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FINANCIAL STABILITY AUTHORITY

MEMORANDUM

22.12.2016

APPLICATION OF THE MINIMUM REQUIREMENT FOR ELIGIBLE LIABILITIES (MREL)

1. Concepts and abbreviations used

Bail-in	Crisis resolution tool implemented by lowering the nominal value of liabilities or by converting liabilities into equity.
BRRD	Bank Resolution and Recovery Directive 2014/59/EU
CRD IV	Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, the CRD IV Directive
CRR	Regulation 575/2013/EU on prudential requirements for credit institutions and investment firms, the EU Capital Requirements Regulation
EBA	European Banking Authority
Resolution Act	Act on resolution of credit institutions and investment firms (1194/2014)
Commission Delegated MREL Regulation	Commission Delegated Regulation (EU) 2016/1450 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria relating to the methodology for setting the minimum requirement for own funds and eligible liabilities
MREL	Minimum Requirement for Own Funds and Eligible Liabilities.
NCWO	No Creditor Worse Off. Principle ensuring that, in connection with a bail-in, no creditor incurs a higher loss than if the institution would have been placed under bankruptcy.
RVV	Finnish Financial Stability Authority (*Rahoitusvakausvirasto*)
SRB	Single Resolution Board
SRM Regulation	Single Resolution Mechanism Regulation 806/2014/EU.
TLAC	Total Loss-Absorbing Capacity. A requirement set by the Financial Stability Board for the own funds and eligible liabilities of globally significant financial institutions (G-sifi).

2. Summary

- This memorandum describes the procedure for setting MREL for institutions under the RVV's direct responsibility as well as factors influencing the determination of the level. In addition, the memorandum includes interpretations made to date on questions arising within the context of the RVV's work and in EU bodies (particularly the EBA and the SRB).

- MREL is a Pillar 2 type institution-specific requirement determined in connection with institution-specific resolution planning. The level of the requirement and its application levels depend materially on the resolution strategy determined for the group and the institution in the plan. In practice, MREL is set for the first time when the plan for the institution is finalised, and it is reviewed thereafter in the context of the next update of the plan or when the components of the requirement (e.g. level of additional capital buffers) change.

- As a rule, MREL is set both on the basis of the consolidated financial position and on an institution-specific basis. The statutory conditions for exemption from the institution-specific requirement are very stringent.

- The most important background regulation for the determination of MREL consists of the recently adopted Commission Delegated MREL Regulation, which is directly applicable at the national level. In addition, the definition of liabilities eligible to cover MREL has been specified by several EBA interpretations.

- As regards the definition of MREL-eligible liabilities, Finnish legislation contains certain sections at variance with the BRRD.

- For institutions determined to be subject to resolution proceedings, MREL consists of the loss absorption amount and recapitalisation amount. As regards institutions determined to be subject to normal insolvency proceedings, MREL consists solely of the loss absorption amount (recapitalisation amount = 0).

- The RVV does not define in advance the criteria, for example based on the size of the bank, according to which institutions are to be determined to be subject to either resolution or insolvency proceedings. This assessment is made in the context of crisis resolution planning.

- The starting point in the determination of the level of MREL is that, for institutions determined to be subject to resolution, the requirement equals the combined amount of the minimum capital requirement and additional capital buffers applying to the institution multiplied by two (if the operations continue in their previous scope according to the resolution strategy). In accordance with the Commission MREL Regulation, this may be adjusted upwards or downwards at the discretion of the authority where the conditions are met. As a rule, for institutions determined to be subject to normal insolvency proceedings, MREL is the same as the minimum regulatory capital requirement.

- As a rule, the RVV requires that MREL for institutions subject to crisis resolution is at least 8% of the balance sheet total (the prerequisite for using the assets of the single resolution fund).

- The RVV may establish a transitional period to meet MREL. The transitional periods are not necessarily equally long for all institutions but they will also reflect, among other things, the date of setting the requirement relative to other institutions. A transitional period may also be granted, for example, so that in the first stage the requirement only needs to be met at consolidated level, whereas the institution-specific requirements take effect in the subsequent stage.

- The RVV will not publish any institution-specific MREL it has set. The RVV will not require institutions to disclose their MREL, either.

- For the time being, the collection of data for the calculation of MREL is conducted in the context of the first institution-specific crisis resolution planning, and thereafter annually based on the SRB's data collection templates on the liability structure. However, the data collection is intended to become regular. The content and more detailed technical implementation are still being planned, but the intention is to combine the data collection with joint European data collection.

- The RVV has mapped the amount of MREL-eligible items of other institutions than those currently subject to crisis resolution planning during autumn 2016 with a separate data collection.

3. Introduction and objectives of the memorandum

One of the key objectives of the new regulations on crisis resolution is to ensure that shareholders and creditors bare the cost of bank failure. MREL has a key role in achieving this goal, since it ensures that an institution has an adequate amount of eligible liabilities to effectively implement the bail-in tool.

The Resolution Act and certain other legal acts and regulations relating to the implementation of EU crisis resolution legislation entered into force as of 1 January 2015. In accordance with chapter 8 of the Resolution Act, the RVV must set MREL to institutions falling within the scope of the Act. The Act does not contain any transitional provisions regarding the establishment of an MREL, and therefore the RVV must apply the provisions of chapter 8 immediately from the entry into force of the Act. In practice, the schedule for setting the requirement also depends, for example, on the preparation of the crisis resolution plan and certain EU regulations specifying the calculation[1].

