



BRRD2 / MREL Question & Answers

Subject: BRRD2 / MREL Related Queries
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Background

Following the recent engagement with industry participation on the roll out of BRRD2 through the latest series of Industry Dialogue Workshops, the below Questions and Answers ('Q&A') reflects key areas of discussion / queries amongst participants. This Q&A is **not** intended to act as legal advice or as financial advice, and should be read in that light. The RCU continue to encourage firms to familiarise themselves with the relevant legislation and we look forward to collaborating in future policy in this area.

Section A – Non MREL Specific Questions

Q1. How will the references to 3rd Country within BRRD2 changes be reflected in the domestic legislation amendments?

A1. A 3rd country is defined in Gibraltar as “a country or territory outside Gibraltar” and thus includes the UK. This mirrors the UK definition, which treats Gibraltar as a 3rd country.

Q2. How will 'Union' be reflected in the amendments within 71a (2) of BRRD2 (Contractual recognition of resolution stay powers)?

A2. The amendments have replaced 'Union' with 'Gibraltar' within 71a (2), therefore now reading 'Gibraltar parent undertakings'.

Q3. What is the definition of 'Gibraltar Parent Undertaking' under 71a (2) of BRRD2 (Contractual recognition of resolution stay powers)?

A3. Gibraltar parent undertaking is defined as a Gibraltar parent financial holding company, Gibraltar parent institution or Gibraltar parent mixed financial holding company¹.

Q4. When does BRRD2 changes re contractual recognition of bail-in, stay/moratorium powers come in to effect?

A4. BRRD2 has been transposed in December 2020, which means that changes relating to contractual recognition of bail-in, stay/moratorium powers have come in to effect from that point.

¹ Further legal advice may be required in relation to firms that form part of a Group structure, the parent of which is not a bank and where a 3rd country subsidiary of the Gibraltar subsidiary is in operation.

Section B – MREL Specific Questions

Q5. In relation to Article 45 of BRRD2, is a firm out of scope if it is not an entity referred to in points b-d of Article 1(1)?

A5. Under Article 45 of BRRD2 MREL is applicable where a firm is an:

1. Institution (Credit Institution or Investment Firm) or
2. Entity referred to in point (b), (c) or (d) of Article 1(1) of this Directive

Q6. Within BRRD2, what instruments are classified as eligible liabilities for the purposes of MREL?

A6. BRRD2 specifies which liabilities are eligible to qualify as MREL (as introduced by CRRII Article 72a-c). As discussed under IDW2 2021, it is recommended that firms familiarise themselves with the conditions for Eligible Liabilities (CRRII and Article 45b 1-3 BRRD2).

Q7. Will the MREL target be provided as a monetary amount or as a percentage of RWA/LRE?

A7. Final MREL is expected to be calculated as a monetary amount on an annual basis, but will be expressed as a % of RWA or LRE (whichever is the higher). We welcome feedback from participating firms in this regard.

Q8. Within BRRD2, from a consistency point of view, why in some cases will MREL be expressed as a percentage of RWA and in other cases as a percentage of LRE?

A8. BRRD II changes require calibration at the same level as the global standard in this area, whereby recognising the importance of including a non-risk-based ratio based on the leverage ratio exposure. This also aligns to the UK's approach.

Q9. Will there be a 'fished bank' approach taken in Gibraltar (as introduced as part of BRRD2 and discussed in IDW2 2021)?

A9. Under BRRD2, financial institutions can be also classified as a top tier bank under certain conditions and on a decision of the Resolution Authority. These firms are known as 'fished banks'. A three-year grace period is required following such a classification. In the event of such an approach, it is expected that firms would be engaged/consulted in advance of any changes.

Q10. What will be the interim MREL target?

A10. The proposed interim targets have been communicated at IDW3 2021. We now await feedback from firms in this regard.

Q11. Under BRRD2, when is final MREL implementation expected by?

A11. Final MREL is expected to be implemented by January 2024, with interim 'phased' targets in 2022 and 2023.

Q12. Within the UK approach to MREL, is it correct to say that MREL doesn't include buffers in its calculation?

A12. For G-SIBs in the UK, MREL will equal an institution's 'capital requirements' (i.e. 2x Pillar 1 plus Pillar 2A or, if higher, the institution's applicable leverage ratio) **plus** 1x its capital buffers (the combined buffer or, where binding, the PRA buffer). However, the MREL Statement of Policy reflects the Bank of England's discretion to remove capital buffers if they are deemed not to be relevant to absorbing losses in resolution involving stabilisation powers.

Q13. Under BRRD2, can capital counting towards the combined buffer requirement be used for MREL?

A13. Under BRRD2, capital counting towards the combined buffer requirement can no longer count towards MREL. This aligns to the UK approach to eligible liabilities.

Q14. Is a government deposit classified as an eligible instrument for the purposes MREL?

A14. As discussed, firms are asked to familiarise themselves with the eligibility conditions of MREL (CRRII Article 72a-c and Article 45b 1-3 BRRD2), for example:

1. Short term deposits with an original maturity with less than 1 year shall be excluded from eligible liabilities items.
2. Criteria on redeeming instruments prior to maturity.

The RCU welcome engagement on any assessment that a firm makes on its proposed eligible liabilities, and in some cases, given the number of conditions involved, legal advice may be required.

In addition to the above, under BRRD2, eligible instruments are now required to be subordinated from January 2024. As agreed at IDW3 2021, the RCU look forward to collaborating with industry participants in future policy in regarding subordination.

Q15. Will there be regulatory reporting templates for MREL?

A15. As agreed at IDW3 2021, the RCU hope to work closely with industry participants over the coming years regarding the reporting requirements for MREL.