Banking Package

Main changes of CRD/CRR/BRRD/SRMR review

DeNederlandscheBank
EUROSYSTEEM

Introduction by Frank Elderson and Nicole Stolk

The EU is strengthening the banking union and reducing risks in the financial system by adopting the “Banking Package”. The Banking Package consists of the review of the CRD, CRR, BRRD and SRMR.

As the Executive Directors responsible for banking supervision and resolution at DNB, we consider these new laws to be an important step in making the European banking sector more resilient. We are pleased to see that the review has now been finalised. We are aware that as a consequence, the sector will have to implement many changes.

De Nederlandsche Bank (DNB) has explored several key changes in the Banking Package and has presented these findings in a brief factsheet. As we think this overview might also be helpful to the banking sector, we have decided to make it available through this clickable PDF. Please note, that the factsheet focuses on the main changes only and is by no means a comprehensive overview.

If you read this Factsheet online, the clickable PDF format allows you to move straight to the topic of your interest.

We hope that this Factsheet helps you to obtain an overview of a number of main changes in the legislation. Perhaps it may even serve as your memory aid in a few years time. Best of luck with the implementation of this important package!

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Overview

On 7 June 2019, the Banking Package was published in the Official Journal of the European Union. The objective of the new legislation is to reduce risks in the banking sector and to take the next step towards the completion of the Banking Union.

Contents

The Banking Package consists of the review of the capital requirements directive (CRD) and regulation (CRR), as well as the review of the bank recovery and resolution directive (BRRD) and the single resolution mechanism regulation (SRMR).

Scope

The scope of application of the new prudential and resolution rules consists of credit institutions, systemic investment firms and (mixed) financial holding companies. Credit unions are exempted from the scope.

EBA mandates

The European Banking Authority (EBA) has received several mandates to develop Binding Technical Standards (BTS) and guidelines. These BTS and guidelines aim to further harmonise European supervision. The EBA will also update the current BTS and guidelines.

Timelines

In general, the date of entry into force of the CRD, CRR, BRRD and SRMR reviews is 27 June 2019. The reviews of the CRD, BRRD and SRMR will apply from 18 months after this date (28 December 2020). The CRR will apply from 24 months after this date (28 June 2021). The timelines in the factsheet are based on the following articles: CRR review article 3, CRD review article 2, SRMR review article 2, BRRD review article 3. The articles however contain specific exemptions to these general timelines.

Contents

Own funds

The Banking Package strengthens the capital adequacy of institutions by integrating own funds and eligible liabilities, by emphasizing substance over form and by fostering cooperation between authorities. At the same time, other amendments are introduced to alleviate the burden for institutions (e.g. CRR review article 26(3)) or to transpose existing EBA Q&As into the CRR (e.g. CRR review article 78(1)).

Eligibility criteria alignment

Under the CRRI the eligibility criteria for own funds and eligible liabilities instruments were not fully aligned. To maintain the quality of these instruments and to enhance their loss absorbing capacity further alignment was needed.

Anti-circumvention principle

The CRR review introduces a substance over form anti-circumvention principle. This principle means that the combined economic effects of the terms and conditions of an instrument and all arrangements related to that instrument must be assessed in conjunction with the main terms and conditions of the issuance, so that the overall substance of the instrument/transaction is captured. The eligibility of the instrument should not be assessed on an isolated basis, but as part of the wider transaction(s) (CRR review article 79a).

Classifying CET1 instruments

Prior approval for a subsequent instrument to classify as CET1 capital is no longer required if the instrument is substantially the same as previously issued instruments for which it already received permission to classify as CET1, and if the competent authority is notified sufficiently in advance (CRR review article 26(3)).

Software

The CRR review introduces an exemption to the general rule that software should be deducted from CET1 capital under certain conditions to be specified by the EBA (RTS - 12 months after entry into force). The rationale for this proposal is the technological evolution in the banking sector where software is becoming more and more important (CRR review article 36(1)(b) and 36(4)).

Reduction of own funds

If an institution provides sufficient safeguards as to its capacity to operate with sufficient own funds, it is possible to grant prior general permission for a reduction of own funds (CRR review article 78(1)).

Reduction of AT1 and T2 instruments within the first five years after issuance is allowed if (i) the replacing instrument is of higher quality and sustainable for the income capacity; and (ii) the replacement is prudentially beneficial and justified by exceptional circumstances (CRR review article 78(4)(d)).