Since MREL constitutes an entirely new Pillar-2 type institution-specific requirement, the RVV wishes to contribute with this memorandum to clarifying the procedure for setting the requirement and the factors affecting its level. The memorandum also includes interpretations made to date with respect to questions arising within the context of the RVV’s work and in EU bodies (particularly the EBA and the SRB). Another objective of the memorandum is to improve opportunities for all institutions (including those whose resolution planning has not begun) to anticipate the level of their future MREL and to prepare for the requisite reporting and IT-systems changes.

The statements made in the memorandum only apply to institutions under the direct authority of the RVV (so-called LSI credit institutions and investment firms). Hence, they do not apply to institutions under the SRB’s direct responsibility or such institutions subject to decisions made by a resolution college lead by a foreign authority (see section 5 below).

The statements made in the memorandum will be specified and supplemented where necessary, for example as new regulations are provided or policies by authorities are established. Furthermore, certain questions whose preparation is still under way at the EU level have been excluded from the memorandum.

4. Background norms

[1] Including final Commission Delegated MREL Regulation, which was issued on 23 May 2016 and entered into force on 23 September 2016.

4.1 Valid regulations and other reference norms

The key background regulations for MREL are the Resolution Act (particularly chapter 8), the BRRD (particularly Articles 44 and 45), the SRM Regulation (particularly Article 12), and the Commission Delegated MREL Regulation.

In the context of its sector-level hearings, the SRB has published the principles applicable to the setting of MREL for institutions under its direct responsibility[2]. The principles are not intended to be applied to institutions under the responsibility of national authorities. As pointed out below, the SRB also has the competence, however, to provide instructions to national resolution authorities regarding issues affecting institutions under their authority.

In addition, interpretations are made continuously within the EBA's questions and answers process (Single Rulebook Q&A) on issues relating to resolution regulations[3]. Furthermore, certain national resolution authorities have published policy papers on the application of MREL[4].

4.2 EU-level preparations to harmonise TLAC and MREL requirements

On 23 November 2016, the Commission issued legislative proposals on the harmonisation of the TLAC requirement and the MREL requirement and on certain other amendments, based on which the calculation of MREL is likely to be specified as of the beginning of 2019[5]

The RVV is closely monitoring the progress of EU preparations, but, as they are incomplete, the impacts of the proposed regulations could not be taken into account in this memorandum. The RVV will, however, make the requisite amendments to this memorandum gradually as the content and entry into force of the revisions proposed by the Commission are specified[6].

4.3 EBA preparatory work to clarify need to revise BRRD

On 14 December 2016, the EBA published the final MREL report[7]referred to in Article 45, paragraph 19 of the BRRD and submitted it to the Commission. The provision above lists several issues regarding the determination of MREL, and the EBA has been requested to give its views on any changes required to the regulation. The purpose of the final report is to help the Commission to prepare a proposal on amendments to the BRRD (see previous paragraph).

A representative of the RVV participated in the EBA working group that prepared the report. The proposals included in the report could not be taken into account in this memorandum, but, as stated above, the RVV will update the memorandum as preparations proceed at the EU level.

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[2] See https://srb.europa.eu/sites/srbsite/files/2nd_industry_dialoge_12-1-2016_-_mrel.pdf
[3] Although the responses given in the forum are non-binding by nature, they have a steering impact on practices observed by authorities
[4] For example, the MREL consultation paper published by the Swedish Riksgälden on 26 April 2016 https://www.riksgalden.se/Dokument_sve/om_riksgalden/finansiell%20stabilitet/mrel-till%c3%a4mpning-av-krav-pa-nedskrivningsbara-skulder.pdf and the proposal of the Bank of England on the application of MREL http://www.bankofengland.co.uk/pra/Pages/publications/cp/2015/cp4415.aspx
[5] The proposals related to resolution consist of three packages: proposed amendments to the BRRD, see http://ec.europa.eu/finance/bank/docs/crisis-management/161123-proposal-directive-recapitalisation-capacity_en.pdf; changing the ranking of banks' liabilities in insolvency hierarchy, see http://ec.europa.eu/finance/bank/docs/crisis-management/161123-proposal-directive-unsecured-debt-instruments_en.pdf; and amendments to the Capital Requirements Regulation (CRR), see http://ec.europa.eu/finance/bank/docs/regcapital/crr-crd-review/161123-proposal-amending-regulation_en.pdf
[6] The amendments regarding the ranking are proposed to enter into force as soon as 1 July 2017.
[7]See https://www.eba.europa.eu/-/eba-makes-final-recommendations-for-strengthening-loss-absorbing-capacity-of-banks-in-europe

5. Competent authority responsible for setting MREL

In accordance with the SRM Regulation, the SRB exercises the relevant powers available for the national resolution authorities with respect to institutions that are under the ECB's direct supervision or carry out cross-border activities[8]. In Finland, there are currently four such institutions. As regards these institutions, decisions regarding the establishment of MREL are made by the SRB.

If an institution is part of a foreign group and a resolution college has been set up for the group, the decision on MREL for the group and any of its constituent institutions are made by the college in a joint decision-making procedure[9]. In this case, the competent authority in the joint decision-making process is either the SRB or the RVV, depending on under whose responsibility the institution belongs.

As regards institutions other than those referred to above,[10] MREL is set exclusively by the RVV. As stated above, the considerations presented in this memorandum only apply to these institutions under the direct responsibility of the RVV.

