## Basic information

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|---|---|
| **2016/0361(COD)**<br><br>COD - Ordinary legislative procedure (ex-codecision procedure) Regulation | Procedure completed |
| Single Resolution Mechanism: loss-absorbing and recapitalisation capacity for credit institutions and investment firms<br><br>Amending Regulation (EU) No 806/2014 2013/0253(COD)<br><br>**Subject**<br><br>2.50.03 Securities and financial markets, stock exchange, CIUTS, investments<br>2.50.04 Banks and credit<br>2.50.08 Financial services, financial reporting and auditing<br>2.50.10 Financial supervision | |

## Key players

European Parliament

| Committee responsible | Rapporteur | Appointed |
|---|---|---|
| ECON Economic and Monetary Affairs | HÖKMARK Gunnar (PPE) | 24/11/2016 |
| | Shadow rapporteur<br><br>SILVA PEREIRA Pedro (S&D)<br><br>KAMALL Syed (ECR)<br><br>CORNILLET Thierry (ALDE)<br><br>SCHIRDEWAN Martin (GUE/NGL)<br><br>URTASUN Ernest (Verts/ALE)<br><br>VALLI Marco (EFDD)<br><br>ZANNI Marco (ENF) | |

| Committee for opinion | Rapporteur for opinion | Appointed |
|---|---|---|
| JURI Legal Affairs | The committee decided not to give an opinion. | |
| AFCO Constitutional Affairs | The committee decided not to give an opinion. | |

Council of the European Union

| Council configuration | Meetings | Date |
|---|---|---|

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|---|---|---|---|
| | Economic and Financial Affairs ECOFIN | 3619 | 2018-05-25 |
| | Agriculture and Fisheries | 3689 | 2019-05-14 |

| European Commission | Commission DG | Commissioner |
|---|---|---|
| | Financial Stability, Financial Services and Capital Markets Union | DOMBROVSKIS Valdis |

European Economic and Social Committee

## Key events

| Date | Event | Reference | Summary |
|---|---|---|---|
| 23/11/2016 | Legislative proposal published | COM(2016)0851 | Summary |
| 01/02/2017 | Committee referral announced in Parliament, 1st reading | | |
| 19/06/2018 | Vote in committee, 1st reading | | |
| 19/06/2018 | Committee decision to open interinstitutional negotiations with report adopted in committee | | |
| 25/06/2018 | Committee report tabled for plenary, 1st reading | A8-0216/2018 | Summary |
| 02/07/2018 | Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 72) | | |
| 04/07/2018 | Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 72) | | |
| 26/02/2019 | Approval in committee of the text agreed at 1st reading interinstitutional negotiations | PE636.105<br>GEDA/A/(2019)001585 | |
| 15/04/2019 | Debate in Parliament | | |
| 16/04/2019 | Decision by Parliament, 1st reading | T8-0371/2019 | Summary |
| 16/04/2019 | Results of vote in Parliament | | |
| 14/05/2019 | Act adopted by Council after Parliament's 1st reading | | |
| 20/05/2019 | Final act signed | | |
| 20/05/2019 | End of procedure in Parliament | | |
| 07/06/2019 | Final act published in Official Journal | | |

## Technical information

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|---|---|
| **Procedure reference** | 2016/0361(COD) |
| **Procedure type** | COD - Ordinary legislative procedure (ex-codecision procedure) |
| **Procedure subtype** | Legislation |
| **Legislative instrument** | Regulation |
| **Amendments and repeals** | Amending Regulation (EU) No 806/2014 2013/0253(COD) |
| **Legal basis** | Treaty on the Functioning of the European Union TFEU 114 |

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|---|---|
| **Mandatory consultation of other institutions** | European Economic and Social Committee |
| **Stage reached in procedure** | Procedure completed |
| **Committee dossier** | ECON/8/08581 |

**Documentation gateway**

**European Parliament**

| Document type | Committee | Reference | Date | Summary |
|---|---|---|---|---|
| Committee draft report | | PE610.851 | 27/09/2017 | |
| Amendments tabled in committee | | PE616.880 | 01/02/2018 | |
| Committee report tabled for plenary, 1st reading/single reading | | A8-0216/2018 | 25/06/2018 | Summary |
| Text agreed during interinstitutional negotiations | | PE636.105 | 15/02/2019 | |
| Text adopted by Parliament, 1st reading/single reading | | T8-0371/2019 | 16/04/2019 | Summary |

**Council of the EU**

| Document type | Reference | Date | Summary |
|---|---|---|---|
| Coreper letter confirming interinstitutional agreement | GEDA/A/(2019)001585 | 15/02/2019 | |
| Draft final act | 00047/2019/LEX | 20/05/2019 | |

