

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

SRB Policy under the Banking Package



May 2021

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SINGLE RESOLUTION BOARD

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SRB Policy under the Banking Package

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# ABBREVIATIONS

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

<sup>(1)</sup> 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, the CRR requires institutions to comply with a prudential leverage ratio requirement at all times<sup>(2)</sup>, 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 (LRE)<sup>(3)</sup> to complement the risk-based MREL expressed as a percentage of the total risk exposure amount (TREA)<sup>(4)</sup>. The parallel requirement is calibrated at a level commensurate to recapitalising a failing bank in order to restore compliance with the leverage ratio requirement<sup>(5)</sup>.
  - MREL is composed of a loss-absorption amount (LAA) and a recapitalisation amount (RCA)<sup>(6)</sup>. 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 MREs 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 has 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 requirement<sup>(7)</sup> that must be met with own funds instruments and eligible liabilities that are subordinated to all claims arising from excluded liabilities<sup>(8)</sup>. 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 amount of subordinated MREL expressed in terms of LRE<sup>(9)</sup>. However, the resolution

<sup>(2)</sup> Point (d) of Article 92(1) CRR.

<sup>(3)</sup> Articles 429 and 429a CRR.

<sup>(4)</sup> Article 92(3) CRR.

<sup>(5)</sup> Point (b) of Article 12d(3) SRMR.

<sup>(6)</sup> Article 12d(2) SRMR.

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

<sup>(8)</sup> 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.

<sup>(9)</sup> Article 128 CRD (the reference therein to ‘risk based components’ makes clear that the restriction against multiple use of buffer CET1 applies to MREL-TREA only).

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) CRR<sup>(10)</sup>.

- Concurrently with the Pillar 1 subordinated MREL requirements detailed above, a Pillar 1 Bank's resolution authority must also ensure that the subordinated MREL resources of a Pillar 1 Bank are equal to at least 8% of total liabilities and own funds (TLOF)<sup>(11)</sup>. The resolution authority may reduce or increase this target level of minimum subordination for a Pillar 1 Bank on a case by case basis and subject to conditions<sup>(12)</sup>. 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% target<sup>(13)</sup>. 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<sup>(14)</sup>. 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 planning<sup>(15)</sup>.
  - 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 networks<sup>(16)</sup>, including a dedicated definition of the term resolution group<sup>(17)</sup> that reflects the 'inverse' ownership structure typical for cooperative groups. Governance and loss-sharing arrangements between

<sup>(10)</sup> Article 72b(3) CRR.

<sup>(11)</sup> Article 12c(4) SRMR.

<sup>(12)</sup> 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) SRMR can only apply to 30% of the relevant population of Pillar 1 Banks and is subject to other conditions.

<sup>(13)</sup> Article 12c(6) SRMR, second subparagraph.

<sup>(14)</sup> Certain questions concerning the relationship between the 8% TLOF requirement and quantitative MREL requirements are the subject of pending EBA Q&A.

<sup>(15)</sup> Article 12c(5) SRMR.

<sup>(16)</sup> Articles 12f(3) and 12i SRMR.

<sup>(17)</sup> Point 24b of Article 3(1) SRMR.

the entities of a cooperative network are 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 e.g. 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 the Combined Buffer Requirement (CBR) considered in addition to MREL expressed in TREA<sup>(18)</sup> or for MREL breaches themselves<sup>(19)</sup>. 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 2019<sup>(20)</sup> and updated on 18 December 2019<sup>(21)</sup> 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*<sup>(22)</sup>.

<sup>(18)</sup> Article 10a(1) SRMR.

<sup>(19)</sup> Article 12j(1)(b) SRMR.

<sup>(20)</sup> [https://srb.europa.eu/sites/srbsite/files/crr\\_addendum\\_to\\_the\\_2018\\_srb\\_mrel\\_policy.pdf](https://srb.europa.eu/sites/srbsite/files/crr_addendum_to_the_2018_srb_mrel_policy.pdf)

<sup>(21)</sup> <https://srb.europa.eu/en/node/903>

<sup>(22)</sup> [https://srb.europa.eu/sites/srbsite/files/2020-12-18\\_srb\\_permissions\\_regime\\_communication\\_final.pdf](https://srb.europa.eu/sites/srbsite/files/2020-12-18_srb_permissions_regime_communication_final.pdf)

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## 2. CALIBRATION

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- 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 BRRD<sup>(23)</sup> and the CRR<sup>(24)</sup>.** 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)<sup>(25)</sup>. 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 MREL, they shall not be part of the consolidation when determining the external MREL of the resolution group<sup>(26)</sup>.
- 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.

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<sup>(23)</sup> See points (83a), (83b) and (83c) of Article 2(1) BRRD.

