03 July 2015

EBA/RTS/2015/05

EBA FINAL Draft Regulatory Technical Standards

on criteria for determining the minimum requirement for own funds and eligible liabilities under Directive 2014/59/EU

Contents

1. Executive summary

Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms (the Bank Recovery and Resolution Directive, BRRD) provides a common resolution regime in the Union that allows authorities to deal with failing institutions as well as ensuring cooperation between home and host authorities. In the future, shareholders and creditors will have to internalise the burden of bank failure, minimising moral hazard and risks to taxpayers.

To avoid institutions structuring their liabilities in a way that impedes the effectiveness of the bail-in or other resolution tools, and to avoid the risk of contagion or a bank run, the Directive requires that institutions meet at all times a robust minimum requirement for own funds and eligible liabilities (MREL). This is to be set on a case-by-case basis by resolution authorities, based on at least six common criteria set out in the BRRD.

These technical standards further specify these minimum criteria in order to achieve an appropriate degree of convergence in how they are applied and interpreted across Member States, and ensure that similar levels of MREL are set for institutions with similar risk profiles, resolvability, and other characteristics regardless of their domicile. Differences in the application of the criteria would result in similar banks facing different requirements and thus different costs of financing their activities.

Setting a level of MREL based on the minimum criteria also requires resolution authorities to assess matters which are also considered either in the calibration of prudential regulatory requirements or in the case-by-case judgements made by supervisory authorities, such as the degree of losses which institutions or groups should be able to absorb, or their risk profile, business model and systemic importance. These technical standards therefore also seek to describe how these two sets of judgements should be related to each other.

The draft RTS first seek to clarify how the resolution authority's assessment of the amount of MREL needed to absorb losses and, where necessary, recapitalise a firm after resolution, should be linked to the institution's going concern capital requirements. They provide that resolution authorities should, as a default, seek to rely on supervisory assessments of the degree of loss that a bank needs to be able to absorb and the capital it needs to operate.

In addition, resolution authorities should consider any additional MREL needed to successfully implement the resolution plan. In particular, where the resolution plan identifies that some liabilities would be unlikely to contribute to loss absorption or recapitalisation in resolution, resolution authorities may need to increase the MREL or take alternative measures. If the resolution authority considers that in resolution, a contribution to the costs of resolution from the Deposit Guarantee Scheme would be possible, after considering the strict limits on such contributions, it may also take this into account in setting the MREL.

Lastly, the draft RTS propose that for the assessment of systemic risk, resolution authorities should identify as systemic at least those institutions which are identified as globally systemically important Institutions (G-SIIs) or other systemically important institutions (O-SIIs) for the purposes of the CRR/CRD IV. For systemic institutions, resolution authorities should consider the potential need to be able to access the resolution financing arrangement, in the event that it is not possible to implement a resolution plan relying solely on the institution’s own resources, and to assess whether the MREL would be sufficient to enable the preconditions in the BRRD for access to these arrangements to be met.The EBA expects these RTS to be broadly compatible with the proposed Financial Stability Board (FSB) term sheet for Total Loss Absorbing Capacity (TLAC) for Globally Systemically Important Banks (G-SIBs). Where there are differences resulting from the nature of the EBA’s mandate under the BRRD, as well as the fact that the BRRD MREL requirement applies to banks which are not G-SIBs, the standards should not present additional obstacles to resolution authorities implementing the MREL for G-SIBs consistently with the international framework.

2. Background and rationale

Section 1: The MREL provisions of the Bank Recovery and Resolution Directive

The recent financial crisis forced governments around the world to rescue banks. The subsequent impact on public finances as well as the undesirable incentive effects of socialising the costs of bank failure have underscored the fact that a different approach is needed.

Significant steps have been taken to address the potential spill overs between banks and sovereigns, and thereby reduce the systemic risks of failing banks. Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms (the BRRD) provides a common resolution regime in the Union that allows authorities to deal with failing institutions as well as ensuring cooperation between home and host authorities. In the future, shareholders and creditors will have to bear the burden of bank failure, minimising moral hazard and risks to taxpayers. Removing the implicit subsidy of large banks by governments will avoid the build-up of excessive risk and leverage within banks and the banking system as a whole.

To avoid institutions structuring their liabilities in a way that impedes the effectiveness of the bail-in or other resolution tools, and to avoid the risk of contagion or a bank run, the Directive requires that institutions meet at all times a robust MREL expressed as a percentage of the total liabilities and own funds of the institutions[1]. Hence, the MREL should ensure that shareholders and creditors primarily bear losses in situations regardless of which resolution tool (e.g. the bail-in or bridge bank tools) is applied. In this way the MREL ensures sufficient loss absorbing capacity that should enable an orderly resolution, ensuring continuity of critical functions without recourse to public funds.

According to Article 45(2), the EBA is mandated to develop draft regulatory technical standards to specify further the six criteria which resolution authorities are expected to apply when setting the MREL. The EBA's work interacts considerably with the work of the FSB to develop a related global standard on TLAC for G-SIBs. The EBA aims to implement the MREL as required by the BRRD, and in a way that is consistent with the developing international framework, while ensuring proportionality in its application to institutions other than G-SIBs.

[1] See recital 80 and Article 45 of Directive 2014/59/EU

Section 2: General approach

Article 45 of the BRRD provides for a case-by-case assessment of the MREL for each institution or group, against a minimum set of criteria described in Article 45, paragraph 6. The BRRD does not establish a common MREL; while the impact assessment for the BRRD estimated the impact of the requirement on the assumption of a reference level of MREL of 10% of total liabilities, the actual level should be adapted to reflect the resolvability, risk profile, systemic importance and other characteristics of each institution.

These technical standards aim to further specify these minimum criteria in order to achieve an appropriate degree of convergence in how they are applied and interpreted across Member States, and ensure that similar levels of MREL can be set for institutions with similar risk profiles, resolvability and other characteristics regardless of their domicile. Differences in the application of the criteria would result in similar banks facing different requirements and thus potentially different costs of financing their activities.

Setting a level of MREL based on the minimum criteria also requires resolution authorities to assess matters which are also considered either in the calibration of prudential regulatory requirements or in the case-by-case judgements made by supervisory authorities, such as the degree of losses which institutions or groups should be able to absorb, or their risk profile, business model and systemic importance. These technical standards therefore also seek to describe how these two sets of judgements should be related to each other.

Resolution authorities also need to consider, when setting an appropriate MREL, the interaction with other conditions set by the BRRD, in particular for resolution planning and the requirements for use of the resolution fund to indirectly absorb losses.

Both CRR regulatory capital requirements and the BRRD preconditions for use of the resolution fund (in Article 44(5) and (8) of the BRRD) do establish common minimum requirements, whereas the BRRD does not establish a common minimum for the MREL.

The EBA is additionally required to submit a report to the Commission by 31 October 2016 reviewing the implementation of an MREL at national level and several aspects of the framework for an MREL set out in the BRRD.

Section 3: Specific criteria

This section explains how the RTS specify further the assessment criteria of Article 45(6).

3.1 Resolvability and capital adequacy

The criteria in Article 45(6)(a) and (b) cater to the need to meet the resolution objectives when an institution is resolved using the resolution tools, including bail-in. The main means by which the MREL contributes to ensuring that firms can be resolved in a way which meets resolution objectives is to ensure that there are enough own funds and eligible liabilities available to absorb losses and contribute to recapitalisation. This in turn will mean that extraordinary public financial support is not needed to absorb losses or contribute to recapitalisation, and the use of resolution funds is only required in extraordinary circumstances and when other preconditions in the BRRD are met. As such, the standards further specify the criterion in Article 45(6)(a) in the same way as that in Article 45(6)(b) criterion (relating to capital adequacy following bail-in), but noting that it applies to all resolution tools.

The capital adequacy criterion has two elements: loss absorption and recapitalisation. The RTS propose how resolution authorities should assess the amount necessary for each.

The first is the need to ensure that losses are absorbed. The regulatory capital requirements (both pillars 1 and 2) and buffers already reflect the judgement of the supervisor and legislators about the level of unexpected losses an institution should be able to absorb. Therefore as a baseline the resolution authority should seek to ensure that losses equal to capital requirements (including buffers) can be absorbed. The draft standards provide that resolution authorities, in consultation with competent authorities, may conclude that some components of capital requirements are not suitable for inclusion in this assessment of required loss absorbency..

Differences in judgement between the competent and resolution authority may be appropriate, but should be clearly reasoned. The draft RTS aim to avoid requiring the resolution authority to maintain the capacity to act as a ‘shadow’ supervisor. For this purpose, the resolution authority shall request from the competent authority a summary of the institution’s capital requirements. Subsequently, the resolution authority may, if it wishes, assess whether the information provided by the competent authority justifies an adjustment of the loss absorption amount. It should do so in consultation with the competent authority and based on a reasoned explanation, referring as far as is feasible (given the information available to the resolution authority) to CRR/CRD IV and the guidelines adopted by the EBA pursuant to Article 107(3) of Directive 2013/36/EU for the supervisory review and evaluation of risks.

The resolution authority may additionally assess that a higher loss absorption amount is required if the resolvability assessment process concludes that this is necessary to reduce or remove an impediment to resolvability.

The second element of the capital adequacy criterion is for the resolution authority to determine the amount of recapitalisation which would be required to implement the preferred resolution strategy identified in the resolution planning process. This recapitalisation amount is only necessary for those institutions for which liquidation under normal insolvency processes is assessed not to be feasible and credible. Hence, for those banks that can be liquidated, the recapitalisation amount may be zero.

The recapitalisation criterion consists of two parts. The first creates a link between the MREL and the capital ratio necessary to comply with conditions for authorisation for the institution after resolution. According to the CRR and CRD framework, the competent authority may withdraw the authorisation if an institution no longer meets the prudential requirements that it needs to satisfy at all times. This means that an institution, immediately after resolution, would have to comply, at a minimum, with the 8% total capital ratio requirement and any pillar 2 capital requirement that the authorities have set (and potentially any leverage ratio requirement which is applicable). Capital requirements are likely to need to be met through Common Equity Tier 1 (CET1) capital instruments only, at least in the immediate post-resolution period.

When estimating capital needs after implementation of the preferred resolution strategy, the resolution authority should as a starting point use as denominators for capital ratios the most recent reported values (for risk-weighted exposure amounts, and, if relevant, leverage exposure measures). Authorities may adjust these denominators if the resolution plan identifies, explains and quantifies a change in these measures. This change should be assessed in the resolvability assessment process to be both feasible and credible, without extraordinary financial support or adversely affecting the provision of critical functions by the institution.

