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Subject matter	Interaction between 45f(3) and 45f(4) BRRD
Question	<p>In case of a “daisy chain” structure involving three entities (resolution entity, intermediate entity which is subsidiary of the resolution entity and subsidiary of the intermediate entity) which are all in the same Member State, how and with respect to which paragraph of Article 45f of Directive 2014/59/EU (BRRD) should resolution authorities and institutions proceed to assess waiver requests?</p> <p>Is any of the two potentially applicable paragraphs (Article 45f(3) and 45f(4)) required to be privileged/rejected? Should they be combined?</p> <p>Also, in such a situation:</p> <p>a) Could you confirm that the impossibility to meet conditions under one paragraph (for instance, intermediate entity in shortfall or cross-border SPE) does not preclude requesting a waiver and the request being examined based on the other paragraph?</p> <p>b) Regarding condition set out in article 45f (3)(d) and 45f(4)(d) BRRD, which entity should be the guarantor, the resolution entity or the parent entity? How to interpret/ apply these two options in case there is no MREL</p>

	<p>target set at the parent level but only at resolution entity level?</p> <p>c) In case the interpretation is that in order for an indirect subsidiary of a resolution entity to be granted a waiver from the application of internal MREL, its direct parent must comply with a sub-consolidated MREL target in the same MS (Article 45f(4) BRRD/12h(2) SRMR), can you clarify if the condition set out in Article 45f(4)(b) BRRD/12h(2)(b) SRMR requiring the (direct) parent undertaking to comply with the sub-consolidated MREL requirement referred to in Article 45a(1) BRRD/12a(1) SRMR is met if such parent undertaking is in shortfall but has been granted a MREL waiver?</p> <p>A final related question in case of entities subject to BRRD is whether, when assessing the condition under paragraphs 45f (3)(f) and 45f (4)(f) BRRD on ownership of 50% of voting rights in the subsidiary, such ownership should be assessed both directly and indirectly (direct/ indirect control).</p>
<p>Background on the question</p>	<p>Article 45f(3) and Article 45f(4) BRRD, like Article 12h(1) and Article 12(2) SRMR, create two distinct possibilities to obtain waivers from internal MREL requirements: - one where compliance with the conditions is assessed with reference to the relationship between the resolution entity and the applicant, a subsidiary of the resolution entity, and - one where compliance is assessed with reference to the relationship between the parent undertaking and its subsidiary. There are many situations where an entity combines roles, which leaves no doubt as to the entities to be considered in the analysis: for instance, in typical MPE cases where the intermediate parent is also the resolution entity or in domestic SPE cases for the direct subsidiaries of the resolution entity (the resolution entity is at the same time their parents). However, how should resolution authorities and institutions proceed in cases where both options are legally open but involve different entities? A typical example is this of so-called “daisy chain” structures in SPE strategies. Let us consider a chain with an ultimate parent A which is the resolution entity, its subsidiary B which is the direct parent of a subsidiary C and this “ultimate” subsidiary C. In this case, should C wish to request a waiver, it would be possible for it to submit an analysis of the conditions (guarantee, transfer of funds, compliance with external MREL) with respect to either A (based on article 45f(3) BRRD/12h(1) SRMR) or B (based on article 45f(4) BRRD/12h(2) SRMR). Is any of those options required to be privileged/rejected? Should they be combined? Related sub-questions arise then about situations where all conditions are met based on one article, but one is not met with respect to the other. An example would be the case of the “daisy chain” described above, where B would be in shortfall but A would not be: there, conditions under Article 45f (4) would not be met, but conditions under Article 45f(3) could be. Another would be if B and C would be in the same Member State and A in another (cross border SPE): there, conditions of Article 45f(3) could not, by construction, be met, but conditions of Article 45f(4) could be.</p>
<p>Final answer</p>	<p>Paragraphs 3 and 4 of Article 45f provide for situations where the resolution</p>

authority of a subsidiary that is not itself a resolution entity may grant a waiver regarding the application of Article 45f (the so-called internal MREL requirement). The objective of having both paragraphs 3 and 4 in Article 45f was to cover a broad spectrum of situations that could arise, including direct and indirect ownership structures (daisy chains) with single point of entry (SPE) strategy, cross-border groups where the ultimate subsidiary and an intermediate parent undertaking are in the same Member State but the resolution entity is located in another Member State, as well as the ownership structures within each resolution group of a group with multiple point of entry (MPE) strategy. These paragraphs are not competing or meant to be applied in a hierarchical order or cumulatively, they are to be applied (independently) in different situations.

