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RECOMMENDATIONS

COUNCIL

COUNCIL RECOMMENDATION

of 24 November 2020

on vocational education and training (VET) for sustainable competitiveness, social fairness and resilience

(2020/C 417/01)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 166 and 165 thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Charter of Fundamental Rights of the European Union ([1]) recognises education and access to vocational and continuing training as a fundamental right, the United Nations' Sustainable Development Goals envisage by 2030 equal access for all women and men to affordable and quality technical, vocational and tertiary education, including university, and a substantial increase in the number of youth and adults who have relevant skills, including technical and vocational skills, for employment, decent jobs and entrepreneurship.

(2) The European Pillar of Social Rights ([2]) proclaimed on 17 November 2017 sets out a number of principles to support fair and well-functioning labour markets and welfare systems, including Principle 1 on the right to quality and inclusive education, training and lifelong learning, and Principle 4 on active support to employment.

(3) High quality and innovative vocational education and training systems provide people with skills for work, personal development and citizenship, which help them to adapt to and deliver on the twin digital and green transitions, to cope with emergency situations and economic shocks, while also supporting economic growth and social cohesion. Thereby providing them with skills that help them get or create jobs in demand on the labour market.

(4) Effective vocational education and training policies are essential in order to achieve the goal of promoting a skilled, trained and adaptable workforce and labour markets responsive to economic change, set in Article 145 TFEU.

([1]) OJ C 326, 26.10.2012, p. 391.
([2]) Doc. 13129/17.

(5) The Commission Communication on 'The European Green Deal' ([3]) is Europe's new growth strategy aiming to transform its economy and society and put them on a more sustainable path. Schools, training institutions and universities are well placed to engage with pupils, parents, businesses and the wider community on the changes needed for a successful transition. Pro-active up- and reskilling are necessary to reap the benefits of the green transition.

(6) The Commission Communication on 'A strong social Europe for just transition' ([4]) highlights the need to place skills, employability and human capital at the centre stage, through the European Skills Agenda for sustainable competitiveness, social fairness and resilience ([5]), accompanied by a proposal for a Council Recommendation on vocational education and training. It also announces further work on the European Education Area and a new education and training cooperation framework with the Member States.

(7) The Commission Communication on A New Industrial Strategy for Europe ([6]) calls for decisive action to make lifelong learning a reality for all and ensure that education and training keep pace and help deliver the twin transitions. It also calls on higher and vocational education and training to provide more scientists, engineers and technicians for the labour market. The New Circular Economy Action Plan ([7]) and the EU Biodiversity Strategy for 2030 ([8]) highlight the key role of skills in the transition to a green and clean economy.

(8) The Commission Communication on An SME Strategy for a sustainable and digital Europe ([9]) highlights that availability of skilled staff or experienced managers has become the most important problem for a quarter of EU's micro, small and medium-sized companies (SMEs) and that lack of skilled employees is the most important obstacle to new investment across the EU. Vocational education and training is particularly relevant for SMEs to make sure that their workforce has the skills needed.

(9) The Commission Communication on a Union of Equality: Gender Equality Strategy 2020-2025 ([10]) highlights the importance of vocational education and training for women and men to ensure a gender balance in professions which are, traditionally, male or female dominated, to tackle gender stereotypes.

(10) The Commission Communication on EU budget powering the recovery plan for Europe ([11]) sets out a bold and comprehensive plan for European recovery, based on an emergency European Recovery Instrument ('Next Generation EU') and a reinforced multiannual financial framework for 2021-2027. This plan is based on solidarity and fairness, and deeply rooted in the Union's shared principles and values. The plan sets out how to kick-start the European economy, boost the green and digital transitions, and make it fairer, more resilient and more sustainable for future generations.

(11) Since 2013, the Youth Guarantee ([12]) has helped young people enter the labour market by offering them a quality offer of employment, continued education, apprenticeships or traineeships within four months of becoming unemployed or leaving school. Vocational education and training has been effective in smoothing transition to the labour market for young people at risk of exclusion. In the future, attractive and labour-market relevant vocational education and training, notably apprenticeships can play an even a stronger role under the Youth Guarantee in preventing young people from becoming unemployed and preparing them for future labour market opportunities, in particular as part of the green and digital transitions.

(12) The Commission Proposal for a Regulation of the European Parliament and of the Council on the European Social Fund Plus (ESF+) aims at ensuring better labour market relevance of education and training system and equal access to lifelong learning opportunities for all, through up- and reskilling pathways.

([3]) COM(2019) 640 final.
([4]) COM(2020) 14 final.
([5]) COM(2020) 274 final.
([6]) COM(2020) 102 final.
([7]) COM(2020) 98 final.
([8]) COM(2020) 380 final.
([9]) COM(2020) 103 final.
([10]) COM(2020) 152 final.
([11]) COM(2020) 442 final.
([12]) Council Recommendation of 22 April 2013 on establishing a Youth Guarantee (OJ C 120, 26.4.2013, p. 1).

(13) The Commission Proposal for a Regulation of the European Parliament and of the Council establishing 'Erasmus': the Union programme for education, training, youth and sport and repealing Regulation (EU) No 1288/2013 provides that the integrated nature of the 2014-2020 programme covering learning in all contexts - formal, non-formal and informal, and at all stages of life - should be maintained to boost flexible learning paths allowing individuals to develop those competences that are necessary to face the challenges of the twenty-first century.

(14) The present Recommendation is building on a number of initiatives in the area of education and training and skills that have been developed at European level, as summarised in Annex I and will contribute to the European Skills Agenda for sustainable competitiveness, social fairness and resilience, the updated Digital Education Action Plan, the European Education Area and the strategic framework for European cooperation in education and training.

(15) The present Recommendation aims at fulfilling the objective of the European Education Area to develop a genuine European learning space where high quality and inclusive education and training is not hampered by borders and which aims at removing obstacles for recognition of higher education and upper secondary education and training qualifications and learning periods abroad, and work towards the smoother cross-border validation of training and lifelong learning outcomes.

(16) Building on the priorities of an enhanced European cooperation in vocational education and training (the Copenhagen process), adopted as a Council Resolution on 19 December 2002 ([13]), the objectives of high quality and flexible vocational education and training and of transnational mobility continued to be at the core of the global vision for the modernisation of vocational education and training defined by the Ministers in charge in 2010 in the Bruges Communiqué.

(17) In the Riga Conclusions of 22 June 2015, the Ministers in charge of vocational education and training agreed on a set of priorities to support the achievement of this vision, as integrated in the 2015 Joint Report of the Council and the Commission on the implementation of the strategic framework for European cooperation in education and training (ET 2020) ([14]) and in the 2016 New Skills Agenda for Europe ([15]) which gave a further strong boost to the Union VET policy with a stronger focus on attractiveness and quality.

(18) The Recommendation of the European Parliament and of the Council of 18 June 2009 on the establishment of a European Quality Assurance Reference Framework for Vocational Education and Training ('EQAVET') ([16]) set out a reference framework to support Member States in improving the quality of their vocational education and training systems and to contribute to increased transparency of vocational education and training policy developments between Member States. During the ten years of its implementation, EQAVET has stimulated reforms in national quality assurance systems, but did not contribute significantly to the improvement of transparency of quality assurance arrangements. Furthermore, it was mostly applied in school-based initial vocational education and training. Therefore, the 2009 EQAVET framework should be integrated into this Recommendation and elements addressing the shortcomings of its implementation in relation to the quality of learning outcomes, certification and assessment, stakeholders' consultation, the role of teachers and trainers, work-based learning and flexibility of vocational education and training should be added. In order to improve mutual learning, enhance the transparency and consistency of quality assurance arrangements in the provision of vocational education and training and reinforce mutual trust between EU Member States, EU level peer reviews of quality assurance at system level should be introduced.

(19) The Recommendation of the European Parliament and of the Council of 18 June 2009 on the establishment of a European Credit System for Vocational Education and Training ('ECVET') ([17]) set the objective to improve the recognition, accumulation and transfer of learning outcomes, supporting mobility and lifelong learning as well as the establishment of a EU credit system in vocational education and training. During the ten years of its implementation, ECVET has widely contributed to the development of a better-quality mobility experience through the use and documentation of units of learning outcomes. The concept of ECVET points however was generally not applied and ECVET did not lead to the development of a European credit system in vocational education and training. Therefore, this Council Recommendation should include the key principles of ECVET (e.g. units of learning

([13]) OJ C 13, 18.1.2003, p. 2.
([14]) OJ C 417, 15.12.2015, p. 25.
([15]) COM(2016) 381 final.
([16]) OJ C 155, 8.7.2009, p. 1.
([17]) OJ C 155, 8.7.2009, p. 11.

outcomes) related to flexibility. The ECVET tools (e.g. learning agreement and memorandum of understanding) supporting mobility of vocational learners, are to be further developed in the framework of other EU instruments such as those supported under the Erasmus+ programme. For vocational qualifications at post-secondary and tertiary level, the European Credit Transfer and Accumulation System already in use may be applied.

(20) The Council Recommendation of 15 March 2018 on a European Framework for Quality and Effective Apprenticeships ([18]) identifies 14 key criteria that Member States and stakeholders should use to develop quality and effective apprenticeships ensuring both the development of job-related skills and the personal development of apprentices.

(21) CEDEFOP monitoring of the priorities agreed in the Riga conclusions of 22 June 2015 shows a number of areas where countries have progressed with the modernisation agenda of vocational education and training, in particular in relation to apprenticeships and work based learning, quality assurance, setting up of skills anticipation mechanisms and of advisory bodies involving social partners, increasing permeability and flexibility and recently a stronger focus on digital skills. However, in light of the green and digital transitions there is a need to significantly expand and improve the offer for vocational education and training both for young people and adults, while also increasing the attractiveness and quality of initial vocational education and training.

(22) Many countries have in place initiatives to promote excellence in vocational education and training and to better connect VET to innovation and skills ecosystems. Building upon these examples, the concept of Centres of Vocational Excellence is being piloted with a view to becoming world-class reference points for training in specific areas for both initial training and continuing up-skilling and re-skilling.

(23) In its Opinion on the Future of Vocational Education and Training, adopted in December 2018, the Advisory Committee on Vocational Training ('ACVT') set the vision for an excellent, inclusive and lifelong vocational education and training that meets the requirements of the future generated by economic, technological and societal changes. This Opinion invited the Commission to prepare a proposal to streamline and consolidate the EU policy framework for vocational education and training, its governance and existing instruments in the form of an overarching Council Recommendation.

(24) Given its non-binding nature, this Recommendation respects the principles of subsidiarity and proportionality and should be implemented in accordance with European law, national law and practice. In particular, this Recommendation is without prejudice to the Directive 2005/36/EC ([19]) as amended by Directive 2013/55/EU ([20]) on the recognition of professional qualifications and the regime of automatic recognition provided therein.

Taking into account the following definition of 'vocational education and training':

For the purposes of this Recommendation, vocational education and training is to be understood as the education and training which aims to equip young people and adults with knowledge, skills and competences required in particular occupations or more broadly on the labour market ([21]). It may be provided in formal and in non-formal settings, at all levels of the European Qualifications Framework (EQF), including tertiary level, if applicable,

([18]) OJ C 153, 2.5.2018, p. 1.

([19]) Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, 30.9.2005, p. 22).

([20]) Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation') (OJ L 354, 28.12.2013, p. 132).

([21]) Based on Cedefop definition: European Centre for the Development of Vocational Training: Terminology of European Education and Training Policy, 2014.

HEREBY RECOMMENDS THAT MEMBER STATES:

in accordance with national and Union legislation, available resources, national priorities and circumstances, including the socio-economic situation and the characteristics of national VET systems, and in close cooperation with all relevant stakeholders:

a) work towards implementing a vocational education and training policy which:

— equips young people and adults with the knowledge, skills and competences to thrive in the evolving labour market and society, to manage the recovery and the just transitions to the green and digital economy, in times of demographic change and throughout all economic cycles,

— fosters inclusiveness and equal opportunities and contributes to achieving resilience, social fairness and prosperity for all and

— promotes European vocational education and training systems in an international context so that they are recognised as a worldwide reference for vocational learners;

b) deploy actions and investments for implementing this policy, in accordance with the principles defined below in points 1-21 and

c) work towards achieving by 2025 the following EU-level objectives ([22]) which are part of relevant European monitoring frameworks, including in the area of education and training and social and employment policies:

— the share of employed graduates from VET should be at least 82 % ([23]);

— 60 % of recent graduates from VET benefit from exposure to work-based learning during their vocational education and training ([24]). This objective refers to all forms of work based learning at a workplace, and will also thereby contribute to increased apprenticeship opportunities which can be supported with the Youth Guarantee;

— 8 % of learners in VET benefit from a learning mobility abroad ([25]).

Vocational education and training is agile in adapting to labour market changes

1. Vocational education and training programmes offer a balanced mix of vocational including technical skills well aligned to all economic cycles, evolving jobs and working methods and key competences ([26]), including solid basic skills, digital, transversal, green and other life skills which provide strong foundations for resilience, lifelong learning, lifelong employability, social inclusion, active citizenship and personal development;

([22]) The objectives are defined as EU average values to be achieved collectively by MS. When reporting on progress towards achieving these objectives, including where relevant in the context of the European Semester, the Commission should take into account specificities of different national systems and circumstances. Member States should make full use of Union funding opportunities in line with their national circumstances, priorities and challenges. The three quantitative objectives do not pre-empt decisions on how Union funding instruments under the Multiannual Financial Framework 2021-2027 and the Next Generation EU are implemented.

([23]) This will cover the age group 20-34 who have graduated 1-3 years ago from upper secondary or post-secondary non-tertiary VET.

([24]) This will cover the age group 20-34, having left education and training 1-3 years ago. The indicator will be based on data that will be collected as of 2021 as part of the European Union Labour Force Survey (EU LFS) as defined in the variable identifier 'HATWORK' in the Commission Implementing Regulation (EU) 2019/2240. This refers to work experiences at a workplace in a market or non-market unit (i.e. in a company, government institution or non-profit organisation) that were part of the curriculum of the formal programme that led to the highest level of education successfully completed. If a respondent had several work experiences, the cumulative duration of all work experiences should be considered. The work experiences should be expressed in full-time equivalents.

([25]) This will be measured as the share of mobile learners in a calendar year, as a proportion of a cohort of VET graduates in the same year. The indicator will be based on the mobility data sourced from Erasmus+ data and VET graduate data sourced from the Unesco-OECD-Eurostat. Where available and only if the data provided is comparable to Erasmus+ data, including the duration of mobility, data from national authorities mobility programmes could also be used to complement the data from Erasmus+. In case data from national authorities is included, it should be displayed in a transparent manner.

([26]) The Council Recommendation of 22 May 2018 on Key Competences for Lifelong Learning defines the following key competences: Literacy competence; Multilingual competence; Mathematical competence and competence in science, technology and engineering; Digital competence; Personal, social and learning to learn competence; Citizenship competence; Entrepreneurship competence as well as Cultural awareness and expression competence.

2. Vocational education and training curricula, programme offers and qualifications are regularly updated, as relevant, building on skills intelligence (i.e. graduate tracking systems, skills anticipation mechanisms, including at sectoral and regional levels);

3. Providers of vocational education and training have. in line with national context, an appropriate degree of autonomy, flexibility, support and funding to adapt their training offer to changing skills needs, green and digital transitions and economic cycles, while ensuring quality;

4. Vocational education and training programmes at all levels comprise work-based learning components that are further expanded also in continuing vocational education and training; apprenticeship schemes ([27]) are further developed, to enhance Youth Guarantee offers ([28]), and are complemented by appropriate support ([29]) and measures to stabilise the offer of apprenticeships, and to address specific challenges of small companies; in order to create work-based learning opportunities in different sectors of the economy, incentive measures could be provided for employers in line with national context;

Flexibility and progression opportunities are at the core of vocational education and training

5. Vocational education and training programmes are learner centred, offer access to face-to-face and digital or blended learning, flexible and modular pathways based on the recognition of the outcomes of non-formal and informal learning, and open up career and learning progression; continuing vocational training programmes are designed to be adaptable to labour market, sectoral or individual up- or reskilling needs;

6. Vocational education and training programmes are based on modules or units of learning outcomes and validation mechanisms are in place allowing the transfer, recognition and accumulation of individuals' learning outcomes with a view to gaining a qualification, a partial qualification, as relevant in the national context; ([30]) In initial VET the primary goal is to progress to a full qualification.

Vocational education and training is a driver for innovation and growth and prepares for the digital and green transitions and occupations in high demand

7. Vocational education and training is made resilient by being part of economic, industrial and innovation strategies, including those linked to recovery, green and digital transitions. As a consequence, the offer of vocational education and training needs to be significantly adapted and/or expanded, especially for adults, by fostering the acquisition of entrepreneurial, digital and green skills;

8. Centres of Vocational Excellence act as catalysts for local business investment, supporting recovery, green and digital transitions, European and regional innovation and smart specialisation strategies, development of vocational education and training, including at higher qualification levels (EQF levels 5-8) in line with national context and provide innovative services such as clusters and business incubators for start-ups and technology innovation for SMEs, as well as innovative reskilling solutions for workers at risk of redundancy;

9. Vocational education and training institutions have access to state-of-the-art infrastructure, have in place digitalisation strategies ([31]) in line with national context and embed environmental and social sustainability in their programmes and organisational management, thus contributing to the implementation of the UN Sustainable Development Goals;

Vocational education and training is an attractive choice based on modern and digitalised provision of training/ skills

10. Initial and continuing vocational education and training are part of the lifelong learning. Flexible and permeable pathways are in place between both initial and continuing vocational education and training, general education and higher education;

([27]) As defined under the Council Recommendation of 15 March 2018 on a European Framework for Quality and Effective Apprenticeships.
([28]) As defined under the Council Recommendation of 22 April 2013 on establishing a Youth Guarantee.
([29]) These might include inter-company training centres.
([30]) In accordance with the Council Recommendation of 20 December 2012 on the validation of non-formal and informal learning.
([31]) For example, the SELFIE self-reflection tool supports VET institutions in using digital technologies for teaching and learning effectively and in enhancing their cooperation with employers in work-based learning schemes.

11. Vocational education and training programmes at EQF levels 5 to 8 are further developed to support a growing need for higher vocational skills in line with national context;

12. Vocational education and training programmes are delivered through an appropriate mix of open, digital and participative learning environments, including learning conducive workplaces and are supported by state-of-the-art and accessible infrastructure, equipment and technology, and versatile pedagogies and tools, for example ICT based simulators, virtual and augmented reality which increase the accessibility and efficiency of training provision, including for small enterprises ([32]);

13. Teachers, trainers and other staff in vocational education and training undertake initial and continuing professional development in order to: deliver high quality training; foster technical and digital skills and effective innovative training methods, including teaching in virtual environment; in line with state of the art vocational and digital pedagogy, work with digital learning tools, and in diverse and multicultural environments. Their career paths become more attractive through broader recruitment approaches, enhanced career opportunities ([33]), as well as strengthened cooperation between vocational teachers/trainers and companies and other workplaces;

14. Internationalisation strategies support a strategic approach to international cooperation in vocational education and training, including in border regions of the EU; such strategies promote successful national practices worldwide and can be implemented by different means such as mobility of learners and teachers/trainers, and participation and joint preparation in international skills competitions;

15. Opportunities for learning mobility of vocational learners and staff, including virtual mobility, long-duration mobility and mobility to third countries are in place, facilitated by the use and recognition of units of learning outcomes and of relevant European tools; ([34])

16. Clear and user-friendly information on learning and career opportunities, and validation opportunities, in the entire EU is ensured through high quality lifelong learning and career guidance services, making full use of Europass and other digital services;

Vocational education and training promotes equality of opportunities

17. VET programmes are inclusive and accessible for vulnerable groups, such as people with disabilities, low-qualified/skilled persons, minorities, people with migrant background and people with fewer opportunities because of their geographical location and/or their social-economically disadvantaged situation; Targeted measures and flexible training formats prevent early leaving from education and training and support the school-to-work transition;

18. VET programmes are accessible through digital learning platforms, supported by tools, devices and internet connection, in particular for vulnerable groups and people in rural or remote areas;

19. Targeted measures promote gender balance in traditionally 'male' or 'female' professions and address gender related and other types of stereotypes together;

Vocational education and training is underpinned by a culture of quality assurance

20. The European Quality Assurance Reference Framework (the EQAVET Framework) as described in Annex II is used in national quality assurance systems, for both initial and continuing vocational education and training; it covers vocational education and training in all learning environments (such as school-based provision and work-based learning, including apprenticeship schemes) and all learning types (digital, face-to-face or blended), delivered by both public and private providers, and is underpinned by a set of indicative descriptors and common reference indicators for quality assurance in vocational education and training applied both at system and provider level, according to national context, as listed in Annex II;

([32]) These may furthermore include collaborative teaching, interdisciplinary and project-based learning, and new organisational methods in training institutions and companies, as well as artificial intelligence.

