Minimum Requirement for Own Funds and Eligible Liabilities (MREL)

SRB Policy for 2017 and Next Steps

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Background: This document serves as a reference for the determination of SRB decisions on MREL as part of the 2017 resolution planning cycle. It replaces the MREL approach for 2016 previously published by the SRB.

Disclaimer: The SRB MREL policy is subject to further revisions, including due to changes in the applicable European Union (EU) legislation. This public document aims at making the public in general, and institutions in particular aware of the SRB MREL policy as well as the process currently being followed to determine MREL targets in the SRB 2017 resolution planning cycle. The SRB MREL policy represents a common approach to ensure consistency and level playing field within the Banking Union, and it takes into account where necessary any bank-specific features. The SRB may deviate from the content of this document if it considers it necessary and in the line with bank-specific features and the applicable legislative framework.

EXECUTIVE SUMMARY

Progress towards MREL binding targets

1 The Single Resolution Board (SRB), together with the Banking Union national resolution authorities (NRAs) is publishing its second policy statement on the minimum requirement for own funds and eligible liabilities (MREL), which will serve as a basis for setting binding MREL targets for banks under the remit of the SRB. It follows the publication in February 2017 of the preliminary MREL approach used in 2016, which consisted of informative targets. The SRB MREL policy reflects the progress made throughout the year on the development of a tailored MREL policy.

2 MREL represents one of the key tools to improve banks' resolvability, allowing resolution authorities to maintain critical functions and restore a bank's capital position after resolution. MREL corresponds to the minimum amount of loss-absorbing capacity that is also covered by the international standard of total loss absorbing capacity (TLAC) developed by the Financial Stability Board (FSB). It was enacted in the Bank Recovery and Resolution Directive (BRRD) in May 2014, for all banks, and the SRB is committed to implementing and enforcing the applicable legal framework, including setting MREL targets for the banking groups under its remit.

3 For the 2017 resolution planning cycle, the SRB is moving from informative targets and will set bank-specific binding consolidated MREL targets under Single or Multiple point-of-entry (SPE or MPE) approach for the majority of the largest and most complex banks including all global systemically important institutions (G-SIIs) and banks with resolution colleges under its remit. The SRB MREL policy for 2017 is based on a gradual approach for reaching final MREL targets in a multi-year timeframe. To this extent, bank-specific transition periods will allow banks to implement the requirement by progressively building up their MREL capacity. This year represents a major leap forwards in increasing the resolvability of banks.

4 Other key changes with respect to the 2016 default approach include broadening the policy to include a number of bank-specific adjustments, enhancing requirements for eligible liabilities and expecting a minimum level of subordination. The MREL computation will remain calibrated for bail-in strategies, until transfer strategy policies are further fine-tuned and operationalised. The SRB MREL policy contains an objective set of criteria in this regard and represents a step towards bank-specific MREL targets.

Bank-adjusted targets and location of MREL

5 As in 2016, the SRB starts with the calculation of MREL targets at the level of the resolution group, building upon the default formula set out in the EU Delegated Regulation 2016/1450 on MREL (DR). A major change in the 2017 policy from that of 2016 is to tailor the targets

with bank-specific adjustments to the recapitalisation amount (RCA), including the possibility using a different basis for risk-weighted assets (RWA) from that of the most recently reported balance sheet figures (Article 2(3) DR), when (i) the resolution plan identifies, explains and quantifies any change in regulatory capital needs immediately as a result of resolution action; and (ii) this change is considered in the resolvability assessment to be both feasible and credible without adversely affecting the provision of critical functions by the bank, and without recourse to extraordinary financial support besides the potential use of the Single Resolution Fund. In addition, the SRB addresses in its policy the specificities of banks with a multiple-point-of-entry (MPE) strategy with a need for MREL for each relevant resolution group.

Quality and subordination

6 The SRB is also moving forwards with respect to the quality of MREL and is introducing a subordination benchmark for other systemically important institutions (O-SIIs) in addition to the subordination for G-SIIs introduced in 2016. Regarding the eligibility of liabilities, overall the SRB maintains the 2016 approach but gives further details of its position: (i) the SRB excludes non-covered non-preferred deposits unless there is evidence that they cannot be withdrawn within a one-year period; (ii) the SRB generally excludes liabilities governed by the laws of a country outside the EU unless there is evidence that the write-down or bail-in of those liabilities by the SRB would be recognised by the courts of that country.

