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PROPOSAL

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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2021) 665 final
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

Delegations will find attached document COM(2021) 665 final.

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2021/0343 (COD)

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

(Text with EEA relevance)

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EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Regulation (EU) No 575/2013 of the European Parliament and of the Council[1] (the Capital Requirements Regulation or CRR) establishes together with Directive 2013/36/EU of the European Parliament and of the Council[2] (the Capital Requirements Directive or CRD) the prudential regulatory framework for credit institutions operating in the Union. The CRR and the CRD were adopted in the aftermath of the 2008-2009 financial crisis to enhance the resilience of institutions operating in the EU financial sector, largely based on global standards agreed with the EU's international partners, in particular the Basel Committee on Banking Supervision (BCBS).

The CRR has been subsequently amended to tackle remaining weaknesses in the regulatory framework and to implement some outstanding elements of the global financial services reform that are essential to ensure institutions' resilience. A major revision was brought by the 'Risk Reduction Measures Package', which was adopted by the European Parliament and the Council on 20 May 2019 and published in the Official Journal on 7 June 2019. That package included inter alia changes to the Union bank resolution framework through Directive (EU) 2019/879 of the European Parliament and of the Council[3], amending Directive 2014/59/EU of the European Parliament and of the Council[4] (Bank Recovery and Resolution Directive or BRRD), Regulation (EU) 2019/877 of the European Parliament and of the Council[5], amending Regulation (EU) No 806/2014 of the European Parliament and of the Council[6] (Single Resolution Mechanism Regulation or SRMR) and Regulation (EU) 2019/876 of the European Parliament and of the Council[7], amending the CRR. This reform implemented in the

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1. Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).
2. 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).
3. 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).
4. 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).
5. 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).
6. 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).
7. 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).

Union the international Total Loss-Absorbing Capacity (TLAC) standard for global systemically important institutions (G-SIIs) adopted by the Financial Stability Board (FSB) in November 2015[8] and enhanced the application of the minimum requirement for own funds and eligible liabilities (MREL) for all institutions established in the Union.

The TLAC standard requires G-SIIs to hold a sufficient amount of highly loss-absorbing (bail-inable) liabilities to ensure smooth and fast absorption of losses and recapitalisation in the event of resolution. The implementation of the TLAC standard in Union law, namely through amendments to the CRR, took into account the existing institution-specific minimum requirement for own funds and eligible liabilities (MREL), set out in the BRRD.[9] Moreover, both sets of rules are closely interconnected, particularly through cross-references from the BRRD and the SRMR to the CRR. For instance, the BRRD and the SRMR generally rely on the total exposure measure and the total risk exposure amount as calculated under the CRR for calculating and expressing MREL. Therefore, the two requirements should be understood as complementary elements of a common framework.[10] That revised framework should better ensure that institutions' loss absorption and recapitalisation occurs through private means once those institutions get into financial difficulties and are subsequently placed in resolution. TLAC and MREL are thus essential to effectively manage bank crises and reduce their negative impact on financial stability and public finances. TLAC and the revised rules on MREL became applicable in the Union on 27 June 2019 and 28 December 2020, respectively.

In line with international standards, Union law recognises both the Single Point of Entry (SPE) resolution strategy and the Multiple Point of Entry (MPE) resolution strategy.[11] Under the SPE resolution strategy, only one group entity, typically the parent undertaking, is resolved ('resolution entity'), whereas other group entities, usually operating subsidiaries, are not subject to resolution action. Instead, the losses of those subsidiaries are transferred to the resolution entity and capital is down streamed to the subsidiary. This ensures that the subsidiaries can continue to operate smoothly even after they have reached the point of non-viability. Each resolution entity forms a 'resolution group' together with the subsidiaries that belong to it and that are not themselves resolution entities. Under the MPE resolution strategy, more than one entity of the banking group may be resolved. Consequently, more than one resolution entity and thus more than one resolution group may exist within the banking group. The underlying principle of the MPE resolution approach is to enable the resolution of a given resolution group in a feasible and credible way without undermining the resolvability of other resolution entities and resolution groups in the same consolidated banking group.

The revised bank resolution framework provides that MREL for resolution entities should be set at the consolidated level of a resolution group ('external MREL').[12] In addition, that

[8] Financial Stability Board, *Principles on Loss-absorbing and Recapitalisation Capacity of Globally Systemically Important Banks (G-SIBs) in Resolution, Total Loss-absorbing Capacity (TLAC) Term sheet*, 9.11.2015.

[9] More specifically, the CRR envisaged a new requirement for own funds and eligible liabilities for those institutions that have been identified as G-SIIs, while the institution-specific *add-on* for those G-SIIs as well as the institution-specific requirement non-G-SIIs were introduced through targeted amendments to the BRRD and to the SRMR.

[10] Recital 16 of Regulation (EU) 2019/876, Recital 2 of Directive (EU) 2019/879 and Recital 2 of Regulation (EU) 2019/877.

[11] Recital 4 of Directive (EU) 2019/879.

[12] Article 45e of the BRRD.

framework envisages how the loss absorption and recapitalisation capacity should be allocated *within* resolution groups ('internal MREL')[13].

