

**MINIMUM
REQUIREMENT
FOR OWN FUNDS
AND ELIGIBLE
LIABILITIES
(MREL)**

May 2023

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Abbreviations

ALR	Additional liabilities report
BRRD	Bank recovery and resolution directive
CBR	Combined buffer requirement
CCyB	Countercyclical capital buffer
CET1	Common equity Tier 1
CRD	Capital requirements directive
CRR	Capital requirements regulation
EBA	European Banking Authority
EC	European Commission
ECB	European Central Bank
FOLTF	Failing or likely to fail
FSB	Financial Stability Board
G-SII	Global systemically important institution
LDR	Liability data report
LRE	Leverage ratio exposure measure
LAA	Loss absorption amount
MCC	Market confidence charge
MDA	Maximum distributable amount
MPE	Multiple points of entry
MREL	Minimum requirement for own funds and eligible liabilities
NCWO	No creditor worse off
NRA	National resolution authority
NIP	Normal insolvency proceedings
PONV	Point of non-viability
PtB	Price to book
P1R	Pillar 1 requirement
P2R	Pillar 2 requirement
RC	Resolution college
RCA	Recapitalisation amount
RLEs	Relevant legal entities
RPC	Resolution planning cycle
RWA	Risk-weighted assets
SPE	Single point of entry
SRB	Single Resolution Board
SRM	Single Resolution Mechanism
SRMR	Single Resolution Mechanism Regulation
SRF	Single Resolution Fund
SREP	Supervisory review and evaluation process
TLAC	Total loss-absorbing capacity
TLOF	Total liabilities and own funds
TREA	Total risk exposure amount
WDC	Write-down and conversion

1. Executive summary

- 1 The minimum requirement for own funds and eligible liabilities (MREL) is set by resolution authorities to ensure that a bank maintains at all times sufficient eligible instruments to facilitate the implementation of the preferred resolution strategy.** The building up and maintenance of MREL capacity — in terms of quantity, quality, governing law, and appropriate location of MREL instruments — therefore plays a key role in improving a bank's resolvability. This capacity underpins the credibility and feasibility of the preferred resolution strategies, and gives resolution authorities greater flexibility and confidence that a chosen strategy will meet public policy objectives. One example of how MREL features underpin resolution strategies is subordination requirements, set by the Single Resolution Board (SRB) (and subject to legal minima for some types of banks, including G-SIIs and Top Tier institutions) to improve resolvability in general, and in particular to reduce the risk of breaching the no-creditor-worse-off (NCWO) principle (that no creditor is worse off under resolution than under insolvency proceedings). Another example is the criteria on the location of eligible instruments needed to support the implementation of the resolution strategy in groups with complex structures.
- 2 MREL serves to prevent a bank's resolution from depending on the provision of public financial support, and so helps ensure that shareholders and creditors contribute to loss absorption and recapitalisation.** It ultimately supports the long-term viability, stability and efficiency of the financial system by promoting transparency, accountability and the better pricing of risk. The SRB will therefore always view the setting of the MREL through the lens of resolvability in order to ensure that banks maintain at all times sufficient quantity and quality of instruments capable of absorbing losses and recapitalising a bank in resolution.
- 3 This paper sets out the SRB's MREL policy, which has been revised as a result of the experience obtained during the 2020 resolution planning cycle.** The regulatory framework for MREL was revised in 2019 through amendments to the EU Bank Recovery and Resolution Directive 2014/59/EU (BRRD); Regulation 806/2014/EU establishing a Single Resolution Mechanism (SRMR); and the Capital Requirements Regulation (CRR) and Capital Requirements Directive (CRD)¹ (the Banking Package).
- 4 The SRB has implemented the legislative amendments, taking into account their ultimate policy objectives.** The provisions are intended to be effective, efficient and proportionate. They will help ensure that MREL is set in the context of fully feasible and credible resolution plans for all types of banks. To this end, they build on the SRB's existing MREL policy and experience with implementation, and the changes to the preceding Resolution planning cycle (RPC) of the SRB are largely incremental. The provisions will also promote a level playing field across banks including for Banking Union subsidiaries of non-banking Union (EU) banks.

¹ Respectively, Directive 2014/59/EU as amended by Directive (EU) 2019/879; Regulation (EU) 2014/806 as amended by Regulation (EU) 2019/877; Regulation (EU) 575/2013 as amended by Regulation (EU) 2019/876; and Directive (EU) 2013/36 as amended by Directive (EU) 2019/879.

5 The paper is structured as follows:

- Calibration.
 - ▶ From 2021, CRR requires institutions to comply with a prudential leverage ratio requirement at all times², acting as a backstop to risk-based own funds requirements. Taking this into account, the revised BRRD introduced an MREL requirement based on the Leverage Ratio Exposure Measure (LRE³) to complement the risk-based MREL expressed as a percentage of the total risk exposure amount (TREA⁴). The parallel requirement is calibrated at a level commensurate to recapitalising a failing bank in order to restore compliance with the leverage ratio requirement⁵.
 - ▶ MREL is composed of a loss-absorption amount (LAA) and a recapitalisation amount (RCA)⁶. The legal framework defines conditions under which the RCA may be adjusted upwards or downwards. For example, a market confidence charge (MCC) is applied where warranted to ensure that a bank sustains market confidence post-resolution.
 - ▶ The Banking Package introduced the total loss-absorbing capacity (TLAC) minimum requirement for global systemically important institutions (G-SIIs), from the global standards set by the Financial Stability Board (FSB), and supplemented the MREL framework accordingly.
 - ▶ If Multiple Point of Entry (MPE) is the preferred resolution strategy, the MRELS for the different resolution groups (i.e. the points of entry) should be set in such a way that each can be resolved independently without causing immediate shortfalls in other resolution groups.
- **Subordination for resolution entities.** The SRB sets subordination requirements in accordance with the legal framework, and developed a methodology to estimate NCWO risk.

Specifically:

- ▶ The first group of banks – collectively ‘Pillar 1 Banks’ – includes: (i) resolution entities of G-SIIs and material subsidiaries of non-EU G-SIIs; (ii) banks with total assets exceeding EUR 100bn, consolidated at the level of the resolution group (Top Tier Banks); and (iii) other banks chosen by the respective national resolution authority (NRA) which are not Top Tier Banks but are assessed as likely to pose a systemic risk in the event of failure (Other Pillar 1 Banks). Pillar 1 Banks will be subject to subordination requirements composed of a non-adjustable Pillar 1 MREL requirement⁷ that must be met with own funds instruments and eligible liabilities that are subordinated to all claims arising from excluded liabilities⁸. For these purposes, CET1 contained in capital buffers cannot count towards meeting the required amount of subordinated MREL expressed in terms of TREA, but may count towards meeting the required

² Point (d) of Article 92(1) CRR.

³ Articles 429 and 429a CRR.

⁴ Article 92(3) CRR.

⁵ Point (b) of Article 12d(3) SRMR.

⁶ Article 12d(2) SRMR.

⁷ Article 92a and Article 92b CRR (reflecting the international TLAC standard for G-SIIs); Article 12d(4) SRMR; Article 12d(5) SRMR.

⁸ Article 72b (2)(d) CRR for G-SIIs and Article 12d(4) and Article 12d(5) SRMR for Top Tier banks and Other Pillar 1 banks.

amount of subordinated MREL expressed in terms of LRE⁹. However, the resolution authority may, under certain conditions, permit G-SIIs to count senior liabilities as eligible liability instruments against TLAC requirements up to an aggregate amount that does not exceed 3.5% of the TREA calculated in accordance with Article 92(3) and (4) CRR¹⁰.

- ▶ Concurrently with the Pillar 1 subordinated MREL requirements detailed above, the Pillar 1 Banks' resolution authority must also ensure that the subordinated MREL resources of Pillar 1 Banks are equal to at least 8% of total liabilities and own funds (TLOF)¹¹. The resolution authority may reduce or increase this target level of minimum subordination for Pillar 1 Banks on a case by case basis and subject to conditions¹². When setting the subordinated component of the MREL ensuring the 8% TLOF target, the resolution authority should count CET1 eligible for capital buffers towards the 8% target¹³. Depending on the risk density of a Pillar 1 Bank, and its liability structure, the application of the 8% TLOF minimum subordination requirement may result in a quantity of subordinated MREL that is higher than the Pillar 1 subordinated MREL requirements described in the paragraph above. For some Pillar 1 Banks (depending on risk density and liability structure) satisfying the leverage based Pillar 1 subordinated MREL requirements may simultaneously satisfy the 8% TLOF target.
 - ▶ A second group of banks (non-Pillar 1 banks) are subject to a subordination requirement upon the decision of the resolution authority to avoid a breach of the NCWO principle, following a bank-specific assessment carried out as part of resolution planning¹⁴.
 - ▶ The SRB uses a valuation-based approach to quantify the possible NCWO risk. Assessing the need for subordination depends on projections of the size and distribution of losses for different classes of creditors under different strategies and conditions. The approach provides such projections by combining accounting and historical market data. Any assessment is bank-specific and will be based on the specific risks identified in resolution planning.
- **Internal MREL for non-resolution entities.** The SRB will progressively expand the scope of non-resolution entities for which it will adopt internal MREL decisions. The SRB may waive subsidiary institutions qualifying as non-resolution entities from internal MREL, for example, where free transferability of funds is assured and, among other conditions, the respective subsidiary and its parent are established in the same Member State. The SRMR enables the SRB to permit the use of guarantees to meet the internal MREL within the Member State of the resolution entity; this paper defines criteria for granting such permission.
 - **MREL for cooperative groups.** The Banking Package introduced provisions specifically designed to tailor MREL requirements for cooperative networks¹⁵, including a dedicated definition of the term resolution group¹⁶ that reflects the 'inverse' ownership structure typical for cooperative groups. Governance and loss-sharing

⁹ Article 128 CRDV (the reference therein to 'risk-based components' makes clear that the restriction against multiple use of buffer CET1 applies to MREL-TREA only).

¹⁰ Article 72b(3) CRR.

¹¹ Article 12c(4) SRMR.

¹² Article 12c(4) SRMR allows the resolution authority to lower the target subject to a floor. Pursuant to Article 12c(8) SRMR, raising the subordination level under Article 12c(7) can only apply to 30% of the relevant population of Pillar 1 banks and is subject to other conditions.

¹³ Article 12c(6) SRMR, second subparagraph.

¹⁴ Article 12c(5) SRMR.

¹⁵ Articles 12f(3) and 12i SRMR.

¹⁶ Point 24b of Article 3(1) SRMR.

arrangements between the entities of a cooperative network are very varied. The resolution authority therefore has to tailor the resolution strategy to the specific features of the loss-sharing arrangement of a particular cooperative network in order to ensure that the group is resolvable. The SRB has set out minimum conditions to authorise certain types of cooperative networks to use eligible liabilities of associated entities other than the resolution entity to comply with the external MREL, as well as minimum conditions to waive the internal MREL of the legal entities that are part of the cooperative network. The determination of the external and internal MREL must be fully aligned with the specific resolution strategy in a way that supports the implementation of resolution action.

- **Eligibility.** For liabilities to be eligible for MREL there are a number of criteria that need to be met. The SRB has developed a checklist to assist banks in establishing if liabilities are eligible, and requires sign-off from banks at management level that such conditions have been adequately checked. This section also provides more details on eligibility characteristics for specific types of liabilities, such as, but not limited to, liabilities issued under the law of third countries, non-covered non-preferred deposits and liabilities arising from debt instruments with embedded derivatives.
- **Transitional arrangements.** The operationalisation of transitional periods up to the 2024 deadline, including binding intermediate targets in 2022 and informative targets in 2023, is explained. Transitional arrangements must be bank-specific, because they depend on the MREL tailored to that bank and its resolution plan, and the bank's progress to date in raising MREL-eligible liabilities.
- **M-MDA.** The Maximum Distributable Amount related to MREL (M-MDA) may be applied to banks for breaches of CBR considered in addition to MREL expressed in TREA¹⁷ or for MREL breaches themselves¹⁸. The paper describes the two-stage assessment and the expectations for the banks as regards the notification.

6 **Alongside this document, readers are advised to read:** the SRB's addendum on new CRR requirements published on 25 June 2019¹⁹ and updated on 18 December 2019²⁰ informing institutions of the implementation of CRR provisions relating to TLAC requirements for G-SIIs; the prior permission regime under Article 78a CRR applicable to all institutions; and the *Communication on the SRB's permission regime on reduction of eligible liabilities*²¹.

¹⁷ Article 10a(1) SRMR.

¹⁸ Article 12j(1)(b) SRMR.

¹⁹ https://srb.europa.eu/sites/srbsite/files/crr_addendum_to_the_2018_srb_mrel_policy.pdf

²⁰ <https://srb.europa.eu/en/node/903>

²¹ https://srb.europa.eu/sites/srbsite/files/2020-12-18_srb_permissions_regime_communication_final.pdf

2. Calibration

- 7 This chapter describes the SRB's methodology for calibrating MREL. Sections 2.1 and 2.2 are applicable to all resolution entities that are not parent entities of other resolution entities (SPE strategies), as well as to non-resolution entities for determining the internal MREL. Section 2.5 outlines the specifics of MREL for G-SIIs. Section 2.6 introduces the SRB's methodology for calibrating MREL for resolution entities that are parent entities of other resolution entities (MPE strategies).
- 8 **The concepts of 'resolution entity', 'non-resolution entity', 'resolution group', 'parent entity', and 'G-SII' are defined in the BRRD²² and the CRR²³.** In broad terms, a resolution group consists of a resolution entity and subsidiaries, or a resolution entity and other institutions permanently affiliated with a central body. A resolution group within a banking group comprises at least one resolution entity (i.e. a Point-of-Entry) and its subsidiaries that are intended to be resolved jointly through the upstreaming of losses to or downstreaming of capital from the resolution entity.
- 9 **The SRB will continue its approach to the definition of resolution groups based on the financial and operational separability of institutions.** Resolution groups are defined in accordance with the preferred resolution strategy, and might deviate from the prudential perimeter. This is the case where the SRB assesses that one or more subsidiaries are financially and operationally separable from (other) subsidiaries headed by a resolution entity established in the EU (resolution group).²⁴ Where the SRB defines more than one EU resolution group, and/or excludes subsidiaries established in third countries from the EU resolution group, the external MREL for resolution entities established in the Banking Union will be set in accordance with the methodology for MPE strategies.
- 10 **Mortgage credit institutions qualifying under the conditions of Article 12b(1) SRMR are exempted from the MREL.** Where they are subsidiaries of a resolution entity subject to the MREL, they shall not be part of the consolidation when determining the external MREL of the resolution group²⁵.
- 11 **The new framework confirms the principle that the resolution authority is required to determine the loss-absorption amount (LAA) and recapitalisation amount (RCA) for those entities that would not be wound up in normal insolvency proceedings.** The LAA reflects the losses that the bank should be capable of absorbing. The RCA is the amount necessary to recapitalise the institution in order for it to continue to comply with its conditions for authorisation and carry on the activities for which it is authorised under the relevant legislation. The sum of these amounts constitutes the institution's MREL. Entities that would be wound up in normal insolvency procedures have an LAA, but no RCA.
- 12 **External MREL and internal MREL.** The MREL for resolution entities is set at the consolidated level of the resolution group (external MREL); it has to be met with own funds at the level of the resolution group and eligible liabilities issued externally by

²² See points (83a), (83b) and (83c) of Article 2(1) BRRD.

²³ See point (133) of Article 4(1) of Regulation (EU) No 575/2013.

²⁴ See point (83b) of Article 2(1) BRRD and point (24b) of Article 3(1) of the SRMR.

²⁵ Article 12b(2) SRMR.

the resolution entity²⁶. The MREL for entities that are not themselves resolution entities ('non-resolution entities') is set at individual level or sub-consolidated level, where applicable (internal MREL)²⁷.

- 13 **Supervisory and resolution reporting data used for calibration.** As further detailed in section 7, the SRB calibrates the MREL targets based on the appropriate reference date. This means that for setting MREL in the resolution planning cycle starting in a given year, the SRB will use the final supervisory review and evaluation process (SREP) decisions and Pillar 2 requirements applicable in that year and the previous year's balance sheet data, or later data where deemed necessary to address a relevant change in circumstances. The SRB uses transitional prudential values applicable at the reference date²⁸. In subsequent resolution planning cycles (see section 7), the MREL target is re-calibrated and communicated based on the input values of the new reference date.
- 14 Where the resolution group perimeter differs from the prudential one, the SRB estimates the level of the Pillar 2 requirement and Combined Buffer Requirement to be used as input for MREL calibration applying the methodology set out by the EBA draft Regulatory Technical Standards (RTS) under Article 45c(4) of the BRRD²⁹.