Preparing the ground for future requirements

7 The SRB also adopts a proportionate approach for banks to build their MREL by setting bank-specific transition periods with a maximum horizon of four years, with interim targets for transition periods exceeding two years.

8 Going further, to prepare the ground for the future implementation of MREL on an individual basis and the operationalisation of bail-in within groups, the SRB will also communicate to banks informative calculations to assess their compliance with MREL targets using a narrower definition of eligible instruments[1]. Given this, the SRB will consider a computation at the level of the point of entry, this year for informative and non-binding purpose only, taking into account own funds instruments eligible for the consolidated own funds of the resolution entity and only those liabilities issued by the resolution entity to entities outside the resolution group.

[1] For the time being compliance with the binding targets will be assessed taking into account consolidated own funds and consolidated eligible liabilities at the level of the resolution group.

Next steps for 2018 and beyond

9 The 2017 MREL policy is a new milestone in the improvement of banks' resolvability and will be further developed in line with the SRB roadmap to MREL. To this extent, the SRB will focus in 2018 on three main areas: (i) enhancing the MREL targets based on the outcome of the SRB's resolvability assessment; (ii) refining its location policy within groups and developing a framework for individual and internal MREL; and (iii) developing a policy for transfer strategies.

10 MREL decisions must be reviewed annually. In this context, the SRB will take into account any relevant supervisory decision affecting the banks within its remit, or any change in the banks' financial structures and risk profiles. In addition, the SRB will adapt its policy, including the bank-specific MREL targets and transition periods, to address any change to the applicable legal framework.

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ACRONYMS

BRRD	Bank Recovery and Resolution Directive
CBR	Combined Buffer Requirement
DGS	Deposit Guarantee Scheme
DR	Commission Delegated Regulation
EU	European Union
G-SII	Global Systemically Important Institution
LAA	Loss Absorbing Amount
LSI	Less Significant Institution
MCC	Market Confidence Charge
MPE	Multiple Points of Entry
MREL	Minimum Requirement for Own Funds and Eligible Liabilities
NCA	National Competent Authority
NRA	National Resolution Authority
NCWO	No Creditor Worse Off
O-SII	Other Systematically Important Institution
P1	Pillar 1
P2R	Pillar 2 Requirement
RCA	Recapitalisation Amount
RWA	risk-weighted assets
SPV	Special Purpose Vehicle
SRB	Single Resolution Board
SREP	Supervisory Review and Evaluation Process
SRMR	Single Resolution Mechanism Regulation
TLAC	Total Loss-Absorbing Capacity

SRB MREL POLICY IN 2017

A- MOVING FORWARD

11 **The SRB is continuing to develop its MREL policy**. In 2017 and as part of its gradual multi-year approach to MREL, the SRB starts introducing binding requirements and addresses the quantity and quality of MREL with bank-specific features. The SRB launched its second MREL data collection (based on the SRB Liability Data Template[2]) with the aim of assessing the overall impact of its policy and computing MREL targets for banks. The SRB and NRAs met with banks on several occasions throughout the year to explain the envisaged methodology, seek feedback and explain the final policy.

12 **MREL makes banks more resolvable and gives more flexibility to the SRB when addressing crisis situations.** Building MREL is key to improving the resolvability of banks. Adopting binding decisions this year is a major leap forward and will improve resolution authorities' ability to take appropriate actions.

13 **The SRB is committed to abiding by the legal framework in place and setting MREL targets even if the framework changes.** Should the framework changes, the SRB will adapt its policy accordingly. Indeed, the current negotiations on the European Commission's legislative proposals will amend the BRRD and the Single Resolution Mechanism Regulation (SRMR), leading to a revision of MREL targets in the coming years.

14 **The SRB is engaging closely with the industry to define appropriate targets and their implementation.** Regular ongoing communications with institutions take the form of industry dialogues and bilateral meetings or workshops. The SRB and the NRAs are interacting with banks on a bilateral basis to engage in a dialogue on MREL determination in 2017. In addition, the SRB has opened global communication with the market via the organisation of an industry dialogue on 21 November 2017 and the publication of the present document.