According to the BRRD, as a rule, financial instruments that are eligible for internal MREL must be held by the resolution entity, i.e. typically the parent undertaking[14]. The rationale of this rule is to ensure that the loss-absorbing and recapitalisation capacity of a subsidiary is provided by its parent, i.e. by the resolution entity. That parent may hold internal MREL eligible instruments either directly or indirectly through other entities in the same resolution group (see illustration below). The possibility for instruments to be also indirectly subscribed by the parent through intermediate entities was justified by the fact that the obligation to comply with internal MREL should not unnecessarily alter the existing funding channels of banking groups where the funding for acquiring such instruments is structured around the chains of ownership and distributed to the subsidiaries across the group through intermediate entities and not directly by ultimate parents (resolution entities).

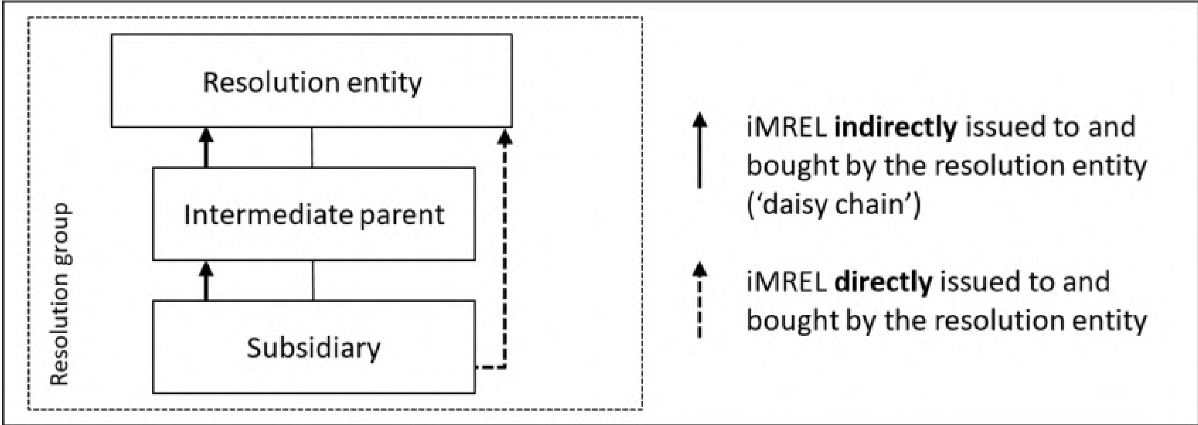

Illustration: Subscription of internal MREL eligible instruments (directly or indirectly)

To operationalise the approach of indirect subscription of internal MREL eligible instruments within resolution groups, also referred to as the 'daisy chain' approach, and to ensure that it is prudentially sound, the co-legislators mandated the European Banking Authority (EBA) to develop draft regulatory technical standards (RTS) and the Commission to adopt on that basis a delegated act to specify a methodology for such an indirect issuance of eligible instruments.[15] According to the BRRD mandate that methodology should:

- permit a proper transfer of losses from subsidiaries to their ultimate parent (resolution entity) and a proper transfer of capital from that parent to subsidiaries;

[13] Article 45f the BRRD. The requirement is referred to as 'internal' in view of the fact that the eligible instruments generally have to be funded internally within the banking group, namely by a subsidiary's ultimate parent.

[14] Article 45f(2), point (a)(i), of the BRRD also allows to consider eligible for internal MREL those *liabilities* that 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 Articles 59 to 62 of the BRRD does not affect the control of the subsidiary by the resolution entity. Additionally, Article 45f(2), point (b)(ii), of the BRRD allows internal MREL to be met by *own funds* other than CET1 capital 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 Articles 59 to 62 does not affect the control of the subsidiary by the resolution entity.

[15] Article 45f(6) of the BRRD.

- ensure that the loss-absorbing capacity of the subsidiary is not also counted for the purposes of compliance with internal MREL by the intermediate parent; and
- ensure that its outcome is equivalent to that of a direct subscription by the ultimate parent (resolution entity) of eligible instruments issued by subsidiaries.

Since early 2020, the EBA has been working on that draft RTS on the basis of a deduction regime, in line with the mandate set out in the BRRD and the recommendations in the relevant international standards.[16] The deduction regime developed by the EBA envisages that internal MREL eligible instruments issued by subsidiaries to the resolution entity via an intermediate parent would have to be fully deducted from the amount of the intermediate parent's own internal MREL capacity. Such a deduction approach was considered as the most consistent with the conditions set out in the BRRD mandate and conducive to the operationalisation of the internal MREL framework.[17]

The methodology developed by the EBA was subject to a public consultation.[18] The consultation feedback showed general support to the draft RTS, but highlighted several inconsistencies of the requirements for the delegation laid down in the BRRD with the existing prudential rules laid down in the CRR. Hence, in a letter to the European Commission dated 25 January 2021[19], the EBA outlined that the interactions between the BRRD and the CRR would not allow the application of the prudential treatment needed for the mandate to be fulfilled as originally intended. More precisely, the EBA noted that the CRR did not allow for the deduction of internal MREL eligible instruments and, subsequently, for the application of an appropriate risk weight of zero percent in all the cases relevant for the mandate under the BRRD. Similar issues were identified in the area of the CRR leverage ratio requirement. This situation would not only generate an inconsistency between the prudential and resolution framework but would also go against the requirement of the BRRD mandate to generate an outcome equivalent to that of a direct subscription, according to the EBA. It was concluded that the BRRD requirements could not be fulfilled without additional provisions that the RTS could not bear on its own but needed rather to rely on the Level 1 text to specify.