The second part of the recapitalisation amount is to ensure sufficient market confidence in the institution. The draft RTS provides that this should be assessed by considering how much is needed to restore the capital buffers established by CRD IV, and that the resolution authority should review whether the resulting capital level is appropriate when compared to capital levels in the firm's peer group. Sustaining market confidence is likely to require that the institution is not operating under a capital conservation plan and so capital buffers would need to be restored. The draft standards provide that resolution authorities, in consultation with competent authorities, may conclude that some components of capital requirements would not be applicable in the aftermath of resolution. The peer group approach takes the lesson learned during the crisis that market confidence is likely to depend on capital levels relative to peers. In addition, the proposed capital levels are also needed to avoid reliance on extraordinary public financial support, which resolution plans cannot assume.

The draft RTS also allows resolution authorities to take account when setting the loss absorption and recapitalisation amounts of the specific features of subsidiaries of groups and of financial market infrastructure firms which are subject to the MREL requirement.

Box 1: Stylised examples of application of the capital and resolvability criteria

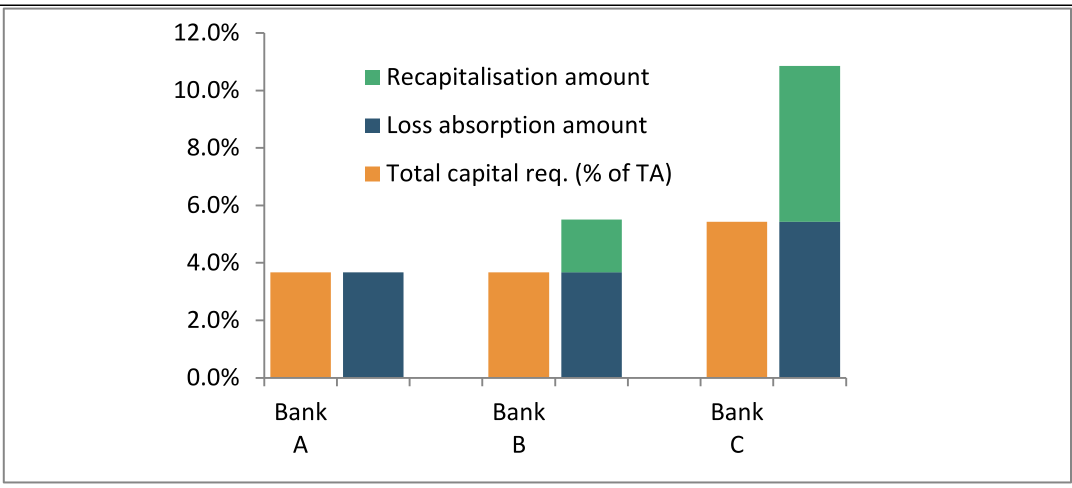
This box provides three examples of how resolution authorities might apply these criteria to simple hypothetical banks with different resolution plans. Note that these examples assume that the resolution authority relies wholly on the institutions' capital requirements to determine the required degree of loss absorbency and does not make any additional adjustments envisaged by the draft RTS on the basis of the resolvability assessment or other considerations.

Bank A is a small bank, assumed to have a minimum total capital requirement of 8% of risk-weighted assets (RWAs) and a combined buffer requirement of 2.5% (i.e. no pillar 2 or discretionary buffer requirements) and total RWAs equal to 35% of total liabilities and own funds.

The resolvability assessment process concludes that it is both feasible and credible to liquidate the bank. The resolution authority therefore determines a loss absorption amount by translating the overall capital requirement of 10.5% of RWAs into the equivalent percentage of total liabilities and own funds – in this case, 3.7%. The recapitalisation amount is zero, as the bank would be liquidated.

Bank B is a medium-sized bank, again with an overall capital requirement of 10.5% and RWAs equal to 35% of total liabilities and own funds. The loss absorption amount determined by the resolution authority is therefore also 3.7% of total liabilities and own funds. However, the resolution authority assesses that liquidation is not credible because the bank carries out some critical functions that need to be preserved. The resolution plan adopted is to transfer assets and liabilities associated with the critical functions to a bridge bank and liquidate the remaining assets and liabilities. The planned bridge bank accounts for half of the RWAs of Bank B, so the resolution authority sets a recapitalisation amount of 1.8% of total liabilities and own funds. This gives a total MREL of 5.5%. If a leverage ratio requirement had been applied, this would also need to be considered and could lead to a higher level of MREL.

Bank C is a large, systemically important bank with a capital conservation buffer requirement of 2.5%, a G-SII buffer requirement of 2.5%, and a pillar 2 capital requirement of 2% of RWAs, giving an overall capital requirement of 15% of RWAs. Again RWAs are 35% of total liabilities and own funds. If the pillar 2 and G-SII buffers are included in the resolution authority's assessment of the required loss absorption amount, it would be 5.4% of total liabilities and own funds. The resolution authority determines that the only feasible and credible resolution strategy is a bail-in, and so resolution will not result in any immediate reduction in RWAs. The resolution authority therefore sets a recapitalisation amount also equal to 5.4% of total liabilities, and a total MREL of 10.8%. If a leverage ratio requirement had been applied, this would also need to be considered and could lead to a higher level of MREL.



3.2 Exclusions and deposit guarantee scheme contributions

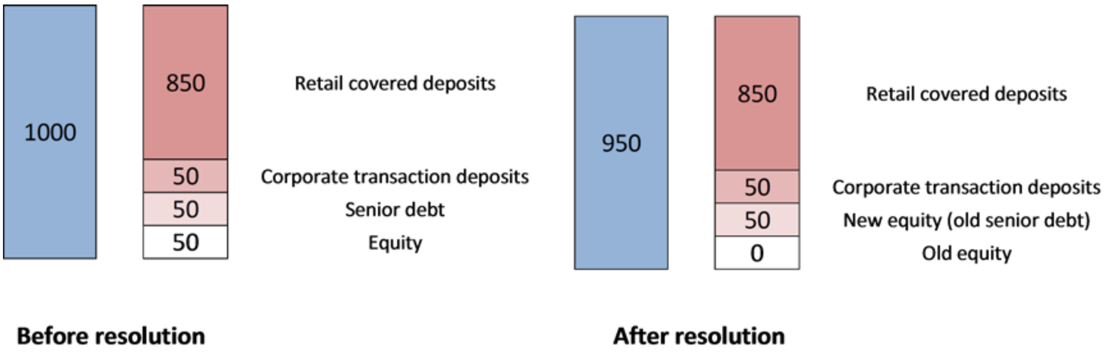
The third criterion is the need to ensure that the MREL is sufficient even if the resolution plan envisages that certain classes of liabilities are excluded from contributing to loss absorption or recapitalisation by the resolution authority in order to ensure a successful resolution. There are three ways in which such exclusions from loss might occur: in a bail-in, some liabilities are not eligible under Article 44(2) of the BRRD, or resolution authorities may make use of their power under Article 44(3) of the BRRD to exclude some classes of liabilities on an ad-hoc basis, or they may be transferred in full under a partial transfer.

Bail-in-able liabilities (i.e. those which meet the conditions for inclusion in the amount of own funds or eligible liabilities) may be excluded from loss in this way and so are not able to contribute to the absorption of losses or recapitalisation. If this contingency is envisaged in the resolution plan, the MREL needs to be increased to account for their exclusion.

Additionally, exclusion of liabilities from loss increases the amount of loss or recapitalisation which must be borne by other liabilities. If a sufficiently large amount of excluded liabilities rank equal to or junior to in terms of insolvency any liabilities which are bailed in, this could result in holders of bailed-in liabilities receiving worse treatment than in insolvency, and so being eligible for compensation. The draft RTS propose the principle that the MREL should be set to avoid such a risk of compensation arising, but it leaves the resolution authority to determine whether this is best done by increasing the MREL, requiring part of the MREL to be met through contractual bail-in instruments, as permitted under Article 45(13) of the BRRD, or through alternative measures to remove impediments to resolvability.

Box 2: Stylised example of the impact of exclusions

A failing bank has assets of 1 000 (RWA of 500); equity of 50 (CET1 10%); senior debt of 50; large corporate transaction deposits of 50, which rank *pari passu* with senior debt; and 850 in preferred retail deposits. The resolution authority concludes that bailing in corporate transaction accounts would interrupt the operation of a critical function, and so they should be excluded from bail-in under the resolution plan.



A loss of 50 would require writedown of all of the old equity. Conversion of 100% of the senior debt would, assuming the average risk weight of assets does not change, restore the CET1 capital ratio to 10.5%. If the economic value of the equity after resolution is 80% of book value, the economic loss to the former senior creditors would be 10.

Under insolvency, half of this loss would have been borne by the corporate transaction deposits. If the ex post insolvency valuation concludes that total losses in insolvency would have been 70 or less, then senior debt holders would be worse off than in insolvency. To reduce this, the MREL requirement could be raised (provided this is met through liabilities which can be feasibly and credibly bailed in), or part of the MREL requirement could be met through subordinated bail-in-able liabilities, in both cases increasing the proportion of losses in insolvency that are borne by MREL holders.

The fourth criterion requires the resolution authority to take account of the extent to which the Deposit Guarantee Scheme could contribute to the financing of resolution in accordance with Article 109 of the BRRD. Article 109 permits the use of deposit guarantee funds in resolution, but limits their contribution to the lesser of a) the amount of losses covered depositors would have borne in insolvency, or b) 50% (or a higher percentage set by the Member State) of the target level of the deposit guarantee fund. The RTS provides that resolution authorities should be required to set an MREL to ensure that these limits would be respected if losses equal to the amount determined for purposes of the first criteria were incurred,.

Subject to these constraints, the RTS propose that resolution authorities have the option to reduce the MREL to take account of the estimated contribution from the deposit guarantee scheme (DGS).

3.3 Risks and systemic risks

The fifth criterion requires resolution authorities to take account of the size, business model, funding model and risk profile of the institution. As noted above, these factors also affect the setting of prudential requirements for the institution, and in particular the Supervisory Review and Evaluation Process (SREP). In order to ensure that any differences of judgement between the supervisory and resolution authorities are clearly articulated and discussed, and to avoid unnecessary duplication of resources between authorities, resolution authorities are required to request a summary of these factors from the competent supervisory authority, and how risks arising from them are mitigated by capital requirements or other supervisory risk mitigants. Subsequently, the resolution authority may assess whether these factors are adequately addressed by these mitigants, or by measures adopted to remove or reduce impediments to resolvability. If it assesses that this is not the case, the resolution authority may adjust the MREL. It should do so in consultation with the competent authority and based on a reasoned explanation, referring as far as possible to the CRR/CRD IV and any guidelines adopted by the EBA pursuant to Article 107(3) of Directive 2013/36/EU adopted by the competent authority for the supervisory review and evaluation of risks.

