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Council Working Party on Financial Services and the Banking Union (CMDI)

20 July 2023

Presidency note on Daisy Chains proposal

1. Introduction

During the Council Working Party meeting of 7 July, a large majority Member States were in favour fast-tracked negotiation of the Commission's separate proposal amending BRRD and SRMR which follows up on the review clause introduced in Regulation (EU) 2022/2036 (the 'Daisy Chains proposal'). A large majority of Member States were also in favour of a separate discussion on the topics addressed in the Daisy Chains proposal – namely, the possibility to set internal MREL on a consolidated basis for certain intermediate entities and the treatment of liquidation entities under the MREL framework.

There were no opposing views to the proposed removal of the need to adopt MREL decisions for liquidation entities, where the respective MREL would not have exceeded the own funds requirements. However, a few Member States signalled concerns on the provisions related to liquidation entities. More specifically:

- Some Member States believe there is a connection between the definition of liquidation entities and the parallel discussions on the scope of resolution and the public interest assessment in the main proposals amending BRRD and SRMR, and therefore would prefer to move the provisions on liquidation entities from the Daisy Chains proposal to the main proposals;
- A couple of Member States considered that the existence of liquidation entities within a resolution group is not compatible with the concept of the single point-of-entry resolution strategy;
- Other Member States, while agreeing with the possibility of having subsidiaries in a daisy chain as liquidation entities, disagreed with exempting intermediate entities from deducting their exposures of internal MREL eligible resources of liquidation entities.

At the same time, the majority of Member States was supportive of the approach put forward in the Commission proposal to treat liquidation entities in the separate, fast-tracked proposal and exempt the holdings of internal MREL eligible instruments from being deducted[1].

As regards the possibility to determine internal MREL for intermediate entities on a consolidated basis, the majority of Member States was supportive of the approach put forward in the

[1] Additionally, one Member State disagreed with the wording of the proposal concerning possibility to set MREL for liquidation entities exceeding the own funds requirements. Annex 1 proposed amendments to the proposed Article 45c(2a), 2nd subparagraph, BRRD, and Article 12d(2a), 2nd subparagraph, SRMR, with the aim of removing the word 'exceptionally' and approximating it from the current draft of Article 45c(2) BRRD and Article 12d(2) SRMR. This is not intended to significantly alter the substance of the Commission's proposal on this point.

Commission proposal. A couple of Member States suggested to introduce a floor to the consolidated internal MREL, which would correspond to the individual MREL.

Section 2 of this Presidency non-paper aims at presenting the possible options for the treatment of liquidation entities within a daisy chain. Section 3 addresses the safeguards for the setting of consolidated internal MREL for intermediate entities. Additionally, annex 1 puts forward technical changes to the less controversial topics, on the basis of the written input provided by Member States so far.

The Presidency invites delegations to express their views on the options presented in the non-paper and on the technical changes proposed in annex 1.

2. Possible options for the treatment of liquidation entities within a daisy chain

Considering the views expressed by Member States, the Presidency presents two options for the treatment of liquidation entities within a daisy chain. Other options that would materially affect the balance reached in Regulation (EU) 2022/2036 or open other parts of the resolution framework have not been presented.

The **first option** follows the **approach taken by the Commission, without changes**. Under this option, the definition of liquidation entities would remain as in the proposal, meaning it would be neutral to the possibility for resolution authorities to define a subsidiary within a resolution group as a liquidation entity. If a liquidation entity is part of a daisy chain, intermediate entities would not have to deduct their exposures to this liquidation entity.

The **second option** deviates from the approach taken by the Commission by reintroducing a mandatory **deduction for the intermediate entity of exposures due to the holdings of own funds instruments** issued by a liquidation entity. Under this option, and similarly to the first option, the definition of liquidation entities would remain as in the proposal. However, if a liquidation entity is part of a daisy chain, intermediate entities would have to deduct their exposures arising from the holdings of own funds instruments issued by a liquidation entity. The focus on own funds, and not exposures arising from holdings of other instruments issued by a liquidation entity that would meet the MREL eligibility criteria, is consistent with the removal of the obligation for resolution authorities to adopt MREL decisions for liquidation entities. Consequently, exposures of the intermediate entity due to the holdings of instruments issued by a liquidation entity, other than own funds, that would meet the MREL eligibility criteria would have to be risk-weighted in application of the prudential treatment for intragroup exposures, while exposures due to the holdings of own funds instruments issued by a liquidation entity would be deducted, in line with the approach taken in Regulation (EU) 2022/2036[2].