<sup>(24)</sup> See point (133) of Article 4(1) CRR.

<sup>(25)</sup> See point (83b) of Article 2(1) BRRD and point (24b) of Article 3(1) SRMR.

<sup>(26)</sup> Article 12b(2) SRMR.

- 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 the resolution entity<sup>(27)</sup>. 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)<sup>(28)</sup>.
- 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 RPC 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 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 date<sup>(29)</sup>. 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 CBR 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) BRRD<sup>(30)</sup>.

## 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)<sup>(31)</sup>. Each may have to be met in part or in full with subordinated resources in the respective metric, as determined by the SRB.

## 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)<sup>(32)</sup> minimum Supervisory Pillar 1 requirement<sup>(33)</sup> and Supervisory Pillar 2 requirement<sup>(34)</sup>; and

<sup>(27)</sup> 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.

<sup>(28)</sup> Article 12g(1) SRMR.

<sup>(29)</sup> Article 12d(9) SRMR.

<sup>(30)</sup> [https://eba.europa.eu/sites/default/documents/files/document\\_library/Publications/Draft%20Technical%20Standards/2020/RTS/961829/Final%20Report%20on%20methodology%20to%20estimate%20P2%20and%20CBR%20for%20setting%20MREL%20requirements.pdf](https://eba.europa.eu/sites/default/documents/files/document_library/Publications/Draft%20Technical%20Standards/2020/RTS/961829/Final%20Report%20on%20methodology%20to%20estimate%20P2%20and%20CBR%20for%20setting%20MREL%20requirements.pdf)

<sup>(31)</sup> Article 12a(2) SRMR.

<sup>(32)</sup> Depending on whether the respective MREL is set on consolidated or individual basis.

<sup>(33)</sup> Article 92(1) CRR.

<sup>(34)</sup> Article 104a CRD.

- For the MREL-LRE, the LAA corresponds to the (consolidated) leverage ratio requirement<sup>(25)</sup>:

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

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

### 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 CBR.** Common Equity Tier 1 (CET1) used to meet the MREL-TREA cannot be used to meet the CBR<sup>(26)</sup>. However, the usability of the same amount of capital is unrestricted by the leverage-based MREL. The same distinction applies to subordination requirements<sup>(27)</sup>.

## 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 proceedings (liquidation entities).** For such entities, the SRB assesses whether to maintain 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 system<sup>(28)</sup>.
- 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.

<sup>(25)</sup> 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.

<sup>(26)</sup> Article 128 CRDV (in particular the reference therein to "risk based components").

<sup>(27)</sup> Second subparagraph of Article 12c(6) SRMR.

<sup>(28)</sup> Article 12d(2) SRMR.

## 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, adjusting downwards 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.
- 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<sup>(39)</sup>.** This adjustment relates to the MREL-TREA only<sup>(40)</sup>.
- 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))<sup>(41)</sup> step by step.** In the 2020 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 entity<sup>(42)</sup>; 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.

## 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) SRMR<sup>(43)</sup>. 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 (P2R).** Article 12d(3) SRMR foresees potential upward or downward adjustments of the RCA component corresponding to supervisory P2R, 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

<sup>(39)</sup> Article 12d(3) SRMR.

<sup>(40)</sup> Sixth subparagraph of Article 12d(3) SRMR.

<sup>(41)</sup> Article 12d(3) SRMR (the seventh subparagraph sets a default value equal to the post-resolution CBR minus the counter cyclical buffer).

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

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

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 separation<sup>(44)</sup>).** 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 precondition 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;
  - ▶ 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 MREL.** 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.

<sup>(44)</sup> 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.

## 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 FSB<sup>(45)</sup>. 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 SRMR<sup>(46)</sup>. 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-SIIs<sup>(47)</sup>. 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.

## 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 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.

<sup>(45)</sup> Article 4(1)(136) CRR.

<sup>(46)</sup> Article 12e(1) and (3) SRMR.

<sup>(47)</sup> Article 12d(1)(a-e) of SRMR.

### 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 requirement<sup>(48)</sup>, 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 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 CRR) are directly applicable to G-SIIs as regards their TLAC requirement.
- 46 **The SRB reflects the economic effect of the concept described in paragraphs 43 and 44 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. For the 2021 RPC, the SRB will allow, on a transitional basis, surpluses present in third-country resolution groups to proportionally reduce the add-on. This approach will be re-assessed in the next cycle.
- 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 in 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

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

the application of bail-in in 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 NCWO<sup>(49)</sup>, a resolution haircut<sup>(50)</sup> 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 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.

<sup>(49)</sup> See Section 3.3 and Box 1.

