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Article	45c
Paragraph	3
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COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations	Not applicable
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Disclose name of institution / entity	No
Type of submitter	Resolution authority
Subject matter	Minimum requirement for own funds and eligible liabilities (MREL) - Calibration
Question	When setting a recapitalisation amount enabling the “resolution group resulting from resolution” to meet its prudential requirements “after the implementation of the preferred resolution strategy”, should the resolution authority consider the changes resulting from the whole sequence of actions which implements the preferred resolution strategy, irrespective of the point in time when they are likely to be taken, or only changes resulting from those actions implemented after entry into the formal resolution phase (post-Failing-Or-Likely-To Fail - FOLTF)?
Background on the question	For a proper and harmonised implementation of the amendments to BRRD, it is necessary for resolution authorities to have a clear and common understanding of the methodology used to set MREL targets. Adjustments to the recapitalisation amount are the most prone to interpretation since they relate by definition to a hypothetical entity, namely the institution/resolution group that will emerge from the recovery and resolution process. Therefore, a consistent reading of the text is needed on those issues. Article 45c(3) in BRRD mandates the resolution authority to take into account the changes in RWA and leverage ratio exposure measure resulting from the

implementation of the preferred resolution strategy. In particular, the resolution authority has to “adjust for any changes resulting from resolution actions set out in the resolution plan”. Is this provision limiting the scope of actions to be considered? Questions might specifically arise concerning the exact timeframe to be considered: should the resolution authority look only at what takes place during the formal resolution phase (resolution actions *stricto sensu*, option A) or should it also consider actions which are foreseen in the resolution plan but implemented already in the run-up to resolution (option B)? An answer would prevent different approaches to be taken on this matter, which in turn might lead to significant enough divergences in terms of MREL targets set.

EBA answer

Article 45c(3) of Directive 2014/59/EU as amended by Directive (EU) 2019/879 (BRRD) provides for the rules concerning the determination of the minimum requirement for own funds and eligible liabilities (MREL) for resolution entities. This provision states that the MREL shall be composed of:

- a) an amount of the losses to be absorbed in resolution that corresponds to the resolution entity’s own funds requirements, and
- b) a recapitalisation amount that allows the resolution group resulting from resolution to restore compliance with its own funds requirements after the implementation of the preferred resolution strategy.

The fifth subparagraph of Article 45c(3) further specifies that, when setting the recapitalisation amount, the resolution authority shall:

- a) use the most recently reported values for the relevant total risk exposure amount or total exposure measure, adjusted for any changes resulting from resolution actions set out in the resolution plan; and
- b) after consulting the competent authority, adjust the amount corresponding to the current requirement referred to in Article 104a of Directive 2013/36/EU downwards or upwards to determine the requirement that is to apply to the resolution entity after the implementation of the preferred resolution strategy.

When calibrating the recapitalisation amount, the resolution authority shall assess the impact of all the resolution actions that are planned for the implementation of the preferred resolution strategy by that resolution authority as provided in the group resolution plan.

For this purpose, it is not relevant whether some of those actions (e.g. transfer of assets) could also be implemented prior to resolution by the resolution entity or other entities of the group as part of their recovery plans in accordance with Articles 5 and 7 of BRRD.

There are, therefore, two factors to be considered when determining whether recovery or other measures are relevant to the setting of the recapitalisation amount:

- (a) they are included in the resolution plan as a resolution action that forms part of the preferred resolution strategy; and
- (b) in case they are not implemented by the resolution entity or other entities of the group prior to resolution, the resolution authority has deemed it feasible and credible to implement them in resolution.

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The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.

Link

https://www.eba.europa.eu/single-rule-book-qa/-/qna/view/publicId/2019_4901