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VERKET FÖR FINANSIELL STABILITET
FINANCIAL STABILITY AUTHORITY

MEMORANDUM

29.4.2019

This memorandum was last updated on 29 April 2019, and it reflects the policy lines set in the memorandum on MREL called "2018 SRB Policy for the first wave of resolution plans" issued by the SRB on 20 November 2018.

APPLICATION OF THE MINIMUM REQUIREMENT FOR OWN FUNDS AND 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
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
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
FFSA	Finnish Financial Stability Authority (*Rahoitusvakausvirasto*)
LAA	Loss Absorbing Amount
MPE	Multiple Point of Entry. Resolution strategy, in which resolution measures are directed at more than one entities or sub-groups within a group.
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.
RCA	Recapitalisation Amount
Resolution Act	Act on resolution of credit institutions and investment firms (1194/2014)

SPE	Single Point of Entry. Resolution strategy, in which resolution measures are directed at a single entity within a group.
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 FFSA's direct responsibility as well as factors influencing the determination of the level. In addition, the memorandum includes interpretations made to date[1] on questions arising within the context of the FFSA'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 significant changes in the requirement applicable to the institution (e.g. significant change in the level of additional capital buffers).

- Revision of MREL always requires a separate decision by the FFSA, and for example a change of an additional capital charge imposed by the FIN-FSA does not automatically trigger a change to MREL

- 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 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. Within the banking union, significant factors guiding the determination of MREL are the SRB's policy decisions on MREL, on which this policy memorandum is also largely based.

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

- The FFSA does not define in advance or publicly disclose 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.

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[1] As at the end of April 2019.

- The default level 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. The SRB has also defined the application principles of MREL for institutions not using a whole bank bail-in strategy, based on which a scaling factor of minus 20% may be applied to the recapitalisation amount subject to certain conditions. 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 FFSA 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 FFSA 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 capacity of the institution to fulfil the requirement at time it is imposed and 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 group level, whereas the institution-specific requirements take effect in the subsequent stage.

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

- For the time being, the collection of data for the calculation of MREL is conducted based on the SRB's data collection templates on the liability structure[2]. In addition, Excel-based MREL data collection templates are collected from institutions within the scope of MREL on a semi-annual basis. Following BRRD2 regulation, the data collection will be more detailed. The more detailed content and technical manner of implementation of the reporting are still under preparation by an EBA working group.

3. Introduction and objectives of the memorandum

One of the key objectives of the new regulations on crisis resolution is the implementation of investor liability. 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 FFSA must set MREL to institutions falling within the scope of the Act. The Act does not contain any transitional provisions regarding the establishment of a MREL, and therefore the FFSA 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[3].

Since MREL constitutes an entirely new Pillar-2 type institution-specific requirement, the FFSA 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

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[2] See https://srb.europa.eu/en/content/liability-data-report
[3] Including final Commission Delegated MREL Regulation, which was issued on 23 May 2016 and entered into force on 23 September 2016.

with respect to questions arising within the context of the FFSA's work and in EU bodies (particularly the EBA and the SRB). Another objective of the memorandum is to improve opportunities for all institutions 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 FFSA (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

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.

Certain provisions in chapter 8 of the Resolution Act which were at variance with the BRRD on the calculation of the MREL were specified by amendments entering into force on 1 January 2018[4].

In memoranda published by the SRB, it updated its principles applicable to the setting of MREL for institutions under its direct responsibility[5]. The principles are not intended to be applied as such to institutions under the responsibility of national authorities, but the SRB has stated it deems important that the principles are applied uniformly to all euro area credit institutions. As pointed out below, the SRB also has the competence to provide instructions to national resolution authorities regarding issues affecting institutions under their authority, where necessary.

In addition, interpretations are made continuously within the EBA's questions and answers process (Single Rulebook Q&A) on issues relating to resolution regulations[6]. Furthermore, certain national resolution authorities have published policy papers on the application of MREL[7].

