Council of the European Union
General Secretariat

PUBLIC

Interinstitutional files:
2023/0111 (COD)
2023/0112 (COD)
2023/0115 (COD)

Brussels, 11 April 2025

WK 4803/2025 INIT

LIMITE

EF
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From:	Presidency
To:	Working Party on Financial Services and the Banking Union (CMDI) Financial Services Attachés
Subject:	CMDI WP meeting 15/04/2025: Presidency Non-Paper on Selected Secondary Topics in the CMDI Discussions (agenda item no. 3)

Presidency Non-Paper on Selected Secondary Topics in the CMDI Discussions

for CMDI Council Working Party meeting on 15/4/2025

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This paper aims at gathering Member States views as regards certain issues that were reported to the Presidency as potential problems that could be solved within CMDI.

1. Clarification of SRMR scope

The proposed amendment to Article 2(1) SRMR is meant to ensure that the scope of SRMR is aligned with the remit of the ECB, in line with recitals 14 and 15 SRMR and the practice followed so far.

The proposal for the new wording of Article 2(1) SRMR is as follows (changes on the current version):

Article 2 – Scope

1. This Regulation shall apply to the following entities:

(a) credit institutions established in a participating Member State;

(b) parent undertakings, including financial holding companies and mixed financial holding companies, established in a participating Member State, where they are subject to consolidated supervision carried out by the ECB in accordance with Article 4(1)(g) Regulation (EU) No 1024/2013 ***and for which the ECB exercises its powers directly in accordance with Article 6(4) or (5)(b) of that Regulation****;*

(c) investment firms and financial institutions established in a participating Member State, where they are covered by the consolidated supervision of the parent undertaking carried out by the ECB in accordance with Article 4(1)(g) of Regulation (EU) No 1024/2013 ***and for which the ECB exercises its powers directly in accordance with Article 6(4) or (5)(b) of that Regulation****.*

Q1: Do Member States agree with the identified problem? Do Member States support the wording of proposed amendment?

2. Flexibility for RAs on the 4-month period for reaching a JD on the RP/MREL

It was suggested that the period for adoption of joint decisions related to resolution planning in resolution colleges (adoption of group resolution plans, removal of impediments to resolvability and MREL) should be reduced from 4 months to 3 months. This would improve the efficiency of the resolution colleges' functioning and reduce the overall length of the resolution planning cycle (as the overall process for adopting decisions for groups with a resolution college exceeds 12 months in total). However, resolution authorities should be given the flexibility for extending the joint decision period, where appropriate in more complex cases (e.g. where there is a need to achieve a new joint decision).

To achieve the mentioned changes, the following amendments are proposed (changes on the current version):

Article 13 BRRD

PUBLIC

Requirement and procedure for group resolution plans

(…)

4. The adoption of the […].

*Those resolution authorities shall make a joint decision within **three** months of the date of the transmission by the group-level resolution authority of the information referred to in the second subparagraph of paragraph 1. **The group-level resolution authority, after consulting the resolution authorities of the subsidiaries, may exceptionally extend the period for reaching a joint decision up to a maximum of six months.***

[…]

*5. In the absence of a joint decision between the resolution authorities within **the relevant period referred to in paragraph 4**, the group-level resolution authority shall make its own decision on the group resolution plan. The decision shall be fully reasoned and shall take into account the views and reservations of other resolution authorities. The decision shall be provided to the Union parent undertaking by the group-level resolution authority.*

*Subject to paragraph 9 of this Article, if, at the end of the **relevant** period **referred to in paragraph 4**, any resolution authority has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the group-level resolution authority shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in accordance with the decision of EBA. The **relevant** period **referred to in paragraph 4** shall be deemed to be the conciliation period within the meaning of that Regulation. EBA shall take its decision within one month. The matter shall not be referred to EBA after the end of the **relevant** period **referred to in paragraph 4** or after a joint decision has been reached. In the absence of an EBA decision within one month, the decision of the group-level resolution authority shall apply.*

*6. In the absence of a joint decision between the resolution authorities within **the relevant period referred to in paragraph 4**, each resolution authority that is responsible for a subsidiary and that disagrees with the group resolution plan shall make its own decision and, where appropriate, identify the resolution entity and draw up and maintain a resolution plan for the resolution group composed of entities under its jurisdiction.*

[…]

*Subject to paragraph 9 of this Article, if, at the end of the **relevant** period **referred to in paragraph 4**, any resolution authority has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the resolution authority concerned shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in accordance with the decision of EBA. The **relevant** period **referred to in paragraph 4** shall be deemed to be the conciliation period within the meaning of that Regulation. EBA shall take its decision within one month. The matter shall not be referred to EBA after the end of the **relevant** period **referred to in paragraph 4** or after a joint decision has been reached. In the absence of an EBA decision within one month, the decision of the resolution authority of the subsidiary shall apply.*

Article 18 BRRD

Powers to address or remove impediments to resolvability: group treatment

(…)

*5. The joint decision shall be reached within **three** months of submission of any observations by the Union parent undertaking. **The group-level resolution authority, after consulting the resolution authorities of the subsidiaries and the resolution authorities of jurisdictions in which significant branches are located, may exceptionally extend the period for reaching a joint decision up to a maximum of six months.** Where the Union parent undertaking has not submitted any observations, the joint decision shall be reached within one month from the expiry of the four-month period referred to in the first subparagraph of paragraph 3.*

(…)

Article 45h BRRD

Procedure for determining the minimum requirement for own funds and eligible liabilities

(…)

*3. In the absence of such a joint decision within **three** months, a decision shall be taken in accordance with paragraphs 4 to 6. **The group-level resolution authority, after consulting the resolution authorities referred to in paragraph 1, may exceptionally extend the period for reaching a joint decision up to a maximum of six months.***

*4. Where a joint decision is not taken within **the relevant period referred to in paragraph 4** because of a disagreement concerning a consolidated resolution group requirement referred to in Article 45e, a decision shall be taken on that requirement by the resolution authority of the resolution entity after having duly taken into account:*

[…]

*Where, at the end of the **relevant** period **referred to in paragraph 4**, any of the resolution authorities concerned has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the resolution authority of the resolution entity shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in accordance with the decision of EBA.*

The decision of EBA shall take into account points (a) and (b) of the first subparagraph.

