



Published on 22 03 2021

COMMUNICATION ON SRB APPROACH TO ELIGIBILITY OF UK LAW INSTRUMENTS WITHOUT BAIL-IN CLAUSES AFTER BREXIT

The Single Resolution Board (SRB) will consider liabilities governed by UK law without a contractual bail-in recognition clause as eligible for minimum requirement for own funds and liabilities (MREL), if they were issued on or before 15 November 2018. This exemption shall apply until 28 June 2025.

MREL is the minimum amount of equity and eligible debt a bank must maintain to support an effective resolution. These liabilities need to be susceptible to bail-in in the event of a bank resolution action, in order to minimise the impact on public funds. Liabilities governed by third-country law must include a contractual bail-in recognition clause. Following the introduction of the Banking Package, third country liabilities not including such clause are automatically not eligible for MREL. This mandatory condition applies to all liabilities, including AT1 and T2 instruments.

The European Union (EU) law ensuring automatic application of SRB resolution actions in all EU Member States ceased to apply to the UK on 31 December 2020, following the end of the transition period under the Brexit Withdrawal Agreement. As a result, liabilities governed by UK law are subject to the same rules as those governed by other third-country laws.

The SRB will consider liabilities governed by UK law without a contractual bail-in recognition clause as eligible for MREL, if they: (i) otherwise satisfy applicable MREL criteria; and (ii) were issued on or before 15 November 2018, when the SRB published its resolvability expectations for banks in the context of Brexit and noted the potential consequences of Brexit for banks' existing stock of UK law governed MREL instruments. This exemption shall apply until 28 June 2025, to ensure alignment with the prudential grandfathering of the requirement to introduce contractual recognition clauses in own funds instruments provided for in Article 494b CRR.

The above approach would ensure a smooth transition and would avoid any disproportionate effects on the banks, while still serving the overarching goal of achieving the resolvability of banks and ensuring that they maintain adequate levels of loss-absorbing liabilities. Any liability governed by UK law issued or materially amended after 15 November 2018 must include a contractual bail-in recognition clause to be eligible for MREL.

The volume of the concerned instruments will gradually decrease over time as they reach their respective maturity dates. The SRB will of course continue to monitor the resolvability of banks whose liabilities include such instruments and may review the considerations expressed in this communication if changing circumstances affect the resolvability of those banks.