Public consultation on the future of MREL policy

December 2023

Background

Under post-financial crisis reforms, banks are required to build up loss-absorbing capacity to ensure that resolution strategies can be effectively implemented without recourse to taxpayers' money or industry safety nets. Resolution authorities set the minimum requirement for own funds and eligible liabilities (MREL) for each bank, and it is a key element of banks' resolvability. The availability of MREL means that resolving a failing bank is possible, while at the same time protecting public funds and minimising public financial support.

Resolution, in general, ensures that shareholders and investors, who benefit most when the bank is profitable, contribute most to loss-absorption and recapitalisation when the bank fails. It ultimately supports the financial system's long-term viability, stability and efficiency by: (i) promoting market discipline; (ii) providing transparency for creditors about the quantum and structure of a bank's loss-absorbing resources; (iii) ensuring that losses are born by the investors; and (iv) encouraging a better pricing of risk. A bank's failure to meet its required MREL adversely impacts that bank's loss-absorbing and recapitalisation capacity and, ultimately, its overall resolvability and the effectiveness of its potential resolution.

Build-up of loss-absorbing capacity over recent years

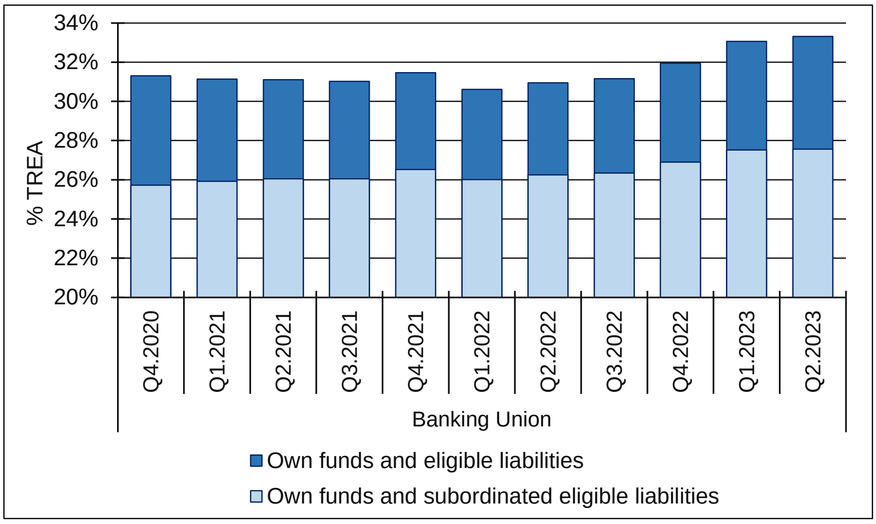
The build-up of MREL resources by banks in the SRB's remit has been steady since the adoption of the first binding targets in 2017. Banks' efforts to issue significant amounts of eligible liabilities have contributed to improving their resolvability.

In 2019, the European Parliament and the Council of the European Union adopted a comprehensive reform package, which completed the regulatory framework for MREL in the EU[1]. This package implemented, among other things, the internationally agreed total loss-absorbing capacity (TLAC) standard of the Financial Stability Board (FSB) for global systemically important banks (G-SIBs). In terms of MREL deadlines, including internal MREL and subordinated MREL requirements, statutory transitional arrangements were introduced by the package with a first binding intermediate MREL applicable from 1 January 2022, an informative intermediate target from 1 January 2023 and banks' final MREL applicable from 1 January 2024.

[1] The "Banking Package", which included amendments to provisions of the Bank Recovery and Resolution Directive (BRRD) and the Single Resolution Mechanism Regulation (SRMR), but also to the Capital Requirements Directive (CRD) and the Capital Requirements Regulation (CRR).

