The European Parliament has approved changes to the Bank Recovery and Resolution Directive (BRRD2). Adoption by the Council of the EU should follow imminently. Assuming publication in the Official Journal early in June, Member States will have until December 2020 to implement the changes. Within the euro area, analogous revisions to the Single Resolution Mechanism Regulation (SRMR2) will apply on the same timetable. New minimum requirements for own funds and eligible liabilities (MREL) will be phased in by January 2024.

Background

When the Commission first proposed revisions to the BRRD in December 2016 the EU’s flagship, post-crisis bank resolution framework had only been in operation for two years and the implementation deadline for its provisions on bail-in had passed just one year before. Within the euro area the newly established Single Resolution Board (SRB) had not yet tested the provisions of the SRMR in a real resolution (the SRB’s first, and to date, only resolution under the regime would come later in 2017). Progressive implementation of other provisions of the BRRD on MREL and the accumulation of resolution funds (including the euro-area’s single resolution fund (SRF)) were also very much in their infancy in 2016.

So why the rush to change legislation on which the ink was still drying in late 2016? Part of the reason was to bring EU rules on MREL into conformity with the international standard for global systemically important banks (G-SIBs) on total loss absorbing capacity (TLAC), intended to apply from the beginning of 2019 and from which the EU’s MREL standard differed in some respects. Also, in the short time that the BRRD had been in full operation, some provisions (particularly the ‘Article 55’ requirement to include contractual recognition of bail-in clauses in contracts governed by the laws of a third country) had already proved themselves to be onerous and in need of reform.

What is MREL?

Under the original BRRD, the EU established a requirement for all EU banks and investment firms (not just systemically important ones) to hold a certain amount of own funds and eligible liabilities (known as MREL) over and above basic regulatory capital requirements, in order to ensure sufficient loss absorbing capacity and to improve the resolvability of an EU institution without recourse to taxpayer funds.

In accordance with the MREL regulatory technical standards adopted in mid-2016 there are essentially two elements to MREL: the first is the ‘loss absorption amount’ (i.e. the amount determined by the resolution authority as necessary to absorb losses) while the second is the ‘recapitalisation amount’ (i.e. the amount of resources necessary not only to ensure the continued solvency of the institution but also its continued compliance with regulatory capital requirements post-resolution). These amounts can be supplemented by a

BRRD2: the key changes

1. MREL recalibration

EU global systemically important institutions (G-SIIs) and some other large firms will be subject to fixed minimum levels of MREL (previously MREL was institution-specific). Firm-specific top-ups may also apply (including market confidence buffers). EU G-SIIs and other larger institutions will also be required to meet a certain proportion of their MREL using liabilities that are subordinated to liabilities excluded from bail-in. For EU G-SIIs the revised MREL framework brings EU rules into conformity with the international TLAC standard.

2. Resolution stays and moratoria

The Commission’s original proposal to extend the duration of resolution stays has not made it into the final text. The maximum period of any resolution stay will still be two business days but authorities will be able to trigger stays once a determination that an institution is failing or likely to fail has been made and before the decision to place the entity into resolution has been taken.

3. Contractual recognition of bail-in

The ‘Article 55’ requirement to include contractual recognition of bail-in wording in contracts governed by the laws of a third country has been softened. Firms will be able to notify resolution authorities of liabilities in relation to which it would be legally or otherwise impracticable to include the wording (though resolution authorities may require inclusion if they disagree). The European Banking Authority is charged with developing regulatory technical standards to specify the conditions under which impracticability might apply.
Subordination

To be eligible as TLAC an instrument has to be subordinated to other liabilities that would be excluded from bail-in in a resolution. By contrast, the BRRD did not mandate the subordination of MREL instruments, leaving open the possibility that instruments otherwise capable of counting towards MREL could, in a normal insolvency of an EU bank, rank pari passu alongside claims that would or could be excluded from bail-in in a resolution. This created a problem for EU resolution authorities. If they were to bail in liabilities that ranked pari passu with claims that would or could be excluded from bail-in they would be treating creditors in the same class differently, potentially producing a breach of the imperative that no creditor should be left worse off in resolution (NCWO) than they would be in an ordinary insolvency, which is one of the overriding principles of resolution under the BRRD.

