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# Amending the bank resolution framework – BRRD and SRMR

The completion and implementation of the significant overhaul of the financial regulatory framework in response to the financial crisis, including the revision of the resolution framework for banks, remains a major area of the European Commission's work. On 23 November 2016, the Commission proposed amending the Bank Recovery and Resolution Directive (BRRD) and the Single Resolution Mechanism Regulation (SRMR) in order to incorporate international standards on loss-absorption and recapitalisation; the proposals incorporate the total loss-absorbing capacity (TLAC) set by the Financial Stability Board (FSB), an international standard-setter.

**Proposal for a Directive of the European Parliament and of the Council amending Directive 2014/59/EU on loss-absorbing and recapitalisation capacity of credit institutions and investment firms and amending Directive 98/26/EC, Directive 2002/47/EC, Directive 2012/30/EU, Directive 2011/35/EU, Directive 2005/56/EC, Directive 2004/25/EC and Directive 2007/36/EC; Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 806/2014 as regards loss-absorbing and Recapitalisation Capacity for credit institutions and investment firms**

COM(2016) 851, COM(2016) 852, 23.11.2016, 2016/0361(COD), 2016/0362(COD), Ordinary legislative procedure (COD) (Parliament and Council on equal footing (formerly 'co-decision'))

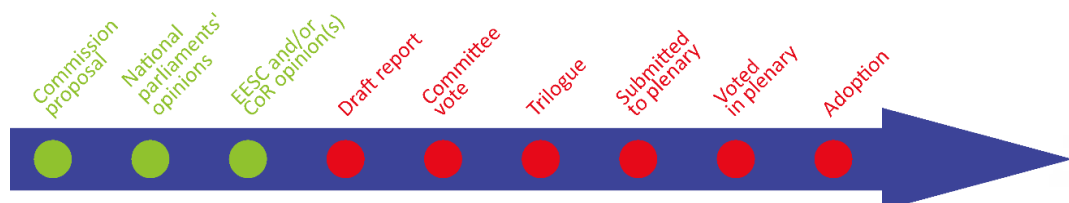
Committee responsible:	Economic and Monetary Affairs (ECON)
Rapporteur:	Gunnar Hökmark (EPP, Sweden)
Shadow rapporteurs:	Pedro Silva Pereira (S&D, Portugal); Syed Kamall (ECR, United Kingdom); Sylvie Goulard (ALDE, France – to be replaced); Fabio de Masi (GUE/NGL, Germany); BRRD: Philippe Lamberts (Greens/EFA, Belgium); SRMR: Ernest Urtasun (Greens/EFA, Spain); Marco Valli (EFDD, Italy); Marco Zanni (ENF, Italy)
Next steps expected:	Publication of draft report

6 June 2017

First edition

The 'EU Legislation in Progress' briefings are updated at key stages throughout the legislative procedure.

Please note this document has been designed for on-line viewing.



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## Introduction

Completing and implementing the significant overhaul of the financial regulatory framework in response to the financial crisis, including revising the [prudential requirements](#) as well the [resolution framework](#) for financial institutions and investment firms, remains a major area of the European Commission's work. On 23 November 2016, the Commission presented, as part of a '[banking reform package](#)' its proposals to amend the Bank Recovery and Resolution Directive (**BRRD**) and the Single Resolution Mechanism Regulation (**SRMR**). The aim of these proposals is to incorporate international standards on loss-absorption and recapitalisation into European legislation.<sup>1</sup> While the EU's current resolution framework has been in place since 2014,<sup>2</sup> recent international policy developments<sup>3</sup> – specifically aimed at large and systemically important banks – made adjustments necessary. The legal basis is Article 114 of the Treaty on the Functioning of the European Union (TFEU).

## Context

While banking supervision aims to prevent bank crises and act as an early-warning mechanism (going concern), banking resolution provides for orderly failure and minimises impacts on financial stability (gone concern). While the **Bank Recovery and Resolution Directive 2014/59/EU** sets the framework for all banks in the EU, the **Single Resolution Mechanism Regulation (EU) No 804/2014** defines the unified resolution procedure for institutions within the euro area (and constitutes the second pillar of the banking union).<sup>4</sup>

International standards on loss-absorption and recapitalisation have been further developed within the resolution framework for global systemically important banks ([G-SIBs](#)).<sup>5</sup> The [Financial Stability Board \(FSB\)](#) published on 9 November 2015 the [total loss-absorbing capacity \(TLAC\)](#) term sheet, a new standard which was later endorsed by the G20. This standard is designed to ensure that if a global systemically important bank fails it has sufficient loss-absorbing and recapitalisation capacity available to implement an orderly

