EUROPEAN
COMMISSION

Brussels, XXX
[…](2023) XXX draft

2023/[…] ([…])

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)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The proposed amendments to Directive 2014/59/EU[1] (the Bank Recovery and Resolution Directive or BRRD) and to Regulation (EU) No 806/2014[2] (the Single Resolution Mechanism Regulation or SRMR) are part of a legislative package that includes also additional amendments to those acts and to Directive 2014/49/EU[3] (the Deposit Guarantee Schemes Directive or DGSD).

In the aftermath of the global financial and sovereign crises, the EU took multiple decisive actions, in line with international calls for reform, to create a safer financial sector for the EU single market and provide authorities with the tools and powers to handle the failure of any bank in an orderly manner, while preserving financial stability, public finances and depositor protection.

The Union framework was reformed largely based on global standards agreed with the EU's international partners. It consists of four main EU legislative texts adopted in 2013 and 2014 acting together with relevant national legislation: a regulation and a directive on prudential requirements for and supervision of institutions (CRR[4] and CRD[5]), the BRRD and the SRMR.

The 2019 Banking package revised the framework by including measures delivering on Europe's commitments made in international fora[6] to take further steps towards completing the Banking Union by providing credible risk reduction measures to mitigate threats to financial stability. The main revisions concerned the implementation in the Union of the international 'Total Loss-absorbing Capacity (TLAC) Term Sheet', published by the Financial Stability Board on 9 November 2015 (the 'TLAC standard')[7], for global systemically important banks, referred to in the Union framework as global systemically important institutions, and the amendment of the minimum requirement for own funds and eligible liabilities (MREL) set out in BRRD and SRMR.

---

1 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).

2 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).

3 Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ L 173, 12.6.2014, p. 149–178).

4 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. 1–337).

5 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338–436).

6 Financial Stability Board (2014 updated version), *Key Attributes of effective resolution regimes for financial institutions.*

7 Financial Stability Board (2015), *Principles on Loss-absorbing and Recapitalisation Capacity of Globally Systemically Important Banks (G-SIBs) in Resolution, Total Loss-absorbing Capacity (TLAC) Term Sheet.*

The objective of these reforms was to better ensure that the loss absorption and recapitalisation of banks, when those banks become financially unviable and are subsequently placed in resolution, would occur through private means. The revision also clarified the application of MREL at the level of subsidiaries within banking groups by introducing the concept of 'internal MREL' in line with a similar concept included in the TLAC standard. These requirements aim to ensure that internal arrangements are in place between group entities to transfer losses from group entities to the resolution entity, i.e. typically the parent undertaking, without placing the group entities into formal resolution, which could potentially have disruptive effects on the market. To implement this mechanism, group entities are required, based on the decision of the resolution authorities, to issue eligible liabilities that should be subscribed directly or indirectly by the resolution entity.

The Union MREL framework was further amended by Regulation (EU) 2022/2036 of the European Parliament and of the Council[8], which established methods for the indirect subscription of instruments eligible for meeting the internal MREL. On the basis of a technical assessment by the EBA pursuant to a mandate set out in Article 45f(6) BRRD, the regulation introduced a deduction mechanism for the indirect subscriptions of internal MREL through intermediate entities in a chain of ownership (i.e. between the ultimate subsidiary and the resolution entity) to ensure the effective application of internal loss transfers in the MREL framework. Under this mechanism, referred to as a full holdings-based deduction approach, intermediate entities are required to deduct from their own internal MREL capacity the holdings of internal MREL eligible instruments issued by other entities that are part of the same resolution group. The text also specifies that intermediate entities complying with internal MREL on a consolidated basis are exempted from the obligation to deduct their holdings of instruments issued by the entities included in the consolidation. This approach was preferred to a requirement-based deduction approach where the amount of deductions required of the intermediate entities would be limited by a cap corresponding to the level of the internal MREL of the issuing entity belonging to the same resolution group.

Regulation (EU) 2022/2036 also mandated the Commission to review the implementation of the deduction approach for indirect subscription of internal MREL eligible resources across the different types of banking group structures, to assess any potential unintended consequences of the new deduction mechanism and to ensure a proportionate treatment and level playing field, particularly with regards to chains of ownership that include an operating company between a parent holding company and its subsidiaries ('holdco structures' in opposition to 'opco structures' where the parent entity is not a holding company). The Commission was asked to assess the possibility of allowing compliance with internal MREL on a consolidated basis in additional situations, the treatment of entities whose resolution plan provides that they are to be wound up under normal insolvency proceedings ('liquidation entities') and the appropriateness of limiting the deductions to an amount equivalent to the internal MREL of the issuing entity.

Based on an analysis of the deduction mechanism introduced in the Regulation and a quantitative impact assessment using data provided by the SRB, the Commission found that targeted amendments to BRRD and SRMR with respect to the scope of application of internal MREL requirements and the treatment of liquidation entities are necessary and appropriate.

---

[8] 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. 1–10).

The proposed amendments will contribute to banks' resolvability by improving the functioning and the proportionality of the deduction mechanism, and will ensure that it does not create level playing field issues between different banking group structures.

Given that the corresponding provisions are already in force and will become applicable in the Union on 1 January 2024, the proposed amendments need to be made in a timely manner. The need for an expedited adoption is further amplified by the fact that banking groups need clarity on the deduction mechanism to decide how best to preposition their internal MREL capacity in view of the general MREL compliance deadline that is also set to 1 January 2024.

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

The proposal introduces amendments to the existing legislation, acting on a mandate for the Commission to assess the functioning of the deduction mechanism set out in Regulation (EU) 2022/2036, and renders it fully consistent with the existing policy provisions in the area of bank crisis management.

The targeted review of BRRD and SRMR aims to improve the functioning and the proportionality of the deduction mechanism, and ensures that it does not create level playing field issues between different banking group structures.

