RIKSGÄLDEN
SWEDISH NATIONAL DEBT OFFICE

2 July 2021

MINIMUM REQUIREMENT FOR OWN FUNDS AND ELIGIBLE LIABILITIES (MREL)

- Application and Policy

UNOFFICIAL TRANSLATION
In the event of discrepancies between the Swedish and English versions of this memorandum, the Swedish version will apply.

The Debt Office's mandate within financial crisis management

The Swedish National Debt Office, together with the Ministry of Finance, Finansinspektionen (the Swedish Financial Supervisory Authority)) and the Riksbank, shall work to ensure the stability of the financial system. This is an important responsibility as a serious disturbance in the system could result in significant costs to the Swedish economy in the form of decreasing production and more unemployment. The Debt Office's primary duties within financial stability are the provision of precautionary support to viable banks and other institutions, management of systemically important undertakings that are no longer viable and responsibility for the deposit insurance scheme.

The procedure for managing systemically important undertakings that are no longer viable is called resolution. This involves central government, via the Debt Office, taking control of an undertaking that has encountered problems in order to either restructure it or wind it up in an orderly manner and with the aim of avoiding the use of taxpayer's money. During the resolution process, all or part of the undertaking's functions are kept open so that depositors and other customers have access to their accounts and other services.

The minimum requirement for own funds and eligible liabilities (MREL)
In resolution, the undertaking's losses are managed in such a way that its shareholders and creditors are first to bear the costs (through what is known as a bail-in). Consequently, the potential to implement a bail-in is dependent on undertakings having a certain amount of own funds and liabilities that can be used to cover losses and restore capital. The minimum requirement for own funds and eligible liabilities (MREL) ensures there are sufficient own funds and liabilities that can be written down or converted in order to restore the institution's viability.[1]

[1] MREL stands for the Minimum Requirement for Own Funds and Eligible Liabilities.

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Glossary

Bail-inable liability: Liability in accordance with Chapter 2, Section 2 of the Resolution Act

Combined buffer requirement: Requirement in accordance with Chapter 2, Section 2 of the Capital Buffers Act (2014:966)

Eligible liability: Liability in accordance with Chapter 2, Section 2a of the Resolution Act

ESIRE: European systemically important resolution entity

External MREL: The MREL that shall be complied with by 1) resolution entities and 2) undertakings that are neither resolution entities nor subsidiaries of a resolution entity/third-country undertaking

GSIRE: Global systemically important resolution entity

Internal MREL: The MREL that shall be complied with by undertakings that are not resolution entities and are 1) subsidiaries of a resolution entity or 2) subsidiaries of a third-country undertaking

Institution: Credit institutions and investment firms in accordance with Chapter 2, Section 1 of the Resolution Act

LAA: Loss absorption amount

Leverage ratio requirement: Minimum leverage ratio requirement in accordance with Article 92(1) of the Capital Requirements Regulation

LRE: Leverage ratio exposure

Material subsidiary: A subsidiary as defined in Article 4(1)(135) of the Capital Requirements Regulation

MREL: The minimum requirement for own funds and eligible liabilities

NSIRE: National systemically important resolution entity

ORE: Other resolution entity

Pillar 1 requirements: Capital requirements in accordance with Article 92(1)(c) of the Capital Requirements Regulation

Pillar 2 requirements: Capital requirements that are decided pursuant to Chapter 2, Section 1, first paragraph of the Special Supervision of Credit Institutions and Investment Firms Act (2014:968)

RCA: Recapitalisation amount

Resolution Act: The Resolution Act (2015:1016) (as worded in the version that entered into force on 1 July 2021)

Resolution entity: a legal entity within the EEA that, in accordance with a resolution plan, shall be subject to resolution measures (Chapter 2, Section 1 of the Resolution Act)

Resolution group: a resolution entity and its subsidiaries that are not a) a resolution entity, b) a subsidiary of another resolution entity, or c) a subsidiary in a third country that, according to the resolution plan, is not part of the resolution group and its subsidiaries (Chapter 2, Section 1 of the Resolution Act)

Subordinated eligible instruments and liabilities Subordinated eligible instruments in accordance with Chapter 2, Section 2b of the Resolution Act and liabilities as referred to in Chapter 2, Section 11 of the same act.

TLOF: Total liabilities and own funds

TREA: Total risk-weighted exposure amount

1. Introduction and background

In 2014, as a consequence of the global financial crisis, the EU adopted harmonised rules for dealing with failing banks – known as the Bank Recovery and Resolution Directive.[2] This directive established a specific procedure called resolution, which is based on the principle that it shall be possible to manage financial crises in an economically effective way and, as far as is possible, without using public funds or other state aid. The Recovery and Resolution Directive has been transposed into Swedish law through the **Resolution Act** (2015:1016). The Debt Office is Sweden's resolution authority.

A central aspect of the resolution procedure is the Debt Office's authority to recapitalise a failing bank by writing down and converting liabilities into new equity. In order to ensure that there are sufficient own funds and liabilities to write down and convert in conjunction with resolution, all institutions have been subject to a minimum requirement for own funds and eligible liabilities (the requirement has been abbreviated to MREL).

The minimum requirement for own funds and eligible liabilities has been decided by the Debt Office on the basis of rules in the Resolution Act and the European Commission's delegated regulation.[3] In the memorandum, 'Application of the minimum requirement for own funds and eligible liabilities' from 2017 (the previous MREL policy), the Debt Office described the deliberations that formed the basis of how the requirement was previously applied.[4] The application described there has, in certain respects, been supplemented and changed over time, which has been done through separate publications on the Debt Office website.

In 2019, the EU adopted the banking package, which includes a number of amendments to the Recovery and Resolution Directive[5] and to the Capital Requirements Regulation[6]. The amendments to the Recovery and Resolution Directive have been introduced into Swedish law primarily through amendments to the Resolution Act. The implications of these amendments include that the Swedish term used for 'minimum requirement for own funds and eligible liabilities' has been changed. The amendments entered into force on 1 July 2021.

In this memorandum, the Debt Office describes how it intends to apply the new rules when making decisions in respect of the minimum requirement for own funds and eligible liabilities. Within the

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[2] Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012 of the European Parliament and of the Council.

[3] Commission Delegated Regulation (EU) 2016/1450 of 23 May 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria relating to the methodology for setting the minimum requirement for own funds and eligible liabilities.

[4] Reg. no.: RG 2016/425.

[5] Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC.

[6] Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012.

scope of this memorandum, the minimum requirement for own funds and eligible liabilities will be abbreviated to **MREL**.

The memorandum consists of two parts. One part is a policy document (the MREL policy), which describes how the Debt Office intends to apply MREL. The other is a longer explanatory part that describes in more detail the legal basis and the deliberations that form the basis of the positions adopted in the MREL policy. This memorandum replaces the Debt Office's previous application and instructions, including the previous MREL policy. The new MREL policy may be updated in future to the extent that it needs to be supplemented. The MREL policy is included as an appendix to this memorandum.

Amendments to the Swedish National Debt Office's Resolution Regulations (2015:2) as a consequence of amendments to the Resolution Act are not covered in this memorandum.

Changes due to the banking package

The regulatory changes made through the banking package do not result in any changes to the basic concept of MREL. The requirement will continue to be determined on the basis of undertakings' capital requirements (risk-weighted and non-risk-weighted) and contain a loss absorption and recapitalisation amount. However, the banking package does entail a number of changes and clarifications to the regulatory framework, especially in respect of how the requirement is to be complied with. These changes and clarifications largely correspond to the content of the supplementary resolvability principles that the Debt Office has chosen to apply pending the implementation of the banking package in Swedish law.

The following section summarises the principal and, for this memorandum, relevant changes as a consequence of the banking package.

- MREL shall be expressed as two ratios: a risk-weighted ratio (risk-weighted MREL) and leverage ratio (non-risk-weighted MREL).[7]
- The loss absorption amount may no longer include the undertakings' **combined buffer requirements.** At the same time, an obligation for undertakings to comply with the combined buffer requirement in addition to the risk-weighted MREL is being introduced.[8]
- The former possibility to require that undertakings comply with the minimum requirement for own funds and eligible liabilities entirely or partially using a certain type of subordinated liabilities is replaced with mandatory requirements for subordination.[9]

[7] Under previous rules, the minimum requirement for own funds and eligible liabilities would be calculated in both risk-weighted and non-risk-weighted terms but expressed at a total percentage requirement in relation to the undertaking's total liabilities and own funds (TLOF). Because non-risk-weighted capital requirements have not been applied in Sweden prior to 28 June 2021, the requirement was previously calculated entirely on the basis of undertakings' risk-weighted capital requirements.

[8] These changes do not affect the total requirements that are placed on undertakings but do mean that the buffers are being placed in excess of MREL and thus can be used without undertakings breaching MREL. When applying the previous policy, the Debt Office achieved equivalent functionality using what is termed the liabilities proportion principle.

[9] When applying the previous policy, the Debt Office set equivalent requirements for subordination through what is known as the subordination principle.

- The rules are being tailored for undertakings that are part of a group in order to ensure it is possible to carry out resolution in accordance with an adopted resolution strategy. There are certain special rules for MREL, primarily in respect of how the requirement is to be complied with, that apply to those undertakings within a group that are not themselves in resolution.[10]
- The conditions for liabilities that may be used to comply with MREL, known as **eligible liabilities**, are made stricter in some respects, for example conditions are added that liabilities shall not be subject to early redemption or be possible to offset.
- Undertakings that breach the combined buffer requirement in addition to the risk-weighted MREL may be subject to decisions prohibiting transfers of value (restrictions on dividends etc.). In addition, some additional powers to intervene are specified that the Debt Office or Finansinspektionen are able to make use of.
- New reporting requirements for monitoring MREL are being introduced. A requirement that undertakings publish details of their MREL requirements and how these are being complied with is also being introduced as of 1 January 2024.
- The requirements adopted under the new rules will be phased in, with full compliance no later than 1 January 2024. Specific deadlines for compliance with MREL after an undertaking has been classified as a resolution entity or after resolution has been completed are also being introduced.

This memorandum is restricted to covering matters related to the scope and calculation of, compliance with and phasing in of MREL, including requirements for subordination. The new reporting requirement is covered in the Debt Office's amended Resolution Regulations (2015:2). Matters relating to restrictions on dividends, conditions for eligible liabilities etc. may be expanded on in future versions of the Debt Office's MREL policy.

Fundamental basis for application of the MREL policy

The Debt Office's decisions concerning MREL are made separately for each undertaking based on the framework set out in the Resolution Act. The act gives the Debt Office the scope to decide on certain aspects pertaining to the scope and size of and compliance with the requirements. The policy positions that the Debt Office intends to adopt in respect of these aspects, which are described in this memorandum, are based on the following principles.

– *MREL shall ensure that a failing undertaking can be recapitalised in accordance with the resolution strategy or strategies adopted in the resolution plan.*

A key basic premise in the MREL rules is that the level of the requirement shall be set such that it is able to both absorb losses and also recapitalise the undertaking in accordance with the adopted resolution strategy. The actual recapitalisation need, as well as the prerequisites for meeting this need are dependent on the prevailing circumstances at the time of a failure, including the size of the losses that affected the undertaking, the market's confidence in the undertaking etc. The application of MREL should take into account such circumstances.

– *Subordination increases resolvability*

[10] When applying the previous policy, the Debt Office has set corresponding requirements through a principle that specifies how MREL should be complied with within groups.

The fact that MREL is being complied with using liabilities that are subordinate to other liabilities enhances the potential to implement resolution in accordance with the resolution objectives and without the use of external funding. Consequently, MREL should, to the extent that the regulatory framework allows, be complied with using own funds and subordinated eligible instruments and liabilities. Subordination also contributes to increased transparency and to greater potential for the financial market to price risk.

– *The MREL policy should be transparent and easily understood*

The rules relating to MREL are complex. The format of the requirement is also closely linked to the capital requirements regulations, which are themselves complex. The scope that the Debt Office has to determine how various parts of the requirement shall be structured adds to this complexity. From a stability perspective, it is vital that both undertakings themselves and their investors and customers understand how MREL requirements are determined and met. Consequently, what guides the Debt Office's application of the new regulatory framework is that it has to be characterised by transparency, predictability and comprehensibility.

– *MREL should be founded on a risk-based approach*

When the requirements placed on banks and other financial undertakings by authorities are proportional to the undertakings' risk, this incentivises good risk management and is, by extension, beneficial to financial stability. MREL shall be calculated and expressed in both risk-weighted and non-risk-weighted terms. The non-risk-weighted requirements may be viewed as a *minimum requirement* that shall always ensure a certain capacity for recapitalisation in proportion to an undertaking's entire balance sheet. The basic premise of the policy positions that the Debt Office have to take in regard to MREL in addition to this is that, based on the reasoning above and to the extent the rules allow, the requirements should be risk-based.

– *MREL should be calculated and complied with in the same way by undertakings with similar resolution strategies.*

How the level of MREL is calculated and how the requirement is complied with are fundamentally a function of how it is intended that an undertaking will be managed in the event of a failure. The basic premise is therefore that undertakings that will be managed in the same way in the event of a crisis should be subject to the same type of requirements. For example, this means that the undertakings that the Debt Office deems systemically important and to be managed through resolution should, as a rule, be subject to a MREL that is calculated and complied with in the same way. This also encompasses how the requirements within resolution groups are determined (given similar resolution strategies).

2. Basic premises for the application of MREL

Legal basis

General information about the link between resolution planning and MREL

The application of the regulatory framework in respect of MREL is dictated by, among other things, the Debt Office's resolution planning and the assessments made and policy positions adopted within the scope of this.

The Debt Office is obliged to draw up a resolution plan for each institution. If the institution, together with other undertakings, is part of a group that is subject to group-based supervision, the resolution plan shall encompass the entire group (group resolution plan).[11] With a few exceptions, all undertakings that are subject to planning obligations shall also be subject to MREL.

The resolution plan shall state which resolution measures the Debt Office intends to implement if the institution or another group undertaking is placed in resolution. The need for resolution measures shall be based on an assessment of whether the institution and/or the group can be restructured or wound up through bankruptcy, liquidation or resolution.[12] This assessment includes several appraisals, of which two of the key appraisals are whether the institution or group performs *critical functions* and whether winding up the institution or group could have a negative impact on *financial stability*.[13] If there is no need for resolution measures, the institution and group undertakings should be wound up through bankruptcy or liquidation.

For institutions or groups that are to be managed through resolution, there is a resolution strategy that is set out in the resolution plan. The resolution strategy sets out details including which resolution measures are to be implemented and where in the group these measures will be put in place. The assessments of the institution's or group's critical functions and the impact on financial stability are also important factors for the design of the resolution strategy. For example, if only parts of the operations of an undertaking or a group are judged to be critical, the resolution measures can be restricted to only encompassing these parts.

The design of the resolution strategy forms the basis of how the rules concerning MREL will be applied. *The level* of MREL shall be adapted on the basis of the measures set out in the resolution plan, taking into account factors including what portion of the undertaking's or group undertaking's operations need to be recapitalised. The resolution strategy also governs how MREL shall be *complied with* and at which *level* the requirements shall be complied with. An undertaking that, according to the resolution plan, shall be subject to resolution measures is what is known as a resolution entity and shall comply with MREL in accordance with rules that are different to those that apply to undertakings that are not subject to resolution measures.

[11] Chapter 3, Sections 1 and 2 of the Resolution Act.
[12] Chapter 3, Sections 10 and 11 of the Resolution Act.
[13] See Section 9 of the Resolution Ordinance (2015:1034) and the Debt Office's publication *Financial crisis management* (RG 2018/518) where these concepts are described in more detail.

For resolution entities, a classification is also made. This classification has significance for matters including which subordination requirements the Debt Office can impose.

Undertakings that are subject to MREL and level of compliance

The new rules entail some changes to the type of undertakings that are subject to MREL. The Debt Office's obligation to make decisions concerning MREL no longer applies to just institutions, but also to certain other undertakings that are covered by the Resolution Act.[14] However, these changes do not mean that all undertakings covered by the Resolution Act will become subject to MREL. Some undertakings will be subject to MREL only after a specific decision by the Debt Office.[15] It is also possible for other undertakings to be exempted from MREL through a decision of the Debt Office.[16]

Changes to the rules relating to the scope of the requirements are associated with the introduction into the regulatory framework of new provisions entailing that the application of MREL for undertakings that are part of groups shall be based on the resolution strategy to which the group is subject. The level at which MREL shall be calculated and complied with (individual or consolidated level) and which own funds and eligible liabilities shall be used to comply with MREL differ depending on whether or not a group undertaking shall be subject to resolution measures. The aim of these changes is to ensure that the loss-absorbing and recapitalisation capacity is localised in the correct place within the group and can be used in a way that is consistent with the adopted resolution strategy.[17] For these purposes, new definitions that govern how the MREL rules are to be applied are being introduced:

Resolution entity: A resolution entity is a legal entity (undertaking) within the EEA that, in accordance with the resolution plan, shall be subject to resolution measures.[18, 19]

Resolution group: A resolution group consists of a resolution entity and its subsidiaries that are not:

- a resolution entity,
- a subsidiary of another resolution entity or
- a third-country subsidiary that, according to the resolution plan, is not part of the resolution group and its subsidiaries.[20]

[14] Chapter 4, Section 1 of the Resolution Act, which refers to all undertakings that are specified in Chapter 1, Section 1, first paragraph, point 1 or 2.
[15] Chapter 4, Section 22 of the Resolution Act.
[16] Chapter 4, Section 20 of the Resolution Act.
[17] Govt Bill 2020/21:155 p. 67.
[18] Chapter 2, Section 1 of the Resolution Act.
[19] For undertakings that are part of a group, the group's resolution entities and resolution groups shall be shown in the group resolution plan (Chapter 3, Section 2 of the Resolution Act). For undertakings that are not part of a group, there is no explicit provision specifying that the resolution plan shall state a resolution entity. However, the definition of a resolution entity implies that an undertaking that is not part of a group but shall be subject to one or more resolution measures is also to be considered a resolution entity.
[20] Chapter 2, Section 1 of the Resolution Act.

Accordingly, a resolution group consists of two or more group undertakings that, according to the resolution plan, shall be managed collectively in resolution but whereby only one of the undertakings (the resolution entity) is placed in resolution and made subject to resolution measures.