The latest available data shows that the vast majority of banks in the SRB's remit have already completed, or are on track to complete, their journeys towards meeting their final MREL. The overall shortfall against the targets for resolution entities reduced further in Q2 2023, following a steep build-up of MREL capacity between Q4 2022 and Q2 2023, testimony to increased issuance activity, which has gradually closed remaining shortfalls in the run-up to the 2024 deadline. The overall MREL shortfall in Q2 2023 fell to EUR 4.4 bn (corresponding to 0.1% of Total Risk Exposure Amount (TREA)). When considering the combined buffer requirement (CBR), which banks need to meet in addition to MREL, the shortfall was equal to EUR 13.6 bn (corresponding to 0.2% TREA). Around 10% of the resolution entities (corresponding to eight banks) were in shortfall against their final targets, and about 22% (18 banks) when considering the CBR. However, all banks with a shortfall against their final targets and 14 (out of 18 banks) when considering the CBR have a longer transitional period to meet their final target, ending, in most cases, in 2024-2025.

Graph 1. Build-up of MREL-eligible liabilities and own funds of resolution entities, % TREA



Next phase of resolution planning

While 1 January 2024 marks a significant milestone in ensuring that banks in the Banking Union hold and maintain a minimum amount of high-quality loss-absorbing resources, the SRB is also entering a new phase. Resolution plans are in place for all SRB banks, the Single Resolution Fund (SRF) has collected its target amount to reach 1% of covered deposits of credit institutions in all 21 Banking Union countries at the end of 2023, and banks are reaching the target date for the implementation of the SRB's Expectations for Banks[2].

In 2023, the SRB launched a strategic review aimed at ensuring that the SRB remains optimally equipped to deal with the various challenges that a resolution authority may encounter in an ever-changing world, and to

[2] Expectation's for Banks document published on 10 April 2020.

ensure that banks remain resolvable regardless of the geopolitical or macroeconomic landscape. While the initial focus has been on legally mandated resolution plans, in the coming years the SRB will shift its focus to make sure that all resolution strategies outlined in those plans can be effectively implemented. In doing this, the SRB will draw on the valuable lessons learnt from the bank failures the organisation has handled since its inception[3], together with cases in the United States, the United Kingdom and Switzerland in 2023.

These most recent crisis cases provided important lessons to resolution authorities, as described in the related FSB Report[4]. For example, it is essential for resolution authorities to have at their disposal more than one option with regard to feasible and credible resolution strategies, involving various resolution tools. These cases have demonstrated that transfer tools are a key component of authorities' crisis-management toolkit. Moreover, recent cases have also indicated that, even when financial restructuring through bail-in is not enacted as the main strategy – because at the time of resolution, authorities reach the conclusion that a sale of the business or a bridge bank may achieve the resolution objectives more effectively in that specific situation –, the availability of loss-absorbing resources beyond own funds remains crucial to support the resolution process through the implementation of a transfer strategy. An additional major lesson learned from recent crisis cases is the importance of access to sufficient liquidity resources in restoring confidence in the resolved entity and underpinning the success of a resolution strategy.

In addition to their MREL build-up, banks have further developed their operational processes to support the use of those resources in a crisis and are expected to close any remaining gaps, notably in terms of liquidity and funding in resolution, separability and restructuring. The latest aggregated resolvability assessment exercise (the so-called heat-map), released in September 2023, confirmed that banks under the SRB's remit continue to make steady progress in building up their resolvability capabilities.

Objectives and scope

The lessons learned from recent crises will lead to an evolution in resolution plans, and MREL targets will need to evolve accordingly to reflect the resolution strategies which they are designed to support. At the same time, MREL is only one element of our toolkit; it must always be considered in conjunction with the many other elements that together make a bank fully resolvable.

This consultation aims to gather views and reflections from stakeholders to inform any future review of the MREL Policy by the SRB. The SRB also takes this opportunity to solicit public feedback on the use of discretionary exclusions from bail-in and monitoring MREL eligibility. As such, this document does not intend to prejudge or bind the SRB on any final policy decision it will take.

[3] Cases handled by the SRB.

[4] 2023 Bank Failures: Preliminary lessons learnt for resolution (fsb.org).

Further public consultations in respect of other areas of resolution will follow in the future.

Considerations for consultation

The SRB seeks stakeholders' views on factors relevant to setting MREL, which may not necessarily be for immediate application or adoption, but which might be considered/introduced over the course of several resolution planning cycles.

