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**'I' ITEM NOTE**

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From: General Secretariat of the Council  
To: Permanent Representatives Committee (Part 2)

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Subject: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF  
THE COUNCIL amending Directive 2014/59/EU and Regulation (EU) No  
806/2014 as regards certain aspects of the minimum requirement for own  
funds and eligible liabilities  
*- Mandate for negotiations with the European Parliament*

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## I. INTRODUCTION

1. On the 18 April the European Commission adopted a legislative package known as the reform of the Crisis Management and Deposit Insurance framework ('CMDI') setting out amendments to Directive 2014/59/EU (the Bank Recovery and Resolution Directive or 'BRRD') and to Regulation (EU) No 806/2014 (the Single Resolution Mechanism Regulation or 'SRMR').
2. As part of the CMDI package the Commission also adopted a targeted amendment of the BRRD and of the SRMR as a separate legal instrument (the 'Daisy Chains proposal') to address specific issues on the treatment of 'internal MREL'

**MREL** refers to the minimum requirement for own funds and eligible liabilities that must be met by the subsidiaries ('intermediate entities') of a parent resolution entity in a banking resolution group where the former issue MREL-compliant instruments that are subsequently bought by the latter directly or indirectly through other subsidiary or sister entities of the same resolution group.

3. Regulation (EU) 2022/2036 introduced a requirement whereby internal MREL holdings issued by intermediate entities must be deducted in order to protect the integrity and loss-absorbency of the MREL instruments. However, that Regulation also tasked the Commission to assess potential level playing field issues and negative impacts that may arise from this deduction requirement on different types of banking group structures, in particular those operating under a parent holding company.
4. The Commission concluded from its review that the deduction requirement for internal MREL could be disproportionate in specific cases and, therefore, that it would be appropriate to provide for certain exemptions. This conclusion underpins the Daisy Chains proposal, which was adopted as a self-standing legal instrument for the co-legislators to fast-track its adoption ahead of the remainder of the CMDI review proposals.

## II. MAIN ELEMENTS

5. The BRRD and the SRMR require legal entities issuing MREL instruments to comply with this requirement on an individual basis, which entails the obligation of deducting internal MREL holdings. However, the obligation of deducting internal MREL holdings is not engaged in those cases where the issuer of the relevant instruments may comply with the MREL requirement on a consolidated basis, insofar as it achieves a similar effect at group level as compliance at individual level. This exemption is currently only available in two cases: (i) for parent companies in the EU that are not resolution entities and that are subsidiaries of third country groups; and (ii) for parent companies of institutions or entities that are waived from complying with internal MREL.
6. The key purpose of the Daisy Chains proposal is to expand the scope of that consolidated treatment to capture intermediate entities holding internal MREL instruments in certain cases where they would, thus, not be obliged to deduct their holdings of MREL-compliant instruments.
7. The resolution authorities would have the discretionary power of setting internal MREL on a consolidated basis for intermediate entities where that would not lead to a shortage of eligible resources for resolution across the group and provided that the following two conditions are complied with: (i) the relevant group meets certain structural requirements in terms of simplicity<sup>1</sup> or the intermediate entity is already subject to additional own funds requirements on a consolidated basis; and (ii) compliance with MREL on a consolidated basis would not impair the effective resolvability of the group.

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<sup>1</sup>The intermediate entity issuing the internal MREL holdings must be a direct subsidiary of the group's resolution entity which, in turn, must be a holding company established in the same Member State as the intermediate entity, and there must be no other subsidiary within the group issuing MREL instruments.

8. In addition to the above, the other key tenet of the Daisy Chains proposal relates to the application of the MREL requirement to ‘liquidation entities’. The proposal defines those as entities earmarked for liquidation in accordance with the group’s resolution plan, which would then be liquidated under the applicable insolvency law. It is proposed that liquidation entities would not need to comply with an MREL requirement in excess of their own funds requirements as a general rule, since they would not be subject to resolution measures (conversion or write-down of MRE instruments) that would justify imposing such measures, unless the resolution authority decides otherwise for individual liquidation entities on a case-by-case basis for financial stability protection reasons.
9. The Daisy Chains proposal was presented together with the remainder of the CMDI review package to the Working Party (‘WP’) on Financial Services and Banking Union (CMDI) under the Swedish Presidency on 24 May 2023. The WP proceeded to scrutinising the proposal over four subsequent meetings held under the Spanish Presidency which resulted on the compromise text as set out in doc. 15021/23 which meets the necessary support from delegations.

### III. CONCLUSION

10. In view of the above, the Permanent Representatives Committee is invited to:

- (a) agree on the text of the mandate for negotiations with the European Parliament, as set out in document 15021/21;
- (b) invite the Presidency to start negotiations with the European Parliament on the basis of this negotiating mandate with a view to reaching an agreement at first reading.

11. In accordance with the approach to legislative transparency endorsed by Coreper on 14 July 2020, and in full consistency with Regulation 1049/2001 and the Council's Rules of Procedure, the current document and documents 16099/22 and 16102/22 will be made public unless the Permanent Representatives Committee otherwise objects.