Other undertakings in the resolution group are not placed in resolution but instead managed primarily through the measures taken in relation to the resolution entity.[21]

An undertaking that is not a resolution entity can either be part of a resolution group (i.e. be a subsidiary of a resolution entity) or be an undertaking that is not part of a resolution group and whose resolution plan does not specify any resolution measures. The intention is for the latter type of undertaking to be managed through bankruptcy or liquidation rather than resolution.

Separate rules on how MREL shall be complied with apply to subsidiaries within resolution groups (see section 4). The term **internal MREL** is used in this memorandum and in the MREL policy in order to differentiate the requirements that apply to these undertakings. The term **external MREL** is used for resolution entities and undertakings that are to be managed through bankruptcy or liquidation.

In the vast majority of cases, MREL shall be calculated and complied with at the *individual level*. However, for a resolution entity that is part of a resolution group, the requirement shall only be calculated and complied with at the *consolidated level*. The same applies to a parent undertaking within the EEA that is not a resolution entity but is a subsidiary of a third-country undertaking.[22] For resolution entities that are part of a resolution group, the consolidated level refers to consolidation at the resolution group level.[23]

The Debt Office has an obligation to make decisions concerning MREL for undertakings that are institutions (regardless of whether or not they are resolution entities).[24] However, for institutions that are subsidiaries of a resolution entity, i.e. are subject to internal MREL, there is the potential to decide that the institution shall be completely exempted from the requirements. An exemption of this type may only be decided under certain conditions.[25]

The basic premise is also that the Debt Office has an obligation to make decisions concerning MREL for undertakings that are subject to the Resolution Act but not institutions. However, if such an undertaking is a subsidiary of a resolution entity, the Debt Office may make decisions concerning

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[21] A resolution strategy that involves a group as a whole being managed collectively in resolution through only one of the group undertakings, normally the parent undertaking, being placed in resolution is usually termed resolution with a single point of entry (SPE). In contrast, a strategy that involves one or more undertakings in a group being placed in resolution and managed separately is termed resolution with multiple points of entry (MPE).

[22] Chapter 4, Section 23 of the Resolution Act.

[23] Govt Bill 2020/21:155 p. 176.

[24] Chapter 4, Section 1 of the Resolution Act.

[25] Chapter 4, Section 20 of the Resolution Act. By virtue of point 1b of the provision, the potential to grant an exemption also applies to institutions that are subsidiaries of an undertaking that is not itself a resolution entity, but is in turn a subsidiary of a resolution entity (known as an intermediary undertaking) and where this intermediary undertaking complies with the requirement for own funds and eligible liabilities on a consolidated basis. In practice, this potential exemption is restricted to subsidiaries of parent undertakings within the EEA because it is only these parent undertakings (in addition to those that are resolution entities) that shall comply with MREL at the consolidated level.

MREL for such undertakings, i.e. the undertaking is not subject to MREL unless the Debt Office decides it is.[26]

Which undertakings shall be subject to a decision concerning MREL and at which level the requirements shall be calculated and complied with are summarised in Table 1.

Table 1. Scope of MREL and level for calculation and compliance

Type of undertaking	Decision concerning MREL	Level	Requirement
1. Undertakings included in a resolution group			
a) Resolution entity	Mandatory (for all undertakings)	Consolidated	External
b) Subsidiary of resolution entity	Institution: Mandatory, but the Debt Office can decide on exemptions Not an institution: Only if the Debt Office decides	Individual	Internal[27]
c) Parent undertaking within the EEA that is a subsidiary of a third-country undertaking	Mandatory	Consolidated	Internal
2. Undertakings not included in a resolution group			
a) Resolution entity	Mandatory (for all undertakings)	Individual	External
b) Not a resolution entity (managed through bankruptcy or liquidation)	Mandatory (for all undertakings)	Individual If parent undertaking within the EEA: consolidated	External (in applicable parts[28])

Classification of resolution entities

An undertaking that, according to the resolution plan, shall be subject to resolution measures is a resolution entity. Although the formal obligation for the Debt Office to appoint resolution entities is new, there is no practical difference from how the previous rules were applied. The Debt Office has also previously identified which undertaking or undertakings within a group shall be subject to resolution measures, for example with the aim of setting appropriate MREL.

One new feature that has practical significance for the application is that an internal classification of resolution entities shall be conducted on the basis of new provisions in the Resolution Act. A resolution entity shall belong to one of the four categories that apply by virtue of the rules (see Table 2). The criteria for when an undertaking shall be classified as a global or European systemically important resolution entity (**GSIRE** and **ESIRE**, respectively) are set out in law. The classification of national systemically important resolution entities (**NSIRE**) is conducted by the Debt Office based on an assessment of whether the resolution entity's potential failure constitutes a probable systemic risk. Resolution entities that are not GSIREs, ESIREs or judged to be an NSIRE are not defined in the Resolution Act. For clarity, the term other resolution entity (**ORE**) is used to denote such resolution entities.

[26] Chapter 4, Section 22 of the Resolution Act.
[27] For subsidiaries of a resolution entity that is to be wound up through bankruptcy or liquidation, certain derogations are made from the conditions for eligible liabilities for internal MREL (Chapter 4, Section 12, second paragraph).
[28] See Govt Bill 2020/21:155 p. 93 for a more detailed description of the meaning of "in applicable parts".

This classification is significant in regard to which requirements the resolution entities are subject. Certain minimum levels for MREL and subordination apply to GSIREs and ESIREs. For NSIREs, the Debt Office is able to decide that the same minimum levels shall apply as apply to ESIREs.[29] No minimum levels are applied to OREs. The classification is also of significance to the requirement for subordination. Sections 3 and 4 contain a more detailed account of how the classification affects the requirements.

Table 2. Classification of resolution entities[30]

Resolution entity	Description
Global systemically important resolution entity (GSIRE)	Resolution entity that is a global systemically important institution or part of such an institution as per the definition in the Resolution Act.
European systemically important resolution entity (ESIRE)	Resolution entity that is not a GSIRE and has assets that exceed EUR 100 billion or is part of a resolution group that has assets that exceed EUR 100 billion.
National systemically important resolution entity (NSIRE)	Resolution entity that is not a GSIRE or ESIRE but which the Debt Office deems to be a probable systemic risk in the event of failure.
Other resolution entity (ORE)	Undertaking that is a resolution entity but is not classified as a GSIRE, ESIRE or NSIRE.

The Debt Office's policy positions:

Decisions concerning MREL for subsidiaries that are not institutions

The main rule is that undertakings that are not institutions and are subsidiaries of a resolution entity shall not be subject to MREL. However, the Debt Office *may* also make decisions concerning MREL for such undertakings.[31]

There was previously also an equivalent potential to make decisions concerning MREL for undertakings that are not institutions.[32] However, the potential to make such decisions has not been used in practice. Nor does the Debt Office intend to make decisions concerning MREL for such subsidiaries in future. Nevertheless, this may happen in individual cases if it is deemed necessary on the basis of the resolution plan. One example where such decisions may be pertinent is for undertakings that are what are known as intermediary undertakings, i.e. are subsidiaries of a resolution entity that in turn has its own subsidiaries within the same resolution group that is subject to MREL.

[29] Chapter 4, Sections 3, 18 and 19 of the Resolution Act.
[30] Chapter 2, Section 1 of the Resolution Act.
[31] Chapter 4, Section 22 of the Resolution Act.
[32] This potential encompassed not just subsidiaries, but also a wider circle of undertakings. By virtue of the new rules, the Debt Office is obliged to make decisions concerning the MREL for all undertakings, provided they are not subsidiaries of a resolution entity (see Table 1).

Exemption from internal MREL

The Debt Office may decide that an institution that is a subsidiary of a resolution entity, i.e. an institution subject to an internal MREL, shall be exempt from MREL.[33] A decision of this nature is dependent on a number of conditions being met, including that both the subsidiary and the resolution entity are established in Sweden and part of the same resolution group, and that there is nothing to prevent the resolution entity from transferring or repaying funds to the subsidiary.[34]

In accordance with that which is set out in section 3, MREL for certain subsidiaries that are part of a resolution group may be limited to the loss absorption amount. One condition for this is that the subsidiary does not perform critical functions or if its failure does not constitute a threat to the resolution group's critical operations or to financial stability. In practice this type of limitation is equivalent to an exemption from MREL for these subsidiaries. This is because the internal MREL will not exceed the subsidiary's capital requirement and thus will not constitute any additional requirement.

For subsidiaries whose requirements will not be limited to a loss absorption amount, the Debt Office makes the following assessment in respect of the potential to decide on exemptions from the internal MREL.

The purpose of an internal MREL is to ensure that a subsidiary has sufficient own funds and eligible liabilities to cover a loss-absorption or recapitalisation need that may be expected to arise if the subsidiary fails. If these resources are not in place, is must be possible to recapitalise the subsidiary in a way other than by bailing in and converting the subsidiary's liabilities. An exemption from the internal MREL is conditional on there being other mechanisms in place to ensure that recapitalisation of a subsidiary will be possible to a sufficient extent and within the requisite time frame. The conditions that the regulatory framework place on the resolution authority's ability to grant exemptions constitute a number of prerequisites for the possibility of doing this.

Even if all of these conditions are met, there is no guarantee that it will be possible to provide funds for recapitalisation in all conceivable scenarios. For example, a resolution entity that has the capacity to supply resources to subsidiaries (i.e. is compliant with MREL at the consolidated level) at the time the exemption was decided, may not have the corresponding capacity at the time of the failure of the subsidiary. Accordingly, it is the view of the Debt Office that the fact that the conditions are met is not sufficient grounds to grant an exemption.

The Debt Office's assessment is that the security that is achieved through these subsidiaries being ordered to comply with an internal MREL, and which result in the loss-absorption and recapitalisation capacity being allocated to subsidiaries in advance, cannot be achieved in the same way through other mechanisms for supplying funds from the resolution entity. For this reason, the Debt Office intends, as a basic premise, not to apply the potential to allow exemptions from the internal MREL.

[33] This potential exemption also applies in certain limited cases for institutions that are subsidiaries of undertakings that are not resolution entities.

[34] Chapter 4, Section 20 of the Resolution Act.

Classification of national systemically important resolution entities (NSIREs)

The resolution entity's classification determines which provisions concerning MREL and subordination are applicable to it. What constitutes a GSIRE and ESIRE, respectively, is set out in law. The classification of an NSIRE is instead based on the Debt Office's assessment of whether the entity constitutes a probable systemic risk in the event of failure. A resolution entity that is not classified as systemically important, i.e. is not a GSIRE, ESIRE or NSIRE, is an ORE.

How the Debt Office intends to classify NSIREs is described below.

The assessment of whether a resolution entity is a probable systemic risk in the event of failure is associated with the evaluation conducted in the resolution planning process in respect of how an undertaking (or group) will be managed in the event of failure. When the Debt Office draws up a resolution plan, the authority shall consider the extent to which it is possible to wind up the undertaking through bankruptcy, liquidation, resolution proceedings or an equivalent foreign procedure in a way that does not lead to severe disruption to the financial system within the EEA.[35] If winding up an undertaking through bankruptcy or liquidation is judged to cause severe disruption to the financial system, the undertaking shall be managed through resolution in accordance with the resolution plan.

The Debt Office's view is that a failing undertaking that is judged to cause severe disruption to the financial system in the event of failure constitutes a probable systemic risk. Accordingly, an assessment showing that a failing undertaking needs to be placed in resolution means that the undertaking has been declared to be a probable systemic risk and thus, according to the Debt Office, fulfils the criterion for classification as an NSIRE.

This means that the undertakings the Debt Office is currently planning to manage in resolution – and which do not fulfil the criteria for classification as GSIREs or ESIREs – shall, according to the Debt Office, be deemed to be NSIREs. This also means that no undertaking is deemed to be an ORE. In addition, this means that the criteria for classifying certain undertakings as NSIREs – i.e. those undertakings that the Debt Office plans to manage in resolution but which do not fulfil the criteria for classification as GSIREs or ESIREs – are deemed to have been in place prior to 1 January 2022. This has significance for the phase-in of MREL and requirements concerning subordination (see sections 4 and 5).[36]

[35] Chapter 3, Sections 10 and 11 of the Resolution Act.
[36] See Govt Bill 2020/21:155 pp. 202f. compared with p. 177.

3. Determination and calculation of MREL

Legal basis

MREL shall be calculated on the basis of the undertaking's or, where applicable, the resolution group's risk-weighted and non-risk-weighted capital requirements.[37] In this respect, the new regulatory framework entails no change to how the requirement is calculated. Something that is new, however, is that the requirement will now be expressed as a percentage of the risk-weighted and non-risk-weighted exposure amounts, respectively, on which the calculation is based, rather than as a percentage of total liabilities and own funds (**TLOF**).[38] As with the capital requirements, MREL will thus consist of a risk-weighted requirement (risk-weighted MREL) and a non-risk-weighted requirement (non-risk-weighted MREL).[39]

The risk-weighted MREL shall be expressed as a percentage of the total risk-weighted exposure amount (**TREA**) calculated in accordance with Article 92(3) of the Capital Requirements Regulation or the own funds requirement in accordance with Article 11(1) of the Securitisation Regulation[40] multiplied by 12.5.[41] Non-risk-weighted MREL shall be expressed as a percentage of the total exposure measure (**LRE**) calculated in accordance with Articles 429 and 429a of the Capital Requirements Regulation.[42]

For both risk-weighted MREL and non-risk-weighted MREL, the requirement shall be calculated on the basis of the sum of a loss-absorption amount (**LAA**) and a recapitalisation amount (**RCA**). Both of these amounts are determined on the basis of the undertakings' risk-weighted and non-risk-weighted capital requirements, respectively.[43] The size of the LAA is determined in the same way for all undertakings, while the RCA can be tailored on the basis of factors including the resolution strategy to which an undertaking or group is subject. The requirements expressed in per cent are obtained by calculating the ratio made up of the sum of the LAA and RCA (numerator) and the aforementioned exposure amount (denominator). A more detailed description of how the requirements are calculated and expressed appears below.

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[37] Chapter 4, Section 3 of the Resolution Act.
[38] Chapter 4, Section 1 of the Resolution Act.
[39] The minimum requirement for bail-inable assets has not been calculated on the basis of non-risk-weighted capital requirements because no such binding capital requirements have been applied to Swedish undertakings. Given that non-risk-weighted capital requirements became binding on 28 June 2021, MREL will also be calculated in non-risk-weighted terms. In this respect, the application of the new rules is different to what was done in the past.
[40] Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014.
[41] Chapter 4, Section 1, second paragraph, point 1 of the Resolution Act.
[42] Chapter 4, Section 1, second paragraph, point 2 of the Resolution Act.
[43] Chapter 4, Sections 3 and 4 of the Resolution Act. For GSIREs and material subsidiaries of a global systemically important institution domiciled outside of the EEA, this applies because it is stated in Chapter 4, Section 2 that the Debt Office shall decide on an additional requirement, in excess of the risk-weighted ratio and leverage ratio pursuant to Articles 92a, 92b and 494 of the Capital Requirements Regulation if this is necessary in order to fulfil the conditions set out in Article 45c of the Recovery and Resolution Directive.

When determining the non-risk-weighted MREL, the Debt Office (in a way that is equivalent to that used previously) shall also take into account the requirements that apply for the use of the resolution reserve and other external funding in conjunction with resolution.[44]

Undertakings that are classified as GSIREs or ESIREs are subject to certain minimum levels for MREL.[45] The Debt Office may decide, having taken into account certain circumstances, that an undertaking classified as an NSIRE shall be subject to the same minimum levels for MREL that apply to ESIREs.[46] By virtue of such a decision, the requirements for subordination that apply to ESIREs also become applicable to NSIREs.[47]

For the risk-weighted MREL, a limitation is being introduced through the banking package to the effect that the Common Equity Tier 1 capital being used to comply with the combined buffer requirement may not simultaneously be used to comply with the risk-weighted MREL.[48] This double counting ban means that the combined buffer requirement must be complied with *in addition to* the risk-weighted MREL, which means in turn that that there is a total risk-weighted requirement level that amounts to the risk-weighted MREL plus the combined buffer requirement. However, for those undertakings that are resolution entities, the double counting ban results in no increase in the total risk-weighted requirement level (MREL plus the combined buffer requirement) because the Debt Office has achieved equivalent functionality by applying the liabilities proportion principle. Nevertheless, the ban does result in an actual increase in the total *internal* risk-weighted requirement level (internal MREL plus the combined buffer requirement) because the Debt Office has not applied the liabilities proportion principle to subsidiaries.

Figure 1. Calculation of MREL

$$Risk - weighted\ MREL\ (\%\ of\ TREA) = \frac{LAA_{TREA} + RCA_{TREA}}{TREA}$$

$$Non - risk - weighted\ MREL\ (\%\ of\ LRE) = \frac{LAA_{LRE} + RCA_{LRE}}{LRE}$$

Calculation of the loss absorption amount

The LAA shall be calculated in the same way for all undertakings that are subject to MREL.[49]

[44] Chapter 4, Section 5, point 1 of the Resolution Act.
[45] Articles 92a, 92b and 494 of the Capital Requirements Regulation and Chapter 4, Section 3, second paragraph of the Resolution Act.
[46] Chapter 4, Section 3, third paragraph of the Resolution Act.
[47] Chapter 4, Sections 13, 15 and 19 of the Resolution Act.
[48] Chapter 2, Section 1, second paragraph of the Capital Buffers Act (2014:966).
[49] For GSIREs, the calculation of LAA and RCA is done in order to determine the need for and size of the additional requirement that applies by virtue of Chapter 4, Section 2 in excess of the minimum levels that apply by virtue of the Capital Requirements Regulation.

