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From: General Secretariat of the Council

To: Working Party on Financial Services and the Banking Union (CMDI)
Financial Services Attachés

Subject: CMDI WP 17.06.2025: Commission non-paper - Technical solution for the restriction of MREL eligible instruments for retail clients

Technical solution for the restriction of MREL eligible instruments for retail clients

The existing rules on the sale of MREL to retail clients have resulted in a variety of practices being used across the EU, making the framework very complex and fragmented.

The framework has room for improvement, but adding an additional set of rules, as proposed by the EP, would further increase complexity. Improvements need to be based on solid evidence about the implementation of the existing provision, hence the EBA report originally proposed by the Commission – whose deadline could be shortened from 24 to 18 months. On this basis, a future legislative proposal would propose improvements on the framework, in particular by narrowing down the existing three national options for protection of retail clients to a smaller number.

In the current proposal, a dedicated recital could be added to better reinforce the importance of the rules on the protection of retail clients, especially when they are depositors of the issuing bank, and the need for authorities to adequately monitor and enforce those rules, including in the context of resolvability assessments.

Line 57 (Recital 47): the reference to the EBA report on the protection of retail investors is deleted and a new recital 47-a is introduced:

(47-a) Directive (EU) 2019/879 introduced in Directive 2014/59/EU dedicated rules to ensure that retail investors do not invest excessively in instruments that are eligible for the MREL of institutions and entities. The excessive holding of MREL instruments by retail clients can be detrimental to the resolvability of an institution or entity and can create problems for financial stability. This can be especially problematic when the retail clients are also depositors of the issuing institution, as those depositors are particularly vulnerable to the inappropriate placement of the institutions' own instruments. Authorities should thus ensure that sellers, institutions and entities comply with the measures adopted by Member States implementing Directive (EU) 2019/879 to ensure the protection of retail clients. Where those measures are not being applied appropriately, authorities should enforce those rules. It is therefore appropriate to introduce dedicated sanctioning powers in Directive 2014/59/EU related to the failure to comply with the dedicated rules on the protection of retail investors, alongside the existing powers in Directive 2014/65/EU. Moreover, using the existing reporting for resolution planning and MREL purposes, resolution authorities should assess the nature of the investor base in MREL-eligible instruments when carrying out the resolvability assessment of institutions and entities and, where necessary, require the institution or entity to address or remove any impediments found. Finally, EBA, in coordination with ESMA, should report on the measures adopted by Member States for the protection of retail investors in what concern debt instruments that are eligible for the MREL pursuant to Directive 2014/59/EU, comparing and assessing any potential impact on cross-border operations. On that basis, the Commission may adopt a legislative proposal to ensure a more effective protection of retail investors.

Line 300 (new paragraph 8 in Article 44a): keep the Commission text as amended by the Council

8. By ... [PO please insert the date = 24 **18** months after the date of entry into force of this Directive], EBA, in coordination with ESMA, shall report to the Commission on the

application of this Article. That report shall compare the measures adopted by the Member States to comply with this Article, analyse their effectiveness in protecting retail investors and assess their impact on cross-border operations.