The lack of a subordination rule in the original BRRD (combined with the expansive scope of bail-in powers, applicable to every liability not explicitly excluded by the legislation (whether or not the liability counted as MREL)) meant that EU resolution authorities would not be able to use bail-in powers to the maximum extent without the bail-in action potentially being subject to legal challenge based on a breach of the NCWO principle.

After the adoption of BRRD in 2014 some Member States began to make further changes to their national insolvency laws to fix this design flaw in the BRRD. In 2016 Germany adopted legislation designed to ensure that among the unsecured creditors of a bank, claims that would be ineligible for bail-in in resolution would be met before other unsecured claims in a liquidation. Thus, Germany used statutory subordination to fix the problem. By contrast, France achieved a similar outcome through new legislation mandating the contractual subordination of a new class of ‘senior non-preferred’ unsecured claims.

Creditor Hierarchy Directive 2017

Seeing Member States adopt slightly different solutions to the same problem, the EU decided to establish a harmonised approach (closely modelled on the 2016 French precedent). This solution was adopted as the Creditor Hierarchy Directive (2017), which made targeted amendments to the insolvency hierarchy provisions of the original BRRD. Since the Directive’s implementation deadline passed at the end of 2018 all EU banks are now required to maintain a new class of senior non-preferred debt which ranks just below a bank’s most senior debt (for example corporate deposits and derivative liabilities). In a bail-in resolution senior non-preferred notes would be bailed in and take losses after the write down and conversion of Tier 2 capital instruments but before any other unsecured liabilities.

The Creditor Hierarchy Directive did not settle the subordination question completely though. Over the course of 2018, debates about the extent to which MREL requirements should be satisfied with subordinated liabilities dominated trilogue negotiations on BRRD2. While subordination would clearly be required for EU G-SIIs in order to meet the TLAC standard, some EU policy makers also wanted to impose a requirement for other (non-G-SII) EU firms to meet their MREL requirement with subordinated liabilities. On the one hand, subordination of liabilities improves the resolvability of an institution without recourse to taxpayer funds (so is favoured by resolution authorities) but on the other hand subordinated liabilities are a more expensive source of funding for banks.

MREL recalibration under BRRD2

On the surface, the EU’s recalibrated MREL regime is complex. For example, the instrument eligibility criteria set out in CRR2 (and primarily designed with G-SIIs and the TLAC standard in mind) include a clear subordination requirement (with support for statutory, contractual and structural subordination). However, the part of BRRD2 dealing with MREL eligibility that cross-refers to those criteria disapplies the subordination requirement. Thus, prima facie, BRRD2 does not deviate from its predecessor and subordination is not among the MREL eligibility criteria. However, other cross-references in BRRD2 to CRR2 confirm the subordination imperative for G-SIIs, while other provisions of BRRD2 make clear that some larger firms (that are not G-SIIs) must also satisfy a proportion of their MREL requirement with subordinated liabilities.

Despite the structure of the new rules, their substance is easily understood by recalling that two fundamental policy questions have driven the recalibration of the MREL regime:

1. Should the amount of MREL that firms are required to hold be subject to a fixed minimum level based on ratios common to all firms in a class (i.e. the quantum question)?
2. Should a firm’s MREL requirement (whether or not the quantum is subject to a common, fixed minimum) be required to be met using subordinated liabilities (i.e.
the subordination question)?

The reasons these two questions have dominated political debates during the genesis of BRRD2 are twofold. First, the question of setting fixed minimum levels of MREL goes to level playing field concerns. The international TLAC standard treats all G-SIIs alike in prescribing a fixed minimum level based on ratios common to all G-SIs. By requiring fixed minimum levels of MREL for various non G-SIIs, EU policy makers have tried to level the playing field among similarly sized significant firms that are nonetheless too small to count as G-SIs. Secondly, subordination is important to assure resolvability (since subordinated claims can be easily bailed in without risk of offending the NCWO principle).

BRRD2 now uses asset-based denominators to calculate MREL (important for G-SIs expected to conform to the asset-based, TLAC standard). However, when it comes to setting levels of subordination (both for G-SIs and other types of firm) BRRD2 continues to rely on the ‘total liabilities and own funds’ (TLOF) denominator familiar from the original BRRD. Under BRRD2, both G-SIs and certain other significant firms are required to issue subordinated liabilities worth at least 8% of TLOF (with scope for resolution authorities to accept marginally lower levels of subordination in some cases).

