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Status	Final Q&A
Legal act	Directive 2014/59/EU (BRRD)
Topic	MREL
Article	45a
Paragraph	1
Subparagraph	-
COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations	Not applicable
Article/Paragraph	N/A
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Disclose name of institution / entity	No
Type of submitter	Competent authority
Subject matter	Interpretation of points (a) and (b) of Article 45a(1)
Question	Do points (a) and (b) of Article 45(3)a(1) state conditions for exemption from the MREL requirement for mortgage credit institutions financed by covered bonds? If so, how can resolution authorities verify these conditions beforehand?
Background on the question	Article 45(3)a(1) of Directive 2014/59/EU (BRRD) (Application of the minimum requirementExemption from the minimum requirement for own funds and eligible liabilities) provides that: “Notwithstanding paragraph 1, resolution authorities shall exempt mortgage credit institutions financed by covered bonds which, according to national law are not allowed to receive deposits from the obligation to meet, at all times, a minimum requirement for own funds and eligible liabilities, as: (a) those institutions will be wound-up through national insolvency procedures, or other types of procedure implemented in accordance with Article 38, 40 or 42 of this Directive, provided for those institutions; and (b) such national insolvency procedures, or other types of procedure, will ensure that creditors of those institutions, including holders of covered bonds where relevant, will bear losses in a way that meets the resolution objectives.”“Notwithstanding Article 45, resolution authorities shall exempt from the requirement laid down in Article 45(1)

mortgage credit institutions financed by covered bonds which are not allowed to receive deposits under national law, provided that all of the following conditions are met:(a) those institutions will be wound up in national insolvency proceedings, or in other types of proceedings laid down for those institutions and implemented in accordance with Article 38, 40 or 42; and(b) the proceedings referred to in point (a), ensure that creditors of those institutions, including holders of covered bonds, where relevant, bear losses in a way that meets the resolution objectives.”Points (a) and (b) seem to be an explanation of why mortgage credit institutions financed by covered bonds which, according to national law, are not allowed to receive deposits shall be exempted from the obligation to meet MREL. Points (a) and (b) could however also be interpreted as conditions that must be met in order to exempt such mortgage credit institutions from the MREL requirement.In addition, neither (i) the exact objective of this legal provision, i.e. why these institutions should be exempt for the obligation to meet MREL requirements is clear, nor (ii) how the resolution authority can verify beforehand the conditions provided under points a) and b) of Article 45(3)a(1).

Final answer

Points (a) and (b) of Article 45(3)a(1) Directive 2014/59/EU (BRRD) should be interpreted as prerequisite conditions in order to apply the exemption from MREL to mortgage credit institutions financed by covered bonds.

The mortgage credit institutions financed by covered bonds have a specific treatment because in some legal regimes, they are, by law, subject to insolvency proceedings: they do not take deposits and, partly on that basis, the national legislator has made the choice not to put them into resolution but into insolvency. Moreover, to ensure that losses are absorbed by creditors including, where relevant, holders of covered bonds and not by injecting public funds, point (b) explicitly states that the national insolvency procedure applicable to such institutions must comply with the resolution objectives.

Disclaimer:

This question goes beyond matters of consistent and effective application of the regulatory framework. A Directorate General of the Commission (Directorate General Financial Stability, Financial Services and Capital Markets Union) has prepared the answer, albeit that only the Court of Justice of the European Union can provide definitive interpretations of EU legislation. This is an unofficial opinion of that Directorate General, which the European Banking Authority publishes on its behalf. The answers are not binding on the European Commission as an institution. You should be aware that the European Commission could adopt a position different from the one expressed in such Q&As, for instance in infringement proceedings or after a detailed examination of a specific case or on the basis of any new legal or factual elements that may have been brought to its attention.

Link	https://www.eba.europa.eu/single-rule-book-qa/-/qna/view/publicId/2017_3206
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