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From:	Presidency
To:	Working Party on Financial Services and the Banking Union (CMDI) Financial Services Attachés
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Presidency note on the Daisy Chains proposal

WP CMDI 18-09-2023

1. Introduction: previous discussions and Member States views

At the Council Working Party meeting of 20 July, the Presidency presented potential compromise options to the Daisy Chains proposal, in particular covering the treatment of liquidation entities and the consolidated internal MREL, in addition to certain technical improvements of the text. These options were then discussed by Member States, which also sent written comments by 25 August. The objective of this section is to provide a recap of those discussions and summarise the views of Member States based on the oral interventions and written comments.

On liquidation entities, two compromise options were discussed on 20 July. The first option was to follow the Commission proposal, i.e. removing the deduction of all exposures by intermediate entities to liquidation entities in the same resolution group. The second option was to implement deductions by the intermediate entity of exposures corresponding to the holding of own funds instruments issued by liquidation entities in the group. Both options would ensure consistency with the removal of the MREL decisions for liquidation entities where MREL would not exceed own funds. Also, both options would retain the definition of liquidation entities as proposed and be neutral on the identification of liquidation entities in SPE (daisy chains) groups. The second option introducing deductions of own funds would ensure a higher level of loss absorbing capacity at the level of the intermediate entity.

On the possibility to allow consolidated internal MREL at the intermediate entity, the Presidency note of 20 July explained the potential disadvantages and operational difficulties related to introducing a floor corresponding to the individual internal MREL. Instead, the Presidency note proposed a clarification in Recital 5 to state that, where concerns related to the size of the consolidated internal MREL relative to the individual one are present, this could be considered as a threat to resolvability and the resolution authority should not grant the consolidation, i.e. only an individual internal MREL would be set for that respective intermediate entity.

Many **Member States** supported the Presidency proposals put forward on 20 July, while several Member States reiterated their concerns and proposed additional safeguards.

- **On the deduction treatment of liquidation entities**:
  - Six Member States agree with option 1 to remove the deductions of exposures by intermediate entities and issued by liquidation entities in daisy chains. Some Member States consider that the MREL add-on for liquidation entities should be worded as an exception (i.e., reverting back to the Commission proposal) and, if effects are envisaged on financial stability, the respective entity should not be earmarked for liquidation but for resolution. Another Member State

suggested that the wording of the MREL add-on should be further aligned with the BRRD II text.

- Ten Member States favour option 2 implying the deduction of own funds instruments of the liquidation entity by the intermediate entity. They see this option as a more prudentially sound approach, in line with the spirit of Regulation (EU) 2022/2036, while at the same time offering a degree of proportionality when compared to a deduction including eligible liabilities. A few Member States suggest changes to the definition of liquidation entities to refer to "normal insolvency proceedings" rather than winding up "in an orderly manner according to the national law". Another Member State suggests that the removal of the MREL decisions should only be introduced for stand-alone liquidation entities or groups headed by liquidation entities, while for resolution groups with a single point of entry strategy (SPE), proportionality could be achieved by introducing a threshold below which internal MREL would be waived.

- **<u>On consolidated internal MREL for the intermediate entity</u>**:
  - Eight Member States agree with the possibility to have consolidated internal MREL for groups headed by holding companies (Holdco) and by operating banks (Opco) under the safeguards proposed by the Commission. The majority of these Member States do not see the merit of an additional individual internal MREL requirement acting as a floor to the consolidated internal MREL as this would add unnecessary complexity and not be aligned with the treatment at the level of the resolution entity. A Member State sees merit in deleting the reference to the effects on resolvability "in a significant way" which may be difficult to measure.
  - Six Member States consider that, for the consolidated internal MREL for Opco groups, the clarification related to resolvability included by the Presidency in Recital 5 of the compromise text discussed on 20 July goes in the right direction, but it is not sufficient to ensure legal certainty and it should be reflected in the enacting provisions by adding a backstop where the individual internal MREL requirement serves as a floor to the consolidated internal MREL requirement, unless the Pillar 2 requirement (P2R) and the combined buffer requirement are held at consolidated level only and a prudential derogation (waiver) under Article 7 CRR has been granted by the competent authority regarding the individual prudential requirements.
  - For the consolidated internal MREL of Opco groups, three Member States suggested to add a condition that the intermediate entity and the resolution entity should be established in the same Member State. For one of these, this could be an alternative to introducing the condition referring to the prudential waiver under Article 7 CRR.
  - One Member State suggests that, consolidated internal MREL for Holdco groups should only be possible when the prudential requirements are also set at the consolidated level. For Opco groups, the internal MREL requirement

should be set at the higher between the individual and the consolidated internal MREL requirement.