B- SETTING BINDING MREL TARGETS

Binding targets will be set for the majority of the largest and most complex banks

15 **The SRB will set binding targets in 2017 for the majority of the largest and most complex banks.** The SRB will set MREL targets for a majority of banking groups currently in their third resolution planning cycle (i.e. banks that received informative MREL targets

[2] https://srb.europa.eu/en/content/liability-data-report

in 2016). For these banks, the SRB will define binding targets and assess the possible adjustments proposed in the 2017 SRB MREL policy.

16 **Most of the other SRB banks will be subject to informative targets in 2017.** For other banks within the SRB's remit, the SRB considers, in line with the approach taken in 2016, that an iterative process, without taking an immediate binding decision on MREL, is preferable. As part of its multi-year approach, the SRB undertakes exchanges with banks based on informative targets to pave the way for future decisions.

17 **For the less significant institutions (LSIs) that are not within its remit, the SRB will act through its oversight function.** According to the SRMR, the SRB shall assess the conformity of draft resolution measures for LSIs, notified by NRAs to the SRB, with the SRMR. The NRAs' draft resolution plans cover all resolution measures to be adopted, such as draft resolution plans, decisions to apply simplified obligations, MREL and resolvability assessment. With regard to the MREL policy, the SRB will ensure that high resolution standards across the NRAs are applied consistently.

NRAs will implement SRB decisions

18 **The SRB MREL decisions will be addressed to the banks via the relevant NRAs.** Based on the SRMR[3], NRAs are responsible for implementing SRB decisions on MREL targets for their banks, in accordance with the SRB's instructions.

Compliance with the binding requirements will be monitored

19 **MREL must be met at all times.** Banks will be asked to submit funding plans to continue to satisfy their MREL or to reach the applicable binding MREL target by the end of the transition period. To this end, the SRB will determine interim targets when the transition period exceeds two years to ensure the feasibility of reaching the target at the end of the transition period. In addition, banks will have to develop internal processes and governance frameworks to monitor MREL consistently within the group.

C- TARGETS AND LOCATION

20 **As in 2016, the SRB calculates consolidated MREL targets for all banks under bail-in strategy, be it the preferred or the variant resolution strategy.**

21 **The MREL policy builds upon the delegated regulation default formula,** made up of two components: (i) a default loss absorbing amount (LAA), which reflects the losses

[3] Article 12(14) of the SRMR provides that '[t]he Board shall address its determination to the national resolution authorities. The national resolution authorities shall implement the instructions of the Board in accordance with Article 29. The Board shall require that the national resolution authorities verify and ensure that institutions and parent undertakings maintain the minimum requirement for own funds and eligible liabilities laid down in paragraph 1 of this Article.'

that the bank will incur in resolution, and (ii) a recapitalization amount (RCA), which reflects the capital needed to meet ongoing prudential requirements after resolution. The latter component is complemented by a market confidence charge (MCC) necessary to ensure market confidence post-resolution. MREL targets are based on fully-loaded RWAs.

MREL DR Default MREL Target = Loss Absorption Amount
+ Recapitalization Amount
+ Market Confidence Charge

MREL DR Default MREL Target= Max (P1+P2R+CBR; Basel 1 floor; Leverage ratio)
+ Max (P1+P2R; Basel 1 floor; Leverage ratio)
+ CBR

Where:
P1 = Pillar 1 requirement
P2R = Pillar 2 requirement
CBR = Combined buffer requirement

22 **For the 2017 MREL policy, the leverage ratio remains excluded from the MREL formula.** The leverage ratio is not included in the computation, as it remains non-binding under the current legal framework. Once it has been introduced into EU legislation as a compulsory ratio, the SRB will amend its MREL calculation accordingly.

23 **MREL targets will be set using supervisory data of the previous year (i.e. in 2017, these are the 2016 SREP decisions applicable as of January 2017).** The SRB acknowledges that supervisory and resolution planning cycles are intertwined but are not necessarily aligned in a way that allows the SRB to use the most recent SREP decisions for determining MREL. Determining MREL involves a broad range of stakeholders, particularly for banks covered by resolution colleges, and it therefore requires time and a stable basis. As a result, binding MREL targets will be set using the final SREP decisions and Pillar 2 requirements approved in 2016. The same approach will be applied for cross-border LSIs, in liaison with the appropriate NCA.