The rationale for fixing firms’ subordinated MREL requirements by reference to an 8% of TLOF measure is presumably to improve the ability to access resolution funds. Under BRRD2 (as was the case under BRRD) funds from a resolution fund cannot be applied in a resolution until claims worth at least 8% of TLOF have been bailed in. If resolution authorities know that a firm holds subordinated MREL worth at least 8% of TLOF but the extent of losses in a resolution will run to more than 8% of TLOF, then it should be possible to plug the funding gap using a resolution fund. If a firm’s easily bail-in liable liabilities are worth less than 8% of TLOF, then in a resolution in which losses exceed that level, the institution may not be capable of being resolved.

**MREL for G-SIs, Top Tier Firms and Other Systemic Entities**

The new MREL framework focuses on ‘resolution entities’. These are the entities to which resolution powers apply (such as bail-in) would be applied directly in a resolution. In a banking group whose resolution strategy is one of ‘multiple point of entry’ (MPE) there will be more than one resolution entity in the group. However, the MREL regime is also adapted to non-resolution entities (i.e. entities which are within the scope of the legislation but which would not have resolution powers applied against them directly in a resolution) by requiring them to issue MREL liabilities to parent companies in order to facilitate the ‘upstreaming’ of losses to the parent that would be resolved in a ‘single point of entry’ (SPE) resolution. Together, resolution entities and their subsidiaries constitute a ‘resolution group’ – a concept important to the application of MREL on a consolidated basis.

Addressing quantum and subordination in turn for different types of entity, the contours of the EU’s new framework for MREL become clear (see Annex for specific detail). Fixed common minima and mandatory subordination apply only to G-SIs (for which this is necessary in order to respect the TLAC standard) but also to certain smaller entities: Top Tier Firms as well as Other Systemic Entities (OSEs) that qualify neither as G-SIs nor Top Tier Firms but which resolution authorities think could pose systemic risk.

Under BRRD2, subordination is not, prima facie, an MREL eligibility requirement. However, G-SIs are required to meet their ‘Pillar 1’ MREL with subordinated liabilities in line with provisions of CRR2. Under BRRD2, Top Tier firms and OSEs are also subject to a mandatory minimum level of subordination (such that their ability to use unsubordinated liabilities towards MREL would be limited to that part of their MREL quantum that exceeded the minimum level of subordination applicable to them).

**G-SIs**

G-SIs are subject to a fixed minimum quantum of MREL (i.e. a Pillar 1 quantum) that reflects the ratios prescribed in the TLAC standard relating to the risk-weighted total risk exposure amount (TREA) and the non-risk-weighted leverage ratio exposure measure (LREM). A G-SI’s MREL quantum can also be subject to an additional, institution-specific top-up (i.e. a Pillar 2 quantum). Common, fixed minimum levels of subordination (i.e. Pillar 1 subordination) apply to all G-SIs but a higher level of subordination may be applied to individual G-SIs (i.e. Pillar 2 subordination). Use by resolution authorities of Pillar 2 subordination is capped and cannot be applied to more than 30% of the G-SIs, Top Tier Firms or OSEs for which a resolution authority is responsible (although there is national discretion to increase that percentage).

**Top Tier Firms**

EU resolution entities that fail to qualify as G-SIs but which form part of a resolution group with assets in excess of €100 billion are subject to a Pillar 1 quantum as ‘Top Tier Firms’. This Pillar 1 quantum is set using ratios that are lower than those applicable to G-SIs but the calculation refers to the same asset-based denominators (TREA and LREM). There is also a Pillar 2 (i.e. firm specific) element to their MREL calculation which can be augmented by a market confidence buffer. Pillar 1 subordination applies to Top Tier Firms who must meet their Pillar 1 quantum with subordinated liabilities and who may be subject to a firm-specific additional Pillar 2 subordination requirement. Use of Pillar 2 subordination by resolution authorities is controlled in the same way as for G-SIs. For Top Tier Firms subordinated MREL is capped at an amount equal to 27% of their TREA.