<sup>(50)</sup> The resolution haircut aims to duly reflect the experience of losses during a resolution in the jurisdictions involved.

## 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 principle<sup>(51)</sup>. 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)<sup>(52)</sup>. 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 on the 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 conditions<sup>(53)</sup>. 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 Banks<sup>(54)</sup>, 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 subordinated<sup>(55)</sup>.

<sup>(51)</sup> Article 27(3) and (5) SRMR.

<sup>(52)</sup> 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.

<sup>(53)</sup> Article 72b(3) and (4) CRR.

<sup>(54)</sup> Article 12c(5) SRMR.

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

- 54 **The Banking Package has 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-SIIs<sup>(56)</sup>, Top-Tier Banks<sup>(57)</sup>, and Other Pillar 1 Banks<sup>(58)</sup>. The minimum level of subordination for these banks is composed of:
- (i) Pillar 1 subordinated MREL requirements, calibrated at 18% TREA (plus CBR<sup>(59)</sup>)/6.75% LRE<sup>(60)</sup> for G-SIIs, or 13.5% TREA (plus CBR)/ 5% LRE for Top Tier Banks and Other Pillar 1 Banks<sup>(61)</sup>; and
  - (ii) any additional subordination set by the resolution authority, equal to a level of 8% TLOF<sup>(62)</sup>. Note: this level may be increased or decreased by the resolution authority under conditions described below, subject to a cap<sup>(63)</sup> and a floor<sup>(64)</sup>.
- 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-based<sup>(65)</sup> or leverage-based 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.

<sup>(56)</sup> Article 92a CRR.

<sup>(57)</sup> Article 12d(4) SRMR.

<sup>(58)</sup> Article 12d(5) SRMR.

<sup>(59)</sup> 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).

<sup>(60)</sup> 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 Top Tier Banks and Other Pillar 1 Banks will be determined through the SRB MREL decision.

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

<sup>(62)</sup> Article 12c(4) SRMR.

<sup>(63)</sup> Article 12c(7) SRMR.

<sup>(64)</sup> Article 12c(4) SRMR.

<sup>(65)</sup> Including the buffer requirements that stack on top of MREL expressed in TREA.

- 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 plan<sup>(66)</sup>. 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 P2R 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)<sup>(67)</sup>.
- 61 **The SRB may decide to increase subordination in relation to banks for which it 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:

<sup>(66)</sup> 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).

<sup>(67)</sup> 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 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)<sup>(68)</sup>.** 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 resources<sup>(69)</sup> 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 RPCs.

## 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 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

<sup>(68)</sup> 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.

<sup>(69)</sup> See point (49b) of Article 3(1) SRMR 'subordinated eligible instruments' means instruments that meet all of the conditions referred to in Article 72a CRR other than paragraphs (3) to (5) of Article 72b of that Regulation.

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 surplus<sup>(70)</sup> 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)<sup>(71)</sup>. 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.
- 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.**
- 73 Based on the experience gained, the SRB will consider further enhancements of the methodology in the next cycles.

<sup>(70)</sup> 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 Pillar 1 subordination requirement.

<sup>(71)</sup> The CBR is the Combined Buffer Requirement.

### 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 value<sup>(72)</sup>.

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  $ptb_{OF\_from\_Senior} = 25\%$ .

<sup>(72)</sup> 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, including shortfalls, is collected via the liability data report (LDR) as well as an additional liability report (ALR)<sup>(73)</sup> tailored to the new eligibility regime established under Article 12g SRMR<sup>(74)</sup>.
- 76 **The SRB notes that some elements of the eligibility framework will be further specified through Level 2 legislation.** Banks will need to comply with the requirements of these regulations following their publication in the *Official Journal of the European Union*. In particular, pending Level 2 acts will define methods serving to prevent the indirect subscription of internal MREL instruments by the resolution entity from hampering the smooth implementation of the resolution strategy ('daisy chains')<sup>(75)</sup>; and on the form and nature of indirect funding and incentives to redeem<sup>(76)</sup>.