- **Consistency with other Union policies**

The proposal contributes to the strengthening of the Union financial legislation adopted in the last decade to increase the resilience of the financial sector and to ensure an orderly management of bank failures that aim to make the banking system more robust and ultimately promote the sustainable financing of the economic activity in the Union. It is fully consistent with the EU's fundamental goals of promoting financial stability, reducing recourse to taxpayers' money in bank resolution and preserving depositor confidence. These objectives are conducive to a high level of competitiveness and consumer protection.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

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

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

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

The proposed amendments are in line with the mandate set out in Regulation (EU) 2022/2036 requiring the Commission to review the application of the framework. These changes would further promote a uniform application of prudential requirements, the convergence of practices among resolution authorities and a level playing field throughout the single market for banking services. These objectives cannot be sufficiently achieved by Member States alone. If the Union were to cease regulating those aspects, the internal market for banking services would become subject to different sets of rules, leading to fragmentation and undermining the recently build single rulebook in this area.

- **Proportionality**

Union action is necessary to achieve the objective of improving the application of the existing Union rules as regards ensuring the resolvability of banking groups and addressing level playing issues. The proposed amendments do not go beyond addressing selected provisions in the Union's prudential framework for institutions that target exclusively measures aimed at ensuring a smooth transfer of losses and capital within resolution groups at the moment of resolution though appropriate rules on internal MREL eligible instruments in complex cases such as daisy chains. Moreover, the proposed amendments are limited to those issues, which cannot be addressed within the existing margin of discretion the current rules provide for.

- **Choice of the instrument**

The measures are proposed to be implemented by amending BRRD and SRMR through a Directive. The proposed measures refer to or further develop already existing provisions in those instruments related to the loss-absorbing and recapitalisation capacity of institutions and entities.

A specific proposal on targeted amendments to the MREL framework is justified in view of the urgency of harmonised Union rules before the application date of 1 January 2024 of the dedicated treatment in CRR for the indirect subscription of internal MREL eligible resources.

In view of the limited number of the proposed amendments and to ensure a consistent discussion and the full alignment of the final amendments to BRRD and to SRMR, the amendments to both acts are included in a single proposal.

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

- **Ex-post evaluations/fitness checks of existing legislation**

This initiative acts upon the mandate for the Commission introduced by Regulation (EU) 2022/2036 to review and assess the functioning of a deduction mechanism and adopt, where appropriate, a legislative proposal to address any identified shortcomings[9].

The review is based on an analysis that includes a quantitative impact assessment focusing on the level playing field between different types of banking group structures. It evaluated the effects of the current rules and analysed possible amendments related to the possibility to allow entities that are not themselves resolution entities to comply with the minimum requirement for own funds and eligible liabilities on a consolidated basis, the treatment, under the rules governing the minimum requirement for own funds and eligible liabilities, of entities whose resolution plan provides that they are to be wound up under normal insolvency proceedings, and the appropriateness of limiting the amount of deductions required under the existing rules.

- **Stakeholder consultations**

Commission staff has consulted Member States on the outcome of the analysis, on the quantitative impact assessment of the deduction mechanism and on the proposed amendments in the context of the Commission Expert Group for Banking, Payment and Insurance.

[9] This chapter of the explanatory memorandum fulfils the obligation of the Commission to report to the Council and to the European Parliament on the outcome of the review conducted in compliance with the review clause introduced in Article 129 BRRD by Regulation (EU) 2022/2036.

The results of these consultations fed into the preparation of this proposal. They provided clear evidence of the need to update and complete the current rules in order to best achieve the objectives of the framework while ensuring proportionality and a level playing field.

- **Collection and use of expertise**

The Commission benefited from the support of the SRB through the provision of data, collected on an ad-hoc basis through a voluntary exercise directly from banking groups that are subject to the existing rules and shared with the Commission on an aggregate and anonymised basis. The sample was made of ten intermediate entities, located in six Member States, that are subject to the deduction mechanism under the existing rules. The sample was evenly split among entities part of holdco and opco structures, and relied in most cases on data as of 31 December 2021.

Member State	Number of intermediate entities part of HoldCo	Number of intermediate entities part of OpCo
Austria		1
Belgium	1	1
Croatia	1	
France		3
Ireland	2	
Netherlands	1	
Total	**5**	**5**

Source: Commission staff, based on data provided by SRB, as of 31 December 2021

This quantitative evidence was used to assess the functioning of the deduction framework under the existing rules, identify potential shortcomings and level playing field issues related to its implementation and test possible amendments to address them.

- **Impact assessment**

The proposal has been subject to an analysis that included a quantitative impact assessment taking into account the feedback received from stakeholders and the need to address various considerations specified in the mandate given to the Commission pursuant to Regulation (EU) 2022/2036.

Assessment of the deduction mechanism for internal MREL

The Commission has assessed the potential existence of level-playing field issues between different banking group structures under the current deduction mechanism.

According to the data analysis, the amount of exposures of intermediate entities that would be subject to a deduction under a full holdings-based deduction approach corresponds, in aggregate, to 24.1% of the total risk exposure amount (TREA) and 4.3% of the total exposure measure (TEM) of the intermediate entities. However, intermediate entities of holdco structures tend to be more affected, in aggregate, compared to intermediate entities of opco structures: deductions would represent up to 28.1% versus 14.3% of the TREA, and up to 5% versus 2.7% of the TEM of the intermediate entities. These differences may be explained by the higher amounts of intragroup exposures at the level of the intermediate entities in the case of holdcos, translating in higher relative amounts of deductions (Table 1). This is also confirmed when considering average values at bank level. While deductions represent on average 12.3% of the TREA of all intermediate entities under a full holdings-based approach, this level reaches 14.7% TREA for intermediate entities part of holdcos versus 7.5% TREA for those part of opcos (Table 2).

However, this structural difference is not reflected when considering the solvency situation of the intermediate entities, as intermediate entities of holdcos and opcos both face an important decrease of their MREL surplus after the introduction of a deduction mechanism. In particular, one intermediate entity of a holdco starts to display a 2.6% TREA shortfall against its MREL and its combined buffer requirement (CBR) with a full holdings-based deduction approach and the four others keep having an average MREL surplus of 5.2% TREA, while they were all in surplus (6.4% TREA on average) without deductions. For intermediate entities part of opcos, the average MREL surplus against the MREL and CBR decreases from 5.3% to 1.7% TREA, while two entities which were already in shortfall without deductions see their average shortfall increase from 2.4% to 6.1% TREA (Table 3).

The choice of the deduction approach (i.e., holdings-based versus requirement-based) changes the magnitude of the impact but not the relative higher amount of deduction across the two types of structures.