Although only the most significant institutions are under the SRB's direct responsibility, the SRB has the right, however, to issue guidelines and general instructions to national resolution authorities according to which the tasks are performed and resolution decisions are adopted by national resolution authorities[11]. The guidelines issued to the national authorities may therefore concern resolution plans and, for example, the procedure to be followed in setting MREL for all institutions. The guidelines are binding on the national authorities. So far, the SRB has not issued such guidelines.

The RVV must consult FIN-FSA before setting an MREL. According to the Resolution Act, the RVV must continuously monitor compliance with the requirements for applying MREL in cooperation with FIN-FSA[12].

6. Scope of application of MREL

6.1 Group-specific and institution-specific requirement

MREL is applied both on the basis of the group's consolidated financial position and on an institution-specific basis. The extent of the consolidation is determined consistently with the concept of consolidation group used in the capital requirements calculation of institutions. At sub-consolidation level, the RVV applies MREL only on such Finnish sub-consolidation groups whose group parent companies are based in an EU member state outside the banking union.

The RVV points out that even if the resolution plan were prepared only at the level of the group or amalgamation, legislation requires MREL to be set both on the consolidated level and on an

[8] A list of credit institutions under the direct supervision of the ECB (List of significant supervised entities, 129 institutions)and other cross-border institutions under the SRB's direct responsibility (16 institutions) are found in these links: https://www.bankingsupervision.europa.eu/ecb/pub/pdf/list_of_supervised_entities_20160101en.pdf?893aec32a4f8bb8e1de0333de1b993a5 and http://srb.europa.eu/sites/srbsite/files/cross_borders_02052016.pdf

[9] Chapter 8, section 10 of the Resolution Act.

[10] So-called LSI credit institutions and all investment firms falling within the scope of application of the Act.

[11] Article 31(1) of the SRM Regulation. In addition, the RVV is obliged to submit a draft of the MREL decision concerning an LSI to the SRB 20 days before the final decision.

[12] As regards significant institutions, the SRB is under a similar consultation obligation vis-à-vis the ECB, see SRM Regulation, Article 12.

the institution-specific basis.

6.2 Credit institutions

The institution-specific requirement applies to credit institutions referred to in chapter 1, section 7 of the Act on Credit Institutions. Where a credit institution under the SRB's direct responsibility or a subsidiary credit institution belonging to a foreign group is concerned, the requirement is set in accordance with the procedure referred to above in section 5 and by the authority stated therein.

6.3 Mortgage credit banks

MREL is not applied to mortgage credit banks referred to in chapter 2 of the Covered Bond Act (688/2010)[13].Accordingly, the RVV will not set an institution-specific MREL for such mortgage credit banks. Although mortgage credit banks are exempted from the institution-specific MREL, their balance sheets are included in the basis of calculation of the consolidated MREL requirement.

On the other hand, if a deposit bank or a credit entity has received an extended authorisation to carry out mortgage banking activities (Covered Bond Act, Section 10), it is subject to the institution-specific MREL just like other credit institutions.

6.4 Investment firms

MREL applies to investment firms referred to in chapter 6, section 1, subsection 1 of the Act on investment services that carry out trading in financial instruments on their own account or underwrite issues. In practice, these are investment firms whose initial capital under Directive 2013/36/EU must be at least €730,000. If a more stringent initial capital requirement has been set nationally for any of their activities (for example custody services), this does not mean that institutions engaging in such activities fall within the scope of MREL.

In determining the application of MREL to investment firms, the RVV as a rule considers the scope of the authorisation instead of the actual scope of activities conducted.

MREL therefore applies to investment firms whose authorisation allows the underwriting of issues even where they do not pursue such activities.

6.5 Exemptions from institution-specific requirements

The RVV may decide that an institution functioning as the parent company of a group is only subject to MREL based on the consolidated financial position[14]. Similarly, the RVV may exempt from MREL an institution which is a subsidiary in a group[15]. The requirements for granting such waivers are listed in chapter 8, section 11 of the Resolution Act. Where an institution considers it

[13] Chapter 8, section 7, subsection 5 of the Resolution Act
[14] Chapter 8, section 11, subsection 1 of the Resolution Act
[15] Chapter 8, section 11, subsection 2 of the Resolution Act

meets the preconditions listed in said section, it may file a written application with the RVV in order to have an exemption. Upon receiving an application, the RVV considers whether there are sufficient grounds for granting an exemption.

The RVV points out that an institution-specific exemption both at the level of the parent and a subsidiary is always contingent on a derogation granted by FIN-FSA from the application of the minimum requirement for own funds referred to in Article 7 of the CRR. According to information provided by FIN-FSA, it has not extended any derogations referred to in Article 7 of the CRR.

According to the RVV's view, the preconditions for granting an institution-specific exemption from MREL are not currently met with respect to any institution under the RVV's responsibility. Where an institution considers it meets the preconditions for a waiver, it may file a written application with the RVV.

6.6 Amalgamations of deposit banks

Under legislation, the RVV cannot grant an exemption from the institution-specific MREL to a member institution of an amalgamation on any other grounds than those stated above in section 6.5.[16]. Hence, MREL as a rule is set both for the amalgamation and its member credit institutions.

As regards amalgamations, the level of application and amount also depend on the selected resolution strategy. In setting the MREL level, however, the lower minimum capital requirements possibly applicable to the member credit institutions of an amalgamation under the Amalgamations Act may be taken into account (see section 8 below).