Apart from the need to operationalise the indirect subscription of instruments eligible for internal MREL, some other resolution related issues have been identified since the revised TLAC/MREL framework became applicable in 2019.[20] Those issues mainly relate to the regulatory treatment of G-SII groups with an MPE resolution strategy, including those MPE groups that have subsidiaries in third countries. For instance, the CRR currently does not

[16] Financial Stability Board, *Guiding Principles on the Internal Total Loss-absorbing Capacity of G-SIBs ('Internal TLAC')*, 6.7.2017. Under that regime, instruments eligible for internal MREL issued by the subsidiary and subscribed by the intermediate parent would be fully deducted from the eligible instruments issued by the intermediate parent to comply with its own internal MREL.

[17] In its work, the EBA also considered other approaches, but discarded them as incompatible with the provisions of the BRRD on internal MREL or due to their lack of prudence or simplicity.

[18] EBA/CP/2020/18, 22 July 2020, available at: https://www.eba.europa.eu/calendar/eba-consults-technical-standards-indirect-subscription-mrel-instruments-within-groups

[19] EBA-2020-D-3378, 25 January 2021, available at: https://www.eba.europa.eu/sites/default/documents/files/document_library/About%20Us/Missions%20and%20tasks/Correspondence%20with%20EU%20institutions/2021/962427/2021%2001%2025%20Letter%20to%20J%20Berrigan%20re%20Art%2045f%286%29%20BRRD%20%28daisy%20chains%29.pdf

[20] Chapter 5.2 to 5.5 of the explanatory memorandum contains detailed explanations on the specific issues.

specify whether the various adjustments to TLAC[21] for G-SIIs with an MPE resolution strategy also cover those subsidiaries of a G-SII that are located in a third country. In addition, the formula[22] for the calculation of the TLAC/MREL surplus of a subsidiary in the context of the general deduction regime applicable to G-SIIs with an MPE resolution strategy relies on the *risk-based* TLAC/MREL requirement of the subsidiary only, while it was omitted to also take into account the *non-risked-based* TLAC/MREL. Further issues include some contradictions within the Level 1 text, notably with regard to the interplay of provisions in the CRR and the BRRD[23] that are relevant to address potential inconsistencies between SPE and MPE requirements. Lastly, some issues have been observed with regard to the criteria[24] for instruments to be eligible for compliance with the internal TLAC requirement, which is of relevance when addressing the failure of EU subsidiaries of non-EU global systemically important institutions (G-SIIs).

Some targeted changes to specific resolution related aspects of the CRR are necessary to address the above issues. In particular, the regulatory treatment of G-SII groups with an MPE resolution strategy, including of those MPE groups that have subsidiaries in third countries, needs to be better aligned with the treatment outlined in the TLAC standard. This would help to ensure that, in case of resolution, each resolution entity and group belonging to those G-SIIs can continue to perform critical functions without the risk of contagion. The amendments proposed would not alter the overall architecture of the framework but would ensure the proper application of TLAC and MREL.

First, it is necessary to incorporate directly into the CRR a dedicated prudential treatment related to the indirect subscription of instruments eligible for internal MREL (daisy chain approach). The proposed modifications to the CRR would address the identified inconsistencies between the CRR and the BRRD, which were outlined in the EBA's letter to the European Commission dated 25 January 2021. More precisely, the deduction regime, which was developed by the EBA in the context of the draft RTS under the BRRD, would be incorporated directly into the CRR. This would ensure a proper functioning of the indirect subscription of internal MREL within resolution groups with several layers of ownership, in line with the political agreement reached during the negotiations of Directive (EU) 2019/879. In addition, the revisions would ensure that the treatment of holdings of internal MREL eligible instruments remains aligned in both the resolution and the prudential framework, thus enabling the operationalisation of the deduction methodology developed by the EBA and, at the same time, avoiding the introduction of undue complexity in the treatment of those exposures.

Second, the CRR provisions on the comparison between the sum of the actual TLAC requirements of all the resolution groups within a G-SII group with an MPE resolution strategy with the theoretical SPE requirement of that G-SII group need to be clarified.[25] The changes proposed are needed to clarify the extent to which resolution authorities can address the potential inconsistencies between SPE and MPE requirements. This would be achieved by

[21] Article 12a and 72e(4) of the CRR.
[22] Article 72e(4) of the CRR.
[23] Articles 12a and 92a(3) of the CRR and 45h(2) of the BRRD.
[24] Article 72b(2) of the CRR.
[25] Articles 12a and 92a(3) of the CRR.

aligning the CRR treatment with the one envisaged under the BRRD[26] and the TLAC standard[27].

Third, it is necessary to amend the formula for the calculation of the TLAC/MREL surplus of a subsidiary in the context of the general deduction regime applicable to G-SIIs with an MPE resolution strategy[28] to ensure that that formula takes into account both the risk-based and the non-risk-based TLAC/MREL requirements of the subsidiary, in line with the TLAC standard. This would avoid that the TLAC/MREL surplus of a given subsidiary is overestimated.