2.1. Risk-based and Leverage-based MREL

- 15 **External and internal MREL include a risk- and a leverage-based dimension.** LAA and RCA are computed not only as a percentage of the total risk exposure amount (TREA), but also as a percentage of the Leverage Ratio Exposure Measure (LRE), based on a different calibration. MREL is therefore expressed as two ratios that have to be met in parallel: (i) as a percentage of TREA (the MREL-TREA); and (ii) as a percentage of the LRE (the MREL-LRE)³⁰. Each may have to be met in part or in full with subordinated resources in the respective metric, as determined by the SRB.³¹

²⁶ Point (b) of Article 12c(1) SRMR in conjunction with point (a) of Article 72b(2); see exception of Article 12c(3) SRMR and Article 88a CRR on qualifying instruments issued by subsidiaries. For own funds see the specification in Article 11(3a) CRR in the context of TLAC.

²⁷ Article 12g(1) SRMR.

²⁸ Article 12d(9) SRMR.

²⁹ https://eba.europa.eu/sites/default/documents/files/document_library/Publications/Draft%20Technical%20Standards/2020/RTS/961829/Final%20Report%20RTS%20on%20methodology%20to%20estimate%20P2%20and%20CBR%20for%20setting%20MREL%20requirements.pdf

³⁰ Article 12a(2) SRMR.

³¹ As regards the leverage-based dimension, given the communication by the ECB as concerning the non-extension of the relief measure, the SRB will re-calibrate in the 2022 RPC the final targets on the basis of the leverage amount including central bank exposures. The monitoring of compliance with the build-up towards the final MREL targets will also take this communication into account.

2.2. Default formula for external and internal MREL

2.2.1. LOSS-ABSORPTION AMOUNT (LAA)

- 16 **In line with points (a)(i) and (b)(i) of Article 12d(3) and (6) SRMR, the LAA is expressed in relation to the two metrics, TREA and LRE:**

- For the MREL-TREA, the LAA consists of the sum of the (consolidated)³² minimum Supervisory Pillar 1 requirement³³ and Supervisory Pillar 2 requirement³⁴; and
- For the MREL-LRE, the LAA corresponds to the (consolidated) leverage ratio requirement³⁵:

$$LAA_{TREA} = (TREA \times (\text{Supervisory Pillar 1} + \text{Supervisory Pillar 2}))$$

$$LAA_{LRE} = (LRE \times \text{Leverage Ratio})$$

2.2.2. RECAPITALISATION AMOUNT (RCA)

- 17 **In light of points (a)(ii) and (b)(ii) of Article 12d(3) and (6) SRMR, the RCA is also expressed in relation to the two metrics, TREA and LRE:**

for the MREL-TREA, the RCA consists of the sum of the (consolidated) minimum Supervisory Pillar 1 and Pillar 2 requirements for the TREA calculation, and

for the MREL-LRE, the RCA corresponds to the (consolidated) leverage ratio requirement for the LRE calculation:

$$RCA_{TREA} = (TREA \times (\text{Supervisory Pillar 1} + \text{Supervisory Pillar 2}))$$

$$RCA_{LRE} = (LRE \times \text{Leverage Ratio})$$

- 18 **Instruments cannot be used to meet both the MREL-TREA and the capital buffer requirement (CBR).** Common Equity Tier 1 (CET1) used to meet the MREL-TREA cannot be used to meet the CBR³⁶. However, the usability of the same amount of capital is unrestricted by the leverage-based MREL. The same distinction applies to subordination requirements³⁷.

2.3. Adjustments to the loss-absorption amount

- 19 **The SRB assesses whether raising the LAA above capital requirements is necessary for entities that would likely be wound up under normal insolvency**

³² Depending on whether the respective MREL is set on consolidated or individual basis.

³³ Article 92(1) CRR.

³⁴ Article 104a CRD.

³⁵ Article 92(1)(d) CRR; the prudential leverage ratio requirement applies from 28 June 2021, to be taken into account when calibrating targets based on the non-risk based formula in decisions issued in the 2021 planning cycle, including the intermediate target to be met by 1 January 2022.

³⁶ Article 128 CRDV (in particular the reference therein to “risk based components”).

³⁷ Second subparagraph of Article 12c(6) SRMR.

proceedings (liquidation entities). For such entities, the SRB assesses whether to maintain the MREL at the level of the LAA or to set a higher amount after evaluating, in particular, any possible impact on financial stability and on the risk of contagion to the financial system³⁸.

- 20 In particular, the SRB bank-specific assessment may lead to an adjustment where in liquidation, the bank's inherent risks and/or lack of transparency and/or specific circumstances increasing the risk of contagion to the financial system, may put financial stability objectives at risk.

2.4. Adjustments to the recapitalisation amount

- 21 **The default RCA may be adjusted upwards or downwards according to Article 12d(3) SRMR.** All possible adjustments of the RCA under the SRB MREL policy are described below. The SRB will continue to adjust the default RCA on a case-by-case basis, where considered appropriate, for all types of banks. To ensure equal treatment and a level playing field for all institutions in the Banking Union, the determination of adjustments is subject to stringent conditions.

2.4.1. FOR ALL STRATEGIES

Adjustments related to balance-sheet size

- 22 **The SRB calculates external MREL on a consolidated basis taking into account all entities in the resolution group, regardless of the fact that some subsidiaries within the resolution group could be subject to insolvency proceedings in case of failure.** Some entities within the resolution group might enter liquidation in the run-up to a wider group resolution. The insolvency of such subsidiaries could have an impact on a group's capital and therefore affect the amount of MREL-eligible instruments at the level of the resolution entity. However, the willingness to let a subsidiary go into liquidation during the run-up to resolution remains a going-concern business decision. It is not something that can be anticipated nor mandated by the resolution authority and is therefore not factored into the consolidated MREL requirement.
- 23 **The SRB may apply bank-specific adjustments related to balance sheet depletion, binding restructuring plans and recovery options.** The SRB will allow, on a bank-by-bank basis with due justification, downwards adjustment of the projected TREA post-resolution that serves as a basis for determining the RCA of the MREL-TREA, including the market confidence charge. The same adjustment would apply for determining the RCA of the MREL-LRE.
- 24 **The prevalence of credit risk in the bank's risk profile acts as an indicator for considering the balance sheet depletion effect.** At the time of failure, the banking group may have a smaller balance sheet than at the time of resolution planning, particularly if the failure is due to credit risk losses. The higher the contribution of credit risk to the own funds' requirement, the greater the likelihood that the balance sheet effect will be applied by the SRB. In any case, the adjustment of assets is limited to an amount equal to the LAA plus CBR, and should in all cases not exceed 10% of total assets.

³⁸ Article 12d(2) SRMR.

- 25 **Divestments and sales firmly embedded in a going-concern divestment/restructuring plan may warrant an adjustment in RCA.** To this end, they may include the removal of riskier assets with associated higher risk weighting from the balance sheet through mandatory deleveraging actions. If actions as formulated in going-concern divestment and restructuring plans are legally binding and time-bound, the SRB may take into account the possible impact of these actions on the parameters that are used for determining the RCA of MREL.
- 26 **The SRB may apply downward adjustments based on recovery options, but only in exceptional cases and subject to conditions.** Provided the SRB assesses actions for implementing these options as (i) credible and feasible in accordance with Article 12d(3) SRMR; (ii) implementable immediately in resolution; and (iii) having a positive impact in any loss scenario, then such measures may be eligible, subject to a case-by-case assessment. The SRB will consider the effects of such measures on the TREA/LRE of the post-resolution bank balance sheet up to a reduction equal to 5% of TREA, when determining the RCA of MREL.

Market confidence charge adjustment

- 27 **The recapitalisation amount can be adjusted upwards by an appropriate amount (termed the market confidence charge or MCC) as necessary to ensure that, following resolution, the resolution entity sustains sufficient market confidence.**³⁹ This adjustment relates to the MREL-TREA only⁴⁰.
- 28 **The MCC provision reflects that MREL should be calibrated so as to ensure that the resolution entity is sufficiently capitalised to sustain market confidence.** This will allow the resolution entity to be able to meet the conditions for authorisation during the restructuring period, provide critical functions; and attract funding without recourse to extraordinary public financial support, over a one-year time horizon. By that time, it is expected that the implementation of the restructuring plan would have led to material improvements in the financial situation of the bank so that market access is no longer problematic.
- 29 **The SRB is phasing in the change in the MCC from the previous SRB formula (CBR minus 125 basis points) towards the new legislative formula (CBR minus the amount maintained to meet the Countercyclical Capital Buffer, CCyB)⁴¹ step by step.** In the 2020 resolution planning cycle (RPC), the SRB set the MCC at CBR minus the greater of the absolute bank-specific amounts of the CCyB and 93.75 basis points. The MCC will be set at CBR minus the greater of the CCyB and 62.5 basis points in the 2021 RPC and 31.25 in the 2022 RPC. Subsequently, the SRB will apply the formula in the legislation, equal to CBR minus the CCyB.
- 30 An MCC does not seem essential for ensuring the viability of a subsidiary that will be recapitalised by the resolution entity at the point of non-viability without placing it under resolution, except in specific circumstances. Accordingly, the SRB does not set the MCC for internal MREL for non-resolution entities, except (i) for the operating bank that is a direct subsidiary of a holding company identified as a resolution entity⁴², or (ii) where the SRB concludes that the MCC is necessary to sustain market confidence because of the subsidiary's complexity and strong reliance on wholesale funding.

³⁹ Article 12d(3) SRMR.

⁴⁰ Sixth subparagraph of Article 12d(3) SRMR.

⁴¹ Article 12d(3) SRMR (the seventh subparagraph sets a default value equal to the post-resolution combined buffer requirement minus the counter cyclical buffer).

⁴² To allow 'downstreaming' of the capacity raised by the holding company from external investors (structural subordination).

Other possible adjustments

- 31 **The SRB may raise the MREL-LRE up to 8% of TLOF if necessary to meet resolution objectives.** The SRB may adjust the MREL-LRE up to 8% TLOF at the level of the resolution group, if considered necessary to provide for loss-absorbing capacity at the level referred to in Article 27(7) SRMR⁴³. The SRB will do so based on a case-by-case assessment with due consideration for financial stability.
- 32 **RCA may potentially be adjusted in light of projected post-resolution Pillar 2 requirements.** Article 12d(3) SRMR foresees potential upwards or downwards adjustments of the RCA component corresponding to supervisory Pillar 2 requirements after the implementation of the resolution strategy and after consulting the competent authority. The SRB, in consultation with the competent authorities, estimates the P2R post resolution (for its use in the MREL formula) on the basis of the outcome of the latest SREP process. For banks with a high risk profile, the resolution actions are expected to yield a risk-reducing effect that could potentially be translated into a lower post resolution P2R level for both external and internal MREL. For banks with a lower risk profile, the current resolution P2R will contribute to the MREL calibration.

2.4.2. FOR TRANSFER STRATEGIES

- 33 **The SRB may adjust the RCA, including the MCC, to reflect the transfer of assets when the preferred resolution strategy relies primarily on a transfer tool (sale of business – share or asset deal, bridge institution, and/or asset separation⁴⁴).** The adjustment takes the form of a scaling factor applied to total assets as a proxy to reflect the recapitalisation needs post resolution, or the assets that would be transferred and/or liquidated under normal insolvency proceedings. This scaling factor applies to the TREA and LRE bases of the calibration of the RCA. It can be aggregated with other bank-specific adjustments applied to the RCA, including the MCC, where relevant.
- 34 **Allowing such an adjustment demands a critical and realistic assessment of the credibility and feasibility of resolving the respective bank using transfer tool(s).** As a pre-condition to the choice of the sale of business tool, all the conditions for its operationalisation shall be met at the time of resolution planning. This condition implies, among other things, high standards in the Management Information System and data room availability, market analysis of the likelihood of potential buyers, and a stringent separability analysis. Moreover, adjustment factors to MREL for banks with a transfer strategy presuppose that the transfer tools are the most appropriate tools for achieving the resolution objectives.
- 35 **The SRB tailors the adjustment factor to bank-specific characteristics within a 10% corridor range with an upper limit of 25% and a lower limit of 15%.** The adjustment factor is based on criteria that capture the marketability and capital needs of the resolved entity.
- 36 The criteria include:
- bank size, measured by total assets;
 - existence of impaired assets, measured by the ratio of non-performing exposures net of allowances over total assets;

⁴³ In accordance with the fourth subparagraph of Article 12d(3) and the fourth subparagraph of Article 12d(6) SRMR.

⁴⁴ In this context, the asset separation tool is a complementary resolution tool, which can only be used in combination with other resolution tools; the primary tool of the resolution strategy is typically the bail-in tool.

- depositor base, measured by the ratio of covered deposits to total assets; and
 - level of uncertainty on the valuation of banks' activities, measured by the ratio of Level 3 assets to total assets (a higher ratio of Level 3 assets implies a lower level of transparency to a buyer).
- 37 **The adjustment factor is not applicable to internal MRELS.** Resolution tools are intended to be applied at the level of resolution entities only. Subsidiaries that are not resolution entities are meant to be recapitalised through the cancellation and/or conversion of instruments that meet the conditions for internal MREL, which prevents subsidiaries from entering either resolution or insolvency. Since the amount of losses incurred by subsidiaries as well as their recapitalisation needs are not dependent on the choice of resolution tool for the resolution entity, no scalar should be applied to internal MREL.

2.5. MREL for G-SIIs

- 38 **Resolution entities of EU G-SIIs and material subsidiaries of non-EU G-SIIs are subject to specific MREL requirements.** The definition of G-SII entities covers all subsidiaries of all G-SIIs identified by the FSB⁴⁵. They are subject to requirements articulated in a statutory Pillar 1 TLAC requirement set out in Article 92a and 92b CRR, and any potential additional requirement determined by the SRB where the minimum TLAC requirement is deemed to be insufficient for fulfilling the conditions of MREL calibration set out in Article 12d SRMR⁴⁶. In addition, Article 72e CRR extends the existing deduction regime for own funds instruments to eligible liabilities items for G-SII entities that are identified as resolution entities. The rules for calculating the precise amounts that must be deducted are fully harmonised in CRR.
- 39 **The SRB sets an additional requirement where the requirement set out in Article 92a and 92b CRR is lower than general MREL calibration (LAA+RCA) based on Article 12d SRMR.** The additional requirement should be equal to the difference between the two. The possible addition helps ensure that all resolution groups are capable of absorbing losses and being recapitalised in line with the provisions set out in Article 12d SRMR, as for non-G-SIIs; the resolvability rationale underpinning the calibration of the LAA and RCA does not differ between G-SIIs and non-G-SIIs⁴⁷. Thus, with this policy, the SRB implements current principles of MREL calibration for EU G-SIIs established in the Banking Union, in alignment with the approach of other FSB jurisdictions to set requirements on loss-absorbing resources at a level potentially higher than the minimum TLAC defined in the TLAC term sheet.

⁴⁵ Article 4 (1)(136) CRR.

⁴⁶ Article 12e(1) and (3) SRMR.

⁴⁷ Article 12d(1)(a)-(e) of SRMR.

2.6. MREL for groups with multiple resolution entities (MPE)

- 40 **The key characteristic of the MPE approach is that a banking group is resolved through the application of resolution powers to the individual resolution group(s) where losses materialise.** A resolution group comprises a resolution entity (i.e. a Point-of-Entry) and its subsidiaries that are intended to be resolved jointly through the upstreaming of losses to that resolution entity.
- 41 **The underlying assumption of the MPE approach is that resolution groups can be resolved feasibly and credibly without undermining the resolvability of other parts of the consolidated group.** To achieve this aim, any resolution group in a MPE group should limit its financial interconnection to other resolution groups within the same banking group and, in principle, hold MREL-eligible instruments issued in the market external to the banking group in order to avoid contagion effects between resolution groups in the same banking group.
- 42 **Following this principle, for an MPE resolution group the MREL needs to be adjusted upward to reflect the level of exposures between resolution groups in the same banking group.** For example, equity participations may have to be written off or debt converted into other capital instruments in resolution. This condition is necessary for ensuring that single entities or resolution groups can be resolved feasibly and credibly without undermining the resolvability of other parts/entities of the consolidated group.

