Brussels, 13th February 2024

# EACB comments the SRB public consultation on the future of MREL policy

## General remarks

The EACB appreciates the SRB's approach in opening for consultation its plans for future adjustments to the MREL Policy and welcomes the opportunity to engage in constructive dialogue. We fully support the public statements of the SRB Chair to enhance transparency in the build-up of SRB policies and strengthen collaboration with the industry.

Thanks to the resolution planning carried out in recent years, and to the establishment and financing of the SRF, EU financial stability has improved, and this should be duly reflected in the current MREL calibration. We particularly value that the SRB considers the possibility for banks to use resolution tools other than bail-in, such as transfer strategies.

However, the current consultation could have been more productive had the SRB presented a draft MREL policy. This would have enabled participants to the consultation to provide comprehensive feedback on other aspects of the document as well.

We would highlight in particular two general points:

1. The SRB makes reference to the 2023 market turmoil in the US and Switzerland. However, the cases in the US and in Switzerland are not comparable to the EU, especially to the banking union, encompassing the SSM and SRM. Switzerland serves as an example of non-resolution, and the resolution framework in Switzerland is not fully aligned. The US resolutions, on the other hand, were the result of weaker banking regulation in general (exemption from NSFR and LCR, and a lack of liquidity planning), as opposed to the EU Single Rule Book.
2. In general, we believe that the existing framework is familiar to resolution entities that have diligently adhered to the SRB Policy for years. Therefore, while we acknowledge the potential need for adapting the MREL Policy over time, no fundamental change is necessary nor to be aspired.

   Finally, we find the concept of a "single adjustment driver" interesting to explore as an alternative to the current MREL calibration. However, we have reservations that a single adjustment driver or linking MREL to resolvability score is fully aligned with SRMR. A more careful consideration and thorough assessment is essential to ensure compatibility with the regulatory framework.

## 1. Adjustment for preferred resolution strategies relying on a combination of resolution tools

***Question 1.1. Which criteria would you use to identify the assets / liabilities subject to a transfer strategy in addition to those listed in guiding principles for perimeter identification (e.g. business activities, size, separability, marketability)?***

We fully support the idea of considering transfer tools as complementary to the bail-in tool, they should be integrated in banks' preferred resolution strategies and reflected in their MREL target calibration. However, there is a need for a more transparent understanding of the operationalisation requirements for these complementary tools (documentation, testing, etc.), and their potential impact on the MREL target calculations.

It is important for the SRB to recognise banks' demonstrated capabilities in transferring portfolios or selling entities efficiently, without requiring detailed documentation as for the bail-in tool that is specific to a resolution context. Clarification on how subordinated MREL would be affected is also necessary.

In addition to the SRB's guiding principles for perimeter identification, which currently focus on the transfer of the core activities of the bank, additional and specific principles should be considered when transfer tools are intended to be used as complements to bail-in.

Distinct perimeters should be considered, which may allow simultaneously to:

- Represent clear sets of businesses potentially attractive to third-party acquirers.
- Include critical functions, ensuring continuity under the selected acquirer.
- Be easily structured and operated from a legal, financial and operational viewpoint, enabling an efficient transfer under the responsibility of the resolution authority in case of resolution.

Furthermore, when these perimeters are regarded as complements to bail-in, they should:

- Have a proportionate impact on solvency and/or liquidity.
- Focus on activities not considered as core to the expected post-resolution banking group.
- Be incorporated into distinct legal entities or easily identifiable and separable business units.

These perimeters may include non-performing assets or activities with reputational risks, significant risks (potentially challenging to manage post-resolution), or impede the restructuring of the post-resolution banking group.

***Question 1.2. Do you have comments on how a partial transfer would influence the composition and risk profile of the balance sheet of the resolved bank for the recapitalisation needs?***

The SRB's approach to Pillar 2 requirements (P2R) reductions, outlined in para. 32 of the SRB MREL Policy, requires refinement, as discussed under Question 5.1.