([33]) These may include multiple paths for career progression, recognition of previous professional experience, hybrid teachers/trainers in line with national context.

([34]) For example, templates for the Memorandum of Understanding and the Learning Agreement.

21. A Quality Assurance National Reference Point for vocational education and training continues to bring together all relevant stakeholders at national and regional levels to:

    — take concrete initiatives to implement and further develop the EQAVET Framework,

    — inform and mobilise a wide range of stakeholders, including Centres of Vocational Excellence, to contribute to implementing the EQAVET framework,

    — support self-evaluation as a complementary and effective means of quality assurance to allow the measurement of success and the identification of areas for improvement, including with respect to digital readiness of VET systems and institutions

    — participate actively in the European network for quality assurance in vocational education and training,

    — provide an updated description of the national quality assurance arrangements based on the EQAVET Framework,

    — engage in EU level peer reviews ([35]) of quality assurance to enhance the transparency and consistency of quality assurance arrangements, and to reinforce trust between the Member States;

Implementation at national level

It is recommended that Member States take actions to implement this policy at national level, together with social partners and other relevant stakeholders. In doing so, they should:

22. Support sustainable partnerships for the governance of vocational education and training, in accordance with national context and, where relevant, through public-private partnerships. Involve social partners and all relevant stakeholders, including vocational education and training institutions, industries and businesses of all sizes, public and private employment services, VET teachers and trainers and their representatives, intermediary bodies such as chambers of industry, commerce and crafts, professional and sectoral organisations, national coordinators for the Youth Guarantee, ESF and other EU initiatives, the information technologies sector, Centres of Vocational Excellence, clusters, learners' and parents' organisations, as well as local, regional and national authorities. Promote such partnerships at regional and sectoral level;

23. Make best use of the European transparency tools such as the European Qualifications Framework, the European Credit Transfer and Accumulation System (ECTS), Europass and the European Skills, Competences, Qualifications and Occupations (ESCO), facilitate automatic mutual recognition of qualifications and the outcomes of learning periods abroad ([36]), enable learners to use the various features of Europass (e.g. recording their experience, skills and qualifications in an online profile that serves for career guidance, mobility experience, obtaining digitally signed credentials, and receiving suggestions and searching for learning and job opportunities, qualifications, validation, recognition, etc.);

24. Make best use of European Union funds and instruments supporting reforms and/or investment in vocational education and training, including on digitalisation and environmental sustainability, such as the Next Generation EU (Recovery and Resilience Facility, REACT-EU), European Social Fund+, SURE, the European Regional Development Fund, InvestEU, Erasmus+, Horizon Europe, Interreg, Digital Europe, the Just Transition Mechanism and the European Agricultural Fund for Rural Development, and the Modernisation Fund; stimulate further investments in vocational education and training from both public and private sectors;

25. Define by building on relevant existing national arrangements and financial frameworks measures to be taken for the implementation of this Recommendation at national level within 18 months of its adoption and follow up their implementation, including with national resource allocations as adequate at national level and with a strong focus on mainstreaming digitalisation and environmental sustainability across the entire VET sector with due regard to the responsibility/autonomy of education and training institutions in line with national context.

([35]) A peer review is a type of voluntary mutual learning activity with the objective to support the improvement and transparency of quality assurance arrangements at system level not leading to accreditation procedures, based on a specific methodology to be developed by the European Network for quality assurance in vocational education and training.

([36]) In line with the Council Recommendation of 26 November 2018 on promoting automatic mutual recognition of higher education and upper secondary education and training qualifications and the outcomes of learning periods abroad.

HEREBY WELCOMES THE COMMISSION'S INTENTION, WITH DUE REGARD FOR SUBSIDIARITY, TO:

implement the Union's vocational education and training policy, supporting the action of the Member States, including through:

26. Ensuring effective governance of the EU policy for vocational education and training through the tripartite Advisory Committee on Vocational Training, on the basis of a rolling work programme and in cooperation with Directors-General for Vocational Education and Training ([37]), learners' representatives and providers of vocational education and training;

27. Ensuring that the EU policy for vocational education and training is fully reflected in taking forward the EU Recovery Plan, the European Green Deal and the New Industrial Strategy for Europe, the SME-Strategy for a sustainable and digital Europe and is a consistent and coherent part of the European Skills Agenda for sustainable competitiveness, social fairness and resilience, the Digital Education Action Plan, the overall European cooperation framework for education and training and the European Education Area;

28. Further providing support for structural reforms on apprenticeship through the apprenticeship support service and a new boost to the European Alliance for Apprenticeships in synergy with the Youth Guarantee; gradually expanding support services for vocational education and training in cooperation with CEDEFOP;

29. Exploring the concept and use of microcredentials, including in VET, together with Member States and relevant stakeholders, including in the context of the EQF Advisory Group, as proposed in the European Skills Agenda.

30. Supporting the goal of gradually establishing and developing European Platforms of Centres of Vocational Excellence and exploring European Vocational Core Profiles together with Member States and relevant stakeholders, as part of Europass platform and complemented, where possible, by vocational digital content developed in the framework of European transparency tools, with a view to facilitate mobility of learners and workers and the transparency and recognition of qualifications;

31. Supporting qualitative and effective digitalisation of VET provision in both school-based and work-based learning through promoting the use of European competence frameworks ([38]) and self-assessment tools ([39]), and exploring the feasibility of an EU wide survey for VET schools;

32. Reinforcing the European Alliance for Apprenticeships and the Digital Skills and Job Coalitions as announced in the European Skills Agenda;

33. Promoting European vocational education and training systems in an international context so that they are recognised as a worldwide reference for vocational learners, including by supporting internationalisation of vocational education and training systems also with regard to EU candidate countries and to European Neighbourhood countries in cooperation with the European Training Foundation, skills competitions and communication campaigns to raise the attractiveness and image of VET and providing user-friendly access to information about vocational education and training and related career opportunities, building and further developing the Europass features;

34. Cooperating with international organisations, in particular OECD, ILO, UNESCO and the World Bank, in the field of vocational education and training.

35. Supporting the Member States' efforts for the implementation of this Recommendation, strengthening capacity of vocational education and training institutions, including their digitalisation and environmental sustainability and promoting research in VET at both national and EU level through funding from the relevant Union funds and programmes (the Next Generation EU (Recovery and Resilience Facility and REACT-EU), European Social Fund+, SURE, European Regional Development Fund, InvestEU, Erasmus+, Horizon Europe, Interreg, Digital Europe, Just Transition Mechanism, the European Agricultural Fund for Rural Development, the Modernisation Fund);

([37]) Directors-General for Vocational Education and Training are designated by the Member States.

([38]) Such as the Digital Competence Framework for Citizens (DigComp), Digital Competence Framework for Educators (DigCompEdu) and the Digital Competence Framework for Organisations (DigCompO).

([39]) Such as SELFIE.

36. Ensuring qualitative and quantitative monitoring in line with the common objectives defined in this Recommendation as well as other relevant data, including on investment, and feeding this data into the European Semester and relevant European monitoring and reporting frameworks and reporting to the Council on the implementation of the Recommendation every five years, building on data available at national and European level and annual monitoring by CEDEFOP.

This Recommendation replaces the Recommendation of the European Parliament and of the Council of 18 June 2009 on the establishment of a European Quality Assurance Reference Framework for Vocational Education and Training (EQAVET), and the Recommendation of the European Parliament and of the Council of 18 June 2009 on the establishment of a European Credit System for Vocational Education and Training (ECVET).

Done at Brussels, 24 November 2020.

For the Council
The President
M. ROTH

ANNEX I

Relevant Union acts in the field of skills, education and training

1. Council Recommendation of 28 June 2011 on policies to reduce early school leaving ([1]).

2. Council Recommendation of 20 December 2012 on the validation of non-formal and informal learning ([2]).

3. 2015 Joint Report of the Council and the Commission on the implementation of the strategic framework for European cooperation in education and training (ET 2020) – New priorities for European cooperation in education and training ([3]).

4. Council Recommendation of 19 December 2016 on Upskilling Pathways: New Opportunities for Adults ([4]).

5. Council Recommendation of 22 May 2017 on the European Qualifications Framework for lifelong learning, and repealing the recommendation of the European Parliament and of the Council of 23 April 2008 on the establishment of the European Qualifications Framework for lifelong learning ([5]).

6. Council Recommendation of 20 November 2017 on tracking graduates ([6]).

7. Decision (EU) 2018/646 of the European Parliament and of the Council of 18 April 2018 on a common framework for the provision of better services for skills and qualifications (Europass) and repealing Decision No 2241/2004/EC ([7]).

8. Council Recommendation of 22 May 2018 on key competences for lifelong learning ([8]).

9. Council conclusions on moving towards a vision of a European Education Area ([9]).

10. Council Recommendation of 26 November 2018 on promoting automatic mutual recognition of higher education and upper secondary education and training qualifications and the outcomes of learning periods abroad ([10]).

11. Council conclusions on the implementation of the Council Recommendation on Upskilling Pathways: New Opportunities for Adults ([11]).

12. Council Resolution on further developing the European Education Area to support future-oriented education and training systems ([12]).

13. Council conclusions on the Economy of Wellbeing ([13]).

14. Commission Communication on 'Annual Sustainable Growth Strategy 2020' ([14]).

([1]) OJ C 191, 1.7.2011, p. 1.
([2]) OJ C 398, 22.12.2012, p. 1.
([3]) OJ C 417, 15.12.2015, p. 25.
([4]) OJ C 484, 24.12.2016, p. 1.
([5]) OJ C 189, 15.6.2017, p. 15.
([6]) OJ C 423, 9.12.2017, p. 1.
([7]) OJ L 112, 2.5.2018, p. 42.
([8]) OJ C 189, 4.6.2018, p. 1.
([9]) OJ C 195, 7.6.2018, p. 7.
([10]) OJ C 444, 10.12.2018, p. 1.
([11]) OJ C 189, 5.6.2019, p. 23.
([12]) OJ C 389, 18.11.2019, p. 1.
([13]) 13432/19.
([14]) COM(2019) 650 final.

ANNEX II

The EQAVET Framework

Part A. *EQAVET indicative descriptors*

This annex proposes indicative descriptors aiming to support Member States and VET providers, as they deem appropriate, when implementing the EQAVET Framework. They are structured by phases of the quality cycle: *Planning – Implementation – Evaluation – Review*. They can be applied to both initial and continuing VET and are applicable to all learning environments: school based provision and work based learning including apprenticeships schemes.

Quality Criteria	Indicative descriptors at VET-system level	Indicative descriptors at VET-provider level
Planning reflects a strategic vision shared by the relevant stake holders and includes explicit goals/objectives, actions and indicators	Goals/objectives of VET are described for the medium and long terms, and linked to European and Sustainable Development Goals taking into account environmental sustainability considerations Social partners and all other relevant stakeholders participate in setting VET goals and objectives at the different levels Targets are established and monitored through specific indicators (success criteria) Mechanisms and procedures have been established to identify the training needs of the labour market and society	European, national and regional VET policy goals/objectives are reflected in the local targets set by the VET providers Explicit goals/objectives and targets are set and monitored, and programmes are designed to meet them Ongoing consultation with social partners and all other relevant stakeholders takes place to identify specific local/ individual needs Responsibilities in quality management and development have been explicitly allocated There is an early involvement of staff in planning, including with regard to quality development
	An information policy has been devised to ensure optimum disclosure of quality results/ outcomes subject to national/ regional data protection requirements Standards and guidelines for recognition, validation and certification of competences of individuals have been defined VET qualifications are described using learning outcomes Mechanisms are established for the quality assurance of the design, assessment and review of qualifications VET programmes are designed to allow flexible learning pathways and to respond quickly to changing labour market needs	Providers plan cooperative initiatives with relevant stakeholders The relevant stakeholders participate in the process of analysing local needs VET providers have an explicit and transparent quality assurance system in place Measures are designed to ensure compliance with data protection rules

Quality Criteria	Indicative descriptors at VET-system level	Indicative descriptors at VET-provider level
Implementation plans are devised in consultation with stakeholders and include explicit principles	Implementation plans are established in cooperation with social partners, VET providers and other relevant stakeholders at the different levels Implementation plans include consideration of the resources required, the capacity of the users and the tools and guidelines needed for support Guidelines and standards have been devised for implementation at different levels. These guidelines and standards include assessment, validation and certification of qualifications Implementation plans include specific support towards the training of teachers and trainers, including for digital skills and environmental sustainability	Resources are appropriately internally aligned/ assigned with a view to achieving the targets set in the implementation plans Relevant and inclusive partnerships, including those between teachers and trainers, are explicitly supported to implement the actions planned The strategic plan for staff competence development specifies the need for training for teachers and trainers Staff undertake regular training and develop cooperation with relevant external stakeholders to support capacity building and quality improvement, and to enhance performance
	VET providers' responsibilities in the implementation process are explicitly described and made transparent A national and/or regional quality assurance framework has been devised and includes guidelines and quality standards at VET-provider level to promote continuous improvement and self-regulation	VET providers' programmes enable learners to meet the expected learning outcomes and become involved in the learning process VET providers respond to the learning needs of individuals by using a learner – centred approach which enable learners to achieve the expected learning outcomes VET providers promote innovation in teaching and learning methods, in school and in the workplace, supported by the use of digital technologies and online-learning tools VET providers use valid, accurate and reliable methods to assess individuals' learning outcomes
Evaluation of outcomes and processes is regularly carried out and supported by measurement	A methodology for evaluation has been devised, covering internal and external evaluation Stakeholder involvement in the monitoring and evaluation process is agreed and clearly described The national/regional standards and processes for improving and assuring quality are relevant and proportionate to the needs of the sector Systems are subject to self-evaluation, internal and external review, as appropriate	Self-assessment/self-evaluation is periodically carried out under national and regional regulations/frameworks or at the initiative of VET providers, covering also the digital readiness and environmental sustainability of VET institutions Evaluation and review covers processes and results/outcomes of education and training including the assessment of learner satisfaction as well as staff performance and satisfaction

Quality Criteria	Indicative descriptors at VET-system level	Indicative descriptors at VET-provider level
	Early warning systems are implemented Performance indicators are applied Relevant, regular and coherent data collection takes place, in order to measure success and identify areas for improvement. Appropriate data collection methodologies have been devised, e.g. questionnaires and indicators/ metrics	Evaluation and review includes the collection and use of data, and adequate and effective mechanisms to involve internal and external stakeholders Early warning systems are implemented
Review	Procedures, mechanisms and instruments for undertaking reviews are defined and used to improve the quality of provision at all levels Processes are regularly reviewed and action plans for change devised. Systems are adjusted accordingly Information on the outcomes of evaluation is made publicly available	Learners' feedback is gathered on their individual learning experience and on the learning and teaching environment. Together with teachers', trainers' and all other relevant stakeholders' feedback this is used to inform further actions Information on the outcomes of the review is widely and publicly available Procedures on feedback and review are part of a strategic learning process in the organisation, support the development of high quality provision, and improve opportunities for learners. Results/outcomes of the evaluation process are discussed with relevant stakeholders and appropriate action plans are put in place

Part B. *The reference set of EQAVET Indicators*

This section proposes a set of reference indicators which can be used to support the evaluation and quality improvement of national/regional VET systems and/or VET providers when implementing the EQAVET framework.

Indicator	Type of Indicator	Purpose of the Policy
Overarching Indicators for Quality Assurance		
Number 1		
Relevance of quality assurance systems for VET providers: a) share of VET providers applying internal quality assurance systems defined by law/at own initiative b) share of accredited VET providers	Context/Input indicator	Promote a quality improvement culture at VET-provider level Increase the transparency of quality of training Improve mutual trust on training provision
Number 2		
Investment in training of teachers and trainers: a) share of teachers and trainers participating in further training	Input/Process indicator	Promote ownership of teachers and trainers in the process of quality development in VET

Indicator	Type of Indicator	Purpose of the Policy
b) amount of funds invested, including for digital skills		Improve the responsiveness of VET to changing demands of labour market Increase individual learning capacity building Improve learners' achievement
Indicators supporting quality objectives for VET policies		
Number 3		
Participation rate in VET programmes: Number of participants in VET programmes ([1]), according to the type of programme and the individual criteria ([2])	Input/Process/Output indicator	Obtain basic information at VET- system and VET-provider levels on the attractiveness of VET Target support to increase access to VET, including for disadvantaged groups
Number 4		
Completion rate in VET programmes: Number of persons having successfully completed/abandoned VET programmes, according to the type of programme and the individual criteria	Process/Output/ Outcome indicator	Obtain basic information on educational achievements and the quality of training processes Calculate drop-out rates compared to participation rate Support successful completion as one of the main objectives for quality in VET Support adapted training provision, including for disadvantaged groups
Number 5		
Placement rate in VET programmes: a) destination of VET learners at a designated point in time after completion of training, according to the type of programme and the individual criteria ([3]) b) share of employed learners at a designated point in time after completion of training, according to the type of programme and the individual criteria	Outcome indicator	Support employability Improve responsiveness of VET to the changing demands in the labour market Support adapted training provision, including for disadvantaged groups

([1]) For IVT: a period of 6 weeks of training is needed before a learner is counted as a participant. For lifelong learning: percentage of population admitted to formal VET programmes.

([2]) Besides basic information on gender and age, other social criteria might be applied, e.g. early school leavers, highest educational achievement, migrants, persons with disabilities, length of unemployment.

([3]) For IVT: including information on the destination of learners who have dropped out.

Indicator	Type of Indicator	Purpose of the Policy
Number 6		
Utilisation of acquired skills at the workplace: a) information on occupation obtained by individuals after completion of training, according to type of training and individual criteria b) satisfaction rate of individuals and employers with acquired skills/competences	Outcome indicator (mix of qualitative and quantitative data)	Increase employability Improve responsiveness of VET to changing demands in the labour market Support adapted training provision, including for disadvantaged groups
Context information		
Number 7		
Unemployment rate ([4]) according to individual criteria	Context indicator	Background information for policy decision-making at VET-system level
Number 8		
Prevalence of vulnerable groups: a) percentage of participants in VET classified as disadvantaged groups (in a defined region or catchment area) according to age and gender b) success rate of disadvantaged groups according to age and gender	Context indicator	Background information for policy decision-making at VET-system level Support access to VET for disadvantaged groups Support adapted training provision for disadvantaged groups
Number 9		
Mechanisms to identify training needs in the labour market: a) information on mechanisms set up to identify changing demands at different levels b) evidence of the use of such mechanisms and their effectiveness	Context/Input indicator (qualitative information)	Improve responsiveness of VET to changing demands in the labour market Support employability
Number 10		
Schemes used to promote better access to VET and provide guidance to (potential) VET learners: a) information on existing schemes at different levels b) evidence of their effectiveness	Process indicator (qualitative information)	Promote access to VET, including for disadvantaged groups Provide guidance to (potential) VET learners Support adapted training provision

([4]) Definition according to ILO: individuals aged 15-74 without work, actively seeking employment and ready to start work.