The SRB will not adjust the default loss absorption amount in 2017

24 **As in 2016, the SRB will use the default Loss Absorption Amount (LAA) without adjustments.** The SRB may revise its policy once the revision of the BRRD has been finalised. From next year, following an assessment of substantive impediments, the SRB may also decide to revise its policy and adjust the LAA accordingly. In accordance with the DR, the SRB considers the default LAA as the higher of the following: the sum of a bank's minimum capital requirement (Pillar 1); its Pillar 2 requirement; and its fully-loaded CBR; or the amount required to meet the Basel 1 floor (in accordance with the DR definition).

SRB Default Loss Absorption Amount = Max (P1+P2R+CBR; Basel 1 floor)

The SRB will consider bank-specific adjustments for the recapitalization amount and keeps the market confidence charge unchanged

25 **The default Recapitalization Amount (RCA) remains the starting point for MREL determination.** Under the DR, there are two components of the RCA, the minimum requirement for authorisation (Pillar 1 and P2R or, if higher, the amount required to meet the Basel 1 floor), and an amount to regain market confidence, the MCC. As in 2016, the SRB decided not to take into account the leverage ratio when determining the default RCA, and decided to set the default MCC at the level of the CBR less 125 basis points.

SRB Default Recapitalization Amount = Max (P1+P2R; Basel 1 floor)

SRB Default Market Confidence Charge = CBR – 125 basis points

26 **Banking groups for which liquidation is the preferred resolution strategy will have no RCA.** The SRB will assess the feasibility and credibility of liquidation under normal insolvency proceedings for the banking groups within its remit subject to binding MREL targets. Where the preferred strategy at the level of the group is liquidation, MREL will be set at the level of the LAA, with no RCA. Nevertheless, the characteristics of a bank may change, including its risk profile and business strategy, and consequently the assessment of feasibility and credibility of the liquidation might be revised in the future. In such circumstances, the MREL target would be increased accordingly.

27 **Bank-specific adjustments will be permitted.** The DR enables resolution authorities to make bank-specific adjustments on three components of the RCA, including the MCC. These adjustments relate to (see also Figure 1):

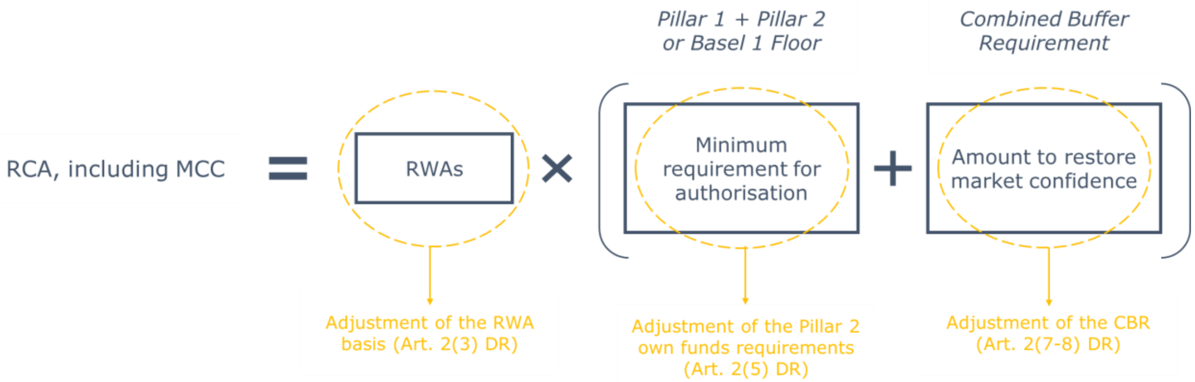
1) The RWA basis for the calculation of the RCA and MCC: while the DR makes it clear that the default amounts should be the starting point, resolution authorities may use a different RWA basis from the reported RWA[4] to calculate the RCA and the MCC.

2) The Pillar 2 own funds requirements used for the default RCA: to tailor the amount required to satisfy the applicable capital requirements to comply with the conditions for authorisation after the implementation of the preferred resolution strategy.

[4] In particular, when the resolution plan identifies, explains and quantifies any change in regulatory capital needs immediately as a result of resolution action, and when this change 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 public financial support.

3) The level of the CBR used for the default MCC: to tailor the amount required to maintain sufficient market confidence after resolution.