However, the effect of these changes will be different for intermediate entities part of holdcos as any shortfall directly affects the MREL capacity of the parent resolution entity (via additional subordinated issuances to the market). In fact, holdco structures may only fund those issuances through structurally subordinated debt given that they typically may not have other sources of funding. This specificity is also reinforced by the fact that the operating bank below the holdco generally centralises the exposures to the rest of the group. On the contrary, in opco structures, the resolution entity may reallocate other sources of funding to finance the internal MREL of its intermediate entities.

In this context, the Commission staff considered that intermediate entities of holdco structures might be affected to a different extent compared to other structures, due to the proportion of intragroup exposures (that may vary on a bank-by-bank basis) and the consequences of a shortfall at the level of the intermediate entity. This observation could warrant the need to explore possible ways to make the current framework more proportionate.

Three possible options have been assessed.

(i) Allowing intermediate entities to comply with MREL on a consolidated basis

The current rules do not impose a deduction at the level of the intermediate entity when it already complies with internal MREL on a consolidated basis, in relation to its holdings of instruments issued by entities in the consolidation perimeter. This is justified by the fact that consolidation raises the level of the requirement in order to capture the exposures (external to the subgroup) of all the entities within the consolidation perimeter. It requires intermediate entities to hold sufficient internal MREL capacity to ensure that its losses, as well as the losses of the consolidated entities, can be upstreamed to the resolution entity in an effective way.

The BRRD only provides two specific cases where internal MREL can be met by a non-resolution entity on a consolidated basis: in presence of internal MREL waivers (Article 45f(4) BRRD) and in the case of Union parent undertakings of third-country groups (Article 45f(1), 2nd subparagraph).

However, recourse to a consolidated requirement may prove useful to capture certain banking structures' specificities, for instance, where an intermediate entity naturally centralises intragroup exposures and, in the case of holdco structures, channels internal MREL resources pre-positioned by the resolution entity. Setting internal MREL on an individual basis for certain intermediate entities, such as those part of holdco structures or certain opco structures, in the latter case where prudential requirements are determined on a consolidated basis, may artificially create gaps between the requirements of, respectively, the resolution entity and the

intermediate entity, the latter being subject to deductions. In this context, setting internal MREL on a consolidated basis at the level of the intermediate entity would remove the obligation for the intermediate entity to deduct exposures linked to entities part of its subgroup, because consolidation would have an effect similar to that of deductions.

Based on the data analysed, consolidation increases significantly the exposure amounts of the intermediate entities on the basis of which internal MREL is calculated (+23% TREA and +52% TEM in aggregate terms, Table 1).

The impact on MREL and solvency is not clear-cut across the board and seems to be influenced by bank-specific considerations that may make consolidation more or less advantageous from a daisy chain perspective. In fact, compared to the status quo (no deductions), surpluses against MREL of intermediate entities of holdcos are decreasing by 25-40% due to consolidation (from 9.4% to 7.3% TREA), while surpluses of intermediate entities part of opcos seem to decrease a lot more (from 7.5% to 2.7% TREA).

For holdco structures, applying consolidation has, on average, a lower impact on MREL surpluses than the deductions under the full holdings-based approach, but remains more penalising than deducting under a requirement-based approach.

The data also shows that, when considering the difference between a full holdings-based deduction approach and consolidation, one intermediate entity of a holdco has a shortfall against its MREL and the combined buffer requirement (CBR), but this shortfall disappears with consolidation. Additionally, the shortfall against MREL of the intermediate entities of opcos that are already in shortfall is either increasing or decreasing depending on the cases (Table 3).

Overall, consolidation could be beneficial for intermediate entities of holdco structures. The absence of clear effects on opco structures, despite a general reduction of surpluses without consistent impact on banks already in shortfall, may be explained by the organisation of these groups, where consolidation at the level of an intermediate entity may not necessarily be relevant in all cases. Where applied indistinctly, consolidation may therefore have more significant negative effects on banks part of opco structures than the deductions under the full holdings-based approach. However, consolidation may be an avenue to address the situation of holdco structures and opco structures where prudential requirements are already set on a consolidated basis at the level of the intermediate entity.

(ii) Removing liquidation entities from the scope of deduction mechanism

Under the current framework, liquidation entities are subject to an internal MREL requirement and, as a result, are also captured by the deduction mechanism when part of a daisy chain. This may be overly prudent, since there is no expectation (provided that the strategy is accurately chosen) of a write down or conversion of the instruments of the liquidation entity and upstreaming of losses to the resolution entity, via the intermediate entity, in case of failure. Moreover, the impact of including liquidation entities in the daisy chain deductions may be material for intermediate entities in groups with many subsidiaries earmarked for liquidation, especially given the holdings-based deduction approach, which requires that the entirety of own funds and eligible liabilities of the ultimate subsidiary held by the intermediate entity must be deducted.

Removing liquidation entities from the scope of the deductions under the daisy chain approach would be more proportionate considering that there is no need to down-stream resources to recapitalise the entity in case of failure. As a result, the exposures of intermediate entities towards liquidation entities would not have to be deducted, but risk-weighted in accordance with the applicable rules, requiring the intermediate entity to hold own funds and

eligible liabilities to cover potential losses on these exposures, but to a lesser extent compared to a full deduction. In cases where the exposures to liquidation entities would be significant, this may affect the ability of the intermediate entities to transfer all losses up to the resolution entity. However, the data available shows that the proportion of exposures to liquidation entities is very low, especially in opco structures[10] (0.3% of TREA in aggregate, Table 1, and 0.6% TREA on average, Table 2), thereby minimising the identified risks.

Overall, the data indicate that exposures of intermediate entities to liquidation entities account on aggregate for 2% of the TREA and 0.3% of the TEM of the intermediate entities. However, these proportions differ when considering the type of group structure: up to 2.6% TREA and 0.3% TEM for holdco structures versus 0.3% TREA and 0.1% TEM for opco structures (Table 1).

The amount of exposures (TREA/TEM) under a holdings-based deduction approach without liquidation entities is naturally higher than under a holdings-based approach that includes a deduction of exposures to liquidation entities, but remains below the levels reached if the deductions were capped under a requirement-based deduction approach.