The sixth and final criterion requires resolution authorities to take account of the potential adverse effects on financial stability of the failure of the institution. The draft RTS propose that the resolution authority should identify institutions whose failure is reasonably likely to pose systemic risk, including at least any G-SIIs or O-SIIs identified pursuant to the CRD. For these institutions an MREL should continue be set to ensure that the first five criteria are adequately addressed.

But in addition, given the high potential social costs of their failure, it is important to ensure that additional funding from the resolution financing arrangements established pursuant to the BRRD is also available if needed. Resolution authorities are therefore required to assess whether the level of MREL is sufficient to ensure that the conditions for use of the resolution fund described in Article 44 of the BRRD could be met. That article requires that a contribution to loss absorption and recapitalisation of not less than 8% of the total liabilities including own funds of the institution (or, under certain conditions, 20% of RWAs) has been made by the holders of relevant capital instruments and other eligible liabilities.

Lastly, the RTS propose that the resolution authority should, in assessing an institution or group against these criteria, consider the appropriate timetable for the institution to meet the MREL and provide the institution with a planned MREL for each 12-month period during this transitional period. This planned level may, however, be revised subsequently.

Section 4: Comparison with FSB proposals

The EBA expects these RTS to be broadly compatible with the proposed FSB term sheet for TLAC for G-SIBs. While there are differences resulting from the nature of the EBA's mandate under the

BRRD, as well as the fact that the BRRD MREL requirement applies to banks which are not G-SIBs, these differences do not prevent resolution authorities from implementing the MREL for G-SIBs consistently with the international framework. Below is a summary of some of the differences between the BRRD MREL framework and the FSB proposals:

1. **Pillar 1, pillar 2 and capital buffers.** The FSB term sheet proposes a predetermined pillar 1 minimum TLAC requirement of between 16% and 20% of (RWAs), and an additional, discretionary, pillar 2 TLAC requirement set on a bank-by-bank basis. Basel III capital buffers must be met on top of the TLAC requirements. The BRRD requires the MREL to be set on a case-by-case basis does not include a common minimum requirement, and does not apply the proposed TLAC treatment of capital buffers. Accordingly, if resolution authorities choose to aim to meet the FSB standards, this should be consistent with setting a single MREL requirement which covers both the pillar 1 and pillar 2 components of the proposed TLAC term sheet.

2. **Eligibility of instruments.** The FSB term sheet sets a number of requirements for instruments to be eligible for TLAC (e.g. subordination), some of which differ from the criteria to be counted towards MREL in the BRRD. Eligibility of instruments is set by the BRRD and is outside the scope of these RTS. However, the BRRD and the draft RTS do require resolution authorities to take into account the risk of exclusions from bail-in and the need for the institution to be feasibly and credibly resolvable.

3. **Implementation date.** The FSB proposes a lag before implementation of TLAC (not before 1 January 2019), whereas the requirement to set an MREL applies from the date of national implementation of Article 45 of the BRRD (i.e. 1 January 2016 at the latest). However, the approach adopted in the draft RTS would not prevent resolution authorities from setting an MREL requirement which increases over time to reflect the need for an adequate transition period.

4. **Denominator.** The FSB pillar 1 requirement is set as a percentage of RWAs (or, if the leverage ratio backstop binds, of the leverage ratio exposure measure). The BRRD requires the MREL to be set as a percentage of own funds and total liabilities (after full recognition of counterparty netting rights). The draft RTS enable resolution authorities to consider RWA-based capital requirements or leverage ratio requirements when setting the MREL, but the final requirement must be set as a percentage of own funds and total liabilities.

5. **Other differences in scope.** The TLAC proposal of the FSB also addresses a number of other issues which are outside the scope of these RTS, including the prudential treatment of holdings of TLAC instruments and a requirement for a minimum percentage of TLAC to consist of non-capital instruments.

3. Draft regulatory technical standards on criteria for determining the minimum requirement for own funds and eligible liabilities

COMMISSION DELEGATED REGULATION (EU) No …/..

of XXX

supplementing Directive 2014/59/EU of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms with regard to regulatory technical standards specifying the criteria relating to the methodology for setting the minimum requirement for own funds and eligible liabilities

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms[2], and in particular Article 45(2) thereof,

Whereas:

(1) Effective resolution can only be feasible and credible if adequate internal financial resources are available to an institution to absorb losses and for recapitalisation purposes without affecting certain liabilities, in particular those excluded from bail-in. Directive 2014/59/EU provides that institutions should meet a minimum requirement for own funds and eligible liabilities ('MREL') to avoid that institutions excessively rely on forms of funding that are excluded from bail-in, since failure to meet MREL would impact negatively institutions' loss absorption and recapitalisation capacity and, ultimately, the overall effectiveness of resolution.

(2) When determining MREL in accordance with Article 45(6)(a) and (b) of Directive 2014/59/EU, the resolution authority should consider the need, in case of

[2] OJ L 173, 12.6.2014, p. 190.

application of the bail-in tool, to ensure that the institution is capable of absorbing an adequate amount of losses and being recapitalised by an amount sufficient to restore its Common Equity Tier 1 ratio to a level sufficent to maintain the capital requirements for authorisation and at the same time to sustain sufficient market confidence. This close relationship with supervisory decisions requires that such assessments are made by the resolution authority in close consultation with the competent authority, and that the resolution authority should take account of the assessments made by the competent authority on the business model, funding model, and risk profile of the institution for the purposes of setting prudential requirements.

(3) In particular, in accordance with Article 45(6)(a) and (b) of Directive 2014/59/EU, the assessment of the necessary capacity to absorb losses should be closely linked to the institution's current capital requirements, and the assessment of the necessary capacity to restore capital should be closely linked to likely capital requirements after application of the resolution strategy, unless there are clear reasons why losses in resolution should be assessed differently than in going concern A similar assessement is necessary to ensure the MREL is sufficient to ensure resolvability of an insitution when resolution tools other than bail-in are to be applied.

(4) Article 45(6)(c) of Directive 2014/59/EU also requires that resolution authorities consider the possibility that certain classes of liabilities, identified in resolution plans and in the resolvability assessment, might be excluded from bail-in. Liabilties of that kind should not be relied on for purposes of meeting the MREL. Resolution authorities should also ensure that when significant amounts of any insolvency class of liabilities are excluded from bail-in, on either a mandatory or discretionary basis, this exclusion would not result in liabilities of the same or a more senior class bearing greater losses than they would in insolvency, as this would be an impediment to resolvability.

(5) Resolution authorities may require part of the MRELreferred to in Article 45(1) of Directive 2014/59/EU to be met by subordinated contractual bail-in instruments , or by setting a higher minimum requirement, or by alternative measures to address impediments to resolution. If the risk of a breach of the 'no creditor worse off' safeguard is sufficiently low, no adjustment to the MREL is necessary.

(6) In order to ensure consistency with prudential supervision, the resolution authority's assessment of the size, business model, funding model, and risk profile of the institution should be closely linked to that carried out by the competent authority unless there are clear reasons why losses in resolution should be assessed differently than in going concern. Certain institutions subject to Directive 2014/59/EU, in particular financial market infrastructures which are also authorised as credit institutions, have highly specialised business models and are subject to additional regulations, which should be taken into account when setting MREL.

(7) Article 16 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council empowers the European Banking Authority (EBA) to issue guidelines to ensure the common, uniform and consistent application of Union law and requires that competent authorities and financial institutions to which such guidelines are addressed make every effort to comply with such guidelines. Since Directive 2013/36/EU mandates the EBA to issue guidelines in accordance with Article 16 of

Regulation (EU) No 1093/2010, to further specify the common procedures and methodology for the supervisory review and evaluation process, competent authorities should take into account in accordance with that Article, the guidelines on common procedures and methodologies for the supervisory review and evaluation processs issued by the EBA by making every effort to comply with those guidelines in line with Article 16(3) of Regulation (EU) No 1093/2010.

(8) Resolution plans may provide for arrangements for loss absorption and recapitalisation within group structures, including through capital instruments or eligible liabilities issued by institutions to other institutions or entities within the same group. Resolution authorities should set MREL consistently with those arrangements where they are integral to the institution or group's preferred resolution strategy.

(9) To ensure that resolvability does not depend on the provision of public financial support and that the European system of resolution financing arrangments fulfils its purpose of contributing to ensuring financial stability, resolution authorities, when setting MREL, should take account of the conditions provided in Article 101(2) of Directive 2014/59/EU for use of resolution financing arrangements in ways which indirectly result in part of the losses of an institution or entity being passed on to the resolution financing arrangment.

(10) Resolution authorities should also consider the potential adverse impact of an institution's failure on financial stability. Resolution authorities should pay particular attention to ensuring that effective resolution of a systemically important institution without the provision of extraordinary public financial support is not prevented by the exhaustion of its effective loss absorbing capacity prior to the meeting of the conditions set forth in Article 44(5) and (8) of Directive 2014/59/EU relating to the extraordinary use of resolution financing arrangements when liabilities are excluded from bail-in. This would require in particular that the holders of the institution's capital instruments and other eligible liabilities, at the time of resolution and after absorbing any losses before that time, should be capable of contributing to loss absorption and recapitalisation with an amount at least equal to 8% of the total liabilities including own funds (or 20% of risk-weighted assets, if certain conditions set out in Directive 2014/59/EU are met). This should not however result in any reduction or replacement of the need to ensure sufficient loss absorption and recapitalisation capacity through write down and conversion of eligible liabilities, or imply that the resolution financing arrangement should be used for these purposes other than in accordance with the principles governing the use of the resolution financing arrangement set out in Article 44 of Directive 2014/59/EU and in any case exclusively to the extent strictly necessary

(11) Resolution authorities should assess the potential size of contributions to the cost of resolution from the deposit guarantee scheme by estimating the amount the deposit guarantee scheme could feasibily and credibly contribute. If this assessment concludes that such a contribution is likely, resolution authorities may choose to set a lower MREL. Any such assumed contribution should respect the limits on such contributions set out in Directive 2014/59/EU and are therefore likely to be most relevant for institutions funded primarily by covered deposits.