Figure 1: Bank-specific adjustments for the RCA, including the MCC



28 **The SRB envisages, on a bank-by-bank basis with due justification, three possible adjustments to the RWA basis.** These adjustments refer to:

1) **The effect of balance sheet depletion**: The failure of a banking group may, particularly if the failure was due to credit risk losses, result in the banking group having a smaller balance sheet directly following resolution. The SRB considers that, on a bank-by-bank basis, a maximum balance sheet depletion of up to 10% of total assets[5] may be used to adjust the RWA basis.

2) **The use of recovery options:** A very limited number of recovery options might be relevant for a reduction in RWA. The SRB will consider only those recovery options that can be implemented swiftly as a resolution action assuming that the bank was unable to use them in the early intervention or recovery phase.

3) **Restructuring plan divestments and sales:** If actions as formulated in restructuring plans[6] are legally binding and time-bound, the SRB may take into account the possible impact on the bank's RWA. These plans aim to, among other goals, restore the long-term viability of the bank by achieving sustainable profitability and reducing risk. This includes the removal from the balance sheet of

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[5] For 2017, the SRB assumes that the incurred losses would equal the LAA, and that these losses would reduce the total asset amount of the balance sheet accordingly under the assumption that the risk density of the assets remains stable post-resolution in comparison with its *ex ante* resolution level.

[6] For instance, following the receipt of state aid, European Commission-approved restructuring plans.

riskier assets with associated higher risk weighting through mandatory deleveraging actions embedded in the restructuring plan.

29 **The SRB does not envisage any further adjustment of the default RCA and MCC in 2017.** Next year the SRB might consider implementing other adjustments, including to the RWA basis. These could include, for instance, RWA adjustments to reflect the potential liquidation of entities within a banking group or adjustments to the Pillar 2 requirement to reflect possible post-resolution requirements.

Other bank-specific adjustments are considered for the overall MREL target

30 **The SRB maintains its reference to an eight percent benchmark.** MREL should be set at a sufficiently prudent level to allow access, if necessary, to financing arrangements such as the Single Resolution Fund. Similarly to the approach taken in 2016, the SRB reiterates that an MREL of at least eight percent of total liabilities and own funds would generally be calculated for major banking groups within the Banking Union.

31 **In 2017, the SRB does not include any other adjustment to MREL targets.** This relates in particular to (i) liabilities mandatorily excluded from bail-in under Article 44(2) BRRD, for which preliminary assessments are conducted in resolution plans to assess the possible risk of breaching the no creditor worse off (NCWO) principle when applying the bail-in tool; (ii) liabilities that are likely to be excluded in exceptional circumstances under Article 44(3) BRRD, and (iii) deposit guarantee scheme (DGS) contributions. Similarly to the 2016 approach, the SRB considers that taking into account DGS contributions is not consistent with the preferred resolution strategy for most of the banking groups under its direct responsibility.

Specificities of MPE strategies are addressed

32 **The SRB MREL policy addresses MPE strategies.** The BRRD and SRMR indicate that both SPE and MPE resolution strategies are allowed, and that MREL should be set in a way that is consistent with the distribution of risks across the banking group and located in entities where losses are most likely to arise.

33 **MREL for MPE strives to limit contagion risk.** In an MPE strategy, separability should not be hampered. Indeed, insofar as the failure and subsequent resolution of a given resolution entity affects other resolution entities, a 'contagion risk' occurs. It is essential that a credible and feasible MPE strategy can be executed without undermining the viability of other resolution groups. To this end, contagion risk is minimized where one resolution group within a bank can be resolved without causing immediate MREL shortfalls in the bank's other resolution groups for which a target has been determined.

The SRB MREL policy identifies the requirement for a consolidated MREL target at the level of the resolution entity, within the MPE group. MREL targets will be based on the applicable total SREP capital requirement; the applicable total RWA of the resolution group (i.e. excluding the exposures to other resolution groups in the same banking group); and specific adjustments to take into account potential expected LAA stemming from participations in other resolution groups as well as the RCA needs related to residual exposures to those resolution groups following expected loss absorption.

D- QUALITY, SUBORDINATION AND ELIGIBILITY CRITERIA

Subordination for G-SIIs and O-SIIs

34 **Subordination improves resolvability and limits the risk of breaching the NCWO principle.** Subordination can be considered a tool to improve resolvability, including through the removal of impediments (Article 17(h) BRRD), to make the implementation of the bail-in tool feasible and credible. In particular, subordination addresses risks stemming from (i) having bail-inable instruments ranking *pari passu* with operational liabilities and any other excluded liabilities prescribed by Article 44.2 BRRD or (ii) the discretionary power of the resolution authority to exclude some liabilities under exceptional circumstances (Article 44.3 BRRD).