- Another Member State noted cases where the consolidated internal MREL at the level of the intermediate entity would be significantly higher than the individual internal MREL and suggests clarifying (in recitals and the provision) that the consolidation of internal MREL in Opco groups should only be pursued where it would adequately reflect the recapitalisation needs of the group and not lead to significant increases in internal MREL.

Based on the existing feedback, Section 2 of this Presidency non-paper aims to propose additional drafting suggestions on the treatment of liquidation entities. Section 3 proposes additional options on the consolidated internal MREL safeguards. Annex 1 illustrates the drafting of the legal text reflecting the options in Sections 2 and 3.

The Presidency invites delegations to express their views on the options and questions raised in the non-paper and on the drafting suggestions proposed in Annex.

2. Possible options for discussion – liquidation entities

In light of Member States comments and preferences, option 2 presented in the non-paper circulated for the 20 July meeting, introducing a **deduction by the intermediate entity of exposures due to the holding of own funds instruments issued by the liquidation entity** is the retained one. This requires amendments to the legal text in Article 45c(2a), fourth subparagraph of BRRD, Article 12d(2a), fourth subparagraph of SRMR, and in recitals 3 and 8.

In addition, the definition of liquidation entities in Article 2(1) point (83aa) BRRD, and in Article 3(1)(24aa) SRMR, could be improved, as suggested by some Member States, by adding that an entity may qualify as a liquidation entity also when the group resolution plan or the resolution plan does not envisage the exercise of write-down and conversion powers with respect to such entities. This is to cater for the concern that group resolution plans do not prepare for the wind-down under insolvency proceedings of group entities as such and ensure alignment with current practices.

Moreover the wording of Article 45c(2a) second subparagraph of BRRD and Article 12d(2a), second subparagraph of SRMR regarding the MREL add-on for liquidation entities has been amended to bring it closer to the language of BRRD II. However, the wording of this subparagraph should not refer to a “limit” of the MREL requirement at the level of the loss absorbing amount (as is the case under BRRD II), since the text removes MREL decisions for liquidation entities where no add-on is required. Therefore, the assessment of the resolution authorities is whether it is justified to determine the MREL requirement in an amount exceeding the loss absorption amount.

Please see draft compromise text in Annex.

Question: Do Member States agree with the proposed way forward?

3. Possible options for discussion - consolidated internal MREL

Since most Member States comments were focused on the consolidated internal MREL for intermediate entities part of Opco groups, this section proposes two possible compromise options related to condition ii) of Article 45f(1)(a) for such intermediate entities in Opco groups.

Option 1 retains the condition in Article 45f(1)(a)(ii) BRRD for granting a consolidated internal MREL as proposed by the Commission, i.e. when the competent authority has set the intermediate entity's requirement referred to in Article 104a of CRD (P2R) or the combined buffer requirement (CBR) on a consolidated basis. This means that the intermediate entity may be required to comply with those prudential requirements both on an individual and on a consolidated basis, or only on a consolidated basis.

Option 2 proposes that the resolution authority may set the internal MREL of the intermediate entity of an Opco group on a consolidated basis when it complies with the P2R only on a consolidated basis. This option would narrow down the cases of consolidated internal MREL to those banks where no individual P2R but only a consolidated one is set. Moreover, reference to the CBR is removed under option 2, since a component of the CBR (the capital conservation buffer of 2.5% TREA) statutorily applies to every entity as per the CRD and its omission at an individual level would entail a prudential waiver, which may not be explicitly granted, as explained below.

Assessment of the options

Under ***option 1***, the scope of intermediate entities where a consolidated internal MREL could be set by the resolution authority is intended to cover intermediate entities in Opco groups where consolidated prudential P2R and CBR are set, but which may be in addition, or not, to individual prudential requirements.

Under ***option 2***, it is made clear that the possibility for a consolidated internal MREL is limited to those entities where the P2R was set only at a consolidated level, while there is no condition related to the level at which the CBR is set.

References to prudential waivers under Article 7 CRR

Some Member States have suggested that, both an individual and a consolidated internal MREL should be set for intermediate entities part of Opco groups and the entity would need to comply with the higher of these two requirements. Some Member States suggested that, when the individual prudential requirements have been waived by the competent authority under Article 7 CRR, the resolution authority may set the internal MREL requirement only on a consolidated basis as well.

However, this approach may not work in practice in all situations due to the heterogeneity of cases.

Every institution is statutorily subject to minimum own funds requirements at individual level (Article 6(1) CRR), which, at a minimum, are composed of Pillar 1 (8% TREA), CBR of 2.5% TREA (capital conservation buffer) and the leverage ratio requirement of 3%, unless expressly waived. In addition, the competent authority may set a P2R and the designated authorities may set additional buffer components. Parent institutions must comply with the prudential requirements at consolidated level (Article 11(1) CRR). In addition, Article 11(6) CRR stipulates that, "when it is justified for supervisory purposes by the specificities of the risk or of the capital structure of an institution or where Member States adopt national laws requiring the structural separation of activities within a banking group, competent authorities may require an institution to comply with the obligations laid down in Parts Two to Eight of this Regulation and in Title VII of Directive 2013/36/EU on a sub-consolidated basis".