**Other systemic entities (OSEs)**

Resolution authorities have discretion to apply the Top Tier Pillar 1 quantum to other resolution entities that qualify neither as G-SIs nor Top Tier but which resolution authorities think could pose systemic risk (OSEs). Individual OSEs are subject to Pillar 2 quantum in the
same way as Top Tier Firms. Pillar 1 and Pillar 2 subordination also apply to OSEs in broadly similar terms as they apply to Top Tier Firms (although the cap on subordinated MREL of 27% of TREA does not apply to OSEs).

Other resolution entities

For resolution entities that are not G-SIs, Top Tiers or OSEs, MREL remains an exclusively Pillar 2 obligation calculated on a firm by firm basis and potentially supplemented by a market confidence buffer. These types of firm are not subject to a compulsory minimum level of subordination. However, resolution authorities do have discretion to apply Pillar 2 subordination on a firm by firm basis, subject to various conditions (including a potential need to mandate subordination in order to mitigate NCWO concerns).

Non-resolution entities

Non-resolution entities (unless completely exempt from MREL as some non-deposit taking mortgage credit institutions may be) are still subject to MREL requirements, albeit specially adapted ones designed to ensure that losses sustained by the non-resolution entity can be up-streamed to the resolution entity, for example by requiring their eligible liabilities to be issued to and bought by their parent resolution entity.

Institutions that are material EU subsidiaries of non-EU G-SIs which are not themselves resolution entities

Material EU subsidiaries of non-EU G-SIs which are not themselves resolution entities are subject to a Pillar 1 quantum requirement. They have to satisfy an MREL requirement equal to 90% of the requirement that applies to EU G-SIs. Capital or eligible liabilities used to satisfy the requirement has to be held by the third country parent, in order to facilitate the upstreaming of losses in resolution to the third country resolution entity.

MREL eligibility criteria

Under the original BRRD, MREL eligibility criteria (such as maturity requirements, exclusion of derivatives and eligible deposits) were spelled out in the BRRD itself. Under the new framework, BRRD2 cross-references MREL eligibility criteria that are listed in CRR2. Apart from changes relating to subordination, there are also new eligibility rules relating to embedded derivatives and to instruments where either the issuer or holder has an option to redeem the instrument prior to maturity.

Most deposits are explicitly excluded from MREL eligibility including covered deposits (i.e. insured deposits up to the level of deposit insurance); eligible deposits above the insurance limit from natural persons, micro and SMEs; sight deposits and deposits with a maturity of less than one year; and deposits made by natural persons, micro and SMEs made at non-EU branches that would be eligible for deposit insurance if they were made through branches of EU institutions inside the EU.

Subordination

As noted above, a requirement that eligible liabilities be subordinated to excluded liabilities is among the eligibility criteria listed in CRR2. Thus, for G-SIs, eligible liabilities must be subordinated (although resolution authorities do have discretion to permit very limited use by G-SIs of unsubordinated liabilities in certain cases, and liabilities used by G-SIs to meet any institution-specific add-on may not need to be subordinated). For other entities, BRRD2 ‘switches off’ the CRR2 subordination requirement but then effectively reimposes it to some degree for Top Tier firms and OSEs by requiring that they fulfil a certain proportion of their MREL with liabilities that are subordinated.

No security or set-off

Liabilities that are secured or guaranteed cannot qualify as MREL. The new MREL eligibility requirements also require that liabilities are not subject to set-off or netting arrangements that would undermine their capacity to absorb losses in resolution. In practice this requirement may mean that issuers need to start including waivers of implied rights of set-off that might otherwise arise automatically by operation of law either in insolvency or in business-as-usual scenarios.

Embedded derivatives

Liabilities arising from derivatives were not MREL-eligible under the original BRRD, and the recalibration of MREL under BRRD2 does not change this. However, a new approach is taken as regards embedded derivatives. Although liabilities arising from embedded derivatives are expressly excluded from the scope of eligible liabilities as described in CRR2 (reflecting TLAC requirements) BRRD2 contains a derogation that permits liabilities arising from structured notes and other debt instruments with derivatives features to count towards MREL. However, for G-SIs, structured notes and other embedded derivatives cannot count to their Pillar 1 fixed minimum, only towards any entity specific add-on (Pillar 2 MREL).