Adjustment for preferred resolution strategies relying on a combination of resolution tools

One of the key reflections of the strategic review of the SRB relates to the credibility of resolution strategies chosen so far by resolution authorities across Europe and globally until now.

The recent bank crises in Switzerland and the US highlighted the key role of liquidity in resolving a bank in crisis. In the US, continued access to ordinary liquidity facilities and support provided by the Federal Deposit Insurance Corporation for the set-up of bridge banks in both Silicon Valley Bank and Signature Bank crises ensured the funding in resolution, and thus the preparedness to swiftly enact the bridge bank resolution tool.

Recent cases again demonstrated how bank crises evolve dynamically, making crisis management path-dependent and requiring more agile resolution planning than may have been the practice in the past. Authorities may need to consider several options and potential outcomes at the same time within a highly compressed timeline, until the final outcome is determined. Running several strategies in parallel while preparing for execution is only achievable when extensive preparation of those strategies is undertaken during resolution planning and thorough *ex ante* testing is conducted by authorities and banks.

A key lesson from recent crises is to be ready to deploy more than one resolution tool so as to increase optionality in execution, in order to achieve the resolution objectives. Therefore, the operationalisation of resolution strategies, potentially involving the sale-of-business or bridge-institution tools, even for large banks, needs to be assessed as potentially viable alternative strategies to current preferred strategies based on the use of the 'open bank' bail-in tool. Such alternative strategies become particularly relevant when a bank's failure is driven by liquidity, rather than solvency, stress. In this context, resolution strategies utilising different transfer tools can play a key role in the development of a flexible approach to resolution planning so that it is not dependent on a single resolution tool. As previously announced[5], the SRB will more systematically assess the possibility to use asset transfer tools, in combination with the bail-in tool, including for some of the larger banks (GSIIs and Top Tier[6]).

[5] SRB bi-annual reporting note to the Eurogroup (europa.eu).

[6] Banks with total assets exceeding EUR 100bn.

Regarding MREL, Article 12d(3) SRMR[7] requires that, after consulting the competent authorities including the ECB, the Board shall adjust the recapitalisation component of MREL if it determines that it would be feasible and credible to support the preferred resolution strategy. Currently, when the preferred resolution strategy relies primarily on a transfer tool, the SRB already adjusts the value of the asset-based denominators used in the calibration of the recapitalisation amount (i.e. TREA and TEM), reflecting the anticipated reduction of the balance sheet implied by a partial asset transfer[8]. The current SRB methodology would continue to apply to any bank whose preferred resolution strategy is predicated on the use of a transfer tool, where the conditions are met.

For some banks, expecting to rely exclusively on transfer tools in their resolution strategies may be unrealistic, for example, during a systemic crisis. Therefore, strategies combining bail-in and transfer tools or the bail-in tool alone could be developed to provide the greater optionality recommended in the FSB Report.

The use of transfer tools typically involves some estimation of the part of the balance sheet likely to be, or capable of being, transferred in resolution, taking into account the interplay between jurisdiction-specific elements and the mechanics of the relevant resolution tools. For example, the set-up of a bridge institution or asset management vehicle implies different legal and operational steps across participating Member States of the Banking Union. After all resolution strategies have been operationalised and tested, the SRB could consider how to factor them into the potentially different recapitalisation needs reflecting both the shrinkage of the balance sheet and potential losses or financing needs derived from the transferred perimeter. The ultimate goal of this consideration is to increase optionality and flexibility for the SRB in times of crisis. A larger set of readily executable resolution tools increases such optionality and flexibility.

Question 1.1: Which criteria would you use to identify the assets / liabilities subject to a transfer strategy in addition to those listed in guiding principles[9] for perimeter identification (e.g. Business activities, size, separability, marketability)?

Question 1.2: Do you have comments on how a partial transfer would influence the composition and risk profile of the balance sheet of the resolved bank for the recapitalisation needs?

[7] Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010, OJ L 225 30.7.2014, p. 1.

[8] Point (a) of the fifth subparagraph of Article 12d(3) requires the Board to adjust the reference values of TREA and LRE used in the calculation of the recapitalisation amount in order to reflect changes to those values resulting from resolution actions set out in the resolution plan.

