Single Rulebook Q&A

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Status	Final Q&A
Legal act	Directive 2014/59/EU (BRRD)
Topic	MREL
Article	45b
Paragraph	5
Subparagraph	1
COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations	Not applicable
Article/Paragraph	Not applicable
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Disclose name of institution / entity	No
Type of submitter	Credit institution
Subject matter	MREL subordination for smaller banks
Question	Is the subordination requirement for the MREL of smaller banks (i.e. that are not G-SII or part of a G-SII, top tier banks nor banks subject to Article 45c(6)) subject to the limit of the prudential formula referred to in Article 45b(7)? Does the reference to 8% of total liabilities, including own funds, represent a cap, or does this provision include the possibility of full subordination for MREL? Are the conditions referred to in Articles 45b(7) and (8) applicable to smaller banks?
Background on the question	According to Article 45b(5): "5. For resolution entities that are neither G-SIIs nor resolution entities that are subject to Article 45c(5) or (6), the resolution authority may decide that a part of the requirement referred to in Article 45e up to the greater of 8 % of the total liabilities, including own funds, of the entity and the formula referred to in paragraph 7, shall be met using own funds, subordinated eligible instruments, or liabilities as referred to in paragraph 3 of this Article, provided that the following conditions are met [...]" As far as we read, 8% TLOF represent a cap but as far as we understand small banks could be also subject to full subordination.

According to Article 45b(7), only some banks are subject to the definition of 'risky banks'. We would like to understand whether small banks are subject to this definition and requirement: "7. By derogation from paragraph 4 of this Article, the resolution authority may decide that the requirement referred to in Article 45e of this Directive shall be met by resolution entities that are G-SIIs or resolution entities that are subject to Article 45c(5) or (6) of this Directive using own funds, subordinated eligible instruments, or liabilities as referred to in paragraph 3 of this Article, to the extent that, due to the obligation of the resolution entity to comply with the combined buffer requirement and the requirements referred to in Article 92a of Regulation (EU) No 575/2013, Article 45c(5) and Article 45 e of this Directive, the sum of those own funds, instruments and liabilities does not exceed the greater of: (a) 8 % of total liabilities, including own funds, of the entity; or (b) the amount resulting from the application of the formula Ax2+Bx2+C, where A, B and C are the following amounts: A = the amount resulting from the requirement referred to in point (c) of Article 92(1) of Regulation (EU) No 575/2013; B = the amount resulting from the requirement referred to in Article 104a of Directive 2013/36/EU; C = the amount resulting from the combined buffer requirement. 8. Resolution authorities may exercise the power referred to in paragraph 7 of this Article with respect to resolution entities that are G-SIIs or that are subject to Article 45c(5) or (6), and that meet one of the conditions set out in the second subparagraph of this paragraph, up to a limit of 30 % of the total number of all resolution entities that are G-SIIs or that are subject to Article 45c(5) or (6) for which the resolution authority determines the requirement referred to in Article 45e. The conditions shall be considered by resolution authorities as follows: (a) substantive impediments to resolvability have been identified in the preceding resolvability assessment and either: (i) no remedial action has been taken following the application of the measures referred to in Article 17(5) in the timeline required by the resolution authority, or (ii) the identified substantive impediments cannot be addressed using any of the measures referred to in Article 17(5), and the exercise of the power referred to in paragraph 7 of this Article would partially or fully compensate for the negative impact of the substantive impediments on resolvability; (b) the resolution authority considers that the feasibility and credibility of the resolution entity's preferred resolution strategy is limited, taking into account the entity's size, its interconnectedness, the nature, scope, risk and complexity of its activities, its legal status and its shareholding structure; or (c) the requirement referred to in Article 104a of Directive 2013/36/EU reflects the fact that the resolution entity that is a G-SII or that is subject to Article 45c(5) or (6) of this Directive is, in terms of riskiness, among the top 20 % of institutions for which the resolution authority determines the requirement referred to in Article 45(1) of this Directive. For the purposes of the percentages referred to in the first and second subparagraphs, the resolution authority shall round the number resulting from the calculation up to the closest whole number. Member States may, by taking into account the

	specificities of their national banking sector, including in particular the number of resolution entities that are G-SIIs or that are subject to Article 45c(5) or (6) for which the national resolution authority determines the requirement referred to in Article 45e, set the percentage referred to in the first subparagraph at a level higher than 30%."
Final answer	For resolution entities that are not Global Systemically Important Institutions (G-SIIs) or part of a G-SII and resolution entities that are subject to Article 45c(5) or (6) of Directive 2014/59/EU, as amended by Directive (EU) 2019/879 (BRRD), the determination of the subordination component of their minimum requirement for own funds and eligible liabilities (MREL) is governed by Article 45b(5). According to that provision, a resolution authority can require that part of the MREL applicable to those resolution entities be met with own funds, other subordinated instruments and certain admissible liabilities where there is a risk that, in resolution, non-subordinated creditors would incur greater losses than they would incur in a winding up under normal insolvency proceedings (risk of breach of the 'no creditor worse off' (NCWO) principle). Point (c) of the first sub-paragraph of Article 45b(5) further provides that the subordination component determined by the resolution authority cannot exceed the amount necessary to ensure that the NCWO principle is not breached. In addition to this limitation, Article 45b(5) imposes another quantitative limitation to the subordination component that can be required of those banks. Under the introductory part of Article 45b(5), the level of subordination cannot exceed the greater of: (i) 8% of the total liabilities, including own funds, of the resolution entity; (ii) the formula referred to in Article 45b(7). The reference in paragraph 5 of Article 45b to paragraph 7 of that same Article is meant to encompass only the formula mentioned therein. The criteria for setting the subordination component of the MREL of resolution entities that are not G-SIIs or part of a G-SII, top tier banks or systemic institutions subject to Article 45c(6) are those mentioned in Article 45b(5) and they essentially relate to the need to address risks arising from compliance with the NCWO principle. In addition, when taking a decision on the subordinated part of MREL, the resolution authority is required to consult the competent authority and to take into account the criteria listed in Article 45b(9). The conditions laid down in Article 45b(8) are not applicable to those resolution entities. **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 intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.
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