In fact, removing exposures to liquidation entities from the deductions has a positive effect on the total amount of deductions by the intermediate entities across the board, but this effect does not reach the same level as deductions under a requirement-based approach. For holdco structures, deductions under a full holdings-based approach would account for 14.7% TREA, reduced to 13.2% TREA if exposures to liquidation entities are excluded, but still above the 11.1% TREA reached for deductions under a requirement-based approach. The ranking and proportions are similar for opcos (7.5%, 6.9% and 6% respectively). Overall, slightly less than half the distance between the two approaches is met by removing exposures to liquidation entities.

However, removing exposures to liquidation entities would have different impacts on the type of instruments affected by the deductions and the MREL and capital positions post-deductions.

The number of intermediate entities of holdco structures subject to a deduction affecting items other than eligible liabilities (Tier 2, Additional Tier 1 (AT1), Common Equity Tier 1 (CET1)) decreases when excluding liquidation entities, while the effects seem less material for opcos, as all intermediate entities currently deducting from a category of own funds would continue deducting (in relatively similar amounts) from those same categories. This is also explained by the limited proportion of exposures to liquidation entities for this type of intermediate entity (Table 2).

Considering the effects on the MREL and capital ratios, the removal of exposures to liquidation entities improves the situation for a number of intermediate entities that were in shortfall against various requirements due to the full holdings-based deduction approach, removing or reducing these shortfalls in particular in one holdco and two opco structures[11]. In addition, the removal of exposures to liquidation entities sometimes leads to a lower shortfall

[10] Data shows that the proportion is slightly higher for holdco structures, but the application of consolidation would cancel out the need for a deduction and make this adjustment linked to liquidation entities irrelevant.

[11] In particular, two intermediate entities had a shortfall against their total MREL due to the deductions that would be reduced from 3.8% to 2.1% TREA (-45%), three intermediate entities had a shortfall against their total MREL+CBR due to the deductions that would be reduced from 4.2% to 3.2% TREA (-24%) and one intermediate entity had a shortfall on its Tier 1 and overall capital requirements that would be reduced to 0.

compared to the requirement-based deduction approach[12]. However, the effect seems limited when considering the surpluses: these are higher under a requirement-based deduction approach than the full-holdings based approach with or without liquidation entities by around 20-25%, but only against total MREL requirements, showing that the choice of the deduction approach does not really affect CET1, Tier 1 or overall capital requirement ratios (Table 3).

In this context, removing liquidation entities from the scope of the deduction mechanism would improve the proportionality of the requirement, more correctly reflecting the impact of the deductions without affecting the prudential soundness of the approach and without materially altering the balance achieved with the regulation. The impacts do not seem overly biased towards one group structure, also considering the different proportions these exposures represent in holdco and opco structures, respectively.

Such amendment could therefore be applied to all groups, noting that it would become irrelevant should an intermediate entity comply with internal MREL on a consolidated basis (due to the absence of deductions in this case).

(iii) Application of a cap on the level of deductions (requirement based deduction approach)

Internal MREL ensures that losses at the level of a subsidiary in a resolution group can be transferred adequately up to the resolution entity without placing the subsidiary in resolution. The introduction of a deduction mechanism aims to foster this internal loss-absorbency by ensuring that losses do not remain trapped at the level of an intermediate entity, putting at risk the execution of the group strategy.

A requirement-based approach may weaken the group's resolvability, as a cap on the deduction corresponding to the internal MREL requirement (rather than the capacity) may prevent the intermediate entities to pass on adequately all losses to the resolution entity, creating possible bottlenecks at the level of the intermediate entity as the amount of capital and eligible liabilities that the resolution authority would be writing down or converting in case of failure of a subsidiary would not be capped by the amount of the respective internal MREL requirement. It would thus lead to a less prudentially sound outcome.

The requirement-based deduction may also affect the comparability between direct and indirect issuances of instruments by the subsidiary to the resolution entity, possibly creating level playing field issues among banks depending on their organisational structure, and running counter to the initial goal pursued by the co-legislators of not preferring one form of issuance over another. The requirement-based deduction approach is finally not able to fully prevent the double counting of internal MREL capacity at the level of the intermediate entity.

Preferred option

Considering the outcome of the different options, the analysis concludes that the full holdings-based deduction approach adopted in Regulation (EU) 2022/2036 should be preserved. Amending the approach by introducing limitations to the amount of deductions corresponding to the internal MREL requirement of the issuing subsidiaries would result in a less prudentially sound mechanism and reduce the effectiveness and the efficiency of the deduction mechanism, creating risks of bottlenecks when upstreaming losses within a group. It would also weaken the coherence of the framework as such change would represent an important deviation from the political agreement reached by the co-legislators in 2019, as

[12] For example, where the holdings of internal MREL instruments of liquidation entities would be deducted under a requirement-based approach, while they would not be deducted under this scenario, hence resulting in a lower shortfall.

reflected in the mandate entrusted to the EBA in Article 45f(6) BRRD of ensuring that direct and indirect subscriptions of internal MREL should not lead to a different outcome.

However, the assessment also concludes on the appropriateness and necessity of adjusting at the margin the mechanism to address the concerns raised regarding the impact of a full-holdings based deduction approach on certain group structures in a way that would increase proportionality and not endanger the transfer of losses and capital within a resolution group. In line with the options assessed in the impact assessment, the amendments that would best achieve these objectives and improve coherence with the resolution framework would consist of: (i) allowing certain intermediate entities, i.e. intermediate entities part of holdco structures and opco structures, where prudential requirements are already set on a consolidated basis, to comply with internal MREL on a consolidated basis subject to the decision of the resolution authority and (ii) removing issuances of liquidation entities from the scope of the deduction mechanism.