[9] Annex 3 of the SRB's Operational guidance for banks on separability for transfer tools.

Market confidence charge

The most recent bank crises remind that in some scenarios, especially those characterised by extreme liquidity stress due to concerns of market participants, customers or depositors about the bank's franchise or regulatory situation (as was the case in the resolution of the two Banking Union subsidiaries of Sberbank Europe and the liquidation of ABLV, or the acquisition of Credit Suisse), banks can fail despite meeting their own funds requirements. A robust level of loss-absorbing capacity is key to support resolution actions, in particular by financing the subsequent restructuring phase without incurring the risk of a new failure. Nonetheless, in order to restore market confidence, high levels of regulatory capital need to be combined with additional capabilities in resolution, such as liquidity in resolution and a credible restructuring plan, which is readily understood by the bank's creditors and counterparties and the market more generally.

In the specific case of Credit Suisse, the authorities considered that confidence in the bank was best ensured through a commercial merger by a larger financial institution that was perceived as strong by market participants. The merger was also supported by a write-down of AT1 bondholders, as well a temporary public sector liquidity support among other measures. At the same time, Credit Suisse had a significant amount of loss-absorbing capacity available, ready to be bailed-in, in case the merger had not been agreed. In a joint statement[10], the SRB, the EBA and the ECB have underlined that the resolution framework in the European Union has established a clear order according to which shareholders and creditors of a troubled bank should bear losses, which remains unchanged.

The SRB is seeking views on the factors underpinning market confidence after resolution. Since first setting MREL, the SRB has taken into account the need to ensure a sufficient level of recapitalisation after resolution to sustain market confidence. Under the sixth subparagraph of Article 12d(3) SRMR, *"The Board shall be able to increase the [MREL-TREA] by an appropriate amount necessary to ensure that, following resolution, the entity is able to sustain sufficient market confidence for an appropriate period, which shall not exceed one year"*. The same article in the seventh subparagraph defines the CBR that is to apply after the application of the resolution tools less the amount stemming from the counter cyclical buffer (CCyB) as the reference amount for the market confidence charge (MCC).

In this regard, the eighth subparagraph of Article 12d(3) SRMR envisages that the reference amount shall be adjusted if the SRB determines, after consulting with the competent authorities, including the ECB, that it would be feasible and credible for a lower amount to be sufficient or higher amount necessary to sustain market confidence and to ensure both the continued provision of critical economic functions by the bank and its access to funding without recourse to extraordinary public financial support (other than contributions from the SRF) after implementation of the resolution strategy. Accordingly, and in particular in light of the experience gained

[10] See https://www.srb.europa.eu/en/content/srb-eba-and-ecb-banking-supervision-statement-announcement-19-march-2023-swiss-authorities.

from recent international crises, the SRB is reflecting on the amount necessary to sustain market confidence after resolution.

When setting MREL at the level of a subsidiary institution (internal MREL), the loss-absorbing and recapitalisation needs should be generally provided by the resolution entity through direct or indirect subscription of own funds instruments and eligible liabilities issued by the subsidiary and through their write-down or conversion into instruments of ownership at the point of failure. In this context, the SRB has initially considered that a MCC would not be necessary to ensure the viability of subsidiary institutions except in two cases: (i) for the operating bank that is a direct subsidiary of a holding company identified as a resolution entity, or (ii) where the SRB concludes that the MCC is necessary to sustain market confidence because of the subsidiary's complexity and strong reliance on wholesale funding. These criteria guided the setting of internal MREL from the 2020 resolution planning cycle and subsequent recalibrations.

In the context of the broader reflection on the drivers of market confidence after resolution, the SRB is reassessing whether the criteria underpinning the setting of MCC at the level of the subsidiary ensure the resolution objectives are met with a sufficient degree of assurance in cases of failure. A particular point of review, among others, could be the criteria to ensure achievement of the objective of financial stability where the subsidiary has a systemic footprint at national level, while duly considering the ability to allocate resources across the group flexibly.

Question 2.1 External MCC for resolution entities: what do you view as the main factors for a bank to be able to sustain market confidence during and immediately following resolution?

