

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 (Text with EEA relevance)

TITLE IV

RESOLUTION

CHAPTER IV

Resolution tools

Section 5

The bail-in tool

Subsection 1

Objective and scope of the bail-in tool

[^{F1}Article 44a

Selling of subordinated eligible liabilities to retail clients

1 Member States shall ensure that a seller of eligible liabilities which meet all conditions referred to in Article 72a of Regulation (EU) No 575/2013 except for point (b) of Article 72a(1) and paragraphs 3 to 5 of Article 72b of that Regulation sells such liabilities to a retail client, as defined in point 11 of Article 4(1) of Directive 2014/65/EU, only where all of the following conditions are fulfilled:

- a the seller has performed a suitability test in accordance with Article 25(2) of Directive 2014/65/EU;
- b the seller is satisfied, on the basis of the test referred to in point (a), that such eligible liabilities are suitable for that retail client;
- c the seller documents the suitability in accordance with Article 25(6) of Directive 2014/65/EU.

Notwithstanding the first subparagraph, Member States may provide that the conditions laid down in points (a) to (c) of that subparagraph shall apply to sellers of other instruments qualifying as own funds or bail-inable liabilities.

2 Where the conditions set out in paragraph 1 are fulfilled and the financial instrument portfolio of that retail client does not, at the time of the purchase, exceed EUR 500 000 the seller

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shall ensure, on the basis of the information provided by the retail client in accordance with paragraph 3, that both of the following conditions are met at the time of the purchase:

- a the retail client does not invest an aggregate amount exceeding 10 % of that client's financial instrument portfolio in liabilities referred to in paragraph 1;
- b that initial investment amount invested in one or more liabilities instruments referred to in paragraph 1 is at least EUR 10 000.

3 The retail client shall provide the seller with accurate information on the retail client's financial instrument portfolio, including any investments in liabilities referred to in paragraph 1.

4 For the purposes of paragraphs 2 and 3, the retail client's financial instrument portfolio shall include cash deposits and financial instruments, but shall exclude any financial instruments that have been given as collateral.

5 Without prejudice to Article 25 of Directive 2014/65/EU, and by way of derogation from the requirements set out in paragraphs 1 to 4 of this Article, Member States may set a minimum denomination amount of at least EUR 50 000 for liabilities referred to in paragraph 1, taking into account the market conditions and practices of that Member State as well as existing consumer protection measures within the jurisdiction of that Member State.

6 Where the value of total assets of entities referred to in Article 1(1) that are established in a Member State and are subject to the requirement referred to in Article 45e does not exceed EUR 50 billion, that Member State may, by way of derogation from the requirements set out in paragraphs 1 to 5 of this Article, apply only the requirement set out in paragraph 2(b) of this Article.

7 Member States shall not be required to apply this Article to liabilities referred to in paragraph 1 issued before 28 December 2020.]

Textual Amendments

- F1** Inserted by [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](#).