Therefore, in the prudential world it is possible to have in parallel both individual and consolidated prudential requirements at the level of the parent institution and subsidiaries. However, in the resolution world, TLAC/MREL must be held only at consolidated level by resolution entities (no exceptions) and at an individual level by non-resolution entities (with narrow exceptions). In practice, when the relevant authorities have set P2R and CBR on a consolidated basis only, a prudential waiver may have been granted from compliance with individual prudential requirements, but not necessarily. In some cases, the absence of a waiver may also be due to the fact that individual requirements are lower than the consolidated ones (and therefore there is in practice no need to formally grant the waiver from the application of individual prudential requirements). Moreover, a waiver of prudential requirements at individual level would refer not only to the discretionarily set P2R, but also to the Pillar 1 requirement and the capital conservation buffer requirement.

In this light, the Presidency would refrain from projecting supervisory conclusions linked to the presence or absence of a prudential waiver into the MREL calibration by making reference to prudential waivers under Article 7 CRR. In turn, the Presidency proposes to make clear that a consolidated internal MREL requirement could only be set if the P2R has only been set at consolidated level. The reference to the CBR is proposed to be deleted to avoid interferences with the requirement that the capital conservation buffer is statutorily set by law to each entity.

Regarding the coexistence of an individual and consolidated internal MREL requirement for the intermediate entity where the individual requirement acts as a floor, the Presidency reiterates its arguments from the 20 July non-paper related to the difficulties resulting from the static view of setting such as a floor.

Establishment in the same Member State

Some Member States have suggested an additional condition for the consolidated internal MREL in Opco groups, of having the intermediate entity located in the same Member State as the resolution entity and part of the same resolution group, similar to the second condition of Article 45f(1)(a)(i) for Holdco groups.

However, given that resolution entities which are operating banks usually consolidate several intermediate entities which may be located in other Member States, such addition may reduce significantly the applicability of the consolidation provision for Opco groups. Article 11(1) CRR requires parent institutions in a Member State to comply with the prudential requirements on a consolidated basis. It should be noted that, Article 11(6) CRR quoted above also allows for the subconsolidated prudential requirements at the level of subsidiaries under certain conditions without requiring that the consolidating entity and its parent entity are located in the same Member State.

In light of these arguments, the Presidency would not introduce this additional condition.

Safeguards against significantly increased consolidated internal MREL

One Member State has the opposite concern, that a consolidated internal MREL at the level of the intermediate entity would be significantly higher than the individual internal MREL plus deductions. This increase would for instance happen if the intermediate entity holds a large amount of participations in liquidation entities that are exempted from internal MREL, which means that in the end there could be a disconnect between the requirement for internal MREL that would be set on a consolidated basis at the level of the intermediate entity for the subgroup and the individual strategy and consequently, the internal MREL determined for the individual entities composing this same subgroup. This Member State proposes an additional safeguard to ensure that in such cases, the resolution authority would not impose the consolidated internal MREL requirement on the intermediate entity.

Since the consolidated internal MREL requirement is a discretionary decision of the resolution authority when conditions are met, rather than an obligation, and is introduced with the objective of achieving some degree of proportionality in cases where groups would be unduly impacted by the daisy chain deductions, the Presidency does not consider it necessary to introduce such safeguard.

Question 2: Do Member States agree with the proposed way forward for the setting of consolidated internal MREL?

Annex 1: Presidency compromise text

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

(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[1],

Having regard to the opinion of the European Economic and Social Committee[2],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Directive (EU) 2019/879 of the European Parliament and of the Council[3] and Regulation (EU) 2019/877 of the European Parliament and of the Council[4] amended the minimum requirement for own funds and eligible liabilities ('MREL') set out in Directive 2014/59/EU of the European Parliament and of the Council[5] and in Regulation (EU) No 806/2014 of the European Parliament and of the Council[6], which applies to credit institutions and investment firms (institutions) established in the Union

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1 OJ C , , p. .

2 OJ C , , p. .

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 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).

5 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).

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).

as well as to any other entity that falls under the scope of Directive 2014/59/EU or Regulation (EU) No 806/2014 (entities). Those amendments provided that internal MREL, that is, MREL applicable to institutions and entities that are subsidiaries of resolution entities but are not themselves resolution entities, may be met by those institutions and entities using instruments issued to and bought by the resolution entity either directly or indirectly through other entities in the same resolution group.