Question 2.2 Internal MCC for subsidiaries that are non-resolution entities: when setting an MCC for subsidiaries, what do you view as the main drivers for subsidiary banks to regain market confidence after the application of write-down and conversion powers?

Monitoring of eligibility

In order to ensure the effectiveness of MREL, it is critical that the instruments counting towards it have a high loss-absorbing capacity. Eligibility requirements serve this purpose, by controlling the features that instruments and other potentially eligible liabilities have to incorporate in order to count towards the requirement. These eligibility requirements are defined in both the CRR[11] (Articles 72a to 72c) and the SRMR (Article 12c(1) – (3)).

[11] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012, OJ L 176, 27.6.2013, p. 1.

Against this backdrop, monitoring exercises carried out at the EU level[12] on outstanding MREL securities generally show a high level of standardisation and compliance with relevant eligibility requirements, and that a harmonised approach to checks is also beneficial for ensuring a level playing field. It is also notable that there has, as yet, been comparatively less EU-level monitoring of liabilities that might satisfy eligibility requirements but which do not take the form of transferable securities.

For these reasons, also with the aim to reconsider the current verification process based on management sign-off[13] and to align with supervisory standards, the SRB intends to gradually intensify its monitoring activities in respect of new MREL issuances. The envisaged intensification of monitoring would be undertaken on an *ex-post* basis and would be informed by a self-assessment template provided by the banks, mirroring the current practice of the SSM when reviewing the qualification of AT1 and T2 instruments. Eligibility checks can take the form of off-site and on-site checks, depending on bank-specific priorities. In this respect, it is important to recall that the primary responsibility for satisfying eligibility requirements rests with institutions themselves and their management. Where banks are unsure whether a liability exhibits the required features to qualify as eligible, they should not report it as eligible.

Question 3.1: Do you have any comments on the described approach for eligibility monitoring that a resolution authority should implement to ensure effective loss-absorbing capacity?

Question 3.2: While MREL-securities traded on capital markets and/or subscribed by professional investors show a high degree of standardisation and harmonisation of practices, liabilities arising from different legal arrangements (i.e., incorporated into private-placement agreements) do not. Are you aware of any specificities presented by non-standardised claims that would be worth taking into account for the purpose of eligibility monitoring activities (also in light of the current management sign-off process)?

Discretionary exclusions

As the main objective of MREL is to ensure the availability of resources to absorb losses at the point of resolution, the quality of MREL instruments is crucial for the success of resolution: these resources need to be available at the time of resolution and their bail-in should be credible and feasible.

Where the bail-in tool is applied, Article 27(5) SRMR allows the resolution authority to exclude or partially exclude certain liabilities from the write-down and conversion powers. These “discretionary exclusions” are possible only in exceptional circumstances, where any of the conditions listed in points (a)-(d) of Article 27(5) SRMR is met, i.e.:

[12] See for instance the past EBA update on the monitoring of AT1, T2 and TLAC/MREL eligible liabilities instruments of European Union institutions.

[13] See MREL reporting update: checklist on reported liabilities and sign-off form..

a. the bail-in of a given liability or of the class of liabilities is not possible within a reasonable time, notwithstanding the good faith efforts of the resolution authority;

b. the exclusion is strictly necessary and proportionate to ensure continuity of critical functions and core business lines in a manner that maintains the ability of the institution under resolution to continue key operations, services and transactions;

c. the exclusion is strictly necessary and proportionate to avoid giving rise to wide-spread contagion, in particular as regards eligible deposits held by natural persons and micro, small and medium-sized enterprises; or

d. the application of bail-in to those liabilities would result in destruction in value such that the losses borne by other creditors would be higher than if those liabilities were excluded from bail-in.

Commission Delegated Regulation (EU) 2016/860[14] lays down rules further elaborating the exceptional circumstances listed above and governing how authorities may exercise their discretion to exclude.

In the context of crisis preparedness, the SRB is further developing principles that it will consider when determining which liabilities could be deemed as likely to be excluded from bail-in in resolution on a discretionary basis. In order to enhance resolution readiness, a preliminary identification of these liabilities should be done already in the planning stage, in order to address potential impediments, where possible, and without prejudging the final decision of the SRB at the moment of execution.