4.2 EU-level preparations to harmonise TLAC and MREL requirements

On 23 November 2016, the Commission issued legislative proposals on the implementation of the TLAC requirement for European G-SIIs and on certain other amendments affecting the calculation of MREL for all institutions.[8] The schedule of entry into force of the proposed changes is

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[4] Act 821/2017 on the amendment of the Resolution Act,https://www.finlex.fi/fi/laki/alkup/2017/20170821 (in Finnish).
[5] See https://srb.europa.eu/en/content/mrel
[6] Although the responses given in the forum are non-binding by nature, they have a steering impact on practices observed by authorities
[7] For example, the MREL consultation paper published by the Swedish Riksgälden on 23 February 2017 https://www.riksgalden.se/globalassets/dokument_sve/om_riksgalden/pressmeddelanden/ovrigt/tillampning-av-minimikravet-pa-nedskrivningsbara-skulder.pdf and the Bank of England statement on the application of MREL https://www.bankofengland.co.uk/-/media/boe/files/financial-stability/resolution/boe-approach-to-setting-mrel-november-2016.pdf?la=en&hash=BFA7F3F7A2C03DCE2E7BFDC95C54E33379C2B62C. Both of the above authorities have also published their bank-specific decisions on the applicable MREL levels.
[8] Proposals pertaining to resolution consist of three package; proposed amendments to the BRRD, see http://ec.europa.eu/finance/bank/docs/crisis-management/161123-proposal-directive-recapitalisation-capacity_en.pdf, adjustment of the

sequential so that the amending Directive 2017/2399 of 12 December 2017 as regards the ranking of unsecured debt instruments in insolvency hierarchy had to be implemented nationally by 29 December 2018. In Finland, the amendment of the Directive was enforced on 12 November 2018 by the new section 4 a of the Credit Institutions Act (Act 9.11.2018/866). The contents of the other amendments to EU legislation have also been confirmed, but they have not yet been published in the Official Journal. The CRR 2 amendments (containing certain provisions on the application of MREL) will enter into force 20 days from publication, while BRRD 2 amendments must be implemented in national legislation within 18 months from publication.

The FFSA monitors the progress of the preparations at the EU level closely, but due to the lack of the final BRRD 2/CRR 2 provisions and the incompleteness of national implementation, the impacts of the proposed regulations could be taken into account in this memorandum. However, the FFSA will make the requisite revisions to the memorandum once the content of the final regulations has been confirmed and national implementation proceeds.

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[9]. As regards these institutions, MREL is established by the SRB, but the FFSA is responsible for the national implementation of MREL decisions.

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[10]. In this case, the competent authority in the joint decision-making process is either the SRB or the FFSA, depending on under whose responsibility the institution belongs.

As regards institutions other than those referred to above,[11] MREL is set exclusively by the FFSA. As stated above, the considerations presented in this memorandum only apply to these institutions under the direct responsibility of the FFSA.

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[12]. 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 FFSA must consult FIN-FSA and the SRB before setting an MREL. According to the Resolution Act, the FFSA must continuously monitor compliance with the requirements for applying MREL in cooperation with FIN-FSA[13].

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priority of banks' liabilities, see http://ec.europa.eu/finance/bank/docs/crisis-management/161123-proposal-directive-unsecured-debt-instruments_en.pdf and amendment of the Capital Requirements Regulation, see http://ec.europa.eu/finance/bank/docs/regcapital/crr-crd-review/161123-proposal-amending-regulation_en.pdf

[9] A list of credit institutions under the direct supervision of the ECB (List of significant supervised entities) and other cross-border institutions under the SRB's direct responsibility are found in these links: https://www.bankingsupervision.europa.eu/banking/list/who/html/index.en.html and http://srb.europa.eu/sites/srbsite/files/cross_borders_02052016.pdf

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

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

[12] Article 31(1) of the SRM Regulation.

[13] As regards significant institutions, the SRB is under a similar consultation obligation *vis-à-vis* the ECB, see SRM Regulation, Article 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 FFSA 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 FFSA 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 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)[14].Accordingly, the FFSA will not set an institution-specific MREL for such mortgage credit banks. Although mortgage credit banks belonging to a group are not subject to the institution-specific MREL, their assets and liabilities are taken into account in the 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 FFSA as a rule considers the scope of the authorisation instead of the actual scope of activities conducted.