II

(Information)

INFORMATION FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

EUROPEAN COMMISSION

COMMISSION NOTICE

relating to the interpretation of certain legal provisions of the revised bank resolution framework in reply to questions raised by Member States' authorities (second Commission Notice)

(2020/C 417/02)

The banking reform package proposed by the European Commission in November 2016 was adopted by the European Parliament and the Council on 20 May 2019 and published in the Official Journal on 7 June 2019. This package includes *inter alia* changes to the Union bank resolution framework through Directive (EU) 2019/879 of the European Parliament and of the Council ([1]), amending Directive 2014/59/EU of the European Parliament and of the Council ([2]) (Bank Recovery and Resolution Directive - BRRD) and Regulation (EU) 2019/877 of the European Parliament and of the Council ([3]), amending Regulation (EU) No 806/2014 of the European Parliament and of the Council ([4]) (Single Resolution Mechanism Regulation - SRMR). This reform implements in the Union the international Total Loss-Absorbing Capacity (TLAC) standard for global systemically important banks adopted by the Financial Stability Board in November 2015 and enhances the application of the minimum requirement for own funds and eligible liabilities (MREL) for all banks. The revised framework should strengthen banks' loss- absorption capacity and facilitate their recapitalisation through private means once they get into financial difficulties and are subsequently placed in resolution.

According to Article 3(1) of Directive (EU) 2019/879, Member States should transpose the provisions of that directive in their national law by 28 December 2020. With the aim to facilitate a timely, consistent and accurate transposition, on 29 September 2020 the Commission adopted a Notice with the answers to the questions raised by Member States'

([1]) Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC (OJ L 150, 7.6.2019, p. 296).

([2]) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

([3]) Regulation (EU) 2019/877 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 806/2014 as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms (OJ L 150, 7.6.2019, p. 226).

([4]) Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ L 225, 30.7.2014, p. 1).

authorities concerning the interpretation of certain BRRD provisions as well as on their interactions with SRMR, Regulation (EU) No 575/2013 of the European Parliament and of the Council ([5]) (Capital Requirements Regulation – CRR) and Directive 2013/36/EU of the European Parliament and of the Council ([6]) (Capital Requirements Directive – CRD) ([7]).

In view of the additional questions received from Member States' authorities, the Commission intends to provide in the Annex to this second Notice the answers to those questions.

Against this background, the Commission adopts in this Notice answers related to the following legal acts:

— Directive (EU) 2014/59/EU (BRRD), as amended by Directive (EU) 2019/879,

— Regulation (EU) No 806/2014 (SRMR), as amended by Regulation (EU) 2019/877,

— Regulation (EU) No 575/2013 (CRR), as amended by Regulation (EU) 2019/876 of the European Parliament and of the Council ([8]),

— Directive 2013/36/EU (CRD), as amended by Directive (EU) 2019/878 of the European Parliament and of the Council ([9]).

This Notice clarifies the provisions already contained in the applicable legislation. It does not extend in any way the rights and obligations deriving from such legislation nor introduce any additional requirements of the concerned operators and competent authorities. This Notice is merely intended to assist Member States' authorities in the transposition in national law and 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 this Notice cannot prejudge the position that the European Commission might take before the Union and national courts.

This second Notice complements the Notice that has already been adopted by the Commission on 29 September 2020.

([5]) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

([6]) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

([7]) Commission Notice relating to the interpretation of certain legal provisions of the revised bank resolution framework in reply to questions raised by Member States' authorities (OJ C 321, 29.9.2020, p. 1).

([8]) Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012 (OJ L 150, 7.6.2019, p. 1).

([9]) Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures (OJ L 150, 7.6.2019, p. 253).

ANNEX

List of Abbreviations

AIFM – alternative investment fund managers;

AT1 instruments – Additional Tier 1 instruments referred to in Article 52(1) CRR;

BRRD – Directive (EU) 2014/59/EU of the European Parliament and of the Council ([1]), as amended by Directive (EU) 2019/879 of the European Parliament and of the Council ([2]);

BRRD I – Directive (EU) 2014/59/EU, without any amendments;

CBR – combined buffer requirement as defined in point (6) of Article 128 CRD;

CET1 capital – Common Equity Tier 1 capital referred to in Article 50 CRR;

CRD – Directive 2013/36/EU of the European Parliament and of the Council ([3]), as amended by Directive (EU) 2019/878 of the European Parliament and of the Council ([4]);

CRR – Regulation (EU) No 575/2013 of the European Parliament and of the Council ([5]), as amended by Regulation (EU) 2019/876 of the European Parliament and of the Council ([6]);

EBA – European Banking Authority;

ESMA – European Securities and Markets Authority;

External MREL – minimum requirement for own funds and eligible liabilities applicable to resolution entities and referred to in Article 45e BRRD;

G-SII – global systemically important institution;

Internal MREL – minimum requirement for own funds and eligible liabilities applicable to subsidiaries of a resolution entity or of a third-country entity but which are not themselves resolution entities referred to in Article 45f BRRD;

M-MDA – Maximum Distributable Amount related to the minimum requirement for own funds and eligible liabilities referred to in Article 16a BRRD;

MiFID – Directive 2014/65/EU of the European Parliament and of the Council ([7]);

MPE – multiple point of entry;

([1]) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

([2]) Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC (OJ L 150, 7.6.2019, p. 296).

([3]) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

([4]) Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures (OJ L 150, 7.6.2019, p. 253).

([5]) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

([6]) Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012 (OJ L 150, 7.6.2019, p. 1).

([7]) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

MREL – minimum requirement for own funds and eligible liabilities;

NCWO – no creditor worse off in resolution than under normal insolvency proceedings;

SEL – subordinated eligible liability which meets the conditions set out to in Article 72a CRR, except those set out in Article 72a(1)(b), and in Article 72b(3) to (5) CRR;

SRB – Single Resolution Board;

SRM – Single Resolution Mechanism;

SRMR – Regulation (EU) No 806/2014 of the European Parliament and of the Council ([8]), as amended by Regulation (EU) 2019/877 of the European Parliament and of the Council ([9]);

SRMR I – Regulation (EU) No 806/2014, without any amendments;

TEM – total exposure measure calculated in accordance with Articles 429 and 429a CRR;

T2 instruments – Tier 2 instruments referred to in Article 2(1)(73) BRRD;

TLAC – Total Loss-Absorbing Capacity;

TLAC minimum requirement – harmonised minimum level of the TLAC standard for G-SIIs referred to in Articles 92a and 92b CRR and Article 45d(1)(a) and (2)(a) BRRD;

TLAC standard – TLAC Term Sheet published by the Financial Stability Board in November 2015;

Top-tier banks – resolution entities of resolution groups with assets above EUR 100 billion referred to in Article 45c(5) BRRD;

TREA – total risk exposure amount calculated in accordance with Article 92(3) CRR;

UCITS – undertakings for collective investment in transferable securities.

Unless otherwise provided, all references to legal provisions in this Annex should be understood as references to legal provisions of the BRRD.

A. QUESTIONS RELATED TO DEFINITIONS

1. Question (Article 2)

Do 'subordinated eligible instruments' defined in Article 2(1)(71b) include also 'subordinated eligible liabilities' referred to in Article 44a?

Answer

The 'subordinated eligible liabilities' referred to in Article 44a BRRD are included in the concept of 'subordinated eligible instruments' defined in Article 2(1)(71b) BRRD. The latter concept is wider than the former, as 'subordinated eligible instruments' include also the T2 instruments that meet the conditions of Article 72a(1)(b) CRR.

2. Question (Article 2)

Under which conditions and which third country entities are expected to be included in the resolution group when applying the definition of 'resolution group' laid down in Article 2(1)(83b)?

([8]) Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ L 225, 30.7.2014, p. 1).

([9]) Regulation (EU) 2019/877 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 806/2014 as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms (OJ L 150, 7.6.2019, p. 226).

Answer

The inclusion or not of third country entities in a resolution group depends on the resolution strategy provided in the group resolution plan. Such strategy is determined by the decision of the relevant resolution authority in accordance with Articles 12(1) and (3) and 45e(2) *in fine*.

If the group resolution plan provides that, in case of failure of the third country subsidiary, the Union parent undertaking would provide support to that subsidiary, it should be included in the resolution group headed by that Union parent undertaking. If, on the other hand, according to the group resolution plan, the failure of the third country subsidiary would be dealt with by the relevant third country authorities through third country resolution or other third country procedures, the subsidiary should not be included in the resolution group headed by the Union parent undertaking.

3. **Question (Article 2)**

What is the purpose of the reference to Article 7 in the definition of 'subsidiary' in Article 2(1)(5)?

Answer

The definition of 'subsidiary' in BRRD was amended in Article 2(1)(5) by Directive (EU) 2019/879 to clarify the treatment of credit institutions that are permanently affiliated to a central body, of the central body itself and of their respective subsidiaries by taking into account their specific group structure.

With the introduction of a second part to the definition of 'subsidiary', it is clarified that, when applying Articles 7, 12, 17, 18, 45 to 45m, 59 to 62, 91 and 92, any reference to 'subsidiary' should be read as including also the entities that are part of resolution groups referred to in Article 2(1)(83b)(b) – i.e., credit institutions that are permanently affiliated to a central body, the central body itself, and their respective subsidiaries. Due to the specific ownership structure of these groups, these entities typically do not fall under the first part of the definition of 'subsidiary'. However, this extension of the scope of the term 'subsidiary' should only take place where and as appropriate, taking into account which entities of such resolution groups should comply with Article 45e(3) in accordance with the decision of the resolution authority.

The reference to Article 7 in the second part of the definition of 'subsidiary' clarifies that this provision that requires the drawing up of group recovery plans that identify measures that may be implemented at the level of the Union parent undertaking and each individual subsidiary applies also to the entities forming part of resolution groups referred to in Article 2(1)(83b)(b). While recovery plans are drawn with respect to the entire group and not with respect to the resolution groups identified by the resolution authority in the group resolution plans, the legislative intent was to clarify that references to 'subsidiary' in Article 7 may also encompass, where and as appropriate, the entities belonging to the above mentioned resolution groups.

4. **Question (Article 2)**

What is the definition of 'central body' referred to in Article 2(1)(a)(5) BRRD?

Answer

BRRD does not provide for a definition of 'central body', as that concept may vary depending on the national legislation of a Member State. Each Member State may define a central body under their laws provided that several institutions are affiliated to it. While the features mentioned in Article 10(1) CRR and mirrored in points (a) to (d) of Article 45g BRRD can be used as reference, they do not provide for a definition of 'central body', but rather for the features of an affiliation to a central body. This means, in practice, that entities that could be considered as central bodies under national law may only benefit from waivers provided in those provisions where the conditions thereof are fulfilled.

References to central bodies are not new given that BRRD I already contained those references, in particular in Article 4(8) and (9).

B. QUESTIONS RELATED TO THE POWER TO PROHIBIT CERTAIN DISTRIBUTIONS PROVIDED IN ARTICLE 16A BRRD

5. Question (Article 16a)

How should Article 16a be applied to entities whose resolution plan provides for their winding up under normal insolvency proceedings, and where their respective MREL is set at a level exceeding the loss absorption amount under the second subparagraph of Article 45c(2)?

Answer

Article 16a(1) BRRD provides that the power to restrict certain distributions is available in the situation where the entity meets its CBR in addition to its own funds requirements referred to in points (a), (b) and (c) of Article 141a(1) CRD, but fails to meet its CBR in addition to the requirements referred to in Article 45c and 45d BRRD (i.e. MREL). This provision applies also to the entities referred to in the second subparagraph of Article 45c(2) BRRD, given that these entities are not excluded from the scope of application of Article 16a(1) BRRD.

6. Question (Article 16a)

Article 16a provides resolution authorities with a discretionary power to prohibit distributions above the M-MDA only where the concerned institution is in a situation where it fails to meet the CBR when considered in combination with MREL calculated on the basis of the TREA.

Does that situation also include the cases where an entity fails to meet the CBR in combination with the intermediate MREL targets determined under the second subparagraph of Article 45m(1))? Should that power only be applicable when the entity fails to meet the CBR in combination with the final MREL target?

Answer

The power of resolution authorities to restrict certain distributions of entities provided in Article 16a(1) is activated only when the entity meets its CBR in combination with the relevant own fund requirements, but not in combination with MREL. Given that the intermediate target for MREL referred to in the second subparagraph of Article 45m(1) is binding upon the entity in accordance with that provision, the power of resolution authorities provided in Article 16a (1) is also activated when the entity meets its CBR in combination with the relevant own fund requirements, but not in combination with the intermediate target for MREL. This power is discretionary and is subject to the conditions laid down in Article 16a(2) and (3).

7. Question (Article 16a)

Does the application of point (b) of Article 16a(1) imply that obligations to pay variable remuneration cannot be prohibited when they were created before the entity failed to meet its CBR in the situation referred to in that provision ?

Answer

Where the conditions for the exercise of the power of resolution authorities to prohibit certain distribution are met, the resolution authority may prohibit the entity from distributing more than M-MDA through:

— making distributions in connection with CET1 capital,

— paying variable remuneration or discretionary pension benefits,

— making payments on AT1 instruments.

Point (b) of Article 16a(1) provides explicitly that restrictions apply to new obligations to pay variable remuneration or to existing obligations to pay variable remuneration 'if the obligation to pay was created at a time when the entity failed to meet the combined buffer requirement'. Therefore, if the obligation to pay variable remuneration was created before the entity failed to meet the CBR, such payment is not subject to the restrictions provided in Article 16a(1).

C. QUESTIONS RELATED TO RESOLUTION PLANNING

8. Question (Article 12)

Point (e) of Article 12(3) BRRD provides that a group resolution plan must 'set out any additional actions, not referred to in this Directive, which the relevant resolution authorities intend to take in relation to the entities within each resolution group' What types of actions are covered by this provision?

Answer

The additional actions provided in the group resolution plan referred to in Article 12(3)(e) BRRD generally refer to tools and powers provided for in national law that do not arise from the BRRD pursuant to Articles 1(2) and 37(9) BRRD.

This element of the group resolution plan was already provided under BRRD I. The amendments introduced by Directive (EU) 2019/879 to Article 12(3)(e) added only the reference to resolution groups.

9. Question (Articles 17 and 18)

Directive (EU) 2019/879 amended Articles 17 and 18 BRRD concerning the powers of resolution authorities to address or remove impediments to resolvability by replacing the references to 'institution' with references to 'entity'.

Considering that 'institution' refers only to credit institutions and investment firms and that 'entities' refers to all entities referred to in points (a) to (d) of Article 1(1) BRRD, does this mean that the amended Articles 17 and 18 BRRD now provide for the application of the powers to address or remove impediments to resolvability in relation to any entity referred to in points (a) to (d) of Article 1(1) BRRD?

Answer

The amendment set out in Directive (EU) 2019/879 increased the scope of application of Articles 17 and 18 and now allows resolution authorities to apply the provisions therein to the entities referred to in Article 1(1)(a) to (d) (i.e. institutions, financial institutions and certain holding companies).

10. Question (Article 17)

According to Article 17(3), where substantive impediments to resolvability have been notified to an entity, the concerned entity must propose to the resolution authority possible measures to address or remove those impediments. The resolution authority then has to assess whether the measures proposed effectively address or remove the substantive impediment concerned.

Are the proposed measures, if accepted by the resolution authority, binding on the entity and are they enforceable by the resolution authority?

Answer

BRRD does not explicitly state what should be the legal effect of the measures proposed by an entity to address or remove the substantive impediments to resolvability identified by the resolution authority, after those measures have been assessed by the resolution authority as being effective.

However, to ensure that the substantive impediments are effectively addressed or removed, the measures proposed by the entity need to be binding and enforceable in an equivalent way to the alternative measures identified by the resolution authority under Article 17(4) and (5). Therefore, the resolution authority should be able to require the entity to remedy any incorrect or insufficient implementation of the measures proposed by the entity.

BRRD does not specify how the enforcement should be ensured. Therefore, this matter is left to the discretion of national legislators. For example, a Member State may provide in its national law transposing BRRD that the measures proposed by the entity become binding once they are accepted by the resolution authority. Alternatively, national legislation may require resolution authorities to adopt an administrative decision addressed to the entities concerned endorsing the proposed measures and requiring their implementation.

11. **Question (Article 17)**

Article 17(4) provides that, when considering certain measures to remove impediments to resolvability, 'the resolution authority must take into account the threat that those impediments to resolvability present for financial stability and the effect of the measures on the business of the entity, its stability and its ability to contribute to the economy.'

Which are the measures referred to in the last sentence of the second subparagraph of Article 17(4) that must be taken into account by the resolution authority: the measures to remove impediments to resolvability originally proposed by the entity, or the alternative measures proposed by the resolution authority?

Answer

The 'measures' referred to in the last sentence of the second subparagraph of Article 17(4), whose effects to the business and stability of the concerned entity and to its ability to contribute to the economy must be taken into account by the resolution authority refer to the alternative measures that the resolution authority must identify pursuant to the first sentence of that same provision. The second subparagraph of Article 17(4) applies to the identification of alternative measures by the resolution authority.

12. **Question (Article 18)**

As concerns the removal of impediments to the resolvability at group level, the second sentence of Article 18(4) refers to 'group-level resolution authorities'. Does this reference aim to also capturing the resolution authority of the relevant resolution entity?

Answer

The second sentence of Article 18(4) encompasses the resolution authorities of the parent undertaking and of all the subsidiary entities that fall in the scope of BRRD. The resolution authorities of resolution entities that themselves are not Union parent undertakings are captured by the reference to 'the resolution authorities of the subsidiaries'.

13. **Question (Article 18)**

According to paragraphs 6, 6a and 7 of Article 18, that deal with the removal of impediments to resolvability at group level, if, at the end of the relevant period to reach a joint decision referred to in paragraph 5 of that Article, a resolution authority has referred a matter mentioned in paragraph 9 of that Article to EBA for binding mediation, the group-level resolution authority, the resolution authority of the resolution entity and the resolution authority of the subsidiary, as appropriate, must defer its decision and await any decision that EBA may take.

Can the matters mentioned in Article 18(9) be referred to EBA by any resolution authority, including the one that has to take the decision in the absence of a joint decision?

Answer

The decisions referred to in Article 18(6), (6a) and (7) have to be suspended if a resolution authority has referred a matter mentioned in Article 18(9) to EBA for binding mediation within the period referred to in Article 18(5). That resolution authority can be any resolution authority, including the one that is taking a decision referred to in Article 18(6), (6a) or (7) in the absence of a joint decision.

14. **Question (Articles 13, 16, 18 and 45h)**

In accordance with Articles 13(4), 16(3) and 18(1), the adoption of the group resolution plan, the assessment of group resolvability and the adoption of measures to address or remove substantive impediments to resolvability take place through a single joint decision taken at the level of the whole group.

On the other hand, Article 45h provides that the joint decisions concerning MREL are taken at the level of the resolution group, but always with the involvement of the group-level resolution authority, even where different from the resolution authority of the resolution entity.

Does this mean that, for groups with an MPE strategy, the resolution authorities responsible for subsidiaries that do not belong to a resolution group are not involved in the joint decisions on MREL for that resolution group?

Answer

The amendments introduced by Directive (EU) 2019/879 in BRRD have established a different decision-taking procedure for resolution plans and for MREL determination for MPE groups (i.e., when a group has more than one resolution entity).