35 **In 2017, subordination will be composed of two elements**: a general level depending on the systemic importance of banks and a potential bank-specific add-on to address NCWO risks based on mandatory exclusions, the latter being for monitoring purpose only in the 2017 resolution planning cycle (see Figure 2). The assessment of compliance with the relevant subordination levels will take into account all forms of subordination, including "senior non-preferred" instruments where they exist, subject to analysis in line with national laws. The SRB reserves the right to adjust this policy at a later stage in the light of the future design of the BRRD and further development of the MREL policy in 2018.

36 **G-SIIs will be expected to fulfil a minimum percentage of subordinated instruments.** In concrete terms, G-SIIs will meet a minimum subordination level equal to 13.5 percent RWA plus the CBR, pending further assessment of NCWO risks.

37 **For O-SIIs, the SRB will set a benchmark of 12% of RWA plus the CBR.** This reference point acts as a proxy in 2017 to improve resolvability and addresses potential *pari passu* issues.

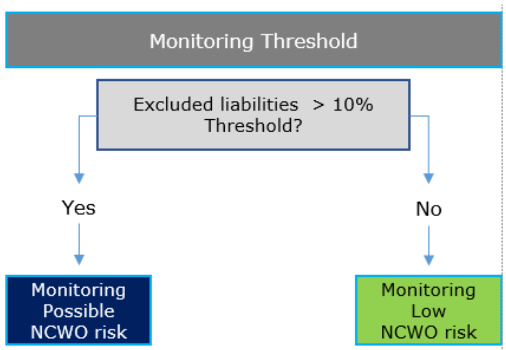
38 **In parallel, the SRB starts assessing the risk of breaching the NCWO principle.** Resolution authorities need to undertake an NCWO analysis if exclusions within the same creditor class exceed a threshold of 10% of the total value of that class (Article 3.3 DR). In 2017, this assessment will focus on the risk of breaching the NCWO principle owing to mandatory exclusions from bail-in under Article 44.2 of the BRRD, but will not lead to additional subordination requirements. In the future, the SRB will analyse NCWO issues in

more details and subsequently could increase the required amount of subordination to address NCWO risk.

Figure 2: SRB policy on subordination for 2017

Subordination (*)	
G - SIIs	**13.5% RWAs + Buffers**
O – SIIs	**12% RWAs + Buffers**
Other	**Case by case**

(*) Not applicable for banks in which the PRS envisages structural subordination



Eligible liabilities and own funds are taken at consolidated level

39 **Compliance with binding targets will be assessed against eligible liabilities and own funds at consolidated level.** Similar to the approach taken in 2016, the SRB will consider those instruments issued by the parent undertaking and all other entities in the prudential scope of consolidation to be MREL-eligible, provided they meet the other eligibility criteria as per the BRRD and the specific options adopted by the SRB for its 2017 policy (listed in the present document). In practice, compliance with the binding MREL targets will be assessed by taking into account consolidated own funds and consolidated eligible liabilities at the level of the resolution group.

Structured notes are mostly excluded

40 ***Structured notes.*** Similar to the approach taken in 2016, the SRB policy in 2017 excludes structured notes by default. However, the SRB will assess on a case-by-case basis the eligibility of such liabilities:

1) when a given amount of the liability arising from the instrument is known in advance at the time of issuance, is fixed (i.e. the amount cannot go below a minimum floor) and is not affected by a derivative feature;

2) if the instrument, including its derivative feature, is not subject to any netting agreement and its valuation is not subject to Article 49.3 BRRD;

3) only up to the amount of the liability that complies with point 1) (i.e. for the fixed floor of the liability that would have to be paid).

Non-covered non-preferred deposits breakable below one year are excluded

41 **The SRB will exclude non-covered non-preferred deposits if they can be withdrawn within a one year horizon.** Some term deposits may have an early redemption clause that would have to be taken into account in the maturity assessment (Article 45(4) BRRD). In addition, according to the European Banking Authority, a 'deposit which is deposited for at least a year's period but which confers upon its owner a right to early reimbursement with less than one year's notice shall not be included in the amount of own funds and eligible liabilities meeting MREL'[7]. As a result, the SRB is asking banks to conduct credible analyses of the deposits and will review them so as to exclude from the eligible instruments all non-preferred non-covered deposits above one year that have a redemption clause below one year or for which there is no sufficient evidence that they cannot be withdrawn.