[14] Chapter 8, section 7, subsection 5 of the Resolution Act

MREL[15] 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 FFSA may decide that an institution functioning as the parent company of a group is only subject to MREL based on the consolidated financial position[16]. Similarly, the FFSA may exempt from MREL an institution which is a subsidiary in a group[17]. The requirements for granting such waivers are listed in chapter 8, section 11 of the Resolution Act. Where in the context of setting or reviewing MREL, an institution considers it meets the preconditions listed in said section, it may file a written application with the FFSA in order to have an exemption. Upon receiving an application, the FFSA considers whether there are sufficient grounds for granting an exemption.

The FFSA 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 EU Capital Requirements Regulation. According to information provided by FIN-FSA, it has not extended any derogations referred to in Article 7 of the CRR.

Preparations by the SRB for principles regarding the setting of the institution-specific requirement[18] are still in process, but they have been clarified to some extent in the SRB's 2018 second-wave MREL policy[19].

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

6.6 Amalgamations of deposit banks

Under legislation, the FFSA cannot currently 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.[20] 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

[15] If an investment firm has normal bankruptcy proceedings as a resolution strategy, its MREL requirement is the same as its minimum capital adequacy ratio
[16] Chapter 8, section 11, subsection 1 of the Resolution Act
[17] Chapter 8, section 11, subsection 2 of the Resolution Act
[18] A distinction must be made between the institution-specific requirement and Internal MREL, which means a requirement applicable to groups with an SPE strategy in which the subsidiary must fulfil the institution-specific requirement with intra-group and subordinate liabilities, this ensures the transfer of the subsidiary's loss within the group to the level of the parent (so-called point of entry entity). The Internal MREL principles will become binding following the implementation of the BRRD 2 package, but some elements are already included in the SRB's current MREL policy lines
[19] See https://srb.europa.eu/sites/srbsite/files/public_mrel_policy_2018_-_second_wave_of_plans.pdf. These principles are not included yet in this memorandum.
[20] 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 that enable certain derogations or mitigations to 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[21], 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. In calculating the consolidated MREL, external liabilities issued by all companies belonging to the consolidation group may be included in eligible liabilities[22].

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[23].

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

- the financial instrument is fully paid up;
- 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[,24,25];
- the liability does not arise from a derivative[26];
- the liability does not arise from compensable or preferential deposit[27];
- 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[28].

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

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[21] Article 7(2) of the Regulation.
[22] According to the SRB's second-wave 2018 MREL policy paper, t, only external MREL-eligible liabilities issued by the group's resolution entity should be considered MREL-eligible. This principle will be clarified in the next update version.
[23] Chapter 8, section 4 of the Resolution Act contains a list of liabilities whose nominal value cannot be reduced.
[24] Among fixed-term deposits, only those that cannot be terminated by the depositor during the term of the agreement are deemed to be MREL eligible. If a fixed-term deposit can be terminated by the depositor, 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.
[25] 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). The criteria concerning debt terms and conditions affecting maturity will be clarified following the CRR 2 revisions. They will be addressed in the next update version of this memorandum.
[26] Structured notes and comparable instruments as a rule are not included in MREL-eligible liabilities. However, the FFSA may, on a case-specific basis decide to approve them at the institution's initiative if the instruments meet the requirements stated in paragraph 20 of SRB's 2019 first-wave policy memorandum.
[27] A preferential deposit is defined in section 4 a(1)(1) of the Credit Institutions Act..
[28] 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.

eligible liabilities. However, the FFSA may require, for example in its decision concerning the impediments to wind-up and related to the resolution plan, that intra-group liabilities must have rank lower than other eligible liabilities in terms of insolvency legislation[29].

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.

Where liabilities issued by an institution are subject to the legislation of a non-EU-member state, those liabilities as a rule are not MREL-eligible even if they otherwise meet the MREL-eligibility criteria.

Regarding Brexit, liabilities issued under UK jurisdiction are regarded as third-country liabilities immediately after the entry into force of Brexit and they lose their MREL eligibility in the absence of the above prerequisites, unless the EU and the UK agree on an exemption or a transition period in the context of the exit negotiations or otherwise.