2.6.1. TREATMENT OF MPE GROUPS

- 43 **The Banking Package introduced a deduction regime directly applicable to G-SIIs under an MPE approach.** Article 72e(4) CRR introduces specific TLAC adjustments for G-SIIs under an MPE strategy. In particular, it foresees adjustments to the TLAC eligible items: any exposure of the EU parent resolution entity towards a subsidiary which does not belong to the same resolution group as that EU parent, in the form of either own funds or eligible liabilities, shall be deducted from the computation of the TLAC-eligible liabilities of the parent resolution entity.
- 44 **However, if the subsidiary concerned is in surplus with regard to its TLAC requirement⁴⁸, according to Article 72e(4) CRR, the resolution authority of that parent institution, after duly considering the opinion of the resolution authorities of any subsidiaries concerned, may permit the parent institution to deduct a lower amount of such exposures.** The deduction may be reduced by the proportion of the TLAC surplus that corresponds to the own funds and eligible liabilities issued by the subsidiary and held by the parent resolution entity. From an economic perspective, this lower deduction amount represents loss-absorbing and recapitalisation capacity held at local level and not committed to any local prudential and resolution requirement.
- 45 **If a lower deduction is accepted, the amount of TLAC surplus that is used to reduce the deductions of the parent resolution entity has to be deducted from the TLAC-eligible liabilities of the subsidiary concerned.** The rationale is that

⁴⁸ This includes any Pillar II MREL additional to TLAC (see Article 72e(4) CRR) where applicable.

otherwise the same liabilities could be used to cover TLAC requirements twice: at parent level and at subsidiary level. The surplus amount pertaining to the parent resolution entity that increases its eligible liabilities must be matched by a corresponding lower amount of eligible liabilities in the subsidiary. The new rules established by Article 92a of the CRR (and related provisions, including Article 72e) are directly applicable to G-SIIs as regards their TLAC requirement.

- 46 **The SRB reflects the economic effect of the concept described in paragraphs 42 and 43 above in the MREL framework for all MPE banking groups for the treatment of exposures to resolution groups based in third countries.** To this end, the SRB determines MREL add-ons and differentiates its approach according to whether the exposures are towards other resolution groups based in the EU or in third countries. This methodology applies to all MPE banking groups (G-SIIs and non-G-SIIs).
- 47 **The part of the add-on related to exposures to resolution groups based in third countries will be treated in such a way as to mirror the economic rationale and effects of the CRR deduction regime.** To this end, for exposures to non-EU resolution groups, MPE deductions as set out in Article 72e(4) CRR for G-SIIs will be translated into corresponding MREL add-ons for all MPE groups. The outcome of the CRR approach based on deductions will be transformed into corresponding add-ons to capture the intragroup exposures between resolution groups based in third countries and the EU resolution group for which the MREL is computed. The SRB allows, on a transitional basis, surpluses present at third-country resolution groups to proportionally reduce the add-on. On 27 October 2021 the European Commission published a legislative proposal which clarifies, among other aspects, that surpluses located in countries which have not adopted a resolution framework (equivalent to internationally agreed standards) cannot form a basis for reducing the requirement for the resolution group of the EU entity. The SRB will align its transitional approach to the final legislative outcome, including the date of entry into application of the revised regime.
- 48 **The part of the add-on related to exposures to resolution groups based in the EU will instead be computed according to a methodology that simulates the loss absorption and recapitalisation at the other EU resolution groups.** For the part of these exposures which relates to the loss-absorption amount of other EU resolution groups, the full part will be required as add-on. For the part which relates to the simulated recapitalisation, as a result of the application of bail-in at other EU resolution groups, the resolution group concerned would hold new equity instruments, whose market value is expected to be lower than their book value after resolution. To reflect such a lower market value, in line with the assumption made in the approach to NCWO⁴⁹, a resolution haircut⁵⁰ of 75% is assumed on the book value of the equity participations in other resolution groups, which increases the add-on of the resolution group concerned by the same amount. Any remaining exposures to other EU resolution groups not involved in the simulated bail-in will be subject to the MREL formula applied to the resolution group concerned.
- 49 **To foster a level playing field across resolution strategies (SPE or MPE) for all banking groups, the SRB may adjust the MREL requirements of entities forming part of an MPE group based on a hypothetical SPE requirement.** In this regard, Article 45h(2) BRRD states that for determining MREL for G-SIIs, the resolution authorities should discuss and where appropriate and consistent with the G-SII's

⁴⁹ See Section 3.3 and Box 1

⁵⁰ The resolution haircut aims to duly reflect the experience of losses during a resolution in the jurisdictions involved.

resolution strategy, agree on any adjustment to eliminate or minimise the differences between i) the requirement for the Union parent entity as if it was the only resolution entity of the G-SII (hypothetical SPE requirement) and ii) the sum of the requirement for each resolution entity (MPE requirements without add-on). On this basis, the SRB could reduce, for all EU resolution groups of an MPE banking group, the add-on up to the difference between the two hypothetical requirements, conditional on the commitment of the bank to reduce financial interconnections between resolution groups. This policy aims to preserve the neutrality of MREL with regard to the resolution strategy chosen, while ensuring a level-playing field between similar groups with different preferred resolution strategies.

- 50 **When comparing with the hypothetical SPE requirement, MPE add-ons will be disregarded in the sum of the requirements of resolution groups.** In this way, double counting of own funds instruments and eligible liabilities instruments issued by entities in one resolution group and held by entities in another resolution group is avoided.

3. Subordination for resolution entities

- 51 **Subordination improves resolvability by making the implementation of the resolution tools more feasible and credible.** In particular, it addresses the risks stemming from having bail-in-able instruments ranking *pari passu* with operational liabilities and any other liabilities excluded from bail-in in resolution, which might otherwise result in a breach of the NCWO principle⁵¹. Of particular concern is the risk that the value of instruments held by shareholders and creditors whose claims have been bailed-in in resolution incur greater losses than they would have incurred in a winding up under normal insolvency proceedings (insolvency)⁵². The affected shareholders and creditors would be entitled to the payment of the difference out of the resolution financing arrangements. Subordination is designed to avoid this.
- 52 **The Banking Package confirms the central role of the NCWO risk in the determination of subordination requirements.** As will be explained in this section, for resolution entities subject to Pillar 1 subordinated MREL requirements, the legislation provides discretion to the resolution authority to reduce the minimum requirement to a level of subordinated instruments below 8% TLOF on a case-by-case basis, provided that the NCWO principle is not breached and conditional to bank's progress towards resolvability. The SRB may also grant G-SIIs an allowance for senior instruments to be used to meet the external TLAC requirement subject to the same conditions⁵³. The NCWO principle also plays a role in the conditionality for increasing the subordination requirement for Pillar 1 banks beyond the level equal to 8% TLOF in accordance with Article 12c(7), (8) and (9) SRMR. Finally, the assessment of NCWO risk is the driver for subordination requirements for banks other than G-SIIs, Top Tier Banks and Other Pillar 1 Banks⁵⁴, taking into account the provisions of Article 12c(9) SRMR.

3.1. Calibration of subordination requirements

- 53 **Subordination requirements differ across types of institutions.** The amount a resolution entity is required to hold in own funds and subordinated liabilities depends on the entity's regulatory classification, and, in particular, whether the SRB has identified NCWO risk for these banks. Resources eligible for meeting the internal MREL for non-resolution entities must be fully subordinated⁵⁵.

⁵¹ Article 27(3) and (5) of the SRMR.

⁵² Article 15(1)(g) SRMR. The NCWO condition can be breached even though total losses are typically larger under insolvency than under resolution because the distribution of losses depends on the approach taken. For example, insolvency may allow holders of bail-in-able senior debt to share losses with holders of non-bail-in-able senior debt. That may be superior for the former if the value of shares they receive in resolution is very low. Annex II provides an illustration.

⁵³ Article 72b(3) and (4) CRR.

⁵⁴ Article 12c(5) SRMR.

⁵⁵ See eligibility criteria in Article 12g SRMR and 92b CRR (internal TLAC).

- 54 **The Banking Package significantly amended the way subordination requirements are determined for various types of banks, and especially for larger, more systemic banks.** The framework establishes minimum subordination requirements for G-SIIs⁵⁶, Top-Tier Banks⁵⁷, and Other Pillar 1 Banks⁵⁸. The minimum level of subordination for these banks is composed of:
- i. Pillar 1 subordinated MREL requirements, calibrated at 18% TREA (plus CBR⁵⁹)/6.75% LRE⁶⁰ for G-SIIs, or 13.5% TREA (plus CBR)/ 5% LRE for Top Tier Banks and Other Pillar 1 Banks⁶¹; and
 - ii. any additional subordination set by the resolution authority, up to a level that ensures 8% TLOF⁶². Note: this level may be increased or decreased by the resolution authority under conditions described below, subject to a cap⁶³ and a floor⁶⁴.
- 55 **In line with Article 12c(5) SRMR, the SRB may set subordination requirements for resolution entities of banks that do not qualify as G-SIIs, Top Tier Banks and Other Pillar 1 Banks, based on a case-by-case assessment of NCWO risk.** The subordination requirement is to be set at a level calibrated for each bank so as to eliminate potential NCWO risks. The assessment is subject to the conditions of Article 12c(9) SRMR. The level of subordination is limited to the higher of (i) 8% of total liabilities and own funds; and (ii) the so-called 'prudential formula' (2x Supervisory Pillar 1 + 2x Supervisory Pillar 2 + CBR).

3.2. Provisions for Pillar 1 banks

3.2.1. 8% TLOF TARGET LEVEL

- 56 **Article 12c(4) SRMR provides that the SRB should require resolution entities of G-SIIs, Top Tier Banks and Other Pillar 1 Banks to achieve a subordination level equal to 8% TLOF.** This requirement is in addition to the Pillar 1 subordinated requirements described above in point (i) of paragraph 53. The 8% TLOF requirement is a target level which the SRB has to ensure when calibrating the subordinated component of the MREL.
- 57 **Depending on the risk density and the liability structure of the resolution entity at the reference date of MREL calibration, the 8% TLOF target level may already be exceeded by the Pillar 1 subordinated MREL requirements.** Where the amount corresponding to 8% TLOF exceeds the risk-based⁶⁵ or leverage-based

⁵⁶ Article 92a CRR.

⁵⁷ Article 12d(4) SRMR.

⁵⁸ Article 12d(5) SRMR.

⁵⁹ Even though the CBR is not part of the MREL, it accounts for an additional level of subordination governed by a dedicated regulatory regime with a power of the resolution authority to prohibit certain distributions in case the institution does not meet the CBR in addition to the requirement (Article 10a SRMR).

⁶⁰ Article 92a CRR in conjunction with Article 72a(1)(a), Article 72b(2)(d), Article 72k and 92a CRR. Being a statutory requirement of Article 92a CRR, no implementing act of SRB is needed, whereas Pillar 1 requirements for TTBs and Other Pillar 1 Banks will be determined through the SRB MREL decision.

⁶¹ Article 12d(4) and (5) SRMR in conjunction with Article 12c(3) and Article 12g(2)(a)(ii) SRMR.

⁶² Article 12c(4) SRMR.

⁶³ Article 12c(7) SRMR.

⁶⁴ Article 12c(4) SRMR.

⁶⁵ Including the buffer requirements that stack on top of MREL expressed in TREA.

Pillar 1 subordinated MREL requirements, the MREL needs to be increased up to the equivalent of 8% TLOF to ensure that the target level is achieved.

- 58 **The 8% TLOF target level for Top Tier Banks is capped at 27% of TREA.** Where the TLOF component, including any adjustment, leads to an amount of subordination that is higher than 27% of TREA, Article 12c(4) SRMR provides that a cap (at 27% of TREA) should be applied where access to the Single Resolution Fund is not considered to be an option for resolving that resolution entity in the resolution plan⁶⁶. The cap does not apply to G-SIIs, nor to Other Pillar 1 Banks.

3.2.2. INCREASE OF THE 8% TLOF TARGET LEVEL

- 59 **The SRB may increase the 8% TLOF subordination requirement for G-SIIs, Top Tier Banks and Other Pillar 1 Banks under specific conditions.** According to Article 12c(8) SRMR, the SRB may decide to increase subordination requirements, for a number of resolution entities up to 30% of this type, where:
- a. substantive impediments to resolvability have been identified in the preceding resolvability assessment;
 - b. the credibility and feasibility of the resolution strategy is limited; or
 - c. the bank has been assigned a prudential Pillar 2 requirement which ranks it, in terms of riskiness, among the top 20% of the resolution entities under the SRB's remit that are subject to an MREL decision.

- 60 Article 12c(7) SRMR specifies that the SRB may impose a higher subordination requirement to the extent that it should not exceed the higher of (i) 8% of total liabilities and own funds; and (ii) the prudential formula (2x Supervisory Pillar 1 + 2x Supervisory Pillar2 + CBR)⁶⁷.

- 61 **The SRB may decide to increase subordination in relation to banks for which the SRB concludes that the credibility and feasibility of their resolution strategy is limited or if there are substantive impediments or because of the riskiness of the bank.** Therefore, where applicable, the SRB will assess condition (a) of Article 12c(8) SRMR concerning substantive impediments to resolvability identified in the preceding resolvability assessment. In addition, the attention will focus on condition (b) of Article 12c(8) SRMR (related to insufficient progress in removing potential impediments, in particular relating to NCWO risk), and on the conditions of Article 12c(9) SRMR. Where a bank does not take measures deemed credible and sufficient to address potential impediments, the SRB may decide to adjust upward its subordination requirement. The bank's progress on resolvability will be first and foremost assessed against the specific work priorities communicated to each bank by the SRB. Finally, condition (c) on riskiness of the bank will also be assessed.

3.2.3. DECREASE OF THE 8% TLOF TARGET LEVEL

- 62 **The SRB may decrease the 8% TLOF target level on a case-by-case basis, depending on the outcome of the assessment of NCWO risk, and subject to satisfactory progress towards resolvability.** When determining the overall level of the subordination requirement for a resolution entity, the SRB may decrease the 8% TLOF target level downwards – in accordance with Article 12c(4) SRMR – by no more than the level equal to the formula:

⁶⁶ Where the use of the Single Resolution Fund is foreseen, the overall MREL target needs to be sufficient to meet the conditions for a contribution of the Fund to resolution (Article 27(7) SRMR).

⁶⁷ For Top Tier Banks, the 27% TREA cap may be exceeded.

$$8\% \text{ TLOF} \times \left(1 - \left(\frac{3.5\% \text{ TREA}}{18\% \text{ TREA} + \text{CBR}} \right) \right)$$

- 63 **This adjustment may be granted only if the conditions set out in Article 72b(3) CRR are met**, in particular where the reduction does not create NCWO risk. In addition, the adjustment is subject to satisfactory progress of the bank towards resolvability. Where the SRB concludes that these conditions are met on a case-by-case basis, the NCWO approach described in section 3.3 would allow the SRB to grant an adjustment to the 8% TLOF target level up to a level that ensures compliance with the said conditions.

3.2.4. TLAC ALLOWANCES FOR G-SIIS

- 64 **Decisions on the TLAC allowances under Article 72b(3) and (4) CRR for G-SIIs should follow the approach taken regarding discretionary 8% TLOF reductions.** An allowance under Article 72b(3) and (4) CRR permitting the use of senior instruments to satisfy the external TLAC requirement of Article 92a CRR may be granted, on a case-by-case basis, only (i) if it does not give rise to a material risk of successful legal challenge or valid compensation claims in relation to the NCWO principle; and (ii) subject to satisfactory progress of the bank towards resolvability.
- 65 **Where granted, this allowance may be full or partial, depending on the quantity of subordinated instruments needed to balance the estimated value in resolution with the value in insolvency (equilibrium point)⁶⁸.** Where the amount of subordination at the equilibrium point is lower than the reduced 8% TLOF target level, the SRB limits the allowance to the extent necessary to ensure an amount of subordinated resources⁶⁹ equal to that level.
- 66 **These allowances will be reassessed yearly on a case-by-case basis, based on relevant balance sheet data, and communicated to G-SIIs.** The SRB will communicate any allowance granted and applicable from 1 January 2022 under the fully-loaded TLAC regime of 18% TREA/6.75% LRE, to be revised in the subsequent planning cycles.

3.3. Valuation-based assessment of NCWO risk

- 67 **The SRB considers that an assessment of the NCWO risk should support the resolvability of banks.** The methodology for such an assessment should provide the SRB with the analytical tools to implement subordination levels for banks that have no minimum subordination requirement under the Banking Package, as well as to adjust subordination requirements for Pillar 1 Banks.
- 68 **The SRB uses a quantitative approach that simulates the resolution and insolvency scenarios and compares the situation (value at disposal) of certain groups of creditors in those scenarios.** Where the estimate in resolution is lower than the value in insolvency, the approach determines the amount of senior resources that would need to be replaced with subordinated resources to make these two values

⁶⁸ In contrast, the outcome remains binary for any allowance granted under Article 72b(4) CRR ('Hold-Co allowance') due to the 'all-or-nothing' nature of this permission.