The analysis on the recapitalisation needs of the resolved bank could benefit from existing recovery options for partial transfer strategies in the Recovery Plan.

If transfer perimeters are proportionally impactful from a solvency and/or liquidity perspective, partial transfers can directly reduce the recapitalisation needs of the resolved bank. Additionally, recognising that the business model of the post-resolution group should necessarily change compared to the pre-resolution one, which would have likely proven inappropriate, partial transfers would help adapting the business model.

Beyond the size impacts, these transfers should be factored into the estimation of the required capital buffers of the post-resolution group, which should be calibrated on a smaller, different, and typically less risky group than the pre-resolution entity.

In addition to these considerations, the natural business attrition of a bank in the run-up to resolution should also be considered when calibrating the recapitalisation needs. This is particularly relevant for corporate and institutional banking activities, and more specifically for global market activities, where clients and counterparties may limit their business engagement with a banking group experiencing deteriorating conditions. Notably, rating downgrades below defined thresholds can trigger automatic termination of business for certain transactions and counterparties. This attrition will entail a material reduction of the balance-sheet well beyond the "balance sheet depletion" as currently used in the MREL default formula set by the SRB. A notable example is the rapid reduction in Crédit Suisse's balance sheet in the months preceding the crisis.

## 2. <u>Market confidence charge (MCC)</u>

***Question 2.1. External MCC for resolution entities: what do you view as the main factors for a bank to be able to sustain market confidence during and immediately following resolution?***

Market confidence is intricately linked to credibility and is a quality that takes time to rebuild after an institution has weathered significant challenges, particularly after being formally declared FOLTF. An extremely high level of MCC may not significantly influence the attitudes of investors and creditors following a resolution and should be avoided as a higher MREL weighs on bank lending capacity in going concern without a strong justification in resolution.

It is noteworthy that the current gold-plating of the MCC at the European level calls for the SRB's discretionary authority to reduce it.

In our view, while a high level of regulatory capital is crucial, it alone cannot fully restore market trust nor is it the primary driver of market confidence, although an adequate path to regain a reasonable capital level over time will contribute to it.

In addition to the key element of time, several other essential components contribute to the restoration of market confidence:

- Clear and regular communication: Both the Resolution Authority and the Competent Authority, ideally jointly, should engage in transparent and consistent communication, explaining the factors leading to the declaration of FOLTF in a manner accessible to all stakeholders, as well as the actions taken to remedy such situation in the short term, in particular in terms of liquidity, if relevant. A comprehensive plan for the sustainable recovery of the institution in the longer term should also be outlined. Regular updates and evolving details, especially regarding the longer-term business reorganisation plan, can be communicated incrementally. In the short term, it is essential that the communication by the authorities demonstrates that they have the situation under control. Confidence will only be restored if investors assess the resolution plan as credible and believe that it will be executed. Therefore, the role of authorities is key and the SRB will need to communicate on the retained strategy and on identifiable milestones. Effective communication strategies, such as those employed by Novo Banco over the years, serve as a valuable model.
- Decisive, effective and timely plan implementation: The execution of the announced plan, updated periodically, plays a pivotal role. It should convincingly demonstrate that the root causes of the quasi-failure are addressed and that the bank’s business model is adapted accordingly, leading rapidly to a stabilised situation and gradually to a reasonably profitable one.
- In summary, successful confidence restoration hinges on a two-fold strategy: clear communication demonstrating a profound understanding of the situation and an initial focus on stabilisation, including on liquidity, followed by a commitment to achieving reasonable profitability and capitalisation in the subsequent phases.

In addition, investors will be more inclined to lend to a resolved bank if there is a clear message from the central bank that it supports the resolution (akin to the US and Swiss examples). Emergency Liquidity Assistance should be readily available to resolved institutions.