- 1 Note that in order to make the EU resolution framework more operational, the new proposal contains a moratorium tool allowing for the suspension of certain contractual obligations for a short period of time in resolution as well as in the early intervention phase.
- 2 See for an overview Deutsche Bundesbank, [Europe's new recovery and resolution regime for credit institutions](#), in: Monthly Report, Frankfurt a. M., 2014, June, pp. 31-55 and for a more detailed account A. Kern, [European Banking Union: A Legal and Institutional Analysis of the Single Supervisory Mechanism and the Single Resolution Mechanism](#), in: European Law Review, Issue 2, 2015, pp. 154-187.
- 3 See e.g. Carney, M., [Ten years on: fixing the fault lines of the global financial crisis](#), Banque de France, Financial Stability Review, No 21, April 2017, pp. 13- 20.
- 4 Thus far, the banking union has two pillars, a single supervisory mechanism ([SSM](#)) and single resolution mechanism ([SRM](#)), and an accompanying '[single rulebook](#)' – a set of legislation applying to all EU Member States (not just those in the euro area). On 4 November 2014, the ECB assumed [supervisory tasks](#) under the SSM, to directly oversee all '[significant](#)' [euro-area banks](#) (in cooperation with national supervisory authorities). The SRM is a system to unify the resolution of [non-viable financial institutions](#), and consists of the central resolution authority (the [Single Resolution Board](#)) and a [Single Resolution Fund \(SRF\)](#). On 24 November 2015, the Commission presented a proposal for a common [European Deposit Insurance Scheme \(EDIS\)](#) to become the banking union's 'third pillar'. The latter is still in negotiation, see [2015/0270\(COD\)](#).
- 5 While international fora such as the FSB and the BCBS use the abbreviation 'G-SIBs', the equivalent in the context of EU legislation is 'G-SII', [global systemically important institutions](#). Mesnard, B. et al., [Global Systemically Important Banks in Europe](#), European Parliament/EGOV, 23 May 2017.

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resolution that minimises impacts on financial stability. It applies to all G-SIBs, hence to [13 banks within the EU](#) (out of 30).

The **TLAC** standard sets a **minimum level** of loss-absorbing capacity to be held by all G-SIBs, a 'Pillar 1' requirement (while the current BRRD provisions allow resolution authorities to set individual requirements on a case-by-case basis, a 'Pillar 2' requirement, see below). As of 1 January 2019, G-SIBs will have to comply with a minimum TLAC requirement of 16 % of RWA ([risk-weighted assets](#)) **and** 6 % of the Basel III [leverage ratio](#) denominator (TLAC Leverage Ratio Exposure<sup>6</sup> (LRE) Minimum). As of 2022, the minimum thresholds will be set at 18 % and 6.75 % respectively. Since TLAC, like all Basel and FSB provisions, is not legally binding on either countries or institutions, it has to be adopted either at national or EU level in order to become a legal requirement. Basel and FSB provisions are currently transposed into EU norms through the [Capital Requirements Directive and Regulation CRD-IV/CRR, 2013/36/EU](#) and [\(EU\) No 575/2013](#), one example being the above-mentioned criterion to identify systemically important institutions, transposed in [Article 131 CRD-IV and Article 441 CRR](#).

## Existing situation

The EU's resolution framework consists of two major pieces of legislation, the BRRD, applying to all banks in the EU and the SRMR, applicable to institutions in euro-area Member States. Additional provisions are contained in the CRR and CRD-IV. Together with the directive on ensuring better protection for depositors (Deposit Guarantee Schemes Directive – [2014/49/EU \(DGSD\)](#)) they form the '[single rulebook](#)', applying to all EU countries and to over [6 500 banks](#).

### Bank Recovery and Resolution Directive (BRRD)

In order to ensure the orderly failure of financial institutions, the [BRRD](#) confers new powers to resolution authorities in the EU: those powers aim at (i) anticipating the failure of the financial institution and getting ready for its resolution (resolution planning process), and (ii) minimising the economic costs of resolution for the financial sector, depositors, public funds and the real economy.<sup>7</sup> While the BRRD applies to all EU Member States, the [SRM](#) unifies the resolution of [non-viable financial institutions](#) within the Banking Union.<sup>8</sup>

To limit [state aid](#) for ailing banks, the BRRD provides for a [bail-in mechanism](#) (Articles 43 ff. BRRD). Since 1 January 2016, it is mandatory to bail in shareholders and creditors for a **minimum amount of 8 % of total**

<sup>6</sup> The Leverage Ratio Exposure (LRE) is the denominator of the leverage ratio as per the Basel III standard.

<sup>7</sup> The BRRD, in force since 2 July 2014, is accompanied by four delegated acts, implementing technical standards and regulatory technical standards, see [overview](#) of the European Commission. Most recently, the EBA published draft RTS on [valuation in resolution](#) on 23 May 2017.