⁶⁹ See point (49b) of Article 3(1) SRMR 'subordinated eligible instruments' means instruments that meet all of the conditions referred to in Article 72a of Regulation (EU) No 575/2013 other than paragraphs (3) to (5) of Article 72b of that Regulation.

equal. This amount reflects the quantitative change in the liability structure deemed necessary to avoid NCWO risk under the specific assumptions of the valuation approach. At this 'equilibrium point', the approach assumes that NCWO risk will be avoided. Thus, the approach is aimed at operationalising the legal principles governing NCWO risk in a mathematical construct.

- 69 **The approach will also allow the SRB to estimate the equilibrium point where the value in resolution is higher than the insolvency counterfactual.** The absence of NCWO risk reflects a potential surplus⁷⁰ of subordinated resources over the equilibrium point from which NCWO risk is avoided.
- 70 **The SRB estimates the value of a creditor's claim in resolution with its respective value in insolvency, based on assumptions about write-downs and losses under different circumstances.**
- i. **The total loss of value for the creditor after resolution is referred to as 'resolution haircuts'.** In resolution, the value of debt is affected by the full or partial write-down and conversion of the outstanding amount. While the part of the claim written down is fully lost, the part of senior claims converted into shares (partially) compensates the creditor for the loss of the debt claim (Box 1).
 - ii. **In insolvency, the value of debt is affected by any loss the creditor incurs when the amount he/she receives following the liquidation of assets and payment of other liquidation costs is lower than his/her claim, referred to as 'insolvency haircuts'.** It is assumed that the total amount of losses may exceed the total amount of the own funds requirement (which equals the MREL LAA + CBR)⁷¹. Losses include those which may have contributed to the insolvency situation, and those stemming from the insolvency proceedings, because assets will be liquidated below their book value.
- 70a **In addition, as from 2022 RPC, in its assessment of the NCWO risk, the SRB takes into account the evolution of the bank's balance sheet approaching failure.**⁷²
- 71 **The approach assumes an additional loss in the event of insolvency, reflecting the extra losses and costs associated with insolvency proceedings.** The additional amount (i.e. the haircut on assets) is 10%, applied to total assets minus the own funds requirement (MREL LAA + CBR). This proxy level might be fine-tuned in future resolution planning cycles to take into account the composition of assets and the national historical recovery rates in insolvency proceedings, subject to the availability of data from which the SRB can draw reliable conclusions for all Banking Union jurisdictions.
- 72 **The bank-specific input values to be used in the SRB's assessment will be derived from the liability structure of the bank as reported in the LDR.**

⁷⁰ A surplus of subordinated resources over the equilibrium point of NCWO needs to be distinguished from a surplus of subordinated resources over MREL: the amount of subordinated resources of a bank may exceed the amount needed to avoid NCWO risk assumed under the quantitative tool, but at the same time be insufficient to meet any Pillar1 subordination requirement.

⁷¹ The CBR is the Combined Buffer Requirement.

⁷² The SRB considers in the NCWO methodology that, during the stress period when the bank is approaching FOLTF, part of the short-term unsecured funding will be withdrawn and replaced by secured liabilities. This might either increase or decrease the share of liabilities excluded from bail-in ranking *pari passu* to MREL eligible liabilities, depending on the insolvency ranking and bail-inability of the replaced liabilities. The impact is bank-specific, with a potential increase of NCWO risk for those entities where the outflows stem mainly from senior liabilities that are not excluded from bail-in.

- 73 Based on the experience gained, the SRB will consider further enhancements of the methodology in the next cycles.

BOX 1

DERIVATION OF RESOLUTION HAIRCUTS

The approach assumes (i) losses equal to the amount of own funds requirement, i.e., the MREL LAA plus CBR (written down part); and (ii) that the institution is recapitalised by the level of the RCA. Recapitalisation is achieved through the conversion of liabilities, starting from liabilities in subordinated rankings, and thereafter, if needed, converting senior (or *pari passu*) non-excluded liabilities. After resolution, the value of instruments initially held by senior non-excluded debt holders would be the remaining senior debt (unconverted part) plus the portion of new equity awarded as a result of the conversion of senior debt (converted part).

The creditors whose liabilities have been converted in proportion to the converted amounts are then allocated the newly created shares. Where NCWO risk is assumed to exist after this step, the shares are re-allocated to creditors of higher rankings to the extent necessary to avoid NCWO risk, taking into account the post-conversion equity value of these instruments instead of their nominal value⁷³.

These equity instruments are booked on the bank's balance sheet at the same nominal value as the initial liabilities they result from. However, the book value does not necessarily reflect the instruments' value for the new shareholders, for whom the relevant value is the market price of the new shares, in line with Article 10(5) of Commission Delegated Regulation 2018/345, which provides that Valuation 2 'shall provide an estimate of the post-conversion equity value of new shares transferred or issued as consideration to holders of converted capital instruments or other creditors'. The term 'equity value' means an estimated market price, for transferred or issued shares, that results from the application of generally accepted valuation methodologies. This value may take into account reasonable expectations for franchise value.

Historical data shows that listed companies and especially banks under strain may trade significantly below book value. In particular, price to book ('PtB') ratios of financial institutions were depressed during the financial crisis. Similarly, the PtB ratios reduced significantly during the Covid-19 pandemic. In addition, PtB ratios of banks with low profitability are generally below par, reflecting the key role of expected earnings in the equity valuation of companies.

The SRB considers that PtB ratios of shares, adjusted for a resolution scenario, can be used to determine a proxy for post-conversion equity value. PtB ratios are available for a broad sample of past crisis cases and banks with low profitability. Considering historical and current PtB ratios and a necessary adjustment for a resolution scenario, the SRB will assume a default price-to-book value of $ptb_{OF_from_Senior} = 25\%$.

⁷³ See EBA Final Guidelines on the rate of conversion of debt to equity in bail-in (EBA/GL/2017/03, 05 April 2017).

4. Internal MREL for non-resolution entities

- 74 **The MREL policy recognises that a feasible and credible resolution strategy may involve the placement of loss-absorbing capacity in all parts of the resolution group.**
- 75 **The SRB will issue internal MREL decisions for non-resolution entities, expanding the scope of entities covered.** The SRB has already set transitional periods applying to targets for non-resolution entities, in accordance with the regime for transitional periods defined in Article 12k SRMR (see section 7). Information on eligible resources is collected via the liability data report (LDR)⁷⁴ as well as the reporting under Commission Implementing Regulation (EU) 2021/763⁷⁵.
- 75a **Regulation (EU) 2022/2036⁷⁶ (“CRR quick-fix”) introduces a deduction framework at the level of intermediate entities in a chain whenever instruments are issued indirectly to the resolution entity.** It aims to foster internal loss-absorbency within the resolution group by ensuring that losses do not remain stuck at the level of an intermediate entity, putting at risk the execution of the group strategy. Pursuant to this Regulation, intermediate entities are required to deduct from their stock of internal MREL resources their holdings of internal MREL eligible instruments issued by other entities part of the resolution group. The provisions laying down the deduction mechanism for the indirect subscription of internal MREL will become applicable on 1 January 2024.
- 76 [DELETED]

4.1. Internal MREL for an expanded scope of non-resolution entities

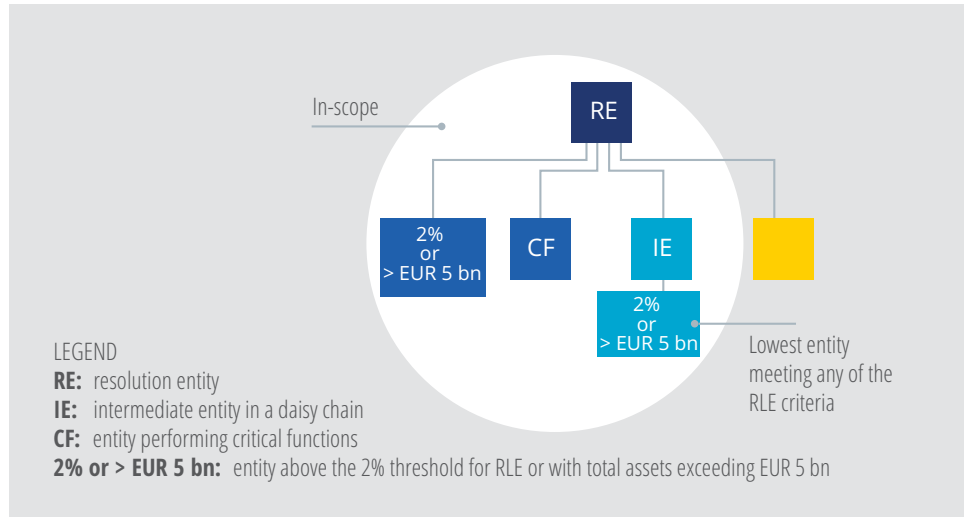
- 77 **The scope of subsidiaries for which the SRB will set internal MREL** encompasses entities providing critical functions and/or those meeting the 2% threshold of the resolution group’s total risk exposure amount, or leverage exposure, or total operating income (the previous threshold was 3%), or those with total assets exceeding EUR 5bn. These are deemed RLEs (see graphic overleaf). It is worth noting that entities providing critical functions are captured by the definition of RLEs, even where they are below the size threshold. In addition, the SRB sets internal MREL for intermediate entities: an intermediate entity is defined as a subsidiary of a resolution entity that is a parent entity of at least one RLE. Where an intermediate entity is a financial holding company that is not subject to prudential requirements of the CRR, the SRB sets internal MREL on a case-by-case basis if considered instrumental for the loss-transfer in the chain and sound execution of the group’s resolution strate-

⁷⁴ See <https://www.srb.europa.eu/en/content/reporting>

⁷⁵ https://eur-lex.europa.eu/eli/reg_impl/2021/763

⁷⁶ <https://eur-lex.europa.eu/eli/reg/2022/2036/oj>

gy. In line with the SRB policy on the scope of LDR reporting, the entities that comply with the criteria above are required to submit a LDR to ensure that the financial information needed to determine MREL is available. The SRB will re-assess the scope of subsidiaries with internal MREL in future cycles as deemed appropriate.



4.2. Waiver of internal MREL

78 **In line with Article 12h SRMR, in limited circumstances the SRB may waive internal MREL for subsidiary institutions qualifying as non-resolution entities.** Table 1 provides an overview of the statutory conditions of Article 12h.

Table 1: Overview of minimum statutory conditions for waiving internal MREL

Scope	Criteria	References
Internal MREL targets for subsidiaries may be waived	1 If the subsidiary and its resolution entity (or its parent undertaking) are established in the same Member State and are part of the same resolution group.	Article 12h(1)(a) or 12h(2) (a) SRMR
	2 If the resolution entity (or its parent undertaking) complies with the requirement referred to in Article 12f SRMR (i.e. consolidated external MREL on a consolidated basis at the level of the resolution group) or respectively MREL at sub-consolidated level.	Article 12h(1)(b) or 12h(2) (b) SRMR
	3 If there is no current or foreseen material, practical, or legal impediment to the transfer of funds by the resolution entity to the subsidiary, in particular when resolution action is taken in respect of the resolution entity or the parent undertaking.	Article 12h(1)(c) or 12h(2) (c) SRMR

79 **The SRB may exercise its discretion to grant waivers where the minimum conditions set out in Article 12h SRMR are met and where the files sent to the SRB are complete.**⁷⁷ In considering the granting of a waiver, the SRB undertakes a ho-

⁷⁷ Provided that the complete application is submitted at an early stage of the resolution planning cycle, the SRB decision as to whether to grant a waiver will be reflected in the MREL decision. If the review is completed outside of the cycle, the SRB conclusion may lead to a revision of an existing MREL decision.

listic assessment of all circumstances known at that stage of resolution planning that could have an impact on the transfer of funds by the resolution entity to the subsidiary when resolution action is taken. In general, the granting of a waiver implies that prepositioning of loss-absorbing capacity in the form of MREL-eligible items is not needed because the losses will be absorbed and the recapitalisation of the subsidiary will be ensured by the resolution entity through alternative action.

- 80 **Free transferability of funds, as envisaged for waiver cases, is assessed against a resolution scenario.** Article 12h(1)(c) and 12h(2)(c) SRMR requires that no current or foreseen material, practical or legal circumstances impede the transfer of funds by the resolution entity or the parent undertaking to the subsidiary, in particular when resolution action is taken in respect of the resolution entity or the parent undertaking. The condition of Article 12h(1)(c) and 12h(2)(c) SRMR is thus to be assessed by the resolution authority against a resolution scenario in which, jointly or independently, the resolution entity enters resolution and/or the subsidiary reaches the point of non-viability (PONV)⁷⁸. The scenario may involve the failure of a parent of the subsidiary within the same Member State, including where it is not a resolution entity. In such a scenario, the losses and recapitalisation burden of the subsidiary would need to be covered by the resolution entity, even though it is also in a FOLTF situation, by respecting the safeguards in Chapter VII of the BRRD. Annex II provides additional information on the SRB assessment of the free transferability of funds in a resolution scenario, as well as the documents that banks are expected to submit.
- 81 **The SRB exercises its discretion guided by the systemic relevance of the subsidiary for which a waiver is requested.** In this regard, the SRB is unlikely to grant a waiver to a subsidiary that, viewed as a stand-alone entity, would be a G-SII or a Top Tier Bank due to its size exceeding EUR 100 billion in total assets ('qualified systemic relevance'), and that contributes more than 5% to the relevant resolution group's total TREA and TEM (thresholds agreed at the FSB level for mandatory prepositioning of iTLAC). In cases where only one of these criteria is met, the SRB will consider in particular whether the waiver would jeopardise the wider group's resolvability, considering the bilateral relation between subsidiary and parent.
- 82 **The SRB assesses the fulfilment of the conditions for internal MREL waivers against the yardstick of resolvability.** Supervisory waivers from the application of prudential requirements on an individual basis are not a precondition for the granting of an MREL waiver. Nonetheless, in the context of the overall assessment of the subsidiary's application for an internal MREL waiver, it will be considered whether the subsidiary has obtained, or would be eligible to obtain, a supervisory waiver. While bearing in mind that the competent authority and the resolution authority conduct independent assessments of the conditions for granting a supervisory and MREL waivers respectively, a positive supervisory assessment shows that the relevant group is generally able and willing to provide funding and loss absorption in a going-concern perspective. Where evidence demonstrates in a satisfactory manner that the funding and loss-transfer arrangements are also robust in a resolution scenario, the SRB may consider the statutory conditions for a MREL waiver listed in Article 12h SRMR to be satisfied.
- 83 **Waiver applicants must demonstrate that there is no impediment to the prompt transfer of own funds or repayment of liabilities.** The SRB considers that where a subsidiary would not meet the conditions to obtain a supervisory waiver in a going-concern scenario, this would play against the credibility of gone concern recapitalisation of the subsidiary. The concern is even more relevant where the size,

⁷⁸ Article 12h(2)(b) SRMR.

risk exposures or systemic relevance of the subsidiary would necessitate a significant transfer of funds from the resolution entity or the parent undertaking. In such a case, the bank applying for an MREL waiver is expected to demonstrate that the loss transfer mechanism between the subsidiary and the resolution entity in place is commensurate with the size of the subsidiary and substitutes the need for a prepositioning of loss-absorbing and recapitalisation capacity, even if the resolution entity itself is in a FOLTF situation.

4.3. Provision of guarantees and internal MREL

- 84 **The SRB considers that partially collateralised⁷⁹ guarantees permitted by the resolution authority⁸⁰ may give flexibility to banks to use such instruments to complement fully prepositioned instruments to meet the internal MREL.** Also, they provide greater regulatory assurance for resolvability than waivers. Therefore, in consideration of the advantages and of the regulatory safeguards that apply, the SRB intends in general to permit their use within the same Member State of the resolution entity, provided all the conditions set out in the legislation are met.
- 85 **Article 12g(3) SRMR grants the possibility for the SRB to permit the use of guarantees to meet the internal MREL within the Member State of the resolution entity**, i.e. for the same institutions that may also be potentially eligible to apply for MREL waivers. Such guarantees must meet several conditions to fulfil this function, including:
- the guarantees must be triggered under timing conditions equivalent to those applicable to instruments eligible for meeting internal MREL; and
 - the collateral backing the guarantee given by the resolution entity to its subsidiary qualifies under Article 197 CRR, following appropriately conservative haircuts⁸¹.
- 86 **The SRB may apply further guidance specifying the conditions of Article 12g(3) SRMR for such permission.** In particular, the resolution entity may need to provide an independent written and reasoned legal opinion or otherwise satisfactorily demonstrate that there are no legal, regulatory or operational barriers to the transfer of collateral from the resolution entity to the relevant subsidiary⁸². Regarding the condition to apply appropriately conservative haircuts on collateral qualifying under Article 197 CRR, the SRB will apply the minimum haircuts determined in the tables of Article 224 CRR for volatility adjustments for the same type of collateral, assuming daily revaluation.