Moreover, if authorities have to bail-in more to get a high MCC, that's not going to restore investors’ confidence. Investors are likely to favour not to be bailed-in and to have a lower MCC level.

Finally, investors understand that a recently resolved bank may not immediately resume dividend payouts, especially considering the probable absence of AT1 and, consequently, discretionary AT1 coupons to be honored (it is likely that there are no more AT1 therefore no more discretionary AT1 coupons to pay), therefore there is no need to fully replenish buffers immediately after resolution.

***Question 2.2. Internal MCC for subsidiaries that are non-resolution entities: when setting an MCC for subsidiaries, what do you view as the main drivers for subsidiary banks to regain market confidence after the application of write-down and conversion powers?***

For subsidiaries that are not resolution entities, the key distinction lies in delineating responsibilities. In the event of a group-wide crisis, it is imperative to ensure closely coordinated communication between group and local authorities, as well as with the subsidiary itself, fostering overall consistency. In case of a specific crisis limited to the subsidiary and not remediated by the group, which would trigger the application of write-down and conversion powers (art. 59 BRRD), communication efforts should highlight the rationale behind the National Resolution Authority's intervention. Regardless of the scenario, it should be tailored to the specific subsidiary and the dynamics of the market in which it operates.

Similarly, as for a resolution entity, we do not see that the level of capitalization alone is necessary or sufficient to restore market confidence. Instead, a clear communication and decisive actions demonstrating a profound understanding and control of the situation, showing that it is being efficiently remediated in the short and longer-term, are key. In any event, restorating market confidence is a gradual process that takes time.

Moreover, a review of the definition of the wholesale funding would be welcome. Indeed, market confidence is particularly relevant for subsidiaries reliant on the access to the actual wholesale market (i.e. financial markets, not just corporate client deposits). Market confidence for such subsidiaries relies essentially on the parent support in gone concern.

If a subsidiary reaches the PONV, recapitalisation is ensured by the parent through internal MREL. Market confidence for such subsidiaries relies essentially on the parent support in gone concern. Therefore, the main driver for confidence relies on the group resolution execution rather than the capital level of the subsidiary.

## 3. Monitoring of eligibility

***Question 3.1. Do you have any comments on the described approach for eligibility monitoring that a resolution authority should implement to ensure effective loss-absorbing capacity?***

We are not aware of any deficiencies or shortcomings related to the management sign-off process. The current eligibility governance and the respective processes are well established. We acknowledge the evolving trend that considers eligible liabilities as a form of "own funds light". However, it is crucial to underscore that eligible liabilities are not directly comparable to own funds in this context.

Eligible liabilities have different durability and terms compared to own funds. Requiring a self-assessment for each new issuance or amendment would create a disproportionate burden, especially considering that every MREL-eligible term deposit would be subject to such self-assessment and subsequent communication to the SRB. A simplified process could consist in sending a self-assessment on the issuance programmes each time they are updated (once a year), instead of producing the self-assessment at each issuance, to reduce the workload.

The own funds are analysed and discussed with the ECB, and we believe this arrangement should be maintained to avoid unnecessary duplication of discussions between authorities, which could become burdensome. For the avoidance of doubt, we would welcome a confirmation from the SRB that there will not be a double declaration on the monitoring of eligibility regarding the own funds instruments: to the ECB on the one hand and to the SRB on the other hand.

If SRB is convinced to pursue the path of harmonizing practices with that of the SSM for own funds, we urge to limit this to subordinated eligible liabilities, thus balancing burden for the industry.

***Question 3.2. While MREL-securities traded on capital markets and/or subscribed by professional investors show a high degree of standardisation and harmonisation of practices, liabilities arising from different legal arrangements (i.e., incorporated into private-placement agreements) do not.***

***Are you aware of any specificities presented by non-standardised claims that would be worth taking into account for the purpose of eligibility monitoring activities (also in light of the current management sign-off process)?***

SRB should be aware that private placements are sought by the banks' customers, in particular considering institutions with a very tight relation between the bank and the customer. They serve as an important mean of financing, contributing to overall financial stability.