(2) The Union MREL framework was further amended by Regulation (EU) 2022/2036 of the European Parliament and of the Council[7] which introduced specific deduction rules in the case of indirect subscription of instruments eligible for meeting the internal MREL. That Regulation introduced in Directive 2014/59/EU the requirement for the Commission to review the impact of the indirect subscription of instruments eligible for meeting the MREL on the level playing field between different types of banking group structures, including where banking groups have an operating company between the holding company identified as a resolution entity and its subsidiaries. The Commission was asked to assess whether entities that are not themselves resolution entities should be able to comply with the MREL on a consolidated basis. Furthermore, the Commission was asked to evaluate the treatment, under the rules governing the MREL, of entities whose resolution plan provides that those entities are to be wound up under normal insolvency proceedings ('liquidation entities'). Finally, the Commission was asked to evaluate the appropriateness of limiting the amount of deductions required pursuant to Article 72e(5) of Regulation (EU) No 575/2013 of the European Parliament of the Council[8].

(3) The review of the Commission found that it would be appropriate and proportionate to the objectives pursued by the internal MREL rules to allow resolution authorities to set the internal MREL on a consolidated basis for a range of entities that is wider than the range resulting from the application of Directive 2014/59/EU and Regulation (EU) No 806/2014, where such wider range covers institutions and entities that are not resolution entities themselves, but that are subsidiaries of resolution entities and control themselves other subsidiaries ~~subject to MREL~~ ('intermediate entities') **within the same resolution group**. That would be in particular the case for those banking groups that are headed by a holding company. In such cases, the intermediate entities naturally centralise intragroup exposures and channel the internal MREL eligible resources pre-positioned by the resolution entity. Due to that structure, such intermediate entities ~~would~~ could be disproportionately affected by the deduction rules. The Commission also concluded that the MREL framework would be more **proportionate by adjusting the rules on the scope of exposures that an intermediate entity is required to deduct, where the issuing entity is a liquidation entity not subject to a MREL decision** ~~by the removal of the issuances of liquidation entities, from the scope of the exposures that an intermediate entity is required to deduct pursuant to the deduction mechanism for the indirect subscription of internal MREL eligible~~

[7] Regulation (EU) 2022/2036 of the European Parliament and of the Council of 19 October 2022 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 (OJ L 275, 25.10.2022, p. 1).

[8] 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).

~~resources~~. **In those cases, it is not expected that the write down and conversion powers will need to be exercised in respect of those liquidation entities,** ~~**A liquidation entity will not have to be supported by the resolution entity in case of failure, thus removing the need to safeguard any loss and capital transfer mechanisms within resolution groups, which was the purpose of the deduction rules introduced by Regulation (EU) 2022/2036**~~. By contrast, the remaining entities of the resolution group will need to be ~~**supported**~~ **recapitalised** by the resolution entity in case of distress or failure. The necessary MREL resources should therefore be present at all levels of the resolution group and their availability for loss absorption and recapitalisation should be ensured through the deduction mechanism. Thus, the review of the Commission concluded that intermediate entities should continue to deduct the full amount of their holdings of internal MREL eligible resources issued by other non-liquidation entities in the same resolution group.

(4) Under Article 45f of Directive 2014/59/EU and Article 12g of Regulation (EU) No 806/2014, institutions and entities are to comply with the internal MREL on an individual basis. Compliance on a consolidated basis is only allowed in two specific cases: for Union parent undertakings that are not resolution entities and are subsidiaries of third-country entities, and for parent undertakings of institutions or entities waived from internal MREL. Pursuant to Article 72e(5) of Regulation (EU) No 575/2013, where an intermediate entity complies with its MREL on a consolidated basis, that entity is not obliged to deduct holdings of internal MREL eligible resources of other entities belonging to the same resolution group and included in its consolidation perimeter, as compliance with the internal MREL on a consolidated basis achieves a similar effect. The review carried out by the Commission has demonstrated that intermediate entities of banking groups headed by a holding company should also be able to comply with the internal MREL on a consolidated basis. Furthermore, the review demonstrated that, where the intermediate entity is subject to own funds requirements or to a combined buffer requirement on a consolidated basis, compliance with the internal MREL on an individual basis could create a risk that the internal MREL eligible resources pre-positioned at the level of the intermediate entity are not sufficient to restore compliance with the applicable consolidated own funds requirement after the write down and conversion of those internal MREL eligible resources~~.~~ In addition, a key input in the calculation of the MREL for the institution or entity concerned would be missing where the additional own funds requirement or the combined buffer requirement were set at a different level of consolidation, making the calculation of the requirement challenging. Similarly, the power of resolution authorities to prohibit, in accordance with Article 16a of Directive 2014/59/EU and Article 10a of Regulation (EU) No 806/2014, certain distributions above the maximum distributable amount related to the MREL in respect of the individual subsidiary becomes challenging to exercise where the key metric, the combined buffer requirement, is not set on the same basis as the internal MREL. For those reasons, the possibility to comply with the internal MREL on a consolidated basis should also be available to other types of banking group structures, whenever the intermediate entity is subject to **additional** own funds requirements ~~**or to a combined buffer requirement**~~ **only** on a consolidated basis. **The possibility to comply with internal MREL on a consolidated basis as introduced by this Directive is meant to complement the situations where this is already possible under Directive 2014/59/EU and Regulation (EU) No 806/2014, and does not replace them.**