⁷⁹ At least 50%, see letter (e) of Article 12g(3).

⁸⁰ Article 12g(3) SRMR.

⁸¹ See letter (f) of Article 12g(3) SRMR.

⁸² Last subparagraph of Article 12g(3).

5. MREL for cooperative groups

- 87 **The Banking Package introduced provisions concerning MREL requirements for cooperative networks.** In particular, point (24b) of Article 3(1) SRMR legally defines the scope of the ‘resolution group’ for credit institutions permanently affiliated to a central body, the central body itself and their respective subsidiaries; Article 12f(3) SRMR grants discretion to determine one or more (resolution) entities within that group, whose liabilities shall count towards the compliance with the consolidated MREL requirement; and Article 12i SRMR introduces the possibility of waiving internal MREL for a permanently affiliated credit institution, or the central body itself, upon fulfillment of certain conditions. The implementation of the last two points deserves further explanation.

5.1. Expansion of the perimeter of the eligible liabilities for external MREL

- 88 **A cooperative network may encompass more than one resolution entity, whose liabilities may count towards compliance with the consolidated MREL requirement of the group.** Article 12f(3) SRMR enables the resolution authority to decide which entities in the resolution group must comply with MREL requirements *‘in order to ensure that the resolution group as a whole’* complies with the consolidated MREL requirement. This provision entails the possibility of recognising eligible liabilities issued externally from entities of the cooperative network, leading to the existence of more than one resolution entity. This possibility is explicitly allowed in the legal definition of ‘resolution group’ for cooperative networks in accordance with point (b) of point (24b) of Article 3(1) SRMR.
- 89 **Liabilities that count towards compliance with the consolidated MREL target (‘network eligible liabilities’) should be such as to support the preferred resolution strategy.** Article 12f(3) SRMR states that the selection of entities whose liabilities shall count as network eligible should depend ‘on the features of the solidarity mechanism and the preferred resolution strategy... in conformity with the resolution plan’. The article does not further specify the conditionality that governs the discretion granted to the resolution authority to decide on the modalities of MREL compliance of the network. In this regard, it is important to recall that the objective of MREL in general is to support the resolvability of an institution or a group. The authorisation to use network eligible liabilities must therefore not put at risk the operationalisation of the preferred resolution strategy determined by the SRB for the specific cooperative network. Thus, a network eligible liability must contribute to the resolution financing at the level of the network, regardless of which of the affiliated entities or institutions is the source of losses.
- 90 **This condition holds even when the cooperative network has in place a mutual support scheme.** In particular, it needs to be assured that the preferred resolution strategy can be successfully implemented regardless of which entity within the

network faces losses, which could not be covered by the relevant solidarity mechanism or mutual guarantee scheme in a going-concern status of the cooperative network. If this is not warranted, network eligible liabilities cannot be credibly assumed to ensure the resolvability of the cooperative network.

91 When applying Article 12f(3) SRMR, three general conditions need to be met as part of the resolution planning process in order to assume that a resolution strategy relying on the application of resolution tools on network eligible liabilities is feasible, namely:

- congruent scope of the entities meeting the conditions for resolution, whereby resolution can be applied at the level of the resolution group, taking into account the specificities of the solidarity mechanism;
- operationalisation of the network-wide resolution approach, whereby internal transfer of losses and recapitalisation capacity are operationally feasible on a network basis; and
- existence of a loss-sharing mechanism among entities and creditors in insolvency in accordance with the applicable insolvency law and the features of the solidarity mechanism.

92 These fundamental conditions are meant to provide orientation on the cornerstones of feasible resolution strategies for cooperative networks. The SRB has operationalised these criteria for the MREL treatment of cooperative networks. All entities with liabilities under review for counting towards compliance with the consolidated MREL of the resolution group should be included in the scope of the assessment of the following criteria. The criteria are:

- i. own funds issued by any of the entities are capable of absorbing losses to restore the solvency of any of the entities of the resolution group;
- ii. eligible liabilities issued by any of the network entities would be subject to bail-in, under the resolution strategy relevant for MREL setting, in case any of these entities reaches the point of FOLTF;
- iii. there is no material risk of breaching the NCWO principle with a clear ranking on distribution of losses within the group. In particular, NCWO should be respected when applying the bail-in tool on a pro-rata basis to network eligible liabilities that are part of the same class in the creditor hierarchy;
- iv. appropriate communication to investors investing in MREL-eligible debt instruments and information about the potential bail-in of such instruments for the recapitalisation of any of the entities of the network has taken place;
- v. determination of FOLTF is on a joint basis: the SRB will consider the likelihood of a FOLTF determination being made at the level of all affiliated entities of the network and the central body, either simultaneously or as a whole at group level, taking into account as well the possible assessment of the conditions for resolution under Article 32a and 32(1) BRRD for cooperative networks that are part of the same resolution group.

93 A cooperative network seeking network-wide recognition of eligible liabilities needs to demonstrate fulfilment of condition iii. on a network basis. Based on the applicable national law and the features of the solidarity mechanism, the network should demonstrate that the treatment of creditors in insolvency relies indeed on the solidarity principle between entities and creditors of the network.⁸³ So, in line

⁸³ Note that the demonstration of the absence of any material NCWO risk is not assessed using the tool under section 3.3.

with Article 74 BRRD, the absence of material NCWO risk results from a comparison of the actual treatment of creditors of the network or group in resolution with the (hypothetical) treatment of those creditors, should the entities of the group be liquidated in normal insolvency proceedings (NIP) at the time when the resolution decision is taken. Thus, assuming for a relevant bank a bail-in strategy is applied to the whole network, the SRB must be convinced that the assets and liabilities of all network entities would be legally and economically bundled in an (hypothetical) insolvency procedure, thereby minimising NCWO risk.

- 94 **The existence of (a) a guarantee of the network benefitting third party creditors; or (b) a reorganisation of the network leading to the merger of all affiliates into one entity might under certain conditions achieve such aggregation.** To minimise NCWO risk, either of the two options would also need to become effective in a hypothetical insolvency situation, should the entities of the group be liquidated in normal insolvency proceedings (NIP) at the time when the resolution decision is taken⁸⁴.
- 95 **A reorganisation of the network leading to the merger of all affiliates into one entity may be part of a preferred resolution action envisaged in the resolution plan, provided certain conditions are met.** To be preferred, the SRB must consider the implementation of such merger to be credible and feasible, and its execution must not rely on discretionary decisions of external stakeholders not controllable by the SRB or the national resolution authority. For the purposes of the MREL treatment in case of a merger being implemented as part of or together with resolution actions, the SRB will assess whether the above listed five criteria can be considered met, taking into account the economic and legal implications of the merger.
- 96 **To avail itself of the network-wide recognition of eligible liabilities, the cooperative network should provide strong supporting evidence regarding compliance with the above listed conditions and criteria.** That evidence will be based on the features of the solidarity mechanism or mutual support scheme, and the preferred resolution strategy. For this purpose, the SRB may request an independent legal analysis prepared at the request of the cooperative network, intended to provide clarifications on the features of the solidarity mechanism or mutual support scheme, or any other solution to ensure solidarity among creditors of the network, and their implications for the above conditionality, in combination with the preferred resolution strategy.

5.2. Waiver of internal MREL for affiliated institutions

- 97 **The third subparagraph of Article 12g(1) SRMR describes the scope of the internal MREL for the various institutions making up a cooperative network.** Accordingly, affiliated credit institutions that are themselves resolution entities in the context of Article 12f(3) SRMR are not subject to the MREL on an individual basis. The remaining RLEs of the group remain subject to an internal MREL requirement, unless they are explicitly waived in accordance with Article 12i SRMR.
- 98 **Article 12i SRMR introduces six criteria for granting affiliated credit institutions, or the central body itself, a waiver from individual MREL targets, with flexibility offered to the SRB when assessing the criteria.** Notable is the flexibil-

⁸⁴ Article 74(3)(a) BRRD.

ity with respect to criterion f) that *“there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities between the central body and the permanently affiliated credit institutions in the event of resolution”*.

- 99 **The assessment of criterion f) of Article 12i SRMR on any impediment to the prompt transfer of own funds or repayment of liabilities is based on an analysis of the bilateral relation between the central body and the respective affiliated institution for which a waiver from an individual MREL target is being considered.** A network-wide perspective, as under Article 12f(3) SRMR, is not adopted. The criteria for assessing impediments to the prompt transfer of own funds or repayment of liabilities for non-affiliated subsidiaries are also applicable for cooperative institutions under this section.
- 100 **The presence of a capital waiver from the competent (supervisory) authority does not imply an automatic MREL waiver. Nevertheless, criteria b) and f) of Article 12i SRMR may be considered met where the SRB has received sufficient comfort,** depending on bank-specific elements, that the guarantee provided by the central body to the affiliated institution in line with Article 7(1) CRR could be effectively used in a resolution (and hypothetical insolvency) scenario and covers the entirety of the relevant commitment(s). This possibility is without prejudice to compliance with other criteria set out by the legislation.
- 101 **Despite the application of a waiver, banks are expected to provide all necessary data for the legal entity, as for any other subsidiary.** The application of a waiver does not automatically translate into a waiver from reporting requirements.

6. Eligibility

- 102 **Banks must hold sufficient instruments that meet the eligibility criteria for MREL at all times.** The SRB allows external MREL for resolution entities to be met with own funds at the level of the resolution group and eligible liabilities issued externally by the resolution entity⁸⁵. Liabilities that can be used to meet MREL requirements are defined in the CRR⁸⁶, the SRMR⁸⁷ and the BRRD⁸⁸. The conditions in Article 72b(2) CRR are cumulative for all instruments, while the SRMR provides additional conditions for specific liabilities.
- 103 **The amortised⁸⁹ part of a Tier 2 instrument⁹⁰ is also eligible as a liability for MREL purposes.** This is the case where parts of the Tier 2 instrument no longer qualify as prudential own funds for maturity reasons. No additional assessment is carried out on the amortised part of a Tier 2 instrument under the eligibility criteria in the CRR. This is because the instrument it pertains to is still a Tier 2 instrument, has been validated as such by the competent authority and can be written-down and converted outside of resolution⁹¹ (provided it is not governed by third-country law).
- 104 **Internal MREL must also meet certain eligibility criteria.** Internal MREL for non-resolution entities has to be met with own funds⁹² and eligible liabilities⁹³. The eligibility criteria for internal MREL liabilities are also specified in both the CRR and the SRMR⁹⁴.
- 105 **Not all liabilities can count towards MREL.** The CRR provides a list of liabilities that are excluded from counting as eligible liabilities⁹⁵ for MREL purposes. This list builds on the bail-in exclusion list set out in Article 44(2) BRRD, and in addition to covered deposits excludes sight deposits and short-term deposits with an original maturity of less than one year, preferred deposits⁹⁶ and liabilities arising from derivatives⁹⁷. Nonetheless, liabilities arising from debt instruments with embedded

⁸⁵ Point (b) of Article 12c(1) SRMR in conjunction with point (a) of Article 72b(2) CRR; see exception of Article 12c(3) SRMR and Article 88a CRR on qualifying instruments issued by subsidiaries. For own funds, see the specification in Article 11(3a) CRR in the context of TLAC. With specific regard to resolution groups identified in accordance with point (b) of point (24b) of Article 3(1) SRMR, see Article 12f(3) SRMR.

⁸⁶ Article 72a to 72c CRR, except for Article 72b(2)(d) and Article 72b(3-7).

⁸⁷ Article 12c(1-3) SRMR.

⁸⁸ For the purpose of this chapter, the reference to BRRD is limited to liabilities which fall within the scope of Articles 45b(1-3) and 55.

⁸⁹ The non-qualifying part.

⁹⁰ Article 72a(1)(b) CRR.

⁹¹ Article 21 SRMR.

⁹² Article 12g(2)(b) SRMR.

⁹³ Article 12g(2)(a) SRMR.

⁹⁴ Article 12g(2)(a) SRMR. Point (ii) of this provision cross refers to the CRR and makes the following criteria applicable to the eligibility of internal MREL: Article 72a, except for Article 72b(2)(b), (c), (k), (l) and (m) and Article 72b(3-5) of the CRR.

⁹⁵ Article 72a(2) CRR.

⁹⁶ I.e. (i) The part of eligible deposits from natural persons and SMEs exceeding the coverage level in the DGS Directive which benefits from preferential treatment in the national insolvency hierarchy; and (ii) deposits that would be eligible deposits from micro, small and medium-sized enterprises were they not made through third-country branches of EU banks, both of which benefit from preferential treatment in the national insolvency hierarchy pursuant to Article 108(1) of the BRRD.

⁹⁷ Article 72a(2)(k) CRR.

derivatives can count towards MREL under specific conditions set out in the SRMR⁹⁸ (see paragraph 119).

- 106 **Certain eligibility criteria are waived for liabilities issued before the date of application of the CRR⁹⁹.** This mainly applies to the new eligibility criteria in the CRR which were not in Article 45(4) BRRD. This relates to points (b)(ii) and (f-m) of Article 72b(2).

6.1. MREL eligibility of reported liabilities

- 107 **An eligibility checklist to assist banks when completing the quarterly reporting has been developed by the SRB.** The checklist¹⁰⁰ is a non-exhaustive list of MREL eligibility conditions. It aims to help banks in establishing whether liabilities meet the MREL eligibility criteria set out in the CRR¹⁰¹, the SRMR¹⁰² and the BRRD¹⁰³ and whether they should be reported in accordance with Commission Implementing Regulation (EU) 2021/763¹⁰⁴.
- 108 **Procedures for establishing MREL eligibility are to be documented.** Once banks reach the conclusion that the MREL eligibility criteria are met and that the liabilities should be reported in accordance with Commission Implementing Regulation (EU) 2021/763, the SRB expects banks to document the procedures that have been followed, as part of sound governance. The SRB may require access to this documentation in future on-site inspections. The SRB may also request any additional information it deems necessary in relation to the eligibility of reported liabilities, as part of its scrutiny of the reporting received under Commission Implementing Regulation (EU) 2021/763.
- 109 **Sign-off to accompany quarterly reporting submissions under Commission Implementing Regulation (EU) 2021/763 starting with Q4 2021 reference date¹⁰⁵.** To ascertain that procedures and controls were put in place to establish that reported liabilities meet the MREL eligibility criteria set out in the legislation, the SRB expects confirmation from banks. A sign-off form¹⁰⁶ is to be submitted together with the quarterly reporting under Article 1(a) of Commission Implementing Regulation (EU) 2021/763. The sign-off form is to be signed in line with Principle 1.1 indent 5 of

⁹⁸ Article 72b(2)(l) CRR, in conjunction with Article 12c(2) SRMR.

⁹⁹ Article 494b(3) CRR.

¹⁰⁰ https://srb.europa.eu/sites/srbsite/files/2021_01_08_mrel_checklist_for_reporting_eligible_liabilities_2.pdf

¹⁰¹ Article 72a to 72c CRR, except for Article 72b(2)(d) and Article 72b(3-4).

¹⁰² Article 12c(1-3) SRMR.

¹⁰³ Articles 45b(1-3) and 55 BRRD.

¹⁰⁴ https://eur-lex.europa.eu/eli/reg_impl/2021/763

¹⁰⁵ When it comes to subsidiaries in the scope of the reporting under Commission Implementing Regulation (EU) 2021/763, sign-off depends on how submission of the quarterly reporting under Article 1(a) of Commission Implementing Regulation (EU) 2021/763 is done. Where the quarterly reporting under Article 1(a) of Commission Implementing Regulation (EU) 2021/763 of local subsidiaries established in the same Member State as its parent undertaking are submitted centrally by the parent undertaking or if applicable, by the central body of a cooperative network to the relevant NRA, one sign-off form from the parent undertaking or central body can suffice. It should list all the LEIs of all the subsidiaries established in the Banking Union which it covers. Differently, where the quarterly reporting is submitted independently by each local subsidiary to the relevant NRA, it should be accompanied by a separate sign-off form for each local subsidiary.