7. Components of MREL

In accordance with the Commission Delegated MREL Regulation[17], resolution authorities shall express MREL as a percentage of total liabilities and own funds. Institutions and groups at all times must have an adequate amount of own funds and eligible liabilities to cover MREL. Once MREL has been set, it will be reassessed and decisions on it be made on a regular basis in connection with updating the resolution plan.

The detailed content of items counting towards MREL is presented in the guidelines for the data collection templates. Below is a description of the key content of the calculation items.

7.1 Numerator of the requirement

The own funds and MREL-eligible liabilities of an institution can be used to cover its MREL. The concept of own funds is determined in accordance with provisions on the capital requirements calculation. The first requirement for MREL-eligible liabilities is that their nominal value can be reduced. Such liabilities comprise all liabilities other than those specifically listed in the Resolution Act[18].

In addition, MREL-eligible liabilities must meet the following requirements:

- the financial instrument is fully paid up;

[16] EU regulations or national legislation on crisis resolution do not make reference, for example, to article 10 of the CRR or other special provisions on amalgamations thatenable certain derogations or mitigations to capital requirements.
[17] Article 7(2) of the Regulation.
[18] Chapter 8, section 4 of the Resolution Act contains a list of liabilities whose nominal value cannot be reduced.

- the purchase of the financial instrument was not funded either directly or indirectly by the institution;
- the liability has a remaining maturity of at least one year[19,20,21];
- the liability does not arise from a derivative[22];
- the liability does not arise from covered or preferential deposit[23];
- the institution does not have a right of claim with respect to the liability and it has not pledged collateral or a guarantee for the liability[24].

In order to cover institution-specific MREL, liabilities received from other entities within the group or amalgamation may be used if they otherwise meet the requirements defined above for MREL eligible liabilities. However, the RVV may require, in its decision concerning the impediments to resolvability, that intra-group liabilities must have rank lower than other eligible liabilities in terms of insolvency legislation.[25].

If part of the subordinated liabilities counted as Tier 2 items in the capital requirements calculation are not counted as own funds in accordance with the five-year threshold, the excluded part may be counted towards MREL-eligible liabilities if they otherwise meet the requirements stated above.

7.2 Denominator of the requirement

MREL is set by dividing own funds and MREL-eligible liabilities by the total amount of own funds and liabilities.[26]Liabilities based on derivatives contracts in the numerator are, however, taken into account in net terms insofar as offsetting derivatives positions can be netted in closing the contract.[27]

8. Factors affecting the level at which MREL is set

The Resolution Act determines the general conditions based on which the institution-specific MREL is set. These have been further specified in the Commission Delegated MREL Regulation.

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[19] In accordance with chapter 8, section 7, subsection 3, paragraph 3 of the Resolution Act, it is required that the liability does not mature within a year of its inception. The present wording of the Act is not consistent with Article 45 (4)(d) of the BRRD, and the RVV has made a motion to the Ministry of Finance to amend the provision.

[20] Among fixed-term deposits, only those that cannot be terminated during the term of the agreement are deemed to be MREL eligible. If a fixed-term deposit can be terminated, even where this results in loss of interest and potential extra costs, the deposit is not considered a deposit with an agreed maturity. See also interpretation ID 2015_2267 in EBA's Q & A forum.

[21] Where a liability involves a right of the investor to require early redemption, its maturity is considered to be the first possible redemption date (BRRD 45.4 art)

[22] The treatment of structured notes and comparable instruments is still unconfirmed. According to the present interpretation, these are not considered MREL-eligible liabilities unless the institution demonstrates that they do not include liabilities related to a derivatives contract

[23] A preferential deposit is defined in section 21, subsection 2, paragraph 1 of the Act on Commercial Banks and Other Credit Institutions in the Form of a Limited Company, in section 2, subsection 1, paragraph 1 of the Act on Cooperative Banks andother Credit Institutions in the Form of a Cooperative and in section 118, subsection 2, paragraph 1 of the Act on Savings Banks. Chapter 8, section 7, subsection 3, paragraph 5 of the Resolution Act requires that the liability is not based on a deposit recompensed under chapter 5, section 8 of the Act on the Financial Stability Authority. The present wording of the Act is not consistent with Article 45 (4)(f) of the BRRD, and the RVV has made a motion to the Ministry of Finance to amend the provision.

[24] If there is a guarantee provided by a third party attached to the liability, the liability can be used to cover MREL if it meets the other requirements. See also interpretation ID 2015_1779 in EBA's Q & A forum according to which liabilities guaranteed by third party are not considered to be a secured liability within the meaning of the BRRD.

[25] This may be justified particularly to ensure that the ownership of a loss-making institution remains within the group or amalgamation, and the group is not broken up as a consequence of the use of resolution tools.

[26] The concept of total liabilities in the denominator is not specified. The starting point is the total liabilities entered in the balance sheet. However, where this results in the double accounting of certain items in the denominator, the institution may eliminate the double impact.

[27] Netting must be based on the netting procedure used in capital requirements calculation. See interpretation ID 2015_1824in EBA's Q & A forum.

The following is a description of the RVV's opinion on the factors to be taken into account in the setting process, particularly as regards items subject to discretion by an authority.