(12) This Regulation is based on the draft regulatory technical standards submitted by the European Banking Authority to the Commission.

(13) The European Banking Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council[3],

HAS ADOPTED THIS REGULATION:

Article 1

Determining the amount necessary to ensure loss absorption

1. Resolution authorities shall determine the loss absorption amount which the institution or group should be capable of absorbing.

2. For the purpose of determining the loss absorption amount in accordance with this Article and of any contribution of the deposit guarantee scheme to the resolution costs pursuant to Article 6, the resolution authority shall, consistently with Article 45(6) of Directive 2014/59/EU, request from the competent authority a summary of the capital requirements currently applicable to an institution or group, and in particular the following:

   (a) own funds requirements pursuant to Articles 92 and 458 of Regulation (EU) No 575/2013, which include:

      (i) CET1 capital ratio of 4.5% of the total risk exposure amount;

      (ii) a Tier 1 capital ratio of 6% of the total risk exposure amount;

      (iii) a total capital ratio of 8% of the total risk exposure amount;

   (b) any requirement to hold additional own funds in excess of these requirements, in particular pursuant to Article 104(1), letter (a), of Directive 2013/36/EU;

   (c) combined buffer requirements as defined in point 6 of paragraph 1 of Article 128 of Directive 2013/36/EU;

   (d) the Basel I floor according to Article 500 of Regulation (EU) No 575/2013;

   (e) any applicable leverage ratio requirement.

3. For the purposes of this Regulation, capital requirements shall be interpreted in accordance with the competent authority's application of transitional provisions laid down in Chapters 1, 2 and 4 of Title I of Part Ten of Regulation (EU) No 575/2013 and in the provisions of national legislation exercising the options granted to the competent authorities by that Regulation.

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[3] Regulation (EU) No 1093/2010 of the European Parliament and of the Council

4. The loss absorption amount to be determined by the resolution authority shall be the sum of the requirements referred to in points (a) (b), and (c) of paragraph 2, or any higher amount necessary to comply with the requirements referred to in points (d) or (e) of paragraph 2.

5. The resolution authority may set a loss absorption amount using either of the following methods:

   (a) a loss absorption amount equal to the loss absorption amount determined in accordance with paragraph (4); or

   (b) a loss absorption amount, which may be:

      (i) higher than the loss absorption amount determined pursuant to paragraph (4) where:

      - the need to absorb losses in resolution is not fully reflected in the default loss absorption amount, taking into account information requested from the competent authority relating to the institution’s business model, funding model, and risk profile pursuant to Article 5; or

      - this is necessary to reduce or remove an impediment to resolvability or absorb losses on holdings of MREL instruments issued by other group entities;

      (ii) lower than the loss absorption amount determined pursuant to paragraph (4) to the extent that, taking into account information received from the competent authority relating to the institution’s business model, funding model, and risk profile pursuant to Article 4:

      - additional own funds requirements referred to in paragraph 2(b), which have been determined on the basis of the outcome of stress tests or to cover macroprudential risks, are assessed not to be relevant to the need to ensure losses can be absorbed in resolution;

      - part of the combined buffer requirement referred to in paragraph 2(c) is assessed not to be relevant to the need to ensure losses can be absorbed in resolution.

6. Where the option in paragraph 5(b) is applied, the resolution authority shall provide the competent authority with a reasoned explanation of the loss absorption amount that has been set.

Article 2

Determination of the amount necessary to continue to comply with conditions for authorisation and to carry out activities and sustain market confidence in the institution

1. Resolution authorities shall determine an amount of recapitalisation which would be necessary to implement the preferred resolution strategy, as defined in Article 3(3) of EBA RTS] 2014/15[4], identified in the resolution planning process.

2. Where the resolvability assessment concludes that liquidation of the institution under normal insolvency proceedings is feasible and credible, the recapitalisation amount shall be zero, unless the resolution authority determines that a positive amount is necessary on grounds that liquidation would not achieve the resolution objectives to the same extent as an alternative resolution strategy.

3. When estimating the institution's regulatory capital needs after implementation of the preferred resolution strategy, the resolution authority shall use the most recent reported values for the relevant total risk exposure amount or leverage ratio denominator,as applicable, unless all the following factors apply:

   (a) the resolution plan identifies, explains, and quantifies any change in regulatory capital needs immediately as a result of resolution action;

   (b) the change referred to in point (a) is considered in the resolvability assessment to be both feasible and credible without adversely affecting the provision of critical functions by the institution, and without recourse to extraordinary financial support other than contributions from resolution financing arrangements consistently with Article 101(2) of Directive 2014/59/EU and the principles governing their use set out in Article 44(5) and (8) of that Directive;

   (c) for systemically important institutions identified pursuant to Article 5(1), that the conditions provided in Article 5(2) are met.

4. The resolution authority shall identify and quantify any such changes in regulatory capital needs, and consult with the competent authority before applying them. In particular Where the changes referred to in paragraph 3 are dependent on the actions of a purchaser of assets or business lines of the institution under resolution, or of third parties, the resolution authority shall prepare a reasoned explanation to the benefit of the competent authority as to the feasibility and credibility of that change.

5. The recapitalisation amount shall be at least equal to the amount necessary to satisfy applicable capital requirements necessary to comply with the conditions for authorisation after the implementation of the preferred resolution strategy.

6. The capital requirements referred to in paragraph 5 shall include the following:

[4] OJ L........

(a) own funds requirements pursuant to Articles 92 and 458 of Regulation (EU) No 575/2013, which include:

(i) a CET1 capital ratio of 4.5% of the total risk exposure amount;

(ii) a Tier 1 capital ratio of 6% of the total risk exposure amount;

(iii) a total capital ratio of 8% of the total risk exposure amount;

(b) any requirement to hold own funds in excess of these requirements, in particular pursuant to Article 104(1)(a) of Directive 2013/36/EU;

(c) the Basel I floor according to Article 500 of Regulation 575/2013/EU;

(d) any applicable leverage ratio requirement.

7. The recapitalisation amount shall also include any additional amount that the resolution authority considers necessary to maintain sufficient market confidence after resolution.

8. The default additional amount shall be equal to the combined buffer requirement as specified in Chapter 4, Section 1 of Directive 2013/36/EU which would apply to the institution after the application of resolution tools. The additional amount required by the resolution authority may be lower than this default amount, but not less than zero, if the resolution authority determines that a lower amount would be sufficient to sustain market confidence and ensure the continued provision of critical economic functions by the institution and access to funding, without recourse to extraordinary financial support other than contributions from resolution financing arrangements consistently with Article 101(2) and Article 44(5) and (8) of Directive 2014/59/EU. The assessment of the amount necessary to support market confidence shall take into account whether the capital position of the institution after the resolution would be appropriate in comparison with the current capital position of peer institutions. For G-SIIs, the relevant peer group should consist of all G-SIIs established in the Union.

10. The resolution authority may determine, in consultation with the competent authority and taking into account information received from the competent authority relating to the institution’s business model, funding model, and risk profile pursuant to Article 4, that, notwithstanding the provisions of paragraph 3, it would be feasible and credible for all or part of any additional own funds requirement or buffer requirements currently applicable to the entity not to apply after implementation of the resolution strategy. In this case that part of the requirement may be disregarded for the purposes of determining the recapitalisation amount.

11. The assessment referred to in paragraph 7 shall take account of capital resources in other group entities which would credibly and feasibly be available to support market confidence in the entity following resolution, in the case of the following:

(e) Entities which are subsidiaries of a group subject to a consolidated MREL;

(f) Entities which continue to fulfil point (a) following implementation of the preferred resolution strategy;

(g) Entities which would not be expected to maintain market confidence and access to funding on an individual basis following implementation of the preferred resolution strategy.

12. Where the assets, liabilities or business lines of the institution are to be split between more than one entity following implementation of the preferred resolution strategy, references to risk exposure amounts and capital requirements in this Article should be understood as the aggregate amounts across these entities.

Article 3

Exclusions from bail-in or partial transfer which are an impediment to resolvability

1. The resolution authority shall identify any class of liability which is reasonably likely to be fully or partially excluded from bail-in under Article 44(2) or (3) of Directive 2014/59/EU, or transferred to a recipient in full using other resolution tools based on the resolution plan.

2. If any liability which qualifies for inclusion in MREL is identified as being potentially fully or partially excluded pursuant to paragraph 1, the resolution authority shall ensure that the MREL is sufficient for purposes of the loss absorption amount determined pursuant to Article 1 and for achieving the amount of recapitalisation determined pursuant to Article 2 without write down or conversion of those liabilities.

3. The resolution authority shall determine whether liabilities identified in accordance with paragraph 1, rank equally or junior in the insolvency creditor hierarchy to any class of liability which qualifies for inclusion in MREL and whether the amount of liabilities identified totals more than 10% of any one class of liabilities which ranks equally in insolvency.

Where the conditions of the subparagraph above are met, the resolution authority shall assess whether the need to absorb losses and to contribute to the recapitalisation which would be borne by the instruments referred to in the first subparagraph were they not excluded from bail-in, can be satisfied by instruments which qualify for inclusion in MREL, and are not excluded from loss absorption or recapitalisation without breaching the creditor safeguards provided in Article 73 of Directive 2014/59/EU.

4. The resolution authority shall document any assumptions, valuations or other information used to determine that the MREL meets the conditions set out in paragraph 3.

Article 4

Business model, funding model and risk profile

1. For purposes of Article 45(6)(d) of Directive 2014/59/EU, the resolution authority shall take into account information received from the competent authority, as part of the consultation required by Article 45(6) of Directive 2014/59/EU, a summary and explanation of the outcomes of the supervisory review and evaluation process conducted pursuant to Article 97 of Directive 2013/36/EU and taking into account, in accordance with Article 16(3) of Regulation (EU) No 1093/2010, Guidelines for common procedures and methodologies for the supervisory review and evaluation process (SREP) (EBA/GL/2014/13 issued by the EBA pursuant to Article 107(3) of that Directive, and in particular:

   (a) a summary of the assessment of each of the business model, funding model, and overall risk profile of the institution;

   (b) a summary of the assessment of whether capital and liquidity held by an institution ensure sound coverage of the risks posed by the business model, funding model, and overall risk profile of the institution;

   (c) information on how risks and vulnerabilities arising from the business model, funding model, and overall risk profile of the institution identified in the supervisory review and evaluation process are reflected, directly or indirectly, in the additional own fund requirements applied to an institution pursuant to Article 104(1), letter (a), of Directive 2013/36/EU based on the outcomes of the supervisory review and evaluation process;

   (d) information on other prudential requirements applied to an institution to address risks and vulnerabilities arising from the business model, funding model and overall risk profile of the institution identified in the supervisory review and evaluation process.

