

Certain aspects of the minimum requirement for own funds and eligible liabilities

2023/0113(COD) - 18/04/2023 - Legislative proposal

PURPOSE: to adjust the treatment of liquidation entities under the MREL framework and the possibilities to comply with the internal MREL on a consolidated basis.

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: the EU crisis management framework is well-established, however, recent episodes of bank failures have shown that there is need for improvements. The proposed amendments to Directive 2014/59/EU (the Bank Recovery and Resolution Directive or BRRD) and to Regulation (EU) No 806/2014 (the Single Resolution Mechanism Regulation or SRMR) are part of the crisis management and deposit insurance legislative package.

Directive (EU) 2019/879 of the European Parliament and of the Council and Regulation (EU) 2019/877 of the European Parliament and of the Council amended the minimum capital and eligible liabilities requirement (the MREL) set out in Directive 2014/59/EU of the European Parliament and of the Council and Regulation (EU) No 806/2014 of the European Parliament and of the Council, which applies to credit institutions and investment firms established in the Union and any other entity falling within the scope of Directive 2014/59/EU or Regulation (EU) No 806/2014.

The EU MREL framework was further amended by Regulation (EU) 2022/2036 of the European Parliament and of the Council, which established methods for the indirect subscription of instruments eligible for meeting the internal MREL.

A Commission review found that it would be appropriate and proportionate to the objectives pursued by the internal MREL rules **to allow resolution authorities to set the internal MREL on a consolidated basis for a range of entities** that is wider than the range resulting from the application of Directive 2014/59/EU and Regulation (EU) No 806/2014, where such wider range covers institutions and entities that are not resolution entities themselves, but that are subsidiaries of resolution entities and control themselves subsidiaries subject to MREL ('intermediate entities').

The aim of the CMDI reform is to build on the objectives of the crisis management framework and to ensure a more consistent approach to resolution, so that any bank in crisis can exit the market in an orderly manner, while preserving financial stability, taxpayer money and ensuring depositor confidence. In particular, the existing resolution framework for smaller and medium-sized banks needs to be strengthened with respect to its design, implementation and, most importantly, incentives for its application, so that it can be more credibly applied to those banks.

CONTENT: the Commission therefore proposes to **amend Directive 2014/59/EU and Regulation (EU) No 806/2014** as regards certain aspects of the minimum requirement for own funds and eligible liabilities in order to adjust the treatment of liquidation entities under the MREL framework and the possibilities to comply with the internal minimum requirement for own funds and eligible liabilities on a consolidated basis.

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

The proposal lays down:

- a new definition, 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;
- a general rule that resolution authorities should not determine MREL for liquidation entities;
- clarification on the application of **prior permissions** regime to liquidation entities;
- provisions on liquidation entities as part of daisy chain structures;
- a new article providing 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;
- simplifying the provisions on **reporting** for liquidation entities;
- measures to give the resolution authority the **discretionary power** to set internal MREL on a consolidated basis to a subsidiary of a resolution entity. 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.