8.1 Loss absorption amount

8.1.1 Default level

As part of the definition of MREL, the RVV must set an amount for MREL-eligible amounts it considers needed by the institution in order to absorb losses. The Commission Delegated Regulation specifies the following items as the default loss absorption amou**nt** required to cover losses:

- own funds requirements (4.5% / 6% / 8%) pursuant to Articles 92 and 458 of the EU Capital Requirements Regulation;
- any Pillar 2 requirement set by the competent authority to hold additional own funds pursuant to Article 104(1) of the CRD[28];
- combined buffer requirements as defined in Article 128(6) of the CRD[29];
- the Basel I floor according to Article 500 of the CRR;
- any applicable leverage ratio requirement.

In accordance with the Commission Delegated MREL Regulation, resolution authorities shall determine the loss absorption requirement either at the default amount determined above or by adjusting the default level requirement upwards or downwards.

8.1.2 Adjustment of the amount upwards or downwards

The loss absorption amount may be adjusted upwards in accordance with the Commission Delegated MREL Regulation[30]where the need to absorb losses in resolution is not fully reflected in the default loss absorption amount. An adjustment upwards may also be made when this is necessary to reduce or remove an impediment to resolvability or absorb losses on holdings of MREL instruments issued by other group entities.

The RVV states that the capital requirements applicable to institutions have been set with a view to their adequacy to absorb (unexpected) losses incurred by the institution. FIN-FSA assesses the adequacy of minimum capital requirements for institutions under its responsibility on a regular basis, and subject to certain requirements[31]it may set a discretionary additional capital requirement for institutions. The RVV does not have the possibility or the need to make its own assessment in this respect, but it relies on FIN-FSA's ongoing supervision and regular assessment regarding the adequacy of the minimum capital requirements.

The RVV has not, at this stage, identified any general factors or circumstances requiring a higher loss absorption level than the default level from the viewpoint of winding up or restructuring any institutions under its responsibility.

At present, the RVV does not see any general grounds supporting a higher loss absorption amount than the default level defined in the Commission Delegated MREL Regulation.

[28] In Finland, this provision of the Directive was implemented in chapter 11, section 6 of the Act on Credit Institutions.
[29] In Finland, this provision of the Directive was implemented in chapter 10, section 3 of the Act on Credit Institutions.
[30]Article 1, paragraph 5 of the Regulation.
[31]Chapter 11, section 6 of the Act on Credit Institutions.

The loss absorption amount may be adjusted downwards in accordance with the Commission Delegated MREL Regulation where a Pillar 2 additional capital requirement set by the competent authority or part of the additional buffers is not considered relevant to ensure that losses can be absorbed in resolution. As an example, the Regulation mentions capital buffers set to cover macroprudential risks.

In Finland, FIN-FSA is currently setting discretionary Pillar 2 additional capital requirements for certain institutions under its direct responsibility. However, all Finnish institutions are subject to a fixed capital conservation buffer requirement of 2.5%, which entered into force on 1 January 2015.In addition, FIN-FSA has set a buffer requirement for institutions defined as systemically important credit institutions (so-called O-SII buffer), which applies, however, to institutions other than those under the RVV's direct responsibility. To date, FIN-FSA has not set a countercyclical capital buffer for Finnish institutions.

At present, the RVV does not see any general grounds supporting a lower loss absorption amount than the default level defined in the Commission Delegated MREL Regulation. The default level therefore also includes the general loss buffer in addition to the minimum capital requirement. If other additional capital buffers are set for institutions under the RVV's direct responsibility, their appropriateness will be assessed separately.

In accordance with the Act on the Amalgamation of Deposit Banks, the central institution of the amalgamation may decide (subject to the permission of FIN-FSA) that its member credit institutions be subject to more lenient minimum capital requirements than those contained in the Act on Credit Institutions and the CRR. In addition, for a special reason and subject to an application by the central institution, the Financial Supervisory Authority may grant an exemption from all minimum capital requirements[32].

In determining the loss absorption amount for a member credit institution of an amalgamation of deposit banks, the RVV may consider, as a reducing factor, any applicable statutory exemption criteria regarding capital adequacy requirements.

8.2 Recapitalisation amount

8.2.1 General considerations

The other basic component of MREL consists of the recapitalisation amount, which must be adequate to implement the resolution strategy defined in the resolution plan. The recapitalisation amount must therefore reflect the capital need concerning the activities, or part thereof, following the implementation of the resolution tools on the institution.

For example, if the resolution strategy for an institution consists of the continuation of all of its activities solely by writing down and converting its liabilities (so-called "whole bank bail-in" model), the recapitalisation amount needs to be set again based on the scope of the activities at the time of the initiation of resolution. Since the assessment of the scope of operations at that time is difficult, the recapitalisation amount is generally set based on the current balance sheet of the institution.

[32] Act on the Amalgamation of Deposit Banks, section 21.

If, on the other hand, the resolution strategy consists of separating critical functions of the institution into a bridge bank with an authorisation, and the transfer of the remaining operations into an asset management company, the recapitalisation amount is generally only set based on the part moving into the bridge bank.

8.2.2 Institution subject to normal insolvency proceedings

Where the resolution strategy determines that the institution is within the scope of normal insolvency proceedings, the recapitalisation amount for such institutions is zero. The reason is that in insolvency proceedings, the institution no longer needs an authorisation but its activities are wound down by liquidating property and distributing the assets to the creditors.

For institutions falling within the scope of insolvency proceedings, the MREL consists solely of the loss absorption amount.

The RVV does not determine in advance the criteria, for example based on the size of the bank, according to which the institutions are grouped into those subject to resolution and those subject to insolvency proceedings[33]. In practice, the assessment of whether to place an institution within the scope of resolution or insolvency proceedings is made in the context of assessing the simplified objective relating to the resolution plan.[34].