(5) To ensure that the possibility to comply with MREL on a consolidated basis is available only in the relevant cases identified in the review of the Commission and does not lead to a shortage of internal MREL eligible resources across the resolution group, the power to set the internal MREL on a consolidated basis for intermediate entities should be a discretionary power of the resolution authority and should be subject to certain conditions. The intermediate entity should be the only direct subsidiary, that is an institution or an entity, of a resolution entity which is a parent Union parent financial holding company or a Union parent mixed financial holding company, is established in the same Member State and is part of the same resolution group. Alternatively, the intermediate entity concerned should comply with the additional own funds requirement or with the combined buffer requirement on the basis of its consolidated situation. In both cases, however, compliance with the internal MREL on a consolidated basis should not, in the assessment of the resolution authority, negatively affect in a significant way the resolvability of the resolution group concerned, nor the application by the resolution authority of the power to write down or convert relevant capital instruments and eligible liabilities of the intermediate entity concerned or of other entities in its resolution group. One situation where the setting of internal MREL on a consolidated basis **~~could~~ would** be detrimental to the resolvability of the **resolution group** ~~intermediate entity~~ **is ~~may be~~** where that amount of MREL would not **allow to** ensure compliance with the individual own funds requirements applicable after the exercise of the write-down and conversion powers.

(6) Pursuant to Article 45f(2) of Directive 2014/59/EU and Article 12g(2) of Regulation (EU) No 806/2014, intermediate entities may comply with the consolidated internal MREL using own funds and eligible liabilities. To fully deliver on the possibility to comply with MREL on a consolidated basis, it is necessary to ensure that the eligible liabilities of intermediate entities are computed in a way that is similar to the computation of own funds. The eligibility criteria for eligible liabilities that may be used to comply with internal MREL on a consolidated basis should therefore **~~be aligned with~~ take into account** the rules on the calculation of consolidated own funds laid down in Regulation (EU) No 575/2013. To ensure consistency with the existing rules on the external MREL, that alignment should also reflect the existing rules laid down in Article 45b(3) of Directive 2014/59/EU and Article 12d(3) of Regulation (EU) No 806/2014 for the calculation of eligible liabilities that resolution entities may use to comply with their consolidated MREL. In particular, it is necessary to ensure that eligible liabilities issued by the subsidiaries of the entity subject to consolidated internal MREL and held by the resolution entity, either directly or indirectly through other entities of the same resolution group but outside the scope of consolidation, ~~including the resolution entity,~~ or by existing shareholders not belonging to the same resolution group, count towards the own funds and eligible liabilities of the entity subject to consolidated internal MREL.

(7) **Under the current framework, for ~~For liquidation~~** entities **earmarked for liquidation**, the MREL **is ~~normally limited~~ set in the majority of cases** to the amount necessary for loss absorption, which corresponds to the own funds requirements. In such cases, the MREL does not entail for the liquidation entity any additional requirement directly related to the resolution framework. That means that a liquidation entity can fully comply with the MREL by complying with the own funds requirements and that a dedicated decision of the resolution authority determining the MREL does not contribute in a meaningful way to the resolvability of liquidation entities. Such a

decision entails many procedural obligations for resolution authorities and for the liquidation entities without a corresponding benefit in terms of improved resolvability. For that reason, resolution authorities should not set a MREL for liquidation entities.

(8) **When preparing resolution plans and assessing the resolvability of resolution groups, resolution authorities may consider that a group entity qualifies as a liquidation entity where the resolution plan foresees that the entity would be wound up under normal insolvency proceedings or where the exercise of the write-down and conversion powers is not envisaged in respect of that entity. Where that is the case, the group entity may not need to hold own funds and eligible liabilities in excess of its own funds requirements. In those circumstances, ~~Where the resolution authority considers that an entity that is part of a resolution group qualifies as a liquidation entity,~~** intermediate entities should **~~not~~** be required to deduct from their internal MREL capacity their holdings of own funds **instruments ~~or other liabilities that would meet the conditions for compliance with the internal MREL and~~** that are issued by liquidation entities **which are not subject to a MREL decision. However, they should not be required to deduct liabilities that would meet the conditions for compliance with the internal MREL**. **~~In such a case, the liquidation entity is no longer required to comply with the MREL, and therefore there is no indirect subscription of internal MREL eligible resources through the chain formed by the resolution entity, the intermediate entity and the liquidation entity.~~** In case of failure, the resolution strategy does not envisage that the liquidation entity would be **~~supported~~ recapitalised** by the resolution entity. That means that the upstreaming of losses **above the existing own funds** from the liquidation entity to the resolution entity, via the intermediate entity, would not be expected, and neither would the downstreaming of capital in the opposite direction. That adjustment to the scope of the holdings to be deducted in the context of the indirect subscription of internal MREL eligible resources would thus not affect the prudential soundness of the framework.