In its application practice, the FFSA complies with the requirements on the Bail-in/MREL-eligibility of instruments issued under third-country legislation set in Article 55 of the BRDD, chapter 8, section 12 a of the Resolution Act, and Articles 43 and 44 of Commission Delegated Regulation 2016/1075. In addition, the SRB's MREL policy clarifies the application of these provisions on credit institutions operating in member states of the banking union. On 29 March 2019, the SRB also published a position paper[30] on the impacts of Brexit and its expectations for credit institutions.

The starting point of the abovementioned provisions is that the bank must demonstrate to the authority that an action concerning the write-off or conversion of a liability is effectively enforceable under the third-country legislation. In other words, the purpose is to ensure that third-country regulations do not cause a risk that would endanger the write-down or conversion of liabilities in the event of a crisis.

In accordance with regulation, the institution must, first of all, apply a contractual term for such debt securities providing that the creditor of the institution acknowledges and accepts the write-down or conversion of capital subject to a decision of the Financial Stability Authority. The minimum content of the contractual term concerned is described in Commission Delegated Regulation 2016/1075, but the EBA or other authorities have not published a model clause concerning the contractual term.

Secondly, the credit institution must, upon request, provide a legal opinion to the competent resolution authority on the enforceability and effectiveness of the contractual term in question.
In its MREL policy and application practice, the SRB has clarified these prerequisites to that it usually[31] requires banks to provide legal opinions to ensure the MREL-eligibility of liabilities.

According to the SRB's MREL policy, the legal opinion must cover at least the following aspects:

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[29] 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. See also chapter 8, section 8 of the Resolution Act on the FFSA’s right to demand the institution to cover MREL by contractually eligible liabilities.
[30] See https://srb.europa.eu/en/node/743
[31] The exception is reserved for circumstances where the following applies: “The SRB reserves the right not to request a legal opinion, for instance, where it deems that the proportion of issuances governed by the laws of third countries of the MREL-eligible stock of a bank is not significant and the SRB has sufficient elements to conclude for the eligibility of such liabilities”

"*The legal opinion shall:*

1. *Be reasoned and indicate whether the bail-in clause fully complies with Art. 44 of Commission Delegated Regulation 2016/1075, detailing the criteria set forth therein.*
2. *Take into account not only the general enforceability of the standard/template clause but also, to the extent relevant, all specific circumstances, rules governing the actual programme/offering/issuance, and ensure that no other contractual term or arrangement may impair the effectiveness and enforceability of the clause.*
3. *Include an analysis of possible impediments to the effectiveness and enforceability of the clause, drawing from insolvency law, securities law and the general legal framework of the third country jurisdiction, such as public policy.*
4. *Include an assessment on the effectiveness of the clause in case of non-coincidence of jurisdiction and governing law (i.e. if the chosen court (the jurisdiction) is called to apply a foreign law), particularly in terms of how in practice the chosen forum will apply the governing law.*"

For example, if an institution has different contractual terms depending on an updated version of a programme prospectus, the same legal opinion may cover the enforceability and effectiveness of several contractual terms.

The final result and impacts of the ongoing Brexit negotiations where United Kingdom becomes an EU-external country are still open. The FFSA urges credit institutions to also prepare for circumstances where the UK exits the EU without a contract in place. In this case, the UK would become a third country immediately after the entry into force of the exit, and it would be treated in a regulatory sense as a third country immediately following the relevant date.

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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.[32] 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.[33]

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

[32] 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.

[33] Netting must be based on the netting procedure used in capital requirements calculation. See interpretation ID 2015_1824 in EBA's Q & A forum.

8.1 Loss Absorption Amount, LAA

8.1.1 Default level

As part of the definition of MREL, the FFSA 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 amount** 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[34];
- combined buffer requirements as defined in Article 128(6) of the CRD[35];
- 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[36] 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 FFSA 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[37] it may set a discretionary additional capital requirement for institutions. The FFSA does not see a 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 FFSA 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 FFSA does not see any general grounds supporting a higher loss absorption amount than the default level defined in the Commission Delegated MREL Regulation.