For the risk-weighted MREL, the LAA is the sum of the undertaking's or, where applicable, the resolution group's risk-weighted **Pillar 1 requirements** and **Pillar 2 requirements.**[50]

For the non-risk-weighted MREL, the LAA is the undertaking's or, where applicable, the resolution group's **leverage ratio requirement** (3 per cent of LRE).[51]

Calculation of the recapitalisation amount

The RCA shall be the amount that makes it possible to once again comply with the risk-weighted Pillar 1 and Pillar 2 requirements and leverage ratio requirement, respectively, after resolution has been implemented.[52] The basic premise for calculation of RCA is thus the same as that for LAA, i.e. it shall amount to the sum of the applicable Pillar 1 and Pillar 2 requirements for the risk-weighted MREL and to the leverage ratio requirement for the non-risk-weighted MREL. Because the recapitalisation need of a failing undertaking is dependent on the measure that are implemented to deal with its failure, as well as the circumstances that are more generally deemed to prevail in conjunction with resolution, the Resolution Act provides some scope for tailoring the RCA:

- For undertakings that, according to the resolution plan, shall *be managed though bankruptcy or liquidation*, the Debt Office may decide that MREL shall be limited to only the LAA, i.e. the RCA is not applied in MREL at all.[53]
- For undertakings that, according to the resolution plan, shall *be managed through resolution or are part of a resolution group*:
    - the RCA in both the risk-weighted MREL and the non-risk-weighted MREL shall be adjusted taking into account the resolution measures set out in the resolution plan.[54]
    - the RCA in the risk-weighted MREL shall be adjusted taking into account the Pillar 2 requirements that are applicable once the resolution strategy has been implemented.[55]
    - the Debt Office may decide that the RCA in the risk-weighted MREL shall include a market confidence charge, i.e. a supplementary amount for the purpose of ensuring that the undertaking is able to maintain sufficient market confidence over a certain period after the resolution measures have been implemented.[56]

How the Debt Office intends to apply the rules on tailoring the RCA is set out below in the section *The Debt Office's policy positions*.

[50] Chapter 4, Section 3, point 1a and Chapter 4, Section 4, point 1a of the Resolution Act.
[51] Chapter 4, Section 3, point 2a and Chapter 4, Section 4, point 2a of the Resolution Act.
[52] Chapter 4, Section 3, points 1b and 2b and Chapter 4, Section 4, points 1b and 2b of the Resolution Act.
[53] Chapter 4, Section 4, second paragraph of the Resolution Act.
[54] This applies by virtue of Chapter 4, Section 3, points 1b and 2b, which specify that the risk-weighted and non-risk-weighted ratios, respectively, shall include an amount that makes it possible to comply with the capital requirements following implementation of resolution and Chapter 4, Section 5, point 2, which states that the RCA shall be based on the most recently reported values for the total risk exposure amount and the total exposure measure. See also Govt Bill 2020/21:155 p. 86.
[55] This applies by virtue of Chapter 4, Section 3, point 1b and Chapter 4, Section 4, point 1b of the Resolution Act, see also Govt Bill 2020/21:155 p. 86.
[56] Chapter 4, Section 6 of the Resolution Act.

Determination of non-risk-weighted MREL

When the Debt Office is determining the non-risk-weighted MREL, consideration shall be given to the requirements that apply for the purpose of allowing external funding to be supplied in the event that the bail-in tool or the government stabilisation tool is being applied.[57]

When applying the bail-in tool, the use of external funding becomes pertinent if the Debt Office decides to exempt **bail-inable liabilities** from write-down and conversion[58]. If a decision to allow such exemptions is made, funds from the resolution reserve (or alternative sources of funding) may be used, if necessary, in order to absorb losses or provide an injection of capital to the undertaking in resolution. However, such funds may only be used if the shareholders and creditors have first contributed to loss absorption and recapitalisation with an amount equivalent to at least 8 per cent of TLOF or, under certain circumstances, 20 per cent of risk-weighted assets based on the valuation that shall be conducted in conjunction with resolution.[59]

When applying the government stabilisation tool, external funding in the form of state aid (not funds from the resolution reserve) may be used to either participate in capitalisation or to temporarily take over ownership of an undertaking in resolution. In the same way as with the bail-in tool, this type of external funding is conditional on the shareholders and creditors having first contributed to loss absorption and recapitalisation with an amount equivalent to at least 8 per cent of the TLOF. The alternative condition of 20 per cent of risk-weighted assets is not applicable to this tool.[60]

Consequently, when the Debt Office is determining the non-risk-weighted MREL, the requirement may therefore be adjusted so that it corresponds to the levels the shareholders and creditors are to have first contributed. As described above, this is valid when applying the bail-in tool, provided that the Debt Office has first decided to exempt certain bail-inable liabilities from write-down and conversion. If the Debt Office makes the assessment that certain liabilities will be completely or partially exempted (or transferred to another undertaking), MREL shall be met using own funds or eligible liabilities that cover these liabilities.[61]

Application of the government stabilisation tool is dependent on factors including on there being severe disruption to the financial system and that the use of any other resolution tool or resolution measure is not sufficient.[62]

How the Debt Office intends, when determining the non-risk-weighted MREL, to take into account the requirements that apply to the ability to inject external funding is set out below in the section *The Debt Office's policy positions.*

Minimum levels for certain resolution entities

For resolution entities that are classified as GSIREs or ESIREs, the risk-weighted MREL and non-risk-weighted MREL may not fall below certain minimum levels.[63] For NSIREs, the Debt Office is able to decide to apply the same minimum levels as apply to an ESIRE.[64] If the risk-weighted MREL

[57] Chapter 4, Section 5, point 1 of the Resolution Act.
[58] Chapter 21, Sections 27 and 30 of the Resolution Act.
[59] Chapter 21, Section 30 of the Resolution Act.
[60] Chapter 22, Sections 1 and 2 of the Resolution Act.
[61] Chapter 4, Section 7 of the Resolution Act.
[62] Chapter 22, Section 2 of the Resolution Act.
[63] See footnote 45.
[64] Chapter 4, Section 3, third paragraph of the Resolution Act.

and non-risk-weighted MREL, calculated in accordance with that which is described above, are lower than these minimum levels, each MREL shall therefore be increased to the minimum level.

The levels of the capital requirements that are used to calculate LAA and RCA mean that the risk-weighted MREL and non-risk-weighted MREL will not fall below the minimum level except in those cases in which the RCA is subject to adjustments to take into account measures in the resolution plan (further information is provided below in this section). However, the minimum levels do fulfil a certain function aside from constituting a lower limit for the levels of MREL. On the one hand, its application has significance for the prerequisites for applying subordination requirements for resolution entities that are NSIREs (see section 4), and on the other the minimum levels have an impact on how MREL will be phased in ahead of 1 January 2024 (see section 5).

Table 3. Minimum levels for MREL

	Risk-weighted MREL (percentage of TREA)	Non-risk-weighted MREL (percentage of LRE)
GSIRE	18	6.75
ESIRE and NSIRE	13.5	5

Internal MREL

The legal basis described above also applies when determining internal MREL.[65] However, for **material subsidiaries** of non-EU-based global systemically important institutions that are not resolution entities, MREL shall amount to 90 per cent of the level that would have applied if the undertaking had been a resolution entity.[66] There is no equivalent provision for other subsidiaries.

The Debt Office's policy positions:

MREL for undertakings that shall be managed through bankruptcy or liquidation

For undertakings that, in accordance with the resolution plan or group resolution plan, shall be managed through bankruptcy or liquidation, the Debt Office may limit MREL (both risk-weighted and non-risk-weighted MREL) to the LAA. Accordingly, the RCA is not applied at all for these undertakings, which means that MREL will not exceed the undertaking's capital requirements. Consequently, MREL does not constitute an additional requirement for these companies alongside the capital requirements. When deciding to limit MREL to the LAA, the Debt Office shall specifically take into account the impact on financial stability.[67]

As was previously the case, the Debt Office intends to limit the requirement to the LAA for those undertakings for which, according to the resolution plan, management through bankruptcy or liquidation is deemed possible. The impact on financial stability of such a decision is taken into account during resolution planning when the assessment is made that the undertaking can be wound up through bankruptcy or liquidation without severe disruption to the financial system.

Unlike how the previous policy was applied, the Debt Office intends to also apply the potential to limit the requirement to the LAA to subsidiaries that are part of a resolution group, i.e. for undertakings that are subject to internal MREL. Subsidiaries will therefore be subject to an

[65] Chapter 4, Section 4 of the Resolution Act.
[66] Article 92b of the Capital Requirements Regulation.
[67] See Govt Bill 2020/21:155 pp. 165f.

assessment that is equivalent to those used for other undertakings, i.e. whether the undertaking can be wound up through bankruptcy or liquidation without severe disruption to the financial system. Consequently, the assessment will be based on whether the subsidiary performs critical functions or whether winding it up may have a negative impact on financial stability.

The assessment of critical functions will be conducted using the method applied in the Debt Office's resolution planning. If the undertaking is deemed to have critical functions, MREL will not be limited to the LAA.

For subsidiaries that are part of a resolution group, the assessment of impact on financial stability in the event of the subsidiary's failure needs to include an assessment of the impact on the rest of the resolution group, including the resolution entity. The Debt Office intends to use the definition of material subsidiaries in the Resolution Act as a basis for this assessment.[68] Undertakings that, according to this definition, are material subsidiaries may be assumed to have an (indirect) impact on financial stability as a consequence of their size within the resolution group (because the resolution group itself is deemed to perform critical functions and/or to have a potential impact on financial stability). As a basic premise, the Debt Office does not intend to limit MREL to the LAA for such subsidiaries.

In summary, the Debt Office intends, as a basic premise, to limit MREL to the LAA only for those subsidiaries that 1) are not deemed to have critical functions and 2) are not material subsidiaries. For subsidiaries that are close to the thresholds specified in the definition of a material subsidiary, the Debt Office will conduct an assessment that also includes certain qualitative aspects.

However, the fact that MREL is limited for individual undertakings that are part of a resolution group will not affect MREL at the consolidated resolution group level (i.e. the requirement that shall be complied with by the resolution entity). This is because the implementation of the resolution strategy is based on the entire resolution group – if the resolution entity is deemed to be failing – being held together in resolution, which is dependent on there being the capacity, when necessary, to recapitalise the operations of the entire group, including the affected subsidiaries.[69] However, if the subsidiaries' individual failure – i.e. in a situation in which the undertaking is failing – is not deemed to affect the resolution group's position, it is sufficient for this recapitalisation capacity to be found within the group (in the resolution entity).

Adapting the RCA for resolution measures

Pursuant to the Resolution Act, the RCA shall be an amount that makes it possible to comply with the capital requirements following implementation of resolution. What amount will be necessary at that time depends on several factors including how the resolution has been implemented, i.e. which resolution measures are being applied. If the resolution plan stipulates measures that have an impact on the levels of the capital requirements that need to be complied with after resolution, the RCA shall be adapted on this basis. Adaptation of this nature is achieved through an adjustment of the

[68] Chapter 2, Section 1 of the Resolution Act. A material subsidiary is a subsidiary that on an individual or consolidated basis holds more than five per cent of the consolidated TREA of its parent undertaking, generates more than five per cent of the total operating income of its parent undertaking, or has an LRE that is more than five per cent of the consolidated LRE of its parent undertaking.

[69] Provided that the resolution plan does not specify that only parts of the undertaking's operations will need to be recapitalised in conjunction with resolution.

reported exposure amount that forms the basis of the calculation of the risk-weighted and non-risk-weighted MREL (i.e. TREA and LRE).

Measures in the resolution plan that may make an adjustment of the exposure amount pertinent primarily include those resolution measures that involve only parts of an undertaking's operations being maintained following resolution and thus needing to be recapitalised. For example, this could be the case when the resolution plan states it is possible to separate the critical functions from the remaining parts of the undertaking, e.g. by using the sale of business tool or bridge institution tool.

Another circumstance that could result in a lower recapitalisation need after resolution is that the failing undertaking's balance sheet total has decreased as a result of the losses that caused its failure. However, this is not a consequence of the measures specified in the plan (and thus does not fulfil the conditions for adjustments). In addition, it is not certain that a smaller balance sheet results in equivalent reductions in the exposure amounts on which the calculation of RCA are based, at least with respect to the TREA.

In light of the above, adaptations to the RCA for measures in the resolution plan will only be made for undertakings whose preferred – and, where applicable, alternative – resolution strategy includes measures that entail only parts of the undertaking's operations needing to be recapitalised in conjunction with resolution.

Adapting the RCA for Pillar 2 requirements

Unlike the Minimum Capital Requirement, Pillar 2 requirements are not laid down in law, instead they are dependent on how Finansinspektionen decides to apply them. The development that led to an undertaking being placed in resolution, as well as the resolution measures themselves, are circumstances that could lead to Finansinspektionen deciding to change the Pillar 2 requirements (and buffer requirements) for the undertaking. Such changes have an impact on the undertaking's recapitalisation need. This is one of the reasons why the Debt Office has to adjust the amount in the RCA that corresponds to the Pillar 2 requirement in view of how the requirement will be applied after the preferred resolution strategy has been implemented.

A legal basis for adjusting the RCA on these grounds was already in place.[70] However, the Debt Office has not applied any such adjustments because an assessment has been made that it is not possible to determine with sufficient certainty which capital requirements will be applicable at a given time in the future. The Debt Office intends to apply the new rules in a comparable way. This means that the Pillar 2 requirement included in the RCA as a starting point will be the same as that which is included in the LAA.

Market confidence charge in the RCA

The Debt Office may increase the RCA in the risk-weighted MREL in order to ensure that an undertaking is able to maintain market confidence after resolution for an appropriate period of up to one year. This is called a *market confidence charge* and, as a basic premise, is an amount equivalent to the combined buffer requirement, excluding the countercyclical buffer requirement after resolution

[70] Article 2(9) of Commission Delegated Regulation (EU) 2016/1450.

is implemented or after write-down and conversion outside of resolution.[71] However, the amount can also be adjusted both up and down if this is deemed appropriate in order to maintain market confidence and to ensure that the undertaking is able to maintain its critical functions without preventive state aid.[72]

Corresponding provisions on the application of a market confidence charge in the RCA were already in place.[73] In conjunction with the Debt Office announcing how it would apply the previous rules, the agency stated that a market confidence charge is fundamentally justified but that the potential application of this should be held back because there was uncertainty at that time about whether the new rules would result in the buffer requirements being included in the RCA.[74] Consequently, no market confidence charge has been applied. Given that it is now clear that the regulatory framework continues to allow the application of a market confidence charge, a new policy position from the Debt Office is necessary.

It is not possible to determine with exact precision which capital level is necessary in order to ensure market confidence is maintained after resolution.[75] The basic premise is that the market confidence charge – if applied – shall equate to the combined buffer requirement, excluding the countercyclical buffer. This would give a total RCA that equates to the undertaking's total regulatory capital needs, excluding the countercyclical buffer and the Pillar 2 guidance. In practice, however, the recapitalisation need may, from the perspective of confidence, be both higher and lower than this amount. One factor that will probably be decisive in terms of confidence is how the undertaking's capital position relates to that of comparable competitors.

Even though the capital position is probably not the only decisive factor in terms of the market confidence an undertaking can achieve after resolution, the Debt Office believes that compliance with all applicable capital requirements is an *essential* prerequisite for maintaining market confidence. The basic view expressed by the Debt Office in the previous MREL policy therefore remains, i.e. that the RCA should include a market confidence charge equivalent to the buffer requirements that can be assumed to be applicable after resolution. Applying such a charge creates the scope, if this is required to maintain market confidence, to recapitalise the undertakings up to a level that corresponds to the entire regulatory capital need that can be presumed to be applicable after resolution.

It is the Debt Office's opinion that the need to apply a market confidence charge has been reinforced by the changes to the capital requirements resulting from the banking package (with larger buffer elements and application of the Pillar 2 guidance). Without applying a market confidence charge, these changes would result in a recapitalisation capacity that, relative to the capital position of comparable competitors (that are not subject to resolution) is significantly lower than that which applied under the previous application, which is in itself a disadvantage from the perspective of market confidence.

[71] Chapter 4, Section 6, second paragraph of the Resolution Act.
[72] Chapter 4, Section 6, third paragraph of the Resolution Act.
[73] Article 2(7)-(8) of Commission Delegated Regulation (EU) 2016/1450.
[74] Application of the minimum requirement for own funds and eligible liabilities (RG 2016/425), section 3.2.3.
[75] Ultimately, market confidence is a question of which assessments market participants are making at the time, both in terms of the undertaking suffering from a crisis and the measures put in place by the Debt Office and other authorities in order to deal with the situation.

In light of the above, the Debt Office intends to apply a market confidence charge for all resolution entities and for those undertakings that are subject to an internal MREL and whose requirements are not limited to the LAA.

The charge should be an amount equivalent to the basic amount in the regulatory framework, i.e. the combined buffer requirement, excluding the countercyclical buffer requirement. In addition, the amount should include the undertakings' Pillar 2 guidance. Including the guidance ensures that there is the capacity to recapitalise an undertaking in resolution up to a level that equates to the undertaking's total communicated capital needs (regulatory requirement and guidance). This also ensures that it will be possible for the undertaking's capital position after resolution to be on a par with comparable competitors that were not subject to resolution.

Including the Pillar 2 guidance results in a market confidence charge that is higher than the basic amount. Sufficient market confidence in an undertaking is a prerequisite for maintaining critical functions without preventive state aid. According to the Debt Office, the condition for setting a higher (or lower) amount is fulfilled.

Determination of non-risk-weighted MREL

When determining the non-risk-weighted MREL, the Debt Office shall take into account the requirements that apply for the purpose of allowing external funding to be supplied in the event that the bail-in tool or the government stabilisation tool is being applied. Use of external funding requires the Debt Office, when applying the bail-in tool, to have decided to exempt bail-inable liabilities from write-down or conversion, or, when applying the government stabilisation tool, that resolution tools and resolution measures are insufficient. If the Debt Office decides that bail-inable liabilities may need to be exempted, an undertaking shall comply with MREL using own funds or eligible liabilities that cover the liabilities that may be exempted or transferred.

It is the Debt Office's opinion that, when it is determining MREL, and within the scope of the resolution planning process, this means that it has to evaluate whether there is a need to use external funding. If such a need is deemed to exist, the Debt Office can set MREL on the basis of levels that allow the use of external funding. According to the Debt Office, the implications of the fact that it has to take into account the requirements for the use of external funding are thus not that these requirements shall be applied as a general minimum level for the non-risk-weighted MREL. [76] The assessment should instead be based on the resolution planning and the need for external funding that may have been identified there.

When determining the non-risk-weighted MREL, the Debt Office will therefore not generally be determining MREL on the basis of the levels that permit the use of external funding. Individual account is instead taken on the basis of the undertakings' resolution plans and what has been identified there in respect of the need to use external funding.

[76] Applying these requirements as a general minimum level could also entail undesirable effects on the total size of the MREL, e.g. for undertakings that are subject to resolution strategies where only parts of their operations will survive after resolution.