[2] See also *Commission services' note on the daisy chains proposal* presented on 7 July 2023 for more information on the effect of the (non)application of daisy chains deductions on the own funds deductions under CRR.

Common features in both options

Both options are **neutral towards the existence of liquidation entities in a resolution group**. They do not prohibit the existence of liquidation entities within groups nor force resolution authorities to change the practices adopted thus far and, as a result, rely on the resolvability assessment conducted for each group to determine whether the presence of a liquidation entity in a resolution is in line with the chosen resolution strategy and feasible to implement.

Both options are **consistent with the removal of the obligations for resolution authorities to adopt an MREL decision for liquidation entities** when MREL requirements equal own funds requirements set by competent authorities. From this perspective, 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. In this context, none of the options envisage a deduction of exposures corresponding to holdings of theoretical eligible liabilities issued by the liquidation entity.

Both options should also be considered taking into account the amendment to Article 12 BRRD allowing resolution authorities to take a **simplified approach** when identifying measures to be taken with respect to group entities when drafting group resolution plans[3]. This provision is meant to offer the flexibility needed for resolution authorities to best determine the relevant criteria when defining the applicable strategy for subsidiaries in a resolution group, including when they are part of a daisy chain.

Assessment of the options

The options differ according to three main dimensions:

1) *Addressing the call for proportionality introduced in the review clause*

The first option relies on the fact that no further downstreaming of capital to the subsidiary would be expected, in addition to what is already reflected through the fact that the liquidation entity is part of the consolidated group. Losses would be transferred up to the intermediate entity via its participation and, if higher, intragroup exposures would be subject to risk weighting in application of prudential rules. On the basis of the Commission's impact assessment accompanying the proposal, it supports the call for proportionality introduced in the review clause.

The second option, by imposing a deduction of the exposures due to holdings of own funds issued by the liquidation entities, will naturally reduce the potential for proportionality achieved under the first option. For simplicity reasons this option considers the deduction of all own funds instruments, and not of the hypothetical MREL requirement applicable to the liquidation entity.

[3] The proposal amending Article 12 BRRD reads as follows: *'in paragraph 1, the following third subparagraph is added: 'The identification of the measures to be taken in respect of the subsidiaries referred to in the first subparagraph, point (b), that are not resolution entities may be subject to a simplified approach by resolution authorities if such approach does not negatively affect the resolvability of the group, taking into account the size of the subsidiary, its risk profile, the absence of critical functions and the group resolution strategy.':'*

2) *Complexity of the framework*

The first option is simple. It is fully coherent with the removal of the obligation to determine MREL for liquidation entities when MREL requirements equal own funds requirements and draws a clear delineation in relation to the scope of application of Regulation (EU) 2022/2036.

The second option is naturally more complex, as it requires intermediate entities to deduct their exposures due to holdings of own funds, with direct consequences on reporting, disclosure and monitoring by banks and resolution authorities, in the context of an already complex MREL framework.

3) *Addressing residual risks of impediments to the loss transfer mechanism for indirect issuances of internal MREL*

The second option reduces, compared to the first option, the residual risks that could materialise in a situation where an excessive amount of losses upstreamed from the liquidation entity may not be passed onto the resolution entity in an adequate manner because of an insufficient loss-absorbing capacity at the level of the intermediate entity (e.g. in a scenario where multiple ultimate subsidiaries would fail at the same time). This is, the second option presented above is more prudent.

This element must however be considered taking into account (i) the risk weights that would apply to intragroup exposures in absence of deductions, (ii) the low amounts at stake, as shown in the impact assessment accompanying the Commission's proposal, and (iii) the fact that exposures of liquidation entities remain part of the consolidated external MREL at the level of the resolution group. These points already mitigate the residual risks of impediments to the loss transfer mechanism for indirect issuances of internal MREL.