(9) The main objective of the permission regime for the reduction of eligible liabilities instruments laid down in Articles 77(2) and 78a of Regulation (EU) No 575/2013, which is also applicable to institutions and entities subject to the MREL and to the liabilities issued to comply with MREL, is to enable resolution authorities to monitor the actions that result in a reduction of the stock of eligible liabilities and to prohibit any action that would amount to a reduction beyond a level which resolution authorities deem adequate. Where the resolution authority has not adopted a decision determining the MREL in respect of an institution or entity, that objective is not relevant. **~~Moreover, institutions or entities that are not subject to a decision determining the MREL do not have eligible liabilities on their balance sheet, even if some of their liabilities would theoretically meet the criteria for MREL eligibility~~**. Institutions or entities for which no decisions determining the MREL have been adopted should therefore not be required to obtain the prior permission of the resolution authority to effect the call, redemption, repayment or repurchase of liabilities that would meet the eligibility requirements for MREL.

(10) There are liquidation entities for which the MREL **~~does exceed the amount of the own funds requirements, in which case resolution authorities should be able to set the MREL. That MREL~~** should **exceed ~~be set at an amount exceeding~~** the amount for loss absorption. **This is the case** where the resolution authorities consider that such **a higher** amount is necessary to protect financial stability or address the risk of contagion

to the financial system. In those situations, **resolution authorities should determine a MREL for the liquidation entity, which should consist of an amount sufficient to absorb losses, increased by the amount necessary to properly adress the potential risks identified by the resolution authorities.** ~~the~~**The** liquidation entity should comply with the MREL and should not be exempted from the prior permission regime laid down in Articles 77(2) and 78a of Regulation (EU) No 575/2013. Any intermediate entities belonging to the same resolution group as the liquidation entity concerned should continue to be required to deduct from their internal MREL capacity their holdings of internal MREL eligible resources issued by that liquidation entity. In addition, since liquidation proceedings take place at the level of the legal entity, liquidation entities still subject to MREL should comply with the requirement on an individual basis only. Lastly, certain eligibility requirements related to the ownership of the liability concerned are not relevant, as **without the exercise of the write-down and conversion powers there would be no need to preserve the control of the subsidiary by the resolution entity**~~there is no need to ensure the transfer of losses and capital from the liquidation entity to a resolution entity~~, and should therefore not apply.

(11) Pursuant to Article 45i of Directive 2014/59/EU, institutions and entities are to report to their competent and resolution authorities the levels of eligible and bail-inable liabilities and the composition of those liabilities, and to disclose that information to the public, together with the level of their MREL, on a regular basis. For liquidation entities, no such reporting or disclosure is required. However, to ensure the transparent application of the MREL, those reporting and disclosure obligations should also apply to liquidation entities for which the resolution authority determines that the MREL should be higher than the amount sufficient to absorb losses. In accordance with the principle of proportionality, the resolution authority should ensure that those obligations do not go beyond what is necessary to monitor compliance with the MREL.

(12) Directive 2014/59/EU and Regulation (EU) No 806/2014 should therefore be amended accordingly.

(13) To ensure consistency, the national measures transposing the amendments to Directive 2014/59/EU and the amendments to Regulation (EU) No 806/2014 should apply from the same date.

(14) Since the objectives of this Directive, namely to adjust the treatment of liquidation entities under the MREL framework and the possibilities for resolution authorities to determine ~~to comply with the~~ internal MREL on a consolidated basis, cannot be sufficiently achieved by the Member States but can rather, by amending rules that are already set at Union level, 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 the European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2014/59/EU

Directive 2014/59/EU is amended as follows:

(1) in Article 2(1), the following point (83aa) is inserted:

'(83aa) 'liquidation entity' means a legal person established in the Union in respect of which the group resolution plan or, for entities that are not part of a group, the resolution plan, provides that the entity is to be wound up **~~in an orderly manner~~ under normal insolvency proceedings ~~in accordance with the applicable national law~~ or it does not envisage the exercise of the write-down and conversion powers with respect to that entity**;';

(2) Article 45c is amended as follows:

(a) in paragraph 2, the second and third subparagraphs are deleted;

(b) the following paragraph 2a is inserted:

'2a. Resolution authorities shall not determine the requirement referred to in Article 45(1) for liquidation entities.