Application of minimum levels for NSIREs

For resolution entities that are classified as NSIREs, the Debt Office is able to decide to apply the same minimum levels as apply to ESIREs. When making such a decision, the Debt Office shall take into account certain circumstances linked to the resolution entity's ability to issue eligible liabilities.[77]

As set out above, the minimum levels will not exceed MREL calculated on the basis of the LAA and RCA, except in certain specific cases. From this perspective, it is of no major practical significance to NSIREs whether or not the Debt Office decides that these undertakings shall be subject to the same minimum levels as ESIREs. Nevertheless, a decision that the minimum levels shall also be applied to NSIREs may also have other consequences. If this decision is made, the provisions concerning requirements for subordination that apply to an ESIRE also become applicable to an NSIRE (further information in section 4).[78] If the Debt Office does not decide to apply the minimum levels to an NSIRE, the subordination rules applicable to OREs apply instead. These contain no mandatory requirements concerning subordination.[79]

The fact that the Debt Office is able to refrain from deciding on minimum levels thus means that the Debt Office, in contrast to what applies for ESIREs, is able to entirely refrain from imposing subordination requirements on NSIREs. In the previous MREL policy, the Debt Office has stated that the subordination principle shall, as a main rule, be applied to all undertakings that will be subject to resolution, but that exceptions may be made in those cases where it is possible to establish that subordination is unnecessary for enabling the restructuring or winding up of the undertaking through resolution.[80]

The Debt Office believes that there is reason to retain the flexibility of being able to refrain from imposing subordination requirements on those resolution entities for which this is permitted under the regulatory framework. However, the main rule should continue to be that those undertakings that will be managed through resolution shall be subject to subordination requirements and that such requirements shall be applied consistently to all resolution entities, irrespective of whether they are ESIREs or NSIREs. For these reasons, the Debt Office intends, as a main rule, to decide that the minimum levels for MREL that apply to an ESIRE shall also be applied to an NSIRE.

For those undertakings that, under applicable resolution plans, shall be managed in resolution, the Debt Office has assessed in all cases that the current subordination principle shall be applied, i.e. no exceptions from subordination have been made thus far. All undertakings have also continually issued eligible liabilities and the Debt Office has not identified any aggravating circumstances linked to the ability to issue such liabilities.

[77] Chapter 4, Section 3, third paragraph of the Resolution Act.

[78] Chapter 4, Sections 13, 15 and 19 of the Resolution Act. By virtue of Section 13, the subordination sub-requirement shall be applied to those NSIREs that are encompassed by a decision pursuant to the third paragraph of Section 3, third paragraph, i.e. the minimum levels for MREL. By virtue of Section 15, a decision to apply the alternative subordination sub-requirement may be made for those NSIREs that are encompassed by a decision pursuant to the third paragraph of Section 3. By virtue of Section 19, the Debt Office may decide on the minimum levels for subordination for those NSIREs that are encompassed by a decision pursuant to the third paragraph of Section 3.

[79] Chapter 4, Section 16 of the Resolution Act.

[80] Application of the minimum requirement for own funds and eligible liabilities (RG 2016/425), section 5.2.3.

Summary

Table 4 summarises the Debt Office's main policy positions concerning the determination and calculation of MREL.

Table 4. Summary of MREL

Type of undertaking	Risk-weighted MREL				Non-risk-weighted MREL		
1. Undertakings included in a resolution group	Minimum requirements	LAA	RCA	Market confidence charge	Minimum requirements	LAA	RCA
a) Resolution entity	13.5%	P1+P2R	P1+P2R	Yes**	5%	3%	3%
b) Subsidiary*	n/a	P1+P2R	P1+P2R	Yes**	n/a	3%	3%
c) Subsidiaries that shall be managed through bankruptcy or liquidation*	n/a	P1+P2R	n/a	No	n/a	n/a	n/a
2. Undertakings not included in a resolution group	Minimum requirements	LAA	RCA	Market confidence charge	Minimum requirements	LAA	RCA
a) Resolution entity	13.5%	P1+P2R	P1+P2R	Yes**	5%	3%	3%
b) Not a resolution entity (managed through bankruptcy or liquidation)	n/a	P1+P2R	n/a	No	n/a	n/a	n/a

Note: *Including parent undertakings within the EEA that are subsidiaries of a third-country undertaking. **Market confidence charge equates to the combined buffer requirement minus the countercyclical buffer plus the Pillar 2 guidance. As a basic premise, the Pillar 2 guidance is not applied to subsidiaries.[81] Minimum requirements denotes requirements for resolution entities that are classified as ESIREs or NSIREs. P1 stands for Pillar 1 requirements. P2R stands for Pillar 2 requirements.

[81] See Finansinspektionen's memorandum *New Capital Requirements for Swedish Banks* (FI Ref. 20-20990).

4. Compliance with MREL

Legal basis

MREL shall be complied with using own funds and **eligible liabilities.** The new regulatory framework entails some changes to the rules concerning which own funds and which liabilities may be used to comply with the requirement.

Own funds and double counting ban

- Common Equity Tier 1 capital that is used to comply with the combined buffer requirement may not simultaneously be used to comply with the risk-weighted MREL.[82] This double counting ban applies to both internal MREL and external MREL and means that undertakings must hold Common Equity Tier 1 capital *in addition to* MREL at an amount that equates to at least the combined buffer requirement. The Debt Office may decide to ban transfers of value (including dividends) for undertakings that are not complying with the combined buffer requirement in addition to the risk-weighted MREL.[83]
- For the internal MREL, the use of own funds is further restricted by the fact that own funds other than Common Equity Tier 1 capital may only be used if they fulfil certain specific conditions.[84]

Eligible liabilities

- As was the case previously, it is required that a liability fulfil certain conditions in order to be eligible for compliance with the requirement (including that the liability has a remaining maturity of at least one year).[85] These conditions are being made stricter in certain respects, mainly by new conditions being added, among them that the liabilities may not be subject to netting arrangements or possible to terminate early.[86] Liabilities that do not fulfil these additional conditions but which were issued prior to 27 June 2019 may however be used to comply with MREL.[87]
- Specific conditions for eligible liabilities are being introduced for subsidiaries of resolution entities, among them are that the liabilities shall 1) be issued to the resolution entity, 2) be possible to write down or convert outside of resolution and 3) be subordinated.[88] It is these specific conditions that characterise internal MREL and which are the main differences

[82] Chapter 2, Section 1, third paragraph of the Capital Buffers Act.
[83] Chapter 4, Section 29 of the Resolution Act. This situation only applies to undertakings that are complying with their capital requirements but not complying with the combined buffer requirement in addition to the risk-weighted MREL. An undertaking that is not complying with the combined buffer requirement, as part of its capital requirements is instead covered by the capital requirements regulations and becomes subject to supervisory measures via Finansinspektionen.
[84] Chapter 4, Section 12, first paragraph, point 2 of the Resolution Act. This encompasses own funds that are Common Equity Tier 1 capital or other own funds that the subsidiary has issued to an undertaking in the same resolution group or that the subsidiary has issued to an undertaking outside of the resolution group without this affected the resolution entity's control of the subsidiary at the time bail-in or conversion is implemented.
[85] Undertakings that will be wound up through bankruptcy or liquidation and which are neither resolution entities nor subsidiaries of a resolution entity shall comply with MREL in accordance with the same rules that apply to resolution entities (external MREL), but only the applicable parts. Chapter 4, Section 9 of the Resolution Act.
[86] Article 72b of the Capital Requirements Regulation.
[87] Article 494b(3) of the Capital Requirements Regulation.
[88] Chapter 4, Section 12 of the Resolution Act.

between internal MREL and external MREL. Under certain conditions, however, the Debt Office may allow internal MREL to be complied with using guarantees from the resolution entity (see below).[89]

- For external MREL, a liability need not be subordinated in order to be eligible.[90] Nevertheless, under separate provisions, certain resolution entities have to partly comply with MREL using own funds and **subordinated eligible instruments and liabilities.**[91]
- As was the case under the previous rules, liabilities that fulfil the conditions for being included in own funds are not eligible liabilities. However, the definition of eligible liability is being expanded to also include those parts of a 'supplementary capital instrument' that may no longer be included in own funds and which has a residual maturity of at least one year.[92]
- Unlike under the previous rules, liabilities that encompass derivatives (e.g. structured notes) can be eligible liabilities provided they fulfil certain conditions.[93]
- The main rule is that a resolution entity's MREL may only be complied with using liabilities that are issued by the resolution entity itself. However, liabilities that are issued by one of the resolution entity's subsidiaries can constitute eligible liabilities under certain conditions.[94]

Table 5 summarised the main conditions that apply to eligible liabilities for external and internal MREL, respectively.

Table 5. Conditions for eligible liabilities for external and internal MREL.

Conditions	External MREL	Internal MREL
Subordinated	No (subordination requirement pursuant to separate rules and decisions)	Yes
Issued	Externally	Internally (to a resolution entity)
Bail-inable outside of resolution	No	Yes
Remaining maturity	1+ year	1+ year
Other	Certain limitations to contractual terms relating to offsetting/netting, repurchase, termination etc.	Certain limitations to contractual terms relating to offsetting/netting, repurchase, termination etc.

Guarantees for compliance with an internal MREL

The Debt Office may, if certain conditions are fulfilled, allow a subsidiary that is an institution to entirely or partially comply with internal MREL using guarantees provided by the resolution entity.[95] In this respect, guarantees involve the resolution entity (through a contract) undertaking to supply funds to a subsidiary for the purpose of covering all or parts of the loss absorption or recapitalisation need that may be expected to arise in the subsidiary in the event of its failure. The guarantees thus constitute a substitute for the subsidiary having the equivalent capacity in the form of own funds and

[89] Chapter 4, Section 21 of the Resolution Act.
[90] Chapter 4, Section 9 of the Resolution Act.
[91] Chapter 4, Sections 13–19 of the Resolution Act.
[92] Chapter 4, Section 9 of the Resolution Act and Article 72a(1)(a) and (b) of the Capital Requirements Regulation
[93] Chapter 4, Section 10 of the Resolution Act.
[94] Chapter 4, Section 11 of the Resolution Act.
[95] Chapter 4, Section 21 of the Resolution Act.

eligible liabilities on its own balance sheet, i.e. complying with internal MREL in accordance with the main rule (see Table 5).

The conditions that have to be fulfilled in order for guarantees to be used to comply with internal MREL include that the guarantee shall equate to not less than the amount of the internal MREL that it replaces, that the guarantee is covered by collateral that equates to not less than 50 per cent of the guaranteed amount and that the guarantee is redeemed when the subsidiary no longer has the ability to repay its maturing liabilities or when a default has been established. Use of guarantees for internal MREL is only permitted on the condition that both the subsidiary and the resolution entity are established in Sweden and that the resolution entity is complying with MREL at a consolidated resolution group level.

Subordination requirement

As a basic premise, a liability need not be subordinated in order to be used to comply with external MREL. However, separate provisions stipulate that GSIREs and ESIREs shall comply with MREL using own funds and subordinated eligible instruments and liabilities in accordance with a *subordination sub-requirement*[96] or, if the Debt Office so decides, an *alternative subordination sub-requirement*[97]. For ESIREs, the requirement or alternative sub-requirement may not be below certain *minimum subordination levels*.[98] For NSIREs, the Debt Office is able to decide to apply subordination requirements according to the same rules that apply to ESIREs.[99] Under certain circumstances, the Debt Office may also decide on subordination requirements for OREs.[100]

The subordination requirements constitute part of MREL (hence the name sub-requirements) and may therefore never exceed the risk-weighted or non-risk-weighted ratios for MREL.[101] For simplicity, the sub-requirement is referred to as the subordination requirement for the remainder of this memorandum. In the same way as for MREL, the subordination requirements shall be expressed as a risk-weighted ratio (risk-weighted subordination requirement) and a non-risk-weighted ratio (non-risk-weighted subordination requirement).[102] The amount that shall be determined pursuant to the provisions for the subordination requirement or the alternative subordination requirement shall therefore be related to the respective exposure measures (TREA and LRE).

As with MREL, the basic premise is that own funds may be used to comply with the subordination requirements. However, the double counting ban also applies to the subordination requirements, which means that the capital being used to comply with the combined buffer requirement cannot simultaneously be used to comply with the *risk-weighted* subordination requirement.[103] How the double counting ban is to be related to the levels of subordination is described in more detail below

[96] Chapter 4, Section 13 of the Resolution Act.
[97] Chapter 4, Section 15 of the Resolution Act.
[98] Chapter 4, Section 18 of the Resolution Act.
[99] Chapter 4, Sections 13, 15 and 19 of the Resolution Act.
[100] Chapter 4, Section 16 of the Resolution Act.
[101] Govt Bill 2020/21:155 p. 96.
[102] Govt Bill 2020/21:155 p. 97.
[103] Govt Bill 2020/21:155 p. 97.

under the heading for the alternative subordination requirement, and in the section on the Debt Office's policy positions concerning the level for the alternative subordination requirement.

Minimum levels for subordination

The minimum levels for subordination are the same as the minimum levels that apply to MREL (see Table 3, above). As with MREL, the minimum levels are directly applicable to GSIREs and ESIREs.[104] For NSIREs, the Debt Office may decide to apply the same minimum levels as apply to ESIREs.[105,,106]

Subordination requirement

The basic premise is that the subordination requirement shall be an amount equivalent to 8 per cent of TLOF. However, the level of the requirement may be lower than 8 per cent of TLOF, partly as a consequence of the subordination level being limited by the level of MREL, and partly as a result of it being possible to adjust the requirement to a lower level under certain conditions.[107]

The subordination requirement shall be complied with by GSIREs and ESIREs. If the Debt Office has decided that the minimum levels for MREL shall be applied to an NSIRE, the requirement also applies to these resolution entities.[108] As set out in section 3, the Debt Office intends as a main rule to decide that the minimum levels for MREL shall be applied to NSIREs. Accordingly, the basic premise is that all resolution entities that are GSIREs, ESIREs and NSIREs will be subject to the subordination requirement. As stated below, however, the Debt Office can decide on an alternative subordination requirement. In which case, the alternative subordination requirement applies *instead of* the subordination requirement (but the minimum levels still apply).

Alternative subordination requirement

Under certain conditions, the Debt Office may decide on an alternative subordination requirement.[109] The alternative subordination requirement applies instead of the subordination requirement and may be set at an amount that does not exceed the higher of:

- 8 per cent of TLOF

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[104] Articles 92a, 92b and 494 of the Capital Requirements Regulation and Chapter 4, Section 18 of the Resolution Act.
[105] Chapter 4, Section 19 of the Resolution Act.
[106] Minimum levels are not applicable to OREs. For these entities, subordination requirements only apply if the Debt Office decides on an alternative sub-requirement as set out below.
[107] In accordance with Chapter 4, Section 13, third paragraph and Chapter 4, Section 14, downward adjustments of the minimum level of 8 per cent of TLOF can take place in the following two cases:
1. Upon application by the undertakings, the Debt Office may set a level that is lower than 8 per cent of the TLOF, but never lower than the amount given by the formula $\left(1-\left(\frac{3{,}5\%*TREA}{18\%*TREA+komb.buffertkrav}\right)\right)*8\%\ TLOF$. This lower level is only permitted on condition that certain criteria in the Capital Requirements Regulation are met.
2. For an ESIRE, the sub-requirement, under certain conditions, may not exceed an amount equivalent to 27 per cent of the total risk-weighted exposure amount.
[108] Under Chapter 4, Section 13, the subordination sub-requirement applies to an NSIRE if it is encompassed by a decision pursuant to the third paragraph of Section 3, i.e. the minimum levels for MREL. The subordination sub-requirement is not applicable to OREs.
[109] Chapter 4, Section 15 of the Resolution Act.

- Two times the undertaking's Pillar 1 and Pillar 2 requirements plus the combined buffer requirement (prudential formula).

The requirement may not exceed the higher of these two amounts but does not need to be equal to it.[110] Accordingly, the Debt Office does not need to decide on requirements that are equal to the higher of the two levels and can instead decide on a lower level (but never lower than the minimum levels for subordination).

The alternative subordination requirement can be applied to all resolution entities (for NSIREs on the condition that the resolution entity is subject to the minimum levels for MREL).[111] The Debt Office's potential to apply the alternative subordination requirement to GSIREs, ESIREs and NSIREs applies only if one of the following conditions are met:[112]

- There is a substantive impediment to the implementation of write-down or conversion of liabilities or to the implementation of resolution. Remedial action in accordance with an order from the Debt Office has not been taken or the Debt Office's powers under the Resolution Act are not sufficient to completely or partially remove or limit the impediment and application of the alternative subordination requirement is deemed to be an alternative measure in order to rectify the impediment; or
- The size, legal form or ownership structure of the resolution entity, the nature and scope, risks or complexity of its operations or the resolution entity's links to other undertakings or the financial market may limit the potential to implement write-down or conversion or the implementation or resolution; or
- The resolution entity is subject to a Pillar 2 requirement that places the undertaking among the top 20 per cent of those undertakings that are subject to MREL (i.e. the Pillar 2 requirement the resolution entity is subject to is included in the category of undertakings that have the highest risk value and, in this respect, is among the top 20 per cent of all undertakings that are subject to MREL).

The Debt Office shall also take into account certain circumstances when making decisions concerning application of the alternative subordination requirement.[113] These circumstances primarily relate to the resolution entity's prerequisites for issuing subordinated eligible instruments and liabilities (including business model etc.).

The double counting ban also applies to the subordination requirements, which means that the capital being used to comply with the combined buffer requirement cannot simultaneously be used to comply with the *risk-weighted* subordination requirement. One question is therefore whether the level of subordination shall be determined taking into account, i.e. adjusting for, the fact that an undertaking is obliged to hold capital in order to comply with the combined buffer requirement in addition to MREL and the alternative subordination requirement.[114] It is incumbent on the Debt Office to adopt a position on this question.[115] The Debt Office's policy positions are set out below.

[110] Govt Bill 2020/21:155 p. 101.
[111] According to Chapter 4, Section 16 of the Resolution Act, OREs can also be subject to the alternative sub-requirement.
[112] Chapter 4, Section 15, second paragraph of the Resolution Act.
[113] Chapter 4, Section 17 of the Resolution Act.
[114] Govt Bill 2020/21:155 p. 101.
[115] Ibid p. 102.

Chapter 5, Section 1 of the Debt Office's Resolution Regulations (RGKFS 2015:2), as worded in the version that entered into force on 1 July 2021, stipulates that all GSIREs, ESIREs and NSIREs may be subject to an alternative subordination requirement.