Various conditions apply when embedded derivatives are to count towards MREL, including that the principal is known in advance and fixed or increasing. Where the derivative element could threaten the principal, the note would not be MREL-eligible. The liability arising from the structured note must also be susceptible to daily valuation in an active two-way market while the instrument itself must contain a contractual term specifying that the value of the claim in resolution or insolvency of the issuer is fixed. The instrument (including its derivative feature) must also not be subject to netting.

Maturity and options

BRRD2 (by cross-reference to eligibility criteria listed in CRR2) retains the basic requirement, familiar from the original BRRD, that eligible liabilities should have a residual maturity of at least one year. Liabilities should generally not be redeemable by the noteholder prior to maturity. However, a derogation is made for notes that have a put option that enables noteholders to redeem the instrument prior to the original maturity date. For the purposes of MREL eligibility, such instruments’ maturity date is redefined as the earliest possible date on which the noteholder could exercise the put option (such that for the one-year period before that date,
the instrument would be MREL-eligible).

Similarly, while the basic eligibility criteria for MREL exclude the possibility of the issuer having any economic incentive to seek early redemption, the new framework permits notes with issuer call options to count as MREL-eligible for one year prior to the earliest date on which the issuer could exercise that option. Issuer call options must also be exercisable at the sole discretion of the issuer if the instrument is to be MREL-eligible.

**Deductions**

Under relevant provisions of CRR2, EU G-SIs subject to the Pillar 1 MREL obligation are required to deduct MREL-eligible instruments issued by other G-SIs from their own MREL score. Complex rules govern the extent of any deduction depending on the significance of the investment in the other G-SI, the duration of the holding and the potential offsetting effect of short and long positions. These provisions bring EU rules for G-SIs into conformity with the TLAC standard which, unlike the original MREL rules, requires the deduction of TLAC-eligible instruments issued by other G-SIs. No such deductions from MREL apply to entities that are not G-SIs.

**Resolution groups and consolidation**

Under the new rules, institutions (i.e. banks and investment firms) that qualify as resolution entities are subject to MREL requirements on a consolidated basis at the level of the resolution group. Institutions that are not resolution entities (as might be the case for example in a banking group whose resolution strategy is one of single point of entry, implying resolution action only at the holding level) are required to comply with MREL at the individual level albeit that where the non-resolution entity (NRE) and its parent are located in the same EU Member State and form part of the same resolution group, the resolution authority can waive the application of MREL to the NRE institution or allow it to meet its MREL requirement with collateralised guarantees from the parent.

**Relationship between MREL and regulatory capital (stacking order)**

Under the international TLAC standard regulatory capital used to meet minimum TLAC requirements cannot simultaneously count towards regulatory capital buffers. The rationale for this restriction on ‘double counting’ is to ensure that regulatory capital buffers serve their intended purpose of absorbing ‘bumps in the road’ on a going concern basis. By ‘stacking’ regulatory capital buffers above TLAC the effect of the international standard is that a G-SI with surplus common equity (CET1) should first use that surplus CET1 to fill any shortfall in its TLAC requirement before filling its capital buffers. One potential consequence of this approach is that a firm with additional CET1 in its buffers but facing a shortfall of TLAC may find its capital buffers drained in order to plug the gap in its TLAC, causing a breach of the buffers requirement and potentially leading to a restriction in profit distribution.

As originally formulated, the MREL regime under BRRD did not prohibit double counting of own funds towards both MREL and capital buffers requirements. However, since national transposition in 2015 supervisors in some Member States (notably the UK) have adopted policies against double counting. In its December 2016 proposal for BRRD2 the Commission embraced the priority rule and stacking order approach for MREL. Recognising that this approach could potentially lead to restrictions on profit distribution by firms facing a temporary MREL shortfall, perhaps for reasons beyond the firm’s control (e.g. a temporary inability to roll over MREL-eligible debt due to market wide conditions) the Commission proposal contained a six-month grace period before a firm would face restrictions on profit distribution due to an MREL shortfall.