2. The information referred to in paragraph 1 shall be taken into account by the resolution authority if making any adjustments to the default loss absorption and recapitalisation amounts, as described in Article 1(5) and Article 2(10), in order to ensure that the adjusted MREL, adequately reflects risks affecting resolvability arising from the institution’s business model, funding profile and overall risk profile. Without prejudice to the possibility of adjusting the MREL, the resolution authority shall provide the competent authority with a reasoned explanation of how this information has been taken into account in any such adjustment.

3. In the case of an entity or group which is subject to capital and prudential requirements pursuant to Regulation (EU) No 648/2012 of the European

Parliament and of the Council[5] or Regulation (EU) No 909/2014 of the European Parliament and of the Council[6], only capital requirements pursuant to Regulation (EU) No 575/2013 and Directive 2013/36/EU should be taken into account for assessing the default loss absorption and recapitalisation requirements pursuant to Article 1 and Article 2. The resolution authority may adjust the loss absorption amount to take account of feasible and credible contributions to loss absorption or recapitalisation envisaged by specific sources required by Regulation (EU) No 648/2012 or Regulation (EU) No 909/2014..

4. In the case of entities which are subsidiaries of a group subject to a consolidated MREL, the resolution authority may exclude from its assessment of the loss absorption amount and recapitalisation amount any buffer which is set only on a consolidated basis.

5. Where an authority other than the competent authority has been designated as the responsible authority for setting the countercyclical buffer rate, the resolution authority may request additional information from the designated authority.

Article 5

Size and systemic risk

1. For institutions and groups which have been designated as G-SIIs or O-SIIs by the relevant competent authorities, and for any other institution which the competent authority or the resolution authority considers reasonably likely to pose a systemic risk in case of failure, the resolution authority shall, where appropriate, assess whether the MREL is sufficient to permit the requirements set out in Article 44(5)(a) and 44(8)(a) of Directive 2014/59/EU relating to a contribution to loss absorption and recapitalisation by the resolution financing arrangement would be met.

   For that purpose, consideration shall be given in particular to the requirement that in resolution a minimum contribution to loss absorption and recapitalisation of 8% of total liabilities and own funds, or of 20% of the total risk exposure amount if additional conditions under Article 44(8) of Directive 2014/59/EU are met, is made by shareholders and holders of capital instruments and eligible liabilities at the time of resolution.

2. Resolution authorities may opt not to apply the assessment referred to in paragraph 1 if the resolvability assessment concludes all of the following:

[5] Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, OJ L 201 27.7.2012, p. 1.

[6] Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012, OJ L 257 28.8.2014, p. 1.

(a) there are no impediments to a feasible and credible resolution without a contribution to loss absorption from the resolution financing arrangement;

(b) except in accordance with the principles governing the use of the resolution financing arrangement set out in Article 44 of Directive 2014/59/EU, a contribution from the resolution financing arrangement would not be necessary to avoid a breach of the safeguards provided in Title IV, Chapter VII of Directive 2014/59/EU;

(c) the preferred resolution strategy does not assume that an amount of own funds and liabilities exceeding the MREL requirement would be necessary to absorb losses.

3. Where a joint decision on MREL by the resolution college is required in accordance with Article 45 of Directive 2014/59/EU, for institutions which have been designated as G-SIIs or O-SIIs by the relevant competent authorities, and institutions within them, and for any other institution which the competent authority or the resolution authority considers reasonably likely to pose a systemic risk in case of failure, any downward adjustment to estimate capital requirements after resolution pursuant to Article 2(3) shall only be documented and explained in the information provided to the members of the resolution college.

Article 6

Contributions by the deposit guarantee scheme to the financing of resolution

1. The resolution authority may reduce the MREL to take account of the amount which a deposit guarantee scheme is expected to contribute to the financing of the preferred resolution strategy in accordance with Article 109 of Directive 2014/59/EU.

2. The size of any such reduction sahll be based on a credible assessment of the potential contribution from the deposit guarantee scheme, and shall at least:

(a) be less than a prudent estimate of the potential losses which the deposit guarantee scheme would have had to bear, had the institution been wound up under normal insolvency proceedings, taking into account the priority ranking of the deposit guarantee scheme pursuant to Article 108 of Directive 2014/59/EU;

(b) be less than the limit on deposit guarantee scheme contributions set out in the second subparagraph of Article 109(5) of Directive 2014/59/EU;

(c) take account of the overall risk of exhausting the available financial means of the deposit guarantee scheme due to contributing to multiple bank failures or resolutions;

(d) be consistent with any other relevant provisions in national law and the duties and responsibilities of the authority responsible for the deposit guarantee scheme.

3. The resolution authority shall, after consulting the authority responsible for the deposit guarantee scheme, document its approach as regards the assessment of the overall risk of exhausting the available financial means of the deposit guarantee scheme and apply reductions in accordance with paragraph 1 only if this risk is not excessive.

Article 7

Combined assessment of MREL

1. Resolution authorities shall ensure that MREL is sufficient to allow the write down or conversion of an amount of own funds and qualifying eligible liabilities at least equal to the sum of loss absorption amount and the recapitalisation amount as determined by resolution authorities in accordance with Articles 1 and 2, and to meet the other requirements provided for in Articles 3, 4, 5 and 6 of this Regulation.

2. Resolution authorities shall express the calculated MREL as a percentage of total liabilities and own funds of the institution, with derivative liabilities included in the total liabilities on the basis that full recognition is given to counterparty netting rights.

3. Resolution authorities shall establish a schedule or process for updating the MREL, taking into account:

(a) the need to update the MREL in parallel with the assessment of resolvability;

(b) whether the volatility of the entity or group’s total liabilities and own funds as a result of its business model would be likely to result in the MREL no longer being appropriate at an earlier date.

Article 8

Transitional and post-resolution arrangements

1. By way of derogation from Article 7, resolution authorities may determine a lower level of MREL to enable an appropriate transitional period or for an institution or entity to which resolution tools have been applied.

2. For the purposes of paragraph 1, resolution authorities shall determine an appropriate transitional period which shall cover a reasonable time period and in any case be not longer than 48 months. They shall also communicate to the

institution a planned MREL for each 12 month period during the transitional period. At the end of the transitional period, the final MREL shall be equal to the amount determined under Article 7. That shall not prevent resolution authorities from subsequently revising either the transitional period or any planned MREL.

Article 9

Entry into Force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission
The President

For the Commission
On behalf of the President
[Position]

4. Accompanying documents

4.1 Draft cost–benefit analysis/impact assessment

Introduction

Article 45(2) of Directive 2014/59/EU mandates the EBA to develop draft RTS to specify further the criteria which resolution authorities are expected to apply when setting the MREL.

Article 10(1) of the EBA Regulation provides that when any regulatory technical standards developed by the EBA are submitted to the Commission for adoption, they should be accompanied by an analysis of 'the potential related costs and benefits'. This analysis should provide an overview of the findings regarding the problem to be dealt with, the solutions proposed and the potential impact of these optionsThis annex presents the assessment of the policy options considered in this RTS.

Note that the EBA undertook a specific data collection to permit a detailed assessment of the possible quantitative impact of MREL on EU institution and to support the report on MREL which the EBA is mandated to produce by October 2016. However,, due to data availability, only preliminary analyses are included in the present impact assessment. Further detailed results will be published by the EBA in due course.

Policy background and problem identification

As described in the main body of the consultation paper, Directive 2014/59/EU (the BRRD) provides a framework of resolution powers that is intended to make sure that institutions themselves, along with their shareholders, creditors and other stakeholders, bear the costs of bank failure. But, in the interests of preserving financial stability and the continuity of the critical economic functions of institutions, certain types of liability are excluded from the scope of application of the bail-in tool or are otherwise protected from absorbing losses in resolution. This creates a potential incentive for institutions to seek to raise a greater proportion of their funding from these classes of liabilities. To guard against this, the BRRD requires institutions to maintain at all times an MREL which a) is within the scope of the bail-in tool, and b) meets certain other criteria specified in Article 48.

This MREL must be set by resolution authorities on a case-by-case basis. The case-by-case assessment allows for the MREL to take account of the specific features of each institution, but to ensure a sufficient degree of harmonisation across the Union the BRRD requires resolution authorities to set the MREL on the basis of six common criteria, and for these criteria to be further specified in technical standards developed by the EBA. This draft impact assessment therefore does not seek to assess the impact of introducing an MREL requirement, as this has already been done in the BRRD. Instead it seeks to identify the marginal impact of different approaches which could be taken to developing these technical standards.

Baseline

There are two major challenges in establishing a baseline for assessing the impact of these technical standards, which arise because the requirement to set an MREL is a new requirement introduced by the BRRD. Member States do not currently set similar requirements and so a) do not systematically collect data on the amount of outstanding liabilities which satisfy the criteria for inclusion in MREL, and b) have no established practices for setting requirements against which to compare the impact of the RTS.

Objectives

The general objective of these technical standards is to ensure that the MREL provisions of the BRRD operate effectively to ensure that institutions can be resolved in a way that meets the resolution objectives.

The specific objectives of the RTS are to:

1. Enable similar MREL requirements to be set for institutions with similar risk profiles, resolvability, and other characteristics regardless of their domicile. ;

2. Provide sufficient scope to take into account the specific characteristics of different institutions, and in particular to ensure that the principle of proportionality is respected;

As far as is consistent with the aims and text of the BRRD, not create additional obstacles to resolution authorities setting requirements for G-SIIs which are consistent with the FSB's TLAC proposalsPolicy options

Determination of loss absorption and recapitalisation amounts, and assessment of risk profile, funding profile and business model

While drafting the RTS, the EBA considered several policy options under three specific subject matters

1. **Relationship between resolution authority and competent authority assessments**

Option 1 This would require the resolution authority to perform an independent assessment to determine a) the required degree of loss absorption; b) the business model, funding and risk profile of the resolved entity.

Option 2 This would require the resolution authority to take the supervisory authorities' assessments, as expressed in a) capital requirements as a measure of required loss absorbency and b) supervisory review assessments as regards business model, risk profile, and funding model as a starting point, and provides a reasoned explanation of any departures from these.