Fourth, some CRR provisions applicable to G-SIIs with an MPE resolution strategy should be clarified to allow for the consideration of subsidiaries established outside of the Union. This would align the CRR with the corresponding TLAC principle agreed internationally, which is applicable with respect to subsidiaries established in all FSB jurisdictions.

Fifth, some targeted clarifications in the context of the requirement for own funds and eligible liabilities for institutions that are material subsidiaries of non-EU G-SIIs ('internal TLAC') are needed to ensure that debt instruments issued by those institutions could meet all eligibility criteria for eligible liabilities instruments. The reason for this change is that currently the eligibility criteria for eligible liabilities instruments are based on the assumption that those instruments are issued by a resolution entity, and not by subsidiaries subject to an internal TLAC requirement. The gap would be addressed by clarifying that the same eligibility conditions applicable to resolution entities apply also to non-resolution entities, *mutatis mutandis*. This, in turn, would enable those institutions to meet their internal TLAC requirement inter alia with eligible liabilities, as originally intended by the co-legislators.[29]

These proposed amendments to the CRR can play an essential role in improving an institution's resolvability. Given that the corresponding provisions are already applicable in the Union, the proposed modifications would need to be made in a timely manner. The need for an expedited adoption is further amplified by the fact that banking groups need clarity on the daisy chain mechanism to decide how best to preposition their internal MREL capacity in view of the general MREL compliance deadline that is set to 1 January 2024, with binding intermediate targets needing to be complied with by 1 January 2022.[30]

- **Consistency with existing policy provisions in the policy area**

The proposal introduces amendments to existing legislation. These amendments are fully consistent with the existing policy provisions in the field of prudential and resolution requirements for institutions. The Union resolution framework aims at ensuring that banks' loss absorption and recapitalisation are occurring through private means once their financial situation deteriorates and are subsequently placed in resolution. By facilitating the indirect subscription of internal MREL within resolution groups, by better aligning the regulatory treatment of banking groups with an MPE resolution strategy with the TLAC standard, and by specifying further some of the criteria for eligibility for compliance with the internal TLAC

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[26] Article 45d(4) and 45h(2) of the BRRD.

[27] Section 3 of the TLAC Term Sheet envisages that, where the theoretical SPE requirement is lower than the sum of the actual MPE requirements, the relevant authorities may agree on an adjustment to minimise or eliminate that difference (i.e. by reducing the MPE requirements). In addition, it is clarified that the sum of the actual MPE requirements must never be lower than the theoretical SPE requirement.

[28] Article 72e(4) of the CRR.

[29] Article 92b(2) of the CRR.

[30] Article 45m(1) of the BRRD.

requirement, the proposal will improve the application of the existing Union rules as regards ensuring the resolvability of banking groups. This outcome is consistent with and will contribute to the achievement of the overall objectives of the Union bank resolution framework of safeguarding the financial stability and reducing taxpayers' support in bank resolution.

- **Consistency with other Union policies**

The proposed Regulation is instrumental for an appropriate application of the wider review of the Union financial legislation proposed in 2016 and adopted in 2019 (Risk Reduction Measures Package), aiming at reducing risks in the financial sector while promoting sustainable financing of the economic activity. The proposal is, therefore, fully consistent with the EU's fundamental goals of promoting financial stability, reducing taxpayers' support in bank resolution as well as contributing to a sustainable financing of the economy.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The proposal is based on Article 114 of the Treaty on the Functioning of the European Union (TFEU), the same legal basis as for the legislative acts that are being amended.

- **Subsidiarity (for non-exclusive competence)**

The objectives pursued by the proposed Regulation aim at supplementing and amending already existing EU legislation (the CRR and the BRRD) and can therefore best be achieved at EU level rather than by different national initiatives. The ability of Member States to adopt national measures is limited, given that the CRR and the BRRD already regulate those matters, and changes at national level would conflict with Union law currently in force.

The proposed amendments would further promote a uniform application of prudential requirements, the convergence of supervisory practices and ensure a level playing field throughout the single market for banking services. These objectives cannot be sufficiently achieved by Member States alone. If the Union were to cease regulating those aspects, the internal market for banking services would become subject to different sets of rules, leading to fragmentation and undermining the recently build single rulebook in this area.

- **Proportionality**

This Union action is necessary to achieve the objective of improving the application of the existing Union rules as regards ensuring the resolvability of banking groups. The proposed amendments do not go beyond addressing selected provisions in the Union’s prudential framework for institutions that target exclusively measures aimed at ensuring a smooth functioning of the requirements for own funds and eligible liabilities. Moreover, the proposed amendments are limited to those issues, which cannot be addressed within the existing margin of discretion the current rules provide for.

- **Choice of the instrument**

The measures are proposed to be implemented by amending the CRR through a Regulation. The proposed measures amend the existing rules concerning the application of the requirements for own funds and eligible liabilities laid down in the CRR. Therefore, a regulation is an appropriate instrument for the proposal.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

• Ex-post evaluations/fitness checks of existing legislation

This proposal is not accompanied by a separate impact assessment, as this proposal does not alter the fundamental aspects of the CRR but mainly aims at clarifying the legal relationship between two existing EU law instruments, namely the CRR and the BRRD, by incorporating directly into the CRR a dedicated treatment for the indirect subscription of instruments eligible for internal MREL. Such clarifications would ensure that the two highly interlinked frameworks remain largely aligned. This, in turn, would enable institutions to continue to calculate, report, and disclose one set of total risk exposure amount and total exposure measure for the purpose of both the CRR and the BRRD, thereby avoiding an undue increase in complexity.