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

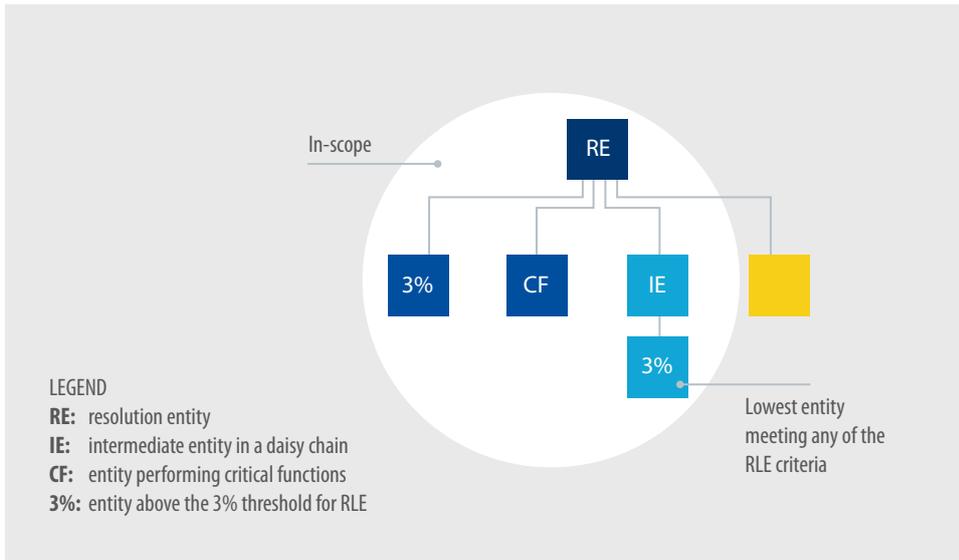
- 77 **The scope of subsidiaries for which the SRB will set internal MREL is expanded.** The scope encompasses entities providing critical functions and/or those meeting the 3% threshold of the resolution group's total risk exposure amount, or leverage exposure, or total operating income (the previous threshold was 4%). These are deemed Relevant Legal Entities (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. 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.

<sup>(73)</sup> See <https://srb.europa.eu/en/content/2020-resolution-reporting>.

<sup>(74)</sup> In this regard, the EBA is expected to develop Regulatory Technical Standards further specifying the limits of indirect subscription of internal resources ('daisy chains') (Article 45f(6) BRRD).

<sup>(75)</sup> Article 45f(6) BRRD.

<sup>(76)</sup> Article 72b(7) CRR.



## 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<sup>(77)</sup>.** In considering the granting of a waiver, the SRB undertakes a holistic 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.

<sup>(77)</sup> Provided that the complete application is submitted at an early stage of the RPC, 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.

- 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)<sup>(78)</sup>. 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.
- 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 internal TLAC). 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 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, 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.

<sup>(78)</sup> Article 12h(2)(b) SRMR.

### 4.3. Provision of guarantees and internal MREL

- 84 **The SRB considers that partially collateralised<sup>(79)</sup> guarantees permitted by the resolution authority<sup>(80)</sup> 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 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 haircuts<sup>(81)</sup>.
- 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 subsidiary<sup>(82)</sup>. 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.

<sup>(79)</sup> At least 50%, see point (e) of Article 12g(3).

<sup>(80)</sup> Article 12g(3) SRMR.

<sup>(81)</sup> See point (f) of Article 12g(3) SRMR.

<sup>(82)</sup> 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 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 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 the operationalisation of the preferred resolution strategy determined by the SRB for the specific cooperative network at risk. 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, adjusted to the new legal framework. 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<sup>(83)</sup>. So, in line 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

<sup>(83)</sup> Note that the demonstration of the absence of any material NCWO risk is not assessed using the tool under section 3.3.

resolution with the (hypothetical) treatment of those creditors, should the entities of the group be liquidated in normal insolvency proceedings 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 benefiting 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 at the time when the resolution decision is taken<sup>(84)</sup>.
- 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 a 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 flexibility 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'*.

<sup>(84)</sup> Article 74(3)(a) BRRD.

- 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 relationship 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 entity<sup>(85)</sup>. Liabilities that can be used to meet MREL requirements are defined in the CRR<sup>(86)</sup>, the SRMR<sup>(87)</sup> and the BRRD<sup>(88)</sup>. The conditions in Article 72b(2) CRR are cumulative for all instruments, while the SRMR provides additional conditions for specific liabilities.
- 103 **The amortised<sup>(89)</sup> part of a Tier 2 instrument<sup>(90)</sup> 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 resolution<sup>(91)</sup> (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 funds<sup>(92)</sup> and eligible liabilities<sup>(93)</sup>. The eligibility criteria for internal MREL liabilities are also specified in both the CRR and the SRMR<sup>(94)</sup>.
- 105 **Not all liabilities can count towards MREL.** The CRR provides a list of liabilities that are excluded from counting as eligible liabilities<sup>(95)</sup> 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 deposits<sup>(96)</sup> and liabilities arising from derivatives<sup>(97)</sup>. Nonetheless, liabilities arising from debt instruments with embedded derivatives can count towards MREL under specific conditions set out in the SRMR<sup>(98)</sup> (see section 6.1.4).

<sup>(85)</sup> 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.

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

<sup>(87)</sup> Article 12c(1-3) SRMR.

<sup>(88)</sup> 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.