Profit and loss transfer agreement

As a general rule, CET1 instruments are prohibited to carry an obligation to make distributions (CRR review). However, under certain conditions, such an obligation following from a profit and loss transfer agreement is allowed (CRR review article 28(3)).

Implementation

The own funds requirements apply from 27 June 2019 onwards.

Leverage ratio

The Banking Package introduces a binding 3% leverage ratio as a pillar 1 requirement as well as a G-SII leverage ratio buffer requirement. Moreover, large institutions will be required to report and disclose an average value for the leverage ratio in order to mitigate window dressing concerns.

Background

The objective of the leverage ratio requirement is twofold: (i) restrict the build-up of leverage in the banking sector in order to avoid destabilising deleveraging processes and (ii) reinforce the risk-based requirements with a simple and credible backstop. The leverage ratio is calculated as the ratio between tier 1 capital and the exposure measure, which consists in turn of assets, derivatives, securities financing transactions and off-balance sheet exposures. In the CRRI the leverage ratio is solely a reporting and disclosure requirement.

Calibration

The CRR review introduces a 3% leverage ratio as an own funds requirement (CRR review article 92(1)(d)). G-SIIs will be required to hold a leverage ratio surcharge in the form of a buffer, calibrated at 50% of the G-SII buffer rate (CRR review article 92(1a)). Moreover, the European Commission is mandated to write a report on the appropriateness of an O-SII leverage ratio surcharge (CRR review article 511). Such an assessment must also be part of the macroprudential review by the European Commission as performed by 30.06.2022 and subsequently every five years thereafter (CRR review article 513).

Reporting and disclosure requirements

Large institutions (CRR review article 4(1)(146)) must report and disclose a value of the leverage ratio based on averages over the reporting period in order to mitigate window dressing behaviour (CRR review article 430(2) and CRR review article 451(3)). In this regard, the EBA shall develop draft implementing technical standards by 28 June 2020 (CRR review article 430(7)).

Exposure measure

The leverage ratio requirement in CRRII is based on the revised leverage ratio framework as published by the Basel Committee in December 2017. Exemptions are introduced for CCPs and CSDs with a banking licence (CRR review article 6(5)), public development credit institutions, promotional loans and export credits (CRR review article 429a).

Moreover, banks' exposures to central banks can be temporarily exempted from the exposure measure under exceptional circumstances, as determined by the competent authority (CRR review article 429a(5)). The maximum duration for this central bank exposure exemption is one year, and in such a case the credit institution faces a commensurate offset in its leverage ratio requirement (CRR review article 429a(7)). The appropriateness of this treatment of central bank exposures must be reviewed by the European Commission in its 2020 year-end report on the leverage ratio (CRR review article 511).

Implementation

The 3% leverage ratio requirement will be applicable from 24 months after the entry into force (28 June 2021) (CRR review article 3(2)). The G-SII surcharge will be applicable from 1 January 2022 onwards (CRR review article 3(5)). The EBA will develop reporting and disclosure formats by 28 June 2020 (CRR review article 430(7)(a)).

Pillar 2

The Banking Package clarifies the conditions for the application of Pillar 2 capital add-ons. Moreover, a clear distinction is made between mandatory Pillar 2 requirements and supervisory expectations to hold additional capital, also known as Pillar 2 Guidance.

Background

The CRDIV left room for different interpretations concerning the Pillar 2 framework across Member States. As a consequence, the EBA developed guidelines to ensure uniform practices in the application of Pillar 2 capital add-ons. The CRD review formalizes these practices in level 1 legislation and thus ensures legal certainty and promotes a level playing field among institutions.