According to Article 12(3)(a) and (aa), group resolution plans must set out the resolution actions that are to be taken for each resolution entity comprising that group. Accordingly, Article 13(4) provides that group resolution plans must be adopted through a joint decision of the group-level resolution authority and the resolution authorities of subsidiaries, and that the planning of the resolution actions for each of the group's resolution entities must be included in that joint decision. There is, thus, only one group resolution plan that is adopted by means of a single joint decision regardless of the number of resolution groups. This applies also for the assessment of group resolvability pursuant to Article 16 and to the adoption of the measures to address or remove impediments to resolvability referred to in Article 18.

However, for the setting of MREL, the decision-making procedure changes: instead of being based on the overall group structure, it is based on the structure of each resolution group. Indeed, Article 45h(1) provides that the MREL of each resolution entity and of its subsidiaries that are part of the same resolution group should be determined through a joint decision. That joint decision should be adopted by the resolution authority of the resolution entity, the group-level resolution authority (where different from the former) and the resolution authorities responsible for the subsidiaries of a resolution group that are subject to MREL on an individual basis. Therefore, in case of an MPE strategy, while the group-level resolution authority is always involved in the joint decision-taking procedure for MREL for each resolution group, the resolution authorities of subsidiaries belonging to a different resolution group are not part of that procedure.

D. QUESTIONS RELATED TO INSOLVENCY PROCEEDINGS IN RESPECT OF INSTITUTIONS AND ENTITIES THAT ARE NOT SUBJECT TO RESOLUTION ACTION

15. **Question (Article 32b)**

Article 32b provides that an institution or entity must be wound up in an orderly manner in accordance with the applicable national law if it is failing or likely to fail and when alternative private sector measures or supervisory action would not prevent that failure in a timely manner and resolution action is not deemed to be in the public interest.

In Article 32b, reference is made to the conditions in points (a) to (c) of Article 32(1), in relation to the entities referred to in points (b), (c) and (d) of Article 1(1). However, Article 32(1) is only applicable to institutions (i.e. entities referred to in point (a) of Article 1(1)). Article 32(1) only applies to the entities referred to in points (b), (c) and (d) indirectly through a cross-reference to this provision in Article 33. For those entities, should the reference in Article 32b be made to Article 33, and not to Article 32?

Answer

Article 32b only refers to the conditions mentioned in points (a) to (c) of Article 32(1), and not to the entire Article 32 (1). Article 32(1) is the correct reference, as the conditions referred to in this provision also apply to entities referred to in points (b), (c) and (d) of Article 1(1) by way of reference to them in Article 33.

16. **Question (Article 32b)**

How should Member States implement Article 32b BRRD in their national laws and what is the interaction of that Article with the withdrawal of an entity's authorisation?

Answer

The wording of Article 32b BRRD is wide to reflect the differences between national laws regulating insolvency of institutions and other financial entities referred to in points (b), (c) and (d) of Article 1(1) BRRD. Hence, in the absence of public interest for the resolution of a failing entity, the insolvency proceedings available at national level should apply to the extent that they:

— meet the criteria defined in Article 2(47) BRRD on the notion of normal insolvency proceedings, and

— lead to the winding up of the entity in accordance with Article 32b BRRD.

As for the withdrawal of the authorisation of an entity meeting the conditions described in Article 32b BRRD, that provision does not provide for any specific requirement to withdraw the authorisation once those conditions are met, nor does it amend the provisions which regulate the withdrawal of authorisation. Therefore, the basis for the withdrawal of authorisation remains the one that existed before the entry into force of Article 32b BRRD – namely, Article 18 CRD and any applicable national provisions.

It is for Member States to assess whether the lack of a withdrawal of authorisation prevents the correct implementation of Article 32b BRRD and whether measures at national level are possible and necessary in this respect.

E. QUESTIONS RELATED TO THE POWERS TO SUSPEND PAYMENT OR DELIVERY OBLIGATIONS UNDER ARTICLES 33A AND 69

17. **Question (Article 33a)**

Article 33a(1) places an obligation on Member States to 'ensure that resolution authorities, after consulting the competent authorities, which shall reply in a timely manner, have the power to suspend any payment or delivery obligations'.

Furthermore, Article 45d(4) states that 'where more than one G-SII entity belonging to the same G-SII are resolution entities, the relevant resolution authorities shall calculate the amount referred to in paragraph 3'.

In the case of a cross-border financial institution or group, could BRRD require Member States to impose in the transposing legislation a binding requirement on competent or resolution authorities outside the jurisdiction of a Member State?

Answer

When transposing BRRD, the obligations for a Member State are limited to what is possible within that Member State's jurisdictional remit and powers.

Therefore, Articles 33a(1) and 45d(4) do not require a Member State to impose the obligations provided therein on authorities outside its jurisdiction.

18. **Question (Article 33a)**

Article 33a BRRD provides NRAs with the power to suspend certain obligations (moratorium) after the declaration that an entity is failing or likely to fail. Under Article 33a(3), Member States may provide that resolution authorities ensure that depositors have access to an appropriate daily amount.

Depending on how Article 33a is transposed nationally, the national law can either regulate precisely how the power to ensure access to a daily amount should be exercised, including quantifying that amount directly in the law, or instead set out criteria for the resolution authority to define that daily amount in each case. The resolution authority would then need to comply with these criteria when exercising the power.

In the context of the SRM, for institutions under the direct responsibility of the SRB, the moratorium power should be exercised by national resolution authorities in order to implement all decisions addressed to them by the SRB.

In Member States that transpose Article 33a(3) in a way that empowers resolution authorities to decide on whether and to what extent the daily amount to deposits should be ensured, which authority would take these decisions for entities in the direct remit of the SRB: the national resolution authorities or the SRB itself?

Answer

When Article 33a is transposed in a way that grants to the resolution authority the power to decide whether to ensure depositors' access to a daily amount and what that amount should be, this power can be exercised by the SRB in accordance with the procedures available in the SRMR for entities under the direct remit of the SRB. In any event, this provision does not prevent that the SRB delegates the decision on the daily amount to the national resolution authorities, without any need for further agreement from the SRB as regards the amount.

Given also the particular nature of this task, and considering that the determination of the appropriate amount hinges on national specificities, the SRB should cooperate with the national resolution authorities in determining the relevant amount in line with Article 30 SRMR.

19. **Question (Articles 33a and 69)**

According to Article 33a(3) and the third subparagraph of Article 69(5), 'Member States may provide that where the power to suspend payment or delivery obligations is exercised in respect of eligible deposits, resolution authorities ensure that depositors have access to an appropriate daily amount from those deposits.' How should this daily amount be calculated?

Additionally, in pages 3 and 4 of the Opinion of the EBA on deposit guarantee scheme pay outs of 30 October 2019, the following statement is made: 'An amendment to the EU legal framework is desirable to ensure that depositors who do not have access to deposits that are due and payable, but whose deposits have not been determined as unavailable, have access to an appropriate daily amount from their deposits. The provision of such an appropriate daily amount should not be executed using DGS funds but should be done using the institution's funds.' Does this mean that it is not possible to use the funds of the deposit guarantee scheme to pay the daily amounts mentioned in Articles 33a and 69?

Answer

It is for the Member State to define the determination of the daily amount. This may be achieved either through a more precise indication of that amount in the transposing law or by delegating to the resolution authority the task to take a decision on a case-by-case basis.

The principle behind the provision of a daily amount is to allow depositors to maintain access to part of their deposits in the institution in the course of the resolution. The funds to support this disbursement should therefore come from the institution, within the limit of the amount available in the depositor's account. There does not seem to be a basis in Article 11 of the Directive 2014/49/EU of the European Parliament and of the Council ([10]) to support an intervention by the deposit guarantee scheme to fund the payment of the daily amount in the course of the resolution of an institution.

20. **Question (Article 33a)**

Does Article 33a(8) also include the cases where there is a determination that an entity referred to in points (b), (c) or (d) of Article 1(1) (financial institutions or certain holding companies) is failing or likely to fail?

Answer

Article 33a, including its paragraph 8, applies to the entities referred to in points (b), (c) and (d) of Article 1(1). In what concerns the determination that those entities are failing or likely to fail, Article 33a(8) refers to the condition in Article 32(1)(a), which also applies to these entities through the cross reference in Article 33.

F. QUESTIONS RELATED TO THE SELLING OF SUBORDINATED ELIGIBLE LIABILITIES TO RETAIL CLIENTS

21. **Question (Article 44a)**

SELs can be sold by any person who has the right to sell such liabilities and who is in their possession, e.g. a non-financial entity or a natural person. In this case, are all these entities and persons required to comply with Article 44a(1) to (4)?

Answer

Article 44a BRRD applies to investment firms in the meaning of Article 4(1)(1) MiFID, credit institutions, UCITS management companies and AIFM that provide investment services or perform investment activities which lead to the transfer to retail clients of a SEL. Such entities are 'sellers' for the purposes of Article 44a BRRD given that only such entities are qualified to fulfil the conditions of Article 44a, in particular to perform a suitability test in accordance with Article 44a(1) (see question 10 of Commission Notice of 29 September 2020). Therefore, the sales of SELs to retail clients that do not involve any of those institutions as sellers are not in the scope of Article 44a(1) to (4) and, in this case, sellers of SELs are not subject to the requirements provided thereof.

([10]) Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ L 173, 12.6.2014, p. 149).

22. **Question (Article 44a)**

Question 10 of Commission Notice of 29 September 2020 includes in the concept of 'seller' mentioned in Article 44a (1) BRRD - 'UCITS management companies and AIFM that provide investment services or perform investment activities which lead to the transfer to retail clients of a SEL'. Do you confirm that this refers only to cases where UCITS management companies and AIFMs offer MiFID services to individual retail client, and not when they offer collective portfolio management?

Answer

Article 44a BRRD applies to investment firms in the meaning of Article 4(1)(1) MiFID, credit institutions, UCITS management companies and AIFM that provide investment services or perform investment activities which lead to the transfer to retail clients of a SEL. Such entities are 'sellers' for the purposes of Article 44a BRRD (see question 10 of Commission Notice of 29 September 2020).

In this context, to be captured by Article 44a(1) to (4) BRRD, the sellers so defined should provide investment services or perform investment activities in relation to a retail client, including when they are a counterparty in a sale of SELs to a retail client.

23. **Question (Article 44a)**

With regards to the interpretation of the term 'seller' in question 10 of Commission Notice of 29 September 2020, how can Member States impose the obligations of paragraphs 1 to 4 of Article 44a on investment firms, UCITS management companies and AIFM, considering that they are not in the scope of BRRD pursuant to Article 1, and that those obligations are not in the legal acts which apply to those entities?

Answer

Article 44a does not refer to any specific authority to be responsible for its enforcement. This means that Member States may designate any appropriate authority or authorities for the enforcement of Article 44a, including authorities designated under MiFID (market conduct authorities). Authorities responsible for the enforcement of Article 44a should apply all the measures and sanctions at their disposal to ensure the effective application of Article 44a by sellers and their retail clients. Such sanctions should be proportionate and respect fundamental rights under Union law. Please also see question 13 of Commission Notice of 29 September 2020.

24. **Question (Article 44a)**

The response to question 10 of Commission Notice of 29 September 2020 states that Article 44a BRRD applies to a number of entities, including investment firms, but it does not include 'investment intermediaries'. Are the persons exempted from MiFID pursuant to its Article 3 subject to Article 44a BRRD?

Answer

Persons that are exempted from MiFID based on its Article 3 are subject to a national regime and do not benefit under MiFID from the freedom to provide services or to perform activities to establish branches in other Member States. This national regime must be at least analogous to the MiFID regime with regard to, among other provisions, the suitability assessment in Article 25(2) MiFID.

Specifically with regard to SELs, these suitability requirements have been made more stringent by Article 44a BRRD. Therefore, in order to ensure a high level of investor protection consistently with Article 3 MiFID, Member States should also impose requirements that are at least analogues to the stricter requirements in Article 44a BRRD on persons exempted from MiFID (investment intermediaries) when they sell SELs to retail clients.

25. **Question (Article 44a)**

The second sub-paragraph of Article 44a(1) provides Member States with the option to extend the provisions of that Article to other instruments qualifying as own funds or bail-inable liabilities.

If in the national transposition of BRRD, a Member State exercises the option in Article 44a(1) to include shares in the scope of that provision, what would happen in the event that a credit institution invites existing shareholders to a rights issue by which the subscribers would take on new shares rather than receive dividends? In this case, would the seller be bound to subject such subscribers to the suitability test under Article 44a(1)?

Answer

The second subparagraph of Article 44a(1) provides for an option for the Member States to extend the scope of this provision to own funds or other bail-inable liabilities defined in Article 2(1)(71) (see question 14 of the Commission Notice of 29 September 2020). The scope of Article 44a(1) could be extended to include shares. In that respect recital (16) of Directive (EU) 2019/879 provides that:

'In addition, it should also be possible for Member States to further restrict the marketing and sale of certain other instruments to certain investors.'

Therefore, any transaction that leads to a transfer of shares to a retail client could potentially be covered by the extended scope of Article 44a(1) while respecting the economic and property rights of shareholders.

26. **Question (Article 44a)**

What is the procedure to be followed in the case a seller determines, at the time of the suitability assessment referred to in Article 44a(1) BRRD, or later, that the information provided by the retail client pursuant to paragraph 3 of that Article is inaccurate? Since the suitability test is performed under the provisions of MiFID, would it be appropriate to follow the procedure of Article 25(3) MiFID, which would mean that the seller would only be required to warn the client that the investment firm is not in a position to determine whether the service or product envisaged is appropriate for them but could still provide the service?

Would it be possible for Member States to impose stricter measures in case of non-compliance of the retail client with Article 44a(3), i.e. refusal to provide the service or does Article 44a(3) BRRD imply that competent authorities should sanction retail clients for non-compliance with their obligation to provide the seller with accurate information?

Answer

In accordance with Article 44a(1)(b) BRRD, the sale of SELs to retail clients may only take place if the seller is satisfied that such liabilities are suitable for that retail client after performing a suitability test under Article 25(2) MiFID (see the reply to question 15 of Commission Notice of 29 September 2020).

Under Article 44a(2) BRRD, the seller must ensure that the investments of retail clients in SELs do not exceed certain limits.

Therefore, if the information provided by the retail client is not accurate or sufficient to perform either the suitability test or the verification of the limits referred to in Article 44a(2) BRRD, the seller should not be allowed to proceed with the sale of SELs to a retail client.

The suitability rules do not provide for sanctions to be imposed on retail clients. The seller needs to take all reasonable steps to ensure that the information collected about clients in respect of the suitability assessment is reliable. This includes ensuring that:

— clients are aware of the importance of providing accurate and up-to-date information,

— all tools to assess the client's knowledge and experience are fit-for-purpose and are appropriately designed for use with their clients,

— questions are likely to be understood by clients, and

— steps are taken to ensure the consistency of client information, such as by considering whether there are obvious inaccuracies.

Article 54 of Commission Delegated Regulation (EU) 2017/565 ([11]) also indicates the consequences for cases where the firm does not receive the necessary information: the firm must not recommend investment services or financial instruments to the client or potential client.

Further, ESMA guidelines ([12]) on certain aspects of the MifID suitability assessment provide additional information on how the self-assessment by clients should be counter-balanced by objective criteria by firms:

'(…) firms need to take reasonable steps to check the reliability, accuracy and consistency of information collected about clients. Firms remain responsible for ensuring they have the necessary information to conduct a suitability assessment. In this respect, any agreement signed by the client, or disclosure made by the firm, that would aim at limiting the responsibility of the firm with regard to the suitability assessment, would not be considered compliant with the relevant requirements in MiFID II and related Delegated Regulation.'

27. **Question (Article 44a)**

According to Article 44a(2), the seller of SELs must ensure that the investment in SELs by a retail client does not exceed a certain limit of its financial instruments portfolio.

Pursuant to Article 44a(4), the retail client's financial instrument portfolio includes cash deposits and financial instruments, with the exception of any financial instruments that have been given as collateral. Does the term 'financial instruments that have been given as collateral' include financial instruments that the client has given as collateral, or also financial instruments the client has received as collateral?

Answer

The meaning of 'collateral given' in Article 44a(4) refers to financial instruments given as collateral to the retail client.

Financial instruments given as collateral by a third party to the retail client should be excluded from their financial instrument portfolio for the purpose of the limits to the holding of SELs under Article 44a(2). If there is a loss on those financial instruments, this will not affect directly the financial situation of the retail client, since instruments given as collateral are only an underlying security guaranteeing the debt of the third party towards the retail client. Therefore, the collateral given to the retail client should be excluded from the financial instruments portfolio for the purposes of calculating the allowed limits in the investments in SELs.

However, financial instruments given by the retail client as collateral to guarantee its own debt towards a third party should not be excluded from the financial portfolio of a retail client, since any loss on those instruments is directly assumed by the retail client. Those instruments will have to be returned to the retail client once the debt of the retail client towards a third party is extinct. Therefore, the collateral given by the retail client is relevant for the purposes of calculating the allowed limits in the investments in SELs.

28. **Question (Article 44a)**

Can the options of paragraphs 1 to 4 and paragraph 5 of Article 44a be combined when transposing BRRD into national law? For instance, can the minimum denomination amount mentioned in paragraph 5 be further enhanced by the additional condition of the investment not exceeding 10 % of the total investment portfolio, as mentioned in paragraph 2(b) of Article 44a?

Answer

Recital (16) of Directive (EU) 2019/879 clarifies that Article 44a(1) to (4) and Article 44a(5) should not be transposed cumulatively, but set out two alternative options. However, to enhance the protection of retail investors, a Member State may provide for a higher amount for the minimum denomination of SELs than EUR 50 000 if it chooses to transpose Article 44a(5) (see also the reply to question 16 of Commission Notice of 29 September 2020).

([11]) Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 87, 31.3.2017, p. 1).

([12]) Guidelines on certain aspects of the MiFID II suitability requirements of 6 November 2018, ESMA35-43-1163.

29. **Question (Article 44a)**

Does the minimum nominal denomination amount of at least EUR 50 000 referred to in Article 44a(5) relate to a single liability or to a group of liabilities (as value per package)?

Answer

The minimum denomination rule applies to each single financial instrument that qualifies as SEL. The *rationale* of this rule is provided in Recital (16) of Directive (EU) 2019/879:

'To ensure that retail investors do not invest excessively in certain debt instruments that are eligible for the MREL, Member States should ensure that **the minimum denomination amount of such instruments** is relatively high (…) (emphasis added).'

30. **Question (Article 44a)**

If a Member State chooses to transpose paragraph 6 of Article 44a, would it not be permitted to also transpose the requirements in paragraphs 1, 2(a), 3 and 4 of that same Article?

Answer

The option provided for in Article 44a(6) is only available if the EUR 50 billion threshold provided therein is met (see question 19 of Commission Notice of 29 September 2020). Under that option, the Member State must apply only the EUR 10 000 minimum initial investment requirement referred to in point (b) in Article 44a(2), in addition to the general investor protection rules provided in MiFID.

However, that Member State may apply certain additional requirements provided in Article 44a(1) to (5), e.g. the suitability test referred to in Article 44a(1) or a minimum denomination rule for SELs lower that 50 000 EUR. This is justified by the *rationale* that Article 44a(6) provides for a lower protection of retail clients in comparison with the two main alternative available options in Article 44a(1) to (4) and Article 44a(5).

At the same time, this option needs to be applied together with one of the options referred to in Article 44a(1) to (4) or Article 44a(5) for SELs issued by entities established in another Member State that do not benefit from the treatment provided in the option referred to in Article 44a(6) (see question 12 of Commission Notice of 29 September 2020).

31. **Question (Article 44a)**

If a Member State chooses to transpose Article 44a(6) BRRD, would any customer wishing to purchase a SEL be a client pursuant to Article 44a(2)(b)?