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 appropriate to ensure that losses can be

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[34] In Finland, this provision of the Directive was implemented in chapter 11, section 6 of the Act on Credit Institutions.
[35] In Finland, this provision of the Directive was implemented in chapter 10, section 3 of the Act on Credit Institutions.
[36] Article 1, paragraph 5 of the Regulation.
[37] Chapter 11, section 6 of the Act on Credit Institutions.

absorbed in resolution. As an example, the Regulation mentions capital buffers set to cover macroprudential risks.

In Finland, FIN-FSA has set, or is in certain respects still 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 FFSA's direct responsibility. To date, the FIN-FSA has not set a countercyclical capital buffer for Finnish institutions[38]. On 29 June 2018, the FIN-FSA decided to set an additional capital buffer requirement based on structural characteristics of the financial system under chapter 10, section 3 of the Credit Institutions Act. The latter additional capital requirements will enter into force on 1 July 2019.

The FIN-FSA's capital buffer requirements will be subject to regular review. Adjustment of the MREL always requires a separate decision by the FFSA, and adjustment of the capital buffer requirement does not automatically cause a change to MREL.

At present, the FFSA 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 FFSA'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 the 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[39].

In determining the loss absorption amount for a member credit institution of an amalgamation of deposit banks, the FFSA 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.

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[38] However, a Finnish institution may be within the scope of a countercyclical capital buffer to the extent that it has exposures in a country which has adopted the requirement. This part of the countercyclical capital buffer has an upward impact on the level of the MREL requirement.
[39] Act on the Amalgamation of Deposit Banks, section 21.

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. At present, the SRB applies the whole-bank-bail-in strategy as the starting point for setting the level of MREL for every institution if it has been determined as the primary or alternative strategy in the resolution plan.

Since the assessment of the scope of operations at that time is difficult, the recapitalisation amount is generally set based on the most recently reported balance sheet of the institution and the resulting total exposure amount. However, the Commission Delegated MREL Regulation also allows the use of an amount calculated on the basis of other assumptions in certain exceptional circumstances (see section 8.2.4 below).

The SRB has also decided the MREL application principles for institutions without a whole bank bail-in strategy. Accordingly, the recapitalisation amount may be adjusted downwards by a maximum of 20% subject to certain preconditions[40].

8.2.2 Institution subject to 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 FFSA 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[41]. 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.[42].

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[43]
- any applicable leverage ratio requirement

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[40] See paragraph 21 of the SRB 2018 first-wave MREL paper.
[41] 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.
[42] Chapter 2, section 10 of the Resolution Act.
[43] In Finland, this provision of the Directive has been implemented in chapter 11, section 6 of the Act on Credit Institutions.

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 Commission Delegated Regulation[44] provides the possibility to make bank-specific adjustments to the most recently reported total risk exposure amount (TREA), if the resolution plan identifies and describes the changes in the capital requirement immediately following resolution action and these changes are taken into account in the resolvability assessment.

The amount may be lower than the default level if the resolution authority considers the lower amount after the implementation of resolution measures sufficient to fulfil the conditions of the authorisation and to maintain market confidence. In the context of this assessment, the FFSA must consider information received from FIN-FSA on the activities and financial position of the institution[45].

The assessment must also take into account the achievement of an adequate level of capital relative to institutions belonging to the same reference group. In view of the above, the SRB has decided to apply a reduction of 1.25% to institutions under its direct competence. The FFSA applies a similar reduction to institutions under its competence.

In the assessment, 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 Amalgamations Act from the minimum capital requirements[46].

On a case-by-case basis, the FFSA may adjust the recapitalisation amount by taking into account potential reduction of the balance sheet due to credit losses recognised. The reduction may amount at the maximum to total risk exposure crresponding to 10% of the balance sheet amount[47]. Since the assessment of the prerequisites of the scenarios by the SRB is still ongoing, the FFSA does not for the time being apply a 10% reduction to any institution.

The FFSA may also take into account the downward impact on total risk exposure of the measures stated in the recovery plan. The FFSA will only consider the impact of such recovery measures which can be implemented rapidly in the resolution phase assuming that the institution is unable to implement them in the recovery phase or in connection with early-phase measures[48].