8.2.3 Default level for institutions determined as subject to resolution proceedings

The recapitalisation amount for institutions determined as subject to resolution proceedings must be adequate to ensure compliance with the requirements for its authorisation while implementing the resolution strategy.

The level of the recapitalisation amount must take into account the following items:

- own funds requirements (4.5% / 6% / 8%) pursuant to Articles 92 and 458 of the CRR.
- any Pillar 2 requirement to hold additional own funds pursuant to point (a) of Article 104(1), of the CRD IV[35]
- the Basel I floor according to Article 500 of the CRR
- any applicable leverage ratio requirement

In addition to the abovementioned requirements, the recapitalisation amount must also correspond to the level considered adequate by the resolution authority to maintain market confidence after the institution has been placed under resolution. In this assessment, **the default level** is the total amount of the additional buffers applicable to the institution after the application of the crisis resolution tools.

8.2.4 Derogation from the default level

The amount may be lower than the default level if the resolution authority considers the lower amount sufficient to maintain market confidence and ensure the continuity of critical functions. In the context of this assessment, the RVV must consider information received from FIN-FSA on the

[33] For example, the Bank of England has determined that institutions with at least 40,000 accounts used in daily finances are reorganised under the resolution proceedings.
[34] Chapter 2, section 10 of the Resolution Act.
[35] In Finland, this provision of the Directive has been implemented in chapter 11, section 6 of the Act on Credit Institutions.

activities and financial position of the institution[36].

The assessment must also take into account the achievement of an adequate level of capital relative to institutions belonging to the same reference group. With a view to this requirement, attention must be paid, for example, to the availability of capital of other institutions within the group to maintain market confidence. For example, if, according to the resolution strategy, an amalgamation of deposit banks will retain its amalgamation structure, it may not be justified to require its individual member credit institutions to maintain a level of capital adequacy covering the capital buffers if the institutions have been granted an exemption under the Act on amalgamations from the minimum capital requirements[37].

On the other hand, the RVV considers it important to ensure that regulatory capital is not used at the same time to cover both MREL and the additional capital buffer requirements. This principle of preventing the double use of regulatory capital applies in CRD IV regulation to minimum capital requirement and additional capital buffers, and it is also reasonable to extend it to MREL calculation[38].

The RVV considers that it is impossible to determine in advance the adequate level of capital to maintain market confidence. Depending on the market situation and the scope of the bank's activities, the level of capital may be higher than or lower than the default level stated above.

In determining the level of the recapitalisation amount, the RVV considers the default level to be the combined amount of minimum capital requirement and additional capital buffers applicable to the institution.

8.2.5 Treatment of liabilities excluded from bail-in by a decision of the authority

In accordance with resolution regulations, subject to certain requirements, the resolution authority may, at its discretion, exclude some of the liabilities normally covered by bail-in from the scope of application of the instrument[39]. In such circumstances, in setting the level of MREL, the resolution authority shall ensure that the amount of MREL-eligible items is sufficient and that the so-called NCWO principle is not breached. Such an assessment is only required, however, where the amount of liabilities subject to the exemption exceeds 10% of the total amount of that ranking class.

The Commission Delegated Regulation does not determine which measures the resolution authority has available in the abovementioned circumstances. In practice, these may include at least an increase of the level of MREL or a requirement to meet it with liabilities with a contractually lower ranking.

The RVV is of the view that exclusion of eligible liabilities from bail-in is an extremely exceptional situation and should only be applied in well justified situations.

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[36] Commission Delegated Regulation, Article 4.
[37] Act on the Amalgamation of Deposit Banks, section 21.
[38] The double use of capital can be prevented in many different ways. First, the capital buffers may be included as part of MREL, in which case the consequences of breaching them would be determined on the basis of MREL provisions. Another alternative is to calculate additional capital buffers on top of MREL, in which case breaching them would lead to the same restrictions on profit distribution as in capital adequacy calculation. The starting point in this memorandum is the first alternative.
[39] Article 3 of the Regulation.

The RVV does not take into account the impact of discretionary exclusion in setting the level of MREL.

8.2.6 Impact of contributions from the deposit guarantee scheme

The Commission Delegated MREL Regulation allows the downward adjustment of MREL to the extent that contributions from the deposit guarantee fund are assumed to fund the tools under the applicable resolution strategy[40].

The use of contributions from the deposit guarantee fund in a bail-in situation requires that all liabilities with a junior ranking compared to the deposits being covered (incl. deposits by SMEs and natural persons beyond the deposit guarantee) have first been fully written off. The prerequisites for the use of the deposit guarantee fund are extremely tight, since for example in the context of writing down liabilities, the use of deposit guarantee assets to recapitalise an institution placed in resolution or a bridge bank is entirely forbidden. In addition, these assets may only be used up to the amount that the deposit guarantee fund would have covered if the institution had been declared insolvent. As a result of the above, the RVV considers it highly improbable that a resolution strategy would be established on an assumption based on the use of deposit guarantee fund assets.

The RVV does not take into account the possibility of using deposit guarantee fund assets as grounds in resolution to reduce MREL.

8.3 Consideration of the leverage ratio and Basel I floor

The Commission Implementing Regulation requires consideration of leverage ratio and Basel I floor in the context of setting MREL. In practice, this means that, in setting the loss absorption amount and the recapitalisation amount, the minimum capital requirement resulting from these two requirements could be used instead of the regulatory capital requirement, where it leads to a higher requirement for the institution concerned than the regulatory capital requirement.