1) What are Member States' preferences on the two options presented on the treatment of liquidation entities within a daisy chain?

3. Determination of internal MREL on a consolidated basis

Taking into account the views expressed by Member States, the Presidency does not consider necessary to require intermediate entities to comply with internal MREL on both an individual and a consolidated basis. This would lead to an important deviation from the existing MREL framework and the political agreement reached in BRRD II and SRMR II and does not appear sufficiently justified in light of the safeguards and conditionality found in the Commission's proposal amending Article 45f BRRD and Article 12g SRMR.

A few Member States put forward the possibility of providing for a floor to the consolidated internal MREL of intermediate entities, which would correspond to the individual MREL of the intermediate entity reflecting the risk-weighting of the exposures to the ultimate subsidiaries. This possibility is not put forward in the present non-paper because:

- Consolidated internal MREL is expressed as a percentage of the total risk exposure amount (TREA) and total exposure measure (TEM) of the intermediate entity on a consolidated basis. The proposed floor would require the calculation of the theoretical internal MREL expressed in TREA and TEM on an individual basis, their conversion into amounts in EUR (or other relevant currency) and then a reconversion of those gross amounts as percentages of the consolidated TREA and TEM. This means that the floor would be a 'static' view of the intermediate entity's situation at the time of calculation, rather than the dynamic view that would follow the evolution of the risk-based and non-risk based metrics;

- Even if the calibration of the consolidated internal MREL takes into account the theoretical level of the individual internal MREL that would not be sufficient to ensure the same amount of pre-positioning of individual internal MREL capacity at the level of the intermediate entity. This is due to the fact that consolidated internal MREL is met with the consolidated own funds and the consolidated eligible liabilities of the intermediate entity[4].

The Presidency considers that the conditionality included in point (a) of Article 45f(1), 4th subparagraph, BRRD and point (a) of Article 12g(1), 4th subparagraph, SRMR, should ensure that only the relevant intermediate entities may have their MREL set on a consolidated basis. **At the same time, the safeguard linked to the resolvability assessment put forward in point (b) of those provisions preserves the necessary discretion of the resolution authority and enables it not to set internal MREL on a consolidated basis where that is not found appropriate. To address Member State's concerns, annex 1 adds in recital 5 an explicit reference to the idea** that, where the amount of consolidated internal MREL would not ensure compliance with the individual own funds requirements applicable after the exercise of the write-down and conversion powers, that may represent a situation of significant negative impact on resolvability. This seems a more prudent and simpler approach than introducing a floor to the internal MREL consolidated level.

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

[4] See *Commission services' note on the daisy chains proposal* presented on 7 July 2023 for more information on the rules for calculating the consolidated own funds and eligible liabilities.

Annex 1: Presidency first 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[5],

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Directive (EU) 2019/879 of the European Parliament and of the Council[7] and Regulation (EU) 2019/877 of the European Parliament and of the Council[8] 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[9] and in Regulation (EU) No

[5] OJ C , , p. .

[6] OJ C , , p. .

[7] 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).

[8] 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).

[9] 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).

806/2014 of the European Parliament and of the Council[10], 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[11] 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[12].

(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'). 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

[10] 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).

[11] 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).

[12] 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).

intermediate entities ~~would~~ **could** be disproportionately affected by the deduction rules. The Commission also concluded that the MREL framework would be more proportionate 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. 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 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 own funds requirements or to a combined buffer requirement on a consolidated basis.

(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 be detrimental to the resolvability of the intermediate entity may be where that amount of MREL would not 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 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) For liquidation entities, the MREL is normally limited 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) 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 or other liabilities that would meet the conditions for compliance with the internal MREL and that are issued by liquidation entities. 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 by the resolution entity. That means that the upstreaming of losses 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 be set at an amount exceeding the amount for loss absorption where the resolution authorities consider that such amount is necessary to protect financial stability or address the risk of contagion to the financial system. In those situations, 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 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 in accordance with the applicable national law;’;

(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 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 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;

(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;';

~~(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 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 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;

(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 ~~consolidation~~ 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*