Moreover, the impact of the measures which are being amended by this proposal has already been subject to analyses in the impact assessments undertaken for Regulation (EU) 2019/876 and Directive (EU) 2019/879. This includes the possible need to issue additional MREL eligible instruments to comply with internal MREL, as introduced by the co-legislators through the revised BRRD. The proposal is broadly based on preparatory work carried out by the EBA, notably with regard to the development of the regulatory technical standards on the indirect subscription of internal MREL eligible instruments within resolution groups. The proposal primarily aims at addressing unintended consequences related to the existing TLAC/MREL framework resulting from the rules currently contained in the CRR.

The proposed amendments would have a limited impact on the administrative burden for institutions and the costs for them to adapt their internal operations, with most of the costs expected to be offset by allowing the approach of indirect subscription of internal MREL eligible instruments within resolution groups to function properly and, for the institutions concerned, by the benefits derived in terms of an improved recognition of third-country subsidiaries and by further specifying the eligibility of instruments issued in the context of the internal TLAC requirement.

• Fundamental rights

The Union is committed to high standards of protection of fundamental rights and is signatory to a broad set of conventions on human rights. In this context, the proposal is not likely to have a direct impact on these rights, as listed in the main UN conventions on human rights, the Charter of Fundamental Rights of the European Union, which is an integral part of the EU Treaties and the European Convention on Human Rights (ECHR).

4. BUDGETARY IMPLICATIONS

The proposal does not have implications for the Union budget.

5. OTHER ELEMENTS

• Detailed explanation of the specific provisions of the proposal

(1) Dedicated treatment for the indirect subscription of instruments eligible for internal MREL

In order to implement the political agreement reached during the negotiations of Directive (EU) 2019/879, it is proposed to introduce the deduction regime, which was developed by the EBA in the context of the draft RTS under the BRRD, directly into the CRR. The proposed Regulation thus introduces, in Article 72e(5) of the CRR, a requirement that intermediate

parents along the chain of ownership would have to deduct from their own internal MREL capacity the amount of their holdings of internal MREL eligible instruments, including own funds, issued by their subsidiaries belonging to the same resolution group.

The introduction of a deduction regime is necessary. From a resolution perspective, the regime ensures an adequate upstreaming of losses and downstreaming of capital between resolution entities and their ultimate subsidiaries, avoids the double counting of the loss-absorbing capacity of the subsidiary for the purposes of compliance with internal MREL by the intermediate parent and provides for an outcome equivalent to that of a full direct subscription by the resolution entity of instruments issued by their ultimate subsidiaries. Additionally, the deduction regime is also needed from a prudential perspective, as, without such a regime, the individual solvency ratios of intermediate parents would not reflect appropriately and prudently their actual loss-absorbing capacity, as those ratios would also include the loss-absorbing capacity of their subsidiaries. This could compromise the proper functioning of the chosen resolution strategy, as the intermediate parent could use up not only its own loss absorption capacity but also that of its subsidiary, before the intermediate parent or the subsidiary are no longer viable. The deduction approach ensures that intermediate parents report available own funds only to the extent that they relate to the risks linked to their own balance sheet. In addition, the approach would be conducive to a timely application of maximum distributable amount restrictions in accordance with Articles 141 and 141b of the CRD, Article 16a of the BRRD and of the determination that the intermediate parent is no longer viable.

The deduction regime should apply to all intermediate parents who are institutions or entities referred to in Article 1(1), points (b) to (d), of the BRRD and who are required to comply with internal MREL as determined by the resolution authority, irrespective of whether they are part of G-SII groups. As such, the references to eligible liabilities items should also be understood as including the liabilities eligible to comply with internal MREL pursuant to Article 45f(2), point (a), of the BRRD.

The deduction regime is strictly limited to intermediate parents in the context of the indirect subscriptions of internal MREL instruments. Therefore, Article 49(2) of the CRR only needs to be amended with regard to exposures that are subject to the new treatment set out in Article 72e(5) of the CRR. Moreover, to ensure that the new deduction regime remains proportionate, institutions will be able to choose the mix of instruments (own funds versus eligible liabilities) with which the intermediate parent funds the acquisition of internal MREL instruments of its subsidiaries. This is achieved by applying the deductions first to the stock of eligible liabilities of the intermediate parent. Only where the amount to be deducted would exceed the stock of eligible liabilities of the intermediate parent, the remaining deductions would have to be applied to its stock of own funds for prudential purposes, starting with Tier 2 items (Article 66, point (e), of the CRR)[31]. In practical terms, this means that the intermediate parent could completely avoid any own funds related deductions as long as it issues sufficient MREL eligible liabilities to the resolution entity.

In some exceptional cases, namely where internal MREL and internal TLAC is not applied on an individual basis but on a consolidated basis[32], a deduction regime may be excessive,

[31] In case the remaining deductions would also exceed the stock of the intermediate parent's Tier 2 items, the exceeding amount would have to be deducted from Additional Tier 1 items (Article 56, point (e), of the CRR). If needed, any remaining amount would subsequently be deducted from the intermediate parent's Common Equity Tier 1 items (Article 36(1), point (j), of the CRR).

