

Bank recovery and resolution: loss-absorbing and recapitalisation capacity of credit institutions and investment firms

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OPINION of the European Central Bank (ECB) on revisions to the Union crisis management framework.

The ECB welcomes the proposed amending regulations and directive, which aim to implement the total loss-absorbing capacity (TLAC) standard of the Financial Stability Board (FSB) for global systemically important institutions (G-SIIs) established in the Union.

Amendments to the minimum requirement for own funds and eligible liabilities (MREL): the proposed amendments to the Bank Recovery and Resolution Directive (BRRD) and to the Single Resolution Mechanism [Regulation](#) (SRMR) provide the possibility for the resolution authority to adjust the MREL recapitalisation amount in order to adequately reflect risks resulting from the business model, funding model and overall risk.

In addition, the ECB considers that the resolution authority should be allowed, after consultation with the competent authority, to adjust the MREL recapitalisation amount upwards to provide for a safety margin. The amount of such a safety margin should be established on a case-by-case basis, dependent on the resolution plan for the credit institution.

The proposed amendments allow a resolution authority to give guidance to an entity on having own funds and eligible liabilities in excess of the MREL, in order to cover the entity's potential additional losses and to ensure market confidence in resolution. The ECB recommends that the proposed MREL guidance is eliminated as it adds complexity to the framework without providing clear benefits.

The ECB also recommends:

- amending the process of addressing or removing impediments to resolvability due to a breach of buffers stacked on top of the MREL to include consultation of the competent authority, as is already provided for in relation to other impediments;
- ensuring that the resolution authorities have more flexibility regarding deadlines in order to ensure that the credit institution has sufficient time, if necessary, to develop the most appropriate strategy to address the breach of buffers;
- clarifying that resolution authorities have the task of monitoring the levels of available MREL eligible instruments and the MREL ratio itself, taking account of all the calculations on deductions;
- clarifying that resolution authorities are also responsible for monitoring compliance with the MREL and informing the competent authority of any breaches and any other relevant events that may affect the ability of the credit institution to fulfil the MREL;
- clarifying the treatment of groups to be resolved according to a multiple entry point approach: (i) the definition of a resolution group should exclude third-country subsidiaries that are points of entry themselves, since these will be treated separately from the rest of the group in the event of resolution; (ii) the amendments should make it clear that compliance with the MREL at resolution entity level must be achieved on a consolidated basis at the resolution group level.

Transitional arrangements for MREL: one key factor in the implementation of an entity-specific MREL is the determination of an adequate transition period.

The ECB proposes that an adequate minimum transition period across credit institutions should be introduced, which should be no shorter than the period applicable to G-SIIs set out in the TLAC term sheet. In addition, the resolution authority should be given the flexibility to determine, on a case-by-case basis, a final period for compliance that is longer than this harmonised minimum.

Early intervention measures: there is a significant overlap between supervisory measures under the CRD, the SSM Regulation (SSMR)

Pre-resolution moratorium tool: due to its exceptional nature and its disruptive impact on contracts, the moratorium tool should be decided in close coordination between all relevant authorities.

The ECB suggests introducing a procedure for the allocation of responsibility for a moratorium to either the competent or the resolution authority, depending on whether the moratorium is imposed before or after the failing or likely to fail determination. Such a procedure should as a rule avoid the imposition of successive moratoria. Only exceptionally, where motivated by the specific circumstances and in compliance with the principle of proportionality, should the resolution authority be able to impose an additional moratorium in order to bridge the gap from the failing or likely to fail determination until resolution action is taken.

The primary objective of a pre-resolution moratorium should be to prevent severe deterioration of a credit institution's balance sheet. Moreover, a moratorium allows additional time for the resolution authority to start preparing for its resolution tasks in parallel. The maximum period for a moratorium should be five working days in total.

An effective pre-resolution moratorium needs to have the broadest possible scope in order to allow for a timely reaction to liquidity outflows.