In all instances, we advocate for a preference toward monitoring or alternative measures rather than limiting private placements.

## 4. Discretionary exclusions

***Question 4.1. Closing of derivative contracts (valued on a net basis) through bail-in may lead to replacement costs incurred by the bank, particularly in respect of open positions for the bank which require re-hedging. In your view, under what circumstances would the costs related to close-out be high enough to lead to destruction of value (meaning that holders of other/non-excluded liabilities would be better off when particular derivative contracts are excluded from bail-in than if derivatives were bailed-in)?***

According to some national authorities (e.g. see the ACPR's note on discretionary exclusions), the closure of derivative contracts (valued on a net basis) through internal bail-in may result in replacement costs borne by the bank, especially for open positions requiring new hedging. The question seems to focus on the circumstances under which these closure-related costs would be sufficiently high to lead to value destruction.

To assess this, several factors could be relevant, including:

- Significance of derivative positions: If derivative positions are significant in terms of size or exposure relative to the bank's capital, replacement costs can be substantial;
- Market volatility: Volatile market conditions can increase replacement costs, as it might be more expensive or difficult to hedge positions;
- Nature of derivatives: Some derivatives may be more complex to replace, especially if they involve less liquid assets or less efficient markets;
- Existence of hedging mechanisms: If derivative positions are used as effective hedges against other risks, closure could result in increased uncovered risks;
- Sensitivity to interest rate changes: Derivatives, especially those linked to interest rates, can be sensitive to rate changes, which could influence replacement costs.

Based on these factors, if replacement costs are deemed excessive, it could lead to value destruction. Holders of other liabilities/non-excluded liabilities could then be better off if certain derivative contracts are excluded from internal bail-in rather than opting for bail-in. However, it is essential to consider these circumstances in the specific context of the bank, its activities, and market conditions at a given time.

***Question 4.2. Under which circumstances and to what extent could bailing-in net liabilities under derivatives (after close out) negatively impact a bank's business, leading to destruction of value? Please elaborate (e.g. potential differences across different banking***

***business models or types of derivatives themselves). Do you think the exclusion of other types of liabilities could lead to such effects?***

Following up on the example above, in accordance with the ACPR note, the bail-in of net derivative exposures (post-closure) could have a negative impact on a bank's operations, potentially leading to value destruction under certain circumstances. Here are some points to consider:

- Banking business models: Different banking business models can influence how derivatives are utilized. For instance, a bank focused on market and trading activities may be more sensitive to fluctuations in underlying asset prices, while a retail bank could be more exposed to interest rate risks. The consequences of bailing in net exposures may vary based on these models.
- Types of derivative products: Some derivative products can be more complex, illiquid, or sensitive to market conditions. The impact of a bail-in may depend on the specific type of derivative products involved. For instance, complex credit derivatives might be more challenging to assess and manage post-closure, thereby increasing the risk of value destruction.
- Exclusion of other liabilities: The exclusion of other types of liabilities could potentially influence the effects of a bail-in. If certain liabilities are excluded from the bail-in, it could affect how costs are distributed and how the bank manages its liabilities. However, this would depend on the specifics of the excluded liabilities and their impact on the overall financial position of the bank.
- Impact on investor confidence: A massive bail-in of net derivative exposures could also impact investor confidence, especially if perceived as a response to significant risks or financial difficulties. This could lead to a depreciation of the bank's stock value.

In conclusion, the circumstances and extent to which the bail-in of net derivative exposures could lead to value destruction depend on various factors, including the bank's business model, the types of derivative products involved, the exclusion of other liabilities, and the impact on investor confidence. A thorough analysis of each specific situation would be necessary to assess these risks.