<sup>(89)</sup> The non-qualifying part.

<sup>(90)</sup> Article 72a(1)(b) CRR.

<sup>(91)</sup> Article 21 SRMR.

<sup>(92)</sup> Article 12g(2)(b) SRMR.

<sup>(93)</sup> Article 12g(2)(a) SRMR.

<sup>(94)</sup> 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.

<sup>(95)</sup> Article 72a(2) CRR.

<sup>(96)</sup> 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) BRRD.

<sup>(97)</sup> Article 72a(2)(k) CRR.

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

- 106 **Certain eligibility criteria are waived for liabilities issued before the date of application of the CRR<sup>(99)</sup>.** 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 Additional Liability Report (ALR) has been developed by the SRB.** The checklist<sup>(100)</sup> 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 CRR<sup>(101)</sup>, the SRMR<sup>(102)</sup> and the BRRD<sup>(103)</sup> and whether they should be reported in the ALR<sup>(104)</sup>.
- 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 the ALR, 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 ALR.
- 109 **Management sign-off to accompany ALR submission<sup>(105)</sup>.** 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 management sign-off form<sup>(106)</sup> is to be submitted together with the ALR with reference date 31 December 2020. The sign-off form is to be completed by the bank's CEO or board member responsible for resolution matters.
- 110 **Sign-off forms are to be submitted to the local NRA.** For the 2021 RPC, the deadline for submission of the management sign-off form and the ALR was 31 March 2021. In future RPCs starting from 2022 onwards, the management sign-off form will be required with the submission of the EBA MREL reporting templates.

### 6.1.1. Location

- 111 **Liabilities must be issued directly by the resolution entity to qualify for external MREL<sup>(107)</sup>.** 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 MREL<sup>(108)</sup> capacity under strict conditions. This is conditional on the following: (i) the liabilities meeting the eligibility

<sup>(99)</sup> Article 494b(3) CRR.

<sup>(100)</sup> [https://srb.europa.eu/sites/srbsite/files/2021\\_01\\_08\\_mrel\\_checklist\\_for\\_reporting\\_eligible\\_liabilities\\_2.pdf](https://srb.europa.eu/sites/srbsite/files/2021_01_08_mrel_checklist_for_reporting_eligible_liabilities_2.pdf)

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

<sup>(102)</sup> Article 12c(1-3) SRMR.

<sup>(103)</sup> Articles 45b(1-3) and 55 BRRD.

<sup>(104)</sup> The ALR is modelled on future EBA MREL Reporting Templates and reports aggregate figures for MREL liabilities.

<sup>(105)</sup> When it comes to subsidiaries in the scope of the ALR, sign-off depends on how submission of the ALR is done. Where the ALRs of subsidiaries are submitted centrally by the parent undertaking to the NRA, one sign-off form by the parent undertaking can suffice. It should list all the LEIs of the subsidiaries whose ALRs it is referring to. Where the ALR is submitted by the subsidiary itself to the local NRA, it should be accompanied by a sign-off form.

<sup>(106)</sup> [https://srb.europa.eu/sites/srbsite/files/2021\\_01\\_08\\_mrel\\_sign\\_off\\_form\\_1.pdf](https://srb.europa.eu/sites/srbsite/files/2021_01_08_mrel_sign_off_form_1.pdf)

<sup>(107)</sup> Article 72b(2)(a) CRR.

<sup>(108)</sup> Article 12c(3)(a) SRMR (which cross refers to point (a) of Article 12g(2) of SRMR).

criteria for internal MREL<sup>(109)</sup>; (ii) the exercise of write-down or conversion (WDC) powers not affecting the consolidation of the subsidiary<sup>(110)</sup> by the resolution entity<sup>(111)</sup>; 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) SRMR.<sup>(112)</sup>

### 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 2019<sup>(113)</sup>.

### 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 criteria<sup>(114)</sup>).** However, some non-covered non-preferred deposits may have an early redemption clause that needs to be taken into account in the maturity assessment<sup>(115)</sup> for MREL eligibility purposes. The European Banking Authority (EBA) has clarified in an EBA BRRD Q&A<sup>(116)</sup> that a *'deposit which is deposited for at least a year's period but which confers upon its owner a right to early reimbursement with less than one year's notice shall not be included in the amount of own funds and eligible liabilities meeting MREL'*. 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.

### 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 conditions<sup>(117)</sup> 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

<sup>(109)</sup> Article 12g(2)(a) SRMR.

<sup>(110)</sup> Article 4(1)(16) CRR (ex vi Article 2(1)(5) BRRD).

<sup>(111)</sup> 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 being a subsidiary of the resolution entity.

<sup>(112)</sup> Article 12c(3)(c) SRMR.