At present, institutions are obliged to report the items necessary for the calculation of the leverage ratio, and this disclosure obligation entered into force at the beginning of 2015. In Finland, the leverage ratio has not been enforced as a binding requirement, but implementation will follow the schedule under the CRR. Decisions on the implementation of the requirement and its level will be made at the EU level in the near future.

For the time being, the RVV does not take into account the leverage ratio as a factor increasing MREL.

The calculation of the Basel I floor is provided for in Article 500 of the CRR. It is a transitional provision provided in the context of the so-called Basel II reform, which was intended to ensure the maintenance of adequate capitalisation for banks applying internal models without a significant decrease of capital requirements after the reform.

[40] The requirements for the use of contributions from the deposit guarantee fund in the funding of resolution are defined in chapter 5, section 14 of the Act on the Financial Stability Authority.

The RVV takes into account the Basel I floor under Article 500 of the CRR as a factor increasing MREL if it leads to a higher requirement than the regulatory capital requirement under Article 92 of the CRR. In calculating the loss absorption amount, reference is made to the total amount of the requirement under Article 92 of the CRR, the discretionary capital buffer under chapter 11, section 6 of the Act on Credit Institutions and the additional capital buffer under Article 128(6) of the CRD. On the other hand, in calculating the recapitalisation amount reference is made to the total amount of the requirement under Article 92 of the CRR and the discretionary capital buffer under chapter 11, section 6 of the Act on Credit Institutions.

8.4 Impact of prerequisites for using the assets of the resolution fund

In accordance with the Commission Delegated MREL Regulation[41], in the context of setting MREL, the prerequisites set for the use of the assets of the resolution fund must be taken into account. The assets of the single resolution fund may not be used until after the nominal value of own funds and eligible liabilities have been reduced at least by an amount corresponding to 8% of the balance sheet total of the institution placed under resolution[42].

Use of the assets of the resolution fund is not unavoidable in all circumstances. If the use of the assets of the fund is considered feasible in the resolution strategy, resolution planning must ensure the validity of the prerequisites[43]. Hence, the 8% requirement as a rule also sets a minimum for MREL.[44]

The RVV requires that MREL as a rule always corresponds to an amount which is at least 8% of the balance sheet total of the institution.

8.5 Example of setting MREL

Bank A is a small institution whose minimum regulatory capital requirement is 8% of risk weighted assets. In addition, it is subject to a fixed additional buffer requirement of 2.5%. The risk weighted assets of the bank amount to 40% of its balance sheet. According to the RVV's assessment, the bank can be placed under normal insolvency proceedings.

The loss absorption amount for the bank is calculated by converting the total capital requirement of 10.5% relative to RWA to a balance sheet based amount. Hence, the loss absorption amount is 4.2% of the balance sheet. The recapitalisation amount is zero, because the bank can be declared insolvent. The bank's MREL is therefore the same as its minimum regulatory capital requirement.

Bank B is a medium-sized institution whose total capital requirement is likewise 10.5% and RWA amount 40% of its balance sheet. The bank does not have derivatives contracts. According to the RVV's assessment, the bank carries out critical functions and therefore its operations call for restructuring through resolution proceedings. The determined resolution tool is bail-in, as

[41] Article 5(1) of the Regulation.
[42] Chapter 8, section 6 of the Resolution Act.
[43] If MREL is not set at a level required by the use of the fund, a situation may emerge where an institution lacks sufficient own funds and eligible liabilities to implement bail-in.
[44] If should be noted that the minimum level of 8% is calculated differently for derivatives than for MREL. For the purposes of MREL, liabilities based on derivatives contracts are accounted for in net terms to the extent that offsetting derivatives positions can be netted in closing the contract. See footnote 23 above. In contrast the minimum level of 8% relating to the use of the assets of the fund, reference is made to the balance sheet total including derivatives in gross terms.

a consequence of which the business of the bank continues in its current scope causing no significant changes in RWA.

The resulting loss absorption amount for the bank is 4.2% of the balance sheet and the recapitalisation amount is 4.2% of the balance sheet. Hence, its MREL is 8.4%, exceeding the minimum level of 8%.

Bank C is similar in terms of nature and has the same risk profile and total capital requirement as Bank B. However, its resolution tool determined in its resolution plan is a bridge bank, which is estimated to continue approximately 80% of the operations of the institution. In this case, the recapitalisation amount is 3.36% (0.8 x 40%) of the balance sheet and the MREL is 7.56%of the balance sheet. Since the resolution plan does not exclude the use of assets of the single resolution fund, the RVV requires the own funds and eligible liabilities to amount to at least 8%. As a result, the level of 8% becomes the effective MREL for Bank C.

9. Transitional period to fulfil MREL

In accordance with the Commission Delegated MREL Regulation[45], resolution authorities may determine an appropriate transitional period for an institution or group to reach the final MREL. According to the same article, the transitional period must be as short as possible. Depending on the length of the transitional period, the resolution authority may set annual target levels for the period between the MREL setting decision and the final deadline, which must be fulfilled by the institution by each interim deadline.

According to the RVV's interpretation, the Commission Delegated Regulation enables a transitional period to be granted, for example so that the requirement must first be met at group level, whereas the institution-specific requirements only enter into force at a later stage[46]. The length of the transitional period can also be used to level out the playing field for institutions, for example by granting a longer transitional period for institutions included sooner in the scope of MREL. In the setting of the transitional period, it is also possible to take into account any delays due to the institution's limited scope for raising funding in the capital markets.

