

LEGAL ALERT

EUROPEAN COMMISSION CLARIFIES THE INTERPRETATION OF CERTAIN LEGAL PROVISIONS OF THE REVISED BANK RESOLUTION FRAMEWORK

A [notice](#) relating to the interpretation of certain legal provisions of the revised bank resolution framework in reply to questions raised by Member States' authorities was published by the European Commission (EC) on 29 September 2020 (Notice). The amendments at stake relate, in particular, to the Union bank resolution framework through [Directive \(EU\) 2019/879](#), amending [Directive 2014/59/EU](#) (Bank Recovery and Resolution Directive – BRRD) and [Regulation \(EU\) 2019/877](#), amending [Regulation \(EU\) No 806/2014](#) (Single Resolution Mechanism Regulation – SRMR).

This reform implements in the EU 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 is intended to better ensure that banks' loss- absorption and recapitalisation are occurring through private means once they get into financial difficulties and are placed subsequently in resolution.

In the context of the Notice, the EC adopts 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 (7);
- [Directive 2013/36/EU \(CRD\)](#), as amended by [Directive \(EU\) 2019/878](#) of the European Parliament and of the Council (8).

In that regard, the Notice clarifies issues related to the following topics:

- Power to prohibit certain distributions provided in article 16A BRRD;
- Powers to suspend payment or delivery obligations under articles 33A and 69 BRRD;
- Selling of subordinated eligible liabilities to retail clients;
- Minimum requirement for own funds and eligible liabilities;
- Bail-in tool and respective contractual recognition;
- Write down or conversion of capital instruments and eligible liabilities;
- Exclusion of certain contractual terms in early intervention and resolution;
- Contractual recognition of resolution stay powers; and
- Directive 98/26/EC (Settlement Finality Directive – SFD).

[Carlos Botelho Moniz \[+ info\]](#)
[Eduardo Paulino \[+ info\]](#)
[Luís Nascimento Ferreira \[+ info\]](#)
[Dzhamil Oda \[+ info\]](#)

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