Table 1: Exposure amounts

		Change of exposure amount (vs baseline)			Exposures to liquidation entities in % (vs baseline)
Metric	Group structure	Full holdings-based deduction	Requirement-based deduction	Sub-consolidation	
TREA	HoldCo	28,1%	24,7%	7,5%	2,6%
	OpCo	14,3%	11,6%	62,9%	0,3%
	Total	24,1%	21,0%	23,4%	2,0%
TEM	HoldCo	5,0%	4,1%	42,3%	0,3%
	OpCo	2,7%	2,2%	74,0%	0,1%
	Total	4,3%	3,5%	52,1%	0,3%

Source: Commission staff, based on data provided by SRB, as of 31 December 2021

Table 2: Deductions

Deductions (% TREA)		Full holdings-based deduction			Requirement-based deduction			Full holdings-based deduction without liquidation entities		
Category	Metric	Holdco	OpCo	Total	Holdco	OpCo	Total	Holdco	OpCo	Total
Total	*Average*	14,7%	7,5%	12,3%	11,1%	6,0%	9,5%	13,2%	6,9%	11,2%
	# of banks	5	5	10	5	5	10	5	5	10
of which: deducted from T2	*Average*	0,9%	1,7%	1,1%	1,2%	1,5%	1,4%	1,8%	1,7%	1,7%
	# of banks	2	4	6	1	4	5	1	4	5
of which: deducted from AT1	*Average*	2,4%	2,3%	2,3%		2,1%	2,1%		2,3%	2,3%
	# of banks	1	4	5		4	4		4	4
of which: deducted from CET1	*Average*	1,1%	5,2%	3,7%	0,3%	3,9%	3,7%	0,3%	5,2%	5,0%
	# of banks	2	4	6	1	4	5	1	3	4

Source: Commission staff, based on data provided by SRB, as of 31 December 2021

Table 3: Impact on MREL and solvency situation

Surpluses/Shortfalls (% TREA)		Baseline			Full holdings-based deduction			Requirement-based deduction			Full holdings-based deduction without liquidation entities			Sub-consolidation		
Requirement	Metric	Holdco	OpCo	Total	Holdco	OpCo	Total	Holdco	OpCo	Total	Holdco	OpCo	Total	Holdco	OpCo	Total
MREL	*Average Shortfall*		-0,3%	-0,3%		-3,8%	-3,8%		-2,5%	-2,5%		-2,1%	-2,1%		-6,1%	-6,1%
	#of banks		1	1		2	2		2	2		2	2		1	1
	Average Surplus	9,4%	7,5%	8,9%	6,8%	4,6%	6,3%	8,1%	4,9%	7,4%	6,7%	4,6%	6,2%	7,3%	2,7%	5,8%
	#of banks	5	4	9	5	3	8	5	3	8	5	3	8	5	3	8
MREL + CBR	*Average Shortfall*		-2,4%	-2,4%	-2,6%	-6,1%	-4,2%	-1,5%	-4,8%	-2,9%	-2,2%	-4,5%	-3,2%		-3,4%	-3,4%
	#of banks		2	2	1	2	3	1	2	3	1	2	3		2	2
	Average Surplus	6,4%	5,3%	6,1%	5,2%	1,7%	4,2%	6,7%	1,9%	5,4%	5,2%	1,7%	4,2%	4,2%	0,8%	3,5%
	#of banks	5	3	8	4	3	7	4	3	7	4	3	7	5	2	7
CET1	*Average Shortfall*															
	#of banks															
	Average Surplus	10,4%	13,2%	11,2%	15,4%	12,3%	14,4%	15,3%	12,7%	14,5%	14,9%	12,6%	14,2%	10,3%	8,5%	9,9%
	#of banks	5	5	10	5	5	10	5	5	10	5	5	10	5	2	7
T1	*Average Shortfall*					-1,4%	-1,4%									
	#of banks					1	1									
	Average Surplus	10,7%	12,9%	11,4%	15,9%	11,6%	14,5%	16,2%	11,1%	14,6%	15,8%	11,0%	14,3%	10,4%	7,7%	9,8%
	#of banks	5	5	10	5	4	9	5	5	10	5	5	10	5	2	7
OCR	*Average Shortfall*					-3,2%	-3,2%		-0,7%	-0,7%						
	#of banks					1	1		1	1						
	Average Surplus	8,2%	9,8%	8,7%	14,1%	7,3%	12,0%	14,3%	7,5%	12,2%	14,0%	6,9%	11,8%	8,4%	5,5%	7,8%
	#of banks	5	5	10	5	4	9	5	4	9	5	5	10	5	2	7

Source: Commission staff, based on data provided by SRB, as of 31 December 2021

Other considerations related to liquidation entities

To ensure coherence with the rest of the framework, the removal of liquidation entities from the scope of the deduction mechanism for the indirect subscription of internal MREL must be considered in the broader context of the relevant BRRD and SRMR provisions applicable to these entities.

Under the existing rules in BRRD and SRMR, resolution authorities are required to adopt MREL decisions for all institutions and entities within the scope of those acts, including liquidation entities. The calibration of the requirement is proportionate to account for the fact that these entities would be wound up under normal insolvency proceedings, and therefore the requirement is limited, in most cases and subject to the decision of the resolution authority, to the own funds requirements of that entity (the loss absorption amount – Article 45c(2), second subparagraph, BRRD and Article 12d(2), second subparagraph, SRMR). The only exception to that situation would arise in cases where the resolution authority determines that MREL should exceed the loss absorption amount, in particular due to possible impact on financial stability and risk of contagion to the financial system (Article 45c(2), third subparagraph, BRRD and Article 12d(2), third subparagraph, SRMR).

The current determination of MREL for liquidation entities puts a significant burden on resolution authorities to issue MREL decisions on a regular basis due to the link with resolution planning, and on banks to ensure monitoring and compliance with other related requirements, such as the prior permission regime for the call, redemption, repayment or repurchase of eligible liabilities provided in Articles 77(2) and 78a CRR. However, in practice this decision changes very little in terms of the structure of liabilities used to comply with MREL because the liquidation entity already needs to comply with its own funds requirements by using own funds instruments (as long as the entity is subject to prudential requirements on an individual basis). The absence of added value of these MREL decisions, when mirroring existing own funds requirements, appears to call for a change in the legislation that would remove the obligation for resolution authorities to set MREL for liquidation entities, in specific circumstances.

Where the resolution authority considers that an entity part of a resolution group qualifies as a liquidation entity, the removal of liquidation entities from the scope of the deduction mechanism for internal MREL would be indirectly achieved by the absence of an MREL requirement at the level of that entity (as it would not be able to be part of a scheme for the

indirect issuance of resources used towards compliance with an internal MREL requirement), ensuring coherence between the proposals.

A similar reasoning applies to the application of the prior permission regime to call, redeem, repay or repurchase eligible liabilities, where the absence of an MREL requirement naturally removes liquidation entities from the scope of the prior permission regime (as the liquidation entity would not have eligible liabilities on its balance sheet, even if certain liabilities would comply with the eligibility requirements).

