

Comments

on SRB Consultation Paper on changes to its MREL policy under the 2019 Banking Pack- age

Register of Interest Representatives

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The **German Banking Industry Committee** is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public-sector banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks finance group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks. Collectively, they represent approximately 1,700 banks.

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Calibration

1. Do you agree that the proposed calibration is consistent with a level playing field across resolution approaches and bank business models?

- ☒ No
☐ Yes

The approach to set bankspecific MREL targets (including minimum subordination requirements at consolidation level and, if applicable, for subsidiaries) is unclear:

It is our understanding that the decision to be communicated in 2020 is based on the autumn 2019 communicated draft (data basis 31.12.2018) and on receipt is binding, whereby at consolidated level the so-called hybrid approach, the point-of-entry MREL, is to be applied. Likewise, the SRB policy states that a decision communicated in 2021 will reflect the legal status of the EU banking package (targets for 1.1.2024 und interim targets 1.1.2022 and 1.1.2023) and the SRB-MREL policy for 2020. The open question not covered by the SRB's explanations is whether there will be separate targets for 2021 and, if yes, on which legal status and SRB-MREL policy will they be based on. We request clarification on this. For the sake of legal certainty, we would in addition ask for clarification that the MREL decision in 2020, and to be communicated to the banks in 2021, will, from the moment of its communication to the bank (as opposed to the intermediate target date), replace any applicable previous decision issued under the previous legal framework. It would be very much appreciated if the MREL decisions were based on the latest available figures.

Furthermore, with regard to MREL decisions communicated to banks in, say February 2021, an alignment should be ensured with the reporting requirement stemming from the EBA ITS on disclosure and reporting, which is expected to be applied by the end of June 2021.

The explanatory text for footnote 60 for note 62 is missing at the bottom of p. 21.

With regard to note 68, we request more detailed explanation of the interplay between the removal of impediments to resolution according to the procedures and measures pursuant Art. 10(7) SRMR already in force and the proposed regulation pursuant to Art. 12c (8) b) SRMR 2.

2. Do you agree that the approach proposed represents the most adequate way to calibrate MREL in support of MPE strategies from a resolvability perspective?

- ☒ No
☐ Yes

Can you confirm that an MPE adjustment on LRE basis is not intended as the LRE measure serves as a backstop only, and therefore does not require an MPE specific adjustment?

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Subordination for Resolution Entities

3. For resolution entities that are not subject to Pillar 1 subordinated MREL requirements, do you agree with the SRB's proposal to determine subordination requirements taking into account the NCWO risk assessed with the NCWO assessment tool?

- ☐ No
☒ Yes

Yes, however, we do ask that the greatest possible transparency be provided to the institutions concerned regarding the underlying simulation methodology (cf. our further remarks on question no.4).

4. Do you agree that the aspects considered in the tool encompass the main drivers of NCWO risk? Should the SRB consider any additional factors influencing NCWO outcomes? Do you have specific suggestions on how to further refine the methodology?

- ☐ No
☒ Yes

Yes, with regard to taking into account NCWO risk, we welcome the fact that the SRB is aiming at a more risk-sensitive tool and has developed a simulation model to assess NCWO risk that compares the positions of the preferential creditors post-resolution and post-insolvency. The basic approach is laid out in the consultation paper in an understandable fashion. In view of the significance of the model in setting the minimum subordination requirements, however, we do see the need to provide transparency for the institutions involved regarding the underlying simulation methodology. With particular reference to note 82: which criteria will be applied by the SRB in this case? How is one to determine if NCWO risk is "not properly assessed"? In this regard, we would really welcome more detailed information. Within the framework of the EU banking package, the institutions are required to establish effective planning and efficient controlling of subordinate MREL liabilities, including taking account of repurchase transactions/redemptions/terminations/repayments (Art. 72b, Art. 78a CRR 2), so that knowledge of the relevant factors influencing the NCWO simulation are essential.

Note 83 states "Input [...] is being sought [...] otherwise." Can you please be more specific on "otherwise". Are further consultations planned? If yes, when?