Paragraph 2 of Article 45f provides for the opportunity of direct or indirect (daisy chains) subscription of internal MREL instruments. The application of a waiver can therefore also be considered both in a situation of direct and indirect subscription of internal MREL instruments, provided all conditions specified in paragraphs 3 or 4 of Article 45f are met.

Paragraph 3 of Article 45f lists the conditions to grant an internal MREL waiver in a situation where the subsidiary and the resolution entity are located in the same Member State and provided all other conditions are met.

Paragraph 4 of Article 45f lists the conditions to grant an internal MREL waiver in a situation where the subsidiary and its parent undertaking are located in the same Member State and provided all other conditions are met. This paragraph is meant to cater for situations such as cross-border resolution groups, where the resolution entity would be located in a Member State, while the intermediate parent and the ultimate subsidiary subject to the granting of a waiver are located in another Member State. This paragraph also caters for certain cases of indirect ownership, as further explained.

The question assumes a situation of a resolution group with multiple layers of indirect ownership (daisy chain) with an ultimate subsidiary, an intermediate parent entity and a resolution entity all part of the same resolution group and located in the same Member State. Whether paragraph 3 or 4 would apply depends on which entity is being waived from internal MREL and whether indirect or direct subscription of internal MREL instruments would take place.

When only the ultimate subsidiary is being waived from internal MREL, and is in a situation of indirect ownership with indirect subscription of internal MREL instruments (i.e. where, in line with the resolution strategy and as approved by the resolution authority, the pre-positioning of internal MREL to the ultimate subsidiary would have been achieved, absent any waivers, through indirect subscription via the intermediate parent undertaking in the daisy chain), paragraph 4 of Article 45f would apply. This means that the

requirement to comply on a consolidated basis with the requirement referred to in Article 45(1) falls on the intermediate parent undertaking. In response to question b) above, it would also be the intermediate parent undertaking guaranteeing the commitments entered into by the ultimate subsidiary, pursuant to Article 45f(4), point (c).

However, in a situation of indirect ownership with direct subscription of internal MREL instruments (i.e. where, in line with the resolution strategy and as approved by the resolution authority, the pre-positioning of internal MREL to the ultimate subsidiary would have been achieved, absent any waivers, through direct subscription by the resolution entity), the waiver to be granted to the ultimate subsidiary would fall under paragraph 3 of Article 45f. It would be for the resolution entity to comply with the consolidated requirement and to guarantee the commitments entered into by the ultimate subsidiary.

In response to questions a) and c) above, in the situation where the resolution entity or intermediate parent undertaking finds itself in shortfall with the consolidated external or internal MREL, respectively, condition (b) of Article 45f(3) or (4) would not be satisfied and the resolution authority could not grant the waiver to the ultimate subsidiary. However, if the resolution entity or intermediate parent is on the path towards compliance with its requirements as per the transitional arrangements set pursuant to Article 45m, that condition should be considered as met (see also Q&A 50 in the Commission notice ([2020/C 417/02](#))).

When both the ultimate subsidiary and the intermediate parent entity are being granted waivers at the same time, paragraph 3 of Article 45f would apply to both. However, if the ultimate subsidiary had already been granted a waiver pursuant to paragraph 4 of Article 45f, a subsequent waiver of the intermediate parent undertaking would mean that the condition of point (b) of that paragraph would cease to be met and the resolution authority would need to reassess the waiver to the ultimate subsidiary under paragraph 3.

In response to the last question regarding the condition (f) under paragraphs 3 and 4 of Article 45f BRRD, both the direct and indirect control should be assessed, as explained in the examples above. The indirect control is relevant when the ultimate subsidiary would have otherwise issued internal MREL instruments directly to the resolution entity despite being owned by the intermediate parent undertaking. In this case its waiver would be assessed under paragraph 3, as illustrated above.

Disclaimer:

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely

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