Nevertheless, for those liquidation entities the MREL of which has been set at a level exceeding the loss absorption amount (i.e., the own funds requirements), the existing rules on adoption of MREL decision, prior permission to call, redeem, repay or repurchase eligible liabilities and inclusion in the daisy chain scope should continue to apply.

- **Regulatory fitness and simplification**

The review is targeting specific provisions related to operationalisation of the internal MREL framework, with particular attention paid to level playing field issues between different banking group structures and the reduction of administrative burden for certain entities for which resolution authorities consider that they could be credibly wound up in insolvency in case of failure.

The proposed reform is expected to bring about benefits with respect to the effectiveness of the framework, legal clarity and improved proportionality of the requirements.

The reform is technology-neutral and does not impact digital readiness.

- **Fundamental rights**

The European Union is committed to high standards of protection of fundamental rights and is signatory to a broad set of conventions on human rights. In this context, the proposal complies with these rights, as listed in the main UN conventions on human rights, the Charter of Fundamental Rights of the European Union, which is an integral part of the EU Treaties and the European Convention on Human Rights (ECHR).

4. BUDGETARY IMPLICATIONS

The proposal does not have implications for the Union budget

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The proposal requires Member States to transpose the amendments to the BRRD in their national laws within 6 months from the entry into force of the amending Directive. The amendments to SRMR should become applicable at the same time.

The changes introduced to Article 45i(4) should reinforce the reporting to resolution authorities by liquidation entities whose MREL exceeds the amount necessary for loss absorption, and will thus continue to be subject to an MREL decision, covering the amount and composition of their MREL capacity.

6. DETAILED EXPLANATION OF THE SPECIFIC PROVISIONS OF THE PROPOSAL

MREL for liquidation entities

A new definition is added in Article 2(1), point (83aa), BRRD and in Article 3(1)(24aa) SRMR, according to which references to 'liquidation entities' should be understood as references to entities whose resolution plan provides for the respective winding up in an orderly manner in accordance with the applicable national law in case of failure.

To achieve a reduction in the regulatory burden while preserving the possibility for resolution authorities to still determine MREL for liquidation entities in certain exceptional cases, the second and third subparagraphs of Article 45c(2) are replaced with a new paragraph 2a, which sets the new general rule that resolution authorities should not determine MREL for liquidation entities. Similar amendments are introduced in Article 12d SRMR, with the deletion of the second and third subparagraphs of paragraph 2 and the insertion of a new paragraph 2a.

The possibility for the resolution authority to determine an MREL, i.e. to set a requirement above the loss absorption amount, is preserved where necessary for protecting financial stability or limiting potential contagion to the financial system, which are the existing criteria in the legislation currently in force.

Where the resolution authority considers that an entity part of a resolution group qualifies as a liquidation entity, the consolidation carried out for the purposes of the external MREL applicable to the resolution entity heading that resolution group should include the liquidation entity, as has been the practice thus far.

Application of prior permissions regime to liquidation entities

Entities earmarked for liquidation are currently in the scope of the prior permission regime set out in Article 78a CRR, by virtue of the cross-references in Articles 45b(1) and 45f(2) BRRD, and Articles 12c(1) and 12g(1) SRMR, to the common eligibility criteria defined in Articles 72a to 72c CRR. However, the procedural obligations created by this provision are disproportionate for the majority of liquidation entities, as they are not expected to hold loss-absorbing capacity above their own funds requirements. In such a scenario, the rationale behind the prior permission rules – empowering the resolution authorities to monitor those actions resulting in a reduction of the stock of eligible liabilities – is not present. Moreover, there already exists a separate prior permission regime for early redemption of own funds instruments (Article 78 CRR) which will continue to apply to all institutions.

In order to reduce the regulatory burden for liquidation entities that need to apply for the prior permission to reduce eligible liabilities instruments, and for the authorities that need to assess such applications, Article 45c(2a) BRRD and Article 12d(2a) SRMR explicitly provide that the prior permission regime under Articles 77(2) and 78a CRR should not apply to liquidation entities for which the resolution authority has not determined an MREL. This would anyway be the natural consequence of the removal of MREL decisions for those liquidation entities, as the absence of an MREL decision means that they no longer have eligible liabilities on their balance sheet, as they are no longer subject to an MREL requirement.

For liquidation entities in respect of which an MREL decision exceeding the loss absorption amount has been adopted by the resolution authority, Articles 77(2) and 78a CRR will continue to apply.

Liquidation entities as part of daisy chain structures

The analysis carried out under the mandate for review introduced in Article 129 BRRD has concluded on the appropriateness of excluding liquidation entities from the scope of the daisy chains rules, more specifically, of no longer requiring own funds instruments and other liabilities issued by liquidation entities without an MREL decision held by an intermediate entity to be deducted by the latter. This would apply where the resolution authority has considered, in the context of resolution planning, that an entity part of a resolution group qualifies as a liquidation entity.

In such a scenario, 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, which means that the upstreaming of losses from the liquidation entity to the resolution entity, via the intermediate entity, would not be expected, and nor would the down-streaming of capital in the opposite direction.

Therefore, the new Article 45c(2a) BRRD and Article 12d(2a) SRMR explicitly provide that holdings of own funds instruments or liabilities issued by liquidation entities that would no longer be subject to an MREL decision should not be deducted by the intermediate parent under the daisy chain deduction rules. Consequently, intermediate entities holding own funds instruments and liabilities issued by liquidation entities will need to apply risk weights to those exposures and to include them in their total exposure measure. As these exposures will be taken into account when calculating the total risk exposure amount and the total exposure measure of the intermediate entity, this ensures that the intermediate entity will be required to hold a certain amount of internal MREL that will reflect those exposures to the liquidation entities.

However, liquidation entities for which resolution authorities exercise their discretion to set MREL at an amount exceeding the own funds requirements would still be in scope of the daisy chain deduction rules.

Reporting for liquidation entities

Under the current Article 45i(4), liquidation entities are not required to report their MREL to the resolution authority, nor to disclose it publicly, irrespective of the calibration of their MREL.