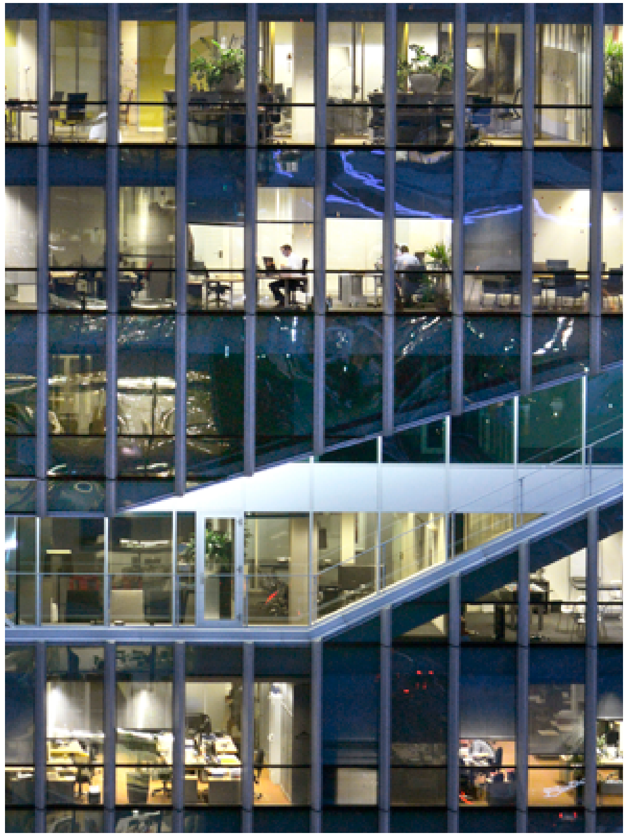
Clarification

Pillar 2 is an institution-specific requirement and should be confined to address microprudential risks. It should not be used to address systemic risk. Supervisors may include the impact of economic and market developments on an institution's risk profile, when imposing the capital add-on. The change will avoid overlap between different capital tools, and promote consistent application of rules (CRD review recital 14, 104a(1) and (2)).

Proportionality

The CRD review takes into account proportionality. The competent authorities may tailor the methodologies used for the supervisory review and evaluation process (SREP) in order to take into account institutions with a similar risk profile. The EBA will draft guidelines specifying how similar risk profiles shall be assessed for the purposes of proportionality (CRD review article 97(4) and (4a)).

Also, the competent authorities may only impose additional or more frequent reporting requirements on institutions where this is appropriate and proportionate with regard to the purpose for which the information is required. Moreover, the information requested should not be duplicative (CRD review article 104(2)).



Pillar 2 Guidance

The supervisory expectation to hold additional capital, also known as Pillar 2 Guidance (P2G), is now clearly distinguished from the mandatory Pillar 2 requirement and is incorporated in level 1 legislation. The CRD review requires institutions to set their internal capital at a level that is sufficient to cover all the risks that an institution is exposed to and to ensure that the institutions' own funds can absorb potential losses resulting from stress scenarios. The competent authority will review the level of internal capital and shall determine the overall level of own funds they consider appropriate. Failing to meet the expectations (the P2G) will not be regarded as in breach of required capital levels and will accordingly not trigger the automatic restrictions on the maximum distributable amounts. However, when an institution repeatedly fails to establish or maintain an adequate level of additional own funds to cover the guidance, the competent authority is able to increase the pillar 2 requirement (CRD review article 104a(1)(e) and article 104b).

Interest rate risk

The CRD review gives guidance to competent authorities on how to account for interest rate risk in the banking book (IRRBB) in the SREP. Banks capitalize for interest rate risk in the banking book in their internal capitalization allocation process (ICAAP). In case the exposure to interest rate risks is excessive, the competent authorities shall take supervisory measures. This is at least the case when:

(i) an institution fails the supervisory outlier test: banks face supervisory measures in case the economic value of equity declines by more than 15% of tier 1 capital resulting from one of 6 supervisory shock scenarios (the most negative outcome applies). The outlier test is currently 20% of total capital resulting from 2 parallel shocks;

(ii) an institution's net interest income experiences a 'large decline' as a result of the two parallel shock scenarios. EBA will specify by means of an RTS what concerns a 'large decline' (CRD review article 84 and 98(5) and (5a)).

Anti-money laundering

The Banking Package integrates anti-money laundering into the SREP. If the competent authority has reasonable grounds to suspect that, in connection with that institution, money laundering or terrorist financing is being or has been committed or attempted, or there is increased risk thereof, it shall immediately notify the EBA and the authority that supervises the institution in accordance with the Anti-Money Laundering Directive. If appropriate, the competent authority shall take supervisory measures in accordance with the CRD review (CRD review article 97(6)).

ESG risks

The EBA is mandated to explore the inclusion of environmental, social and governance risks in the SREP. If appropriate, the EBA may issue guidelines in this respect (CRD review article 98(8)).

