

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

2023/0113(COD) - 22/04/2024 - Final act

PURPOSE: to adjust the treatment of liquidation entities under the minimum requirement for own funds and eligible liabilities (MREL) framework and the possibilities to comply with the internal MREL on a consolidated basis.

LEGISLATIVE ACT: Directive (EU) 2024/1174 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.

CONTENT : the Directive amends 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.

Definition of a liquidation entity

The definition of ‘liquidation entity’ is clarified, focusing on the identification of liquidation entities at the stage of resolution planning. A ‘liquidation entity’ is defined as 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 under normal insolvency proceedings, or an entity, within a resolution group other than a resolution entity, in respect of which the group resolution plan does not provide for the exercise of write-down and conversion powers.

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.

Transparent application of the MREL

Pursuant to Directive 2014/59/EU, institutions and entities are to report to their competent and resolution authorities the levels of eligible liabilities 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.

Application date

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 regulation 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. This would 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.

ENTRY INTO FORCE AND APPLICATION: 12.5.2024. The date of application is set at 14.11.2024 and from 13.5.2024 depending on the provisions.

TRANSPOSITION: no later than 13.11.2024.