This poses an issue for resolution authorities in cases where they need to assess whether a change of strategy would be deemed appropriate or whether the MREL calibration should be increased to a level exceeding the loss absorption amount. To address this problem, resolution authorities are currently asking such banks for simplified reporting, less complex and detailed than required in accordance with Commission Implementing Regulation (EU) 2021/763[13] under Article 45i.

Therefore, Article 45i is amended to introduce a statutory reporting regime in the legal text for liquidation entities for which an MREL decision has been adopted (i.e., the MREL of which exceeds the loss absorption amount).

[13] Commission Implementing Regulation (EU) 2021/763 of 23 April 2021 laying down implementing technical standards for the application of Regulation (EU) No 575/2013 of the European Parliament and of the Council and Directive 2014/59/EU of the European Parliament and of the Council with regard to the supervisory reporting and public disclosure of the minimum requirement for own funds and eligible liabilities (OJ L 168, 12.5.2021, p. 1–83).

For liquidation entities where no MREL has been determined, the status quo is preserved and there are no dedicated MREL reporting or disclosure obligations. As reporting for resolution planning purposes remains unchanged and thus will continue to be applicable to all liquidation entities, resolution authorities would still be able to obtain the relevant information e.g. for the purposes of deciding whether to change the strategy foreseen for the entity concerned or the respective MREL calibration.

Consolidated internal MREL

The analysis carried out by the Commission pursuant to the review clause introduced by Regulation (EU) 2022/2036 has concluded on the appropriateness of allowing certain intermediate entities, belonging to either holdco or to opco structures, to comply with internal MREL on a consolidated basis.

Beyond the benefits to the proportionality of the daisy chain deduction rules and to the minimisation of any level playing field differences between different types of banking group structures, the extension of the possibility to comply with internal MREL on a consolidated basis is also deemed useful for the following reasons:

- It facilitates the calibration of internal MREL for those non-resolution entity subsidiaries that have their additional own funds requirements (Article 104a CRD) and combined buffer requirement (Article 128, point (6), CRD) set on a consolidated basis only;
- It clarifies the application of the power to prohibit certain distributions above the Maximum Distributable Amount related to MREL (M-MDAs – Article 16a BRRD and 10a SRMR) in relation to those subsidiaries the combined buffer of which has been set at a consolidated level;
- It ensures that the subsidiary has sufficient internal pre-positioned capacity so that, in case of failure, it is able to absorb its losses and restore compliance with its consolidated own funds requirements.

Article 45f(1) BRRD and Article 12g(1) SRMR are thus amended to give the resolution authority the discretionary power to set internal MREL on a consolidated basis to a subsidiary of a resolution entity. This possibility is available regardless of the type of banking group structure to which that intermediate entity belongs.

This possibility is subject to two important safeguards. Firstly, for holdco structures, the intermediate entity should be the only direct subsidiary of a resolution entity which is a 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, for other types of banking group structures, the additional own funds requirement and the combined buffer requirement applicable to the subsidiary that is not a resolution entity must have been set by the competent authority on the same basis of consolidation. Secondly, in both cases, the resolution authority must have concluded that compliance with internal MREL on a consolidated basis does not negatively affect the resolvability of the resolution group to which the subsidiary belongs, nor the application of the write down and conversion powers to that subsidiary or to other entities in the same resolution group. The latter condition would, for example, allow the resolution authority not to set internal MREL on a consolidated basis in those situations where the individual requirements applicable to the subsidiary would be higher.

The setting of internal MREL on a consolidated basis removes the possibility for the resolution authority to set internal MREL on an individual basis for that same entity. This is

consistent with the changes introduced in the MREL framework by BRRD2 and SRMR2, which no longer allow for MREL to be set on multiple basis in relation to the same entity. This should not be considered as a waiver benefitting the entity concerned, because compliance with MREL will continue to be required, though on a different basis.

Importantly, the possibility that is now introduced in Article 45f(1) BRRD and Article 12g(1) SRMR does not imply the granting of waivers of internal MREL to the subsidiaries of the entity concerned. Waivers of internal MREL should only be possible where the existing conditions in Article 45f(3) or (4) BRRD and Article 12h SRMR are met.

In terms of the instruments that may be used by the subsidiary that is not a resolution entity to comply with its consolidated internal MREL, the general rules on compliance with consolidated requirements and the eligibility criteria in Article 45f BRRD and Article 12g SRMR apply. Additionally, a new paragraph 2a is introduced in Article 45f BRRD and in Article 12g SRMR to clarify that, where the subsidiaries included in the scope of consolidation of any entity required to comply with consolidated internal MREL have issued eligible liabilities to other entities of the same resolution group but outside that scope of consolidation or to an existing shareholder not belonging to the same resolution group, those liabilities shall be included in the amount of own funds and eligible liabilities of the intermediate entity, up to certain limits. This will allow direct issuances of internal MREL eligible resources between the ultimate subsidiary and the resolution entity to count towards compliance of the consolidated internal MREL of the intermediate entity. This new rule ensures alignment with the calculation of own funds on a consolidated basis and is similar to the rule provided in Article 45b(3) BRRD and 12c(3) SRMR applicable to the external MREL of resolution entities. Similarly, the limitations provided in these amendments ensure that the surplus capacity of the subsidiaries of those intermediate entities cannot be used towards compliance with the respective consolidated internal MREL.

2023/ ()

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[14],

Having regard to the opinion of the European Economic and Social Committee[15],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Directive (EU) 2019/879 of the European Parliament and of the Council[16] and Regulation (EU) 2019/877 of the European Parliament and of the Council[17] 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[18] and in Regulation (EU) No 806/2014 of the European Parliament and of the Council[19], which applies to credit institutions and investment firms (institutions) established in the Union as well as to any other entity as laid down in that Directive or in that Regulation (entities). Those amendments provided that internal MREL, that is, MREL applicable

14 OJ C , , p. .

15 OJ C , , p. .

16 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).

17 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).

18 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).

19 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).

to institutions and entities that are subsidiaries of resolution entities but are not themselves resolution entities, could be met by those 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[20] 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 the possibility to allow entities that are not themselves resolution entities to comply with the MREL on a consolidated basis, the treatment, under the rules governing the MREL, of entities whose resolution plan provides that they are to be wound up under normal insolvency proceedings ('liquidation entities'), and 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[21].