**European Commission**

| Document type | Reference | Date | Summary |
|---|---|---|---|
| Legislative proposal | COM(2016)0851 | 23/11/2016 | Summary |
| Document attached to the procedure | SWD(2016)0377 | 23/11/2016 | |
| Document attached to the procedure | SWD(2016)0378 | 23/11/2016 | |
| Commission response to text adopted in plenary | SP(2019)440 | 08/08/2019 | |

**National parliaments**

| Document type | Parliament /Chamber | Reference | Date | Summary |
|---|---|---|---|---|
| Contribution | FR_SENATE | COM(2016)0851 | 02/03/2017 | |
| Contribution | PT_PARLIAMENT | COM(2016)0851 | 08/03/2017 | |
| Contribution | RO_SENATE | COM(2016)0851 | 23/03/2017 | |
| Contribution | ES_PARLIAMENT | COM(2016)0851 | 23/03/2017 | |
| Contribution | IT_SENATE | COM(2016)0851 | 16/01/2018 | |

**Other institutions and bodies**

| Institution/body | Document type | Reference | Date | Summary |
|---|---|---|---|---|
| ECB | European Central Bank: opinion, guideline, report | CON/2017/0047<br>OJ C 034 31.01.2018, p. 0017 | 08/11/2017 | Summary |

**Additional information**

| Source | Document | Date |
|---|---|---|
| European Parliament | Briefing | |
| European Commission | EUR-Lex | |

**Final act**

Regulation 2019/0877
OJ L 150 07.06.2019, p. 0226 Summary

# Single Resolution Mechanism: loss-absorbing and recapitalisation capacity for credit institutions and investment firms

2016/0361(COD) - 07/06/2019 - Final act

PURPOSE: to strengthen the banking sector by establishing uniform rules for a recovery and resolution framework for institutions and bodies.

LEGISLATIVE ACT: Regulation (EU) 2019/877 of the European Parliament and of the Council amending Regulation (EU) No 806/2014 as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms.

CONTENT: this Regulation amending Regulation (EU) No 806/2014 of the European Parliament and of the Council on uniform rules and procedure for the resolution of credit institutions and certain investment firms within the framework of a single resolution mechanism (MRU) and a single Banking Resolution Fund aims to implement the standard on "total loss absorption capacity" (TLAC) developed by the Financial Stability Board in November 2015.

The regulation is part of a comprehensive package of legislative measures that will reduce risks in the banking sector and further strengthen banks' ability to withstand potential shocks.

This package contains amendments to the legislation on capital requirements (Regulation (EU) No 575/2013 and Directive 2013/36/EU) that strengthen banks' capital and liquidity positions. It also consolidates the framework for the recovery of banks in difficulty and the resolution of their failures ( Directive 2014/59/EU and Regulation (EU) No 806/2014).

The measures adopted implement reforms agreed at the international level following the 2007-2008 financial crisis with the aim of strengthening the banking sector and addressing outstanding financial stability issues. They include elements approved by the Basel Committee on Banking Supervision and the Financial Stability Board (FSB).

***Implementation of international standards for loss absorption and recapitalisation***

The Regulation incorporates the TLAC requirement into the EU's Minimum Capital Requirement and Eligible Commitments (MREL) rules. The objective of the TLAC standard is to ensure that global systemically important banks, referred to as global systemically important institutions ('G-SIIs') in the Union framework, have the loss-absorbing and recapitalisation capacity necessary to help ensure that in, and immediately following, a resolution, those institutions can continue to perform critical functions without putting taxpayers' funds, that is public funds or financial stability at risk.

In practice, the amending regulation requires global systemically important institutions to have a greater capacity to absorb losses and recapitalise by defining the requirements in terms of the level and quality of own funds and eligible liabilities (MREL) to ensure an effective and consistent insolvency procedure. It also provides for provisional safeguard measures and possible additional measures for the resolution authorities.

The Board shall ensure that institutions and entities have sufficient loss-absorbing and recapitalisation capacity to ensure a smooth and fast absorption of losses and recapitalisation in the event of resolution, with a minimum impact on taxpayers and financial stability. That should be achieved through compliance by institutions with an institution-specific MREL as set out in Regulation (EU) No 806/2014.