Answer

If the buyer of SELs is not a retail client as defined in point (11) of Article 4(1) MiFID, Article 44a(6) does not apply, since sales to clients that are not retail clients are not in the scope of Article 44a(1) from which Article 44a(6) derogates. Furthermore, the investor protection requirements laid down in MiFID also apply.

32. **Question (Article 44a)**

In Article 44a(6), should the EUR 50 billion threshold be calculated with reference to the value of total assets of entities before resolution, at the time of entering into resolution, or at the time of the issue of SELs?

Answer

Article 44a(6) BRRD provides for a specific option for a more limited transposition, designed for Member States with small and less liquid markets as reflected in the EUR 50 billion threshold provided thereof. This threshold should be assessed by the Member State at the moment of transposition of Directive (EU) 2019/879. Since this transposition option is subject to the conditionality of the threshold, it is, therefore, the duty of the Member States to monitor and assess regularly whether its market meets the EUR 50 billion threshold and whether the use of the option provided in

Article 44a(6) BRRD is still justified. If the threshold is no longer met, that Member State should choose between the two main alternative possibilities to transpose Article 44a BRRD and lay down those rules in national legislation (see question 20 of Commission Notice of 29 September 2020).

G. QUESTIONS RELATED TO THE MINIMUM REQUIREMENT FOR OWN FUNDS AND ELIGIBLE LIABILITIES

(a) *Eligible liabilities*

33. Question (Article 45b and 45f)

Articles 45b and 45f BRRD specify respectively the criteria of eligible liabilities for resolution entities and for the subsidiaries of resolution entities which are not themselves resolution entities. What are the eligibility criteria that apply to entities whose resolution plan provides for their winding up under normal insolvency proceedings? How should the additional own funds requirements set under Article 104a CRD be treated when determining the MREL target for those entities when such additional own funds requirements have not been set on an individual basis for that entity?

Answer

BRRD only provides for two sets of eligibility criteria for the purposes of MREL compliance:

— Article 45b(1) to (3) BRRD lays down the eligibility criteria applicable to resolution entities, and

— Article 45f(2) BRRD lays down the eligibility criteria applicable to institutions that are subsidiaries of a resolution entity or of a third-country entity but are not themselves resolution entities.

In the absence of specific eligibility criteria for entities whose resolution plan provides for their winding up in accordance with the second subparagraph of Article 45c(2) BRRD, those two sets of criteria should apply accordingly. For entities that are not subsidiaries of a resolution entity, the criteria in Article 45b(1) to (3) BRRD would apply. This is relevant for entities that are parent undertakings, are not part of a group subject to consolidated supervision, or are subsidiaries of a parent undertaking whose resolution plan also provides for its winding up. For entities that are subsidiaries of a resolution entity, the criteria in Article 45f(2) BRRD should apply.

In each case, the eligibility criteria should be applied in light of the specific circumstances of the case. For example, for entities that are not subsidiaries of a resolution entity, the criterion in Article 72b(2)(b)(i) CRR (applicable through Article 45b(1) BRRD), not allowing eligible liabilities to be owned by entities included in the same resolution group, might not apply, as in this case the liquidation entity is not part of a resolution group. Similarly, for entities that are subsidiaries of a resolution entity, the restrictions in Article 45f(2) BRRD on the ownership of eligible liabilities by the resolution entity and by existing shareholders and of own funds by third parties is not be relevant. In those situations, the need to ensure that the exercise of write down and conversion powers does not affect the control of the subsidiary by the resolution entity is not applicable, as the subsidiary will be wound up in case of failure.

Where the competent authority has not imposed additional own funds requirements under Article 104a CRD on the same basis on which the MREL decision will be taken, resolution authorities should consider that the additional own funds requirements for that entity are equal to zero. However, if resolution authorities consider that setting MREL taking into account only the prudential requirements applicable on an individual basis would not sufficiently reflect, inter alia, the business model or the risk profile of the entity as mentioned in point (d) of Article 45c(1) BRRD, they may, in accordance with Article 45c(2) BRRD, assess whether MREL should be limited to the loss absorption amount and increase MREL to adequately reflect the relevant part of the consolidated additional own funds requirement set by the competent authority under Article 104a CRD. Please also see answer to Question 35 included in the Annex to the Commission Notice of 29 September ([13]).

([13]) Commission Notice relating to the interpretation of certain legal provisions of the revised bank resolution framework in reply to questions raised by Member States' authorities (OJ C 321, 29.9.2020, p. 1).

34. **Question (Article 45b)**

What is the interaction, if any, between the possible reduction of the 8 % TLOF requirement in Article 45b(4) BRRD and the possible allowance to use senior liabilities up to 3,5 % to meet the TLAC minimum requirement provided for in Article 72b(3) CRR? Is it the case that for a G-SIIs both always need to be granted together, even if only partially for the allowance, if the NCWO assessment allows it?

Answer

The allowance to use senior liabilities up to 3,5 % TREA for meeting the TLAC minimum requirement provided for in Article 72b(3) CRR and the reduction of the minimum subordination requirement referred to in Article 45b(4) BRRD can be granted together.

The grounds for both the allowance and the reduction are the same, i.e. the conditions mentioned in points (a) to (c) of Article 72b(3) CRR, which refer to the absence of risk of breaching the NCWO principle. However, the allowance and the reduction apply to different requirements, which could translate into different nominal amounts. It is thus possible that, while the conditions in Article 72b(3) CRR may be met for one requirement, they may not be met, or may be only partially met, for the other requirement.

Therefore, while the allowance and the reduction can indeed be granted for the purpose of both compliance with the TLAC minimum requirement under Article 92a CRR and determination of the applicable subordination level under Article 45b(4) BRRD, respectively, BRRD does not require that they should be granted together. The applicable statutory conditions mentioned in points (a) to (c) of Article 72b(3) CRR need to be met in both cases.

35. **Question (Article 45b)**

BRRD now uses exclusively the expression 'total liabilities, including own funds', whereas before Article 45(1) BRRD I used the expression 'total liabilities and own funds'. Was this change exclusively semantic or does it represent a material change on how the amounts should be calculated?

Answer

In the English version of BRRD I, Article 45(1) included the expression 'total liabilities and own funds', but this language was superseded by Directive (EU) 2019/879. With Directive (EU) 2019/879, the language was made consistent with the remaining provisions of both BRRD I and the BRRD as amended by Directive (EU) 2019/879 where the expression 'total liabilities, including own funds' is used. This change does not alter the meaning of this expression, which, thus, should be read in the same way throughout the BRRD.

(b) ***Determination of the MREL***

36. **Question (Article 45c)**

Do you confirm that the expression 'critical economic functions' used in Article 45c is not a new term and that it has the same meaning as 'critical functions', already used and defined in other BRRD provisions?

Answer

The expression 'critical economic functions' used in the eighth subparagraph of Article 45c(3) and the eighth subparagraph of Article 45c(7) should be read in the same way as the expression 'critical functions' used throughout the BRRD as defined in Article 2(1)(35).

37. **Question (Article 45c)**

Article 45c(2) requires that, when winding up is the preferred resolution strategy, the resolution authority must 'assess whether it is justified to limit' their MREL to the loss absorption amount.

When the resolution authority assess that it is not justified to limit the MREL of those entities to the loss absorption amount, is it correct that Article 45c(2) does not require the strategy in the resolution plan to be changed from liquidation to resolution, but instead allows the resolution authority to set a MREL requirement higher than the loss absorption amount?

Answer

The second and third subparagraphs of Article 45c(2) provide how to determine the MREL for entities whose resolution plan provides for their winding up in case of failure.

According to that provision, the resolution authority is required to assess whether, for those entities, it is justified to limit the MREL to the loss absorption amount referred to in point (a) of the first subparagraph of Article 45c(2). In that assessment, the resolution authorities need, in particular, to evaluate any possible impact of such MREL on financial stability and on the risk of contagion to the financial system. If, after that assessment, the resolution authority concludes that it is not justified to limit the MREL of those entities to the loss absorption amount, it can determine an MREL above the amount that would result from Article 45c(3)(a)(i) and (b)(i) or under Article 45c(7)(a)(i) and (b)(i). See also Question 37 of Commission Notice of 29 September 2020 ([14]).

38. **Question (Article 45c)**

The second subparagraph of Article 45c(2) requires resolution authorities to assess whether it is justified to limit the MREL for entities that are to be wound up under normal insolvency proceedings to the loss absorption amount. The third subparagraph of that provision further requires resolution authorities to consider any possible impact on financial stability and on the risk of contagion to the financial system.

Should this assessment be made through the use of:

— a general approach whereby a single add-on is computed and then added to the loss absorption amount of every entity planned to be wound up under normal insolvency proceedings under the remit of the respective resolution authority, or

— a specific approach where the decisions to set an add-on and its calibration are taken on a case-by-case basis?

Answer

The second and third subparagraphs of Article 45c(2), that provide how to determine the MREL for entities whose resolution plan provides for their winding up in case of failure should be applied on a case by case basis. This is the general underlying principle for the BRRD provisions on MREL determination.

This does not prejudge the possibility for resolution authorities to have internal policies on this matter, which are then applied to the individual cases.

39. **Question (Article 45c)**

When calculating the recapitalisation amount, is it legally possible to determine strict caps for the possible reduction of the TREA and TEM after resolution for the purposes of the fifth subparagraph of Article 45c(3), or should TREA and TEM always be calculated on the basis of the *de facto* reduction of the balance sheet taking into account the loss absorption amount?

Answer

In accordance with the first subparagraph of Article 45c(3), the recapitalisation amount should restore the compliance with the entity's total own funds and leverage ratio requirements after the implementation of the preferred resolution strategy.

When setting the recapitalisation amount as part of the MREL calibration, the fifth subparagraph of Article 45c(3) requires that TREA and TEM are adjusted for any changes resulting from resolution action foreseen in the resolution plan (i.e. the decision to place an institution in resolution, the application of a resolution tool or the exercise of one or more resolution powers, as defined in Article 2(1)(40)).

This implies that any adjustment to the recapitalisation amount should be done on a case-by-case basis and be consistent with any changes resulting from planned resolution actions. At the moment of resolution planning and MREL calibration, the adjustment to the recapitalisation amount must be based on estimates of the needs for recapitalisation after resolution (i.e. estimates of any increase or decrease in total balance sheet size and other triggers for changes in the entity's own funds requirements and leverage ratio requirements post resolution). Therefore, the

([14]) Commission Notice relating to the interpretation of certain legal provisions of the revised bank resolution framework in reply to questions raised by Member States' authorities (OJ C 321, 29.9.2020, p. 1).

application of Article 45c(3) in a manner that is consistent with the legislative intent and the structure of the MREL requirement would imply that, when calculating the recapitalisation amount, the expected losses in resolution that lead to a decrease of the balance sheet, as mentioned in point (a) of the fifth subparagraph, are equivalent to the loss absorption amount calculated under points (a)(i) and (b)(i) of the first subparagraph.

40. **Question (Article 45c)**

Pursuant to paragraphs 3 and 7 of Article 45c, the calibration of external MREL and internal MREL is identical. For the entities in the remit of a resolution authority, is it legally possible for that resolution authority to only include in specific cases the market confidence buffer mentioned in the sixth subparagraph of those provisions (e.g. with recourse to criteria related with the reliance of the subsidiary on wholesale funding)?

Answer

When calibrating both the external and internal MREL requirement, Article 45c(3) and (7) provide that the resolution authority has the power to increase the recapitalisation amount when calculated based on TREA by an amount sufficient to sustain market confidence. Pursuant to those provisions, this is a discretionary power, which should be applied by the resolution authority on a case-by-case basis. This does not prejudge the possibility for resolution authorities to have internal policies on this matter, which are then applied to the individual cases.

41. **Question (Article 45c)**

Could you clarify how the resolution authority should consider the criteria mentioned in Article 45c(6) when assessing whether to apply the requirements in paragraph 5 of that Article to a resolution entity that is not a G-SII, part of a G-SII or a top tier bank?

Answer

When deciding whether to apply the requirements laid down in Article 45c(5) to a resolution entity which is not a G-SII, part of a G-SII or part of a resolution group the total assets of which are higher than EUR 100 billion (top-tier bank), the key factor in the resolution authority's decision is the assessment that the resolution entity concerned is reasonably likely to pose a systemic risk in the event of failure.

In addition to this assessment, the resolution authority is also required to take into account the following criteria:

— the prevalence of deposits and the absence of debt instruments in the funding model,

— the extent to which access to the capital markets for eligible liabilities is limited,

— the extent to which the resolution entity concerned relies on CET1 capital to meet its MREL.

Considering that the decision to be taken by the resolution authority implies that the resolution entity concerned will be subject to stricter requirements in terms of calibration of MREL (Article 45c(5) and subordination (Article 45b(4), (7) and (8)), these criteria help to ensure that such a decision is proportionate to the objectives being pursued and takes into consideration the features of the entity concerned. Therefore, it could be considered that, where the above mentioned criteria are met in relation to a resolution entity (i.e. prevalence of deposits in the funding, limited access to debt markets, reliance on CET1 to meet MREL), the resolution authority should not apply the requirements laid down in Article 45c(5) to such entity if that would lead to a disproportionate MREL requirement. This conclusion should not be an automatic and depend on the specific situation of the concrete case.

The three criteria mentioned above can also be found in Article 45m(7), where they are used to determine, in general, a proportionate length of the transitional periods. The criteria of Article 45m(7) are referred to in the third subparagraph of Article 45m(1) and they also pertain to the setting of transitional periods ending after 1 January 2024. Nevertheless, in this specific decision of extending the transitional period beyond 1 January 2024, resolution authorities are also required to take into consideration the following:

— the development of the entity's financial situation,

— the prospect that the entity will be able to ensure compliance in a reasonable timeframe with MREL and its subordination component,

— the ability to replace liabilities that no longer meet the relevant eligibility or maturity criteria and, if unable, whether that inability is of an idiosyncratic nature or is due to market-wide disturbance.

Therefore, the setting of transitional periods ending after 1 January 2024 under the third subparagraph of Article 45m (1) does not prevent as such the resolution authority from deciding to apply the requirements laid down in Article 45c(5) to that same resolution entity. Likewise, a resolution entity to which the requirements laid down in Article 45c(5) have been applied can have a transitional period ending after 1 January 2024 as determined in accordance with Article 45m(7).

42. **Question (Article 45c)**

For the purposes of Article 45c(10), should resolution authorities and the competent authorities consult each other or should resolution authorities require the necessary information from the institution concerned?

Answer

Article 45c(1) clarifies that the MREL requirement whose calibration is detailed in the following paragraphs of Article 45c must be determined by the resolution authority after consulting the competent authority. Moreover, to be able to calibrate the MREL requirement, resolution authorities have the ability to require the necessary information from competent authorities to fulfil the tasks under BRRD, in accordance with Articles 3(4) and 90(1).

(c) ***Determination of the MREL for resolution entities of G-SIIs***

43. **Question (Article 45d)**

What is the meaning of the expression 'part of a G-SII' in Article 45d(1)?

Answer

G-SIIs are defined in Article 2(1)(83c) BRRD by cross-reference to Article 4(1)(133) CRR. The latter provision defines G-SIIs as those that are identified in accordance with Article 131(1) and (2) of CRD. Article 131(1) of CRD requires Member States to designate authorities in charge of identifying, on a consolidated basis, the G-SIIs within their jurisdiction. Article 131(2) provides for a methodology for this purpose.

Article 131(1) CRD provides that G-SIIs must be any of the following:

a) a group headed by an EU parent institution, an EU parent financial holding company, or an EU parent mixed financial holding company; or

b) an institution that is not a subsidiary of an EU parent institution, of an EU parent financial holding company or of an EU parent mixed financial holding company.

The possibility referred to under point b) above was included to cover a theoretical case were a G-SII is a standalone bank. Therefore, a resolution entity that is 'part of a G-SII' is an entity that is not a G-SII itself in accordance with point (b) of Article 131(1) CRD, but is part of the G-SII prudential consolidation in accordance with point (a) of that provision. In practice, this becomes relevant when not only the entity referred to in point (a) of Article 131(1) CRD, but also another entity from the G-SIIs group has been identified as a resolution entity, that is where an MPE resolution strategy is pursued. In this case, both resolution entities should be subject to Article 45d BRRD.

44. **Question (Articles 45d and 45h)**

What is a 'G-SII entity belonging to the same G-SII' as mentioned in Articles 45d(4) and 45h(2) BRRD?

Answer

G-SIIs are defined in Articles 2(1)(83c) BRRD, and 4(1)(133) CRR by reference to Article 131(1) and (2) CRD.

Article 4(1)(136) CRR defines a G-SII entity as 'an entity with a legal personality that is a G-SII or is part of a G-SII or of a non-EU G-SII'.

These definitions are relevant when applying Article 45d(4) and Article 45h(2) BRRD. In practice, these provisions cover the situation where a group headed by a G-SII contains more than one resolution entity (typically, the G-SII itself and one or more other entities), that is where an MPE resolution strategy is pursued.

45. **Question (Article 45d)**

What is the meaning of the term 'Union parent entity' in Article 45d(4)(b)? Does it refer to the Union parent undertaking or to the Union parent institution?

Answer

The 'Union parent entity' referred to in Article 45d(4)(b) is a Union parent undertaking as defined in Article 2(1)(85).

(d) ***Application of internal MREL to entities that are not themselves resolution entities***

46. **Question (Article 45f)**

According to point (ii) of Article 45f(2)(a) BRRD a liability is required to meet the subordination criteria of Article 72b (2)(d) CRR for it to be eligible for compliance with internal MREL.

At the same time, point (iii) of Article 45f(2)(a) BRRD states that eligible liabilities for internal MREL must 'rank, in normal insolvency proceedings, below liabilities that do not meet the condition referred to in point (i) and that are not eligible for own funds requirements'.

However, the criterion in point (i) does not relate to insolvency ranking. It refers to liabilities being 'issued to and bought by the resolution entity, either directly or indirectly through other entities in the same resolution group that bought the liabilities from the entity that is subject to this Article, or are issued to and bought by an existing shareholder that is not part of the same resolution group as long as the exercise of write down or conversion powers in accordance with Articles 59 to 62 does not affect the control of the subsidiary by the resolution entity'. Therefore, the liabilities referred to in point (i) of Article 45f(2)(a) can have virtually any ranking.

Is it correct that the ranking implied by point (iii) of Article 45f(2)(a) BRRD depends on the ranking of the instruments not meeting the criterion of point (i) of that same provision, i.e. that the ranking required for internal MREL instruments depends on the ranking of instruments that the subsidiary has actually issued outside the resolution group? This would imply that the ranking required to meet internal MREL needs to be assessed for each institution on a case by case basis.

Answer

The combined reading of points (i), (ii) and (iii) of Article 45f(2)(a) BRRD results in the following requirements relating to the insolvency ranking of eligible liabilities for internal MREL:

— they must fulfil the general subordination criterion of Article 72b(2)(d) CRR, i.e. subordination to excluded liabilities referred to in Article 72a(2) CRR, by virtue of point (ii) of Article 45f(2)(a) BRRD,

— they must fulfil an additional subordination criterion by virtue of points (i) and (iii) of Article 45f(2)(a) BRRD, in the sense that they must be subordinated to all liabilities that are not eligible for internal MREL and that are not own funds.

The *rationale* of the specific subordination requirement is to ensure that eligible liabilities for internal MREL do not rank *pari passu* with other subordinated liabilities that are not eligible for internal MREL under point (i) of Article 45f (2)(a). This will alleviate the risks for NCWO claims in case eligible liabilities for internal MREL are written down or converted under Article 59(1)(a) and (1a) independently of resolution action (i.e. at the point of non-viability), since only those eligible liabilities could be written down or converted in that case.

47. **Question (Article 45f)**

Are the amounts of CET1 capital and other own funds referred to in Article 45f(2)(b) BRRD net of the deductions made in accordance with Articles 36, 56 and 66 CRR?