<sup>8</sup> The SRM consists of a central resolution authority (the [Single Resolution Board](#)) and a [Single Resolution Fund \(SRF\)](#). To be used in cases of bank failure, the SRF, financed by bank contributions, will be built up over eight years (2016-2023). As of 2024 it will reach at least 1 % of covered deposits. Out of 143 SRB banks (142 in June 2016), the Single Resolution Board is drafting resolution plans for 68 'high priority banking groups' and transitional resolution plans for 32 'medium priority banking groups' in order to prepare the setting of MREL (minimum requirement of own funds and eligible liabilities) on a case-by-case basis. See presentation by M. Grande, [3rd SRB-Banking Industry Dialogue Meeting Resolution Planning in 2016](#), Brussels, 23 May 2016, p. 7.



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**liabilities** before the resolution-financing mechanism (resolution fund) can be tapped. (Article 44(5)).<sup>9</sup> The credibility of bail-in provisions is crucial to manage market participants' expectations.<sup>10</sup> To ensure that sufficient financial resources are available for write-down or conversion into equity, the BRRD (in its Article 45) requires resolution authorities to set financial institutions a **minimum requirement for own funds and eligible liabilities (MREL)**<sup>11</sup> that they have to meet.

While both the TLAC standard and the MREL share the same **objective**, their concepts differ. MREL has already been introduced in the EU by way of the BRRD and, unlike TLAC which is based on RWAs, the current MREL requirement is expressed as a percentage of an institution's total liabilities including regulatory capital. Neither is there a binding minimum level for MREL in the directive. The competent resolution authority is to set an individual MREL for each institution. Table 1 provides an overview of the differences:

Table 1 – Comparing TLAC and the current MREL requirement

	TLAC	MREL
Objective	To ensure i) an appropriate level of loss-absorbing and recapitalisation capacity for the relevant group to be resolvable, ii) critical functions can be continued without taxpayer (public) funding and avoiding adverse effects on the financial system.	
Scope of covered firms	Global systemically important institutions ( <b>G-SIIs</b> )	<b>All</b> credit institutions and investment firms
Calculation (Denominator)	Total risk exposure amount (RWA); Leverage ratio exposure (LRE)	In % of total liabilities and own funds.
Subordination: Eligible instruments	Statutory, contractual or structural subordination is mandatory, with exceptions.	Equity, junior debt, senior debt, and other unsecured liabilities, at the discretion of the resolution authority.
Internal requirement	' <b>Internal TLAC</b> ' requirement for material sub-group in foreign jurisdictions.	MREL set for each financial institution and at group level.
Calibration: Pillar 1 vs. Pillar 2 approach	G-SIBs should have the same <b>Pillar 1 type</b> minimum TLAC requirement plus a Pillar 2 firm-specific requirement.	Case-by-case approach ( <b>Pillar 2 type</b> ) based on each bank's characteristics: resolvability assessment, complexity, risk profile, etc.

9 As to the bail-in instrument, Finance Watch warns that what may have been seen as a 'quick fix' may be found wanting in the moment of need'. [Policy Brief, 1 March 2016](#).

10 In April 2017, the EBA published three sets of [guidelines](#) for the bail-in tool to facilitate its use. Since full transposition of the directive took some time and since the bail-in tool has been in effect only since January 2016, it has not actually been used so far. Regarding the intersection of bail-in, precautionary recapitalisation and state aid, see Mesnard, B., '[Bail-ins' in recent banking resolution and State aid cases](#), European Parliament, EGOV, Brussels, 7 July 2016. See also Philippon/Salord (above) and Mikosek, M., '[Free market in death? Europe's new bail-in regime and its impact on bank funding](#)', Deutsche Bank Research, Frankfurt a. M., 29 April 2016. A comparison of EU and US bail-out provisions provide Gordon, J.N., Ringe, W.G., '[Bank Resolution in the European Union: A Transatlantic Perspective on What Would It Take](#)', in: Columbia Law Review, Vol. 115, No 5, 2015, pp. 1297-1370.

11 MREL is a Pillar 2 type requirement that is determined on the basis of a case-by-case analysis. Resolution authorities' decisions on its level or the extent to which it is to be met with subordinated liabilities must be well justified. See Table 1.