[32] With regard to internal MREL, this may be relevant for certain Union parent undertakings that are subsidiaries of third-country groups (Article 45f(1), third subparagraph, of the BRRD) and for

potentially resulting in a double penalty under the envisaged full holdings-based deduction approach. Indeed, in those situations, the intermediate parent should absorb the losses of its subsidiaries and therefore hold sufficient loss-absorbing and recapitalisation capacity to cover its own needs as well as the needs of the subsidiaries in the perimeter of consolidation. Those cases are therefore exempted from the deduction regime.[33]

The indirect subscription of internal MREL eligible instruments 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. Thus, those losses are not supposed to be absorbed by the intermediate parent, which becomes a mere vehicle to pass through those losses 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 intended by the co-legislators under Article 45f(6) of the BRRD, the deduction regime is accompanied by the application of a 0% risk weight for exposures subject to that regime and by a corresponding exclusion of those exposures from the calculation of the leverage ratio total exposure measure. This is reflected in Articles 113(1), 151(1) and 429a(1) of the CRR.

The above-described approach enables the implementation of the indirect subscription of internal MREL instruments in accordance with the conditions agreed to by the co-legislators during the negotiations of Directive (EU) 2019/879 and reflected in the mandate that was given to the EBA. Furthermore, that approach is simple, in particular when compared to a scenario where the necessary deductions would be applied in the resolution framework only. By keeping the treatment set out in the two highly interlinked frameworks, the CRR and the BRRD, aligned, institutions can continue to calculate, report, and disclose one set of total risk exposure amount and total exposure measure for the purpose of both the CRR and the BRRD, thereby avoiding an undue increase in complexity.

Since the dedicated treatment developed by the EBA in the context of the draft RTS under the BRRD mandate is incorporated directly into the CRR, the RTS is not needed anymore. Consequently, Article 45f(6) of the BRRD is deleted.

(2) Comparison betweeen the theoretical SPE requirement and the sum of the actual MPE requirements

Article 12a of the CRR provides that G-SII groups with an MPE resolution strategy must calculate their TLAC requirement referred to in Article 92a(1), point (a), of the CRR under the theoretical assumption that the group would be resolved under an SPE resolution strategy (theoretical SPE requirement). That theoretical SPE requirement is then to be compared by resolution authorities to the sum of the actual TLAC requirements of each resolution entity of that group under an MPE resolution strategy (MPE requirements). However, the CRR provisions as regards the consequences of that comparison are inconsistent.

More precisely, where the theoretical SPE requirement is *lower* than the sum of the actual MPE requirements, Article 92a(3) of the CRR currently sets out that resolution authorities *may* act in accordance with Articles 45d(4) and 45h(2) of the BRRD. In contrast, the last subparagraph of Article 12a of the CRR sets out that those authorities *shall* act in that case. In the same vein, where the theoretical SPE requirement is *higher* than the sum of the actual

intermediate parents that are subject to a consolidated internal MREL target because the next subsidiary in the chain benefits from a waiver (Article 45f(4), point (b), of the BRRD). Moreover, internal TLAC may also be complied with on a consolidated basis (Article 11(3a) of the CRR).

[33] The deduction approach on which the EBA publicly consulted in 2020 did not envisage an exemption from the deduction regime where internal MREL and internal TLAC is not applied on an individual basis but on a consolidated basis, as this aspect only emerged during the public consultation.

MPE requirements, the second subparagraph of Article 12a of the CRR sets out that resolution authorities *may* act, which seems to be in contrast to the last subparagraph of Article 45h(2) of the BRRD. That last subparagraph envisages that the sum of the actual MPE requirements[34] must never be lower than the theoretical SPE requirements[35] and thus clarifies that in that case action by resolution authorities is compulsory, rather than optional.

Against the above background, it is proposed to amend Article 12a of the CRR to clarify that, based on the calculation set out in that Article, resolution authorities should always act in accordance with Articles 45d(4) and 45h(2) of the BRRD. Article 92a(3) of the CRR can then be deleted. This removes the inconsistencies from the CRR, aligns the CRR provisions with the ones set out in the BRRD and with the TLAC standard, and ensures that any additional MREL requirements determined by the resolution authority pursuant to Article 45d(1), point (b), of the BRRD are always taken into account.

(3) Deductions from eligible liabilities items: non-risk-based requirements for own funds and eligible liabilities

Article 72e of the CRR provides a deduction regime directly applicable to G-SIIs with an MPE resolution strategy. This is in line with the TLAC standard, which aims at ensuring that for G-SII groups with more than one resolution entity, the loss-absorbing capacity of each resolution entity is computed exclusive of any exposures to other resolution entities in the same group that correspond to TLAC instruments. The rationale of this provision is to minimise the risk of contagion within a G-SII group and to ensure that resolution entities have sufficient available loss-absorbing capacity in case of failure, which should not be diminished by losses arising from intragroup holdings of TLAC instruments. Without those deductions, the failure of one resolution entity in the G-SII group would lead to losses in other resolution entities of that group and consequently to a reduction in the loss-absorbing and recapitalisation capacity of those resolution entities.