***Question 4.3. Some instruments have been hedged externally and thus their bail-in would also require a winding down of the corresponding hedge. In your view, can this lead to destruction of value (meaning that holders of other/non-excluded liabilities would be better off when such liabilities are excluded from bail-in than when they are bailed-in)? If yes, under which circumstances (e.g. does it depend on the hedging purpose such as economic or accounting)? Do you think this could be the case for structured notes with embedded derivatives? In such case, please provide concrete examples of structured notes where destruction of value could appear.***

Again, we would highlight that the internal bail-in of certain externally covered instruments could potentially lead to value destruction, depending on specific circumstances. Here are some considerations to take into account:

- Liquidation of the coverage: If the internal bail-in of certain instruments requires the liquidation of corresponding coverage, it could result in additional costs. The liquidation of coverage positions can be sensitive to market conditions, and if carried out under unfavorable conditions, it may lead to additional losses.
- Coverage objective: The circumstances under which value destruction could occur depend on the objective of the coverage. If the coverage was primarily established for economic reasons, such as protecting against fluctuations in asset prices, the liquidation of coverage could be more costly in terms of value destruction. On the other hand, if the coverage was primarily for accounting purposes, value destruction might be less likely.
- Structured notes incorporating derivatives: Structured notes incorporating derivatives can be complex and involve elements of coverage. In such cases, value destruction could be more likely, especially if the liquidation of coverage derivatives results in significant and unexpected losses for the bank.

- Concrete examples: It would be challenging to provide concrete examples without detailed information about specific financial instruments. However, consider the hypothetical example of a structured note linked to interest rate derivatives. If the bank used derivatives contracts to hedge the interest rate risk associated with this note, the liquidation of these derivatives could result in additional losses if market conditions are unfavorable at the time of liquidation.

In conclusion, the internal bail-in of certain externally covered instruments could lead to value destruction, primarily depending on market conditions, the objective of the coverage, and the complexity of the involved financial instruments. A case-by-case evaluation would be necessary to determine the specific risk in each situation.

***Question 4.4. Without prejudice to the considerations for discretionary exclusions regime, as regards bail-in operationalisation:***

- ***Are there any operational challenges that may hamper the bank's ability to provide, on short notice, the information about its derivative contracts as required for the purposes of valuation pursuant to Articles 36 and 49 of BRRD18? If so, do these challenges concentrate in any particular category of derivatives?***
- ***Are there particular types of collateral that might create operational challenges to determine – in a short timeframe – the extent by which the value of secured liabilities, or a liability for which collateral is pledged, exceeds the value of the assets, pledge, lien or collateral against which it is secured?***
- ***Are there particular challenges – in a short timeframe – in identifying the amount of a deposit that exceeds the coverage level provided for in Article 6 of the Deposit Guarantee Scheme Directive19 which would be eligible for bail-in?***

Several operational considerations could hinder a bank's ability to operationalize internal bail-in effectively, especially concerning derivative contracts, collaterals, and deposits. Here are some key points:

- Operational challenges related to derivative contracts: It is suggested that operational difficulties might arise regarding the bank's ability to promptly provide necessary information about its derivative contracts. This could include challenges related to collecting, managing, and communicating data on derivative contracts. These difficulties might be heightened in the case of diversity or complexity among the derivative products held by the bank.
- Collaterals and operational challenges: The question also mentions potential operational challenges related to the swift determination of the value of liabilities secured by collaterals. Rapidly identifying to what extent the value of secured liabilities exceeds the value of assets can be a challenge, especially if the collaterals are diverse or complex. This could affect the ability to adequately assess the amount available for internal bail-in.
- Specific challenges for deposits: The question also raises the possibility of operational challenges in the quick identification of the amount of a deposit exceeding the coverage level stipulated by the Deposit Guarantee Schemes Directive. This could involve the need to rapidly determine which portions of a deposit are eligible for internal bail-in in case the guarantee limits are exceeded. These potential obstacles are therefore significant, when it is relatively unlikely that deposits will be subject to a bail-in.