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	TLAC	MREL
Sizing	Pillar 1 standard minimum: 16 % of RWA <b>and</b> 6 % of leverage assets (from 2022: 18 % and 6.75 %) plus Pillar 2 case-by-case requirements.  TLAC minimum requirements do not include capital buffers.	Sum of the <b>Loss Absorption Amount</b> (current capital requirements) and <b>Recapitalisation Amount</b> (capital requirement post-resolution), subject to various adjustments by the resolution authority, including potential use of Deposit Guarantee Schemes;
Deductions	Deduction of TLAC eligible instruments issued by other G-SIIs.	No deductions of cross-holdings.
Come into force	1 January 2019	1 January 2016 with 48-month phase-in period (four years)

Sources: S. Fernandez de Lis, [New requirements for loss absorbing capacity: TLAC and MREL](#), BBVA Research, 8 March 2016, p. 19; B. Mesnard, [Loss absorbing capacity in the Banking Union: TLAC implementation and MREL review](#), European Parliament, DG IPOL/EGOV, Brussels, July 2016, p. 5, author's contribution.

In terms of **scope**, MREL applies to all banks in the EU (as covered by the BRRD) and not only systemically important institutions. Instead of setting a mandatory fixed minimum **Pillar 1** requirement for all institutions as TLAC does, the MREL will be determined on a case-by-case approach, i.e. not a minimum standard but one set individually for each bank (Pillar 2 only).

### Single Resolution Mechanism Regulation (SRMR)

In force since November 2014, the second pillar of the Banking Union, complementing the Single Supervisory Mechanism (SSM), is the Single Resolution Mechanism (SRM). Codified in the SRMR, it aims to manage swiftly and orderly the resolution of failing banks in the euro area and other participating Member States. The SRM unifies resolution for [banks under its remit](#) and creates a central resolution authority, the [Single Resolution Board \(SRB\)](#), and a [Single Resolution Fund \(SRF\)](#). SRF resources are based on [ex ante contributions](#)<sup>12</sup> from the financial industry. The target level of the SRF to be reached by 2024 amounts to 1 % of the covered deposits of all banks in participating Member States, i.e. about €55 billion.

In 2016, the SRB began to set MREL targets for banks under its remit, and requested banks complete a [Liability Data Template](#) through National Resolution Authorities (NRAs). On 17 February 2017 the SRB published its [guidelines on the approach taken in 2016](#) and the next steps regarding MREL requirements. This document summarises the main principles applied by the SRB when setting MREL targets for major banking groups in 2017. About 70 resolution plans and 30 transitional resolution plans had been developed in 2016, but no binding MREL has yet been set: the 'informative targets' communicated to the banks in 2016 were non-binding, non-enforceable and non-challengeable.<sup>13</sup>

12 For details regarding the calculation criteria see [Commission Delegated Regulation \(EU\) 2017/747](#) of 17 December 2015, OJ L 113/2, 29 April 2017.

13 On the 'simplified approach' taken by the SRB see above Mesnard, B., Katopodi, C., [Hearing with Mrs Elke König, Chair of the Single Resolution Board](#), European Parliament/EGOV, 17 March 2017, pp. 3-4.

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## Parliament's starting position

The European Parliament addressed the topic of capital requirements in its annual report on the banking union in March 2016. In its [resolution](#), the European Parliament 'welcomes the efficient setting-up of the SRB and the establishment of national resolution authorities (NRAs)' (Point 43). It calls for 'timely progress to be made in drawing up resolution plans and setting a minimum requirement for own funds and eligible liabilities (MREL)', and to prioritise systemically important institutions (Points 50, 52). The Parliament calls for flexibility on the maximum distributable amount ([MDA](#)),<sup>14</sup> 'to avoid solutions which are too rigid and might negatively affect the [AT1](#) bond market and the level playing field' (Point 26). The report pushes for regulations rather than directives.

In April 2016, Parliament adopted its position on the EU's role in the framework of international financial, monetary and regulatory institutions and bodies ([2015/2060\(INI\)](#)), and called for better coordination of Member States' positions.

In view of an ongoing and comprehensive review of the Basel III framework, initiated by the Basel Committee on Banking Supervision in 2012, Parliament adopted a [resolution](#) on the finalisation of Basel III (rapporteur [Roberto Gualtieri, S&D, Italy](#)) on 23 November 2016. It 'recalls the interaction of the prudential requirements for banks with other major banking standards, such as the introduction of the TLAC standard within the EU and its harmonisation with the MREL requirement under the BRRD ...' (Point 17).

14 The [MDA provision](#) means banks cannot distribute profits to an extent where the combined capital requirements Article 141(1) CRD IV are no longer met.





## Proposals

### Preparation of the proposals

In the run-up to making its proposals, the Commission not only reviewed different options for implementing TLAC and aligning it with harmonising MREL. It also had begun to develop technical standards detailing the BRRD. On 26 May 2016, the Commission proposed to specify its criteria on how to set MREL, thus incorporating the [draft regulatory technical standards \(RTS\)](#) of the European Banking Authority (EBA) of 3 July 2015 into a [Delegated Regulation \(2016/1450\)](#). However, the EBA conveyed a [dissenting view](#) regarding the burden-sharing requirement for shareholders and creditors of institutions of significant importance. The EBA delivered further analysis on the implementation of the MREL in its [report](#) of 14 December 2016.