The powers under Article 27(5) SRMR concern all bail-inable liabilities and, therefore, are neither limited to, nor in particular target, liabilities that are eligible to meet MREL. On the contrary: due to the uniform eligibility conditions for MREL-eligible liabilities – that aim to ensure that at the point of failure these resources are effectively available, loss-absorbing or convertible into equity, and that losses flow outside of the resolution group in accordance with resolution strategy – these instruments would generally not meet the criteria for exclusion on a discretionary basis, unless an exclusion is necessary due to the specific contagion dynamics in a resolution scenario (e.g. entities affiliated to the resolution entity whose preservation is instrumental to reach the resolution objectives).

Where the SRB considers that in such specific circumstances certain liabilities are reasonably likely to be fully or partially excluded from bail-in on a discretionary basis despite meeting all eligibility conditions of CRR for MREL eligibility, this could lead to a reduction of resources that can be used to meet the MREL[15].

[14] Commission Delegated Regulation (EU) 2016/860 of 4 February 2016 specifying further the circumstances where exclusion from the application of write-down or conversion powers is necessary under Article 44(3) of Directive 2014/59/EU of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms, OJ L 144, 1.6.2016, p. 11.

[15] Article 12d(7) SRMR.

Exclusions might also in some cases indirectly influence subordination levels through the no creditor worse off (NCWO) assessment performed by the SRB each year when setting MREL requirements. Here the transmission channel is different, because the impact does not depend on whether an exclusion concerns a liability that meets all eligibility conditions, but is caused by the impact on remaining bail-inable liabilities that rank *pari passu* to the excluded ones. The presence of *pari passu* liabilities that are excluded from bail-in on a mandatory or discretionary basis may lead to NCWO risks, depending on the specific liability structure of the bank and a range of other factors, in particular the size of the exclusion ratio in a particular insolvency ranking[16]. The impact on subordination is therefore not automatic and is assessed by SRB for each bank.

Before reflecting discretionary exclusions in MREL quantity and/or in the assessment of NCWO risk as described above, the SRB intends to first increase experience in assessing discretionary exclusions on a bank-by-bank basis and to benchmark the preliminary conclusions made in order to ensure convergence across banks with similar types of liabilities. Notwithstanding, the SRB may take decisions on exclusions influencing the MREL already at an earlier stage, when this is considered appropriate.

Finally, it is important to stress that any decision by the SRB to consider in the planning stage whether liabilities are likely to be excluded on discretionary basis is without prejudice to the final decision at the time of resolution. The assessment of circumstances which could lead to an exclusion of some liabilities could differ at the time of resolution planning from the assessment at the moment of resolution, when concrete case-specific circumstances become apparent. Thus, the resolution authority may always conclude that the resolution objectives are achieved more effectively by taking actions in resolution not provided for in the resolution plan, e.g. bailing-in liabilities previously considered as likely to be excluded in the planning phase or vice versa.

The questions below are aimed at gathering views from stakeholders on some specific liabilities in order to further inform the thinking of SRB regarding the exercise of its powers under SRMR in planning and resolution. This, however, should not be understood as suggesting a specific policy choice by the SRB or indicate that some liabilities are more or less likely to be considered as excluded on a discretionary basis in resolution. In the planning stage, the SRB will assess all relevant liabilities (including those where no specific questions were raised for the purpose of this consultation).

Moreover, where the SRB expresses an opinion in resolution planning that a liability is likely to be excluded based on the criteria of Commission Delegated Regulation (EU) 2016/860, this does neither indicate nor bind the SRB that write down and conversion powers under SRMR will not be exercised in relation to such liability in case of resolution, which will exclusively be governed by the specific circumstances at the point in time of adoption of the resolution scheme.

Question 4.1: Closing of derivative contracts (valued on a net basis)[17] through bail-in may lead to replacement costs incurred by the bank, particularly in respect of open positions for the bank

[16] See Section 3 and in particular subsection 3.3 of MREL Policy on NCWO assessment.