The CRR also provides, in Article 72e(4), an exception to that general deduction regime. That exception specifies that the deduction of own funds and eligible liabilities items, issued by a subsidiary and held by its parent, can be reduced at parent level if the amount of that reduction is instead deducted at the level of the subsidiary from its loss absorbing and recapitalisation capacity.

One of the preconditions to reduce the deductions at parent level, and instead deduct the amount of that reduction at the level of the subsidiary, is that the subsidiary in question is in surplus with regard to its requirement for own funds and eligible liabilities. That requirement is expressed as a risk-based and a non-risk based ratio, according to Article 92a(1) of the CRR and Article 45(2) of the BRRD. However, the CRR formula to calculate the surplus of the subsidiary relies on the risk-based requirement only. This, in turn, may lead to an overestimation of the surplus for those subsidiaries for which the non-risk-based requirement for own funds and eligible liabilities is higher than the risk-based one.

It is therefore proposed to amend the formula set out in Article 72e(4) of the CRR. In line with the TLAC standard, that formula would then take into account both the risk-based and non-risk-based requirements for own funds and eligible liabilities of the relevant subsidiary.

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[34] That is the TLAC minimum requirement referred to in Articles 92a and 494 of the CRR and any additional MREL requirement determined by the resolution authority under Article 45d of the BRRD.

[35] That is, the TLAC minimum requirement that would be applicable to the parent undertaking of the G-SII group and the theoretical additional MREL requirement calculated by the resolution authority pursuant to Article 45d(4), point (b), of the BRRD.

(4) Consideration of subsidiaries established outside of the Union

Articles 12a and 72e(4) of the CRR do not explicitly cover subsidiaries that are located in a third country. It may thus not be possible for EU banking groups with a global MPE resolution strategy to take subsidiaries that are established outside of the Union into account. This is relevant, for instance, when comparing the sum of the actual MPE requirements with the theoretical SPE requirement under Article 12a of the CRR. That comparison would have to be made between a theoretical SPE requirement consisting of the entire group and the sum of the MPE requirements determined for EU resolution entities only. In the same vein, the exception to the general deduction regime applicable to G-SIIs with an MPE resolution strategy set out in Article 72e(4) of the CRR could not be applied if the subsidiary concerned is located in a third country.

In order to align the CRR treatment of third-country subsidiaries with the one outlined in the corresponding TLAC standard, which is applicable with respect to entities established in all FSB jurisdictions, it is proposed to amend Articles 12a and 72e(4) of the CRR to clarify that both provisions also apply to subsidiaries established outside of the Union.

The application of Article 72e(4) of the CRR needs to be limited to those cases where a third-country resolution regime is applicable to the subsidiaries concerned. Indeed, without an applicable local resolution regime and the existence of a resolution authority, or of another authority exercising similar powers, there would be no credible legal means to ensure that the capital surplus, which would have virtually been transferred to the parent institution in the EU by means of reduced deductions at parent level, could actually be transferred in case the subsidiary would become insolvent. This is because, without a local resolution regime in place, failed institutions would be subject to insolvency procedures in accordance with the legislation of the third country. Consequently, the parent would have to compete with other creditors during the insolvency of the subsidiary for the repayment of the outstanding claims.

(5) Clarifications on the eligibility of debt instruments issued in the context of the internal TLAC requirement

Article 92b of the CRR lays down the internal TLAC requirement for material subsidiaries of non-EU G-SIIs that are not resolution entities. That requirement may be met with own funds and with eligible liabilities instruments, as specified in Article 92b(2). While the eligibility criteria for eligible liabilities instruments are based on the assumption that those instruments are issued by a resolution entity,[36] entities that are subject to an internal TLAC requirement are, by definition, not resolution entities.[37] Therefore, debt instruments issued by those entities cannot meet all the eligibility criteria for eligible liabilities instruments. Consequently, and in contrast to Article 92b(2) of the CRR, those institutions may be required to meet their internal TLAC requirement with own funds only.

In order to address this legal lacuna, a new subparagraph is added after the third subparagraph of Article 72b(2) of the CRR. That subparagraph clarifies that, for the purposes of internal TLAC, references to the resolution entity have to be read as references to the entity that is subject to the requirement set out in Article 92b of the CRR. This enables material subsidiaries of non-EU G-SIIs to issue, and thus to use, eligible liabilities instruments to meet their internal TLAC requirement, as was intended by the co-legislators.

[36] Article 72b(2), points (c), (k), (l) and (m), of the CRR.
[37] Article 92b(1) of the CRR.

2021/0343 (COD)

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

(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[38],

Having regard to the opinion of the European Economic and Social Committee[39],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Directive (EU) 2019/879 of the European Parliament and of the Council[40], Regulation (EU) 2019/877 of the European Parliament and of the Council[41] and Regulation (EU) 2019/876 of the European Parliament and of the Council[42] amended the Union bank resolution framework, through amendments to Directive 2014/59/EU of the European Parliament and of the Council[43], Regulation (EU) No 806/2014 of the European

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38 OJ C , , p. .

39 OJ C , , p. .

40 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).

41 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).

42 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).

43 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).