Another element of discussion was the role of risk-weighting in determining MREL: commissioned by the European Parliament, four research papers published in July 2016 focus on the pros and cons of calculating 'total assets' using leverage ratio exposure versus 'risk-weighted assets'. [Ayadi/Ferri](#) support a full alignment of MREL with TLAC, and recommend 'to keep the two metrics RWA and LRE and apply the maximum in each case'. [Hellwig](#) finds that neither RWA nor total assets provide proper guidance for determining MREL. In particular, risk-weighting seems less suited for determining MREL since 'capital regulation focuses on the probability of bad results, while MREL is concerned with the extent of losses conditional on results being bad'. [Berger et al](#) find the use of RWAs more convincing, though they admit this method comes at a cost for smaller banks. In a similar vein, [de Groen](#) notes (on a sample of 90 banks) that RWA to total assets turns out to be higher for smaller and retail-oriented banks.

The Commission indicated, in its November 2015 [communication](#) on completing the Banking Union, that, it might, if appropriate, by end-2016 submit a legislative proposal on the harmonised application of the MREL so that TLAC can be implemented by the agreed deadline of 2019. First attempts of the Commission's [Expert Group on Banking, Payments and Insurance](#) to merge TLAC and MREL requirements met with [resistance](#).

On 23 November 2016, the Commission published an [impact assessment](#) covering the overall banking reform package, hence including the revision of the BRRD and the SRMR. In the view of the Commission, the proposal rectifies several MREL shortcomings: MREL calibration conditions and eligibility criteria; clarifying internal loss-absorbing capacities within banking groups; as well as aligning the basis for calculation on the RWA and the leverage ratio exposure measure.

In addition, the Commission published a [communication](#) on the cumulative impact of the current regulatory framework for financial services. This publication is a follow-up to a [call for evidence](#) on this topic, concluded in January 2016.

### The changes the proposals would bring

On 23 November 2016, the Commission presented its 'banking reform package', a set of separate legislative proposals to amend the EU's prudential requirements (CRD-V/CRR-II) and its resolution framework (BRRD/SRMR). The Commission aimed to: (1) better address long-term funding risk; (2) reduce excessive leverage; (3) better address market risks by increasing the risk sensitivity of the existing rules and enhancing the proportionality of



the prudential framework for institutions; **(4) increase the loss absorption and recapitalisation capacity of G-SIs**; and (5) increase legal certainty and enhance convergence among Member States in the area of insolvency law and restructuring proceedings, particularly in the area of creditor hierarchy and subordination. Aims 1-3 and 5 are tackled in separate proposals.<sup>15</sup> The proposed amendments aim to align the MREL with the international TLAC standard, thereby avoiding duplication that would be caused by applying two parallel requirements.

## CRR/CRD

### TLAC

The main provisions implementing TLAC into EU legislation, in particular the new 'Pillar 1 MREL' requirement for G-SIs would be introduced in the CRR and CRD-IV. It is based on both a risk-based denominator (RWA) and a non-risk-based denominator (LRE) (new Article 92a of the CRR) and applies only in the case of G-SIs (Article 131(1) CRD-IV). Article 6 of the CRR is amended to require stand-alone G-SIs that are resolution entities to comply with [the MREL] requirement on a solo basis, whilst Article 11 is amended to require resolution entities part of groups designated as G-SIs to comply with the requirement for own funds and eligible liabilities on a consolidated basis.<sup>16</sup> A new Chapter 5a (new Articles 72a-72l, CRR) on eligible liabilities is introduced. Its rules include the list of excluded liabilities and eligibility criteria as well as deduction rules for TLAC holdings of other G-SIs. The new Article 104a of the CRD specifies the concept of 'Pillar 2 capital', in particular, supervisors cannot impose additional own funds to cover macro-prudential or systemic risk. The new Article 104b introduces the concept of 'capital guidance' (see below).

### BRRD

The modified BRRD introduces the concept of 'resolution entity' and 'resolution group' (taken from the FSB's TLAC standard) to allow for the two principal resolution strategies used, namely Single Point of Entry (SPE) and Multiple Point of Entry (MPE) (Articles 2, 12, 13). So far, resolution groups and material subgroups have not been defined. It replaces the existing Article 45, introduces disclosure requirements and leads to an internal MREL requirement for material subsidiaries of third-country G-SIs in the EU. The proposal also amends Article 55, while creditor hierarchy (Article 108) is modified through a separate legislative proposal.