In accordance with the aforesaid, the FFSA applies the possibility under the SRB’s MREL policy to lower the recapitalisation amount by a maximum of 20% for institutions whose primary resolution strategy is other than whole bank bail-in.

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[44] Article 2(3) of the Commission Delegated MREL Regulation.
[45] Commission Delegated Regulation, Article 4.
[46] Act on the Amalgamation of Deposit Banks, section 21.
[47] See page 12 of the SRB's policy memorandum. The SRB applies the assumption that recognised losses correspond with the loss absorption amount and risk weights remain unchanged in comparison with the period before the implementation of recovery measures.
[48] See page 12 of the SRB's policy paper. The SRB mentions as a third basis for adjustment measures taken under restructuring plans (e.g. those required in the context of the Commission's state subsidy decisions) applicable to the institutions. Such plans have not been implemented in Finland.

In determining the level of the recapitalisation amount, the FFSA considers the default level to be the combined amount of minimum capital requirement and additional capital buffers applicable to the institution, less 1.25%. The FFSA may also, on a case by case basis and subject to very stringent preconditions, also revise the default recapitalisation amount downwards. The FFSA applies the possibility under the SRB's MREL policy to lower the recapitalisation amount by a maximum of 20% for institutions whose primary resolution strategy is other than whole bank bail-in.

8.2.5 Treatment of liabilities excluded from bail-in by virtue of law or 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[49]. 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 directly excluded on from bail-in by virtue of national law and subject to the discretionary exemption totals more than 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. In this respect, the SRB has specified its assessment methodology and impacts on the level of MREL in its 2018 second wave MREL policy. These will be clarified further in the next update version of this memorandum.

The FFSA 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.

In setting the level of MREL, the FFSA currently does not take into account the impact of liabilities directly excluded on from bail-in based on national law or the discretionary exemption.

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[50].

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 de-

[49] Article 3 of the Commission Delegated MREL Regulation.
[50] 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.

clared insolvent. As a result of the above, the FFSA considers it highly improbable that a resolution strategy would be established on an assumption based on the use of deposit guarantee fund assets.

The FFSA 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. Article 500 of the CRR concerning the Basel I floor has been repealed, so it is no longer considered in the determination of MREL.[51]

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 next year.

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

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

In accordance with the Commission Delegated MREL Regulation[52], 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[53].

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[54]. Hence, the 8% requirement as a rule also sets a minimum for MREL.[55]

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[51] See paragraph 6 of the SRB’s MREL policy.
[52] Article 5(1) of the Regulation.
[53] Chapter 8, section 6 of the Resolution Act.
[54] 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.
[55] 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.

The FFSA 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

The examples below illustrate the impact of different resolution strategies on the level of the MREL requirement. As stated above in section 8.2.1., the FFSA as a rule, in line with the SRB's guidance, currently applies the whole-bank-bail-in strategy to all institutions (whose strategy does not involve bankruptcy).

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 FFSA'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 relative to the amount of liabilities and own funds. Hence, the loss absorption amount is 4.2% of liabilities and own funds. 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 FFSA'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 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 3.7 % of the total liabilities and own funds. Since 4.2% + 3.7% is less than 8 %, the 8 % becomes the effective MREL for Bank B.

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 sale of business, which is estimated to continue approximately 80% of the operations of the institution. In this case, the discount of 20 % applied to sale of business tool is taken into account and recapitalisation amount is 2.96% of the balance sheet and the MREL is 7.16% of the total liabilities and own funds. The discount of 1,25 % has also been taken into account. As a result, the level of 8% becomes the effective MREL for Bank C.*

9. Minimum requirement for subordinated liabilities

The TLAC requirements establish a minimum amount applicable to G-SIIs for liabilities ranking junior in comparison to ordinary unsecured senior liabilities. The requirement of subordinated liabilities may improve the possibility to restructure the operation of the institution in the context of a crisis and reduce the risk of breaching the NCWO principle. It may also facilitate and expedite the use of the bail-in tool.

On the basis of current regulation[56], the resolution authority has the right to require an institution to meet its MREL requirement with liabilities ranking junior to MREL-eligible senior liabilities. In its 2018 first-wave policy paper[57], the SRB stated it requires all G-SIIs and O-SIIs under its competence to hold a minimum amount of such liabilities.[58] As regards other institutions than those referred to above, the SRB states the requirement will reflect case-by-case consideration.