Implementation

The revisions of the pillar 2 framework apply 18 months after entry into force (28 December 2020), except for the revisions regarding interest rate risk in the banking book, which apply 24 months after entry into force (28 June 2021).

Macroprudential framework

The Banking Package broadens the macroprudential toolbox to ensure that authorities are enabled to address systemic risk in a timely and effective manner. As a result, more flexibility is introduced into the macroprudential toolkit and the interaction between macroprudential buffers change.

Background

There are several macroprudential buffers: the countercyclical buffer (CCyB), other systemically important institutions buffer (O-SII buffer), globally systemically important institutions buffer (G-SII buffer) and systemic risk buffer (SRB) (CRD review article 130, 131 and 133).

The CCyB is primarily meant to mitigate cyclical systemic risks by increasing the resilience of banks during the upswing of the financial cycle. The CCyB can also help dampen excessive credit growth. The O-SII and G-SII buffers aim to limit the negative externalities that a failure of a systemically important institution can pose to the domestic or global financial system and economy. Finally, the SRB aims to address macroprudential or systemic risks of a long-term, non-cyclical nature.

All these buffers are imposed on the highest level of consolidation and on all exposures. Only the highest of the G-SII/O-SII and SRB is applicable.

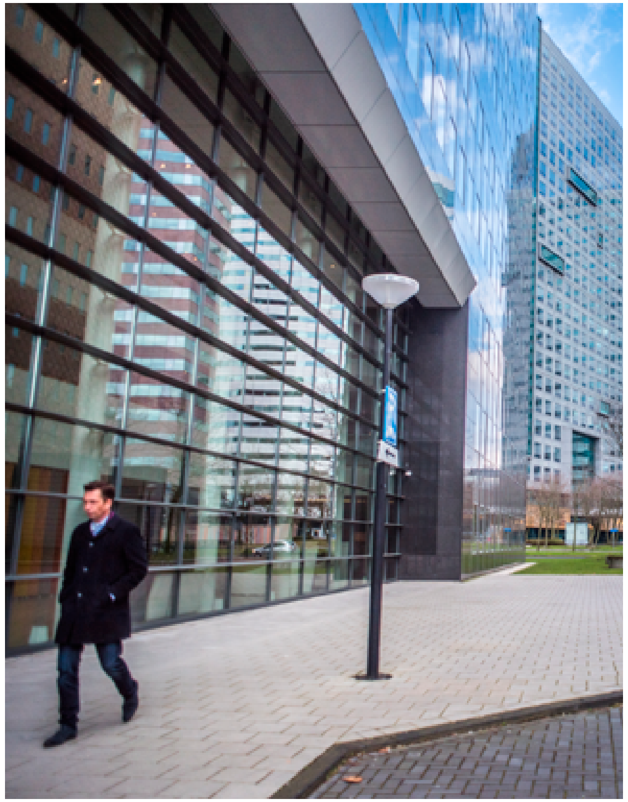
O-SII buffer

The Banking Package increases the cap on the O-SII buffer from 2% to 3% (CRD review article 131(5)). Subject to approval of the European Commission, it is possible for authorities to impose a higher O-SII buffer than 3% (CRD review article 131(5a)).

Additionally, the rules have been changed regarding the O-SII buffer cap for subsidiaries that are identified as an O-SII by the authority of another Member State. The O-SII buffer cap for a subsidiary will be set at the minimum of (i) the G-SII/O-SII buffer of the parent, plus 1% or (ii) 3% unless the European Commission approves a higher O-SII buffer for the group (CRD review article 131(8)). Before, this was capped at the higher of (i) 1% or (ii) G-SII/O-SII buffer rate at the group level.

Systemic risk buffer

The Banking Package makes the SRB more flexible than before; it can be imposed on all or a subset of institutions and on all or a subset of exposures (CRD review article 133(1)).



Interaction between macroprudential buffers

The SRB will always be cumulative to the G-SII/O-SII buffers (CRD review article 131(15)). This is different from the current treatment where – in case the SRB is imposed on all exposures – the highest of the three buffers count. Furthermore, a soft cap of 5% for the combined G-SII/O-SII buffer and the SRB is introduced. If authorities want to impose a higher combined buffer instead, they will need the approval of the European Commission (CRD review article 131(15)).