By way of derogation from the first subparagraph, the resolution authority shall assess whether it is justified to ~~and where necessary for the objectives of protecting financial stability or limiting potential contagion to the financial system, resolution authorities may exceptionally~~ determine the requirement referred to in Article 45(1) for liquidation entities on an individual basis in ~~the~~ an amount exceeding the amount sufficient to absorb losses in accordance with paragraph 2, point (a), of this Article~~, increased to the amount that is necessary for the achievement of those objectives~~. The assessment by the resolution authority shall, **in particular, evaluate the determination referred to in the previous sentence as regards ~~consider the possible consequences of the failure of the liquidation entity concerned and shall, in particular, take into account~~** any possible impact on financial stability and on the risk of contagion to the financial system. In those cases, liquidation entities shall meet the requirement referred to in Article 45(1) by using one or more of the following:

(a) own funds;

(b) liabilities that fulfil the eligibility criteria referred to in Article 72a of Regulation (EU) No 575/2013, with the exception of Article 72b(2), points (b) and (d), of that Regulation;

(c) the liabilities referred to in Article 45b(2).

Articles 77(2) and 78a of Regulation (EU) No 575/2013 shall not apply to liquidation entities for which the resolution authority has not determined the requirement referred to in Article 45(1) of this Directive.

Holdings of **liabilities that do not qualify as** own funds instruments **~~or liabilities~~** issued by subsidiaries which are liquidation entities for which the

resolution authority has not determined the requirement referred to in Article 45(1) shall not be deducted under Article 72e(5) of Regulation (EU) No 575/2013.';

(3) Article 45f is amended as follows:

(a) in paragraph 1, the following fourth subparagraph is inserted:

'By way of derogation from the first and second subparagraphs, resolution authorities may decide to determine the requirement laid down in Article 45c on a consolidated basis for a subsidiary as referred to in this paragraph where all of the following conditions are met:

(a) the subsidiary meets one of the following conditions:

(i) the subsidiary is held directly by the resolution entity and:

- the resolution entity is a Union parent financial holding company or a Union parent mixed financial holding company;
- both the subsidiary and the resolution entity are established in the same Member State and are part of the same resolution group;
- the resolution entity does not hold directly any subsidiary institution or entity as referred to in Article 1(1), points (b), (c) or (d), other than the subsidiary concerned;

(ii) the subsidiary is subject to the requirement referred to in Article 104a of Directive 2013/36/EU ~~**or to the combined buffer requirement**~~ on a consolidated basis **only**;

(b) compliance with the requirement laid down in Article 45c on a consolidated basis does not negatively affect in a significant way the resolvability of the resolution group, or the write down or conversion, in accordance with Article 59, of relevant capital instruments and eligible liabilities of the subsidiary concerned or of other entities in the resolution group.';

(b) the following paragraph 2a is inserted:

'2a. Where an entity as referred to in paragraph 1 complies with the requirement referred to in Article 45(1) on a consolidated basis, the amount of own funds and eligible liabilities of that entity shall include the following liabilities issued in accordance with paragraph 2, point (a), of this Article by a subsidiary established in the Union included in the consolidation of that entity:

(a) liabilities issued to and bought by the resolution entity, either directly, or indirectly through other entities in the same resolution group that are not included in the consolidation of the entity complying with the requirement referred to in Article 45(1) on a consolidated basis;

(b) liabilities issued to an existing shareholder that is not part of the same resolution group.

The liabilities referred to in the first subparagraph, points (a) and (b), shall not exceed the amount determined by subtracting from the amount of the

requirement referred to in Article 45(1) applicable to the subsidiary included in the consolidation the sum of all of the following:

(a) the liabilities issued to and bought by the entity complying with the requirement referred to in Article 45(1) on a consolidated basis, either directly, or indirectly through other entities in the same resolution group that are included in the consolidation of that entity;

(b) the amount of own funds that are issued in accordance with paragraph 2, point (b), of this Article.';

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

'4. Paragraphs 1 and 3 shall not apply to liquidation entities unless the resolution authority has determined the requirement referred to in Article 45(1) for such entity in accordance with Article 45c(2a), second subparagraph. In that case, the resolution authority shall determine the content and frequency of the reporting and disclosure obligations referred to in paragraphs 5 and 6 of this Article for that entity. The resolution authority shall communicate those reporting and disclosure obligations to the liquidation entity concerned. Those reporting and disclosure obligations shall not go beyond what is necessary to monitor compliance with the requirement determined pursuant to Article 45c(2a), second subparagraph.';

Article 2

Amendments to Regulation (EU) No 806/2014

Regulation (EU) No 806/2014 is amended as follows:

~~(5)~~**(1)** in Article 3(1), the following point (24aa) is inserted:

'(24aa) 'liquidation entity' means a legal person established in a participating Member State in respect of which the group resolution plan or, for entities that are not part of a group, the resolution plan, provides that the entity is to be wound up ~~**in an orderly manner in accordance with the applicable national law**~~ **under normal insolvency proceedings or it does not envisage the exercise of the write-down and conversion powers with respect to that entity**;';

~~(6)~~**(2)** Article 12d is amended as follows:

(a) in paragraph 2, the second and third subparagraphs are deleted;

(b) the following paragraph 2a is inserted:

'2a. The Board shall not determine the requirement referred to in Article 12a(1) for liquidation entities.