The Debt Office's policy positions:

Phasing out of existing resolvability principles

The Debt Office has previously applied a number of principles for means of compliance with MREL. The purpose of these principles has been to ensure that MREL is complied with in a way that strengthens undertakings' resolvability and allows capital to be used in the way intended in the capital requirements regulations. The principles have been formulated on the basis of the international standard (known as the TLAC agreement) that formed the basis for the parts of the banking package that relate to MREL. This standard is now being implemented in Swedish law through the banking package, which introduces rules that have an equivalent function to the resolvability principles. In view of this, the principles will no longer be applied. This encompasses:

- the liabilities proportion principle, which is being partially replaced with the double counting ban,
- the subordination principle, which is being replaced with the subordination requirement, and
- principles for how subsidiaries shall comply with MREL, which is being replaced with specific rules relating to the internal MREL.

The principles will be phased out in conjunction with the entry into force of new decisions concerning MREL (including target levels), in accordance with that which is set out in section 5.

Minimum levels for certain resolution entities

As with MREL, the Debt Office intends to decide on minimum levels for subordination for the resolution entities that are classified as NSIREs. This ensures that MREL and subordination is applied consistently among all ESIREs and NSIREs.

Application of the alternative subordination requirement

As set out in section 2, all Swedish resolution entities are either ESIREs or NSIREs. Section 3 also describes how the Debt Office intends, as a main rule, to make decisions that the minimum levels for MREL shall be applied to NSIREs.

GSIREs, ESIREs and NSIREs that are subject to the minimum levels for MREL shall comply with the subordination requirement. However, the Debt Office may decide that these resolution entities shall comply with the alternative subordination requirement instead of the subordination requirement. As set out in the Debt Office's Resolution Regulations, as worded in the version that entered into force on 1 July 2021, all of these resolution entities may be subject to the alternative subordination requirement.

Application of the alternative subordination requirement is dependent on one of the conditions set out in Chapter 4, Section 15, second paragraph, points 1–3 of the Resolution Act being fulfilled. According to the condition under the second point, the alternative subordination requirement may be applied if the resolution entity has certain characteristics (size, complexity, links to other undertakings and markets etc.) that may limit the potential to implement resolution, write-down or conversion. All these characteristics constitute central components of the assessments made by the

Debt Office in each (group) resolution plan, including the assessment of the prerequisites for the ability to implement resolution (the resolvability assessment).

More specifically, the Debt Office analyses during the resolution planning process the size of the resolution entities, and the nature and complexity of their operations within the scope of what is termed financial and operational dependencies (can also be described as internal and/or external dependencies).[116] For all Swedish resolution entities, the Debt Office makes the assessment that there are significant dependencies (e.g. between critical functions, critical services and core business lines) that have an impact on a resolution procedure and can limit the potential to implement such a procedure. For this reason, resolution entities are also subject to a resolution strategy that encompasses bail-in and in which the undertaking or group is managed collectively in resolution (known an as an open bank bail-in).

An additional distinguishing factor for ESIREs is the international nature of their operations and the dependency between different subsidiaries and branches. For NSIREs, for the purpose of ensuring an orderly resolution procedure, the Debt Office has drawn up an alternative resolution strategy: bail-in combined with bridge institution (the entire undertaking or group is also managed collectively in resolution in this case).

All Swedish resolution entities are ranked at the top of the O-SII list published by Finansinspektionen.[117] The O-SII list is based on a quantitative model that measures undertakings' systemic significance based on a number of factors (size, significance to the economy, complexity and/or interconnectedness with the financial system). [118] This means that these resolution entities have a risk structure that can limit the potential for resolution or write-down or conversion, especially in a scenario involving a wider systemic crisis in which a stressed situation for one resolution entity may lead to spill-over effects for others.

All resolution entities also have a funding model that encompasses deposits from large undertakings, unsecured bonds and/or commercial paper with a short residual maturity. In the event of concern that the resolution entity will fail, there is a risk that a resolution entity will have liquidity problems unless existing creditors want to renew outstanding funding. This may limit the potential for write-down or conversion of eligible liabilities because remaining creditors may need to account for a larger portion of the loss absorption and recapitalisation.

In view of this, the Debt Office's assessment is that all undertakings that are ESIREs and NSIREs have characteristics that permit application of the alternative subordination requirement. It can also be noted that all undertakings that are currently ESIREs and NSIREs are included in the category of undertakings that have the highest risk value and are in the top 20 per cent of undertakings that are

[116] See Commission Delegated Regulation (EU) 2016/1075 which specifies the content of resolution plans.

[117] *Identifiering av kapitalbuffertpåslag för övriga systemviktiga företag (O-SII)* [Identification of capital buffer increment for systemically important institutions (O-SIIs)], FI Ref. 20-10805.

[118] According to the EBA guidelines on criteria for establishing the conditions for application of Article 131(3) of Directive 2013/36/EU (CRD) in conjunction with the assessment of other systemically important institutions (O-SIIs), EBA/GL/2014/10.

subject to MREL. For this reason as well, the conditions are in place, at least currently, to apply the alternative subordination requirement.[119]

When applying the alternative subordination requirement, the Debt Office shall also take into account certain circumstances that relate to the resolution entity's potential to issue subordinated eligible instruments and liabilities. As described in section 3, the Debt Office has applied the subordination principle to all undertakings that, according to the applicable resolution plans, shall be managed in resolution. For these undertakings, the Debt Office has not identified any aggravating circumstances linked to the ability to issue subordinated eligible instruments and liabilities.

For some resolution entities, subordination may be achieved to the same degree through the subordination requirement.[120] However, the Debt Office's potential to apply the alternative subordination requirement is not contingent on the fact that the alternative subordination requirement always (at the time and for all resolution entities) has to lead to a higher subordination requirement than the subordination requirement. The Debt Office's intention is that MREL, including subordination, should result in appropriate requirements in accordance with the fundamental basis of the Debt Office policy. This means that MREL shall ensure an orderly resolution procedure by determining an adequate level of loss absorption and recapitalisation capacity, but also enhance financial stability by encouraging good risk management in which the undertaking's operations, risk structure etc. are reflected in an appropriate way in the regulatory requirements placed on the undertaking. These effects are further enhanced by a subordination requirement. In order to ensure an appropriate application, the Debt Office intends to apply the alternative subordination requirement to all resolution entities and for the level of the requirement to be determined in accordance with that which is set out in the following section.

Level of the alternative subordination requirement

The level of the alternative subordination requirement embodies two issues; the application of the double counting ban in relation to the subordination requirement, and also how the level shall be determined.

The double counting ban means that an undertakings shall comply with the combined buffer requirement *in addition to* the risk-weighted MREL, including the subordination requirement.[121] This gives an *effective (de facto)* subordination requirement (total need for own funds and subordinated eligible instruments and liabilities) that is higher than the subordination requirement expressed as part of the risk-weighted MREL.

According to the Debt Office, the levels determined in accordance with the alternative subordination requirement should take into account the undertaking's obligation to comply with the combined buffer requirement in addition to MREL. This means that the undertaking's total need for own funds and subordinated eligible instruments and liabilities can amount, at most, to the amounts that are

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[119] Risk value is defined here as a percentage of TREA. Based on data as at 31 December 2019. Requirements at the consolidated level have been excluded because the condition described applies to those undertakings that shall be subject to MREL.

[120] Because 8 per cent of TLOF can be used to determine an amount for subordination under both the subordination sub-requirement and the alternative subordination sub-requirement.

[121] This means that the Debt Office shall determine a risk-weighted MREL, e.g. 25 per cent of TREA, and then state how high a proportion of this requirement shall be subordinated, e.g. 20 per cent. In this example, the undertaking's total need for own funds and subordinated eligible instruments and liabilities is higher than 20 per cent because the combined buffer requirement is complied with in addition to these requirements.

given by the prudential formula or 8 per cent of TLOF. According to the Debt Office, an interpretation such as this is more consistent with Article 45b(7) of the Recovery and Resolution Directive. Consequently, when the Debt Office is calculating the amount for an undertaking's risk-weighted subordination requirement (as part of MREL), a deduction will be made for the undertaking's obligation to comply with the combined buffer requirement in addition to the risk-weighted MREL.

The level of the alternative subordination requirement may be set at an amount that is *up to but does not exceed* the higher of 8 per cent of TLOF or an amount calculated using the prudential (supervisory) formula. In order to achieve agreement with how MREL will be determined (see section 3), the Debt Office intends to determine the alternative subordination requirement as follows:

1. The prudential formula less the combined buffer requirement.
2. 8 per cent of TLOF but limited to the level of the non-risk-weighted MREL (i.e. 6 per cent of LRE).

The levels calculated in accordance with 1 and 2 will be stated as a risk-weighted ratio and non-risk-weighted ratio, respectively. As with MREL, in practice it is the higher of these subordination levels (i.e. the actual amount) that shall be complied with.

Applying the rules in the manner set out above results in the non-risk-weighted MREL (6 per cent of LRE) constituting a minimum level that shall always be complied with using own funds and subordinated eligible instruments and liabilities.[122] In addition to this, undertakings will be bound by the risk-weighted MREL, where the level of subordination is determined by the prudential formula. This creates agreement with both how the risk-weighted MREL and non-risk-weighted MREL are calculated and expressed and with how the risk-weighted and non-risk-weighted requirements are applied within the field of capital regulations.

Using only the non-risk-weighted subordination level (8 per cent of TLOF) as a basis, without taking into account the risk-weighted level that applies by virtue of the prudential formula, could result in a higher subordination requirement for some resolution entities. Although the basic premise is that a higher degree of subordination strengthens resolvability, the Debt Office does not believe that applying this would be appropriate since it could lead to resolution entities whose operations have lower risk (low risk weights) being given a higher subordination requirement than resolution entities whose operations have a higher risk (high risk weights).

Guarantees for compliance with an internal MREL

The Debt Office intends to decide on MREL including the RCA only for those subsidiaries that perform critical functions or may have a negative impact on financial stability (see section 3). For other subsidiaries, i.e. those for which management through bankruptcy or liquidation is deemed possible, the Debt Office intends to limit MREL to the LAA. Because this means that MREL may not

[122] On condition that 8 per cent of total liabilities and own funds is higher than 6 per cent of the non-risk-weighted exposure measure. This applies generally to Swedish undertakings.

exceed the capital requirements, the question of compliance with MREL using guarantees from the resolution entity is not pertinent for these subsidiaries.

As set out in section 2, the Debt Office can decide to exempt subsidiaries from an internal MREL if the subsidiary's loss absorption and recapitalisation need can be met in another way. As an alternative to exempting subsidiaries from the requirement, the Debt Office can instead allow the internal MREL to be complied with using a guarantee from the resolution entity.[123]

The Debt Office does not believe that the assurance achieved through subsidiaries being ordered to comply with an internal MREL can be achieved in the same way through guarantees. This is also the case if it is done in the form of guarantees that fulfil the conditions of the Resolution Act. For this reason, the Debt Office intends, as a main rule, to not allow an internal MREL to be complied with entirely or partially using guarantees from the resolution entity.

Summary

Table 6 summarises the Debt Office's main policy positions concerning subordination (compliance with MREL).

Table 6. Summary of subordination

Type of undertaking	Risk weighted subordination		Non-risk weighted subordination	
1. Undertakings included in a resolution group	Minimum requirements	Alternative subordination requirement	Minimum requirements	Alternative subordination requirement
a) Resolution entity	13.5%	2*(P1+P2R)	5%	8% of TLOF, max 6% of LRE
b) Subsidiary*	Subordination equates to MREL			
c) Subsidiaries that shall be managed through bankruptcy or liquidation*	n/a			
2. Undertakings not included in a resolution group	Minimum requirements	Alternative subordination requirement	Minimum requirements	Alternative subordination requirement
a) Resolution entity	13.5%	2*(P1+P2R)	5%	8% of TLOF, max 6% of LRE
b) Not a resolution entity (managed through bankruptcy or liquidation)	n/a			

Note: *Including parent undertakings within the EEA that are subsidiaries of a third-country undertaking. Minimum requirements denotes requirements for resolution entities that are classified as ESIREs or NSIREs. P1 stands for Pillar 1 requirements. P2R stands for Pillar 2 requirements.

[123] Govt Bill 2020/21:155 p. 80.

5. Decision-making process and phase-in

Legal basis

For the purpose of easing the transition to the new MREL requirements, there are transitional provisions.[124] The new rules also contain deadlines stipulating how quickly an undertaking shall comply with MREL following implementation of write-down or conversion or after an undertaking has been classified as a resolution entity for the first time.[125] In addition, there are other provisions relating to how MREL is to be decided.

Transitional provisions

The transitional provisions contain five different points that are relevant to decisions concerning MREL:[126]

1. The amendments to the Resolution Act entered into force on 1 July 2021
2. The Debt Office shall make decisions concerning MREL (in accordance with the new regulatory framework) that shall apply as of 1 January 2024, or, if certain conditions are fulfilled, a later date decided by the Debt Office.
3. For those undertakings that fulfil the conditions for being classified as ESIREs and NSIREs prior to 1 January 2022, the Debt Office shall make decisions concerning minimum levels for MREL and minimum levels for subordination that shall apply as of 1 January 2022.[127]
4. In order to enable a linear build-up of MREL, the Debt Office shall, ahead of 1 January 2024 (or a later date decided by the Debt Office as per point 2),
    a) decide on a target level for MREL that shall apply as of 1 January 2022, and
    b) when necessary and every 12 months, notify the undertaking of an informative level for its MREL.
5. A decision concerning MREL under the previous rules shall apply until such time as a decision concerning MREL under the new regulatory framework has been made. The Debt Office's powers to deal with substantive impediments to resolution (Chapter 3, Section 24 of the Resolution Act) as per the older wording of the Resolution Act apply to a decision concerning MREL made under the previous rules.

The transitional provisions set out under points two and four encompass both undertakings that are resolution entities and undertakings that are not resolution entities. The provisions encompass MREL, including the subordination requirement. The minimum levels pursuant to point three only encompass ESIREs and NSIREs. The purpose of the *informative level* as set out under point 4b is

[124] Govt Bill 2020/21:155 pp.141ff.
[125] Chapter 4, Sections 24–27 of the Resolution Act.
[126] Transitional provisions to the Resolution Act, Govt Bill 2020/21:155 pp. 50–51.
[127] In accordance with Chapter 4, Section 3, second and third paragraphs, and Sections 18 and 19 of the Resolution Act.

to facilitate the gradual build-up ahead of 1 January 2024. The requirement decided and the transition period may also be revised.[128]

Within the scope of the provisions concerning entry into force and transition, the Debt Office shall determine intermediate target levels and inform undertakings of informative levels for their MRELs (see policy positions below).[129]

There are no specific transitional provisions for the double counting ban. This means that the obligation to comply with the combined buffer requirement in addition to the risk-weighted MREL applies as of the point at which the minimum levels referred to under point 3 and the target levels referred to under point 4a become applicable.[130]

Deadlines

GSIREs shall comply with the subordination requirement or the alternative subordination requirement as of three years after the day on which the entity has been determined to be such an entity.[131] Undertakings that fulfil the conditions for being classified as ESIREs and NSIREs only after 1 January 2022 shall comply with minimum levels and the subordination requirement or alternative subordination requirement as of three years after the day on which the entity fulfils the conditions for being subject to them.[132]

Following implementation of write-down or conversion, ESIREs and NSIREs shall comply once again with the minimum levels for subordination after two years.[133] The Debt Office shall determine an appropriate deadline by which time a resolution entity (GSIRE, ESIRE, NSIRE or ORE) shall comply with MREL, including the subordination requirement, following implementation of write-down or conversion. The same applies to subsidiaries.[134]

Other provisions relating to decisions concerning MREL

Decisions concerning MREL shall be made in connection with the annual resolution planning process as set out in Chapter 3 of the Resolution Act.[135] For undertakings for which the Debt Office deems management through bankruptcy or liquidation possible, the resolution plan is updated, and thus a decision is made concerning MREL, every other year.[136]

In accordance with that which is stated in section 3, the LAA is calculated on the basis of existing own funds requirements, while the RCA shall be an amount that makes it possible to comply with these requirements once again following resolution.[137] When determining the RCA, the Debt Office

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[128] Govt Bill 2020/21:155 p.142.
[129] Govt Bill 2020/21:155 p.143.
[130] See also Commission Notice (2020/C 417/02), question 6.
[131] Chapter 4, Section 24 of the Resolution Act.
[132] Chapter 4, Section 25, point 1 of the Resolution Act.
[133] Chapter 4, Section 25, point 2 of the Resolution Act.
[134] Chapter 4, Section 26 of the Resolution Act.
[135] Chapter 4, Section 1 of the Resolution Act. Resolution plans and group resolution plans shall be updated annually or at the time of each change to the institution's or group's legal or organisational structure, business activities or financial position that could have a material impact on the effectiveness of the plan or that otherwise necessitates amendment of the plan. See Section 7 of the Resolution Ordinance (2015:1034).
[136] In accordance with Commission Delegated Regulation (EU) 2019/348 on simplified obligations.
[137] Chapter 4, Sections 3 and 4 of the Resolution Act.

shall also use the most recently reported values for TREA and LRE as a basis.[138] The Debt Office shall also adapt MREL to the Pillar 2 requirements continually and without delay.[139]

The Debt Office's policy positions:

Transitional provisions

The Debt Office intends to make decisions concerning MREL (and subordination requirements) in December 2021.[140] In accordance with the transitional rules, these decisions will encompass both MREL, and subordination requirements, that will apply as of 1 January 2024, and the target levels that will apply as of 1 January 2022. For ESIREs and NSIREs, the minimum levels for MREL and subordination apply as of 1 January 2022. This means that it will not be possible for the target levels for ESIREs and NSIREs to be below the minimum levels. In December 2022, the Debt Office will decide on an informative level for MREL (and subordination requirements) that will apply as of 1 January 2023 and until such time as MREL has fully entered into force on 1 January 2024.

When the target levels begin to apply, the Debt Office's existing resolvability principles are also phased out (see the Debt Office's policy positions in section 4).

The combined buffer requirement shall be complied with in addition to the risk-weighted MREL as of 1 January 2022, both for resolution entities and for subsidiaries. This has significance for the target levels decided by the Debt Office (see below).