G-SII methodology

The Banking Package introduces an optional alternative methodology to calculate the G-SII score of an institution which differs from the Basel methodology (CRD review article 131(2a)). This alternative methodology no longer treats activities in other Member States within the Banking Union as cross-border exposures. The competent or designated authority can decide whether it wishes to apply this alternative methodology. However, it is not possible to take away the G-SII status altogether or decrease the G-SII buffer rate below 1% as a consequence of using the alternative methodology (CRD review article 131(10)(c)).

This single jurisdiction approach for the banking union acknowledges the progress made with regard to completing the Banking Union.

Implementation

These revisions to the macroprudential framework apply from 18 months after entry into force (CRD review article 2).

Credit risk

The Banking Package introduces revisions to the credit risk framework, such as changes to the risk weights for several types of exposures and a special treatment for the massive disposal of non-performing exposures.

Background

The changes introduced in the credit risk framework implement a new Basel Standard for investments in funds, aim to encourage certain types of investments and acknowledge certain national products. Moreover, banks are stimulated to sell large amounts of their non-performing loan (NPL) portfolio to further reduce risks in the Banking Union.

SME supporting factor

The Banking Package extends the small and medium-sized enterprises (SME) supporting factor by increasing the scope of SME loans which qualify for lower risk weights. There is no longer a cap on the bank's total exposure to an SME and the threshold value for the 23.81% risk weight reduction is extended from EUR 1.5 million to EUR 2.5 million. A risk weight reduction of 15% is applied to the part of the SME exposures above that threshold (CRR review article 501).

Infrastructure supporting factor

In order to encourage investments in infrastructure projects, capital requirements for banks' exposures to such projects will be reduced by 25%, provided they comply with a set of criteria reducing their risk profile and enhancing predictability of cash flows (CRR review article 501a).

Banks' exposures to collective investment undertakings (CIUs)

The Banking Package implements the international Basel standards in this regard. First, the CIU needs to fulfill certain eligibility criteria. For instance, the CIU needs to be classified as a UCITS or a specific AIF.

For development banks and banks co-investing with development banks, a broader range of CIUs is eligible. If these eligibility criteria are not fulfilled, a fallback approach applies which consists of a 1250% risk weighting of the exposures to the CIU.

However, if the conditions are fulfilled, banks must apply the look-through approach or the mandate-based approach depending on whether the bank has sufficient regular and granular information on the underlying exposures (CRR review articles 132, 132a-132c, and 152).

Retail exposures backed by salaries and pensions

The risk weight for loans backed by the borrower's pension or salary will be reduced to 35%, if certain conditions are met (CRR review article 123).

Massive disposals of NPLs

Banks are allowed to adjust their loss given default estimates by partly or fully offsetting the effect of massive disposals of defaulted exposures on realized loss given defaults, under certain conditions. This will prevent the loss given default from increasing and thus will lead to lower capital requirements in the end. This preferential treatment for selling massive amounts of non-performing loans is limited in time and the bank must notify the competent authority (CRR review article 500).

Implementation

The revisions to the credit risk framework will apply from 24 months after entry into force (28 June 2021). One exemption is the legislation regarding the massive disposal of NPLs, which will apply from 27 June 2019.

Liquidity risk

The Banking Package introduces the Net Stable Funding Ratio requirement (NSFR) into European legislation. In addition, a simplified version of the NSFR for small and non-complex institutions is also introduced in order to take into account proportionality.

Background

The NSFR requirement is the ratio between available stable funding and required stable funding and shall be at least 100% at all times.

The NSFR aims to discourage excessive maturity and/or liquidity transformation, limit overreliance on short-term wholesale funding and promote funding stability and sustainable balance sheet expansions.

The NSFR complements the Liquidity Coverage Ratio (LCR). Whereas the LCR focuses on short term liquidity risk, the NSFR targets longer term funding risk of institutions.

Anticipating the introduction of the minimum NSFR requirement the CRRI already included a NSFR reporting requirement.

NSFR design

The NSFR differentiates between various asset and liability items according to three criteria: residual maturity, type of counterparty and the encumbrance status. In general, a longer remaining time to maturity receives higher required and available stable funding factors. Moreover, financial counterparties receive a lower available stable funding factor and a higher required stable funding factor than non-financial counterparties. Last, encumbered assets receive a higher available stable funding factor than unencumbered assets.