Due to the institution-specific nature of MREL, the RVV will not set for all institutions under its responsibility a single date by which they must fulfil MREL. As stated above, the level of the requirement depends, among other things, on the resolution strategy defined in the resolution plan, and therefore the decision can only be made as part of the plan for each institution. This, in turn, depends on the schedule of preparation of the resolution plan for each individual institution.

The RVV may set a transitional period for the fulfilment of MREL. The transitional periods set by the RVV for different institutions and groups will not necessarily have the same length, as they reflect, for example, on the current level of MREL-eligible items of the institution and the group, and the possibly earlier date of MREL setting compared to other institutions. The transitional period may be granted, for example, so that the requirement applies in the first phase at group level, while the institution-specific requirements take effect in the next phase.

[45] Article 8 of the Regulation.
[46] Such an approach has been adopted, for example, by the SRB for institutions under its direct competence, and by the Swedish resolution authority (Riksgälden).

10. Data collection and regular reporting

In accordance with the Resolution Act, institutions must have adequate systems in place to ensure that the RVV can continuously supervise that the institution complies with the requirements concerning the application of MREL.

An integral part of the setting and supervision of MREL is regular data collection on MREL-eligible liabilities. As regards own funds, the RVV receives the required data largely from existing Corep reports, but current regulatory reporting by institutions does not produce adequate information for MREL calculation.

For exploring the liability structure of institutions, the SRB has prepared Excel-based templates (Liability Data Templates), which have been used in data collection on institutions under the SRB's direct responsibility in spring 2016.[47]The objective of the data collection, in addition to the exploration of MREL-eligible items, is to improve the capabilities of institutions to produce liability-specific information for the purposes of rapid implementation of investor liability (bail-in).

Going forward, the intention is to make the reporting serving MREL calculation a regular one, but its content and technical manner of implementation remains undecided (for example whether to include it as part of Corep).

The RVV has used and will continue to use the SRB's data collection templates for such institutions under its responsibility, for whom the preparation of resolution plans has been launched.[48]The RVV has mapped the levels of MREL-eligible items for all institutions under its responsibility either by the abovementioned LDT templates or templates with a more simplified content. The RVV will provide the institutions concerned with more details in early spring.

All institutions are advised to be aware of and prepare for the data collection on liability structure becoming part of regular regulatory reporting, which will require significant changes in 2017 for example in reporting and IT systems.

In autumn 2016, the RVV has mapped, by a separate data collection, the amount of MREL-eligible items of all institutions under its responsibility.

11. Hearing of the institution and announcement of MREL

The RVV will notify the institution in writing of the level of MREL to be set, on which the institution may comment, depending on the time, either separately or as part of the consultation procedure relating to the resolution plan.

The final decision by the RVV on MREL can be appealed in the same way as any decisions made by the RVV.[49] Due to the institution-specific nature of MREL, the RVV will not publish the requirements it sets.

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[47] See SRB news release https://srb.europa.eu/en/node/52 The updated templates and related instructions are available at http://srb.europa.eu/en/content/resolution-reporting

[48] See news release by the RVV http://rvv.fi/tiedotteet/-/asset_publisher/rahoitusvakausvirasto-kaynnisti-kriisinratkaisusuunnitelmia-koskevan-tiedonkeruun-suorassa-toimivallassaan-olevilta-laitoksilta(in Finnish).

[49] Chapter 17, section 3 of the Resolution Act

The RVV will not publish the institution-specific MREL requirements it sets. The RVV, moreover, does not require the institutions to publish their MREL.

The RVV must notify the European Banking Authority of the MREL applicable to each institution[50].

The question regarding the publication of decisions by resolution authorities on MREL is one of the topics still subject to clarification at the EU level. In addition, preparations are ongoing for regulations relating to the detailed disclosure of details of liability items related to MREL calculation as part of the Pillar 3 process.

12. Obligation of an institution to report falling below MREL and consequences thereof

The Resolution Act requires that institutions always have adequate own funds and eligible liabilities to cover the MREL set by the RVV.

If an institution's own funds and eligible liabilities fall below the MREL set by the RVV, the institution or holding company must notify the RVV thereof without delay. In this case, the institution must prepare to present a plan to fulfil MREL and the requisite measures to implement the plan.

After receiving the notification referred to above or otherwise receiving the information that own funds or eligible liabilities have fallen below the required amount, the RVV may set a deadline by which the MREL for the institution must be fulfilled.

The Resolution Act is not explicit on the consequences of falling below MREL. However, the RVV has the authority, as part its authority to remove impediments to resolvability, to require an institution or its parent company to issue MREL-eligible liabilities or other measures (such as renegotiation of the terms and conditions of liabilities) to fulfil MREL.[51]Depending on the case, falling below MREL may initiate the process of assessment by the RVV of the conditions for implementing resolution.[52]

Depending on the reasons leading to falling below the requirement, the RVV may also propose to FIN-FSA the imposition of administrative sanctions on the institution.[53]

[50] Chapter 8, section 9 of the Resolution Act
[51] Chapter 3, section 4, subsection 9, paragraphs 9) and 10) of the Resolution Act.
[52] Chapter 4, section 2 of the Resolution Act. More detailed provisions on the so-called fail or likely to fail assessment procedure are laid down in EBA Guideline EBA/GL/2015/07
[53] Chapter 18, section 1 of the Resolution Act.