*Subordination policy*

Beyond, the existing GSII category, they decided to create a new category of large banks, the so-called “top-tier banks” with a balance sheet size greater than EUR 100 billion, in relation to which, more prudent subordination requirements are formulated. National resolution authorities may also select other banks (non-GSIIs, non-top tier banks) and subject them to the top-tier bank treatment. Co-legislators agreed an MREL minimum pillar 1 subordination policy for each of these different categories. Moreover, for a sub-set of G-SIIs and top-tier banks and under certain conditions, the resolution authority may also impose an additional Pillar 2 subordination requirement.

For the rest of the banks, the subordination requirement remains a bank-specific assessment based on the principle of “no creditor worse off”.

*Power to prohibit certain distributions*

The Single Resolution Board may prohibit certain distributions if they consider that an institution or entity does not meet the overall capital buffer requirement under Directive 2013/36/EU, when this requirement is taken into account in addition to the MREL.

Lastly, the Regulation lays down transitional and post-resolution provisions: the deadline for entities to comply with the requirements of the Regulation is 1 January 2024.

ENTRY INTO FORCE: 27.6.2019.

APPLICATION: from 28.12.2020.

# Single Resolution Mechanism: loss-absorbing and recapitalisation capacity for credit institutions and investment firms

2016/0361(COD) - 23/11/2016 - Legislative proposal

PURPOSE: to revise the Minimum Requirement for own funds and Eligible Liabilities (MREL) and implement the total loss absorbing capacity (TLAC) for credit institutions and investment firms.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with Council.

BACKGROUND: the G-20 endorsed the **Total Loss-Absorbing Capacity** (TLAC) Term Sheet published by the Financial Stability Board (FSB) in 2015. The TLAC standard requires global systemically important institutions ('G-SIIs') in the Union framework, to hold a sufficient minimum amount of highly loss absorbing (bailin-able) liabilities to ensure smooth and fast absorption of losses and recapitalisation in resolution.

In its Communication of 24 November 2015, the Commission committed itself to bringing forward a legislative proposal by the end of 2016 that would enable the TLAC standard to be implemented by the internationally agreed deadline of 2019. The implementation of the TLAC standard in the Union needs to **take account of the existing institution-specific minimum requirement for own funds and eligible liabilities** ('MREL') applicable to all Union credit institutions and investment firms as laid down in Directive 2014/59/EU of the European Union and of the Council. As TLAC and MREL pursue the same objective of ensuring that Union institutions have sufficient loss absorbing and recapitalisation capacity, the two requirements should be complementary elements of a common framework.

In addition, the absence of harmonised rules in the Member States participating in the Single Resolution Mechanism (SRM) in respect of the implementation of the TLAC standard would create additional costs and legal uncertainty for institutions and make the application of the bail-in tool for cross-border institutions more difficult. The absence of harmonised Union rules also results in competitive distortions on the internal market given that the costs for institutions to comply with the existing requirements and the TLAC standard may differ considerably across the participating Member States. It is therefore necessary to remove those obstacles to the functioning of the internal market and to avoid distortions of competition resulting from the absence of harmonised rules in respect of the implementation of the TLAC standard.

IMPACT ASSESSMENT: the Commission conducted an impact assessment of several policy alternatives. Under the preferred option, the TLAC standard for G-SIIs would be integrated in the existing resolution framework, while that framework would be amended as appropriate to ensure full compatibility with the TLAC standard.

CONTENT: according to this proposal, the Single Resolution Mechanism Regulation will be amended so that the TLAC will be integrated into the existing MREL (Minimum Requirement for own funds and Eligible Liabilities) system, which is applicable to all banks, and will strengthen the EU's ability to resolve failing G-SIIs while protecting financial stability and minimising risks for taxpayers.

The implementation of new standards on the total loss-absorbing capacity (TLAC) of global systemically important institutions (G-SIIs), which will strengthen the EU's ability to resolve failing G-SIIs while minimising risks for taxpayers.

Regulation (EU) No 806/2014 will be amended accordingly.

The proposed amendments are part of a legislative package that includes also amendments to Regulation (EU) No 575/2013 (the Capital Requirements Regulation), to Directive 2013/36/EU (the Capital Requirements Directive) and to Directive 2014/59/EU (the Bank Recovery and Resolution Directive).

# Single Resolution Mechanism: loss-absorbing and recapitalisation capacity for credit institutions and investment firms

2016/0361(COD) - 25/06/2018 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Economic and Monetary Affairs adopted the report by Gunnar HÖKMARK (EPP, SE) on the 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.

The committee responsible recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should amend the Commission proposal as follows.

**Purpose**: the proposal to amend Regulation (EU) No 806/2014 of the European Parliament and of the Council on the single resolution mechanism (MRU) aims to implement the **total loss-absorbing capacity (TLAC) term sheet** (the TLAC standard) on 9 November 2015, which was endorsed by the G-20 in November 2015.