Where possible, the NSFR builds on the LCR. For example, it uses similar definitions and assigns higher available stable funding factors to items that are considered relatively stable by the LCR.

NSFR application

The NSFR requirement applies both at solo and consolidated level (CRR review article 6(4) and 11(4)). Institutions which have obtained a (partial) liquidity waiver from the competent authority may be (partially) exempted from the NSFR requirement at solo level (CRR Review article 8).

Breach of NSFR requirement

If the NSFR is below or expected to fall below 100%, the institution shall immediately notify its supervisor and restore the ratio in a timely manner (CRR Review article 428b). The supervisor shall consider supervisory measures on a case-by-case basis, while paying specific attention to the cause of non-compliance. Until the NSFR has been restored, the institution shall report the NSFR on a daily basis to the supervisor. The supervisor may decide that less frequent reporting is appropriate (CRR Review article 414).

Disclosure requirements

The CRR review introduces disclosure requirements for the NSFR. An implementing technical standard (ITS) prescribing the detailed instructions is expected before June 2022. In addition, the LCR disclosure requirements – which were previously set out in EBA Guidelines – will also be detailed via this ITS (CRR Review article 433a, 433b, 433c, 447 & 451a).

Simplified NSFR

Small and non-complex institutions may – with prior permission from the competent authority – calculate the NSFR using the simplified methodology. The simplified NSFR (sNSFR) has fewer maturity buckets and fewer asset and liability categories, but is calibrated more conservatively. This simplification also extends to the reporting and disclosure requirements. See also the section on proportionality (CRR Review article 428ai).

Implementation

The NSFR requirement applies 24 months after the CRR review enters into force (28 June 2021). Until then national stable funding requirements may be introduced or maintained by Member States (CRR Review article 413(4)).

New NSFR regulatory reporting requirements will apply not earlier than 6 months after entry into force of the amended technical standards (CRR Review article 430).

Proportionality

Proportionality is a key theme in the Banking Package. The proportionality principle means that small and non-complex institutions face a targeted simplified prudential framework.

Background

The current prudential standards already contain proportionality. The Basel standards are targeted to internationally active banks only, and offer institutions a menu of approaches to model their risks (such as standardized and internal model approaches). The European implementation of the Basel standards, even though in principle applicable to all banks, do contain proportionality for specific regulatory topics (such as market risk, capital buffers and governance requirements).

The Banking Package seeks to introduce more proportionality into European banking legislation. The objective is to avoid an excessive compliance burden for small and non-complex institutions by introducing targeted simplifications of prudential requirements. In this manner, more diversity can be introduced into the financial system in order to decrease systemic risk.

Small and non-complex institutions

A new definition for small and non-complex institutions is introduced. The criteria that institutions need to meet are based on their size, but also on their complexity and riskiness for the financial system. Importantly, if an institution wants to classify as small and non-complex, the competent authority should not object to this, based on an analysis of the institutions' size, interconnectedness, complexity or risk profile (CRR review article 4(1)(145)).

Small and non-complex institutions are allowed to use a simplified Net Stable Funding Ratio requirement, as well as a simplified standardized approach for interest rate risk in the banking book. Moreover, they benefit from fewer disclosure requirements (CRD review article 84, CRR review article 428ai and CRR review article 433b).

EBA mandates

Furthermore, the EBA is mandated to develop recommendations on how to reduce the compliance costs of reporting requirements by at least 10% and ideally by 20%. The EBA will also investigate potentially less frequent reporting requirements for small and non-complex institutions (CRR review article 430(8)). Also, the EBA is mandated to develop a feasibility report on an integrated system for collecting statistical, prudential and resolution data (CRR review article 430c). Moreover, the EBA has to develop an electronic compliance tool to facilitate institutions' compliance with the prudential rules (CRR review article 519c).

Large institutions

On the other hand, large institutions must report and disclose certain elements of the leverage ratio exposure measure based on averages over the reporting period to mitigate window dressing concerns (CRR review article 4(1)(146) and CRR review article 451(3)).

Moreover, large institutions have to disclose more data points on a more frequent basis (CRR review article 433a). Large institutions which have issued securities that are admitted to trading on a regulated market of any Member State, also have to disclose information on environmental, social and governance (ESG) risks (CRR review article 449a). Lastly, large institutions must disclose quantitative information on the remuneration of institutions' collective management body (CRR review article 450(2)).