¹⁰⁶ https://srb.europa.eu/sites/srbsite/files/2021_01_08_mrel_sign_off_form_1.pdf

the SRB's Expectations for Banks. Sign-off forms are to be submitted to the local NRA.¹⁰⁷

110 [DELETED]

6.1.1. LOCATION

111 **Liabilities must be issued directly by the resolution entity to qualify for external MREL¹⁰⁸.** As an exception, liabilities issued from subsidiaries in the same resolution group to an existing shareholder outside the resolution group can also count towards external MREL¹⁰⁹ capacity under strict conditions. This is conditional on the following: (i) the liabilities meeting the eligibility criteria for internal MREL¹¹⁰; (ii) the exercise of write-down or conversion (WDC) powers not affecting the consolidation of the subsidiary¹¹¹ by the resolution entity¹¹²; and (iii) the amount of liabilities being issued externally not exceeding the difference between the internal MREL requirement and the actual amount of internal MREL issued to and bought by the resolution entity (either directly or indirectly through other entities in the same resolution group) and own funds issued as per Article 12g(2)(b)¹¹³.

6.1.2. OWNERSHIP

112 **Liabilities cannot be owned by undertakings in which the resolution entity holds 20% or more of the voting rights or capital (either directly or indirectly).** Consequently, this ownership limitation could render ineligible liabilities owned by entities outside the resolution group, and by funding structures that use Special Purpose Vehicles or other funding vehicles established in the EU or third countries that exceed the 20% control threshold. This eligibility condition is waived for liabilities issued prior to 27 June 2019¹¹⁴.

6.1.3. NON-COVERED NON-PREFERRED DEPOSITS

113 **Non-covered non-preferred deposits may count towards MREL if they have a maturity of at least one year (and meet all other applicable MREL criteria¹¹⁵).** However, some non-covered non-preferred deposits may have an early redemption clause that needs to be taken into account in the maturity assessment¹¹⁶ for MREL eligibility purposes. If there is any opportunity for the owner to withdraw the non-covered non-preferred deposit with less than one year's notice (regardless of whether penalties apply), the SRB will not recognise it as eligible for MREL purposes.

¹⁰⁷ Principle 1.1 indent 5 of the SRB's Expectations for Banks provides that "banks are expected to appoint a member of the management body that is responsible for the (internal) work on resolution planning and the implementation of the resolvability work programme. This member signs off on the main deliverables or ensures adequate delegation arrangements in this respect, as part of appropriate internal control and assurance mechanisms, e.g. the resolution reporting templates".

¹⁰⁸ Article 72b(2)(a) CRR.

¹⁰⁹ Article 12c(3)(a) SRMR (which cross refers to point (a) of Article 12g(2) of SRMR).

¹¹⁰ Article 12g(2)(a) SRMR.

¹¹¹ Article 4(1)(16) CRR (ex vi Article 2(1)(5) BRRD).

¹¹² Article 12c(3)(b) SRMR. The control of the subsidiary by the resolution entity is deemed to be affected where the application of WDC to the subsidiary causes changes to the scope of consolidation pursuant to Article 18 CRR, resulting in the subsidiary no longer actually being a subsidiary of the resolution entity.

¹¹³ Article 12c(3)(c) SRMR.

¹¹⁴ Article 494b(3) CRR.

¹¹⁵ Please note that for deposits issued after 27 June 2019, all eligibility conditions apply including third-party termination rights and set off.

¹¹⁶ Article 72c(2) CRR.

6.1.4. LIABILITIES ARISING FROM DEBT INSTRUMENTS WITH EMBEDDED DERIVATIVES

- 114 **Liabilities that arise from debt instruments with embedded derivatives (e.g. structured notes) can be considered eligible for MREL (but not for TLAC) provided that the bank demonstrates that the instruments meet all relevant legal conditions.** In order to be MREL eligible, these liabilities cannot be subject to any netting arrangements, must meet all relevant CRR conditions and one of the following conditions¹¹⁷ must be met: (i) the principal amount of the liability is known at the time of issue, is fixed or increasing and is not affected by an embedded derivative feature and the bank has the ability to perform a daily valuation of the liability in line with Article 12c(2)(a) SRMR even in stressed market conditions; or (ii) the debt instrument includes a contractual term in line with Article 12c(2)(b) SRMR.

6.1.5. CONTRACTUAL RECOGNITION OF WRITE DOWN AND CONVERSION

- 115 **An explicit reference¹¹⁸ providing that the liability may be subject to possible WDC by the resolution authority¹¹⁹ will be required for instruments issued as of 28 June 2021.** Such a reference on possible WDC is an eligibility condition that must be included in contractual documentation and, where applicable, in the prospectus for a liability.

6.1.6. LIABILITIES GOVERNED BY THIRD-COUNTRY LAW

- 116 **Effective resolution within the SRM framework involving liabilities issued under the law of third countries requires that an EU resolution authority can modify those liabilities (e.g. by writing down or converting them).** Yet when liabilities are not governed by the law of an EU Member State, a third-country court with jurisdiction over the liabilities may not recognise the resolution actions of an EU resolution authority. In such circumstances, resolution that achieves the objectives of the SRM will be at risk.
- 117 **The recognition necessary might be achieved by statute or by contract.** One possibility is that the legal framework of the third country or an international agreement ensures that the courts of the third country recognise the EU resolution authorities' powers. In the absence of a cross-border recognition framework, recognition might be achieved through prior contractual acceptance by creditors that their contractual claims may be cancelled or modified in resolution. Article 55(1) BRRD requires banks to include a contractual clause in contracts by which the creditor or party to the agreement creating the liability recognises that the liability may be subject to the write-down and conversion powers of an EU resolution authority. Moreover, that creditor or party agrees to be bound by any reduction of the principal or outstanding amount due, conversion, or cancellation that is affected by the exercise of those powers by a resolution authority. Article 44 of Commission Delegated Regulation (EU) 2016/1075 further specifies the requirements applicable to the clause.
- 118 **Article 55(2) BRRD excludes from MREL capacity liabilities without a recognition clause compliant with Article 55(1) BRRD¹²⁰, in the absence of a cross-border recognition framework.** Article 55(2) BRRD does not exclude from MREL eligible liabilities, including AT1 and T2 instruments, which were issued or entered into before the date mentioned in point (d) of Article 55(1) BRRD, i.e. the date of application of the transposition of BRRD (I) into the respective national legal framework.

¹¹⁷ Article 12(c)(2) CRR.

¹¹⁸ Article 72b(2)(n) CRR.

¹¹⁹ Article 48 BRRD.

¹²⁰ When such a clause is not included in the contract in the absence of cross-border recognition framework, the liability should never be counted against the MREL (see Article 55(2) last subparagraph BRRD2). Not affected are liabilities issued or entered into before the date mentioned in point (d) of Article 55(1) BRRD, i.e. the date of the transposition of BRRD (I) into the national legal framework.

- 119 **AT1 and T2 instruments issued after the date of application of the transposition of BRRD I may be affected.** As a consequence of Article 55, and in the absence as of the date of publication of a suitable binding international agreement with a third country or statutory recognition¹²¹, the SRB will exclude AT1 and T2 instruments governed by third-country law (and issued after the national transposition of BRRD I) from MREL supply, unless the bank has included an effective and enforceable contractual recognition clause.
- 120 **A recognition clause must be effective and enforceable to be compliant.** The power of the resolution authority to request a legal opinion on the effectiveness and enforceability of the clause, on a case-by-case basis, is left unchanged¹²².
- 121 **For liabilities other than AT1 and T2 instruments governed by third-country law, banks need to provide a legal opinion.** Legal opinions signed after the date of the publication of this document will be assessed to be satisfactory where they meet the criteria¹²³ in Box 2 below¹²⁴. In principle, the SRB will not request legal opinions from banks where the proportion of their issuances governed by the laws of third countries with respect to the MREL-eligible stock is deemed not significant, and the SRB has sufficient information, and in particular the contractual terms, to assess the eligibility of such liabilities.

BOX 2

SATISFACTORY LEGAL OPINIONS

A satisfactory legal opinion is expected to:

1. Be written, reasoned, include a verbatim copy of the bail-in clause, and indicate whether the bail-in clause fully complies with Article 44 of Commission Delegated Regulation 2016/1075, detailing the criteria set forth therein.
2. Take into account not only the general enforceability of the standard/template clause but also, to the extent relevant, all specific circumstances and rules governing the actual programme/offering/issuance, and confirm that no other contractual term or arrangement may impair the effectiveness and enforceability of the clause.
3. Include an analysis of possible impediments to the effectiveness and enforceability of the clause taking into account, for example, insolvency law, securities law and the general legal framework of the third-country jurisdiction, such as public policy.
4. Confirm that the assessment of the effectiveness and enforceability of the clause takes into account, where applicable, the possible effects deriving from the non-coincidence of jurisdiction and governing law (i.e. if the chosen court (the jurisdiction) is called to apply a foreign law).

¹²¹ Powers granting discretion to an authority to grant recognition to foreign resolution proceedings at the point of resolution, similar to the discretionary powers under Article 93 to 95 BRRD, do not ensure resolvability ex ante where no recognition is foreseen in the contract. Moreover, the decision of an administrative authority to recognise the resolution action of another jurisdiction does not per se ensure that the courts competent to adjudicate the contract would be bound to reach the same conclusion.

¹²² Article 55(3) BRRD.

¹²³ The first criterion, the assessment of a compliance with Article 44 of Commission Delegated Regulation 2016/1075, must be performed by an appropriately qualified EU counsel.

¹²⁴ Legal opinions prepared in accordance with the criteria set out in the 2018 MREL policy for the second wave of resolution plans and received by the SRB before the publication of this document will continue to be deemed satisfactory and are not superseded.

- 122 **Even with contractual provisions, exogenous risks to resolvability may affect eligibility.** The legal enforceability and effectiveness of contractual recognition is conditional upon any unconditional contractual acceptance of an EU resolution action not being overturned or rendered ineffective by the laws or actions of authorities having jurisdiction over the contract. As acknowledged in the FSB's Principles for Cross-border Effectiveness of Resolution Actions, contractual approaches such as bail-in clauses do not achieve the level of legal certainty that would be conferred by statutory recognition¹²⁵.
- 123 **The SRB retains the right to exclude some or all liabilities under a given governing law from the MREL supply if it were to conclude that a change in or emergence of exogenous circumstances puts the effective exercise of the write-down and conversion powers at risk.** To manage this risk, the SRB welcomes early collaboration with stakeholders in identifying challenges to bail-in operationalisation, and in mitigating those risks through bank preparedness and standardised processes.
- 124 **The responsibility for ensuring that liabilities preserve their eligibility and for managing the related risks rests with banks.** Because the risk described lies outside the sphere of influence of issuing banks, the SRB recommended in previous communication on MREL and Brexit¹²⁶ mitigating risks to resolvability and MREL de-recognition, were they to be realised. To this end, the SRB encouraged banks to adhere to market practices that increase the level of comfort on the effective enforceability of the bail-in clause, also to consider issuing as much as possible under the governing laws of EU27¹²⁷ countries to achieve legal certainty.
- 125 **As of 1 January 2021, with the expiry of the UK-EU27 Withdrawal Agreement¹²⁸, instruments issued under UK law¹²⁹ became subject to the same rules as instruments issued under other third-country laws and therefore require a contractual bail-in recognition clause to be eligible for MREL.** However, having due consideration for the principle of legal certainty, the SRB considers that the requirement to include bail-in recognition clauses should not apply where the liability governed by the UK law was issued before 15 November 2018, the date of the publication of the *Single Resolution Board expectations to ensure resolvability of banks in the context of Brexit* where the SRB noted the potential consequences of Brexit for banks' existing stock of MREL instruments governed by UK law¹³⁰. Nonetheless, the requirement should apply to contracts governed by UK law if there are any material amendments made on or after 15 November 2018. Furthermore, banks are strongly encouraged to continue their efforts to introduce the recognition clauses to existing contracts or replace instruments without required clauses to achieve further progress towards resolvability.
- 126 To ensure alignment with the prudential grandfathering from the requirement to introduce contractual recognition clauses in own funds instruments provided for in Article 494b CRR, this exemption applies only until 28 June 2025. Following that date,

¹²⁵ FSB's *Principles for Cross-border Effectiveness of Resolution Actions*, p. 8.

¹²⁶ See the SRB position paper dated 15 November 2018.

¹²⁷ Member States of the EU with the exception of the United Kingdom in the context of Brexit, see also next section.

¹²⁸ Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (2019/C 384 I/01).

¹²⁹ The term 'instruments issued under UK law' includes liabilities governed by one of the three jurisdictions of the UK being: (i) England & Wales; (ii) Scotland; and (iii) Northern Ireland).

¹³⁰ <https://srb.europa.eu/en/file/brexit-position-paper>.

all instruments governed by UK law must have a contractual bail-in recognition clause to continue being eligible for MREL.

6.1.7. INTERNAL MREL

- 127 **For liabilities to be eligible for internal MREL, the ranking rule¹³¹ must be respected.** Liabilities issued¹³² to and bought by the resolution entity or an external shareholder that is not part of the same resolution group must rank¹³³ below all other externally issued liabilities that are not own funds.
- 128 **Banks should perform a simulation on the WDC.** In order to qualify as eligible for internal MREL, it should be possible for liabilities to be WDC at the point of non-viability in a way that is consistent with the resolution strategy, in particular by not affecting the control of the subsidiary by the resolution entity¹³⁴. The control of the subsidiary by the resolution entity is deemed to be affected where the application of WDC to the subsidiary causes changes to the scope of consolidation¹³⁵. In establishing whether a liability is eligible for internal MREL, banks should perform a WDC simulation, to ascertain whether the WDC would cause changes to the scope of consolidation. This simulation should be carried out in accordance with the simulation provided in the Checklist for Reported Liabilities¹³⁶ and documented for each RPC. The SRB may require access to this documentation during on-site inspections.

¹³¹ Article 12g2(a)(iii) SRMR.

¹³² Either directly or indirectly.

¹³³ In normal insolvency proceedings.

¹³⁴ Article 12g(2)(a)(iv) SRMR.

¹³⁵ Article 18 CRR.

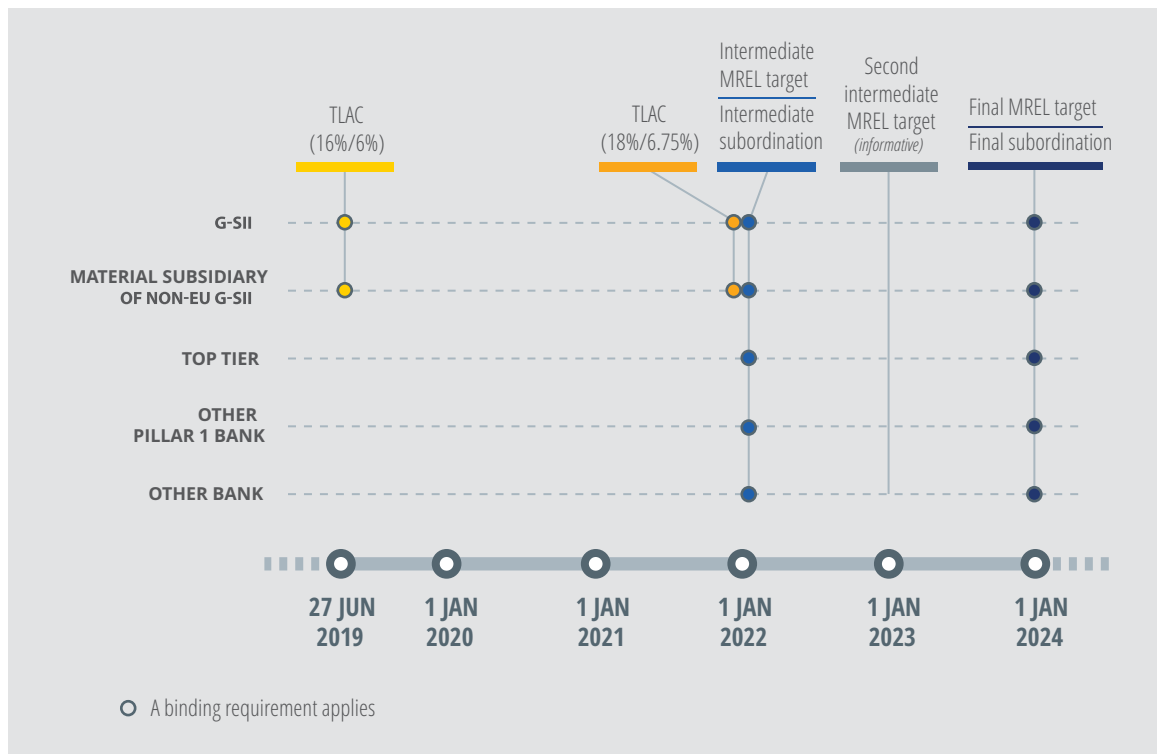
¹³⁶ As published on the SRB website on 8 January 2021.