<sup>(113)</sup> Article 494b(3) CRR.

<sup>(114)</sup> Please note that for deposits issued after 27 June 2019, all eligibility conditions apply including third party termination rights and set off.

<sup>(115)</sup> Article 72c(2) CRR.

<sup>(116)</sup> EBA Q&A 2015/2267.

<sup>(117)</sup> Article 12(c)(2) CRR.

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 **Clauses<sup>(118)</sup> providing that the liability may be subject to WDC by the resolution authority<sup>(119)</sup> will be required for instruments issued as of 28 June 2021.** Such clauses on WDC are an eligibility condition that must be included in contracts or the prospectus for a liability. The SRB expects banks to ensure the robustness and legal soundness of such a provision in the documentation underlying the 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) BRRD<sup>(120)</sup>, 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 BRRD1 into the respective national legal framework.
- 119 **AT1 and T2 instruments issued after the date of application of the transposition of BRRD1 may be affected.** As a consequence of Article 55 BRRD, and in the absence as of the date of publication of a suitable binding international agreement with a third country or statutory

<sup>(118)</sup> Article 72b(2)(n) CRR.

<sup>(119)</sup> Article 48 BRRD.

<sup>(120)</sup> 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 last subparagraph of Article 55(2) BRRD). 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 BRRD1 into the national legal framework.

recognition<sup>(121)</sup>, the SRB will exclude AT1 and T2 instruments governed by third-country law (and issued after the national transposition of BRRD1) 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 unchanged<sup>(122)</sup>.

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 criteria<sup>(123)</sup> in Box 2 below<sup>(124)</sup>. 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).

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,

<sup>(121)</sup> 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.

<sup>(122)</sup> Article 55(3) BRRD.

<sup>(123)</sup> 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.

<sup>(124)</sup> 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.

contractual approaches such as bail-in clauses do not achieve the level of legal certainty that would be conferred by statutory recognition<sup>(125)</sup>.

- 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 Brexit<sup>(126)</sup> 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 EU27<sup>(127)</sup> countries to achieve legal certainty.
- 125 **As of 1 January 2021, with the expiry of the UK-EU27 Withdrawal Agreement<sup>(128)</sup>, instruments issued under UK law<sup>(129)</sup> 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 law<sup>(130)</sup>. 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, all instruments governed by UK law must have a contractual bail-in recognition clause to continue being eligible for MREL.

<sup>(125)</sup> FSB's *Principles for Cross-border Effectiveness of Resolution Actions*, p. 8.

<sup>(126)</sup> See the SRB position paper dated 15 November 2018.

<sup>(127)</sup> Member States of the EU with the exception of the United Kingdom in the context of Brexit, see also next section.

<sup>(128)</sup> 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).

<sup>(129)</sup> 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.

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

### 6.1.7. Internal MREL

- 127 **For liabilities to be eligible for internal MREL, the ranking rule<sup>(131)</sup> must be respected.** Liabilities issued<sup>(132)</sup> to and bought by the resolution entity or an external shareholder that is not part of the same resolution group must rank<sup>(133)</sup> 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 entity<sup>(134)</sup>. 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<sup>(135)</sup>. 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 Liabilities<sup>(136)</sup> and documented for each RPC. The SRB may require access to this documentation during future on-site inspections.

<sup>(131)</sup> Article 12g(2)(a)(iii) SRMR.

<sup>(132)</sup> Either directly or indirectly.

<sup>(133)</sup> In normal insolvency proceedings.

<sup>(134)</sup> Article 12g(2)(a)(iv) SRMR.

<sup>(135)</sup> Article 18 CRR.