Liabilities held by retail investors are MREL-eligible

42 **The SRB does not see any legal basis for resolution authorities to exclude ex ante and uniformly eligible liabilities held by natural persons or small and medium-sized enterprises from MREL or from bail-in.** As a result, the SRB is required to bail-in retail investors in line with their ranking in the applicable creditor hierarchy, other than in exceptional circumstances, and cannot exclude instruments from MREL for the sole reason that they are held by retail investors should they otherwise meet the requirements for MREL. The EU legislation includes many safeguards to ensure financial products are sold to suitable investors only. The implementation and the supervision of such rules is under the responsibility of Member States' market authorities; therefore, any possible failure to comply with investor protection rules is not an argument to exclude these liabilities from the computation of MREL targets or finally bail-in.

43 **However, holdings of subordinated or senior instruments by retail customers could prove to be an impediment to resolution.** As part of the resolvability assessment and the forthcoming analysis of discretionary exclusions to bail-in, the SRB will analyse the bank's exposure to retail bondholders to assess whether the bail-in of these counterparties might be an impediment to resolvability. As in 2016, the SRB remains of the view that large holdings of liabilities sold to retail investors make banks difficult to resolve for various reasons, including (i) the potential loss of a bank's customer base and the risk of withdrawals and (ii) potential litigation brought by retail investors upon or after resolution, which might endanger the bank's future viability.

Liabilities issued under third country law are mostly excluded

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[7] EBA Q&A 2015/2267.

44 **The SRB will in most cases exclude liabilities governed by the laws of a country outside the EU.** When liabilities are not governed by EU law, resolution authorities face the risk that the courts of the country with legal jurisdiction over the liabilities may not recognise the bail-in or transfer order of an EU resolution authority. The SRB will generally not count towards MREL any liability governed by the law of a third country unless a bank is able to demonstrate that the write down or bail-in of those liabilities would be recognised by the courts in that third country. To this extent, these liabilities could be included into MREL when the SRB has assessed that the write down or bail-in powers are contractually recognized as provided for in Article 55 BRRD, based on legal opinions or other evidence satisfactory to the SRB.

Liabilities issued by entities located outside the EU are mostly excluded

45 **Similar to the 2016 approach, liabilities issued by banks located outside the EU are not recognised as MREL eligible.** Eligible liabilities must be issued by an entity that is located within the EU, otherwise resolution authorities' powers could not be applied. Applying the same approach, the 2017 MREL policy still recognises minority interests in subsidiaries (i.e. own funds instruments issued to external investors) as MREL eligible to the extent that they are recognised in the own funds of the EU parent, if the foreign subsidiary is part of the resolution group of the EU parent (i.e. the resolution strategy foresees that the foreign subsidiary would be resolved through the EU parent).

E- TRANSITION PERIOD

Bank-specific transition periods will support banks' efforts in reaching MREL targets

46 **Binding MREL targets will be set with a bank-specific transition period**. The SRB decided to set individual transition periods up to a maximum of four years. The transition periods are defined based on quantity (target) and quality (subordination level) expectations to pave the way for building up a bank's loss absorbing and recapitalisation capacity. The transition periods take into account bank- and market-specific characteristics. When the bank already complies with its MREL target, this requirement will be binding immediately. In addition, the SRB will set non-binding interim targets when the transition period exceeds two years to ensure the feasibility of reaching the target at the end of the transition period.

47 **SRB requirements, including transition periods, may be adjusted in coming years to take into account future calibration of MREL targets.**[8] Indeed, the revision of the MREL target in a future cycle, and the decision of the SRB to impose revised binding requirements following a revision of the SRB methodology, the EU legislative framework, or any bank-specific change, will be accompanied by a transition period that may also be reviewed in the light of the magnitude of the changes. The SRB may need to adjust the transition period in the future, shortening or lengthening it depending on the applicable conditions at that date.

[8] Article 8.3 of the DR provides that 'resolution authorities shall not be prevented from subsequently revising either the transitional period or any planned MREL'.