Because the Debt Office shall inform undertakings of an informative level for their MREL and subordination requirements at least every 12 months, such decisions will be made in December 2022. The purpose of decisions concerning informative levels is to allow a linear phase-in ahead of 1 January 2024, but they are not binding in the same way as the target level that applies as of 1 January 2022.[141] Nevertheless, the Debt Office continually assesses whether there are substantive impediments to resolution. Because the phase-in ahead of 1 January 2024 is to take place in a linear fashion, the informative levels serves as a reference value that undertakings should comply with.

In order to achieve a purposeful transition period with a linear phase-in, the Debt Office intends to take into account previous decisions and principles concerning MREL when determining the target level on 1 January 2022. There is variation in terms of how far undertakings have come in their compliance with the subordination level dictated by the previous MREL policy. However, using existing compliance levels as a basis would entail the target levels for 1 January 2022 being set differently for different undertakings, which would also result in the phase-in ahead of 1 January 2024 taking place at different speeds. Consequently, the Debt Office intends to calculate the target levels for 1 January 2022 in accordance with Table 7 below.

[138] Chapter 4, Section 5 of the Resolution Act.
[139] Chapter 4, Section 8 of the Resolution Act.
[140] This has also been communicated in a news article published on 18 February, see https://www.riksgalden.se/sv/press-och-publicerat/pressmeddelanden-och-nyheter/nyheter/2021/klargorande-med-anledning-av-lagradsremiss-om-andringar-i-regelverket-om-hantering-av-finansiella-foretag-i-kris/.
[141] See Commission Notice (2020/C 321/01), question 49.

Table 7. Target levels for MREL 1 January 2022

Type of undertaking	Risk-weighted MREL (TREA)		Non-risk-weighted MREL (LRE)	
	MREL	Of which subordination	MREL	Of which subordination
Resolution entity (ESIRE & NSIRE)	MREL minus market confidence charge	13.5%	5%	5%
Subsidiary	MREL minus market confidence charge and combined buffer requirement	n/a	Risk-weighted MREL minus market confidence charge (recalculated to LRE)	n/a
Undertaking that shall be managed through bankruptcy or liquidation*	Same as 1 January 2024 (MREL does not exceed capital requirements)			

Note: *Including any subsidiaries of resolution entities. The phase-in is also illustrated in the following section on impact assessment.

MREL has not previously included a market confidence charge. Application of this charge to MREL involves the requirement increasing by a corresponding amount. Furthermore, the double counting ban (which is being phased in) means that undertakings must hold capital that equates to the size of the combined buffer requirement in addition to the risk-weighted MREL. This increases the total risk-weighted requirement (MREL + capital buffers) that undertakings are obliged to comply with.

However, for undertakings that are ESIREs and NSIREs, the double counting ban does not result in any actual increase because the liabilities proportion principle for these undertakings has fulfilled the same function as the double counting ban. All in all, for ESIREs and NSIREs, the new application entails an increase in the risk-weighted requirement that equals the market confidence charge. For ESIREs and NSIREs, the target level for the risk-weighted MREL for 1 January 2022 will therefore be set at MREL excluding the market confidence charge. This means that it will be the market confidence charge that will be phased in over two years up to 1 January 2024. Because the phase-in is to be linear, the Debt Office intends to decide that the informative level that will apply as of 1 January 2023 shall contain 50 per cent of the market confidence charge.

For subordination, the Debt Office intends to decide on a target level that applies from 1 January 2022, which is based on the minimum levels that apply by virtue of law and to which ESIREs and NSIREs are subject. The fact that the Debt Office is using the minimum levels as a basis ensures that phase-in is equal for all ESIREs and NSIREs.

The target level for the non-risk-weighted MREL (including subordination) will also be based on the minimum levels for this requirement. This ensures an equal phase-in because ESIREs and NSIREs were not previously subject to such a requirement.

Under the Debt Office's previous policy, subsidiaries of resolution entities, i.e. undertakings that will be subject to an internal MREL, have not been subject to either a market confidence charge or the liabilities proportion principle. For these undertakings, the new rules, as the Debt Office intends to apply them, entail an increase in the requirements that is equal to the market confidence charge and the effect of the double counting ban. In view of this, the Debt Office intends to set the minimum level for a risk-weighted internal MREL that will apply as of 1 January 2022 at MREL, excluding the market confidence charge and the combined buffer requirement. This means that the market confidence charge and the combined buffer requirement are being phased in over two years ahead of 1 January 2024 for undertakings that are subject to an internal MREL.

No double counting ban applies to a non-risk-weighted internal MREL. The target level that will apply as of 1 January 2022 will therefore be based on the risk-weighted MREL minus the market confidence charge, calculated as a percentage of the LRE. This means that the nominal amount of the risk-weighted and non-risk-weighted target levels will be the same (when account is taken of the obligation to also comply with the combined buffer requirement in addition to the risk-weighted MREL).

For undertakings that shall be managed through bankruptcy or liquidation (also individual subsidiaries within resolution groups) MREL will not exceed the capital requirements. Consequently, the target level that will apply as of 1 January 2022 will be the same as the final MREL that will apply as of 1 January 2024.

Deadlines

The deadlines set out in Chapter 4, Sections 24 and 25 of the Resolution Act do not apply to resolution entities that already fulfil the conditions for being classified as GSIREs, ESIREs and NSIREs prior to 1 January 2022 (see also sections 3 and 4). These undertakings are instead subject to the specific transitional provisions described above.

The deadlines set out in the Resolution Act are applicable to undertakings that are classified as resolution entities only after 1 January 2022. However, the regulatory framework does not specify how the total level for the risk-weighted and non-risk-weighted MREL (in excess of the minimum levels) shall be phased in for undertakings that are classified as resolution entities only after 1 January 2022. The Debt Office will therefore be assessing how this phase-in will occur on an individual basis. However, this phase-in may never take place faster than the three-year deadline given for compliance with the minimum levels.

There are no equivalent provisions for subsidiaries within resolution groups. Any deadlines for the phase-in of MREL for these undertakings will therefore be determined on an individual basis. The phase-in will be affected by whether the undertaking is part of an existing resolution group or if the undertaking is part of a new resolution group in which the resolution entity is also subject to the phase-in of MREL.

The Debt Office will also set deadlines for the phase-in of MREL following implementation of write-down or conversion. These deadlines are affected by the specific circumstances in place at that time, including that which is set out in the restructuring plan that shall be drawn up following resolution. Phase-in of MREL following implementation of write-down or conversion will therefore be determined on an individual basis.

The Debt Office's general decision-making process for MREL

The Debt Office's decision-making process will generally function in a similar way under the new regulatory framework as it did under the previous framework. It is worth providing clarification about certain aspects.

Decisions concerning MREL coincide with the Debt Office having to update each (group) resolution plan at least once per year. For undertakings for which the Debt Office deems management through bankruptcy or liquidation possible, the resolution plan is normally updated, and thus a decision is made concerning MREL, every other year. For undertakings that the Debt Office plans to manage through resolution, both the resolution plan and MREL are decided each year.

The annual cycle for resolution planning normally concludes through a decision about MREL being made in December. New decisions concerning MREL are applicable as of 1 January of the following year.

When making decisions concerning MREL for undertakings that are part of cross-border groups, there are authorities other than the Debt Office involved. This means that the occasion on which a decision is made for these undertakings may differ from that of other undertakings.

When making a decision, the Debt Office bases its calculation of MREL on the capital requirements decided most recently by Finansinspektionen.[142] The reference date for these requirements is normally 31 December of the preceding year. Accordingly, 31 December of the preceding year is the reference date for the calculations and decisions concerning MREL that are made in December.

When determining the RCA, the Debt Office shall use the most recently reported values for TREA and LRE as a basis. The date of the most recent reporting is normally later than 31 December of the preceding year. However, the aim of this provision is to allow the Debt Office to adapt MREL as a consequence of resolution measures stipulated in the resolution plan.[143] The fact that the calculation for MREL also contains various reference dates could erroneously inflate or deflate the requirement. Consequently, the Debt Office will, as a basic premise, be using values for TREA and LRE in both the LAA and the RCA (and the denominator in the equation) that are based on the situation as at 31 December of the preceding year.

If this is justified in view of circumstances that have a material impact on MREL (e.g. substantial operational changes or altered capital requirements), the decision concerning MREL can be based on data as at a reference date other than 31 December of the preceding year. However, the main rule is that data concerning the undertaking's Pillar 2 requirements is still based on the most recently decided capital requirement.

Finansinspektionen has not previously made decisions concerning Pillar 2 requirements and has instead communicated what are known as Pillar 2 assessments. The Debt Office has therefore used these assessments as a basis when calculating the LAA and RCA under the previous policy. During the transitional period and the phase-in of MREL, the Debt Office will be using the communicated Pillar 2 assessments as a basis until such time as new Pillar 2 requirements are decided and available for an undertaking.

[142] These decisions are made in conjunction with Finansinspektionen's supervisory review and evaluation process (SREP).
[143] Govt Bill 2020/21:155 p. 86.

6. Summary and impact

A summary of the Debt Office's proposed new MREL policy is provided below. The aim is to provide a general illustration of the calculations and phase-in of MREL, as well as to explain the Debt Office's policy positions and describe the overall impact.

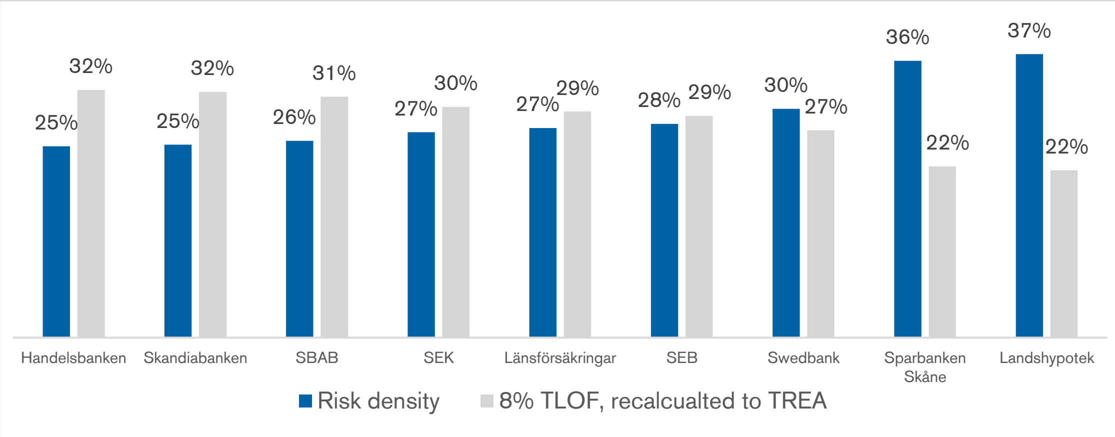
The intention of the Debt Office's MREL policy is to ensure adequate levels of loss absorption and recapitalisation capacity. At the same time, MREL should be fit for purpose by contributing, to the greatest possible extent, to transparency and to providing correct incentives relating to risk management. Because all resolution entities are subject to a similar resolution strategy involving bail-in (known as an open bank bail-in), the Debt Office's policy also aims to ensure that MREL is calculated and complied with in the same way.

For these reasons, the Debt Office intends to include a market confidence charge in MREL (RCA) for both resolution entities and subsidiaries (that shall not be wound up through bankruptcy or liquidation) in resolution groups. A charge such as this ensures that it is possible to recapitalise an undertaking up to (risk-weighted) regulatory capital levels that are also adequate in relation to comparable undertakings.

MREL is expressed as two ratios: a risk-based ratio (TREA) and a non-risk-based ratio (LRE). In this context, the non-risk-weighted MREL can be considered a *minimum requirement* that ensures undertakings always have a minimum loss absorption and recapitalisation capacity. For this reason, the non-risk-weighted subordination requirement will also always amount to this level. In addition, undertakings' loss absorption and recapitalisation capacity shall be sized on the basis of the risks of their operations, i.e. high-risk undertakings are given (all else being equal) a higher MREL and subordination requirement.

One result of the Debt Office's intended application is that 8 per cent of TLOF will not be used as a basis for calculating the risk-weighted subordination requirement. Applying this type of calculation could result in a higher subordination requirement for certain resolution entities. However, because TLOF is a non-risk-based measure, the requirement would increase most for resolution entities with low risk weights, which the Debt Office does not believe is appropriate. The impact can be illustrated using what is known as the risk density (TREA divided by TLOF), which is shown below in Figure 2 (blue bar). The figure also shows how 8 per cent of TLOF, recalculated in terms of REA, is highest for resolution entities with a low risk density and then decreases in relation to increasing risk density (grey bar).

Figure 2. Illustration of risk density and subordination at 8 per cent of TLOF



Note: Risk density (blue bar) calculated as TREA divided by TLOF. The grey bar corresponds to 8 per cent of TLOF for each undertaking, recalculated as a percentage of TREA. Data as at 31 December 2020.
Source: Swedish National Debt Office

All in all, the Debt Office's new MREL policy ensures there is a high degree of subordination, and also that other principles for MREL are taken into account.

The internal MREL (for subsidiaries that are not deemed possible to be managed through bankruptcy or liquidation) is determined in the same way as the external MREL, i.e. including a market confidence charge. This ensures that subsidiaries within a resolution group can also be recapitalised to adequate levels that correspond to the capital requirements (including the combined buffer requirement) to which the subsidiary is subject. Applying the rules in this way also ensures that they are applied in a way that is transparent and equivalent for undertakings that are subject to similar resolution strategies.

Impact

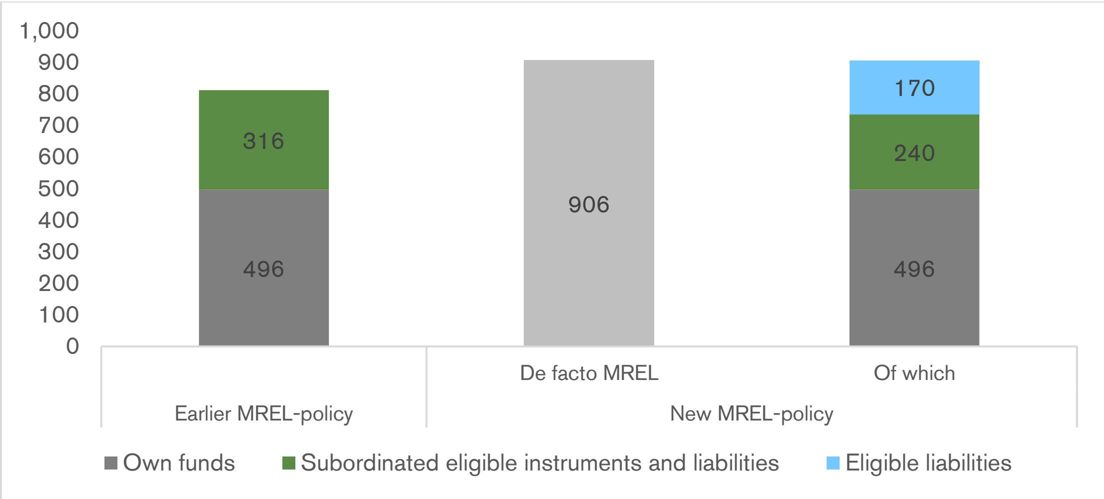
The introduction of the new regulatory framework and the Debt Office's new MREL policy entail certain changes to the size and composition of MREL. The phase-out of the liabilities proportion principle, the introduction of a market confidence charge and required levels of subordination mean that the *de facto MREL* (MREL including the double counting ban) is higher than under the previous MREL policy, while the subordination is lower. These effects are described further below.

In addition, the composition of the capital requirements have an impact on the application of MREL that the Debt Office proposes. The capital buffers' size and proportion of the total capital requirement have risen since the introduction of the Debt Office's previous policy (February 2017), especially for the major Swedish banks, but also for other institutions. Changes to how Finansinspektionen applies the capital requirements regulations also mean that a Pillar 2 guidance has been introduced.[144] Because the combined buffer requirement shall be complied with in addition to the risk-weighted MREL, the combined buffer requirement contains a larger proportion of the total de facto MREL. For the same reason, the market confidence charge also makes up a significant portion of the RCA. This charge includes the Pillar 2 guidance in order to ensure that all components of undertakings' capital requirements are reflected in their MREL.

[144] *New Capital Requirements for Swedish Banks*, FI Ref. 20-20990.

The phase-out of the liabilities proportion principle means that undertakings can now use all of their own funds to comply with MREL. If their own funds do not cover the entire MREL, subordinated eligible instruments and liabilities may then be used to comply with the subordination requirement and eligible liabilities may be used to comply with the remaining portion of MREL. This means that the eligible liabilities used to comply with MREL (and which the Debt Office may make use of in the event of resolution proceedings) differ somewhat from those under the Debt Office's previous policy. A summary to illustrate the change is shown below in Figure 3.

Figure 3. Estimated need for own funds and eligible liabilities (SEK billion)



Note: Estimated total need for existing resolution entities (ESIREs and NSIREs). 'Previous MREL policy' refers to total capital requirement plus the liabilities proportion principle. 'De facto MREL' refers to the new MREL including the double counting ban. 'Of which' refers to either the assumed distribution between own funds and eligible liabilities. Data as at 31 December 2020.
Source: Swedish National Debt Office.

In the figure, the current resolution entities' need for own funds, subordinated eligible instruments and liabilities and eligible liabilities under the previous and new MREL policy is estimated.[145] The left bar shows the total capital requirement plus the liabilities proportion principle under the previous MREL policy. The middle bar shows the *de facto MREL* (MREL including the double counting ban) under the new MREL policy. The right bar shows the assumed distribution between own funds and eligible liabilities under the new MREL policy.

The total need for own funds and eligible liabilities is assumed to rise from SEK 812 billion to SEK 906 billion. As described above, this increase is primarily due to the Debt Office's intention to apply a market confidence charge. Undertakings' need for subordinated eligible instruments is assumed, in accordance with the calculation above, to fall from SEK 316 billion to SEK 240 billion. This is an effect of the levels of subordination resulting from the new regulatory framework and the phase-out of the liabilities proportion principle. As described previously, the Debt Office does not intend to set the risk-weighted subordination on the basis of 8 per cent of TLOF. According to this calculation, applying the rules in this way would have resulted in the total level of subordination amounting to

[145] It is assumed (based on historical data since 2017) in this estimate that ESIREs hold a margin (known as a management buffer) in relation to the capital requirements equivalent to two per cent of TREA. NSIREs are assumed to hold a margin in relation to the capital requirements equivalent to 3 per cent of TREA. The margin in relation to the liabilities proportion principle, the subordination requirement and the *de facto* MREL is assumed to be two per cent of TREA.

