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

2023/0113(COD) - 27/02/2024 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 485 votes to 35, with 104 abstentions, a legislative resolution on the 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.

The proposed Directive aims to amend 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) 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 European Parliament's position adopted at first reading under the ordinary legislative procedure amends the Commission's proposal as follows:

Definition of a liquidation entity

The amended text stated that having clarity on what constitutes a liquidation entity is essential for the proper functioning of the deduction and consolidation frameworks and for calculating the MREL for specific entities.

To that end, a definition of liquidation entity should be laid down, focusing on the identification of liquidation entities at the stage of resolution planning. Therefore, resolution authorities should carry out a proper assessment of institutions and entities within the scope of Directive 2014/59/EU and Regulation (EU) No 806/2014 when drawing up resolution plans. A central part of that assessment is identifying whether the institution or entity carries out critical functions. Without prejudice to the assessment of the importance of the institution or entity at national or regional level, a thorough analysis of the relevance of the potential liquidation entity within a resolution group is also expected to be carried out. An institution or entity that represents a significant part of the total risk exposure amount, leverage ratio exposure or operating income of a resolution group should not in principle be identified as a liquidation entity.

Application of the minimum requirement

By way of derogation, the Board may assess whether it is justified to determine the requirement for a liquidation entity on an individual basis in an amount exceeding the amount sufficient to absorb losses. The Board should take into account in its assessment, in particular, any possible impact on financial stability and on the **risk of contagion to the financial system**, including with regard to the financing capacity of deposit guarantee schemes.

A resolution authority may decide to determine the minimum requirement for own funds and eligible liabilities **on a consolidated basis** for a subsidiary where the resolution authority concludes that all of the following conditions are met: (i) the credibility and feasibility of the group resolution strategy; (ii) the subsidiary’s capacity to comply with its own funds requirement after the exercise of write-down and

conversion powers; and (iii) the adequacy of the internal loss transfer and recapitalisation mechanism, including the write-down or conversion of relevant capital instruments and eligible liabilities of the subsidiary concerned or of other entities in the resolution group.

Transposition

To ensure consistency, the amendments to Regulation (EU) No 806/2014 and the national measures transposing the amendments to Directive 2014/59/EU should apply from the same date.

The amended text stressed however that it is appropriate to provide for an earlier application date in respect of the amendments to the provisions concerning the possibility to comply with the consolidated internal MREL, in order to cater for the need of resolution authorities to adopt new decisions determining the MREL for that purpose and to increase legal certainty for the banking groups that would be subject to that provision in view of the general MREL compliance deadline of 1 January 2024 laid down in Directive 2014/59/EU and Regulation (EU) No 806/2014.

For that reason, the new rules on the consolidated internal MREL under Regulation (EU) No 806/2014 should apply one day after the date of entry into force of this amending Directive. That would also signal to all banking groups and resolution authorities to which Directive 2014/59/EU and Regulation (EU) No 806/2014 apply that measures may be necessary to bridge the period from 1 January 2024 until the application date of the national measures transposing the provisions of this amending Directive.