2 MREL: Unresolved issues

Status of the negotiations

As of today, the Commission's banking package which includes, among others, changes to the resolution framework, is being negotiated by the co-legislators. Discussions are more advanced at the EU Council where several technical aspects are being debated. Work at the EU Parliament is in a preliminary state although the intention is to vote a text by year end. The final package will most likely take at least one more year before it is approved at the EU level and will not be binding until it is transposed by Member States. Regarding MREL, there are two main unresolved issues which stand out in the negotiation process: the harmonisation of the creditor hierarchies and the new eligibility criteria.

Subordination

The Commission's proposal to harmonise the creditor hierarchies in Europe by creating a new senior non-preferred debt class to facilitate the issuance of MREL eligible liabilities, was separated from the rest of the BRRD in order to fast track its approval. The Commission's intention is for the proposal to be adopted by all Member States by July 2017. In general, the proposal is welcomed by many including the ECB which in a recently published opinion urged the co-legislators to approve it as a matter of urgency. Several reasons explain the need for a fast approval: i) **to reduce the existing divergences** in the treatment of senior debt across Member States, ii) **to foster an effective application of the bail-in tool** while minimising the risk of no creditor worse-off than in liquidation problems, iii) **to provide clarity** to banks and investors, and iv) **to allow banks to start building their MREL buffers** without delay. While many banks do not know yet the date on which they will have to comply with MREL, G-SIIs already know that, by 1 January 2019, they will need to hold an MREL of at least 16% of RWAs or 6% of their leverage ratio exposure. As of today, it is unclear whether the approval will be achieved on time since some stakeholders prefer not to separate it from the rest of the banking package, for consistency purposes. An alternative solution would be to allow Member States to proceed with an "anticipated transposition" of the proposed directive, before July 2017, but with the commitment to make the necessary adjustments once the final text is approved. It is crucial to provide legal certainty for banks willing to issue senior non-preferred debt as soon as possible.

Eligibility of issuances

The amendments to the CRR include new and stricter eligibility criteria for instruments to count towards MREL. Besides the already known maturity or subordination requirements, there are several new conditions, such as the prohibition to include acceleration clauses, the obligation to include a point of non-viability clause referring to the BRRD, and the obligation to include contractual bail-in clauses. These are not included in the outstanding contracts of eligible liabilities which means that they will not be MREL-eligible from the date when the new criteria becomes binding. In order to ensure the continued eligibility of outstanding issuances towards MREL, the Commission's **proposal should be amended so that the new eligibility criteria applies only to issuances made after the date of its entry into force**. The US authorities allow banks to compute issuances made prior to the entry into force of the TLAC rule until their maturity. A similar regime could be adopted in the EU.

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