In summary, operational difficulties in the context of internal bail-in could stem from the complexity of derivative contracts, the evaluation of collaterals, and the rapid identification of eligible deposits. Operational challenges may vary depending on the specific nature of the financial instruments and coverage mechanisms involved. Effective management of these aspects would require robust information systems and well-defined operational processes.

## 5. Rethinking the approach to adjustments in the MREL policy

***Question 5.1. What are your views on the current MREL calibration methodology? How do you assess the complexity of the current framework and would you support an approach to MREL by developing a new methodology with a harmonised floor and a single adjustment driver?***

***In your view, does a single adjustment driver based on factors like resolution strategy, resolvability, etc., reduce complexity?***

The current MREL calibration remains complex and conservative in its computation.

Supervisory and resolution authorities have not yet developed the prudential requirements and processes for the MREL calibration for entities where the resolution group does not match the prudential consolidation. It is important that authorities can adjust the consolidated Pillar 2 requirement as input factor for the MREL calibration for resolution groups where consolidated risks are not present, in line with and respecting Article 2 Delegated Regulation (EU) 2021/1118.

Finally, the current risk-based approach for the MREL calibration methodology leads to a double counting of risk for a sample of MPE banks.

This results in a disadvantage for European banks in terms of international competitiveness vs. their peers, namely with respect to equity investors. In that respect, a simplified MREL calibration framework would certainly be welcome. Overall, the current MREL calibration methodology would benefit from more transparency, including – but not limited to – on the calculation of MPE add-ons but also on the value-based NCWO methodology the SRB is currently using for setting case-by-case MREL subordination requirements.

The concept of a "single adjustment driver" is interesting to explore as an alternative to the current MREL calibration. However, a careful consideration is essential to ensure compatibility with the regulatory framework. Whether a single adjustment driver linked to resolution strategy and resolvability would improve the current MREL calibration methodology will heavily depend on its concrete shape and design. A more careful consideration and thorough assessment is essential to ensure compatibility with the regulatory framework – it is not yet evident that a single adjustment driver or linking MREL to resolvability score is fully aligned with SRMR. The key issue is that resolution entity-specific adjustments may still be necessary, as relying on a single adjustment driver seems overly simplistic for addressing the complex issue of MREL.

The idea of a single adjustment driver would however move in the direction of simplification. But such simplification would be effective only if the new associated methodology is clearly defined, predictable, made public to the industry and does not entail by itself a higher MREL requirement. It should be easily understandable, objective, predictable and transparent.

Finally, it is essential that competent resolution authorities continue to limit MREL on a regular basis to the own funds requirements for institutions subject to normal insolvency proceedings. Even a simplification of the calibration methodology of MREL should not alter this approach.

P2R reduction (para. 32 SRB MREL Policy) should be refined.

- The legal basis for the SRB to consider P2R downward adjustments has always been enshrined in Regulation (EU) 806/2014 as the recapitalisation amount should allow the resolution entity/group resulting from resolution to restore compliance with "its P2R at the consolidated resolution group level after the implementation of the preferred resolution strategy" (Art. 12d para. 3 a) ii) and b) of the SRMR).
- In its 2021 MREL Policy, the SRB acknowledged possible P2R downward adjustments, as per our understanding. As of today, the SRB MREL Policy 2023 stipulates in para. 32: "The SRB, in consultation with the competent authorities, estimates the P2R post resolution (for its use in the MREL formula) on the basis of the outcome of the latest SREP process. For banks with a high-risk profile, the resolution actions are expected to yield a risk-reducing effect that could

potentially be translated into a lower post resolution P2R level for both external and internal MREL."

Under the current SRB practice, a P2R reduction is exclusively granted to resolution groups with SREP score 3 minus or higher and the reduction capped at 0.5%.