2. **Extent of recapitalisation needed to maintain sufficient market confidence**

Option 1: The level of CET1 capital after resolution would be benchmarked to the CET1 levels of peer institutions.

Option 2: The level of CET1 capital after resolution should be at least sufficient to meet anticipated capital buffer requirements, after allowing for any estimated reductions in capital requirements due to the resolution.

Option 3: The level of CET1 capital after resolution should be at least sufficient to meet anticipated capital buffer requirements, after allowing for any estimated reductions in capital requirements due to the resolution *and* the post-resolution business reorganisation.

3. **Assessment of impact of exclusions from loss/recapitalisation MREL**

Option 1: The RTS would develop a formula or formulas for assessing the impact of exclusions on MREL.

Option 2: The RTS would describe principle for identifying the impact of exclusions on MREL.

Area	Policy options	Pros	Cons
1. **Relationship between resolution authority and competent authority assessments**	Option 1: Independent assessment to be performed by the resolution authority	• Enables resolution authority to consider factors other than capital requirements (e.g. historical loss experience) • Permits full independence of resolution authority judgement	• Increases potential for conflict and possible regulatory arbitrage between supervisor and resolution authority • Unclear how to constrain this discretion other than by replicating supervisory standards

			• Resource cost of maintaining capacity to perform analysis
	Option 2: Competent authority assessment as default	• Promotes coherence between supervisory and resolution authority assessments • Optional for resolution authority to maintain additional analytical capacity • Consultation with competent authority required by level 1 • Provides framework for discussion between competent and resolution authorities	• Requires good communication between competent and resolution authorities • 'Soft' limit on independence of resolution authority judgement

Preferred option: Option 2 is preferred to Option 1, provided that Option 2 is implemented in a way which is consistent with the BRRD provision for resolution authorities to retain the final say on setting of the MREL.

Area	Policy options	Pros	Cons
1. Extent of recapitalisation to maintain sufficient market confidence	Option 1 : CET1 capital after resolution should be benchmarked to the CET1 levels of peer institutions	• Easy to implement (data would be directly available through the peer review) • Simple and straightforward approach that would ensure maximum transparency	• Static approach (does not take into account the outcome of the resolution or banks' specific developments) • Not tailored and does not consider banks' specific risks

		• Crisis experience indicates that confidence does depend on peer comparisons • No additional cost	
	Option 2: CET1 capital after resolution should be at least sufficient to meet anticipated capital buffer requirements, after allowing for any estimated reductions in capital requirements due to the resolution	• More forward-looking approach than Option 1, as it would consider the up-to-date situation of the institution when determining capital needed	• More costly and time consuming than Option 1, as it would require the competent authority or resolution authority to perform a specific assessment of a bank's capital need after resolution
	Option 3: CET1 capital after resolution should be at least sufficient to meet anticipated capital buffer requirements, after allowing for any estimated reductions in capital requirements due to the resolution *and* the post-resolution business reorganisation	• Enable an accurate and comprehensive assessment of capital need	• More complex and time consuming as it adds a new ladder for determining the level of CET1 capital • Reductions in capital requirements due to business reorganisation are less certain and take longer to implement, whereas market confidence is needed from day 1 to enable a prompt return to private

			sector financing

Preferred option: Option 2 is preferred to Option 3, given the importance as a policy objective of the BRRD of ensuring that banks do not need to rely on public sector financial support during or after resolution. G-SIIs tend to rely on market financing to a greater extent and to be subject to a greater degree of market scrutiny and comparison with peers; therefore Option 1 is included in parallel for these firms.

Impact of exclusions and calibration

Objectives and data source

This section aims at analyzing the impact of exclusion of liabilities and calibration of MREL on the EU banks' distance to compliance. The analysis is based on EBA QIS data as at end 2014. The sample (number of participating banks) is made of 64 banks (including 14 G-SIBs) across 13 EU Member States Due to data availability, only preliminary analyses are included in the present assessment. Further detailed results will be published by the EBA in due course. Analysis based on this data can be compared with the analysis based on public financial statements published in the draft impact assessment which accompanied the consultation paper on these technical standards[7].

Estimation of MREL ratio

Resolution authority assessments of whether instruments will be excluded from contributing to loss absorption or recapitalisation in resolution are likely to have a significant effect on the MREL set for different institutions. As resolvability assessments have not yet been conducted for most EU banks, it is not possible to analyze them. However, the EBA's draft technical standards on the content of resolution plans and the assessment of resolvability[8] identify a number of factors which resolution authorities should consider in assessing the risk of such exclusions. These factors include maturity, subordination ranking, identity of the holders of liabilities, legal impediments such as the existence of set-off rights, and other factors (such as risk of needing to compensate creditors for breaches of safeguards of property rights, or their role in performing critical functions).

As a result of these factors, the instruments least likely to be excluded from loss absorption or recapitalisation are equity, own funds instruments, and other subordinated debt. Based on preliminary results of the EBA QIS on MREL these instruments account for around 6% of total liabilities and own funds of the EU banks as of end-December 2014.

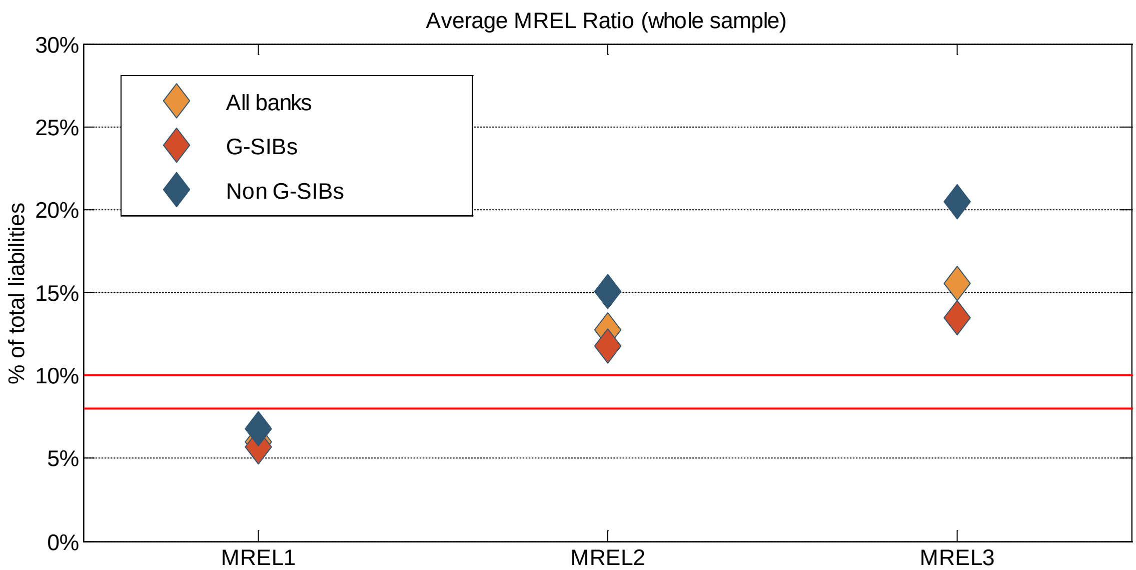
[7] https://www.eba.europa.eu/regulation-and-policy/recovery-and-resolution/regulatory-technical-standards-on-minimum-requirement-for-own-funds-and-eligible-liabilities-mrel-/-/regulatory-activity/consultation-paper
[8] https://www.eba.europa.eu/regulation-and-policy/recovery-and-resolution/regulatory-technical-standards-on-resolution-planning

Other instruments which meet the criteria of Article 45(4) of the BRRD count towards the MREL but are, to varying degrees, at a greater risk of exclusion. Senior unsecured bonds with a residual maturity of more than 1 year could be excluded from loss absorption or recapitalisation if holders would have made high recoveries in insolvency (for instance, because they rank pari passu to a large amount of liabilities which are not exposed to loss in resolution, or because their holders benefit from set-off rights against the institution). The estimated share of senior unsecured debt in the total liabilities and own fund of EU banks is approximately 6.8% at end-December 2014. This is the largest component of MREL qualifying liabilities, and resolution authority assessments of whether or not these liabilities are likely to be excluded from loss absorption or recapitalisation will therefore be a critical input into setting the MREL.

Lastly, senior unsecured instruments other than bonds, in particular uncovered deposits with residual maturity of more than one year, may also qualify for inclusion in MREL. Such instruments may be excluded from loss absorption or recapitalisation for the same reasons as senior unsecured bonds. They may in addition be excluded if the resolution authority concludes that they are essential to the provision of critical functions. This type of instruments only account for 2.8% of EU banks's total liabilities and own fund.

As a result, on average, eligible liabilities (MREL ratios) range from 6% to 16%. That implies that subordinated debt and equity represent roughly 6% of total liabilities of the QIS MREL aggregated sample and that the inclusion of unsecured senior debt above 1 year and of the uncovered deposits above 1 year increases this share to 16%.

Figure 1: Average MREL ratio



MREL 1: Regulatory capital + total unsecured subordinated debt > 1 year
MREL 2: MREL 1+ total senior unsecured debt > 1 year
MREL 3: MREL 2 + uncovered deposits > 1 year

Source: EBA QIS data (December 2014)

The most important part of the resolution authority's assessment of the risk of exclusions is the identification of senior unsecured debt which may be excluded from bail-in. This may be especially likely for certain types of liabilities issued by operating entities of banking groups, if bailing these in increases the risk that critical functions provided by the operating entity would be interrupted.

Estimation of MREL shortfall

The actual MREL requirements will be set by resolution authorities taking into account resolution strategies and other factors that may affect loss absorption amounts and recapitalisation needed after resolution. However, for illustrative purposes, using the same dataset as above shortfalls to two illustrative benchmark levels of MREL can be estimated:

Table 1: Benchmarks levels of MREL

Scenario A	MREL threshold equal to double the minimum capital requirement including buffers (8% minimum total capital requirement + 2.5% capital conservation buffer + G-SII buffers where relevant).
Scenario B	MREL threshold at 8 % of total liabilities and equity.

If resolution authorities assessed that all senior unsecured debt with maturities greater than 1 year and uncovered deposits greater than 1 year were feasibly and credibly loss-absorbing (MREL 3):

- under scenario A only 14 banks would have a shortfall, totaling €44bn;
- under scenario B only 7 banks would, totaling €13bn.

