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## **WORKING DOCUMENT**

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**From:** Presidency  
**To:** Working Party on Financial Services and the Banking Union (CMDI)  
Financial Services Attachés

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**Subject:** CMDI package: working party 09.10.23  
Item 2: Presidency non-paper on the daisy chains proposal

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## Presidency note on the daisy chains proposal

WP CMDI 09-10-2023

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### **1. Introduction: previous discussions and Member States views**

The daisy chains proposal was discussed in the Council Working Party (CWP) meetings of 7 and 20 July. At the CWP meeting of 18 September the presidency intended to discuss again the proposal, but due to time constraints such discussion was not possible and a written procedure was followed instead, in order to advance swiftly in the negotiations.

At this stage, the main areas of discussion are liquidation entities and consolidated internal MREL for the intermediate entity in Opco groups. Below we summarise the latest presidency proposal (CWP meeting of 18 September) together with Member State (MS) reactions on both topics, and a new draft text for the scrutiny of MS.

The intention of the presidency in CWP meeting of 9 October is to reach the maximum level of consensus on the way forward, in order to reach a negotiating mandate in COREPER during the month of October.

### **2. Liquidation entities**

For the 18 September meeting we proposed to introduce a deduction by the intermediate entity of exposures due to the holding of own funds instruments issued by the liquidation entity. This required 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.

The definition of liquidation entities was improved in Article 2(1) point (83aa) BRRD, and in Article 3(1)(24aa) SRMR, 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.

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 was 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.

After written comments were received, many MS agreed with the proposed text. However, the following main concerns were raised by some MS since then:

- Some MS showed concerns regarding the add-on for liquidation entities, since it could be understood as opening the possibility for generally requiring MREL to liquidation entities (both in the daisy chain and at the parent level).

- One MS considers the definition of liquidation entity problematic in connection to their co-operatives, since their resolution strategies includes first a merger and, only after the merger, the application of write-down and conversion powers (or other resolution powers). According to that MS, the definition presented would lead to all co-operatives being considered as liquidation entities, which is problematic.
- Several MS suggest to slightly amend the drafting to better distinguish the cases when the entity is part of a resolution group but is not the head of the group, from the case where entity is standalone or head of a group. Regarding the add-on for liquidation entities,
- One MS suggests to focus on strengthening the legal basis for the RAs power to set an add-on for certain liquidation entities, without creating a systematic assessment that could duplicate and blur the PIA.
- One MS wants to create a category of liquidation entity when no WDCI is expected.

**Question: Do Member States agree with the new text proposed in Annex 1?**

### **3. Possible options for discussion - consolidated internal MREL**

For the 18 September meeting, two compromise options were proposed 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. The 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. A drafting text was proposed regarding Option 2.

Many MS agreed or could accept with the proposed text of Option 2. However, the following concerns were raised by some MS:

- A few MS required a new wording to ensure that Opcos can only benefit from consolidated MREL when complying with an additional set of safeguards.
- One MS prefers to have a floor for the iMREL at an individual basis and against requiring prudential waiver to benefit from consolidation (because it would make it impossible to apply the consolidated MREL in such MS).

**Question 2: Do Member States agree with the new text proposed in Annex 1?**

## Annex 1: Presidency compromise text

Original text

First redraft

**Second redraft**

**Third redraft**

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<sup>1</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Directive (EU) 2019/879 of the European Parliament and of the Council<sup>3</sup> and Regulation (EU) 2019/877 of the European Parliament and of the Council<sup>4</sup> 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<sup>5</sup> and in

<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

<sup>3</sup> 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).

<sup>4</sup> 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).

<sup>5</sup> 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,

Regulation (EU) No 806/2014 of the European Parliament and of the Council<sup>6</sup>, which applies to credit institutions and investment firms (institutions) established in the Union 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<sup>7</sup> 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<sup>8</sup>.
- (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

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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).

<sup>6</sup> 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).

<sup>7</sup> 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).

<sup>8</sup> 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).

~~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 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~~ **only** on the basis of its consolidated situation **only**. 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 credibiliyt and feasibility of the group resolution strategy~~ 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 subsidiary institution group entity qualifies as a liquidation entity where the resolution plan foresees that it is feasible and credible 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 or, where the resolution plan does not envisage the exercise of the write-down and conversion powers in respect of that entity or, in the case of entities permanently affiliated to a central body, any other measures to be taken by the central body or the resolution authority, such as a merger of affiliates". Where that is the case, the group entity subsidiary institution 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~~ **may need to 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. ~~Only in~~ those situations, **resolution authorities should may determine in a proportionate way a MREL for the liquidation entity, which should consist of an amount sufficient to absorb losses, increased by the amount strictly necessary to properly address 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~~ **with regard to an entity within a resolution group other than a resolution entity, the group resolution plan ~~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 may shall~~ **assess whether that** 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 ~~a~~ liquidation entities ~~yes~~ 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, **when intermediate entities would be disproportionately affected by the deduction rules set out in Article 72e(5) of Regulation (EU) No 575/2013,** 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) **subject to internal MREL requirements**, 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 as a substitute for compliance with that requirement on an individual consolidated** basis does not ~~negatively~~ affect in a **significant negative** way:

- the resolvability of the resolution group;
- **the subsidiary’s capacity to comply with its own funds requirement after the exercise of the write-down and conversion powers;**

= **the effectiveness of the internal loss transfer and recapitalisation mechanism, including 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, with regard to an entity within a resolution group other than a resolution entity, the group resolution plan 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 **may shall** assess **whether that** 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 ~~a~~ 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, **when intermediate entities would be disproportionately affected by the**

**deduction rules set out in Article 72e(5) of Regulation (EU) No 575/2013,** 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 45c on a consolidated basis as a substitute for compliance with that requirement on an individual consolidated basis does not negatively affect in a significant negative way:
  - the resolvability of the resolution group;
  - the subsidiary's capacity to comply with its own funds requirement on an individual basis after the exercise of the write-down and conversion powers;
  - the effectiveness of the internal loss transfer and recapitalisation mechanism, including 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 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  
The President*

*For the Council  
The President*