Parliament and of the Council[44] and Regulation (EU) No 575/2013 of the European Parliament and of the Council[45]. Those amendments were necessary to implement in the Union the international Total Loss-absorbing Capacity (TLAC) Term Sheet (the 'TLAC standard')[46] for global systemically important banks 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 global systemically important institution (G-SII) groups with a resolution strategy under which more than one group entity might be resolved (Multiple Point of Entry (MPE) resolution strategy) are to calculate their risk-based requirement for own funds and eligible liabilities under 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 (SPE) resolution strategy). In line with the TLAC standard, that calculation should take into account all third-country entities belonging to a G-SII that would be resolution entities were they established in the Union.

(3) According to Article 45h(2), third subparagraph, of Directive 2014/59/EU, and to the TLAC standard, the sum of the actual requirements for own funds and eligible liabilities of a G-SII group with an MPE resolution strategy must not be lower than that group's theoretical requirement under an SPE resolution strategy. Regulation (EU) No 575/2013, namely Articles 12a and 92a(3), should be aligned with the corresponding provisions of Directive 2014/59/EU and 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 as well as any additional requirement for own funds and eligible liabilities determined in accordance with Article 45d of Directive 2014/59/EU. 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 group 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.

(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 *inter alia* be met with eligible liabilities instruments. However, the eligibility 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

[44] 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).

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

[46] Financial Stability Board, Principles on Loss-absorbing and Recapitalisation Capacity of Globally Systemically Important Banks (G-SIBs) in Resolution, Total Loss-absorbing Capacity (TLAC) Term Sheet, 9.11.2015.

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) According to Article 72e(4), first subparagraph, of Regulation (EU) No 575/2013, resolution authorities may 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 is 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 belonging to that G-SII, as long as those subsidiaries are subject to a local resolution regime that is equivalent to internationally agreed standards.

(6) To operationalise the approach of indirect subscription of internal MREL eligible instruments within resolution groups and to ensure that that approach is prudentially sound, the European Banking Authority (EBA) was mandated under Article 45f(6) of Directive 2014/59/EU to develop draft regulatory technical standards to specify a methodology for such an indirect issuance of eligible instruments. 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 instruments 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 methodology developed by the EBA should be incorporated directly into Regulation (EU) No 575/2013. Consequently, the mandate to develop draft regulatory technical standards set out in Article 45f(6) of Directive 2014/59/EU should be deleted.

(7) In the context of the indirect subscription of internal MREL eligible instruments by resolution entities pursuant to the revised Union bank resolution framework, intermediate parents should be required to deduct from their own internal MREL eligible resources the full holding of own funds and eligible liabilities issued by their subsidiaries belonging to the same resolution group. This 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 the subsidiary for the purposes of compliance by the intermediate parent with its own internal MREL. Additionally, without those deductions, the individual solvency ratios of intermediate parents would not reflect appropriately and prudently their actual loss-absorbing capacity, as those ratios would also include the loss-absorbing capacity of their subsidiaries. This could compromise the proper implementation of the chosen resolution strategy, as the intermediate parent could use up not only its own loss absorption capacity but also that of its subsidiary, before the intermediate parent or the subsidiary are no longer viable. The deductions should first be applied to the eligible liabilities items of the intermediate parents. In case the amount to be deducted would

exceed the amount of the eligible liabilities items of the intermediate parents, the remaining amount should be deducted from their Tier 2 items. To ensure that the deduction regime remains proportionate, that regime should not be applicable in the exceptional cases where internal MREL is applied on a consolidated basis only.

(8) The indirect subscription of internal MREL eligible instruments 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 parent, which should become a mere vehicle to pass through those losses 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, the deducted exposures should receive a 0 % risk weight for the calculation of the total risk exposure amount and be excluded from the calculation of the total exposure measure.

(9) Since the objectives of this Regulation, namely to fully harmonise the prudential treatment of the holdings by intermediate parents of internal MREL eligible resources of their subsidiaries 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 and can therefore, 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.

(10) To ensure that institutions have sufficient time to implement the dedicated treatment for the indirect subscription of instruments eligible for internal MREL, including the new deduction regime, the provisions laying down that treatment should become applicable six months after the entry into force of this Regulation.

(11) 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 (130a) 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 belonging to 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). That calculation

shall be undertaken on the basis of the consolidated situation of the EU parent institution as if it were the only resolution entity of the G-SII.

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 this paragraph shall also be understood as references to the institution that is a material subsidiary of the 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:

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

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;

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).

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 5 is added:

'5. Institutions and entities required to comply with Article 45c of Directive 2014/59/EU that are not themselves resolution entities shall deduct from eligible liabilities items their holdings of own funds and eligible liabilities that meet the conditions of Article 45f(2) of that Directive of their subsidiaries that belong to the same resolution group.

The deduction shall not apply to institutions and entities that are not themselves resolution entities where they are required to comply with the requirement referred to in Articles 45c and 45d of Directive 2014/59/EU on a consolidated basis.

For the purposes of this paragraph, the reference to eligible liabilities items shall also be understood as a reference to eligible liabilities referred to in Article 45f(2), point (a), 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 deducted from own funds or 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 deducted from own funds or 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 (q) is added:

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

Article 2
Amendment to Directive 2014/59/EU

In Article 45f of Directive 2014/59/EU, paragraph 6 is deleted.

Article 3
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 [*OP please insert the date = date of entry into force*].

However, Article 1, point (3), point (5)(b), and points (7), (8) and (9) and Article 2 shall apply from [*OP please insert the date = 6 months after date of entry into force*].

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

Done at Brussels,

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