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<b>Topic</b>	MREL
<b>Article</b>	45m
<b>Paragraph</b>	1
<b>Subparagraph</b>	-
<b>COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations</b>	Not applicable
<b>Article/Paragraph</b>	-
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<b>Disclose name of institution / entity</b>	No
<b>Type of submitter</b>	Resolution authority
<b>Subject matter</b>	Minimum requirement for own funds and eligible liabilities (MREL) - Transitional periods
<b>Question</b>	<p>1) Can resolution authorities set transition periods with an end-date before 1 January 2024?</p> <p>2) Can resolution authorities set a transition period with an end-date before 1 January 2022 (date referred to in the context of the "intermediate target" introduced in the legislation?)</p>
<b>Background on the question</b>	<p>The first sentence of Article 45m(1) of Directive 2014/59/EU as amended by Directive (EU) 2019/879 (BRRD) specifies that resolution authorities shall determine "appropriate transitional periods" to comply with the relevant MREL requirements. The second sentence however specifies that the deadline for institutions to comply with the relevant MREL requirements shall be 1 January 2024. The reference to the term "deadline", specifying a more generic provision granting resolution authorities the possibility to set "adequate" transition periods would merit clarity (hence question 1). In parallel, the second subparagraph of Article 45m(1) BRRD specifies that an "intermediate" target shall be complied with at 1 January 2022, and shall be set to ensure a linear build-up of MREL capacity towards the requirement.</p>

The reference to an "intermediate" target may be understood in relation to a "final" target to be complied with after 1 January 2022. However, where a bank already complies (or intends to comply) with its final target earlier, can resolution authorities set a transitional period that would end before 1 January 2022? If not, how should the reference to the linear build-up be understood? The question is also valid for the relevant SRMR provisions.

**EBA answer**

Resolution authorities cannot set transitional periods with an end-date before 1 January 2024, based on the following:

- The first sentence of Article 45m(1) of Directive 2014/59/EU, as amended by Directive (EU) 2019/879 (BRRD), requires resolution authorities to set appropriate transitional periods for institutions or entities referred to in points (b), (c) and (d) of Article 1(1) to comply with the MREL requirements set under Articles 45e or 45f or with the subordination component set under Article 45b. For institutions or entities already in activity on the date of application of Directive (EU) 2019/879 (i.e. 28 December 2020), the law itself determines what is an appropriate transitional period by requiring it to be set at 1 January 2024 (except where the third subparagraph of Article 45m(1) applies). The law also determines the appropriate transitional period for institutions and entities to comply with the minimum requirements referred to in Article 45c(5) and (6), which is 1 January 2022. The same is done for the situations and the requirements specified in Article 45m(3) and (4) - respectively, two and three years after the events mentioned therein. For the remaining situations - i.e., when resolution authorities set a transitional period ending after 1 January 2024 under the third subparagraph of Article 45m(1), when an institution or entity has been subject to resolution action or to the exercise of the write-down and conversion power as mentioned in Article 45m(5), or in the case when the resolution plan is reviewed under Article 10(6), for example, following a material change to the legal or organizational structure of the bank - the appropriate transitional period shall be set by resolution authorities taking into account the criteria laid down in Article 45m(7).
- This ensures a proportionate treatment and a level playing field for institutions of varying capacity to access capital markets. Considering that, under Article 494(1) of Regulation (EU) 575/2013, as amended by Regulation (EU) 2019/876, Global Systemically Important Institutions (G-SIIs) have until 1 January 2022 to comply with their final Pillar 1 MREL referred to in Article 92a(1) of that Regulation, it is proportionate to require that the deadline for MREL compliance of smaller institutions is at least equal (as provided for the minimum level of the requirement for certain systemic banks set out under Articles 45c(5) and (6), as per Article 45m(2)) or longer;
- The policy intention behind the 2022 intermediate target levels was to ensure that institutions build up their MREL capacity gradually over

time, so as to smoothen their transition towards compliance with the final level of the requirement. If resolution authorities were empowered to set transitional periods for the final level of MREL that end prior to 1 January 2024, then there would not have been the need to introduce the notion of intermediate target level to be complied with on a fixed date;

- The rules on public disclosure of MREL (Article 3(1) of the amending Directive) provide that the application of public disclosure requirements referred to in Article 45i(3) starts on 1 January 2024, unless a longer compliance deadline has been set (in which case, the application date is as of such later compliance deadline). The possibility of the disclosure requirements applying before 1 January 2024 is not mentioned, due to the fact that under Article 45m(1) it is not intended to allow resolution authorities to require shorter transitional periods;
- BRRD uses the terms “deadline” and “transitional period” with the same purpose. See, e.g., Article 10(7)(o), which requires resolution plans to include “the requirements referred to in Article 45e and 45f and a deadline to reach that level in accordance with Article 45m [...]”;
- The use of the term “deadline” in the context of compliance with a requirement means that, prior to such a date, the entity cannot be obliged to comply with that specific requirement nor can it be subject to the negative consequences for non-compliance with it (which will apply as from the day following the deadline).

As regards the second question, since transitional periods / deadlines cannot be set prior to 1 January 2024, by extension they cannot be set also prior to 1 January 2022.

In cases where an institution would already comply with its MREL under the revised framework, i.e., in absence of an MREL shortfall, the application of the notion of a linear build-up when setting its intermediate target would imply that the intermediate target level to be complied with at 1 January 2022 would be equal to the final level of MREL for 1 January 2024.

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