Answer

For the purposes of compliance with both external and internal MREL, references to 'own funds' should be interpreted in accordance with Article 2(1)(38) BRRD, which makes reference to the definition provided in point (118) of Article 4(1) of CRR, subject to any additional conditions that have been specified in BRRD, as those in point (ii) of Article 45f(2)(b).

In this context, point (118) of Article 4(1) of CRR provides that 'own funds' means the sum of Tier 1 capital and Tier 2 capital. In turn, the corresponding CRR provisions on the calculation of Tier 1 capital (Article 25) and Tier 2 capital (Article 71) are clear that the amounts are expressed after deductions referred to in Articles 56 and 66 CRR, respectively.

Moreover, point (68a) of Article 2(1) BRRD defines 'Common Equity Tier 1 capital' by cross-reference to Article 50 CRR, while the latter clarifies that CET1 capital is calculated net of deductions referred to in Article 36 CRR.

48. **Question (Article 45f)**

What is the difference between paragraphs 3 and 4 of Article 45f?

Answer

The distinction between paragraphs 3 and 4 of Article 45f is related to the ownership relationship between the subsidiary for which internal MREL could be waived and its intermediate or ultimate parent.

Paragraph 3 refers to the possibility to waive internal MREL where the subsidiary and the resolution entity are located in the same Member State and provides the conditions to enable such a waiver.

Paragraph 4 refers to the possibility to waive internal MREL where the subsidiary and an intermediate parent undertaking are located in the same Member State while the ultimate parent (the resolution entity) is located in a different Member State. Therefore, paragraph 3 provides for a direct ownership structure, while paragraph 4 provides for a so-called 'daisy chain' structure across more than one Member State.

49. **Question (Article 45f)**

Under Article 45f, the resolution authority can waive the application of internal MREL in two cases:

— when the resolution entity and the subsidiary are both established in the same Member State (paragraph 3),

— when the subsidiary and its parent undertaking are established in the same Member State, even if the resolution entity is not established in that same Member State, provided that the parent undertaking complies, inter alia, with the sub-consolidated internal MREL (paragraph 4).

However, as regards the guarantees provided in paragraph 5 of Article 45f, their granting is only explicitly envisaged by the BRRD in that first situation, that is, where the resolution entity and the subsidiary are located in the same Member State.

It is not clear why, in case of cross-border resolution groups, it is possible to grant waivers (which can be deemed as a 'riskier' approach), but it is not possible to allow compliance with internal MREL with a guarantee (which is a 'less risky' approach).

Is it possible for the resolution authority of a subsidiary to permit the requirement referred to Article 45(1) to be met in full or in part with a guarantee provided by its parent undertaking under the conditions of Article 45f(5), even though the resolution entity is not established in the same Member State as the subsidiary?

Answer

Article 45f(3) refers to waivers for internal MREL in a situation of direct ownership between a subsidiary and the resolution entity in the same Member State while Article 45f(4) refers to waivers for internal MREL in a situation whereby the subsidiary and its intermediate parent undertaking are in the same Member State, but the resolution entity may or not be in that same Member State.

Regarding the possibility for the subsidiary to meet partly or fully the internal MREL with collateralised guarantees (Article 45f(5)), the provision is explicit for the situation of direct ownership between a subsidiary and the resolution entity in the same Member State but it does not provide for an equivalent provision for the situation where a subsidiary and its intermediate parent undertaking are in the same Member State.

However, the use of collateralised guarantees to meet internal MREL in the latter case should also be possible. If a waiver can be used between a subsidiary and its intermediate parent undertaking in the same Member State, similarly, a collateralised guarantee should also be available to use in similar circumstances, especially since it would provide more protection for the subsidiary in receiving the relevant resources than a full waiver of the MREL requirement would.

50. **Question (Article 45f)**

When assessing the criterion for granting waivers from internal MREL requirements referred to point (b) of Articles 45f(3) and 45f(4) BRRD or for using collateralised guarantees under Article 45f(5), what is the MREL target against which compliance is to be assessed during the MREL build-up phase running until 2024? Should compliance be assessed against the 2024 final MREL target or the 2022 intermediate target?

During any transition period that may be set, is the resolution authority allowed to permit meeting internal MREL with guarantees if all the other conditions (other than compliance with the external MREL target) are met?

Answer

When assessing the compliance of the resolution entity or the parent undertaking with the MREL requirement in Articles 45e and 45(1), as stipulated respectively in point (b) of paragraph 3 and 4 of Article 45f, the transitional periods provided in Article 45m should be taken into account.

Therefore, before 2024, compliance with paragraphs 3(b) and 4(b) of Article 45f should be assessed against the intermediate binding target determined under the second subparagraph of Article 45m(1).

This means that an internal MREL waiver could be granted to the subsidiary which is not a resolution entity, if the resolution entity or its parent undertaking comply with the intermediate requirement on a consolidated basis and all other conditions specified under Article 45f(3) or (4) are met at the moment of the waiver decision.

The same applies with respect to compliance with the condition in point (b) of Article 45f(3), when assessing the possibility for allowing that a part or all internal MREL is met with collateralised guarantees in accordance with the first subparagraph of Article 45f(5).

51. **Question (Article 45f)**

Article 45f(3) and (4) list a number of conditions which would allow for the waiving of the application of Article 45f. However, it is not clear from the text of the directive if these conditions are to be met cumulatively or individually.

Are the conditions listed in paragraphs 3 and 4 of Article 45f cumulative, or is meeting any one of the conditions listed therein sufficient to allow the waiving of the application of Article 45f to a subsidiary that is not a resolution entity?

Answer

To ensure a satisfactory level of prudence and safeguards when granting a waiver for internal MREL or when allowing the use of collateralised guarantees, the conditions specified in Article 45f(3),(4) and (5) are to be met cumulatively.

52. **Question (Article 45f)**

Could you explain the *rationale* of the conditions set in Article 45f(5) for use of collateralised guarantees for meeting the internal MREL?

Answer

Article 45f(5) empowers the resolution authority of a subsidiary to allow its internal MREL to be partially or fully met with a guarantee provided by the respective resolution entity when the resolution entity and the subsidiary are established in the same Member State, are part of the same resolution group, and when the resolution entity complies with its external MREL (please see also the reply to question 49 above, for the cases where a subsidiary and its intermediate parent undertaking are in the same Member State).

Article 45f(5) sets forth a set of conditions with which the guarantees have to comply in order to ensure that such guarantees can be effective in absorbing losses of the subsidiary and recapitalising it when they are triggered, irrespective of whether the resolution entity itself is in resolution at that point in time. These conditions provide that:

— The amount of the guarantee is equivalent to the amount of internal MREL which it is replacing (point (a)).

— The guarantee is collateralised at least up to 50 % of the guaranteed amount (point (c)).

— The guarantee is subject to both discretional (i.e., determination that the subsidiary is no longer viable – point of non-viability) and automatic triggers (i.e. inability to pay debts or other liabilities as they fall due), whichever is earlier (point (b)).

— Only financial collateral as defined in the Directive 2002/47/EC of the European Parliament and of the Council ([15]) is accepted, i.e., title transfer financial collateral arrangements or security financial collateral arrangements (pledges). This ensures an enhanced protection to the collateral holder, as under the terms of that directive such collateral is enforceable even if the resolution entity is insolvent or placed in resolution (point (c)).

— The collateral is of high quality (unencumbered, subject to haircuts) (points (d) and (e)).

— The effective maturity of the collateral meets the same maturity condition as eligible liabilities (point (f)), and

— There should be no barriers to the transfer of collateral, including in cases where resolution action is taken in respect of the resolution entity (point (g)).

53. **Question (Articles 45f and 45g)**

Is it correct to consider that the term 'prompt' as used in point (c) of paragraphs 3 and 4 of Article 45f and in point (f) of Article 45g applies not only to the transfer of own funds, but also to the repayment of liabilities by the resolution entity to the subsidiary.

Answer

The condition for granting a waiver for internal MREL referred to in paragraphs 3(c) and 4(c) of Article 45f and in point (f) of Article 45g ensures that there are no current or foreseeable impediments (practical or legal) both to the prompt transfer of own funds to the subsidiary and to the prompt repayment of its liabilities by the resolution entity or intermediate parent undertaking.

(e) ***Procedure for determining MREL***

54. **Question (Article 45h)**

Article 45h(1) states that the resolution authority of the resolution entity, the group-level resolution authority, where different from the former, and the resolution authorities responsible for the subsidiaries of a resolution group that are subject to the requirement referred to in Article 45f on an individual basis must do everything within their power to reach a joint decision. For cross-border groups, would it be appropriate to include a provision in the transposing national law to allow the national resolution authority to cooperate with all relevant authorities?

([15]) Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements (OJ L 168, 27.6.2002, p. 43).

Answer

The second subparagraph of Article 88(5) already provides that the members participating in the resolution college must cooperate closely. This obligation pertains to all tasks listed in Article 88(1), which includes the determination of MREL (point (i) of that provision).

Therefore, a provision that would allow national resolution authorities to cooperate with other relevant authorities would not be contrary to existing BRRD rules.

55. **Question (Article 45h)**

Article 45h(2) BRRD refers to Article 12 CRR. However, the amendments introduced to CRR by Regulation (EU) 2019/876 have deleted that Article 12.

Could you please confirm that Article 45h(2) BRRD should instead refer to Article 12a CRR?

Answer

The reference to Article 12 CRR in Article 45h(2) BRRD should be read as a reference to Article 12a CRR.

56. **Question (Article 45h)**

Paragraphs 4 and 5 of Article 45h apply to the decisions of the resolution authorities in case of disagreement with regards to the consolidated resolution group MREL requirement (external MREL) and the individual MREL requirement of resolution group's entities (internal MREL), respectively.

Does paragraph 6 of Article 45h apply if there is no joint decision on any of the above mentioned requirements simultaneously?

Answer

Article 45h(6) deals with the situation where there is a disagreement among resolution authorities both concerning the level of the consolidated resolution group requirement and the requirements of subsidiaries which are not resolution entities. In this case, the resolution authorities of the subsidiaries will take a decision on the individual level of the MREL requirement for the subsidiaries in compliance with paragraph 5 (i.e., by taking duly into account the views of the resolution authority of the resolution entity). Also, the resolution authority of the resolution entity will take a decision on the consolidated group requirement in compliance with the steps provided in paragraph 4.

(f) ***Transitional and post-resolution arrangements***

57. **Question (Article 45m)**

According to Article 45m(8), resolution authorities may subsequently revise the transitional period or planned MREL targets. Does this provision relate only to the planned MREL targets under Article 45m(6) or can the initially decided transitional period determined under Article 45m(1) be subsequently revised?

Answer

Resolution authorities may revise the initially decided transitional period under Article 45m(1), and not just the planned MREL communicated under Article 45m(6).

The reference to 'Subject to paragraph 1' in the beginning of Article 45m(8) was made to ensure that the resolution authority complies with the rules and criteria provided therein when revising the transitional period.

58. **Question (Article 45m)**

Can the intermediate target level determined under the second subparagraph of Article 45m(1) be extended if resolution authorities set a transitional period ending after 1 January 2024 pursuant to the third subparagraph of that provision?

Answer

The intermediate target level provided for by the second subparagraph of Article 45m(1) must be met by entities on 1 January 2022 and cannot be extended by the resolution authority. The possibility to set a transitional period ending after 1 January 2024 laid down in the third subparagraph of Article 45m(1) applies only to the final MREL.

However, it should be noted that the intermediate target must ensure, as a rule, a linear build-up of own funds and eligible liabilities towards the MREL. Therefore, the extension of the transitional period for the final MREL beyond 1 January 2024 affects the intermediate target to be set by resolution authorities, as it leads to a lower intermediate target than the one that would have been set if the transitional period would end on 1 January 2024.

59. **Question (Article 45m)**

According to the second subparagraph of Article 45m(1), 'The intermediate target levels, as a rule, shall ensure a linear build-up of own funds and eligible liabilities towards the requirement.'

Do you confirm that, in that provision, the term 'requirement' is referring not only to the overall quantitative requirement but also to subordination?

Answer

According to the first sentence of the second subparagraph of Article 45m(1), the intermediate target levels to be determined by the resolution authority refer to the requirements in Articles 45e or 45f (external or internal MREL) and to the requirements that result from the application of Article 45b(4), (5) or (7) (subordination), as appropriate.

The rule requiring resolution authorities to ensure a linear build-up applies to all intermediate target levels to be set by the resolution authority. Therefore, the intermediate target level relating to the overall calibration of MREL should ensure a linear build-up towards the final external or internal MREL set by the resolution authority. Likewise, for subordination, the subordinated intermediate target should be determined in view of the final subordination target set by the resolution authority. The TLAC minimum requirement, as well as the minimum level of the requirements referred to in Article 45c(5) our (6), which need to be complied with by 1 January 2022, also need to be taken into account, as the intermediate target level cannot be set at a lower amount than those minimum requirements (the intermediate target level could be set at an amount higher than those minimum requirements on the basis of the linear build-up rule).

H. **QUESTIONS RELATED TO THE CONTRACTUAL RECOGNITION OF BAIL-IN**

60. **Question (Article 55)**

The first subparagraph of Article 55(1) provides that liabilities which are not excluded from the scope of bail-in and are governed by the law of a third country must include a contractual clause by which the counterparty recognises that the liability may be subject to the write-down and conversion powers of EU resolution authorities and agrees to be bound by such powers.

The second subparagraph of Article 55(1) further provides the resolution authority with the power to grant a waiver to this requirement for entities whose MREL requirements equals the loss absorption amount, provided that the relevant liabilities are not counted for the purposes of meeting MREL requirements.

Should the resolution authority's discretion in the second subparagraph of Article 55(1) be applied on a case-by-case basis or on a general basis to all entities meeting the relevant criteria?

Answer

The assessment referred to in the second subparagraph of Article 55(1) should be performed on a case-by-case basis. This provision provides resolution authorities with discretion to apply the exemption ('may decide') to entities falling in the relevant category mentioned therein.

Moreover, the exemption can only be granted if the institution can meet its MREL requirement with the remaining liabilities. This element needs to be checked before granting the exemption, and that verification only seems possible to be performed on a case-by-case basis.

61. **Question (Article 55)**

Does the date mentioned in Article 55(1)(d) refer to Directive (EU) 2019/879 or to BRRD I?

Answer

Point (d) of Article 55(1) refers to BRRD I, which already contained Article 55, as it refers to the transposition of the BRRD section containing this article, rather than to the transposition of the article itself. The new Article 55 introduced by Directive (EU) 2019/879 replaces the previous Article 55 with a new version of this provision, but does not replace the entire section to which Article 55 belongs.

62. **Question (Article 55)**

How should the term 'class' be understood in the fifth subparagraph of Article 55(2)? Is it referring to the insolvency ranking of the liabilities or to the type of financial instrument concerned?

Furthermore, should the references to 'class' in Article 45b(5) be read with the same meaning as in Article 55(2)?

Answer

The word 'class' in the fifth subparagraph of Article 55(2) refers to the insolvency ranking of the liabilities. This interpretation is aligned with the meaning and use of the word in other BRRD provisions (e.g., Article 34(1)(f) which refers to the NCWO principle). For this reason, the reference to 'class' in Article 45b(5) should be read accordingly.

63. **Question (Article 55)**

The fifth subparagraph of Article 55(2) provides that where the resolution authority, in the context of the resolvability assessment or at any other time, determines that, within a class of liabilities, the amount of liabilities benefitting from the impracticability waiver and liabilities excluded or likely to be excluded from bail-in in accordance with Article 44 (2) and (3) amounts to more than the 10 % of that class, it must immediately assess the impact of that fact on the resolvability of the entity concerned. However, in that provision, there is no reference to liabilities for which the institution fails to include the contractual clause (i.e. violating the obligation pursuant to Article 55(1)) when assessing if the 10 % threshold is exceeded.

Would it be correct to transpose BRRD so as not to include liabilities for which the institution failed to include the contractual clause when calculating the 10 % threshold?

Answer

The wording used in the fifth subparagraph of Article 55(2) is limited to liabilities that are allowed by the resolution authority not to include the contractual term due to impracticability, together with the liabilities that are excluded or likely to be excluded from bail-in under Article 44(2) and (3). The specific obligation to assess the impact on resolvability based on this subparagraph can, therefore, be transposed with reference only to these liabilities.

However, BRRD does not prevent Member States from transposing the provision extensively and to include also liabilities for which the bank fails to include the clause. This approach would be in line with the objectives of resolution and BRRD, as it would increase the scrutiny on the institution's resolvability.

Moreover, the obligation in this provision is without prejudice to the general obligation for the resolution authority to ensure the resolvability of the institution pursuant to Article 17. In the context of the general resolvability assessment, the resolution authority should also take into account the impact from liabilities that do not include the contractual clause because the institution or entity failed to comply with the obligation in Article 55(1).

64. **Question (Article 55)**

On what conditions may a resolution authority determine that it disagrees with a firm's assessment of impracticability? Some difficulties may arise where a contract has been entered into and then the resolution authority determines that a contractual clause as referred to in Article 55(1) should be inserted.

Additionally, if an entity reaches the conclusion that the insertion of the contractual clause is impracticable and notifies the resolution authority of that assessment pursuant to the first subparagraph of Article 55(2), at what moment can that entity enter into the contract concerned?

Answer

The criteria for the assessment of the impracticability will be specified in a delegated regulation setting out regulatory technical standards which are being developed by the EBA, in line with the empowerment provided in Article 55(6).

With respect to the moment when the contract can be concluded, the institution cannot enter into the contract before notifying the resolution authority. However, it can enter into it without waiting for the reply from the resolution authority on the existence of an impracticability condition, due to the fact that the second subparagraph of Article 55 (2) provides that the obligation to include the clause is suspended from the moment of the notification from the institution.

65. **Question (Article 55)**

How should the expression 'within a reasonable timeframe' in Article 55(2) be understood?

In particular, in the first subparagraph of that provision, does the reference to 'reasonable timeframe' apply to the entity (who must provide the information requested by the resolution authority in that timeframe) or to the resolution authority (who must request the information within that timeframe)?

Answer

The 'reasonable timeframe' is relevant for the resolution authority to request the necessary information (in the first subparagraph of Article 55(2)) and the insertion of the clause (in the third subparagraph of the same paragraph).

The first subparagraph of Article 55(2)allows for discretion at national level to define the reasonable timeframe for the resolution authority to request the necessary information from the entity. In any event, it is advisable that such timeframe is defined in a consistent way with the deadline that will be established under the third subparagraph of Article 55(2), regarding the request for the insertion of the clause. This element will be set out in a delegated regulation based on a regulatory technical standard which is being developed by the EBA, in line with the mandate in Article 55(6).

66. **Question (Articles 55 and 59)**

The fifth subparagraph of Article 55(2) refers to Article 73 'when applying write-down and conversion powers to eligible liabilities'. Article 73 establishes safeguards for shareholders in case of 'partial transfers' and 'application of the bail-in tool'.

Should this be interpreted as the safeguards in Article 73 also applying when writing down and converting eligible liabilities 'independent of resolution' under Article 59(1)(a) and (1a)?

Answer

Article 73 applies only to the bail-in tool, which is one of the possible applications of the write down and conversion powers, and is exercised 'in relation to liabilities of an institution under resolution'.

However, the principle enshrined in Article 73(1)(b) – which concerns the application of the NCWO principle – applies also when the write down or conversion is made independently of resolution as per Article 59(1)(a). In particular, the third subparagraph of Article 59(1) provides that 'after the exercise of the power to write down or convert relevant capital instruments and eligible liabilities independently of resolution action, the valuation provided for in Article 74 shall be carried out, and Article 75 shall apply'. Both Articles 74 and 75 imply the application of the NCWO principle.