### MREL, Article 45

Table 2 illustrates the major changes to the MREL framework, including the new minimum requirement (Pillar 1) for G-SIs in the EU. In line with the proposal to amend the [CRD-IV \(new Article 104\(b\)\)](#), Article 45e applies the concept of 'guidance' in the BRRD. It allows resolution authorities 'to require institutions to meet higher levels of MREL while addressing in a more flexible manner any breaches of those levels, in particular by alleviating the automatic effects of such breaches in the form of limitations to the Maximum Distributable Amounts (MDAs)'.<sup>17</sup>

15 The Commission decided to amend the BRRD in two separate legal procedures ([COM\(2016\) 852](#) on TLAC/MREL, this briefing and [COM\(2016\) 853](#) on creditor hierarchy, in order to fast-track the latter. See Delivorias, A., [Ranking of unsecured debt instruments in insolvency hierarchy](#), EPRS, Briefing, 14 March 2017. Cf. Stuchlik, A., [Amending capital requirements. The CRD-V package](#), EPRS, Briefing, 6 April 2017.

16 European Commission, [COM\(2016\) 850 final](#), op. cit., p. 12.

17 European Commission, [COM\(2016\) 852 final](#), p. 10. On Pillar 2 guidance see SRB, [MREL: Approach taken in 2016 and next steps](#), Brussels, November 2016.





Preparation of the proposals

The changes the proposals would bring

Table 2 – Proposed changes to the MREL framework

	MREL for non G-SIIs	MREL for G-SIIs
Objective	To ensure i) an appropriate level of loss-absorbing and recapitalisation capacity for the relevant group to be resolvable, ii) critical functions can be continued without taxpayer (public) funding and avoiding adverse effects on the financial system.	
Scope of covered firms	All non G-SIIs in the EU	All G-SIIs in the EU
Calculation (Denominator)	Total risk exposure amount (RWA); Leverage ratio exposure (LRE)	Total risk exposure amount (RWA); Leverage ratio exposure (LRE)
Subordination: Eligible instruments	Resolution authority may require on a case-by-case basis. A new non-preferred senior debt class, eligible for MREL is created.	Required but exceptions apply. A new non-preferred senior debt class, eligible for MREL is created.
Internal requirement	Internal MREL requirement for all banks that are subsidiaries of resolution entities.	All material subsidiaries of non EU G-SIIs must comply with an internal MREL requirement equal to 90 % of the G-SIIs Pillar 1 MREL requirement.
Calibration: Pillar 1 vs Pillar 2 approach	Individual institution specific requirement ( <b>Pillar 2 type</b> ) based on each bank's characteristics: resolvability assessment, complexity, risk profile, etc.	Common minimum requirement ( <b>Pillar 1 type</b> ) + individual institution specific requirement (Pillar 2 type)
Sizing	<b>Loss Absorption Amount</b> (max: Pillar 1 capital requirements + Pillar 2 buffer) <b>Combined buffer requirement/ Recapitalisation Amount</b> (max: Pillar 1 capital requirements + Pillar 2 buffer) Loss absorption buffer Market confidence buffer	Fixed <b>minimum requirement</b> : 16 % RWA & 6 % LRE (TLAC equivalent; as of 2022: 18 %, 6.75 %) <b>Combined buffer requirement</b> (Pillar 2 buffer) Loss absorption buffer Market confidence buffer
Deductions	No deduction requirement.	Deduction required for own eligible liabilities instruments and holdings of eligible liabilities of other G-SIIs.
Come into force	1. January 2019	1. January 2019

Source: European Commission, author's compilation. Note: The new harmonised minimum TLAC requirement is introduced in the revised CRR (new Article 92a; 'internal TLAC' Article 92b), while institution specific add-ons (both for G-SIIs and for non-G-SIIs) are part of the BRRD/SRMR amendments. Consequences of breaches and interaction with capital buffers are introduced in the revised CRD IV. Finally, amending subordination (Article 108, BRRD) is proposed as separate dossier (see endnote 15).



### *Third-country provisions, Article 55*

The proposal also addresses the need for proportionality of bail-in related rules by revising Article 55 of the BRRD under which banks have to include in contracts that are governed by the law of a third country a clause by which the creditor recognises the bail-in power of the EU resolution authorities.

### *Creditor hierarchy, Article 108*

Some Member States have amended the insolvency ranking of certain bank creditors under their national insolvency law, yet not homogeneously.<sup>18</sup> Unsecured debt holders and other creditors of banks can be treated differently from one Member State to another, for instance. The Commission thus proposed to amend Article 108 of the BRRD, by partially harmonising the creditor hierarchy in case of bank insolvency, as regards the priority ranking of holders of bank senior unsecured debt eligible to meet the BRRD rules. The separate proposal intends to create a new asset class of 'non-preferred' senior debt that should only be bailed in in resolution after other capital instruments, but before other senior liabilities. Institutions remain free to issue debt in both classes. The new 'non-preferred' senior class, modelling the [French approach](#) of a contractual debt instrument, is designed specifically to be eligible for the minimum TLAC requirement, or any subordination requirement that could be imposed by resolution authorities on a case-by-case basis.