Some commentators were nonetheless critical of having any automaticity of profit distribution restriction linked to MREL shortfalls (even where mitigated by a grace period). Instead they argued that resolution authorities should have discretion as to how to respond to such shortfalls on a case by case basis. In the final text that is the approach taken, albeit that there is a rebuttable presumption that an MREL shortfall that continues for more than nine months will lead to restrictions on profit distribution.

**Timing and transition**

BRRD2 establishes complex transition arrangements for MREL. The main deadline is 1 January 2024 but resolution authorities can set longer transition periods on a case by case basis if the circumstances of an individual firm warrant it.

Resolution authorities also have to set an intermediate target for MREL quantum that firms should meet by 1 January 2022. This is also the deadline by which Top Tier Firms and OSEs should meet their fixed minimum (Pillar 1 quantum) although a separate grace period applies to new G-SIs, Top Tier Firms and OSEs so as to exempt them from fixed minima (both quantum and subordination) for three years after they are classified as G-SIs, Top Tier Firms or OSEs. For existing G-SIs, Pillar 1 quantum and provisions of CRR2 that implement TLAC requirements are set to apply as soon as the Regulation enters into force (most likely to be early in Q3 2019) subject to a transitional arrangement permitting slightly lower ratios until the end of 2021, in line with the international standard.

**Conclusion**

BRRD2 and CRR2 will bring EU rules on loss absorbency in resolution into line with international standards for G-SIs. However, in fixing minimum levels of MREL and subordination for a wide range of non-G-SIs, the EU has gone further than the international standard. National discretion to increase levels of subordination could also lead to divergent regimes, especially outside the euro area.

The new rules will undoubtedly prompt a wave of new issuance by EU banks in the months and years to come. The market’s capacity to absorb that new issuance and the impact of more expensive MREL bonds on EU bank profitability remains to be seen.
## BRRD2: MREL quantum and subordination

(Key and notes overleaf)

<table>
<thead>
<tr>
<th></th>
<th>Fixed minimum? (Pillar 1 quantum)</th>
<th>Institution-specific amount? (Pillar 2 quantum)</th>
<th>Fixed minimum extent of subordination for all entities in class? (Pillar 1 subordination)</th>
<th>Entity-specific additional subordination? (Pillar 2 subordination)</th>
</tr>
</thead>
<tbody>
<tr>
<td>G-SII</td>
<td>Higher of: 18% TREA; 6.75% LREM; or 8% TLOF1</td>
<td>Yes</td>
<td>8% TLOF2</td>
<td>Subject to cap3, the higher of: 8% of TLOF; and Prudential formula A\times x^2 + B\times x^2 + C where: A = the firm’s Pillar 1 capital requirement, B = the firm’s Pillar 2 capital requirement, and C = the firm’s combined buffer requirement</td>
</tr>
<tr>
<td>Top Tier</td>
<td>Higher of: 13.5% TREA; 5% LREM; or 8% TLOF4</td>
<td>Yes</td>
<td>8% TLOF subject to limit of 27% TREA</td>
<td>A = the firm’s Pillar 1 capital requirement, B = the firm’s Pillar 2 capital requirement, and C = the firm’s combined buffer requirement</td>
</tr>
<tr>
<td>OSE</td>
<td>Higher of: 13.5% TREA; 5% LREM; or 8% TLOF6</td>
<td>Yes</td>
<td>8% TLOF7</td>
<td></td>
</tr>
<tr>
<td>Other resolution entity</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Higher of: 8% of TLOF; and Prudential formula A\times x^2 + B\times x^2 + C where: A = the firm’s Pillar 1 capital requirement, B = the firm’s Pillar 2 capital requirement, and C = the firm’s combined buffer requirement</td>
</tr>
<tr>
<td>Non-resolution entity (NRE)</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>NRE institution that is material subsidiary of non-EU G-SII</td>
<td>90% of the requirement applicable to an EU G-SII</td>
<td>Yes</td>
<td>Subordination applies. Eligible liabilities / capital must be held by the RE or other group entities so that losses can be up-streamed.</td>
<td>No</td>
</tr>
</tbody>
</table>
KEY

RA Resolution authority
RE Resolution entity
TREA Total risk exposure amount (i.e. risk-weighted asset-based denominator calculated in accordance with Art. 92(3) and (4) of CRR2