However, if resolution authorities assessed that only equity and subordinated debt could be feasibly and credibly loss-absorbing (MREL1):

- under scenario A, 52 of the banks in the sample would have a shortfall to their MREL, totaling €674bn.
- under scenario B, 47 banks would have a shortfall, totaling €510bn.

Table 2: Aggregate MREL shortfall (billion euros) as of December 14

	Scenario A (2* CR)			Scenario B (8% tot. liabilities and own funds)		
	Amount	% of assets whole sample	% of assets non-compliant banks	Amount	% of assets whole sample	% of assets non-compliant banks
MREL 1: Equity & sub debt only	674	2.8%	3.0%	510	2.1%	2.3%
MREL 3: MREL 1 + senior unsecured debt with residual maturity > 1 year + uncovered deposits > 1 year	44	0.2%	1.4%	13	0.1%	2.2%

** Total banking assets of the whole sample*

Source: EBA QIS data (December 2014)

For comparison, the impact assessment which accompanied the consultation paper displayed results globally in line with the findings of the QIS data analysis (see Table 3). The analysis was based on public financial statements as of December 2013 and covered 128 EU banks.

Table 3: Aggregate MREL shortfall (billion euros) as of December 13

	Scenario A (2* CR)		Scenario B (8% tot. liabilities and own funds)	
	Amount	% of assets whole sample	Amount	% of assets whole sample
MREL 1: Equity & sub debt only	332	0.98	464	1.37
MREL 2[9]: MREL 1 + senior unsecured debt with residual maturity > 1 year	36	0.11	12	0.04

Source: SNL Financial

[9] note that MREL 2 is used rather than MREL 3 as high quality estimates of uncovered deposits are difficult to construct using public data

4.2 Views of the Banking Stakeholder Group (BSG)

The BSG broadly supported the overall approach of the technical standards, but made a number of observations on specific issues.

The BSG considers that the 8% burden-sharing precondition for some uses of resolution funds is a cornerstone of the EU resolution regime and should be a reference for setting the MREL. This could indeed be extended from systemic institutions, as proposed in the draft text, to all institutions.

The BSG also noted that resolved entities may face different pillar 2 capital requirements, as a result of restructuring and management change in the resolution process, and could not realistically expect to recover market access immediately following resolution.

4.3 Feedback on the public consultation

The EBA publicly consulted on the draft technical standards.

The consultation period lasted for 3 months and ended on 6 February 2015. X responses were received, of which Y were published on the EBA website.

This paper presents a summary of the key points and other comments arising from the consultation and the analysis and discussion triggered by these comments and the actions taken to address them if deemed necessary.

In many cases, several industry bodies made similar comments, or the same body repeated its comments in its response to different questions. In such cases, the comments and the EBA's analysis are included in the section of this paper where the EBA considers them most appropriate.

Changes to the draft technical standards have been incorporated as a result of the responses received during the public consultation.

Summary of key issues and the EBA's response

1. Calibrating the loss absorption and recapitalisation amounts

Many comments, especially those from industry, argued that one or more of the elements mentioned in the draft RTS should not be taken into account when assessing the capital criterion, although there was little consensus over exactly what changes should be introduced. One NGO response argued that the MREL needed to be calibrated to a high level and not be risk sensitive. The BSG highlighted the importance of the 8% backstop and suggested that it play a reference role for all institutions, not only systemic ones. Many respondents and the BSG also noted that pillar 2 and, in some cases, buffer capital requirements may not be applied in the same way following resolution, and/or that they were applied for reasons such as to disincentivise the build-up of systemic risk, rather than to ensure that losses could be absorbed.

The EBA has made a number of amendments to the text on the loss absorption and recapitalisation amounts (Articles 1 and 2) in order to reflect these comments (see detailed description in the summary table below). The revised draft also includes some drafting changes to Article 6, paragraph 2, to clarify the circumstances in which resolution authorities do not need to take account of the BRRD burden-sharing precondition for use of resolution funds.

2. Peer groups

Many industry comments opposed any reference to peer groups, or suggested differentiating between G-SIIs. Some argued that, if retained, it should be expanded to non-G-SIIs.

The revised draft RTS replace the requirement to compare the recapitalisation amount for G-SIIs with the median CET1 capital ratio of other G-SIIs with a general requirement to carry out an assessment of whether the capital position following resolution would be appropriate relative to the current capital position of peer institutions. Peers are to be defined by the resolution authority, except in the case of G-SIIs whose peer group should consist of all EU G-SIIs.

3. DGS contributions

A number of comments suggested that the RTS should give greater scope to taking account of DGS contributions to resolution. This would in particular be likely to affect the MREL for banks with a large proportion of insured deposits. The revised draft includes a significant redraft of Article 3:

- It states that the MREL may be reduced to take account of the amount of any DGS contribution, without the restriction in the consultation draft to institutions whose resolution plan is for liquidation.

- It is less specific about the calculation of this contribution, but notes that it must be less than a prudent estimate of the limits on contributions imposed by the BRRD – i.e. that it must be less than the losses the DGS would have to bear in an insolvency, and must also be less than 50% of the target level of the DGS fund (unless the national authorities have set an alternative percentage). The calculation should take account of the overall risk of exhausting the DGS fund (as a result of multiple bank failures). It notes that the resolution authority should consult with the DGS authority on its approach for making these assessments.

4. Groups

Many respondents asked for a more detailed explanation of how:

- An entity-level MREL should be set for single point of entry vs multiple point of entry groups (in particular, suggesting that there should be different treatment of 'resolution entities' and other entities).
- Capital requirements set only at the consolidated level (e.g. G-SII buffers, some pillar 2 requirements) would affect entity-level MREL requirements.

The revised draft changes to address these points are:

a) Making explicit that capital requirements set only at consolidated level need not be taken into account for the MREL assessment for subsidiaries (Article 6, paragraph 6);

b) That the recapitalisation amount for subsidiaries may take account of the fact that being a member of a group provides market confidence (providing the group meets its consolidated MREL) (Article 3, paragraph 9).

5. Centralcounterparties and Financial Market Infrastructures

A number of responses from CCPs, CSDs and trade associations emphasised a number of problems they would have in meeting MREL requirements, for FMIs which also have banking authorisations. In particular:

- The lack of eligible instruments in their current balance sheet structures.
- The volatility of their balance sheets means that a requirement set in terms of total assets would also be highly volatile.
- That the existing loss allocation waterfall, including default funds and members' contributions, should address concerns about FMI survival.

The EBA has proposed drafting changes to address these issues, noting:

- That for entities subject to capital and prudential requirements pursuant to EMIR or the CSD Regulation, only CRR capital requirements should be considered when setting the MREL, and feasible and credible contributions to loss absorption or recapitalisation from these sources should be taken into account;
- That resolution authorities may agree to update the MREL requirement more frequently for institutions whose business models imply volatile balance sheets.

6. Consultation with supervisors

Article 5 has been revised to clarify that the purpose of information exchange with supervisors is to allow the resolution authority to satisfy itself that it has discharged its duty to consider the business model, funding model and risk profile.

7. Exclusion threshold

A number of respondents proposed raising the *de minimis* threshold below which the RTS do not require an assessment of whether exclusions from bail-in would result in a breach of the no creditor worse off (NCWO) safeguard. The EBA felt that this was not necessary, but has clarified further that this threshold implies only an assessment by the resolution authority, not an automatic adjustment to the MREL.

Summary of responses to the consultation and the EBA's analysis

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
General comments			
Overall approach and flexibility	A number of respondents sought greater clarity in the RTS about what the MREL numerical requirements would be One trade association respondent thought that the MREL should not be set in a two-step process (loss absorption and recapitalisation) amounts but through a 'holistic' assessment Industry respondents made a range of arguments in favour of changes to the criteria which would result in a lower calibration of the MREL (see below for details) The BSG emphasised the importance of transparency, given the degree of discretion embedded in the MREL approach, and that the definition of netting in the MREL denominator could usefully be clarified	The EBA agrees that greater clarity on which elements of the capital requirements should be considered when setting the loss absorption and recapitalisation amounts would be helpful, but considers that retaining the distinction between these two components remains helpful in establishing a link between the regulatory capital and MREL frameworks. The definition of netting to be used in the MREL denominator is outside the scope of these technical standards.	Redraft of Articles 1 and 2 (Articles 2 and 3 in consultation draft) to clarify which elements of capital requirements should be taken into account
Relationship with TLAC	Many industry respondents stressed that the MREL needed to be compatible with TLAC in scope and consistent in timing (which some felt required a longer transition period). Some respondents thought that the RTS would result in MREL requirements being higher than the proposed TLAC requirements (although these did not consider the pillar 2 element of TLAC) One respondent thought that some aspects – and especially greater harmonisation – should be left until after finalisation of the TLAC proposal, and so addressed	The EBA agrees that the technical standards should aim not to create additional obstacles to applying the proposed TLAC framework to European G-SIBs. However, achieving full harmonisation, for example on the treatment of capital buffers, would go beyond the scope of these technical standards and would in any case need to await finalisation of the FSB's TLAC proposal. The revised text on the relationship with pillar 2 and buffer requirements should allow resolution authorities scope to improve the alignment with the	None (but see below on relationship with pillar 2 capital and buffer requirements)

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	only in the 2016 review	proposed TLAC requirements.	
Relationship with pillar 2 capital requirements	Many industry respondents stressed the differences in application of pillar 2 capital requirements across the EU, and that using pillar 2 as a reference point in setting the MREL would amplify these Some respondents argued that pillar 2 should only be considered to the extent that it reflects expected loss	The EBA agrees that these technical standards should aim not to amplify the effects of differences in application of pillar 2 capital requirements. The draft text on the loss absorption and recapitalisation amounts has therefore been amended to clarify that resolution authorities do not need to take into account elements of the pillar 2 requirements which are not closely related to the purposes of the MREL	See Article 1, paragraph 5, and Article 2, paragraphs 8 and 10
Relationship with capital buffer requirements	There were a range of specific suggestions from industry to exclude elements of the capital buffers as reference points: • Some argued that meeting minimum capital requirements immediately after resolution would be sufficient • Some argued that capital buffers higher than pre-crisis would ensure that banks had positive capital remaining at the point of resolution • Some argued that only institution-specific buffers should be relevant, and not, for example, systemic risk buffers	The draft text on the loss absorption and recapitalisation amounts has been amended to clarify that resolution authorities do not need to take into account elements of the capital buffer requirements which are not closely related to the purposes of the MREL	See Article 1, paragraph 5, and Article 2, paragraph 10
Relationship with leverage ratio	Many industry respondents did not support reference to the leverage ratio, citing two arguments: • It would only be relevant after the leverage ratio is implemented as a binding requirement • It would be unfair to 'low-risk' banks	The EBA agrees that the draft text should clarify that the leverage ratio should only be a reference point for setting the MREL once it becomes part of the applicable regulatory capital framework.	See Article 1, paragraph 2, letter e), and Article 2, paragraph 6, letter d).