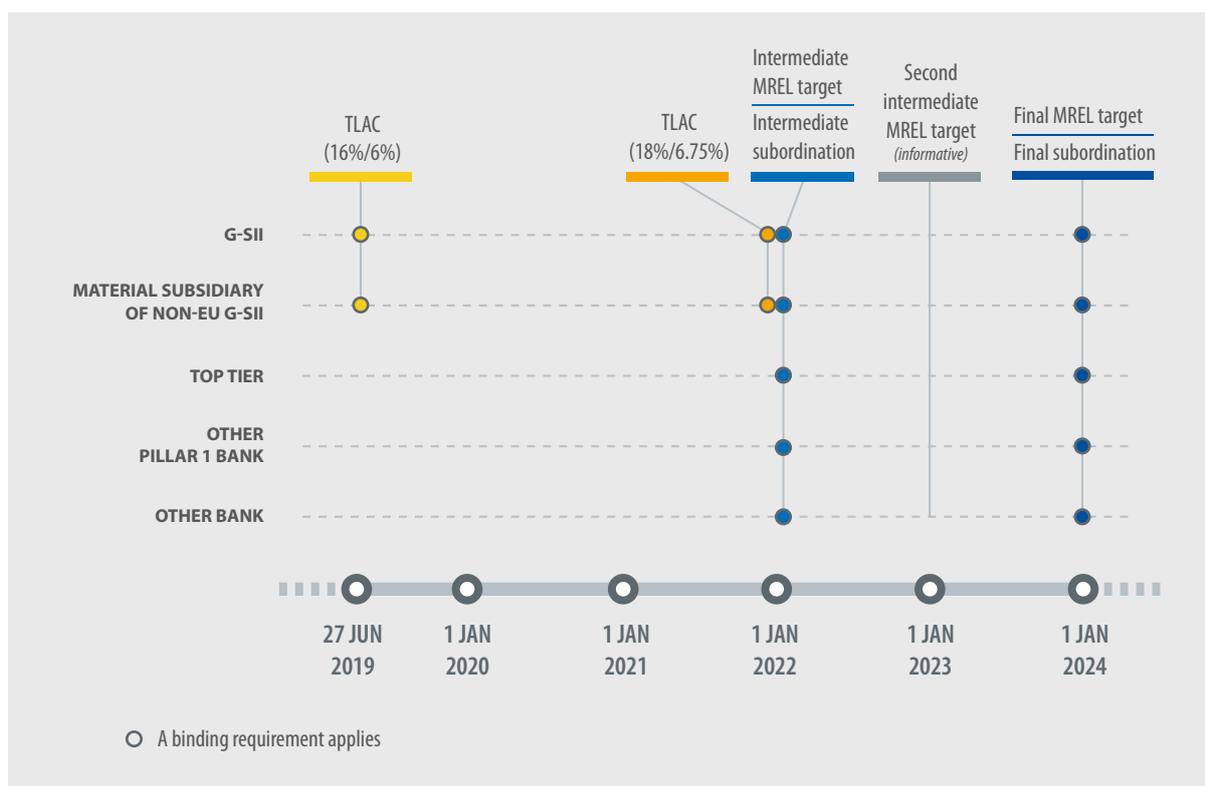
<sup>(136)</sup> As published on the SRB website on 8 January 2021.

## 7. TRANSITIONAL ARRANGEMENTS

129 **Article 12k SRMR specifies the provisions applicable to define transitional periods up to 1 January 2024<sup>(137)</sup>.** 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 binding intermediate target to be met by 1 January 2022, and a second intermediate target of informative nature for 1 January 2023<sup>(138)</sup>.

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 levels<sup>(139)</sup>.** Therefore, they vary significantly between banks,

<sup>(137)</sup> The SRB has submitted a question on the interpretation of Article 12k SRMR via the EBA Single Rulebook Q&A process and will update the policy following the response.

<sup>(138)</sup> '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.

<sup>(139)</sup> Second subparagraph of Article 12k(1) SRMR.

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.

- 131 **To ensure a linear build-up of the MREL capacity<sup>(140)</sup>, the SRB calibrated the binding intermediate target for 1 January 2022 by dividing the amount of MREL shortfall<sup>(141)</sup> relative to the final target equally until the end of the transitional period<sup>(142)</sup> <sup>(143)</sup>.** 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 shortfalls<sup>(144)</sup>.** By that date:
- ▶ G-SIIs and material subsidiaries of non-EU G-SIIs must comply with fully-loaded TLAC requirements<sup>(145)</sup>; and
  - ▶ Top Tier Banks and Other Pillar 1 Banks must meet their MREL-Pillar 1 subordination requirement of 13.5% TREA/5% LRE<sup>(146)</sup>.

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 2021 RPC, 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 of MREL targets the final MREL target is lower than the binding 2022 intermediate MREL target (issued in the previous RPC), then the intermediate MREL target will be lowered accordingly to match the new final MREL target. In all other cases, the MREL decisions adopted in the 2021 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 appropriate<sup>(147)</sup>. 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.

<sup>(140)</sup> 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.

<sup>(141)</sup> Computed taking into account all issuances needs (i.e. including the buffer requirements)

<sup>(142)</sup> For MREL targets expressed in TREA, the bank will need 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.

<sup>(143)</sup> 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.

<sup>(144)</sup> Article 12k(2) SRMR.

<sup>(145)</sup> Article 92a and 92b CRR.

<sup>(146)</sup> Article 12d(4) and (5) SRMR.

<sup>(147)</sup> Third subparagraph of Article 12k(1) SRMR.