7. Transitional arrangements

129 **Article 12k SRMR specifies the provisions applicable to define transitional periods up to 1 January 2024.** In particular, all banking groups have:

- a common deadline of 1 January 2024 to meet their full external *and* internal MREL targets including subordination; and
- two intermediate targets, a first intermediate target is binding since 1 January 2022, and a second intermediate target of informative nature for 1 January 2023¹³⁷.

The following chart provides an overview:



130 **Intermediate targets should ensure a linear build-up by each bank of the MREL capacity towards the final target levels¹³⁸.** Therefore, they vary significantly between banks, depending on the shortfall against the final target and any applicable Pillar 1 subordinated MREL requirements. Specifically, the binding intermediate target levels to be met by 1 January 2022 are set for both the total MREL, as well as the subordination component.

¹³⁷ 'Planned minimum requirements' shall be defined for each 12-month period in accordance with Article 12k(6) SRMR to facilitate a gradual build-up. The SRB will set this intermediate target for the 1 January 2023 as a second milestone towards the final target.

¹³⁸ Second subparagraph of Article 12k(1) SRMR.

- 131 **To ensure a linear build-up of the MREL capacity¹³⁹, the SRB calibrated the binding intermediate target for 1 January 2022 by dividing the amount of MREL shortfall¹⁴⁰ relative to the final target equally until the end of the transitional period^{141 142}.** For banks without a shortfall, the SRB has set the binding intermediate targets equal to final targets to be complied with by 1 January 2022.
- 132 **The subordination component of intermediate target levels cannot be lower than Pillar 1 subordinated MREL requirements, which must be fully met by 1 January 2022 irrespective of shortfalls¹⁴³.** By that date:
- G-SIIs and material subsidiaries of non-EU G-SIIs must comply with fully-loaded TLAC requirements¹⁴⁴; and
 - Top Tier Banks and Other Pillar 1 Banks must meet their MREL-Pillar 1 subordination requirement of 13.5% TREA/5% LRE¹⁴⁵.

Where higher than the above Pillar 1 subordinated MREL requirement, the 8% TLOF minimum subordination requirement, including any increase thereof, is subject to linear progression towards final targets in the case of a shortfall.

- 133 **In the 2022 resolution planning cycle, the SRB will re-calibrate final targets.** New decisions will re-calibrate the final binding MREL targets, including for subordination, to be met by 1 January 2024. If, after the re-calibration, the final MREL target is lower than the binding 2022 intermediate MREL target (issued in the previous resolution planning cycle), then the intermediate MREL target will be lowered to match the new final target. In all other cases, the MREL decisions adopted in the 2022 RPC will re-affirm the previously determined interim MREL targets that the entities are required to meet as of 1 January 2022. The SRB will also assess the need for any extension of the final target deadline beyond 1 January 2024 for individual banks on a case-by-case basis, where justified and appropriate¹⁴⁶. Given that the resolvability of banking groups relies on the availability of sufficient MREL resources, the SRB will consider a deviation from the deadline of 1 January 2024 only exceptionally, taking into consideration whether the bank has taken all necessary steps and actions to meet its target by the deadline and whether banks in the same jurisdiction have adequate access to capital markets. Banks subject to the extension of the deadline to meet the MREL target should enhance efforts even further to progress in other resolvability dimensions.

¹³⁹ The SRB may exceptionally deviate from a linear calibration ('Intermediate target levels, as a rule, shall ensure a linear build-up...') on a case-by-case basis, where justified by exceptional circumstances specific to a bank.

¹⁴⁰ Computed taking into account all issuances needs (i.e. including the buffer requirements)

¹⁴¹ For MREL targets expressed in TREA, the bank needed to comply with the full CBR on top of the interim MREL target already at the first binding date (1 January 2022). This does not apply to the MREL target expressed in the leverage exposure.

¹⁴² In 2020 RPC, in some cases where the MREL metrics changed materially by end-June 2020 due to the Covid-19 outbreak, the MREL intermediate targets were set by deviating from the linear build-up path.

¹⁴³ Article 12k(2) SRMR.

¹⁴⁴ Article 92a and 92b CRR.

¹⁴⁵ Article 12d(4) and (5) SRMR.

¹⁴⁶ Third subparagraph of Article 12k(1) SRMR.

8. M-MDA

- 134 **The SRMR2 introduced the Maximum Distributable Amount related to MREL (M-MDA)**¹⁴⁷. The SRB may set restrictions for banks that do not comply with the Combined Buffer Requirement (CBR), which, under the Banking Package, is added on top of the MREL requirements expressed in TREA, preventing them from distributing more than the M-MDA via various actions (including dividend payments on CET1, variable remuneration and payments on AT1 instruments)¹⁴⁸. The M-MDA may be applied where the bank meets the CBR on top of the own funds requirements¹⁴⁹ (i.e. the bank is not under the prudential MDA restriction), but fails to meet the CBR when considered in addition to the external and internal MREL (including subordination), as well as internal and external TLAC requirements¹⁵⁰, in all cases calculated in terms of TREA. In addition, the M-MDA may also be imposed in cases of breaches of the minimum requirement, i.e. the MREL¹⁵¹.
- 135 **M-MDA restrictions may be imposed on banks that breach CBR considered in addition to MREL and TLAC requirements.** The M-MDA regime became applicable on 28 December 2020 for CBR breaches when considered in addition to the external and internal TLAC requirements. For all other requirements (internal and external MREL including subordination), the M-MDA applied as from 1 January 2022 (i.e. first binding MREL targets under BRRD2).
- 136 **Banks must immediately notify the SRB of any breach or expected breach.** Once the bank is in breach of the CBR in addition to its MREL or TLAC requirements (but meets the CBR in addition to the own funds requirements), it should immediately (i.e. no later than within five working days) notify the national resolution authority and the SRB¹⁵². The bank should not wait until the breaches occur, but should also signal to the national resolution authority and the SRB of any expected breaches once it becomes aware of such risk.

8.1. Scope of M-MDA

- 137 **For resolution entities**¹⁵³, **the M-MDA regime applies to the following requirements:**
- For G-SIIs:
 - External MREL requirement;
 - MREL subordination requirement; and
 - External TLAC requirement:
 - ▶ Transitional requirement until 31 December 2021
 - ▶ Fully-loaded requirement as from 1 January 2022

¹⁴⁷ Article 10a SRMR.

¹⁴⁸ Points (a), (b) and (c) of Article 10a(1) SRMR.

¹⁴⁹ Points (a), (b) and (c) of Article 141a(1) CRD.

¹⁵⁰ In the event of failure to meet the CBR in addition to internal MREL/TLAC expressed in TREA, M-MDA powers are applicable to the non-resolution entity.

¹⁵¹ Article 12j(1)(b) SRMR.

¹⁵² Second subparagraph of Article 10a(1) SRMR.

¹⁵³ It also includes entities to be wound up under normal insolvency proceedings or other equivalent national procedures, even though the use of the M-MDA is very unlikely in such cases.

- For Top Tier and Other Pillar 1 banks:
 - External MREL requirement; and
 - MREL subordination requirement.
 - For non-Pillar 1 banks:
 - External MREL requirement; and
 - Where applicable, MREL subordination requirement¹⁵⁴.
- 138 **For non-resolution entities**, the M-MDA regime applies to the following requirements:
- For material subsidiaries of non-EU G-SIIs:
 - Internal TLAC requirement:
 - ▶ Transitional requirement until 31 December 2021
 - ▶ Fully-loaded requirement as from 1 January 2022
 - Internal MREL requirement, if applicable.
 - For all other subsidiaries that are not themselves resolution entities:
 - Internal MREL requirement, if applicable.

8.2. Notification by the bank

- 139 **The bank must notify the breach and provide a minimum set of information to the SRB and the NRAs.** When the entity notifies the breach to the national resolution authority and the SRB, the following information should be included as a minimum:
- (a) name and the LEI code of the entity that is in breach;
 - (b) description of the breach and the reason of the failure to comply (including the entity's reasoning whether the breach is due to idiosyncratic reasons or exogenous factors);
 - (c) the applicable MREL requirements, the MREL capacity (including information about the main metrics used in the computation of MREL and their trend), as well as the amount of CET1 capital maintained by the entity which is not used to meet MREL requirements;
 - (d) information regarding entity's compliance with the CBR in addition to its own funds requirements;
 - (e) actions and timeline described by the entity to restore the level of MREL-eligible resources (including, where relevant, a funding plan) that would ensure compliance with the CBR in addition to its MREL requirements (expressed in TREA);
 - (f) any other information that should be considered by the resolution authority in assessing the elements in Article 10a(2) SRMR.
- 140 **If there are breaches or expected breaches, the bank is also expected to provide the SRB and the NRAs with monthly data for monitoring purposes** (see below). The specific data templates will be provided by the SRB for quantitative data monitoring and additional qualitative information might be requested on an *ad hoc* basis.

¹⁵⁴ Based on the NCWO risk assessment.

- 141 **If at any point in time the bank is no longer in breach in accordance with Article 10a(1) SRMR**, it should notify the national resolution authority and the SRB without delay.

8.3. Two-stage assessment by the SRB

- 142 **The first stage starts once the bank notifies the national resolution authority and the SRB about the breach and may last nine months.** After consulting the competent authorities, including the ECB (where applicable), the SRB shall assess whether to exercise the M-MDA power, taking into account all of the elements set out in Article 10a(2) SRMR. If the power is not exercised, the SRB shall repeat its assessment at least every month for as long as the entity is in breach.
- 143 **The second stage starts nine months after the notification of the breach.** If the bank continues to be in breach, after consulting the competent authorities, including the ECB (where applicable), the SRB shall exercise the M-MDA power, except where it finds, following its assessment, that at least two of the conditions set out in Article 10a(3) SRMR are fulfilled. If the exception not to exercise the M-MDA is applied, the SRB shall repeat its assessment at least every month for as long as the bank is in breach.

8.4. Computation of the M-MDA

- 144 **The SRMR sets out the calculation steps to compute the M-MDA¹⁵⁵.** The M-MDA is calculated as the amount of interim and any year-end profits not incorporated in CET1 capital (net of any previous distributions) taking into account any possible retained taxes and multiplied by a factor ranging from 0 to 0.6. The multiplier depends on the size of the CET1 shortfall on the CBR in addition to the MREL requirement. The method of computation of the M-MDA is the same under the prudential and resolution MDA regimes¹⁵⁶.
- 145 **The M-MDA is a dynamic restriction.** If the restriction is applied, the amount under the M-MDA will need to be computed by the bank in all circumstances where it plans to distribute through any of the actions that may be restricted under the M-MDA¹⁵⁷.

¹⁵⁵ Article 10a(4)-(6) SRMR.

¹⁵⁶ Article 141(4)-(6) CRD.

¹⁵⁷ Actions referred to in points (a), (b) or (c) of Article 10a(1) SRMR.

Annex I.

Complementary information on NCWO

NCWO occurs when one class of claimants is worse off under resolution than under insolvency. This is in large part due to the balance sheet composition and it can occur even when total losses are larger under insolvency than under resolution, because the distribution of losses depends heavily on the exclusions. In particular, bail-in-able senior liabilities may be worse off being bailed-in under resolution than sharing losses with non-bail-in-able senior liabilities under insolvency. The risk is greater when the market value of equity that bailed-in claimants may receive in exchange for debt instruments is lower.

The purpose of the two examples presented in this Annex is to illustrate – in a simplified manner – the concept of the NCWO risk. The purpose is not to present in detail all the steps the SRB will implement in its NCWO assessment. In practice, additional steps will be taken when the redistribution of the shares post bail-in is simulated (application of differentiated conversion rates).

ILLUSTRATIVE EXAMPLE OF RESOLUTION NOT GIVING RISE TO AN NCWO BREACH

For illustrative purposes, consider a bank with the balance sheet shown in the following table. It is assumed that the bank suffers losses of 60. The minimum capital needed after resolution is 40.

Hence, in resolution, the initial own funds of 80 is reduced to 20 and resolution converts subordinated debt of 20 into equity of 20. The equity may have a market value higher or lower than its book value.

If the bank went through insolvency proceedings, extra losses of 40 would be incurred. All equity and subordinate debt would be wiped out, and aggregate senior debt would be untouched. Holders of bail-in-able senior debt would still hold 90, which is the same as in resolution, while the holders of subordinated debt would be worse off in insolvency because they would not have the equity they received in resolution.

Bank balance sheet (Book value)			
	Initial	After insolvency	After resolution
Debt above senior	100	100	100
Senior debt excluded from bail in	100	100	100
Senior debt not excluded from bail in	90	90	90
Subordinate debt	20	0	0
Equity	80	0	40
Held by:			
Bailed-in senior debt holders	0	0	0
Bailed-in subordinate debt holders	0	0	20
Original equity holders	80	0	20

ILLUSTRATIVE EXAMPLE OF RESOLUTION POTENTIALLY GIVING RISE TO AN NCWO BREACH

The next example is a similar bank with the balance sheet shown in the following table. This bank has less subordinated debt and more senior debt than the one above.

As before, the minimum capital needed after resolution is 40 and the loss incurred is 60. However, with this balance sheet, the outcome is significantly different: in resolution, the initial own funds of 80 are reduced to 20, and the subordinated debt of 10 is converted into equity. In addition, bail-in-able senior debt of 10 is converted into equity.

If the bank went through insolvency proceedings, extra losses of 40 would be incurred (as in the previous example). All equity and subordinate debt would be wiped out, and aggregate senior debt would be reduced by 10. Holders of bail-in-able senior debt would hold 95. If the market value of the equity that they would hold under resolution (10) is less than 5, then they would be better off under insolvency. In such case, a NCWO rule would be breached.

Bank balance sheet (Book value)			
	Initial	After insolvency	After resolution
Debt above senior	100	100	100
Senior debt excluded from bail in	100	95	100
Senior debt not excluded from bail in	100	95	90
Subordinated debt	10	0	0
Equity	80	0	40
Held by:			
Bailed-in senior debt holders	0	0	10
Bailed-in subordinate debt holders	0	0	10
Original equity holders	80	0	20

Annex II.

Complementary information on iMREL waivers

Assessment of the third statutory condition under Article 12h(1)(c) or 12h(2)(c) SRMR: Absence of a current or foreseen material, practical, or legal impediment to the prompt transfer of own funds or repayment of liabilities by the resolution entity (or parent undertaking) to the subsidiary.

For the purpose of the SRB's assessment of Article 12h(1)(c) or 12h(2)(c), the SRB considers the list of criteria below. These conditions mirror the ECB criteria for the assessment of whether there are no current or foreseen material, practical or legal impediments to the prompt transfer of own funds or repayment of liabilities.¹⁵⁸ However, they have been amended to capture transfers by the resolution entity/parent undertaking to the subsidiary, in particular when resolution action is taken. In this context, the SRB verifies that:

- i. national insolvency or company laws do not materially affect the transfer of funds in a pre-FOLTF scenario or in a resolution scenario;
- ii. the shareholding and legal structure of the group does not hamper the transferability of own funds or repayment of liabilities;
- iii. the formal decision-making process regarding the transfer of own funds between the parent undertaking and subsidiary ensures prompt transfers;
- iv. the by-laws of the parent/resolution entity and of the subsidiaries, any shareholder's agreement, or any other known agreements do not contain any provisions that may obstruct the transfer of own funds or repayment of liabilities by the parent undertaking;
- v. there have been no previous serious management difficulties or corporate governance issues which might have a negative impact on the prompt transfer of own funds or the repayment of liabilities;
- vi. no third parties are able to exercise control over or prevent the prompt transfer of own funds or repayment of liabilities;
- vii. the granting of a waiver has been taken into account in the recovery plan (where possible, if not, it will be taken into account in the following recovery plan) and the group financial support agreement (if applicable); and
- viii. the waiver has no negative effects on the implementation of the PRS.

To demonstrate the free transferability of funds in a resolution scenario, banks applying for a waiver are normally expected to submit the documents listed below. Where the specificities of an individual case so justify, the SRB may adopt a different approach to its assessment of compliance with Article 12h (1)(c) or 12h(2)(c). Moreover, where the SRB is satisfied as to the free transferability of funds in a resolution scenario (i.e. that the criteria at Article 12h(1)(c) or 12h(2)(c)

¹⁵⁸ www.bankingsupervision.europa.eu/ecb/pub/pdf/ond_guide_consolidated.en.pdf

are satisfied) this means that the SRB is permitted (but not required due to its discretion) to award a waiver.