### SRMR

While the general rules on the TLAC minimum requirement for G-SIIs are part of the amended CRR (see above), this proposal deals with the institution-specific add-on for G-SIIs and the general requirements applicable to banks established in the banking union. The proposal mirrors changes in the BRRD and introduces a number of targeted amendments to the existing SRMR: It changes the MREL requirement for banks and G-SIIs under the scope of the SRB (taking over TLAC, new Article 12 a-j) from being measured as a percentage of the total liabilities of the institution into a percentage of the total risk-exposure amount, and of the leverage ratio exposure measure of the relevant institution (see above). The amendments also introduce an internal MREL requirement (Article 12g and 12h) which, in line with the TLAC standard, allows the recapitalisation of a resolution group entity (with critical functions) without placing it into formal resolution.

18 See Delivorias, A. [Ranking of unsecured debt instruments in insolvency hierarchy](#), EPRS, EU Legislation in progress Briefing, 14 March 2017. For instance, in some Member States, entire categories of unsecured senior debt are considered subordinated to other senior liabilities whereas, in others, this consideration only applies to newly issued debt meeting specific criteria.

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## Views

### Advisory committees

The European Economic and Social Committee (EESC) adopted its [opinion](#) on the banking reform package on 30 March 2017 (rapporteur: Daniel Mareels, Group I, Belgium), while the Committee of Regions has not yet adopted a position on the Commission proposals. The EESC welcomes the package, its holistic approach and the 'risk-reducing nature of these proposals' and is 'pleased to note that the "too big to fail" issue is being addressed via the TLAC measures and that efforts are being made to make the bail-in rules more effective and efficient' (Point 1.5). The advisory body notes that 'in order to facilitate the implementation of the resolution mechanism, further work should be done on exploring how the high level of bank sovereign debt holdings can be reduced' (Point 3.3.2).

### National parliaments

The two legislative proposals have been transmitted to the national parliaments. The deadline to submit a reasoned opinion on the grounds of subsidiarity was 21 March 2017 for both dossiers (see the Interparliamentary EU information exchange database (IPEX) for [BRRD](#) and [SRMR](#)). No reasoned opinion was submitted. The Portuguese Parliament as well as the Romanian Senate engaged in '[political dialogue](#)'<sup>19</sup> with the Commission.

### Stakeholders' views<sup>20</sup>

The European Banking Federation ([EBF](#)) stresses that 'banks should be able to continue to play their role as lenders while remaining resilient'. In this regard, it 'calls on the EU co-legislators to carefully review this package' and also urges them 'to be more ambitious when it comes to creating jobs and growth in Europe through an efficiently regulated single market for finance'. At a Parliament [expert hearing on 25 April 2017](#), EBF President [Frédéric Oudéa](#) argued in favour of 'international consistency and a level playing field', and supported the Commission decision to address the topic of creditor hierarchy in a separate dossier. He warned however, 'that we should avoid scenarios where Europe front-loads proposals that are still in the making, as has been our experience with bank resolution where you are being asked to revisit BRRD in light of the final international TLAC standard'.

The Association for Financial Markets in Europe ([AFME](#)) 'supports the implementation of these requirements [banking reform package] in the EU in a manner that will enable the sector to support economic growth'. With regard to the proposed changes to the EU's [resolution framework](#), the industry body advocates

19 The Portuguese Parliament and the Romania Senate submitted opinions covering also the amendments regarding the CRD-V/ CRRII review, see Stuchlik above. For an overview on the political dialogue as interinstitutional form of cooperation see e.g. chapter 3 in Rozenberg, O., [The Role of National Parliaments in the EU after Lisbon: Potentialities and Challenges](#), Policy Department C, Study for the AFCO Committee, European Parliament, Brussels, March 2017.

20 This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'EP supporting analysis'.



Advisory committees

National parliaments

Stakeholders' views

ensuring 'an effective MREL framework', to 'establish a deep and liquid market in MREL' as well as to ensure 'a level playing field across the EU and internationally'.