SEK 290 billion. More than half of such an increase (SEK 50 billion) would have been attributed to one of the current resolution entities (as a result of the previously described variation in the risk density). The remaining portion of MREL can be complied with using eligible liabilities, which are assumed to equate to SEK 170 billion.

MREL is important not only for ensuring an orderly resolution procedure, but also for safeguarding financial stability and contributing to the prevention of future crises by encouraging sound risk management and transparency – and thereby enhanced market discipline. These effects are further bolstered by a subordination requirement, which is why the Debt Office continues to strive for a high degree of subordination (as under the previous MREL policy). However, the introduction of the new regulatory framework does result in some limitations in terms of how high the level of subordination can get. Consequently, it will be possible (as set out above) for MREL to be complied with not only using own funds and subordinated eligible instruments and liabilities, but also with a certain proportion of eligible liabilities.

By applying MREL in this way, in which the total de facto requirement is higher than under the previous MREL policy, the Debt Office is ensuring that Swedish undertakings are subject to appropriate requirements that safeguard financial stability. This is also favourable for Swedish undertakings, which are able to benefit from high levels of confidence in their operations and from the financial market.

In addition, the fact that subordination is slightly lower under the new MREL policy may increase the need to also continue strengthening other prerequisites that are important to an orderly resolutionprocedure (resolvability).[146] This is a continual process and is not restricted solely to the Debt Office's MREL policy.

It is not clear-cut whether the total effect of the Debt Office's new MREL policy will ultimately involve in undertakings' costs increasing or decreasing (compared with the previous policy). Subordinated eligible instruments and liabilities can be assumed to be approximately 10–50 basis points (bps) more expensive than senior eligible instruments and liabilities.[147] Eligible liabilities are in turn more expensive than other funding such as covered bonds and deposits. Nevertheless, the Debt Office concludes that it is the underlying risk of the banking business that ultimately governs pricing in the financial market. High MREL requirements can thus contribute to ensuring that banks are both secure and profitable for reasons including that the risk, and thus the pricing, of other funding decreases.[148] From the same perspective, any increase in the total cost of undertakings' funding may be derived from the fact that the implicit government guarantee that has previously been assumed by the financial market (before the introductions of the resolution regulations) is no longer being included.[149]

[146] For this reason, additional intervention powers are being introduced in the new regulatory framework (e.g. the Debt Office is able to decide to ban transfers of value).

[147] Based on data concerning the issues that have been conducted by Swedish undertakings (given the same maturity, issue volume etc.) and during periods in which the market has not been experiencing exceptional circumstances as a result of, for example, external shocks.

[148] Various ratings institutions have also rerated Swedish banks' debt instruments, see for example Moody's Investors Service 20 April 2018

[149] See, for example, Blix Grimaldi, Crosta, David & Linder, *The value of an implicit state guarantee for systemic banks* , FI Analysis No 15, 22 January 2019.

For subsidiaries (that are not deemed possible to wind up through bankruptcy or liquidation), the new MREL policy entails an increase in the internal MREL that is equivalent to the market confidence charge and the combined buffer requirement. This may lead to some redistribution of costs within a group. At the same time, an internal MREL does not entail any redistribution of operational risk within the group. Consequently, the total effect of this change is also difficult to assess. The Debt Office's new MREL policy involves no changes for all other undertakings (that are deemed possible to wind up though bankruptcy or liquidation).

Indicative calculations of MREL

The following illustrative calculations have been performed in order to illustrate the effects of the Debt Office's intended MREL policy. These are based on hypothetical resolution entities and subsidiaries as set out in Table 8.[150] This table also shows the various components that form the basis of the calculations.

Table 8. Indicative data for calculating MREL

Undertaking	P1	P2R	P2G	CBR	CCyB	Market confidence charge	LRE
Hypothetical ESIRE	8.00%	2.00%	1.00%	6.80%	0.30%	7.50%	3.00%
Hypothetical NSIRE	8.00%	2.00%	1.00%	2.80%	0.30%	3.50%	3.00%
Hypothetical subsidiary	8.00%	2.00%	0.00%	2.50%	0.00%	2.50%	3.00%

Note: P1 stands for Pillar 1 requirements. P2R stands for Pillar 2 requirements. P2G is Pillar 2 guidance. CBR is the combined buffer requirement. For ESIREs, the CBR is assumed to consist of a systemic risk buffer (3 per cent), an O-SII buffer (1 per cent), a capital conservation buffer (2.5 per cent) and the CCyB. For NSIREs and subsidiaries, the CBR consists of a capital conservation buffer (2.5 per cent) and the CCyB. CCyB is the countercyclical buffer. The market confidence charge is calculated as CBR minus CCyB plus P2G. LRE is the leverage ratio requirement.

External MREL for resolution entities

Indicative levels for MREL, including subordination, for a hypothetical ESIRE and NSIRE are described below.[151]

MREL is calculated in accordance with that which is set out in section 3.For the risk-weighted MREL, the LAA consists of the Pillar 1 and Pillar 2 requirements. The RCA consists of the Pillar 1 and Pillar 2 requirements and a market confidence charge. The market confidence charge consists of the combined buffer requirement, minus the countercyclical buffer, plus the Pillar 2 guidance. When calculating the non-risk-weighted MREL, the LAA is 3 per cent of the LRE, and the RCA is 3 per cent of the LRE.

The subordination requirement is calculated in accordance with that which is set out in section 4. The risk-weighted subordination is calculated in accordance with the prudential formula, less the

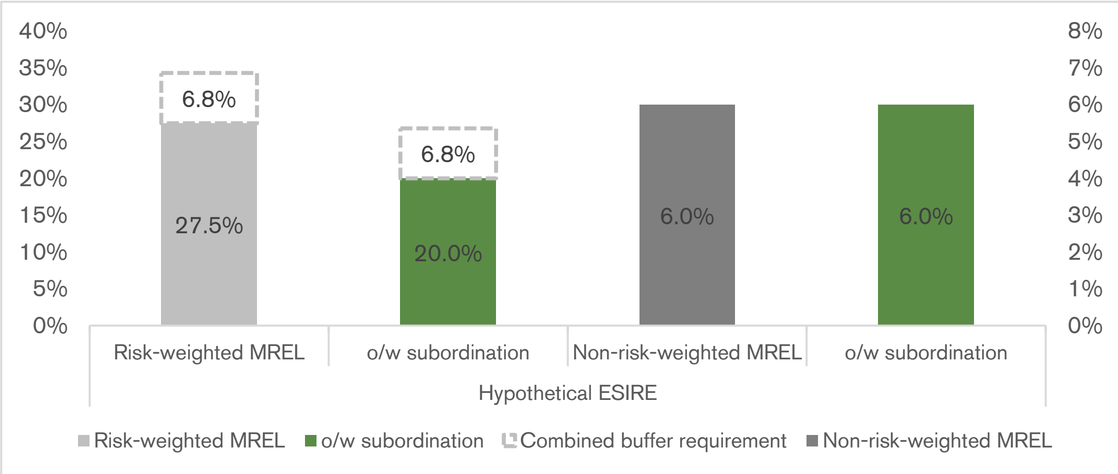
[150] For these calculations, the ESIRE corresponds to a hypothetical major bank, and an NSIRE to a hypothetical medium-sized institution. Pillar 1 requirements and LRE are set out in law. Other components in Table 8 have been assumed on the basis of the basic premises in Finansinspektionen's memorandum *New Capital Requirements for Swedish Banks*, FI Ref. 20-20990.

[151] No indicative levels are published for other undertakings that are subject to an external MREL, i.e. undertakings that are not resolution entities and are not part of a resolution group, because the MREL for these undertakings will be limited to the LAA and will therefore not exceed these undertakings' capital requirements.

combined buffer requirement. The non-risk-weighted subordination is calculated on the basis of 8 per cent of TLOF but its level is limited to the non-risk-weighted MREL (6 per cent of LRE).[152]

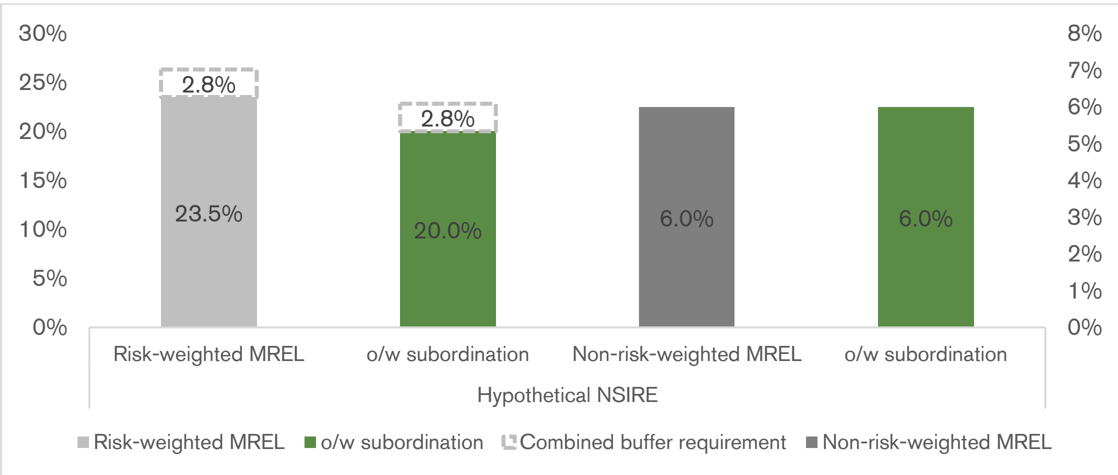
Because the combined buffer requirement shall be complied with in addition to the risk-weighted MREL and subordination requirement, this buffer is reported in the following example on top of the two ratios. This gives the total level of own funds and eligible liabilities that are needed in order to comply with the two risk-weighted ratios.

Figure 4. MREL and subordination for a hypothetical ESIRE (per cent of TREA and LRE)



Note: The risk-weighted level is shown on the left axis and the non-risk-weighted level on the right. Risk-weighted and non-risk-weighted MREL calculated in accordance with section 3. 'Of which subordination', calculated in accordance with section 4, denotes the level of subordination as part of each MREL. The combined buffer requirement shall be complied with in addition to the risk-weighted ratios for MREL and subordination.

Figure 5. MREL and subordination for a hypothetical NSIRE (per cent of TREA and LRE)



Note: The risk-weighted level is shown on the left axis and the non-risk-weighted level on the right. Risk-weighted and non-risk-weighted MREL calculated in accordance with section 3. 'Of which subordination', calculated in accordance with section 4, denotes the level of subordination as part of each MREL. The combined buffer requirement shall be complied with in addition to the risk-weighted ratios for MREL and subordination.

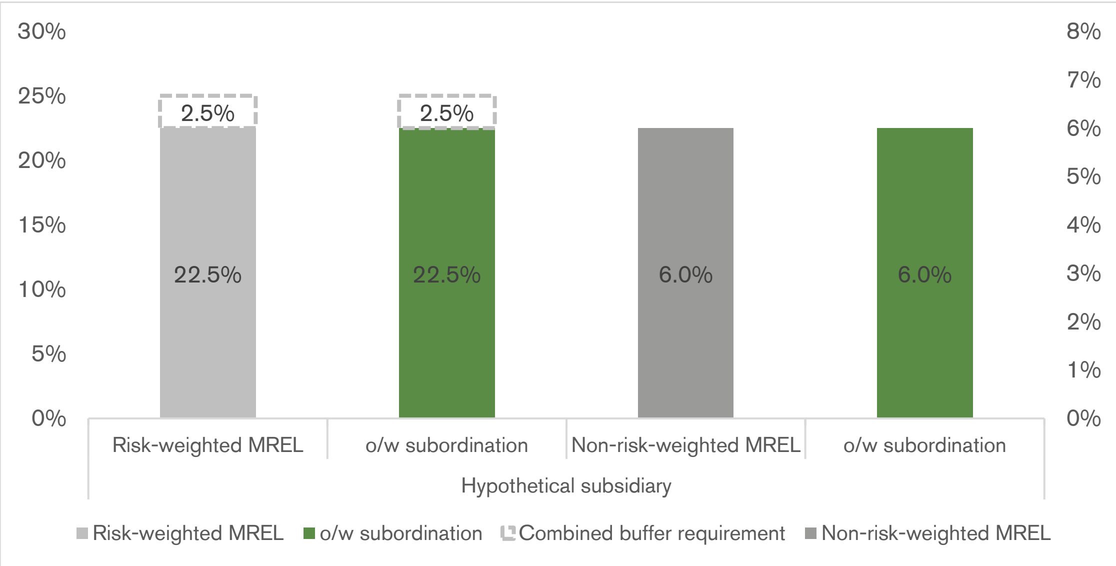
[152] On condition that 8 per cent of TLOF is higher than 6 per cent of the non-risk-weighted exposure measure. This applies generally to Swedish undertakings.

Internal MREL

Indicative levels for the internal MREL and subordination for a hypothetical subsidiary whose MREL is limited to the LAA are reported below. The calculation is based on the components set out in section 3. For the risk-weighted MREL, the LAA consists of the Pillar 1 and Pillar 2 requirements. The RCA consists of the Pillar 1 and Pillar 2 requirements and a market confidence charge. The market confidence charge consists of the combined buffer requirement, minus the countercyclical buffer, plus the Pillar 2 guidance (the countercyclical buffer and Pillar 2 guidance are assumed to be zero in this example). When calculating the non-risk-weighted MREL, the LAA is 3 per cent of the LRE, and the RCA is 3 per cent of the LRE.

The internal MREL is fully subordinated. The combined buffer requirement shall be complied with in addition to the risk-weighted requirement.

Figure 6. MREL and subordination for a hypothetical subsidiary (per cent of TREA and LRE)



Note: The risk-weighted level is shown on the left axis and the non-risk-weighted level on the right. Risk-weighted and non-risk-weighted MREL calculated in accordance with section 3. 'Of which subordination', calculated in accordance with section 4, denotes the level of subordination as part of each MREL. The combined buffer requirement shall be complied with in addition to the risk-weighted ratios for MREL and subordination.

Phase-in

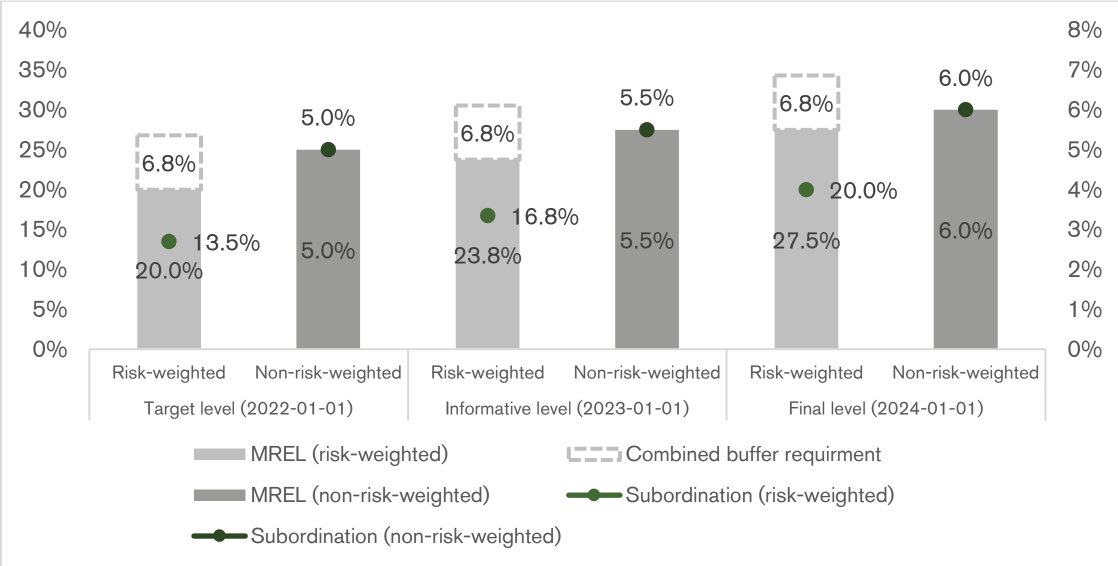
External MREL for resolution entities

The phase-in of MREL, as set out in section 5 and based on the indicative levels for MREL and subordination rendered above, is described below.

The risk-weighted MREL and non-risk-weighted MREL for ESIREs and NSIREs, as of 1 January 2024, equate to the final indicative levels. As of 1 January 2022, the risk-weighted MREL is calculated less the market confidence charge. The non-risk-weighted MREL equates to the minimum level that shall be complied with as of 1 January 2022. As of 1 January 2022, subordination also equates to the minimum levels (risk-weighted and non-risk-weighted, respectively) that shall be complied with.

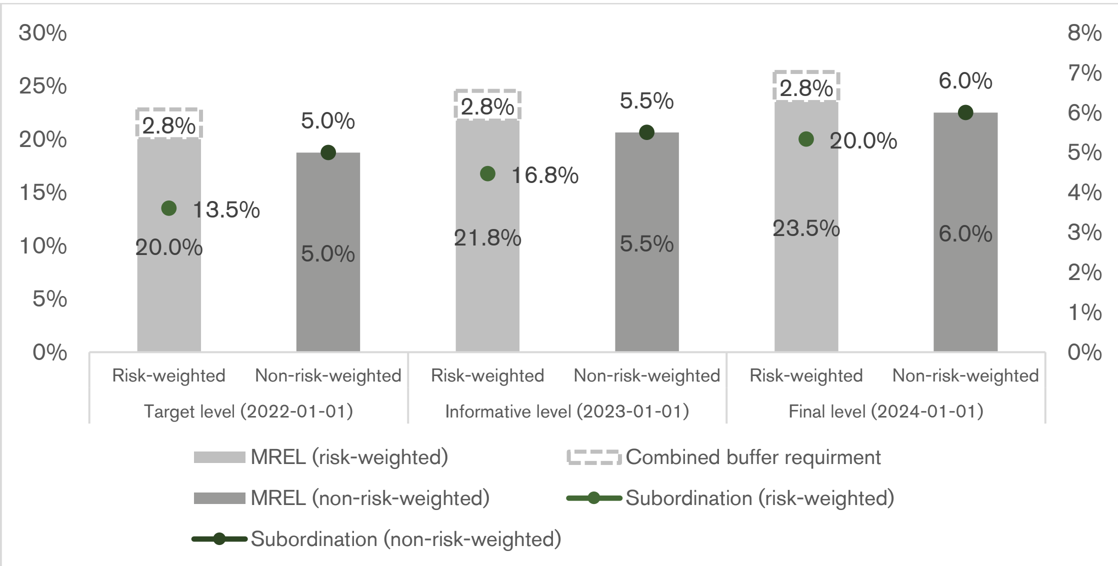
Because the phase-in is to be linear, the informative level for MREL and subordination as of 1 January 2023 is half of the difference between the target level as of 1 January 2022 and MREL as of 1 January 2024. The double counting ban is not being phased in and shall therefore always be complied with in addition to the risk-weighted MREL and risk-weighted subordination.