Implementation

The exact date of implementation differs for each topic. Particularly relevant for proportionality is the EBA compliance tool which applies as of 17 July 2019 (CRR review article 3(3)(j)), the EBA feasibility report on a central data hub which must be finalized by 28 June 2020 (CRR review article 430c(1)) and the EBA recommendations on reporting costs which must be finalized by 28 June 2020 (CRR review article 430(8)).

MREL and TLAC

The Banking Package transposes the FSB Total Loss Absorbing Capacity (TLAC) standard into European legislation. The BRRD review introduces binding subordination requirements for systemic banks. For non-systemic banks, subordination may be imposed to overcome potential compensation risks based on a no creditor worse off (NCWO) assessment.

Background

BRRDI and the minimum requirement for own funds and eligible liabilities (MREL) Delegated Regulation (MREL DR) established the current MREL regime, specifying the eligibility criteria for MREL instruments and the calibration of MREL.

The default calibration under the MREL DR was basically double the bank's capital requirements. MREL comprises a loss absorption amount, a recapitalization amount and a market confidence buffer.

Neither BRRDI nor the MREL DR required mandatory MREL subordination, although the international FSB TLAC Term Sheet requires minimum subordination levels for GSIIs.

Calibration

The Banking Package requires institutions to calculate their MREL by reference to two different measures: the bank's Total Risk Exposure Amount (TREA) (BRRD review article 45(2)(a)) and its Leverage Ratio Exposure Amount (LREM) (BRRD review article 45(2)(b)). A bank must comply at all times with both measures (BRRD review article 45(1)). Before, MREL was expressed as a percentage of the bank's total liabilities and own funds (TLOF, i.e. gross balance sheet).

The MREL requirement is the aggregate of three elements:

- Loss Absorption Amount (BRRD review article 45c(3)(a)(i) / BRRD review article 45c(3)(b)(i)): Pillar 1 + Pillar 2 requirement;
- Recapitalisation Amount (BRRD review article 45c(3)(a)(ii) / BRRD review article 45c(3)(b)(ii)): Pillar 1 + Pillar 2 requirement + Market Confidence Buffer (MCB);
- MCB: only applies to the TREA calibration of the RCA. The default level equals the combined buffer requirement minus the countercyclical buffer (BRRD review article 45c(3), seventh subparagraph) and may be adjusted upwards or downwards.

Subordination

The Banking Package does not mandate full MREL subordination. Instead, there are various partial subordination requirements applicable to different categories of banks:

- Globally systemic important institutions (GSIIs) (BRRD review article 2(1)(83c)): the subordination criteria reflect the FSB TLAC Term Sheet (CRR review article 92a(1)), but with the addition of a mandatory floor of 8% TLOF (BRRD review article 45b(4)).
- "Top Tier" banks: banks with gross total assets greater than €100bn (BRRD review article 45c(5)): highest of 13.5% TREA / 5% LREM / 8% TLOF (capped at 27% TREA) (BRRD review article 45c(5) / 45b(4)).
- "Fished" banks: banks with gross total assets smaller than €100bn yet whose failure poses a systemic risk to the Member State, as determined by the national resolution authority (BRRD review article 45c(6)): same as "Top Tier" banks without the cap of 27% TREA.
- All other banks: subordination can be required where there are risks of NCWO claims (BRRD review article 45b(5)).

MDA restriction

If an institution does not meet its MREL, the resolution authority can impose a maximum distributable amount (MDA) restriction on the institution, after consultation with the competent authority (BRRD review article 16a(1)).

During the first nine months of the breach, the resolution authority shall assess whether to impose such restrictions (BRRD review article 16a(2)). This assessment must be carried out monthly while the MREL breach persists.

After nine months, the MDA restriction becomes mandatory, unless certain conditions apply (BRRD review article 16a(3)).

Implementation

The resolution authority shall determine appropriate transition periods to meet both MREL and the required level of subordination. The deadline for compliance is stated to be 1 January 2024 (BRRD review article 45m(1)).

An intermediate MREL shall be set based, as a rule, on a linear progression to remedy any shortfall (meaning the shortfall will be remedied on a pro rata basis per year). The deadline for this intermediate MREL is 1 January 2022 (BRRD review article 45m(1)).

External links

- CRR review
- CRD review
- SRMR review
- BRRD review
- Factsheet Banking Package