The FFSA does not require a minimum amount in respect of liabilities ranking junior to normal senior liabilities, but a decision on the need of setting a minimum amount will be made in connection with institution-specific resolution planning.

10. Transitional period to fulfil MREL

In accordance with the Commission Delegated MREL Regulation[59], 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[60].

According to the FFSA'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[61]. 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 FFSA 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 FFSA may set a transitional period for the fulfilment of MREL. The transitional periods set by the FFSA 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.

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[56] BRRD Art 45(6)(c) and Resolution Act 8:8§.
[57] SRB 2018 first-wave policy paper, paragraph 25..
[58] For G-SIIs, the minimum requirement is 13.5% + total additional capital buffers and for O-SIIs, 12% + minimum amount of additional capital buffers. The minimum amount may also be met by own funds.
[59] Article 8 of the Regulation.
[60] According to the SRB's policy paper, the transition period will be set on an institution-specific basis and it may be four years at the maximum. If an institution has no MREL shortfall at the time, the requirement will take effect immediately.
[61] Such an approach has been adopted, for example, by the SRB for institutions under its direct competence, and by the Swedish resolution authority (Riksgälden).

11. Data collection and regular reporting

In accordance with the Resolution Act, institutions must have adequate systems in place to ensure that the FFSA 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 FFSA 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 templates (Liability Data Report), which have been used in data collection on institutions under the SRB's direct responsibility also in 2019. The FFSA uses the same Excel-based templates in collecting data on liability structure from institutions under its competence[62]. 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). The SRB also collects quarterly data from institutions under its direct competence on their MREL levels and developments on simplified Excel-based templates. The FFSA uses the same templates and collects data from institutions under its direct competence which have been assigned a MREL.

Following the entry into force of BRRD 2 regulations, the reporting serving the monitoring of MREL will be clarified. The specification of the more detailed reporting content and technical manner of implementation have been assigned to the EBA, and related preparations are underway.

All institutions are advised to be aware of and prepare for the data collection becoming part of regular regulatory reporting. Before the roll-out of regular EBA reporting, data collection from all institutions will be carried out using similar liability structure templates to those used presently, and also simplified MREL templates if the institution is within the scope of MREL..

12. Hearing of the institution and announcement of MREL

The FFSA 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 FFSA on MREL can be appealed in the same way as any decisions made by the FFSA.[63] Due to the institution-specific nature of MREL, the FFSA will not publish the requirements it sets. [64]

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[62] The SRB's release with instructions and tables on the liability data collection 2019 is available at the SRB website https://srb.europa.eu/en/content/liability-data-report. As regards investment firms, the FFSA will collect the liability structure data with separate data collection tables.
[63] Chapter 17, section 3 of the Resolution Act
[64] ESMA has stated its opinion on its Q&A forum on the obligation of listed institutions to publish their MREL. See https://www.esma.europa.eu/press-news/esma-news/esma-updates-its-market-abuse-qas and question Q5.1.

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

The FFSA must notify the European Banking Authority of the MREL applicable to each institution[65].

The CRR2 and BRRD2 amendments being finalised include provisions on the publication of MREL, and their more detailed content will be defined in EBA ITSs. Preparations are currently underway.

13. 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 FFSA.

If an institution's own funds and eligible liabilities fall below the MREL set by the FFSA, the institution or holding company must notify the FFSA 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 FFSA 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 FFSA has the authority, as part its authority to remove obstacles to the winding-up or restructuring of institutions, 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.[66]Depending on the case, falling below MREL may initiate the process of assessment by the FFSA of the conditions for implementing resolution.[67]

Depending on the reasons leading to falling below the requirement, the FFSA may also propose to FIN-FSA the imposition of administrative sanctions on the institution.[68]

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[65] Chapter 8, section 9 of the Resolution Act
[66] Chapter 3, section 4, subsection 9, paragraphs 9) and 10) of the Resolution Act.
[67] 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
[68] Chapter 18, section 1 of the Resolution Act.