F- PREPARING FOR THE FUTURE

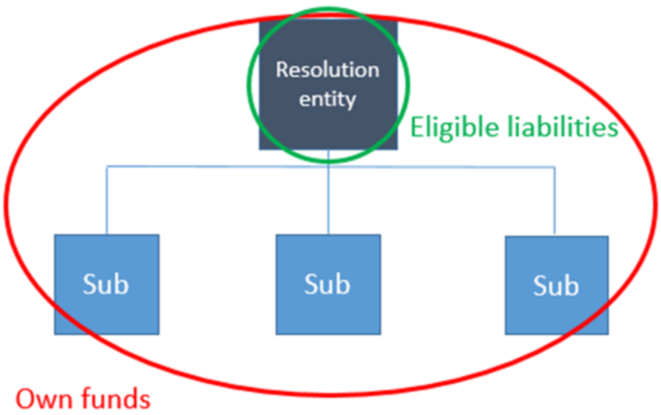
48 **The SRB policy for 2017 represents a step forward compared with the 2016 approach.** By setting binding targets, tailored to bank-specific characteristics and strengthening the definition and quality of eligible instruments, this policy will prepare banks for compliance with current legislation.

49 **The SRB will address the implementation of individual requirements within groups and the operationalisation of the use of the bail-in tool.** At the time of the crisis, resolution actions will be taken at the level of the point of entry. Liabilities, other than own funds instruments, issued by entities that are not identified as a point of entry could credibly absorb losses or be converted into equity only by applying resolution powers to these issuing entities. This might imply a departure from the resolution strategy that may be difficult to implement. Furthermore, even if such liabilities were used to absorb losses in resolution and to recapitalise the issuing entity, the ownership structure of the group might change, raising further challenges for the operationalisation of the bail-in tool.

50 **To prepare the ground for the future, in 2017 the SRB will communicate to banks informative calculations to assess future compliance with MREL targets using a narrower definition of eligible instruments.** The SRB will consider a computation at the level of the point of entry, for informative purpose only, taking into account own funds instruments eligible for the consolidated own funds of the resolution entity and other liabilities issued by the resolution entity to entities outside the resolution group.

51 **In this context, eligible liabilities at consolidated level will be taken into account until individual/internal MREL targets are established.** In the meantime, the SRB encourages banks to start adapting their issuance programmes now to move towards issuances of external MREL from the resolution entity.

Figure 3: Narrowing the definition of MREL-eligible instruments (informative purposes only)



52 **In addition, in 2017, the SRB will communicate informative elements to banks to allow them to prepare for the potential consequences of Brexit.** Post Brexit issuances under UK law will be treated like other third country issuances, subject to any relevant agreement. As for any issuances governed by the law of a third country, the SRB will generally not count towards MREL unless a bank is able to demonstrate that the write down or bail-in of those liabilities would be recognised by the courts of that country. The individual situations will be monitored and a dialogue started with the relevant banking groups about potential solutions.

NEXT STEPS FOR 2018 AND BEYOND

53 **MREL decisions are reviewed annually.** In accordance with the legislation, the SRB will continue revising the applicable MREL targets and transition periods as part of the future resolution planning cycles. In particular, the SRB will take into consideration any change stemming from supervisory decisions or linked to the evolution of banks’ risk profiles and overall structures. To support this review, in 2018, the SRB will launch another round of data requests related to the banks’ liabilities. Such Liability Data Templates will be requested, as it has been done the past two years, on an annual or, if necessary, ad-hoc basis.

54 **The development of the MREL policy will continue in 2018.** With a view to improving banks’ resolvability and tailoring the calibration of MREL targets to bank-specific characteristics, the SRB will update its MREL policy, by paying particular attention to four main areas: i) the analysis of the consequences of its resolvability assessment, including the definition of impediments; (ii)the calibration of MREL targets; iii) the development of a specific policy for resolution strategies not relying on the sole use of the bail-in tool and iv) the development of a policy to address individual and internal MREL.

55 **The SRB will also adapt its framework to any new regulatory developments.** The SRB will adapt its policy, including the bank-specific MREL targets and transition periods, to address any change to the applicable legal framework. In this context, the SRB will continue to follow closely the ongoing negotiations on the revision of the BRRD and SRMR to prepare the ground for a revision of its MREL policy. Simultaneously, the consequences of Brexit will be monitored to address its impacts on the SRB MREL policy and banks’ resolvability.

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