I. QUESTIONS RELATED TO THE WRITE DOWN OR CONVERSION OF CAPITAL INSTRUMENTS AND ELIGIBLE LIABILITIES

67. **Question (Article 59)**

What are the 'exceptional circumstances' referred to in Article 59(1b) that would allow a deviation from the resolution plan?

Answer

Recital (54) and point (j) of Article 87 BRRD clarify that, when taking resolution action, resolution authorities should follow the measures provided for in the resolution plans, unless they assess on the basis of the circumstances of a concrete case that resolution objectives would be achieved more effectively by taking actions which are not provided in the resolution plan. The 'exceptional circumstances' referred to in Article 59(1b) should thus be construed in the light of recital (54) and point (j) of Article 87. This is relevant both in cases where measures need to be taken with respect to a subsidiary only and where a group resolution scheme is needed, as clarified in point (a) of Article 91(6).

68. **Question (Article 59)**

With the amendments to Article 59 BRRD, eligible liabilities that meet the conditions referred to in point (a) of Article 45f(2) BRRD, except the condition related to the remaining maturity of liabilities as set out in Article 72 c(1) CRR, may also be written down or converted at the point of non-viability.

Is the power to write down or convert these instruments only applicable in situations where the issuing subsidiary of the resolution entity is part of the same resolution group as the resolution entity in question? Or may that power also be applied in situations where the subsidiary itself is a resolution entity and thus not part of the same resolution group as the parent entity and where the subsidiary – without being subject to an internal MREL – holds instruments that meet the requirements for internal MREL?

Answer

The power to write down or convert eligible liabilities at the point of non-viability as referred to in Article 59(1a) BRRD is available only with respect to entities that themselves are not resolution entities.

This is clear from Article 59(1a) BRRD itself, which requires that the conditions of point (a) of Article 45f(2) are met, except for the condition related to the remaining maturity of liabilities. Article 45f applies only to entities that are not themselves resolution entities.

Indeed, the introductory sentence of Article 45f(2) BRRD clarifies that the provisions included therein are applicable to the entities referred to in Article 45f(1) BRRD. The latter provision sets out the scope of application of internal MREL and clarifies that internal MREL is not applicable to resolution entities.

Therefore, the eligible liabilities of subsidiaries that are resolution entities can only be written down or converted in resolution, through the use of the bail-in tool and not at the point of non-viability.

J. QUESTIONS RELATED TO THE CONTRACTUAL RECOGNITION OF RESOLUTION STAY POWERS

69. **Question (Article 71a)**

Article 71a(2) gives Member States the option to require that Union parent undertakings ensure that their third-country subsidiaries include, in certain financial contracts, contractual terms to exclude that the exercise of resolution powers forms a ground for termination or other enforcement measures on those contracts. That requirement may apply in respect of third-country subsidiaries which are credit institutions, investment firms (or which would be investment firms if they had a head office in the relevant Member State) or financial institutions.

When exercising this option, can Member States choose to apply the requirement of the first subparagraph of Article 71a(2) only to one or two of the enumerated categories of entities (e.g. only to third country subsidiaries that are credit institutions)?

Answer

Article 71a(2) can be transposed by requiring the insertion of the clause mentioned therein only to some of the categories of entities listed in points (a) to (c) of the second subparagraph, provided that this is not in conflict with other BRRD provisions.

K. QUESTIONS RELATED TO OTHER BRRD PROVISIONS

70. Question (Article 33)

Should the reference in Article 33(4) be to paragraph 2 of that same Article, rather than paragraph 3? Paragraph 2 of Article 33 is the provision containing the rule that resolution action towards entities referred to in Article 1(1)(c) or (d) should only be taken when the conditions in Article 32(1) are met, with the provision in paragraph 4 being an exception to this rule.

Answer

The reference '[s]ubject to paragraph 3' in Article 33(4) means that, where applicable, the conditions of Article 33(3) need to be complied with in the context of application of Article 33(4).

More specifically, where subsidiaries of a mixed activity holding company are held directly or indirectly by an intermediate financial holding company and the conditions set out in points (b) and (c) of Article 33(4) are met, the entity referred to in condition (a) of that provision should be construed as being the financial holding company and not the mixed activity holding company. Thus, '[s]ubject to paragraph 3' is a necessary clarification since both types of holding companies are covered by points (c) and (d) of Article 1(1).

71. Question (Article 36)

In Article 36(11)(a), should the phrase 'capital instruments' be replaced with 'capital instruments and eligible liabilities'?

Answer

In Article 36(11)(a), a reference to 'eligible liabilities' is not needed because that provision is referring to the possibility of writing-up claims only after the application of the bail-in tool, and not after application of the write down or conversion powers under Article 59.

In any case, following a definitive valuation, a write up of instruments that have been written down in accordance with Articles 59 to 62 is nevertheless possible, in accordance with Articles 46(3) and 60(2)(a).

72. Question (Article 47)

Article 47 provides for the rules regarding treatment of shareholders in case of bail-in or write-down or conversion of capital instruments. However, under Directive (EU) 2018/879, the write-down and conversion powers under Article 59 were extended to cover also certain eligible liabilities. Why was this change not reflected in Article 47?

Answer

Article 47 applies to 'shareholders and holders of other instruments of ownership' in the context of the application of the bail-in tool or the exercise of write down and conversion powers under Article 59.

Directive (EU) 2018/879 increased the scope of application of the write down and conversion powers to include holders of certain eligible liabilities. However, as those holders cannot be deemed as being 'shareholders and holders of other instruments of ownership' based on the definitions in points (61) and (62) of Article 2(1), there is no need to adjust the scope of Article 47.

Likewise, holders of relevant capital instruments (already included in the scope of Article 59 in BRRD I) are not affected by the provisions of Article 47, as they too are not 'shareholders and holders of other instruments of ownership' based on the definitions mentioned above.

As regards the reference in paragraph (1)(b)(i) of Article 47 to the dilution of shareholders through the conversion of relevant capital instruments pursuant to the power referred to in Article 59(2), that should also be read as including the conversion of eligible liabilities in accordance with Article 59. In fact, Article 60(1) on the sequence of write-down and conversion of relevant capital instruments and eligible liabilities makes a reference in its point (a) to the need to take one or both of the actions specified in Article 47(1) when reducing CET1 items, before other types of instruments are affected.

73. **Question (Article 108)**

Article 108(2)(c) BRRD requires that 'the relevant contractual documentation and, where applicable, the prospectus related to the issuance explicitly refer to the lower ranking under this paragraph'. Should national transposition measures enacting Article 108(2)(c) in national law require issuers to refer in their documentation to those national transposition measure, or instead to Article 108(2) BRRD?

Answer

The contractual reference to the lower ranking of the liability required under Article 108(2)(c) should be made with reference to the national measures transposing Article 108(2) in the Member State of the issuer of debt instruments. However, the additional reference in the contractual term to Article 108(2) BRRD will not be contrary to it.

74. **Question (general)**

Does the term 'entity', when not being used together with the term 'institution' (i.e., in the expression 'institution or entity referred to in points (b), (c) and (d) of Article 1(1)') cover the institutions referred to in point (a) of Article 1(1) in addition to the entities mentioned in points (b) to (d) of that provision?

Moreover, in Article 16a(1), does the term 'entity' refer to an institution or a financial holding company which has to comply with the prudential requirements on a consolidated basis?

Answer

The specific meaning of the term 'entity' depends on the provisions in which it is used and on who is subject to the underlying obligations in those provisions or the provisions mentioned therein. It should take into account the scope of BRRD as provided in Article 1(1). The term could refer to all or part of the entities referred to in points (a) to (d) of Article 1(1), including the institutions mentioned in point (a).

In the case of Article 16a, the reference to the word 'entity' is meant to encompass all entities referred to in points (a) to (d) of Article 1(1) which are required to comply with the CBR and MREL pursuant to Article 45, regardless of whether it is on an individual or consolidated basis (i.e., external and internal MREL).

L. QUESTIONS RELATED TO THE SRMR

75. **Question (Article 3 SRMR)**

The definition of 'resolution entity' in point (24a) of Article 3(1) SRMR only refers to the SRB and not to the national resolution authorities. This definition is used in several Articles of the SRMR (e.g. Articles 12k, 16, 21 and 27). Can the SRMR provisions containing the expression 'resolution entity' be applied to resolution entities and to groups mentioned in Article 7(3) that fall outside the direct remit of the SRB?

Answer

Article 3(24a) SRMR (the provision mirroring Article 2(83a) BRRD) does not empower the SRB to identify an entity as being a resolution entity. This is rather a consequence of the respective resolution plan providing for resolution action with respect to that entity.

Article 9(1) SRMR requires national resolution authorities to draw up and adopt resolution plans for the entities referred to in Article 7(3) SRMR in accordance with Article 8(5) to (13) SRMR. The obligation for the resolution plan to provide for the resolution actions that may be applied in case of failure is provided in Article 8(6) SRMR. Additionally, the requirement to identify for each group the resolution entities and the resolution groups is provided in the second subparagraph of Article 8(10) SRMR.

76. **Question (Article 10a SRMR)**

In accordance with Article 10a(1) SRMR, where an entity is in a situation where it meets the CBR, but fails to meet its external or internal MREL when calculated on the basis of TREA, the SRB has the power to prohibit an entity from distributing more than the M-MDA. Does the power of the SRB pursuant to that provision relate to all entities which are subject to SRMR, or just to those for which the SRB is directly responsible in accordance with Article 7(2), (4)(b) and (5) SRMR?

Additionally, how should the SRB apply the powers in Article 10a SRMR? Namely, should the national resolution authorities in that case also implement the instructions of the SRB in accordance with Article 29 SRMR?

Answer

In accordance with the division of tasks laid out in Article 7 SRMR, the SRB can only exercise the powers conferred by Article 10a SRMR to the entities in its direct remit (i.e., entities and groups referred to in Article 7(2) SRMR, and entities and groups referred to in Article 7(4)(b) and (5) SRMR where the conditions for the application of those paragraphs are met). For the remaining entities mentioned in Article 7(3), it should be the relevant national resolution authority that exercises the powers to restrict distributions.

Article 10a SRMR does not explicitly indicate to whom the SRB's decision to prohibit distributions above M-MDA should be addressed. Nevertheless, this decision is closely related to the application of MREL given that the power referred to in Article 10a SRMR is one of the measures through which the breach of MREL should be addressed, as per Article 12j(1)(b) SRMR. It is also closely related to the removal of substantive impediments to resolvability given that the second subparagraph of Article 10(9) SRMR identifies the situation where an institution meets the CBR together with its own funds requirements, but not the CBR simultaneously with MREL, as possibly giving rise to a substantive impediment to resolvability. In both instances, the SRB's decisions are addressed to national resolution authorities, which are required to implement them in accordance with Article 29 SRMR – see Articles 12(5) and 10(10) to (12) SRMR.

By analogy with those provisions, and in light of the *rationale* underpinning the interactions between the SRB and national resolution authorities, Article 10a SRMR should be interpreted in the sense that the SRB's determinations provided therein should be addressed to the relevant national resolution authorities, which should implement them in accordance with Article 29 SRMR.

77. **Question (Article 10a SRMR)**

Where an entity is in a situation where it does not meet CBR in combination with its MREL requirements, the SRB has the power to prohibit an entity from distributing more than the M-MDA on the basis of Article 10a SRMR through any of the actions mentioned therein.

However, Article 10a SRMR only refers to the SRB and not to the national resolution authorities. Furthermore, Article 10a SRMR is not listed in the third subparagraph of Article 7(3) SRMR. Can national resolution authorities take action on the basis of Article 10a SRMR in relation to entities and groups referred to in Article 7(3) SRMR?

Answer

Due to the division of tasks laid out in Article 7 SRMR, the SRB can exercise the powers conferred by Article 10a SRMR only over the entities in its direct remit (i.e., entities and groups referred to in Article 7(2) SRMR, and entities and groups referred to in Article 7(4)(b) and (5) SRMR where the conditions for the application of those paragraphs are met) (see also the answer to question 80). Despite the fact that Article 10a SRMR is not included in the list of provisions of the fourth subparagraph of Article 7(3) SRMR, national resolution authorities are still empowered to apply the power to prohibit certain distributions by virtue of the national transposition of Article 16a BRRD.

Even though Article 10a SRMR is not included in the list of provisions in the fourth subparagraph of Article 7(3) SRMR, it should be noted that there are references to this Article in other provisions that are explicitly applicable to national resolution authorities as per Article 7(3) SRMR:

— point (i) of the second subparagraph of Article 10(9) SRMR includes the circumstances described in Article 10a(1) SRMR as a situation giving rise of a substantive impediment to resolvability,

— Article 12j(1)(b) SRMR lists the powers referred to in Article 10a SRMR as one of the measures to be used to address a breach of MREL.

78. **Question (Article 12k SRMR)**

In accordance with Article 12k(1) SRMR, the SRB must determine intermediate target levels for the requirements in Articles 12f or 12g SRMR or for requirements that result from the application of Article 12c(4), (5) or (7) SRMR, as appropriate, that entities referred to in Article 12(1) and (3) SRMR must comply with at 1 January 2022.

Should this provision be interpreted as requiring the SRB to determine the intermediate target levels also for the entities referred to in Article 7(3) SRMR for which the national resolution authorities determine the MREL (i.e., the entities referred to in Article 12(3) SRMR)?

Answer

For the entities referred to in Article 12(3) SRMR, the intermediate targets referred to in the second subparagraph of Article 12k(1) SRMR should be determined by the national resolution authority, in light of the division of tasks laid down in Article 7(3) SRMR.

79. **Question (Article 18 SRMR)**

Pursuant to Article 18(1a) SRMR, the SRB has the power to adopt a resolution scheme with regard to a central body and all credit institutions permanently affiliated to it that are part of the same resolution group when that resolution group complies as a whole with the conditions established in the first subparagraph of paragraph (1) of Article 18 SRMR.

However, Article 18(1a) SRMR refers solely to the SRB, and not to the national resolution authority. Moreover, Article 18(1a) SRMR is not listed in the fourth subparagraph of Article 7(3) SRMR. Do national resolution authorities have the power on the basis of the SRMR to adopt a resolution scheme with regard to a central body and credit institutions permanently affiliated to it that are part of the same resolution group?

Answer

The fourth subparagraph of Article 7(3) SRMR does not include a reference to Article 18(1a) SRMR concerning the application of resolution action in relation to a central body and all credit institutions permanently affiliated to it that are part of the same resolution group.

Nevertheless, national resolution authorities are still empowered to take a resolution action under the conditions mentioned in Article 18(1a) SRMR, as Article 7(3)(e) SRMR requires national resolution authorities to adopt resolution decisions and apply resolution tools in accordance with the relevant procedures and safeguards with respect to the entities and groups under their direct remit. Article 18(1a) SRMR can be considered a specificity of the conditions set out in Article 18(1) SRMR.

Furthermore, the national provision transposing Article 32a BRRD would also be applicable, as it would not be in conflict with the SRMR.

80. **Question (Article 33 BRRD)**

Why is Article 33(3) BRRD not mirrored in the SRMR, and what are the consequences that might result from this?

Answer

This was already the case under SRMR I and BRRD I.

According to Article 33(3) BRRD, where the subsidiary institutions of a mixed-activity holding company are held by an intermediate financial holding company, resolution actions for the purposes of group resolution must be taken in relation to the intermediate financial holding company, and not to the mixed-activity holding company. This Article was amended with Directive (EU) 2019/879, but just to add that, during the resolution planning phase, the intermediate financial holding company must be identified as a resolution entity.

Mixed-activity holding companies are included in the scope of BRRD by virtue of the reference to them in Article 1(1)(c). However, Article 2 SRMR makes no reference to mixed-activity holding companies, meaning that they are not in the scope of SRMR. Thus, there was no need to mirror Article 33(3) BRRD in the SRMR. It should be noted that Article 17(5)(k) BRRD, allowing resolution authorities to request mixed-activity holding companies to set up a separate financial holding company for the purposes of addressing or removing substantive impediments to resolvability, was likewise not mirrored in Article 10(11) SRMR.

81. **Question (Article 45b)**

In light of the answer provided to question 34 of Commission Notice of 29 September 2020, can you clarify what is meant by 'entities in the scope of the SRMR'?

Furthermore, if Member States exercise the option in the last subparagraph of Article 45b(8) BRRD by setting a percentage higher than 30 %, will that percentage apply to the entities referred to in Article 7(3) SRMR that are in the direct remit of the national resolution authorities?

Answer

The entities in the scope of the SRMR are the entities mentioned in Article 2 SRMR. For the purpose of assessing what entities are in the scope of the SRMR, the division of tasks between the SRB and the national resolution authorities in Article 7 SRMR is not relevant.

If a participant Member State exercises the option of the fourth subparagraph of Article 45b(8) BRRD and increases the percentage to more than 30 %, such increase would only be applicable to entities that are outside the scope of the SRMR as laid down in Article 2 SRMR. This is due to the fact that the SRMR is applicable to all entities within its scope, regardless of the division of tasks between SRB and national resolution authorities. When a national resolution authority is exercising its tasks in relation to an entity referred to in Article 7(3) SRMR, it must apply the rules of SRMR using the powers granted on the basis of the national rules transposing BRRD. This is clear from Article 7 SRMR, more specifically point (d) of the first subparagraph and the fourth subparagraph of Article 7(3).

Indeed, the SRMR, in addition to conferring on the SRB a centralised power of resolution, also intended to adapt the rules and principles of the BRRD to the specificities of the SRM and to ensure that the SRB and the national resolution authorities apply the same material rules when adopting decisions under the SRMR. This approach is spelled out in recitals (18), (21) and (23) and, in particular, in recital (28) SRMR whose last sentence provides that '[u] nder certain circumstances the national resolution authorities should perform their tasks on the basis of and in accordance with this Regulation while exercising the powers conferred on them by, and in accordance with, the national law transposing Directive 2014/59/EU in so far as it is not in conflict with this Regulation.' This approach also arises from the first subparagraph of Article 1 SRMR, which provides that the SRMR 'establishes uniform rules and a uniform procedure for the resolution of the entities' within the scope of the SRMR.

Therefore, where SRMR and the national rules transposing BRRD differ, SRMR has to prevail as regards entities included in its scope, as provided in Article 2 SRMR.

Non-opposition to a notified concentration

(Case M.9787 — Česká Spořitelna/Československá Obchodní Banka/Komerční Banka/JV)

(Text with EEA relevance)

(2020/C 417/03)

On 6 August 2020, the Commission decided not to oppose the above notified concentration and to declare it compatible with the internal market. This decision is based on Article 6(1)(b) of Council Regulation (EC) No 139/2004 [1]. The full text of the decision is available only in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

— in the merger section of the Competition website of the Commission (http://ec.europa.eu/competition/mergers/cases/). This website provides various facilities to help locate individual merger decisions, including company, case number, date and sectoral indexes,

— in electronic form on the EUR-Lex website (http://eur-lex.europa.eu/homepage.html?locale=en) under document number 32020M9787. EUR-Lex is the on-line access to European law.

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[1] OJ L 24, 29.1.2004, p. 1.