While the TLAC standard sets obligations only for global systemically important institutions (GSIIs), the minimum requirement for own funds and eligible liabilities (MREL) requirement applies to the EU banking sector as a whole. The proposal addresses this and other differences between the two standards.

**Application and calculation of the minimum requirement for own funds and eligible liabilities**: under the amended text, institutions may meet any part of the MREL requirement with Common Equity Tier 1, Additional Tier 1 or Tier 2 instruments.

**Eligible liabilities for resolution entities**: eligible liabilities shall be included in the amount of own funds and eligible liabilities of resolution entities only where they satisfy certain conditions. By way of derogation, liabilities issued before the date of entry into force of this amending Regulation that do not meet the conditions set out in Regulation (EU) No 575/2013 may be included in the amount of own funds and eligible liabilities of resolution entities included in MREL.

It is clarified that liabilities arising from debt instruments with a derivative feature, such as structured notes, shall be included in the amount of own funds and that the entity has demonstrated to the satisfaction of the Board that the instrument is sufficiently loss absorbing and can be bailed-in without undue complexity, taking into account the principles of prudent valuation.

**Determination of the minimum requirement for own funds and eligible liabilities**: the text specifies that the Board shall ensure that the level of requirement is proportionate to the specificities of the business and funding models of the resolution entity.

The recapitalisation amount shall also be supplemented by an additional amount that the Board considers necessary to maintain sufficient market confidence after resolution, taking into account the business model, funding model, and risk profile of the resolution entity.

**Determination of the requirement for entities that are G-SIIs**: the minimum requirement for own funds and eligible liabilities of a resolution entity that is a G-SII or part of a G-SII shall consist of the higher of:

- **a risk-based ratio of 18%,** representing the own funds and eligible liabilities of the institution expressed as a percentage of the total risk exposure amount calculated in accordance with Regulation (EU) No 575/2013;
- **a non-risk-based ratio of 6.75%,** representing the own funds and eligible liabilities of the institution expressed as a percentage of the total exposure measure referred to in Regulation (EU) No 575/2013.

**Breaches of the requirement**: the Board and the other resolution authorities shall monitor on a quarterly basis the fulfilment of the minimum requirement for own funds and eligible liabilities and shall inform the competent authority of any breaches or other relevant events that could affect the fulfilment of the requirement.

Lastly, the Board shall determine an appropriate transitional period for an institution or entity to comply with the requirements in the Regulation.

# Single Resolution Mechanism: loss-absorbing and recapitalisation capacity for credit institutions and investment firms

2016/0361(COD) - 08/11/2017

**OPINION of the European Central Bank (ECB) on revisions to the Union crisis management framework.**

The ECB welcomes the proposed amending regulations and directive, which aim to implement the total loss-absorbing capacity (TLAC) standard of the Financial Stability Board (FSB) for global systemically important institutions (G-SIIs) established in the Union.

**Amendments to the minimum requirement for own funds and eligible liabilities (MREL)**: the proposed amendments to the Bank Recovery and Resolution Directive (BRRD) and to the Single Resolution Mechanism Regulation (SRMR) provide the possibility for the resolution authority to adjust the MREL recapitalisation amount in order to adequately reflect risks resulting from the business model, funding model and overall risk.

In addition, the ECB considers that the resolution authority should be allowed, after consultation with the competent authority, to **adjust the MREL recapitalisation amount upwards to provide for a 'safety margin'**. The amount of such a safety margin should be established on a case-by-case basis, dependent on the resolution plan for the credit institution.

The proposed amendments allow a resolution authority to give guidance to an entity on having own funds and eligible liabilities in excess of the MREL, in order to cover the entity's potential additional losses and to ensure market confidence in resolution. The ECB recommends that the proposed MREL **guidance** is eliminated as it adds complexity to the framework without providing clear benefits.

The ECB also recommends:

- amending the process of addressing or removing impediments to resolvability due to a breach of buffers stacked on top of the MREL to include consultation of the competent authority, as is already provided for in relation to other impediments;
- ensuring that the resolution authorities have **more flexibility regarding deadlines** in order to ensure that the credit institution has sufficient time, if necessary, to develop the most appropriate strategy to address the breach of buffers;
- clarifying that resolution authorities have the task of monitoring the levels of available MREL eligible instruments and the MREL ratio itself, taking account of all the calculations on deductions.

**Transitional arrangements for MREL**: one key factor in the implementation of an entity-specific MREL is the determination of an adequate transition period.