[Finance Watch](#), a not-for-profit association of 48 civil society organisations, voices reservations regarding the Commission package, its 'accompanying sotto voce' and its 'lack of ambition'. According to Finance Watch, the regulator's proposals display an 'over-riding concern about maintaining or improving the competitiveness of EU banks vis-à-vis overseas rivals'. With regard to resolution, the association warned in March 2016 against having a '[false illusion of safety](#)' and found MREL standards not suitable for providing 'a solid basis for uniform application of BRRD'. At the same hearing (see above) [Christian Stiefmüller](#) of Finance Watch stressed that not only TLAC should be 'implemented fully and without deviations from the FSB Term Sheet' but that the new binding minimum requirement ('Pillar 1 MREL') should also be introduced for Other Systemically Important Institutions (O-SIIs).<sup>21</sup>

On 8 March 2017, the European Central Bank published an [opinion](#) on the BRRD revision to create a new asset-class of 'non-preferred' senior debt instruments. The bank proposes a 'general depositor preference rule' to 'enhance resolvability by clarifying the hierarchy of creditors and facilitating the allocation of losses to unsecured bank debt instruments ahead of certain operational liabilities, while alleviating concerns regarding the '[no creditor worse off](#) than under normal insolvency proceedings' principle' (Point 1.4).

[Karl Lannoo](#) from the think-tank CEPS, finds the EU's banking reform package overly complex and 'extremely difficult for lawmakers to assess these technical changes, above all with regard to the BRRD and the MREL'. He also points to blurred divisions between supervisory and resolution authorities: 'Both can require additional "capital" levels, both can withdraw a bank licence, and both will have to resolve a bank in trouble'.

21 [Other Systemically Important Institutions \(O-SIIs\)](#) are those institutions which are deemed systemically relevant in addition to Global Systemically Important Institutions (G-SIIs), already identified. The European Banking Authority published a first list of O-SIIs in the EU in 2016.



## Legislative process

### European Parliament

Parliament's annual [report on the banking union for 2016](#) stresses, 'that both standards [TLAC/MREL] share the same objective, namely to make sure that banks have enough regulatory capital and loss-absorbing liabilities to make bail-in an effective instrument in resolution without causing financial instability and without public money being needed, thereby avoiding the socialisation of private risks ...' (Point 41).

The Parliament's Committee on Economic and Monetary Affairs (ECON) appointed Gunnar Hökmark (EPP, Sweden) rapporteur for both texts (as well as the file on creditor hierarchy), to be negotiated jointly. On 15 February 2017, Parliament adopted its annual report on the banking union ([2016/2247\(INI\)](#)) (rapporteur: [Danuta Hübner, EPP, Poland](#)). This assessment of the state of play of the banking union reiterates Parliament's position in 2016 and 'notes the interconnection between the risk-weighted asset criteria underlying the TLAC standard and the ongoing work in the EU and at the BCBS on internal models and on the finalisation of the Basel III framework' (Point 41). The resolution also 'draws attention to the importance of clarifying in legislation that MREL-eligible CET1<sup>22</sup> is on top of capital buffers, so as to prevent double counting of capital' (Point 43).

A first exchange of views on both the resolution framework (BRRD/SRMR) as well as prudential requirements (CRD-V/CRR-II) took place on 28 February 2017. Both rapporteurs, Gunnar Hökmark as well as Peter Simon (S&D, Germany, responsible for CRD-V/CRR-II), agreed that both 'packages' need to be 'discussed in close cooperation'. Hökmark stressed that the current BRRD legislation has only been in place for a little over one year and amendments need to strengthen the credibility of the bail-in regime, including the fact that all debt is 'bail-inable'.

On 22 March 2017, [Elke König](#), Chair of the Single Resolution Board addressed ECON members. She voiced concerns regarding the proposed new MREL minimum requirement being mandatory only for G-SIIs which could lead to cliff effects with other systemic institutions.<sup>23</sup> She also stressed that regarding Pillar 2 MREL, 'resolution authorities will need the flexibility to set appropriate transition periods'.

On 25 April 2017, the ECON Committee organised a [public hearing](#) on the banking reform package and held a second exchange on 3 May 2017. The many cross-references between the two different 'packages' became apparent, for instance with regard to aligning the ranking order and MREL eligibility criteria as modified in Article 72b CRR. Draft reports on the dossiers under the banking package are scheduled to be released in July 2017.

22 [Common Equity Tier 1 capital/ratio](#) is a measure of capital that is predominantly common equity as defined by the Capital Requirements Regulation (Article 26 ff.). The CET1-ratio expresses the quality of a bank's balance sheet as it divides common equity and retained earnings by risk-weighted assets. (Tier 1 comprises CET1 + Additional Tier 1).

23 According to the Commission's [impact assessment](#) this option might create 'disproportionate effects' on O-SIIs due to the subordination requirement as well as given the heterogeneity of these institutions in Europe (p. 50).



## Council

As for the banking reform package (and BRRD/SRMR), the [Maltese Presidency](#) notes it will 'follow international developments in the sector to ensure that the EU is well prepared and coordinated to respond to global challenges in a balanced way'. Within the Council, the whole package is being examined by the [working party on financial services](#) after a first ECOFIN discussion held on 8 December 2016.





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