derogation from Article 72e(4) and until 31 December 2024, the resolution authority of a parent institution, after duly considering the opinion of the resolution authorities or relevant third-country authorities of any subsidiaries concerned, may permit that the adjusted amount m_i be calculated by using the following definition of r_i, and w_i:

r_i = the total risk-based capital requirement applicable to subsidiary i in the third country where it has its head office, insofar as that requirement is met with instruments that would be considered own funds under this Regulation;

w_i = the total non-risk-based Tier 1 capital requirement applicable to subsidiary i in the third country where it has its head office, insofar as that requirement is met with instruments that would be considered Tier 1 capital under this Regulation.

2. The resolution authority may grant the permission referred to in paragraph 1 where the subsidiary is established in a third country that does not yet have in place an applicable local resolution regime if at least one of the following conditions is met:

(a) there is no current or foreseen material practical or legal impediment to the prompt transfer of assets from the subsidiary to the parent institution;

(b) the relevant third-country authority of the subsidiary has provided an opinion to the resolution authority of the parent institution that assets equal to the amount to be deducted by the subsidiary in accordance with Article 72e(4), second subparagraph, could be transferred from the subsidiary to the parent institution.'.

Article 2

Amendments to Directive 2014/59/EU

Directive 2014/59/EU is amended as follows:

(1) in Article 45d, paragraph 4 is replaced by the following:

'4. For the purposes of Article 45h(2), where more than one G-SII entity that are part of the same G-SII are resolution entities or third-country entities that would be resolution entities if they were established in the Union, the relevant resolution authorities shall calculate the amount referred to in paragraph 3 of this Article:

(a) for each resolution entity or third-country entity that would be a resolution entity if it were established in the Union;

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

(2) in Article 45f , paragraph 6 is deleted;

(3) in Article 45h, paragraph 2 is replaced by the following:

'2. Where more than one G-SII entity that are part of the same G-SII are resolution entities or third-country entities that would be resolution entities if they were established in the Union, the resolution authorities referred to in paragraph 1 shall discuss and, where appropriate and consistent with the G-SII's resolution strategy, agree on the application of Article 72e of Regulation (EU) No 575/2013 and any adjustment to minimise or eliminate the difference between the sum of the amounts referred to in Article 45d(4), point (a), of this Directive and Article 12a, point (a), of Regulation (EU) No 575/2013 for individual resolution entities or third-country entities and the sum of the amounts referred to in Article 45d(4), point (b), of this Directive and Article 12a, point (b), of Regulation (EU) No 575/2013.

Such an adjustment may be applied subject to the following:

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

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

The sum of the amounts referred to in Article 45d(4), point (a), of this Directive and Article 12a, point (a), of Regulation (EU) No 575/2013 for individual resolution entities or third-country entities that would be resolution entities if they were established in the Union shall not be lower than the sum of the amounts referred to in Article 45d(4), point (b), of this Directive and Article 12a, point (b), of Regulation (EU) No 575/2013.';

(4) in Article 129, the following paragraph is added:

'By 31 December 2022, the Commission shall review the impact of the indirect subscription of instruments eligible for meeting the minimum requirement for own funds and eligible liabilities on the level playing field between different types of banking group structures, including where groups have an operating company between the holding company identified as a resolution entity and its subsidiaries. It shall assess in particular the following:

(a) the possibility to allow entities that are not themselves resolution entities to comply with the minimum requirement for own funds and eligible liabilities on a consolidated basis;

(b) the treatment, under the rules governing the minimum requirement for own funds and eligible liabilities, of entities whose resolution plan provides that they are to be wound up under normal insolvency proceedings;

(c) the appropriateness of limiting the amount of deductions required pursuant to Article 72e(5) of Regulation (EU) No 575/2013.

The Commission shall submit a report thereon to the European Parliament and to the Council. Where appropriate, that report shall be accompanied by a legislative proposal, taking into account the application date of Article 72e(5) of Regulation (EU) No 575/2013.'

Article 3

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 2, points (1) and (3), by … [12 months from the date of entry into force of this amending Regulation]. They shall immediately communicate the text of those measures to the Commission.

When Member States adopt those measures, they shall contain a reference to this Regulation or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by Article 2, points (1) and (3), of this Regulation.

Article 4

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from … [date of entry into force].

However, Article 1, point (3), point (5)(b), and points (7), (8) and (9), shall apply from ***1 January 2024.***

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at …,

For the European Parliament	*For the Council*
The President	*The President*