Internal MREL for non-resolution entities

5. Is the proposed approach to the treatment of guarantees appropriately rigorous and even handed?

- ☐ No
☒ Yes

Yes, but, with regard to the "internal MREL", for us the question arises when relevant institutions will receive minimum "internal MREL" demands for the first time. If the plan is that the relevant institutions receive such a demand with the 2020 MREL notification on the basis of the existing SRB 2019 MREL policy, it is currently questionable which instruments are eligible to meet the requirement.

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MREL for cooperative groups

6. Do you agree with the criteria for recognition of network eligible liabilities? Specifically, do you agree with the condition to disclose to investors subscribing MREL eligible debt instruments information about the potential bail-in of such instruments for the recapitalisation of any of the entities of the network?

- ☐ No
☐ Yes

We would recommend to clarify unambiguously that the concepts and approach illustrated in this section are applicable to consolidated cooperative groups/networks according to Art. 10 CRR only and should not be seen as a reference for other cooperative structures.

7. Do you agree that the assessment of any waiver of the internal MREL for affiliated institutions should relate to the bilateral situation between the affiliated institution and the resolution entity, without taking a network-wide perspective?

- ☐ No
☐ Yes

Cf. the answer to question 6.

Liabilities issued under third country law

8. Do you agree with the criteria for the acceptance of legal opinions? Is there any criterion that in your view needs additional detail or clarification?

- ☒ No
☐ Yes

We adopt a clear stance against the approach described in note 121. The CRR and CRR II provide for transition arrangements (Art. 486 CRR, Art. 494b CRR II) for AT1 and T2 instruments. These regulations are to be applied in meeting the MREL requirements too. AT1 and T2 instruments that are eligible under CRR must be accepted for MREL purposes too. Overwriting CRR provisions and thus tightening requirements as part of MREL policy is inappropriate.

We doubt that, in particular in paragraph 3 in Box 2 – satisfactory legal opinions – a comprehensive statement could be obtained from an external lawyer. It is common practice for lawyers who issue legal opinions to make no statement, for example, on insolvency law and to expressly exclude this legal area from their opinion. For this purpose, the effects of insolvency are too largely dependent on the circumstances of the individual case at the time of insolvency. The other requirements in the second and third paragraphs are also very broad and vague and could lead to considerable uncertainty and discussions among and with the lawyers who would have to produce the legal opinions. Therefore, the statement pursuant to paragraph 1 should be sufficient for a legal opinion.

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9. With the objective of finding practical solutions that ensure full coverage of liabilities for which a legal opinion is expected, which arrangement would you consider to be the most efficient for your issuance practice?

Given the diversity of instruments issued, we do not believe that there is a uniform and comprehensive solution to this. Such a solution should therefore not be imposed on the banks concerned.

Transition arrangements

10. Do you envisage any complications or constraints related to the transition arrangements?

No, but we would like a more detailed explanation of the term “exceptional circumstances” (footnote 93 for note 129).

Re notes 33 / 17: The definitions of the terms “MREL TREA” and “MREL-LRE” are misleading and should be aligned with the wording of Art. 12a (2) SRMR, where the respective ratios are expressed as (emphasis added): “[...] the amount of own funds and eligible liabilities and expressed as percentages of ...[TREA or LRE].” The wording in note. 17 differs as it states: “MREL [...] have to be met [...]: (i) as a percentage of TREA [...] and (ii) as a percentage of the LRE [...]”. An example of where the relevance becomes apparent is in note. 33. Without the suggested alignment it would read, that the LRE would be increased, rather than the required percentage of LRE in order to reach the 8% TLOF level.

Re notes 20 and 60: We are concerned that the wording in notes 20/60 aims to increase the subordination requirement for top-tier banks through the backdoor. It is therefore crucial to maintain the interpretation of the SRMR, whereas the subordination requirement in TREA for a top-tier bank is 13,5% without usage of CET1 used for CBR.

Finally, a question of overall importance: How and when will banks know if they are categorised as the riskiest bank. Please note that such categorisation requires a high degree of transparency and should be calibrated in a steady way to avoid yearly changes in classification.
