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The European Parliament Adopts New Measures on Banks Requirements to Hold Loss Absorption and Recapitalisation Instruments in the Event of a Resolution Requirement

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The European Parliament has adopted a Directive amending the Bank Recovery and Resolution Directive (*2014/59/EU*) ("BRRD") and the Single Resolution Mechanism ("SRM") Regulation (*806/2014*) concerning the minimum requirement for own funds and eligible liabilities ("MREL").

The BRRD requires banks in the EU to meet a minimum requirement for MREL in order to ensure the effective application of the bail-in tool and appropriate loss absorption and recapitalisation when there is the need for bank resolution. An analysis of the existing rules revealed that applying the deduction requirement for an ‘internal MREL’ assessment could disproportionately and negatively affect certain banks when an MREL instrument is issued by a group subsidiary and directly or indirectly subscribed for by a parent company. This so-called ‘internal MREL’, when indirectly subscribed for, must currently be deducted from the own funds of the intermediate subsidiary in order to ensure the integrity and loss absorbency of the MREL instruments.

The new rules, which are known as ‘Daisy Chains’, allow local resolution authorities the power to set this internal MREL on a consolidated basis such that the intermediate subsidiaries involved will not be required to deduct their individual holdings of MREL. In addition, ‘liquidation entities’ within banking groups (which are demarcated for winding-up under local insolvency laws) would not be obliged to comply with MREL requirements unless the relevant resolution authority decides that this is necessary for financial stability purposes on a case-by-case basis.

The next steps involves the new Directive entering into force 20 days after its publication in the Official Journal of the European Union. Member states will then adopt and publish implementing measures for the proposed Directive six months from the date of its entry into force and to apply those measures from the following day.