1. A letter signed by the resolution entity/parent undertaking's legal representative (e.g. CEO or with approval from the management body), stating that the relevant group entities comply with all the conditions for granting the iMREL waiver(s) laid down in Article 12h of the SRMR;
2. A legal opinion, issued either by an external independent counsel or by an internal legal department, approved by the management body of the resolution entity/parent undertaking, demonstrating that there are no obstacles to the transfer of funds or repayment of liabilities by the resolution entity/parent undertaking resulting from applicable legislative or regulatory acts or legally binding agreements, even in the case where a resolution action is taken in respect of the parent / resolution entity and where the subsidiary is at the point of non-viability;
3. A description of the functioning of the financing arrangements to be used in case an institution faces financial difficulties or where a resolution action is taken. This should include information about how those arrangements ensure that funds are available at will and freely transferrable;
4. Evidence that the resolution entity or parent undertaking has guaranteed the obligations of the subsidiary for an amount that is equal to, at least, the amount of the hypothetical internal MREL requirement which would have been set if the subsidiary were not waived.

The guarantee is expected to be enforceable, meaning that it is given in the form of a binding commitment by the resolution entity or parent undertaking to the subsidiary and can be called on by the subsidiary if it reaches a PONV, i.e. meets the conditions listed in Article 21(3) SRMR. The SRB expects to receive guarantees with a maturity that mirrors the one year maturity rule for MREL ensuring the permanence of loss-absorption for an assumed crisis period (i.e. the guarantee should not be capable of revocation by the guarantor with less than one year's notice). The guarantee should not entitle the guarantor to object or delay the due prompt transfer of funds or reduce its exposure under the guarantee by virtue of any counterclaim or set-off rights it may have against the subsidiary. The guarantee should also be known by the creditors/shareholders of the guarantor with the ordinary diligence, for example in financial statements or annual reports.

It is not necessary for the guarantee to take the form of a contractual arrangement, provided that other legal arrangements (for example the applicable legal or regulatory framework including relevant provisions of company law) achieve the same result. When the guarantee is not of a contractual nature, the bank has to demonstrate whether and how the different legal arrangement would achieve the same outcome. The reference to a "guarantee" is not intended to connote any sort of triparty arrangement giving rights to the creditors of the subsidiary against the parent or the resolution entity. The objective of the SRB is to verify the existence of a robust loss transfer arrangement that would ensure the ability of the subsidiary to compel support from the parent or the resolution entity when the subsidiary is at the PONV.

In cases where there is already prepositioned capital issued by the subsidiary to the resolution entity or parent undertaking, the SRB would normally consider as satisfactory a guarantee with an initial minimum amount equal to the difference between the hypothetical waived iMREL requirement and the own funds as required by the capital requirements decision. To ensure that such a guarantee together with the prepositioned capital continuously provides for a minimum value equal to the hypothetical iMREL requirement (e.g. also where capital

requirements are lowered or waived), the terms of the guarantee should ensure that the minimum amount dynamically adapts upwards at any time to the currently existing difference, i.e. when the own funds of the subsidiary are reduced.

A guarantee is not expected when the risks in the subsidiary are negligible.

Risks are normally considered to be negligible when the total risk exposure amount of the subsidiary does not exceed 1% of the total risk exposure amount of the resolution group, though the SRB may in exceptional circumstances consider a higher percentage.

Where the subsidiary applying for a waiver has been identified by the SRB as a candidate for insolvency under the Preferred Resolution Strategy, the SRB may consider letter (c) of Article 12h(1) or 12h(2) SRMR to be met. Since liquidation entities are expected to be wound up under national insolvency procedure, there is a limited need for a loss absorption mechanism to transfer funds from the resolution entity (or the parent undertaking) to the subsidiary. This simplified regime is without prejudice of the SRB assessment of the potential impact of the iMREL waiver on the resolvability of the resolution group to which they belong.

Glossary

Asset Separation Tool (AST)	As defined in the Article 3 (32) SRMR.
Back-to-back booking transaction	A pair of legally separate transactions, but with the same terms of trade and involving three parties. One party is the intermediary, as the buyer in one transaction and the seller in the second transaction. This allows institutions to book the transaction in a different place to the original business.
Bail-in	As defined in Article 3 (33) SRMR.
Bridge Institution (BI)	As defined in Article 3 (31) SRMR.
Business Reorganisation Plan	The restructuring post bail-in should be achieved through the implementation of a business reorganisation plan. Where applicable, such plans should be compatible with the restructuring plan that the entity is required to submit to the Commission under the Union State aid framework. In particular, in addition to measures aiming at restoring the long-term viability of the entity, the plan should include measures limiting the aid to the minimum burden sharing, and measures limiting distortions of competition (Article 27 (16) SRMR and Article 52 (12), (13) BRRD)
Capital Requirements Directive (CRD)	Directive 2013/36/EU.
Central counterparty	An entity that places itself, in one or more markets, between the counterparties to the contracts traded, becoming the buyer to every seller and the seller to every buyer and thereby guaranteeing the performance of open contracts ¹⁵⁹ .
Central Securities Depository (CSD)	An entity that 1) enables securities transactions to be processed and settled by book entry; 2) provides custodial services (e.g. the administration of corporate actions and redemptions); and 3) plays an active role in ensuring the integrity of securities issues (ECB Glossary of terms related to payment, clearing and settlement systems, December 2009) ¹⁶⁰ .
Clearing	The process of transmitting, reconciling and, in some cases, confirming transfer orders prior to settlement, potentially including the netting of orders and the establishment of final positions for settlement. Sometimes this term is also used (imprecisely) to cover settlement. For the clearing of futures and options, this term also refers to the daily balancing of profits and losses and the daily calculation of collateral requirements ¹⁶¹ .
College Banks	Banks for which a college in accordance with Article 88 BRRD has been established.
Combined Buffer Requirement (CBR)	Total CET1 capital required to meet the requirements for the capital conservation buffer ¹⁶² .
Critical Financial Market Infrastructure (FMI services)	Payment, clearing, settlement or custody services, provided by an FMI or by an intermediary, which are necessary for the continuity of one or several critical functions.
Critical functions	Activities, services or operations the discontinuance of which is likely in one or more Member States, to lead to the disruption of services that are essential to the real economy or to disrupt financial stability due to the size, market share, external and internal interconnectedness, complexity or cross-border activities of an institution or group, with particular regard to the substitutability of those activities, services or operations ¹⁶³ .
Critical functions report	An SRB reporting requirement for banks to provide information on their self-assessment of critical functions: https://srb.europa.eu/en/content/critical-functions-report

¹⁵⁹ ECB Glossary of terms related to payment, clearing and settlement systems, December 2009.

¹⁶⁰ ECB Glossary of terms related to payment, clearing and settlement systems, December 2009.

¹⁶¹ ECB Glossary of terms related to payment, clearing and settlement systems, December 2009.

¹⁶² Directive 2013/36/EU 128.

¹⁶³ Article 2 (1), (31) BRRD.

Critical services	Services, which are necessary for one or more critical functions, that are performed for group business units or entities and whose discontinuity would seriously impede or prevent the performance of those critical functions ¹⁶⁴ .
Dual-hatting	Describes situations where an employee paid by one legal entity provides services to another entity within the group.
Essential services	Services whose continuity is necessary to continue core business lines ¹⁶⁵ .
Essential FMI services	Payment, clearing, settlement or custody services, provided by an FMI or by an intermediary, which are necessary for the continuity of one or several core business lines.
FMI Intermediaries	FMI service providers other than FMIs. More often than not, these will be other institutions offering payment, clearing and settlement services, including by way of facilitating indirect access to an FMI.
FMI report	An SRB reporting requirement for banks to provide information on participation in or membership of FMIs and use of FMI intermediaries for payment, clearing, settlement and custody services: https://srb.europa.eu/en/content/fmi-report
Group entities	Each legal entity that is part of a group ¹⁶⁶ .
Indirect holding	In accordance with the Article 1 (114) CRR.
Institution	A credit institution or investment firm ¹⁶⁷ .
Material legal entities	Subset of group entities. The parent institution must always be included. Material group entities are the most significant entities within the group, whether that be due to the provision of critical funds or through generating a significant portion of the institution's revenue.
No Creditor Worse Off (NCWO)	The No Creditor Worse Off principle states that no creditor of an institution should incur greater losses in resolution than they would have incurred under normal insolvency proceedings ¹⁶⁸ .
Open bank bail-in	In accordance with Article 27 (1) (a) SRMR.
Operational Plan	Part of the Resolvability Work Programme that operationalises the programme through (i) concrete deliverables, (ii) timelines and (iii) milestones.
Operational asset	Non-financial assets that are required to perform services, such as real estate, intellectual property including trademarks, patents and software, hardware, IT systems and applications, and data warehouses. Operational assets are critical/essential/otherwise relevant where access to them is required in order to perform a critical/essential/other relevant service.
Other relevant services	Services which, while not defined as critical or essential, are necessary for a successful implementation of the preferred resolution strategy or variant strategy.
Pari passu	The situation where two or more assets, securities, creditors, or obligations are treated equally and managed without preference.
Preferred resolution strategy (PRS)	As defined in Article 2 (3) of Delegated Regulation 2016/1075.
Relevant Services	All critical, essential or other relevant services. This applies analogously to operational assets and staff.
Resolution entity	A resolution entity means an entity established in the Union, which has been identified by the resolution authority as an entity in respect of which the resolution plan provides for resolution action.

¹⁶⁴ Article 6(4) DR 2016/778.

¹⁶⁵ Article 7 DR 2016/778/EU.

¹⁶⁶ Article 1 (2), (31) BRRD.

¹⁶⁷ Article 2 (1), (23) BRRD.

¹⁶⁸ Described in Article 73 BRRD; Article 15 SRMR.

Resolution Group	A resolution entity and its subsidiaries that are not i) resolution entities themselves, or ii) subsidiaries of other resolution entities, or iii) entities established in a third country that are not included in the resolution group in accordance with the resolution plan and their subsidiaries ¹⁶⁹ .
Resolution Reporting Requirements	Pursuant to Article 11 (1) BRRD and Section B of the BRRD Annex, as well as Article 8 (4) SRMR, the SRB collects information for drawing up and implementing resolution plans for banks under its remit. The SRB resolution reporting requirements (Liability Data Report, Critical Functions Report and FMI Report) cover the minimum information required by European Commission Implementing Regulation (EU) 2018/1624 of 23 October 2018 as well as further details required for each area. https://srb.europa.eu/en/content/reporting
Resolvability Progress Report	A document reflecting the progress made by the banks in addressing impediments, based on the Resolvability Work Programme. The report should (i) give sufficient details on the banks' deliverables against milestones, and (ii) help IRTs to update the resolvability assessment at the end of each resolution planning cycle.
Sale of Business (SoB)	As defined in Article 3 (1) (30) SRMR.
Securities Settlement System (SSS)	A system that allows the transfer of securities, either free of payment or against payment (delivery-versus-payment). ¹⁷⁰
Significant Institution	In accordance with Article 6 (4) of Regulation (EU) No 1024/2013.
Substantive Impediment Process	The procedure described under Article 10 SRMR.
Synthetic Holding	In accordance with Article 1 (126) CRR.
Third-country	A non-EU country.
Transitional Service Agreement	An agreement that determines the scope of services one company should provide to another when there is a change of ownership.
Valuation 1	Valuation 1 is the valuation required under Article 20 (45) (a) SRRM to assess whether the conditions for resolution or for write-down or conversion of capital instruments are met.
Valuation 2	Valuation 2 informs the decision on the appropriate resolution action to be taken and, depending on that action, the decisions on the extent of the cancellation or dilution of instruments of ownership, the extent of the write-down or conversion of relevant capital instruments and eligible liabilities, the assets, rights, liabilities or instruments of ownership to be transferred, and the value of any consideration to be paid and ensures that any losses on the assets of the entity are fully recognised. ¹⁷¹ Valuation 2 should include an estimate of the treatment that each class of shareholders and creditors would have been expected to receive if an entity were wound up under normal insolvency proceedings ¹⁷² .
Valuation 3	Valuation 3 aims at determining whether or not shareholders and creditors would have received better treatment if the institution under resolution had entered into normal insolvency proceedings. In other words, Valuation 3 aims at assessing any possible breach of the NCWO principle ¹⁷³ .
VDR	Virtual Data Room: a virtual data room is generally intended to be an online facility where documents and information to perform due diligence are uploaded.

¹⁶⁹ Article 2 (1) (83b) (a) BRRD, Article 23 (1) (24b) (a) SRMR.

¹⁷⁰ ECB Glossary.

¹⁷¹ Article 20 (5) (b)-(g) SRMR.

¹⁷² Article 20 (9) SRMR.

¹⁷³ Article 20 (16-18) SRMR.

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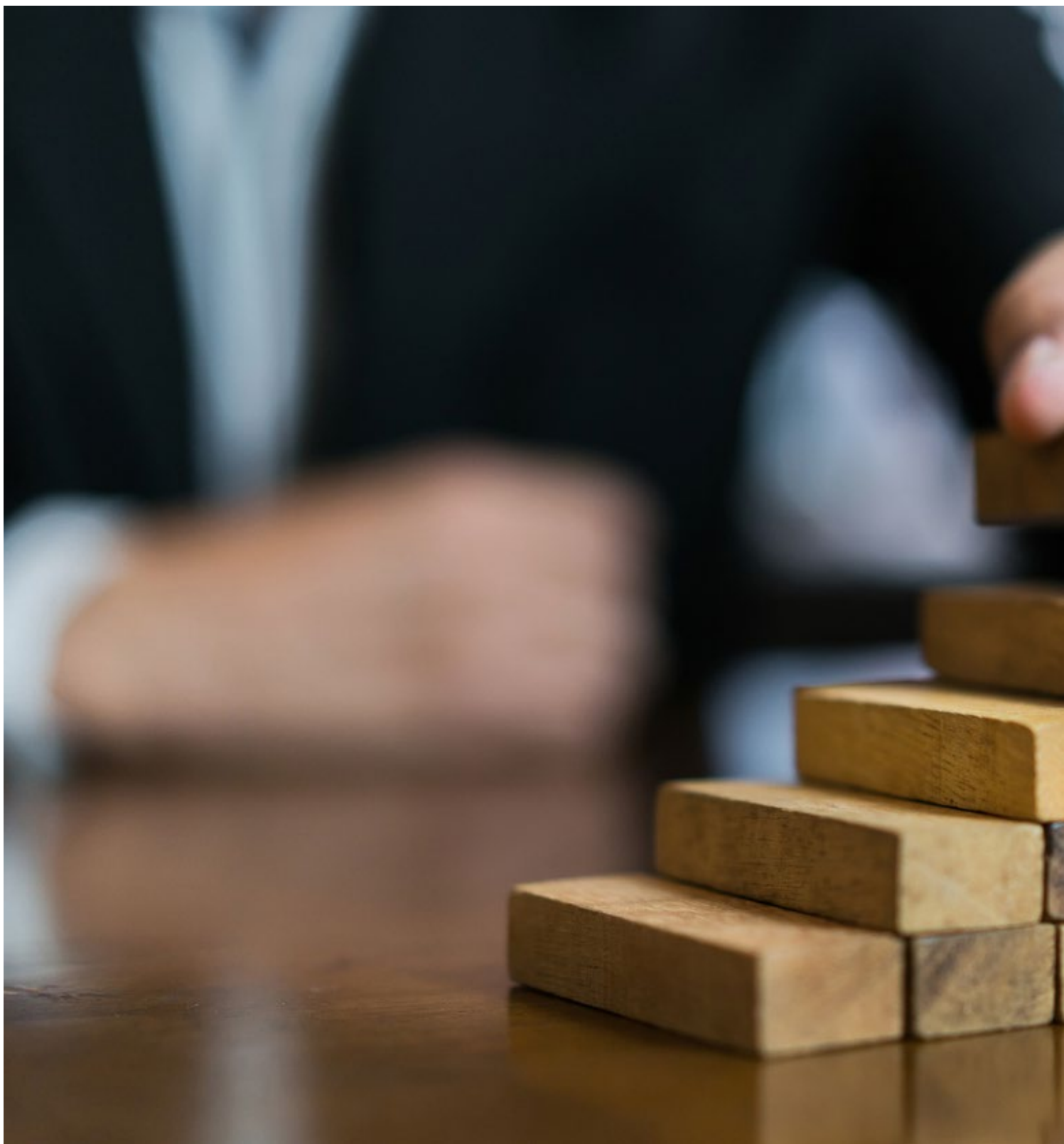
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