Top Tier A RE that is not a G-SII that is part of a resolution group with assets EUR > 100bn
OSE Other systemic entity, i.e. a RE that does not satisfy the definition of Top Tier but in relation to which the RA decides to apply Top Tier treatment pursuant to Art. 45c(6) BRRD2
LREM Leverage ratio exposure measure (i.e. non-risk-weighted asset-based denominator)
TLOF Total liabilities and own funds (liabilities-based denominator described in Art. 45b of BRRD2. Per Art. 45b(6) this includes derivatives liabilities after netting is applied. CET1 used to comply with capital buffers under Art. 128(6) of CRDV can count towards minimum subordination rules expressed as a percentage of TLOF.

1 TREA and LREM ratios are 16% and 6% respectively until end 2021. Firm can ask RA to set lower level than 8% TLOF subject to following floor: 8% TLOF x \(1 - \frac{3.5\% \text{TREA}}{18\% \text{TREA}+\text{buffers}}\)

2 Without prejudice to the requirement to hold MREL worth at least 18% TREA and 6.75% LREM. The 8% TLOF minimum can be reduced, subject to a floor (see footnote 1). Subject to conditions in CRR2 G-SIIs can seek permission to satisfy part of their Pillar 1 quantum (up to 3.5% TREA) with unsubordinated liabilities.

3 RA’s discretionary power to set additional, institution specific subordination is limited to a maximum of 30% of REs that are G-SIIs, Top Tiers and OSEs for which the RA is responsible and where those REs are either: (a) among the 20% riskiest REs for which that resolution authority is responsible for setting consolidated MREL; (b) the resolution authority considers the feasibility of entity’s preferred resolution strategy limited; or (c) have un-remedied impediments to resolvability.

Individual Member States may set the limit higher than 30% of relevant entities according to national conditions and local prevalence of G-SIIs, Top Tiers and OSEs.

4 Firm can request this be lowered subject to a floor. See footnote 1.

5 If 8% TLOF or a lower permitted floor is greater than 27% TREA the part of the consolidated MREL requirement to be met with subordinated liabilities is limited to 27% TREA.

6 Firm can request this be lowered subject to a floor. See footnote 1.

7 27% TREA cap does not apply to OSEs.

Other elements of the Risk Reduction Package

<table>
<thead>
<tr>
<th>What?</th>
<th>When?</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>CRR2</strong></td>
<td>Amends CRR, <em>inter alia</em> to implement binding leverage ratio, TLAC, net stable funding ratio, changes to Pillar 2</td>
</tr>
<tr>
<td><strong>CRDV</strong></td>
<td>Amends CRDIV, <em>inter alia</em> to bring holding companies within supervisory perimeter and to require non-EU groups to establish EU intermediate parent undertakings (IPUs)</td>
</tr>
<tr>
<td><strong>SRMR2</strong></td>
<td>Euro area implementation of BRRD2</td>
</tr>
</tbody>
</table>
Author: Seán Kerr

This publication is intended merely to highlight issues and not to be comprehensive, nor to provide legal advice. Should you have any questions on issues reported here or on other areas of law, please contact one of your regular contacts, or contact the editors.

©  Linklaters LLP. All Rights reserved 2019

Linklaters LLP is a limited liability partnership registered in England and Wales with registered number OC326345. It is a law firm authorised and regulated by the Solicitors Regulation Authority. The term partner in relation to Linklaters LLP is used to refer to a member of the Linklaters LLP or an independent consultant or, outside of Belgium, an employee of Linklaters LLP or any of its affiliated firms or entities with equivalent standing and qualifications. A list of the names of the members of Linklaters LLP and of the non-members who are designated as partners and their professional qualifications is open to inspection at its registered office, One Silk Street, London EC2Y 8HQ, England, or on www.linklaters.com. This document contains confidential and proprietary information. It is provided on condition that its contents are kept confidential and are not disclosed to any third party without the prior written consent of Linklaters. Please refer to www.linklaters.com/regulation for important information on our regulatory position.

We process your data in line with our Global Privacy Notice. You can view this at www.linklaters.com/en/legal-notices/privacy-notice.

To opt-out of receiving any marketing emails from us, or to manage your email preferences and the personal details we hold for you, please contact: marketing.database@linklaters.com.