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

EUROPEAN COMMISSION

Euro exchange rates [1]

1 December 2020

(2020/C 417/04)

1 euro =

	Currency	Exchange rate		Currency	Exchange rate
USD	US dollar	1,1968	CAD	Canadian dollar	1,5522
JPY	Japanese yen	124,92	HKD	Hong Kong dollar	9,2774
DKK	Danish krone	7,4441	NZD	New Zealand dollar	1,7010
GBP	Pound sterling	0,89798	SGD	Singapore dollar	1,6048
SEK	Swedish krona	10,2135	KRW	South Korean won	1 326,72
CHF	Swiss franc	1,0836	ZAR	South African rand	18,3311
ISK	Iceland króna	158,20	CNY	Chinese yuan renminbi	7,8639
NOK	Norwegian krone	10,6028	HRK	Croatian kuna	7,5515
BGN	Bulgarian lev	1,9558	IDR	Indonesian rupiah	16 981,99
CZK	Czech koruna	26,235	MYR	Malaysian ringgit	4,8835
HUF	Hungarian forint	357,20	PHP	Philippine peso	57,598
PLN	Polish zloty	4,4788	RUB	Russian rouble	90,7837
RON	Romanian leu	4,8710	THB	Thai baht	36,215
TRY	Turkish lira	9,4122	BRL	Brazilian real	6,3573
AUD	Australian dollar	1,6274	MXN	Mexican peso	24,0465
			INR	Indian rupee	88,1535

[1] *Source*: reference exchange rate published by the ECB.

New national side of euro coins intended for circulation

(2020/C 417/05)

National side of the new commemorative 2-euro coin intended for circulation and issued by Greece

Euro coins intended for circulation have legal tender status throughout the euro area. For the purpose of informing the public and all parties who handle the coins, the Commission publishes a description of the designs of all new coins ([1]). In accordance with the Council conclusions of 10 February 2009 ([2]), euro-area Member States and countries that have concluded a monetary agreement with the European Union providing for the issuing of euro coins are allowed to issue commemorative euro coins intended for circulation, provided that certain conditions are met, particularly that only the 2-euro denomination is used. These coins have the same technical characteristics as other 2-euro coins, but their national face features a commemorative design that is highly symbolic in national or European terms.

Issuing country: Greece

Subject of commemoration: 2 500 years since the Battle of Thermopylae

Description of the design: The design depicts an ancient Greek helmet. Inscribed along the inner edge are the words '2500 YEARS SINCE THE BATTLE OF THERMOPYLAE' and 'HELLENIC REPUBLIC'. Also inscribed in the background are the year of issuance '2020' and a palmette (the mintmark of the Greek mint). Visible down and right of the helmet is the monogram of the artist (George Stamatopoulos). Although ending in defeat for the Greeks, the Battle of Thermopylae remains a timeless symbol of heroic resistance.

The coin's outer ring depicts the 12 stars of the European flag.

Estimated number of coins to be issued: 750 000

Date of issue: January 2020

([1]) See OJ C 373, 28.12.2001, p. 1 for the national faces of all the coins issued in 2002.

([2]) See the conclusions of the Economic and Financial Affairs Council of 10 February 2009 and the Commission Recommendation of 19 December 2008 on common guidelines for the national sides and the issuance of euro coins intended for circulation (OJ L 9, 14.1.2009, p. 52).

New national side of euro coins intended for circulation

(2020/C 417/06)

National side of the new commemorative 2-euro coin intended for circulation and issued by Greece

Euro coins intended for circulation have legal tender status throughout the euro area. For the purpose of informing the public and all parties who handle the coins, the Commission publishes a description of the designs of all new coins ([1]). In accordance with the Council conclusions of 10 February 2009 ([2]), euro-area Member States and countries that have concluded a monetary agreement with the European Union providing for the issuing of euro coins are allowed to issue commemorative euro coins intended for circulation, provided that certain conditions are met, particularly that only the 2-euro denomination is used. These coins have the same technical characteristics as other 2-euro coins, but their national face features a commemorative design that is highly symbolic in national or European terms.

Issuing country: Greece

Subject of commemoration: 100 years since the union of Thrace with Greece

Description of the design: The design replicates an ancient coin of the Thracian city of Abdera, featuring a griffin. Inscribed along the inner edge are the words '100 YEARS SINCE THE UNION OF THRACE WITH GREECE' and 'HELLENIC REPUBLIC', as well as the year of issuance '2020' and a palmette (the mintmark of the Greek mint). Also visible at left is the monogram of the artist (George Stamatopoulos). The region of Thrace, located in the northeastern corner of the country, was united with Greece after the end of World War I.

The coin's outer ring depicts the 12 stars of the European flag.

Estimated number of coins to be issued: 750 000

Date of issue: May 2020

([1]) See OJ C 373, 28.12.2001, p. 1 for the national faces of all the coins issued in 2002.

([2]) See the conclusions of the Economic and Financial Affairs Council of 10 February 2009 and the Commission Recommendation of 19 December 2008 on common guidelines for the national sides and the issuance of euro coins intended for circulation (OJ L 9, 14.1.2009, p. 52).

V

(Announcements)

PROCEDURES RELATING TO THE IMPLEMENTATION OF COMPETITION POLICY

EUROPEAN COMMISSION

Prior notification of a concentration

(Case M.10069 — HDI Assicurazioni/Amissima Assicurazioni)

Candidate case for simplified procedure

(Text with EEA relevance)

(2020/C 417/07)

1. On 24 November 2020, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ([1]).

This notification concerns the following undertakings:

— HDI Assicurazioni S.p.A. ('HDI', Italy), controlled by the Talanx Group ('Talanx', Germany),

— Amissima Assicurazioni S.p.A. ('Amissima', Italy).

HDI acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of Amissima.

The concentration is accomplished by way of purchase of shares.

2. The business activities of the undertakings concerned are:

— for HDI: provision and distribution of life and non-life insurance products in Italy,

— for Talanx: provision and distribution of insurance and reinsurance products worldwide,

— for Amissima: provision and distribution of non-life insurance products in Italy.

3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope of the Merger Regulation. However, the final decision on this point is reserved.

Pursuant to the Commission Notice on a simplified procedure for treatment of certain concentrations under the Council Regulation (EC) No 139/2004 ([2]) it should be noted that this case is a candidate for treatment under the procedure set out in the Notice.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation to the Commission.

Observations must reach the Commission not later than 10 days following the date of this publication. The following reference should always be specified:

M.10069 — HDI Assicurazioni/Amissima Assicurazioni

([1]) OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation').
([2]) OJ C 366, 14.12.2013, p. 5.

Observations can be sent to the Commission by email, by fax, or by post. Please use the contact details below:

Email: COMP-MERGER-REGISTRY@ec.europa.eu

Fax +32 22964301

Postal address:

European Commission
Directorate-General for Competition
Merger Registry
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

Prior notification of a concentration

(Case M.9977 — EPGC/Metro)

Candidate case for simplified procedure

(Text with EEA relevance)

(2020/C 417/08)

1. On 23 November 2020, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ([1]).

This notification concerns the following undertakings:

— EP Global Commerce a.s. ('EPGC', Czechia), controlled by Mr Daniel Křetínský (Czechia),

— Metro AG ('Metro', Germany).

EPGC acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of Metro.

The concentration is accomplished by way of public bid announced on 13 September 2020.

2. The business activities of the undertakings concerned are:

— for EPGC: an acquisition vehicle currently holding a non-controling interest in Metro. EPGC is controlled by Mr Daniel Křetínský, who holds interests in companies active in the energy, utilities, media, and e-commerce sectors.

— for Metro: active in the wholesale of daily consumer goods.

3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope of the Merger Regulation. However, the final decision on this point is reserved.

Pursuant to the Commission Notice on a simplified procedure for treatment of certain concentrations under the Council Regulation (EC) No 139/2004 ([2]) it should be noted that this case is a candidate for treatment under the procedure set out in the Notice.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation to the Commission.

Observations must reach the Commission not later than 10 days following the date of this publication. The following reference should always be specified:

M.9977 — EPGC/Metro

Observations can be sent to the Commission by email, by fax, or by post. Please use the contact details below:

Email: COMP-MERGER-REGISTRY@ec.europa.eu

Fax +32 22964301

Postal address:

European Commission
Directorate-General for Competition
Merger Registry
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

([1]) OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation').
([2]) OJ C 366, 14.12.2013, p. 5.

Prior notification of a concentration

(Case M.9981 — Bain Capital/Ahlstrom-Munksjö)

(Text with EEA relevance)

(2020/C 417/09)

1. On 25 November 2020, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 [1].

This notification concerns the following undertakings:

— Bain Capital Investors L.L.C. ('Bain Capital') (USA),

— Ahlstrom-Munksjö Oyj ('Ahlstrom-Munksjö') (Finland).

Bain Capital acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of Ahlstrom-Munksjö. The concentration is accomplished by way of purchase of shares.

2. The business activities of the undertakings concerned are:

— for Bain Capital: a private equity investment firm that invests in companies across a number of industries, including information technology, healthcare, retail and consumer products, communications, financial services and industrial/manufacturing,

— for Ahlstrom-Munksjö: a global manufacturer and supplier of fibre-based materials. Its offering includes filter materials, release liners, food and beverage processing materials, décor papers, abrasive and tape backings, electro-technical base paper, glass fibre materials, medical fibre materials and solutions for diagnostics as well as a range of specialty papers for industrial and consumer end-uses.

3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope of the Merger Regulation. However, the final decision on this point is reserved.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation to the Commission.

Observations must reach the Commission not later than 10 days following the date of this publication. The following reference should always be specified:

M.9981 — Bain Capital/Ahlstrom-Munksjö

Observations can be sent to the Commission by email, by fax, or by post. Please use the contact details below:

Email: COMP-MERGER-REGISTRY@ec.europa.eu

Fax +32 22964301

Postal address:

European Commission
Directorate-General for Competition
Merger Registry
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

[1] OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation').

OTHER ACTS

EUROPEAN COMMISSION

Publication of an application pursuant to Article 17(6) of Regulation (EC) No 110/2008 of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89

(2020/C 417/10)

This publication confers the right to oppose the application pursuant to Article 27 of Regulation (EU) No 2019/787 of the European Parliament and of the Council ([1])

MAIN SPECIFICATIONS OF THE TECHNICAL FILE

'VASI VADKÖRTE PÁLINKA'

File number: PGI-HU-02408 – 22.12.2017

1. **Geographical indication to be registered**

'Vasi vadkörte pálinka'

2. **Category of the spirit drink**

Fruit spirit (category 9 in Annex II to Regulation (EC) No 110/2008)

3. **Description of the spirit drink**

3.1. *Physical, chemical and/or organoleptic characteristics*

Chemical and physical characteristics:

Hydrocyanic acid content: maximum 5 g/hl of 100 % vol. alcohol

Copper content: maximum 9 mg/l of finished product

Organoleptic characteristics:

Clear, colourless.

Its aroma is characterised by discreet scentedness and tartness, alongside pronounced notes of pear, citrus and spice.

It has a dry, discreetly fresh and spicy taste, with mild honey, smoky notes, and a sharp finish; it may also have citrusy aromas, discreet tartness and a rustic character.

When resting it retains the characteristic taste and aroma of the fruit used.

3.2. *Specific characteristics (compared to spirit drinks of the same category)*

The organoleptic characteristics of 'Vasi vadkörte pálinka' account for its uniqueness: its fresh, distinctive, slightly tart, citrusy flavour and taste, spicy, honey notes, and a texture that is more rustic than smooth thanks to the wild pear used in the mashing of 'Vasi vadkörte pálinka'.

([1]) OJ L 130, 17.5.2019, p. 1.

'Vasi vadkörte pálinka' is produced from the fruit of indigenous, State-recognised pear varieties grown within the administrative area of the counties listed in point 4. The basic ingredient of 'Vasi vadkörte pálinka' consists at least 75 % of wild pears, the remainder (at most 25 %) consisting of indigenous, State-recognised pear varieties (Bosc kobak, Conference, Clapp kedveltje, Hardenpont téli vajkörte, Tüskés körte, Sózó körte). The tangy tartness and the freshness of 'Vasi vadkörte pálinka' develop thanks to the low sugar content and the tartness of the wild pear, which accounts for at least 75 % of the mash and is difficult to harvest.

4. **Geographical area concerned**

'Vasi vadkörte pálinka' is produced within the administrative boundaries of Vas and Zala Counties. It may be mashed, fermented, distilled and rested in commercial pálinka distilleries located within this geographical area only.

5. **Method for obtaining the spirit drink**

The main stages in the production of the pálinka are as follows:

(a) Selection and acceptance of the fruit;

(b) Mashing and fermentation;

(c) Distillation;

(d) Resting and storage of the pálinka;

(e) Production, treatment and blending of the pálinka.

a. *Selection and acceptance of the fruit*

In terms of variety, at least 75 % of the pears accepted must be wild pears (the common wild pear *Pyruspyraster* subsp. *pyraster*); the remainder, at most 25 %, must consist of indigenous, recognised pear varieties.

The indigenous, State-recognised pear varieties are Bosc kobak, Conference, Clapp kedveltje, Hardenpont téli vajkörte, Tüskés körte and Sózó körte.

The pálinka is made from suitably ripened fruit, i.e. fruit with a dry matter content of at least 14 ref. %, of good or excellent quality. Quantitative acceptance of the fruit is based on weight. During acceptance, fruit quality is evaluated based on sampling. Organoleptic evaluation (ripeness – from ripe to overripe – healthy, clean, free from extraneous matter – soil, leaves, twigs, stones, metal or other material – and from mould or rot, etc.) and the examination of dry matter content form the basis of quality control and acceptance (sugar content and pH measurement). Also, the fruit must be accompanied by documents attesting to its origin. The supplier is required to declare the origin of the fruit and compliance with the withdrawal period.

b. *Mashing and fermentation*

Mashing:

The unique characteristic in the mashing of 'Vasi vadkörte pálinka' is the sugar content, which stands at 3-5 %, thanks to the low sugar content of the wild pear used in production.

Fermentation:

During fermentation, the temperature must be kept at 16-23 °C, and an optimum pH value of 2,8-3,2 must be achieved. The optimum duration of fermentation, depending on the internal qualities of the pears used, is 10 days.

The fermented mash must be distilled as soon as possible, or the basic conditions for proper storage must be ensured until such time as distillation can commence (the temperature must be as low as possible (0-10 °C), water seals must be used, and the containers must be filled to the brim).

c. *Distillation*

'Vasi vadkörte pálinka' can be prepared using a single-stage column distillation system or a traditional, pot-still distillation system. The alcoholic strength of the distilled product is 55-85 % V/V.

d. *Resting and storage of the pálinka*

After refining, the pálinka must be rested in stainless steel containers and stored in an undiluted state.

e. *Production, treatment and blending of the pálinka*

The pálinka must be cooled to a temperature of between -5 and -3 °C, and other impurities must then be removed by filtering them through a sheet filter. After filtration, the pálinka is stored until it heats up to 18-20 °C. The pálinka may be blended only so as to ensure that at least 75 % of the mash sugar supplied as raw material comes from wild pears and at most 25 % from the other pear varieties referred to above.

Before bottling, the alcoholic strength of the pálinka must be adjusted to a level suitable for consumption by adding drinking-grade water, taking account of the specified tolerance for the bottled product (± 0,3 % V/V).

6. **Link with the geographical environment or origin**

6.1. *Details of the geographical area or origin relevant to the link*

The wild pear – colloquially known as the field pear – is a pear species native to Vas and Zala Counties. It is mostly found in natural forest areas.

The western part of Vas and Zala Counties is located at the foot of the Alps, and the landscape becomes more undulating from west to east. Most of the area is covered in forest. The soils found here are mainly brown, chernozem-type, medium-consistency, slightly acidic soils. By virtue of their location, these counties form one of Hungary's wettest regions: the Alpokalja (Lower Alps), although annual precipitation decreases from west to east. The climate of these counties shows some variation: it is drier and more continental as one moves from western areas to the flatter east of the region, although the temperature around the region's extensive forested areas is lower than that of areas not covered by forest. The gently sloping surfaces of the foothills and adjacent areas form the wild-pear-growing area, which sees annual average precipitation of 600-800 mm, although there is little precipitation during the September and October ripening period. The area receives plentiful sunshine of 1 700-1 800 hours per year. Thanks to its proximity to the Alps, the area is slightly cooler than neighbouring counties.

The wild pear prefers south-facing, dry and sunny areas that are free from waterlogging and warm during the ripening period, these areas' more compact brown, chernozem-type soils, and forests with a lower crown cover. With the right soil and microclimate, such as those of the geographical area, the wild pear tree can survive for decades if not centuries. Varying weather conditions from one year to the next may affect yields.

6.2. *Specific characteristics of the spirit drink attributable to the geographical area*

The link between 'Vasi vadkörte pálinka' and the geographical area is based on the product's quality and reputation.

The fact that at least 75 % of the wild pears used for mashing originates in Vas and Zala Counties accounts for the unique organoleptic characteristics of 'Vasi vadkörte pálinka'.

These wild pears ripen well owing to the high number of sunshine hours and precipitation pattern. It takes skill to harvest the wild pear fruit: ripeness can be determined by colour and touch. The aim is to harvest as much fully ripe fruit as possible.

The brown, chernozem, slightly acidic-pH soils and the area's relatively cool climate explain the higher acid content of the wild pear fruit, which is reflected in the flavour components of the distillate: it gives the distillate its freshness and citrusy flavour and to some extent its tartness.

As the wild pear has a much lower sugar content than other fruits, a greater quantity of wild pear is required to produce a unit of pálinka than for ordinary pear pálinkas. The high proportion of wild fruit used to produce 'Vasi vadkörte pálinka' is apparent from its flavour components. The wild pear gives 'Vasi vadkörte pálinka' not only its characteristic tartness, but also its sharpness, rustic rather than smooth texture, and spicy, honey notes.

Since 'Vasi vadkörte pálinka' has a slightly tart taste, thanks to the high proportion of wild pears used, it takes great skill to determine when to separate the distillate from the head distillate, so that no flavours that might ruin the taste can enter the distillate.

The reputation of 'Vasi vadkörte pálinka' is attested to by the following awards it has won:

— gold medal at the Second Vas County Open Pálinka and Spirit Contest in 2011,

— silver medal at the Fourth Vas County Open Pálinka and Spirit Contest in 2013,

— silver medal at the Sixth Vas County Open Pálinka and Spirit Contest in 2015,

— gold medal at the Vas County Pome-Fruit Pálinka and Spirit Contest in 2015,

— silver medal at the Seventh Vas County Open Pálinka and Spirit Contest in 2016,

— bronze medal at the Vas County Pome-Fruit Pálinka and Spirit Contest in 2017.

'Vasi vadkörte pálinka' has featured at several large-scale national presentation and tasting events since 2006. These events include the annual Gyula Pálinka Festival, the Budapest Pálinka Festival, the Békéscsaba Beer and Pork Knuckle Festival, the Szombathely Savária Carnival, the Sopron Gastronomy Festival (Ízutazás) and, in Budapest, the international fairs Sirha, FeHoVa and OMÉK, the National Agriculture and Food Exhibition.

7. **European Union or national/regional provisions**

— Act XI of 1997 on the protection of trademarks and geographical indications,

— Act LXXIII of 2008 on pálinka, grape marc pálinka and the Pálinka National Council,

— Government Decree No 158/2009 of 30 July 2009 laying down the detailed rules for protecting the geographical indications of agricultural products and foodstuffs and on verifying the products,

— Government Decree No 22/2012 of 29 February 2012 on the National Food Chain Safety Office,

— Decree No 49/2013 of 29 April 2013 of the Minister for Rural Development on the limit values for certain contaminants and harmful materials of natural origin in food and on the requirements for certain materials and articles intended to come into contact with food.

8. **Applicant details**

8.1. *Member State, third country or legal/natural person*

Name: Birkás Pálinka Kft.

8.2. *Full address (street number and name, town/city and postal code, country)*

Address: Győrvár, 9821 Győrvár, Hrsz. 435, 9821 Hungary

Email: birkas@birkaspalinka.hu

Tel. +36 30 2563066

9. **Supplement to the geographical indication**

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10. **Specific labelling rules**

In addition to the elements specified in the legislation, the designation also contains the following:

— 'földrajzi árujelző' [geographical indication] (separate from the name),

— the name 'Vasi vadkörte pálinka' must be included on the front and back labels.

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