In our view, the current approach lacks proportionality, as granting a reduction only to resolution entities/groups with SREP score 3 minus or higher seems too high and disproportionate to severe supervisory consequences: SREP score 4 can – in certain cases – be the basis for a determination that an institution is FOLTF (EBA/GL/2015/07, para. 31).

Therefore, the methodology should be refined in the SRB policy in order to allow for incentives and to better align the Policy with the SRMR.

***Question 5.2. Do you see any merits or disadvantages to linking the calibration of MREL with the resolvability assessment? If so, please explain and elaborate.***

We generally oppose linking the calibration of MREL to the resolvability assessment. Should this approach be adopted, it could result in excessive discretionary powers of sanctions in the hands of the SRB, allowing for subjective adjustments of the MREL in cases where there are weaknesses in terms of resolvability.

We believe that MREL calculation should be as predictable as possible for resolution entities. Therefore, while we acknowledge that the calibration according to the SRB Policy could and should be refined, we assert that any changes should be incremental rather than fundamental. The resolvability assessment and its outcomes have consistently been subjected to a considerable degree of discretion of the resolution authority.

Additionally, we fear that establishing a complex scoring system based on the Expectations for Banks and related principles would not remove the inherent subjectivity attached to that kind of assessment.

However, merits and disadvantages will eventually depend on the concrete shape and specific design of any future MREL calibration methodology.

***Question 5.3. Which other factors should be included in the calibration of MREL? How could a harmonized floor be determined?***

Following the experiences in the US and Switzerland and considering the ongoing Review of the Crisis Management and Deposit Insurance framework, the SRB should allow partial transfer strategies as preferred resolution strategy also for larger banks, including for top-tier banks and global significant banks. The MREL calibration methodology must better reflect and facilitate efforts from making transfer strategies possible.

Another important element in any re-worked MREL calibration methodology are the cooperation and decision-making processes between authorities. Well-designed mechanism must avoid ring fencing in a cross-border context.

Further refinements of the MREL calibration methodology must be viewed together with the European Union's Capital Market Union (CMU) and both should benefit from each other. The completion of CMU could further support EU banks to meet their MREL capacities on deep and liquid capital markets by facilitating locally issued subordinated debt with the support of supranational bodies. For example, CMU regulation could encourage long-term investors, such as pension and insurance funds, to take on more significant exposures through requirements for capital coverage and asset valuation in the regulation of insurance funds (see Lehmann, A. 'Developing resilient bail-in capital', 29 April 2019, Bruegel Blog post). Improving cooperation between resolution authorities and broadening the narrow-qualified investor base for MREL bonds would benefit the objectives of CMU to the same extent.

The natural floor for MREL is Pillar 1 and Pillar 2 requirements (loss absorption amount), which is in any case increased by the combined buffer requirements (CBR) when assessing MREL plus CBR. In our view, there is no real additional need for a floor.

The MREL calibration can be reviewed on several aspects:

- Loss Absorption Amount: the assumption in BRRD/SRMR that the bank has lost all its capital requirement in resolution appears rather unrealistic and it is more probable that some capital would still remain.
- Recapitalisation Amount: the BRRD/SRMR stipulate that the calibration of the recapitalisation amount should align with the bank's status in resolution. The resolution authority should evaluate the downsizing of certain activities, considering realistic and operationalized transfers, and incorporating measures such as the sale of certain activities or entities that would have been taken before the FOLTF declaration, especially if the institution had undergone a recovery situation before entering into resolution.

  In addition, pursuing a proportionate approach, the Recapitalization Amount shall be set at zero, for those banks for which the use of applicable national insolvency procedures can achieve resolution objectives.
- Market confidence: as previously discussed, adding buffers for the purpose of market confidence is not justified.

Additionally, the principle stating that own funds that are used to meet the CBR may not count towards fulfilment of MREL-TREA – the total risk exposure amount – (including required levels of subordination expressed in terms of MREL-TREA) should be revised, given that MREL requirements (expressed in terms of TREA) are substantially higher than capital requirements.