By way of derogation from the first subparagraph, the Board shall assess whether it is justified to ~~and where necessary for the objectives of protecting financial stability or limiting potential contagion to the financial system, the Board may exceptionally~~ determine the requirement referred to in Article 12a(1) for liquidation entities on an individual basis in ~~the~~ an amount exceeding the amount sufficient to absorb losses in accordance with paragraph 2, point (a), of this Article~~, increased to the amount that is necessary for the achievement of those objectives~~. The assessment by the Board shall**, in particular, evaluate**

the determination referred to in the previous sentence as regards ~~consider the possible consequences of the failure of the liquidation entity concerned and shall, in particular, take into account~~ any possible impact on financial stability and on the risk of contagion to the financial system. In those cases, liquidation entities shall meet the requirement referred to in Article 12a(1) by using one or more of the following:

(a) own funds;

(b) liabilities that fulfil the eligibility criteria referred to in Article 72a of Regulation (EU) No 575/2013, with the exception of Article 72b(2), points (b) and (d), of that Regulation;

(c) the liabilities referred to in Article 12c(2).

Articles 77(2) and 78a of Regulation (EU) No 575/2013 shall not apply to liquidation entities for which the resolution authority has not determined the requirement referred to in Article 12a(1) of this Regulation.

Holdings of **liabilities that do not qualify as** own funds instruments ~~**or liabilities**~~ issued by subsidiaries which are liquidation entities for which the resolution authority has not determined the requirement referred to in Article 12a(1) shall not be deducted under Article 72e(5) of Regulation (EU) No 575/2013.';

~~(7)~~**(3)** Article 12g is amended as follows:

(a) in paragraph 1, the following fourth subparagraph is inserted:

'By way of derogation from the first and second subparagraphs, the Board may decide to determine the requirement laid down in Article 12d on a consolidated basis for a subsidiary as referred to in this paragraph where all of the following conditions are met:

(a) the subsidiary meets one of the following conditions:

(i) the subsidiary is held directly by the resolution entity and:

- the resolution entity is a Union parent financial holding company or a Union parent mixed financial holding company;
- both the subsidiary and the resolution entity are established in the same participating Member State and are part of the same resolution group;
- the resolution entity does not hold directly any subsidiary entity as referred to in Article 2 other than the subsidiary concerned;

(ii) the subsidiary is subject to the requirement referred to in Article 104a of Directive 2013/36/EU ~~**or to the combined buffer requirement**~~ on a consolidated basis **only** ;

(b) compliance with the requirement laid down in Article 12d on a consolidated basis does not negatively affect in a significant way the resolvability of the resolution group, or the write down or conversion, in accordance with Article 21, of relevant capital instruments and eligible

liabilities of the institution or subsidiary concerned or of other entities in the resolution group.';

(b) the following paragraph 2a is inserted:

'2a. Where an entity as referred to in paragraph 1 complies with the requirement referred to in Article 12a(1) on a consolidated basis, the amount of own funds and eligible liabilities of that entity shall include the following liabilities issued in accordance with paragraph 2, point (a), of this Article by a subsidiary established in the Union included in the consolidation of that entity:

(a) liabilities issued to and bought by the resolution entity, either directly, or indirectly through other entities in the same resolution group that are not included in the consolidation of the entity complying with the requirement referred to in Article 12a(1) on a consolidated basis;

(b) liabilities issued to an existing shareholder that is not part of the same resolution group.

The liabilities referred to in the first subparagraph, points (a) and (b), shall not exceed the amount determined by subtracting from the amount of the requirement referred to in Article ~~45(1)~~ 12(1) applicable to the subsidiary included in the ~~consolidated~~ consolidation the sum of all of the following:

(a) the liabilities issued to and bought by the entity complying with the requirement referred to in Article 12a(1) on a consolidated basis either directly, or indirectly through other entities in the same resolution group that are included in the consolidation of that entity;

(b) the amount of own funds that are issued in accordance with paragraph 2, point (b), of this Article.'.

Article 3

Transposition

Member States shall adopt and publish, by … [OP please insert the date = 6 months after the date of entry into force of this amending Directive] at the latest, the laws, regulations and administrative provisions necessary to comply with Article 1. They shall forthwith communicate to the Commission the text of those provisions.

Member States shall apply those provisions from … [OP please insert the date = 1 day after the transposition date of this amending Directive].

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by Article 1.

Article 4

Entry into force and application

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

Article 2 shall apply from … [OP please insert the date = 1 day after the transposition date of this amending Directive].

Article 2 shall be binding in its entirety and directly applicable in all Member States.

Article 5

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg,

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