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	NGO respondents, however, felt that the leverage ratio was the most important reference point, as they did not have confidence in risk-weighted capital requirements		
Institutions with specific business models: FMI	A number of responses from CCPs, CSDs and trade associations emphasised a number of problems they would have in meeting the MREL requirements, in particular: • The lack of eligible instruments in their current balance sheet structures • The volatility of their balance sheets meant that a requirement set in terms of total assets would also be highly volatile These responses also emphasised that the existing loss allocation waterfall, including default funds and members' contributions, should address concerns about the survival of FMIs	The EBA agrees that resolution authorities should take into account the specific business model features and additional regulatory requirements relevant for FMIs. As the Commission is currently preparing a legislative proposal on the resolution of FMIs, the EBA does not propose to provide detailed standards on how this should be taken into account, but has revised the draft text to make clear that the calibration and timing of setting the MREL for FMIs may take these features into account.	See Article 5, paragraph 3, and Article 7, paragraph 3
Institutions with specific business models: wholly deposit-funded banks	A number of comments concerned the ability of wholly deposit-funded banks to issue eligible instruments, in particular in national banking sectors which were mainly deposit funded	The EBA notes that all institutions within the scope of the BRRD need to meet the requirement to be resolvable, regardless of their funding model. The draft technical standards enable resolution authorities to set lower levels of the MREL for more resolvable banks, and in particular for those which can be liquidated under normal insolvency procedures, which is expected to be the case for many smaller deposit-funded banks. In the consultation paper, the draft technical standards restricted the scope for taking account of the possibility of DGS contributions to the cost of resolution to cases where liquidation was expected.	See revised text of Article 3

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		The EBA has reviewed this text to reflect that such contributions can also be made in other resolution cases. However, adjustments to the MREL for this reason should take into consideration both the strict limits on DGS contributions provided by the level 1 text and the overall risk to the DGS.	
Impact assessment			
Responses to questions in Consultation Paper EBA/CP/2014/25			
1. The draft text describes comprehensively capital requirements under the CRR/CRD IV framework, which includes minimum CET1, AT1 and total capital requirements, capital buffers required by CRD IV, pillar 2 capital requirements set on a case-by-case basis, and alternative backstop capital measures. The EBA is seeking comments on whether all elements of these capital requirements should be considered in the	Most respondents considered that the loss absorption amount should be limited to the minimum regulatory capital. Some respondents felt that inclusion of buffers would embed national discrepancies in the capital framework.	See above	See above

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
assessment of the loss absorption amount. Do you consider that any of these components of the overall capital requirement (other than the minimum CET1 requirement) are not appropriate indicators of loss in resolution, and, if so, why?			
2. Should the resolution authority be allowed to adjust downwards? What are the specific circumstances under which resolution authorities should allow a smaller need to be able to absorb losses before entry into resolution and in the resolution process than indicated by the capital requirements?	There was widespread industry support for the ability to adjust the loss absorption amount. But other respondents proposed that adjustments should only enable increases. Some respondents felt that Article 2(4) might lead to the resolution authority acting as a shadow supervisor.	See above	See above
3. Should any additional benchmarks be used	Some respondents suggested that historical loss analysis and stress testing results could be considered. Other	See above	See above

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to assess the necessary degree of loss absorbency? If yes, how should these be defined and how should they be used in combination with the capital requirements benchmark? Should such benchmarks also allow for a decrease of the loss absorption amount compared with the institution's capital requirements?	respondents felt there was no need for further benchmarks.		
4. Do you consider that any of these components of the overall capital requirement are not appropriate indicators of the capital required after resolution, and, if so, why?	Most respondents considered that the recapitalisation amount should be limited to the minimum regulatory capital. There was support for the recapitalisation amount to be linked to the preferred resolution strategy. Some industry respondents suggested that varying amounts of capital and bail-in-able debt would remain post resolution. Several respondents questioned whether some buffers would be appropriate post resolution.	See above	See above
5. Is it appropriate to have a single peer group of G-SIIs, or should this be subdivided by the	Many industry respondents were concerned about the use of a G-SIB peer group. Some noted that the MREL could spiral upwards if compared with peers. Some respondents were concerned that big differences in G-SIBs balance sheets and business models would call for	The EBA agrees that the diversity of business models and risk profiles within any peer group may mean that it is not appropriate to compare all members' capital levels with the median of the group. The draft text has been amended to instead require an	Revised text in Article 2 (previously Article 3), paragraph 9

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level of the G-SII capital buffer? Should the peer group approach be extended to O-SIIs, at the option of resolution authorities? If yes, would the appropriate peer group be the group of O-SIIs established in the same jurisdiction? Should the peer group approach be further extended to other types of institution?	different recapitalisation requirements and supported a peer group approach defined by comparable G-SIBs in distinct sub-groups. A minority of respondents supported a form of peer review; either comparing with all G-SIBs or a subset based on similar characteristics. Some stated that a case-by-case approach based on business model and funding may be appropriate. Some respondents argued that CET1 may not be the best proxy for market confidence. Many respondents doubted whether such an approach would work well for O-SIIs given the diversity of O-SIIs and their business models and the small numbers of O-SIIs in particular jurisdictions.	assessment of whether capital levels following resolution would be appropriate in comparison with peers. For G-SIIs, the set of European G-SIIs has been retained as the appropriate peer group, as further subdivisions of this group would result in a number of very small peer groups.	
6. The approach outlined in Articles 2 and 3 will reflect differences between consolidated and subsidiary capital requirements. Are there additional ways in which specific features of subsidiaries within a banking group should be reflected?	Many respondents asked for more detailed explanation of how: • An entity-level MREL should be set for single point of entry vs multiple point of entry groups (in particular, suggesting that there should be different treatment of 'resolution entities' and other entities) • Capital requirements set only at the consolidated level (e.g. G-SII buffers) would affect entity-level MREL requirements	The EBA agrees that it would be helpful to make explicit that capital requirements set only at the consolidated level need not be taken into account for the MREL assessment for subsidiaries The EBA also considers that the recapitalisation amount for subsidiaries may take account of the fact that being a member of a group provides market confidence (providing that the group meets its consolidated MREL) The circumstances under which MREL requirements may be waived for individual entities are described in the level 1 text and are beyond the scope of these	See Article 5, paragraph 4 See Article 2, paragraph 11

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	One respondent added that large exposure, intragroup capital and leverage ratio benchmarks should not apply to the intragroup MREL One respondent argued that for single point of entry (SPE) firms with a HoldCo, the MREL should be set on a group-consolidated basis. Firms should be able to waive the MREL for subs if covered by the group (or meet a lower MREL). One respondent stated that intragroup capital requirements, large exposure rules and leverage ratio should not apply to the MREL One respondent stated that there should be no consolidated requirement for a group with a multiple point of entry (MPE) resolution strategy for TLAC consistency One respondent stated that it is up to the resolution authority to take into account the group aspect for the purpose of the MREL. Others argued that it is not clear how a group MREL will be set, but it may need to be clarified in the RTS.	technical standards.	
7. Do you agree that there should be a *de minimis* derogation from this provision for excluded liabilities which account for less than 10% of a given insolvency class?	There was support for the threshold and, from some respondents, for a further increase Some respondents argued that the Impact Assessment doesn't provide enough justification for the *de minimis* derogation, or asked for further justification of the 10% level. Some respondents proposed a NCWO analysis should set the limit. Some respondents sought clarification that the *de minimis* should not affect NCWO.	The EBA notes that, where excluded liabilities exceed the proposed threshold, resolution authorities are only required to assess whether there is a risk of a breach of the No Creditor Worse Off safeguard. There is no automatic impact on the level of the MREL. Accordingly, the EBA considers that a conservative level of this threshold is appropriate. The threshold does not affect the safeguards for creditors and shareholders provided by the level 1	None

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		text.	
8. Do you agree that resolution authorities should seek to ensure that systemic institutions have sufficient MREL to make it possible to access resolution funds for the full range of financing purposes specified in the BRRD?	Many respondents agreed with the need to ensure sufficient MREL in systemic institutions, particularly from the authorities and industry trade bodies. There was concern from some respondents about 'hard wiring' the 8% requirement. In contrast, the EBA BSG emphasised that this burden-sharing requirement is a central pillar of the BRRD framework that needed to be reflected in the MREL, not only for systemic banks Some respondents noted that not including losses before resolution in the 8% threshold may act as an 'adverse incentive' for the resolution authority to intervene.	The EBA's view is that resolution authorities should consider the burden-sharing preconditions for use of the resolution fund established by the level 1 text when setting the MREL. The EBA notes that Article 6 of the draft standards clarifies that this is an assessment by the resolution authority, rather than an absolute test. Some clarifications to the text of this article have been introduced	See Article 6
9. Is this limit on the transition period appropriate?	There was some support for a longer transition period (6 years suggested)	The EBA considers that no strong evidence that the proposed transition period is inappropriate has been provided. The EBA will consider this issue again as part of its report on the MREL in 2016.	None
10. Should the resolution authority also set a transitional period for the MREL of banks which are undergoing or have undergone a resolution process?	There was strong support for a transition period after resolution (either 2 years or 4 years most commonly suggested)	The EBA agrees that this is necessary to enable the MREL to be rebuilt following a resolution	See Article 8, paragraph 1
11. Overall, do you consider that the draft RTS strike the appropriate balance	See above	See above	See above

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between the need to adapt the MREL to the circumstances of individual institutions and promoting consistency in the setting of adequate levels of MREL across resolution authorities?			
12. Are there additional issues, not identified in this section, which should be considered in the final impact assessment?	There was widespread support for a robust quantitative impact assessment which should include impact on the local markets and funding differences.	The EBA has, following the consultation period, gathered additional data from a sample of banks to cross-check the conclusions of the impact assessment based on public data. These results are broadly consistent with the impact assessment based on public data and are summarised in the impact assessment section. The EBA expects to publish more detailed analysis of these data, including further breakdowns by business model, at a future date, as well as to consider these issues further in its report on the MREL in 2016.	