## 8. M-MDA

- 134 **The SRMR2 introduces the Maximum Distributable Amount related to MREL (M-MDA)<sup>(148)</sup>.** The SRB may set restrictions for banks that do not comply with the CBR, which under the new 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)<sup>(149)</sup>. The M-MDA may be applied where the bank meets the CBR on top of the own funds requirements<sup>(150)</sup> (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 requirements<sup>(151)</sup>, 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. MREL<sup>(152)</sup>.
- 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 will apply as from 1 January 2022 (i.e. first binding MREL targets under BRRD).
- 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 5 working days) notify the NRA and the SRB<sup>(153)</sup>. The bank should not wait until the breaches occur, but should signal to the NRA and the SRB of any expected breaches once it becomes aware of such risk.

### 8.1. Scope of M-MDA

- 137 For **resolution entities**<sup>(154)</sup>, the M-MDA regime applies to the following requirements:

- ▶ For G-SIIs:
  - External MREL requirement;
  - MREL subordination requirement; and
  - External TLAC requirement:

<sup>(148)</sup> Article 10a SRMR.

<sup>(149)</sup> Points (a), (b) and (c) of Article 10a(1) SRMR.

<sup>(150)</sup> Points (a), (b) and (c) of Article 141a(1) CRD.

<sup>(151)</sup> 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.

<sup>(152)</sup> Article 12j(1)(b) SRMR.

<sup>(153)</sup> Second subparagraph of Article 10a(1) SRMR.

<sup>(154)</sup> 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.

- Transitional requirement until 31 December 2021
- Fully-loaded requirement starting from 1 January 2022
- ▶ 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 requirement<sup>(155)</sup>.

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 starting 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:

- (i) name and the LEI code of the entity that is in breach;
- (ii) 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);
- (iii) 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;
- (iv) information regarding entity's compliance with the CBR in addition to its own funds requirements;
- (v) 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); and

<sup>(155)</sup> Based on the NCWO risk assessment.

(a) 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.

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 NRA and the SRB without delay.

### 8.3. Two-stage assessment by the SRB

142 **The first stage starts once the bank notifies the NRA and the SRB about the breach and may last for 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-MDA<sup>(156)</sup>.** 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 regimes<sup>(157)</sup>.

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-MDA<sup>(158)</sup>.

<sup>(156)</sup> Article 10a(4-6) SRMR.

<sup>(157)</sup> Article 141(4-6) CRD.

<sup>(158)</sup> 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

# 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 <sup>(159)</sup> .
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) <sup>(160)</sup> .
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 <sup>(161)</sup> .
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 <sup>(162)</sup> .
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 <sup>(163)</sup> .
Critical functions report	An SRB reporting requirement for banks to provide information on their self-assessment of critical functions: <a href="https://srb.europa.eu/en/content/critical-functions-report">https://srb.europa.eu/en/content/critical-functions-report</a> .
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 <sup>(164)</sup> .
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 <sup>(165)</sup> .
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: <a href="https://srb.europa.eu/en/content/fmi-report">https://srb.europa.eu/en/content/fmi-report</a> .
Group entities	Each legal entity that is part of a group <sup>(166)</sup> .

<sup>(159)</sup> ECB Glossary of terms related to payment, clearing and settlement systems, December 2009.

<sup>(160)</sup> ECB Glossary of terms related to payment, clearing and settlement systems, December 2009.

<sup>(161)</sup> ECB Glossary of terms related to payment, clearing and settlement systems, December 2009.

<sup>(162)</sup> Article 128(1) CRD.

<sup>(163)</sup> Article 6(1) DR (EU) 2016/778.

<sup>(164)</sup> Article 6(4) DR (EU) 2016/778.

<sup>(165)</sup> Article 7 DR (EU) 2016/778.

<sup>(166)</sup> Article 1(2)(31) BRRD.

Indirect holding	In accordance with the Article 1(114) CRR.
Institution	A credit institution or investment firm <sup>(167)</sup> .
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 <sup>(168)</sup> .
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.
<i>Pari passu</i>	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.
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 <sup>(169)</sup> .
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 the respective each area. <a href="https://srb.europa.eu/en/content/reporting">https://srb.europa.eu/en/content/reporting</a>
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) <sup>(170)</sup> .
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. <sup>(171)</sup> 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 <sup>(172)</sup> .
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 <sup>(173)</sup> .
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.

<sup>(167)</sup> Article 2(1)(23) BRRD.

<sup>(168)</sup> Described in Article 73 BRRD; Article 15 SRMR.

<sup>(169)</sup> Article 2(1)(83b)(a) BRRD, Article 23(1)(24b)(a) SRMR.

<sup>(170)</sup> ECB Glossary.

<sup>(171)</sup> Article 20(5)(b-g) SRMR.

<sup>(172)</sup> Article 20(9) SRMR.

<sup>(173)</sup> Article 20(16-18) SRMR.



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