*The **relevant** period **referred to in paragraph 4** shall be deemed to be the conciliation period within the meaning of Regulation (EU) No 1093/2010. EBA shall take its decision within one month.*

*The matter shall not be referred to EBA after the end of the **relevant** period **referred to in paragraph 4** or after a joint decision has been reached.*

In the absence of an EBA decision within one month of the referral of the matter, the decision of the resolution authority of the resolution entity shall apply.

*5. Where a joint decision is not taken within **the relevant period referred to in paragraph 4** because of a disagreement concerning the level of the requirement referred to in Article 45f to be applied to any entity of a resolution group on an individual basis, the decision shall be taken by the resolution authority of that entity, where all of the following conditions are fulfilled:*

PUBLIC

[…]

*Where, at the end of the **relevant** period **referred to in paragraph 4**, the resolution authority of the resolution entity or the group-level resolution authority has referred the matter to EBA in accordance with […].*

*The **relevant** period **referred to in paragraph 4** shall be deemed to be the conciliation period within the meaning of Regulation (EU) No 1093/2010. EBA shall take its decision within one month.*

*The matter shall not be referred to EBA after the end of the **relevant** period **referred to in paragraph 4** or after a joint decision has been reached.*

[…]

*6. Where a joint decision is not taken within **the relevant period referred to in paragraph 4** because of a disagreement concerning the level of the consolidated resolution group requirement and the level of the requirement to be applied to the resolution group's entities on an individual basis, the following shall apply:*

(a) a decision shall be taken on the level of the requirement to be applied to the resolution group's subsidiaries on an individual basis in accordance with paragraph 5;

(b) a decision shall be taken on the level of the consolidated resolution group requirement in accordance with paragraph 4.

Q2: Do Member States agree with the identified problem? Do Member States support the wording of proposed amendment?

3. Valuation 1 (V1) in the context of resolution and liquidation

Within the CMDI, Article 36(1) is proposed to be amended so that an independent valuation will be necessary *before determining whether the conditions for resolution or write down or conversion of capital instruments and eligible liabilities are met*, and not *before taking resolution action or exercising the power to write down or convert capital instruments of eligible liabilities*, as in the current version in force of BRRD. Consequently, it is assumed that the independent valuation (V1) will be mandatory also for a liquidation decision.

It might be assumed that the amendment to Article 36(1) BRRD was proposed in the context of the amendments regarding the application of LCT in the case of the use of DGS resources to finance alternative measures, in order to provide the DGS with an independent valuation basis for estimating the costs that would have been incurred in a hypothetical liquidation (even for a credit institution for which the public interest test is negative).

However, there are multiple reasons confirming that currently the framework does not include the obligation to carry out V1 in the context of liquidation:

- The independent valuation regime was established in 2014 (BRRD), being specifically related to the introduction in the EU legislation of a new and exceptional/extraordinary type of powers for an administrative authority (the resolution authority), powers that are interfering (by limiting it) with the property rights of the shareholders and creditors, and that should only be used when justified for the public interest. In order to limit and ensure proportionality in this

interference with the property rights, while strengthening the legal protection of the resolution authority in the course of resolution action, this regime of independent, fair and realistic valuation has been designed to be mandatory before taking any resolution action (Recitals (13), (49) to (52) and Article 36 of BRRD);

- After 2014 (BRRD), the liquidation under normal insolvency proceedings continues to be the default option for a failing bank to exit the market, and no changes have been made through BRRD to the way this process is to be operationalized (Recitals (45) and (46)); for this reason, in our understanding, the national legal regime before BRRD remains applicable;
- The insolvency regime referred upon in BRRD is subject to national specificities as regards the mechanisms provided for shareholders/creditors' protection;
- The current wording of Article 36(1) BRRD states that *before taking resolution action or exercising the write down and conversion competence* an independent valuation shall be carried out, and so, in our interpretation, the independent valuation is mandatory only for an entity heading to resolution;
- Also from an economic perspective, it seems that there is no need/rationale to carry out an independent accounting valuation which involves costs that will ultimately lead to a decrease in the creditors' claims value only to duplicate an assessment that the competent authority is best placed/mostly entitled to perform according to CRD (we would practically end up using the independent V1 only to back or challenge (as the case may be) an analysis that another authority also makes in *on going concern* supervisory activity);
- This was also the approach of SRB in some non-resolution cases (ABLV Bank, Banca Popolare di Vicenza and Veneto Banca) where according to the non-confidential versions of the resolution decision no accounting valuation was made;
- The ruling of the European Court of Justice related to a SRB non-resolution case (ABLV Bank AS vs SRB) where the ECJ ruled that SRB did not breach the legal provisions by relying exclusively on the ECB's assessment in respect of a failing credit institution without carrying out its own failing examination.

It seems that there is no need for any change in the current approach and framework. New approach would weaken the powers to take a decision based on its own assessment (when legal conditions are fulfilled) for the market exit of the credit institution. Also, in this way a supplementary layer of control and accountability for the authority is added, which contravene to the approach reflected by the recent developments of the EU legal framework, stating that the principle of independence is the paramount of the authority's decisions.

Q3: Do Member States agree with the identified problem? Do Member States agree to proceed further with the amendment?