The ECB proposes that an **adequate minimum transition period** across credit institutions should be introduced, which should be no shorter than the period applicable to G-SIIs set out in the TLAC term sheet. In addition, the resolution authority should be given the flexibility to determine, on a case-by-case basis, a final period for compliance that is longer than this harmonised minimum.

**Early intervention measures**: there is a significant overlap between supervisory measures under the CRD, the SSM Regulation (SSMR) and early intervention measures provided for in the BRRD, both in terms of content as well as the conditions for their application.

The ECB recommends removing from the BRRD those early intervention measures that are already available in the CRD and the SSMR and amending the SRMR to provide a legal basis in a regulation for the ECB's early intervention powers in order to facilitate their consistent application.

**'Failing or likely to fail' assessment regarding less significant credit institutions under the direct responsibility of the Single Resolution Board (SRB)**: although the Commission's proposed amendments to the SRMR do not address this, the resolution procedure established in the SRMR requires urgent attention.

The ECB recommends that the proposed amendments to the SRMR are extended to provide explicitly that the respective national competent authority is responsible for the 'failing or likely to fail' assessment for a less significant credit institution under the remit of the SRB.

# Single Resolution Mechanism: loss-absorbing and recapitalisation capacity for credit institutions and investment firms

2016/0361(COD) - 16/04/2019 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 546 votes to 66, with 42 abstentions, a legislative resolution on the 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.

The European Parliament's position adopted at first reading under the ordinary legislative procedure amended the Commission proposal as follows:

***Implementation of international standards for loss absorption and recapitalisation***

The proposal to amend Regulation (EU) No 806/2014 of the European Parliament and of the Council on the single resolution mechanism (MRU) aims to implement the standard on "total loss absorption capacity" (TLAC) developed by the Financial Stability Board in November 2015. It incorporates the TLAC requirement into the EU's Minimum Capital Requirement and Eligible Commitments (MREL) rules.

The amended text underlines that the objective of the TLAC standard is to ensure that global systemically important banks, referred to as global systemically important institutions ('G-SIIs') in the Union framework, have the loss-absorbing and recapitalisation capacity necessary to help ensure that in, and immediately following, a resolution, those institutions can continue to perform critical functions without putting taxpayers' funds, that is public funds or financial stability at risk.

In practice, the amending regulation requires global systemically important institutions to have a greater capacity to absorb losses and recapitalise by defining the requirements in terms of the level and quality of own funds and eligible liabilities (MREL) to ensure an effective and consistent insolvency procedure. It also provides for provisional safeguard measures and possible additional measures for the resolution authorities.

***Respect for the MREL***

The Board should be able to require that the MREL is met with own funds and other subordinated liabilities, in particular where there are clear indications that bailed-in creditors are likely to bear losses in resolution that would exceed the losses that they would incur under normal insolvency proceedings.

The Board should assess the need to require institutions and entities to meet the MREL with own funds and other subordinated liabilities where the amount of liabilities excluded from the application of the bail-in tool reaches a certain threshold within a class of liabilities that includes MREL eligible liabilities.

At the request of a resolution entity, the Board should be able to reduce the part of the MREL required to be met with own funds and other subordinated liabilities up to a limit that represents the proportion of the reduction possible under Article 72b(3) of Regulation (EU) No 575/2013 in relation to the TLAC minimum requirement laid down in that Regulation.

***Confidence buffer***

The Board should be able to increase the recapitalisation amount to ensure sufficient market confidence in the institution or entity after the implementation of actions set out in the resolution plan. The requested level of the market confidence buffer should enable the institution or entity to continue to meet the conditions for authorisation for an appropriate period, including by allowing the institution or entity to cover the costs related to the restructuring of its activities following resolution, and to sustain sufficient market confidence. The market confidence buffer should be set by reference to part of the combined buffer requirement under Directive 2013/36/EU.

The amended text also lays down provisions concerning:

- the Board’s power should prohibit certain distributions if it considers that an institution or entity does not meet the overall capital buffer requirement under Directive 2013/36/EU when this requirement is taken into account in addition to the MREL;

- the minimum requirement for own funds and eligible commitments;

- application and calculation of the minimum requirement for own funds and eligible liabilities;

- eligible liabilities for resolution entities;

- determination of the minimum requirement for own funds and eligible liabilities for resolution entities of G-SIIs and Union material subsidiaries of non-EU G-SIIs;

- application of the minimum requirement for own funds and eligible liabilities to resolution entities;

- waiver for a central body and credit institutions permanently affiliated to a central body;

- breaches of the minimum requirement for own funds and eligible liabilities;

- transitional and post-resolution arrangements: the deadline for entities to comply with the minimum requirements shall be 1 January 2024.