



Council of the European Union
General Secretariat

Brussels, 05 March 2018

**Interinstitutional files:
2016/0362 (COD)**

WK 2714/2018 INIT

LIMITE

**EF
ECOFIN
DRS
CODEC**

WORKING PAPER

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

MEETING DOCUMENT

From:	Presidency
To:	Working Party on Financial Services (Risk Reduction Measures)
Subject:	Amendments to MREL aspects of BRRD COVER NOTE

Amendments to MREL aspects of BRRD

COVER NOTE

State of play of MREL negotiations and PCY proposal

Negotiations on the Risk Reduction package since its proposal by the Commission in November 2016 have been constructive with substantial progress achieved under the MT and EE Presidency. However as negotiations on this file at Council draw to a close under the BG Presidency, it is clear that the key outstanding political issue is related to the Minimum Requirement of Own Funds and Eligible Liabilities.

Changes under BG PCY

Under the BG Presidency a number of proposals have been made to try and unblock the discussions and to find a compromise workable for all MS. In terms of the quantity of MREL, the BG PCY has proposed to move back towards the status quo by removing the concept of Guidance and placing the MCB within the requirement. To compensate for this higher requirement, framed flexibility has been afforded Resolution Authorities in terms of MDA restrictions, with breaches in MREL not necessarily triggering restrictions on the distributions immediately, while at the same time also restricting RAs ability to delay such a trigger beyond 6 months.

In terms of the quality of MREL, the BG PCY has introduced a new floor for subordination for Top Tier Banks. This floor ensures that such institutions have a minimum level of subordination based on recommendations by the EBA. With regard to discretionary subordination, the BG PCY has also put forward a number of proposals to try and accommodate those MS who would like to be able to require higher levels of subordination and those MS who would like some safeguards or backstops to how much of MREL institutions can be required to meet with the comparatively more costly subordinated instruments and to cater for limited access to market for some institutions.

At the WP meeting of the 2nd of March both groups of MS were disappointed with the latest PCY proposal, with those MS wanting more flexibility in terms of the RAs ability to require higher levels subordination believing the caps and conditions proposed by the Presidency as too restrictive, with other MS believing that the proposal went too far with regard to the levels and reasons for which RAs could require subordination.

Taking into consideration the final PCY amendments to the MREL framework (see conclusion and Annex 1), as well as clarification as to the practical meaning of the latest proposals (to be presented at the CWP meeting), the Presidency believes it has achieved a balanced compromise for all MS.

Conclusion

As outlined in Annex 1 and translated into legislative text in the BRRD PCY Compromise, in light of comments made at the WP meeting of the 2nd of March, the PCY has made the following changes:

- **Increased flexibility in terms of MREL calibration** – RAs can now increase the amount above the default recapitalization formula not just for the purpose of meeting authorisation requirements but also for the purposes of sustaining market confidence for a period not longer than one year.
- The **concept of the 8% TLOF is included as consideration for the resolution authorities in the MREL Calibration section** – as non-subordinated MREL eligible or non-MREL eligible debt can also be bailed in and should provide implied potential losses to the market, it is appropriate for RAs to take into account the 8% TLOF rule when setting the MREL level.
- **Discretionary subordination buffer up to 8% TLOF or formula** ($2xP1 + P2 + CCBR$) is still framed but such discretion for G-SIIs and top-tier banks need **not necessarily be internally bound by the NCWO consideration**. RA can base their decisions also on conditions based on what is provided in the TLAC termsheet for the individual TLAC.
- For the **conditions for going to higher subordination buffers** (up to $2x(P1+P2) + CCBR$) the assessment of impediments of resolvability have been expanded to provide **additional discretion to the RA** (while still ensuring justification).

In conclusion, the Presidency believes that the deletion of Guidance, the non-automaticity of MDA, the addition of mandatory subordination for top tier banks, the increased flexibility for setting MREL levels, the framed conditionality for higher subordination requirements, the high but risk-sensitive potential levels of Pillar 2 subordination (and the ability for an even higher level for the riskiest banks or institutions with impediments to resolvability) all represent the necessary changes to achieve a balanced compromise within the context of the overall package. Such a compromise solution is sufficiently risk reducing while still providing EU safeguards and appropriate framing in the context of a Single Rule Book and a framework that can work for all MS.

Annex 1¹

Delegations will find below a table detailing changes made to the Presidency's MREL proposal in light of its efforts to find a compromise and to address concerns raised at the Working Party meeting of the 2nd of March. The Presidency believes that this is a balanced compromise taking into account the views of both sides, and introduces sufficient flexibility for Resolution Authorities while still providing them with the necessary guidance and framing appropriate in a Level 1 text.

Outstanding Items		Legal Reference	Comments
MREL Calibration		New recital (9a)	The NE proposal to include a recital on cross-holdings and investor base of individual bank's MREL instruments received a broad support during the CWP on 2 nd March.
	Flexibility to increase the level of MREL beyond that which is prescribed by the MREL calibration formula	Article 45c (3) and (4) BRRD	RAs can now increase the capitalisation amount to ensure market confidence is sustained for an appropriate period of time.
	Requirement for RAs to take into account the 8% when setting the level of MREL	Article 45c (3) BRRD	RAs must now take into account 8% TLOF when determining MREL amount

¹ Only most important amendments are shown in the table.

	“and the resolution of the resolution group” reference also included in paragraphs 4	Article 45c (4) BRRD	Inclusion of this reference for consistency with previous amendments to Article 45c (3)
MREL Subordination	BE proposal on alternative criteria for top tier banks	Article 45c (3b)	Qualitative criteria introduced which would leave the necessary flexibility for the resolution authority to impose or not a pillar 1 requirement. In practice, this would mean that all the institutions which would exceed a given pre-specified threshold would be captured, and that imposing a Pillar 1 on remaining institutions would be left to the discretion of the resolution authorities on a case-by-case basis.
	Discretion to require P2 subordination	Article 45b(3 – 7)	For all Banks: NCWO retained as a basis for taking a decision to require subordination. The level of subordination is limited by the amount necessary to ensure compliance with NCWO principle and the greater of 8% TLOF or 2P1 + P2R + CCBR. For GSIs and Top Tier Banks: Notwithstanding NCWO consideration, the resolution authority can decide to require subordination based on broader conditions outlined in the TLAC term sheet. The limit on the subordination amount is set in para 6 and is equal to the higher of 8% TLOF or 2xP1 + P2 + CCBR. In this case the amount necessary to ensure compliance with NCWO is not taken into account.
	Additional subordination for outlier banks	45b (7)	With respect to the higher level of subordination that can be required For GSIs and Top Tier Banks up to 2xP1 + 2xP2R + CCBR, and additional instance where this can be required is added with respect to substantive impediments to resolvability
Structured notes		Article 45b(2)	Two options provided for MS consideration.