[17] It is recalled that the secured (collateralised) part of derivatives is always excluded on a statutory basis under Article 27(3) SRMR and therefore not subject to a decision under Article 27(5) SRMR.

which require re-hedging. In your view, under what circumstances would the costs related to close-out be high enough to lead to destruction of value (meaning that holders of other/non-excluded liabilities would be better off when particular derivative contracts are excluded from bail-in than if derivatives were bailed-in)?

Question 4.2: Under which circumstances and to what extent could bailing-in net liabilities under derivatives (after close out) negatively impact a bank's business, leading to destruction of value? Please elaborate (e.g. potential differences across different banking business models or types of derivatives themselves). Do you think the exclusion of other types of liabilities could lead to such effects?

Question 4.3: Some instruments have been hedged externally and thus their bail-in would also require a winding down of the corresponding hedge. In your view, can this lead to destruction of value (meaning that holders of other/non-excluded liabilities would be better off when such liabilities are excluded from bail-in than when they are bailed-in)? If yes, under which circumstances (e.g. does it depend on the hedging purpose such as economic or accounting)? Do you think this could be the case for structured notes with embedded derivatives? In such case, please provide concrete examples of structured notes where destruction of value could appear.

Question 4.4: Without prejudice to the considerations for discretionary exclusions regime, as regards bail-in operationalisation:

- *Are there any operational challenges that may hamper the bank's ability to provide, on short notice, the information about its derivative contracts as required for the purposes of valuation pursuant to Articles 36 and 49 of BRRD[18]? If so, do these challenges concentrate in any particular category of derivatives?*
- *Are there particular types of collateral that might create operational challenges to determine – in a short timeframe – the extent by which the value of secured liabilities, or a liability for which collateral is pledged, exceeds the value of the assets, pledge, lien or collateral against which it is secured?*
- *Are there particular challenges – in a short timeframe – in identifying the amount of a deposit that exceeds the coverage level provided for in Article 6 of the Deposit Guarantee Scheme Directive[19] which would be eligible for bail-in?*

[18] Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council, OJ L 173, 12.6.2014, p. 190.

[19] Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes, OJ L 173, 12.6.2014, p. 149,.

Long-term policy considerations

Rethinking the approach to adjustments in the MREL policy

Under the current SRB approach to MREL setting, as described in the MREL policy based on current Union law, the SRB considers amounts for loss-absorption and recapitalisation, calibrated to take into account balance sheet size changes, market confidence charge or bank's resolution strategy (e.g. multiple point of entry, transfer tools), etc..

A different approach for the long run could be to set the MREL for all banks based on a ***harmonised minimum*** with only one ***adjustment driver*** which would be determined based on a holistic assessment of the bank. The single adjustment could eventually also be tied to the overall resolvability assessment of the bank. This could allow the SRB to view the setting of the MREL also through the lens of resolvability in order to ensure that banks maintain at all times sufficient quantity and quality of instruments capable of absorbing losses and recapitalising a bank, and simultaneously provide an incentive structure that reflects capabilities other than loss-absorption that play a key role for the success of resolution (liquidity, access to financial market infrastructures (FMIs), operational continuity in resolution (OCIR), and so on). In order to potentially make a link between MREL adjustments and resolvability, the SRB could develop a single resolvability score for its banks applied homogeneously across the Banking Union.

Given that such new approach would need to be developed by the SRB only if the EU co-legislators were to review the current legal framework, it would need to be implemented over a multi-year horizon.

Answers to the questions below could be of a broader nature and not be limited to considerations on adjustments under the current framework.

Question 5.1: What are your views on the current MREL calibration methodology? How do you assess the complexity of the current framework and would you support an approach to MREL by developing a new methodology with a harmonised floor and a single adjustment driver? In your view, does a single adjustment driver based on factors like resolution strategy, resolvability, etc., reduce complexity?

Question 5.2: Do you see any merits or disadvantages to linking the calibration of MREL with the resolvability assessment? If so, please explain and elaborate.

Question 5.3: Which other factors should be included in the calibration of MREL? How could a harmonised floor be determined?