(3) The review of the Commission found that allowing resolution authorities to set the internal MREL on a consolidated basis for a wider range of institutions and entities that are not resolution entities but are subsidiaries of resolution entities and control themselves subsidiaries subject to MREL ('intermediate entities') than under the framework resulting from Directive 2014/59/EU and Regulation (EU) No 806/2014 would be appropriate and proportionate to the objectives pursued by the internal MREL rules. This would be the case in particular for banking groups headed by a holding company, where such intermediate entities naturally centralise intragroup exposures and channel the internal MREL eligible resources pre-positioned by the resolution entity, which due to this structure appear to be disproportionately affected by the deduction rules. As for the treatment of liquidation entities under the MREL framework, the Commission also concluded that removing 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 would make the MREL framework more proportionate. By construction, a liquidation entity will not have to be supported by the resolution entity in case of failure. This removes 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

---

20 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).

21 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).

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 2014/69/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. Beyond these two cases, in accordance with the conclusions of the review carried out by the Commission, intermediate entities of banking groups headed by a holding company should also be able to comply with the internal MREL on a consolidated basis. Moreover, this possibility should 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. 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 have been set at a different level of consolidation, making the calculation of the requirement challenging. Similarly, the conditions of the exercise of the power laid down in Article 16a of Directive 2014/59/EU and Article 10a of Regulation (EU) No 806/2014 for the resolution authority to prohibit certain distributions above the maximum distributable amount related to the MREL in respect of the individual subsidiary become challenging to interpret and apply where the key metric, the combined buffer requirement, is not set on the same basis as the 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, this 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.

(5) To ensure that the possibility to comply with MREL on a consolidated basis is available only in the relevant cases 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. Firstly, the intermediate entity should be the only direct subsidiary 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 be required to comply with the additional own funds requirement or with the combined buffer requirement on the basis of its consolidated situation. Secondly, for both cases, compliance with the internal MREL on a consolidated basis should not, in the assessment of the resolution authority, negatively affect the resolvability of the resolution group concerned, nor the application by the resolution authority of the

power to write down or to convert relevant capital instruments and eligible liabilities of the institution or entity concerned or of other entities in its resolution group.

(6) Intermediate entities may comply with the consolidated internal MREL using own funds and eligible liabilities. To ensure that the eligible liabilities of intermediate entities are computed in a way similar to the computation of own funds, thereby fully delivering on the possibility to comply with MREL on a consolidated basis, it is necessary to align the eligibility criteria for eligible liabilities that may be used towards compliance with internal MREL on a consolidated basis with the rules on the calculation of consolidated own funds laid down in Regulation (EU) No 575/2013. This should also reflect the existing rules for the calculation of eligible liabilities that may be used by resolution towards compliance with their consolidated MREL provided under Article 45b(3) of Directive 2014/59/EU and Article 12d(3) of Regulation (EU) No 806/2014. More specifically, it is necessary to ensure that eligible liabilities issued by the subsidiaries of the entity subject to consolidated internal MREL and held by 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, as a rule, limited to the amount necessary for loss absorption, which corresponds to the own funds requirements. In such cases, the MREL does not entail any additional requirement for the institution directly related to the resolution framework. That means that compliance with the MREL can be fully ensured through compliance 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 those entities. Since such a decision entails a lot of procedural obligations for resolution authorities and for the liquidation entities without a corresponding benefit in terms of improved resolvability, It is appropriate to exempt liquidation entities from the obligation to receive a MREL target.

(8) Where the resolution authority considers that an entity 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 nor 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 thus would 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 Regulation (EU) No 575/2013, which is also applicable to institutions and liabilities subject to the MREL, is to ensure that the MREL is met at all times, by making it possible for the resolution authorities to monitor those actions that result in a reduction of the stock of eligible liabilities. 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, by definition, eligible liabilities on their balance sheet. Therefore, it is appropriate not to require institutions or entities for which no decisions determining the MREL have been adopted 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) Only those liquidation entities whose MREL does not exceed the amount of the own funds requirements should be excluded from the requirement to determine and comply with the MREL. Resolution authorities should be able to set the MREL at an amount exceeding the amount for loss absorption for those liquidation entities in respect of which they deem such an amount 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. 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 instrument are not relevant and should not apply.

(11) Under 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 that the amendments to Regulation (EU) No 806/2014 become applicable at the same time as the national measures transposing the amendments to Directive 2014/59/EU, the amendments to Regulation (EU) No 806/2014 should be applied from the end of the date for the transposition of the amendments to Directive 2014/59/EU.

(14) Since the objectives of this Directive, namely to adjust the treatment of liquidation entities under the MREL framework and the possibilities 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, 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 amount sufficient to absorb losses in accordance with paragraph 2, point (a), of this Article, increased to the extent necessary for the achievement of those objectives. In those cases, liquidation entities shall meet the requirement referred to in Article 45(1) 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, except for 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 permit a subsidiary institution or entity referred to in Article 1(1), points (b), (c) and (d), to comply with the requirement laid down in Article 45c on a consolidated basis where all of the following conditions are met:

(a) the subsidiary institution or entity meets one of the following conditions:

(i) the subsidiary institution or entity 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 institution or entity 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 other than the institution or entity concerned;

(ii) the subsidiary institution or entity 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 the resolvability of the resolution group or the write down or conversion of relevant capital instruments and eligible liabilities of the institution or entity concerned or of other entities in the resolution group in accordance with Article 59.';

(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:

(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;';

(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, 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 amount sufficient to absorb losses in accordance with paragraph 2, point (a), of this Article, increased to the extent necessary for the achievement of those objectives. In those cases, liquidation entities shall meet the requirement referred to in Article 12a(1) 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, except for 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.';

(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, resolution authorities may permit a subsidiary entity referred to in Article 2 to comply with the requirement laid down in Article 12d on a consolidated basis where all of the following conditions are met:

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

(i) the subsidiary institution or entity 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 entity 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 other than the entity concerned;

(ii) the subsidiary entity 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 the resolvability of the resolution group or the write down or conversion of relevant capital instruments and eligible liabilities of the institution or entity concerned or of other entities in the resolution group in accordance with Article 21.';

(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) applicable to the subsidiary included in the consolidated 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

1. 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.

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

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 Brussels,

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