Figure 7. Indicative phase-in for a hypothetical ESIRE (per cent of TREA and LRE)



Note: MREL and subordination in accordance with indicative calculations. The risk-weighted level is shown on the left axis and the non-risk-weighted level on the right. The combined buffer requirement shall be complied with in addition to the risk-weighted ratios for MREL and subordination. The target level for the risk-weighted MREL is the final level minus the market confidence charge. The target level for the non-risk-weighted MREL is the non-risk-weighted minimum requirement. The target levels for subordination are also the respective minimum requirements (risk-weighted and non-risk-weighted). The informative level is calculated on the basis of half of the difference between the target level and the final level.

Figure 8. Indicative phase-in for a hypothetical NSIRE (per cent of TREA and LRE)



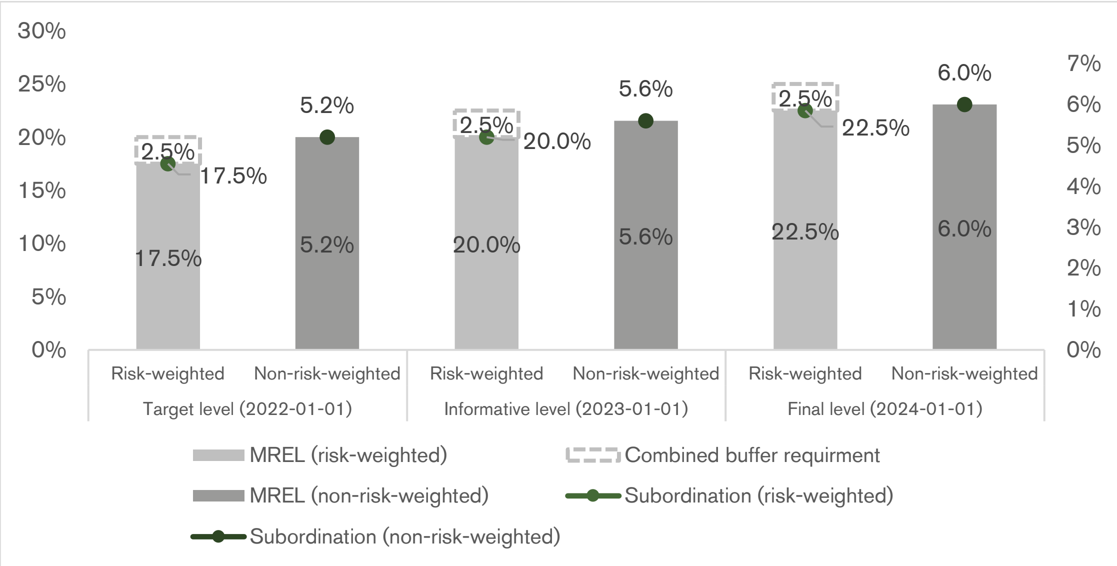
Remark MREL and subordination in accordance with indicative calculations. The risk-weighted level is shown on the left axis and the non-risk-weighted level on the right. The combined buffer requirement shall be complied with in addition to the risk-weighted ratios for MREL and subordination. The target level for the risk-weighted MREL is the final level minus the market confidence charge. The target level for the non-risk-weighted MREL is the non-risk-weighted minimum requirement. The target levels for subordination are also the respective minimum requirements (risk-weighted and non-risk-weighted). The informative level is calculated on the basis of half of the difference between the target level and the final level.

Internal MREL

The phase-in for subsidiaries takes place in a way that corresponds to that for ESIREs and NSIREs, i.e. with a target level as of 1 January 2022, an informative level as of 1 January 2023 and a final level as of 1 January 2024. Because there is no minimum requirement to use as a basis, the target level is instead determined on the basis of the previous requirements to which subsidiaries have been subject. This equates to a risk-weighted level less the market confidence charge and less the combined buffer requirement (but the combined buffer requirement shall be complied within in addition to the risk-weighted MREL).

The target level for the non-risk-weighted MREL is based on the risk-weighted MREL minus the market confidence charge, recalculated as a percentage of the non-risk-weighted exposure amount (LRE). In the following example, this equates to 5.2 per cent of LRE. The double counting ban is not being phased in and shall therefore be complied with in addition to the risk-weighted MREL.

Figure 9. Indicative phase-in for an internal MREL (per cent of TREA and LRE)



Note: MREL and subordination in accordance with indicative calculations. The risk-weighted level is shown on the left axis and the non-risk-weighted level on the right. The combined buffer requirement shall be complied with in addition to the risk-weighted ratios for MREL and subordination. The target level for the risk-weighted MREL is the final level minus the market confidence charge and the combined buffer requirement. The target level for the non-risk-weighted MREL is the risk-weighted MREL minus the market confidence charge. The informative level is calculated on the basis of half of the difference between the target level and the final level.

Appendix 1: MREL policy

This policy sets out how the Debt Office intends to apply MREL (MREL policy). The new MREL policy replaces the Debt Office's previous application and instructions, including the previous MREL policy. The MREL policy may be subject to future updates when necessary. The MREL policy sets out in brief how the Debt Office intends to apply MREL and its policy positions in respect of relevant questions relating to MREL. A more detailed description of and the reasons for the Debt Office's policy positions can be found in the memorandum to which this MREL policy is appended.

Basic premises for the application of MREL

General information about decisions concerning MREL

1. MREL is decided by the Debt Office in conjunction with resolution planning.[153]
    - An undertaking that shall be subject to resolution measures is a resolution entity.[154]
    - A resolution group consists of a resolution entity and its subsidiaries that are not themselves resolution entities or subsidiaries of another resolution entity.[155]

    For undertakings that are subject to a group resolution plan, the group's resolution entities and resolution groups are set out in the plan.

2. Separate rules on how MREL shall be complied with apply to subsidiaries within resolution groups. The MREL that shall be complied with by such undertakings is called internal MREL. The MREL that shall be complied with by other undertakings is called external MREL.

Undertakings that are subject to MREL and level for calculation and compliance

Institution

3. Undertakings that are institutions shall be subject to decisions concerning MREL.[156] The Debt Office is able, under certain conditions, to decide on exemptions from MREL for institutions that are subsidiaries of a resolution entity.[157] As a main rule, the Debt Office does not intend to decide on such exemptions.

Undertakings that are not institutions

4. Undertakings that are encompassed by the Resolution Act but which are not institutions, with the exception of undertakings that are subsidiaries of a resolution entity, shall be subject to decisions

[153] Chapter 4, Section 1 of the Resolution Act.
[154] Chapter 2, Section 1 of the Resolution Act.
[155] Ibid.
[156] Chapter 4, Section 1 of the Resolution Act.
[157] Chapter 4, Section 20 of the Resolution Act.

concerning MREL. The Debt Office may decide on MREL for undertakings that are subsidiaries of a resolution entity but are not institutions.[158] The Debt Office intends to make such decisions only in those cases in which it is deemed necessary on the basis of the resolution plan.

Level for calculation and compliance

5. MREL shall be determined and complied with at an individual level, except in the following cases.[159]
   - MREL for a resolution entity that is part of a resolution group shall be calculated and complied with on a consolidated basis at the resolution group level.
   - MREL for a parent undertaking within the EEA that is a subsidiary of a third-country undertaking and is part of a resolution group without being a resolution entity shall be calculated and complied with on a consolidated basis.

Type of undertaking	Decision concerning MREL	Level	Requirement
1. Undertakings included in a resolution group			
a) Resolution entity	Mandatory (for all undertakings)	Consolidated	External
b) Subsidiary of resolution entity	Institution: Mandatory, but the Debt Office can decide on exemptions Not an institution: Only if the Debt Office decides	Individual	Internal
c) Parent undertaking within the EEA that is a subsidiary of a third-country undertaking	Mandatory	Consolidated	Internal
2. Undertakings not included in a resolution group			
a) Resolution entity	Mandatory (for all undertakings)	Individual	External
b) Not a resolution entity (managed through bankruptcy or liquidation)	Mandatory (for all undertakings)	Individual If parent undertaking within the EEA: consolidated	External (in applicable parts)

Classification of resolution entities

6. Undertakings that are resolution entities shall be classified as follows:[160]

Resolution entity	Description
Global systemically important resolution entity (GSIRE)	Resolution entity that is a global systemically important institution or part of such an institution as per the definition in the Resolution Act.
European systemically important resolution entity (ESIRE)	Resolution entity that is not a GSIRE and has assets that exceed EUR 100 billion or is part of a resolution group that has assets that exceed EUR 100 billion.
National systemically important resolution entity (NSIRE)	Resolution entity that is not a GSIRE or ESIRE but which the Debt Office deems to be a probable systemic risk in the event of failure.
Other resolution entity (ORE)	Undertaking that is a resolution entity but is not classified as a GSIRE, ESIRE or NSIRE.

[158] Chapter 4, Section 22 of the Resolution Act.
[159] Chapter 4, Section 23 of the Resolution Act.
[160] See section 2 of the Debt Office's explanatory memorandum.

7. Undertakings that are resolution entities, according to the Debt Office's assessment, constitute a systemic risk in the event of their failure. Resolution entities that are not GSIREs or ESIRE are therefore classified as NSIREs.

Determination and calculation of MREL

8. MREL is calculated in the same way for both external MREL and internal MREL.

9. Decisions concerning MREL shall be expressed as two ratios: a risk-weighted ratio (risk-weighted MREL) and leverage ratio (non-risk-weighted MREL).[161]

10. The numerator in both the risk-weighted MREL and the non-risk-weighted MREL is the sum of a loss absorption amount (LAA) and a recapitalisation amount (RCA). For the risk-weighted MREL, the LAA and RCA are calculated on the basis of the undertaking's or, where applicable, the resolution group's risk-weighted capital requirements. For the non-risk-weighted MREL, the LAA and RCA are calculated on the basis of the undertaking's non-risk-weighted capital requirements.[162]

11. The denominator in the risk-weighted MREL is the undertaking's or, where applicable, the resolution group's total risk-weighted exposure amount (TREA).

12. The denominator in the non-risk-weighted MREL is the undertaking's or, where applicable, the resolution group's total exposure amount (LRE).

$$Risk-weighted\ MREL\ (\%\ of\ TREA) = \frac{LAA_{TREA} + RCA_{TREA}}{TREA}$$

$$Non-risk-weighted\ MREL\ (\%\ of\ LRE) = \frac{LAA_{LRE} + RCA_{LRE}}{LRE}$$

Calculation of FAB

13. The LAA in the risk-weighted MREL (LAA_{TREA}) is the sum of the undertaking's or, where applicable, the resolution group's risk-weighted Pillar 1 requirement and Pillar 2 requirement.[163]

14. The LAA in the non-risk-weighted MREL (LAA_{LRE}) is the undertaking's or, where applicable, the resolution group's leverage ratio requirement (3 per cent of LRE).[164]

[161] Chapter 4, Section 1 of the Resolution Act.
[162] Chapter 4, Sections 3 and 4 of the Resolution Act.
[163] Chapter 4, Section 3, point 1a and Chapter 4, Section 4, point 1a of the Resolution Act.
[164] Chapter 4, Section 3, point 2a and Chapter 4, Section 4, point 2a of the Resolution Act.

Calculation of RCA

Undertakings that are not deemed possible to wind up through bankruptcy or liquidation

15. The RCA for 1) resolution entities and 2) subsidiaries that are part of a resolution group and shall not be wound up through bankruptcy or liquidation is determined as follows:

   a. The RCA in the risk-weighted MREL (RCA_{TREA}) is the sum of the undertaking's or, where applicable, the resolution group's risk-weighted Pillar 1 requirement, Pillar 2 requirement and a market confidence charge.[165] The market confidence charge shall amount to the combined buffer requirement, minus the countercyclical buffer, plus the Pillar 2 guidance.

   b. The RCA in the non-risk-weighted MREL (RCA_{LRE}) is the undertaking's or, where applicable, the resolution group's leverage ratio requirement (3 per cent of LRE).[166]

   c. The RCA in the risk-weighted MREL and non-risk-weighted MREL can be adapted if the undertaking's resolution plan includes resolution measures that entail only parts of the undertaking's operations needing to be recapitalised in conjunction with resolution.[167] An adaptation of this nature is achieved through an adjustment to the exposure amounts (TREA and LRE) that form the basis on which the RCA is calculated.

   d. As a rule, the RCA in the risk-weighted MREL will not be adapted in view of how the Pillar 2 requirement will be applied following resolution. The Pillar 2 requirement in the RCA will thus be the same as in the LAA.

Undertakings that are deemed possible to wind up through bankruptcy or liquidation

16. The RCA for the following undertakings shall be zero[168]:
   - Undertakings that, according to the resolution plan, shall be wound up through bankruptcy or liquidation
   - Subsidiaries in a resolution group that are neither:
     - performing critical functions, nor
     - material subsidiaries.[169]

17. In this respect, the definition of a material subsidiary is a ground for assessment. For subsidiaries that are close to the thresholds specified in the definition of a material subsidiary, the Debt Office will conduct an assessment that also includes certain qualitative aspects.

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[165] Chapter 4, Section 3, point 1b and Chapter 4, Section 4, point 1b of the Resolution Act and Chapter 4, Section 6 of the Resolution Act.
[166] Chapter 4, Section 3, point 2b and Chapter 4, Section 4, point 2b of the Resolution Act
[167] Govt Bill 2020/21:155 p. 86.
[168] Chapter 4, Section 4, second paragraph of the Resolution Act.
[169] As per the definition in Chapter 2, Section 1 of the Resolution Act. A material subsidiary is a subsidiary that on an individual or consolidated basis holds more than five per cent of the consolidated TREA of its parent undertaking, generates more than five per cent of the total operating income of its parent undertaking, or has an LRE that is more than five per cent of the consolidated LRE of its parent undertaking.

Determination of non-risk-weighted MREL

18. When determining the non-risk-weighted MREL, the Debt Office shall take into account the requirements that apply for the purpose of allowing external funding to be supplied in the event that the bail-in tool or the government stabilisation tool is being applied.[170]

19. The Debt Office does not generally intend to determine the non-risk-weighted MREL on the basis of levels that permit the use of external funding. Account of these requirements is instead taken on the basis of the undertakings' resolution plans and what has been identified there in respect of the need to use external funding.

Minimum levels for MREL

20. MREL for GSIREs and ESIREs may not fall below certain minimum levels.[171] For NSIREs, the Debt Office is able to decide to apply the same minimum levels as apply to an ESIRE.[172] As a main rule, the Debt Office intends to make such decisions for those undertakings that are NSIREs. The minimum levels are set out in the table below.

	Risk-weighted MREL (percentage of TREA)	Non-risk-weighted MREL (percentage of LRE)
GSIRE	18	6.75
ESIRE and NSIRE	13.5	5

Compliance with MREL

21. The external MREL and internal MREL shall be complied with using own funds and eligible liabilities.[173] Subordination requirements apply to the external MREL in accordance with that which is set out below.

22. If certain conditions are fulfilled and following a decision by the Debt Office, the internal MREL may be entirely or partially complied with using guarantees from the resolution entity.[174] As a main rule, the Debt Office does not intend to allow the internal MREL to be complied with using such guarantees.

Limits on the use of own funds

23. The Common Equity Tier 1 capital that is used to comply with the combined buffer requirement may not simultaneously be used to comply with the risk-weighted MREL.[175] The combined buffer requirement shall be complied with in addition to the risk-weighted MREL (both external and internal).

24. Other own funds and Common Equity Tier 1 capital may only be used for the internal MREL if they fulfil the conditions set out in Chapter 4, Section 12, first paragraph, point 2 of the Resolution Act.

[170] Chapter 4, Section 5, point 1 of the Resolution Act.
[171] Articles 92a, 92b and 494 of the Capital Requirements Regulation and Chapter 4, Section 3, second paragraph of the Resolution Act.
[172] Chapter 4, Section 3, third paragraph of the Resolution Act.
[173] Chapter 4, Sections 9–12 of the Resolution Act.
[174] Chapter 4, Section 21 of the Resolution Act.
[175] Chapter 2, Section 1, third paragraph of the Capital Buffers Act.

Eligible liabilities

25. For external MREL, an eligible liability is a bail-inable liability that fulfils the conditions set out in Chapter 4, Sections 9–11 of the Resolution Act.

26. For Internal MREL, an eligible liability is a bail-inable liability that fulfils the conditions set out in Chapter 4, Section 12 of the Resolution Act.

Subordination requirements for certain resolution entities

27. GSIREs, ESIREs and NSIREs that are subject to decisions concerning minimum levels for MREL shall partly comply with MREL using own funds and subordinated eligible instruments and liabilities as referred to in Chapter 4, Section 11 of the Resolution Act (subordination requirement).

28. The subordination requirement shall be determined in accordance with a sub-requirement (Chapter 4, Section 13 of the Resolution Act). However, the Debt Office can decide on an alternative sub-requirement that shall apply instead of the sub-requirement (Chapter 4, Section 15 of the Resolution Act). In accordance with the Swedish National Debt Office's Resolution Regulations (RGKFS 2015:2), as worded in the version that entered into force on 1 July 2021, the alternative sub-requirement may be decided for all resolution entities.

29. As with MREL, the subordination requirement shall be expressed as two ratios: a risk-weighted ratio (risk-weighted subordination requirement) and a leverage ratio (non-risk-weighted subordination requirement).[176]

30. The combined buffer requirement shall be complied with in addition to the risk-weighted subordination requirement.[177]

31. The Debt Office intends to determine the subordination requirement in accordance with the alternative sub-requirement for all resolution entities. The requirement shall be calculated and expressed as follows:

    a. Risk-weighted subordination requirement: The numerator in the risk-weighted subordination requirement shall amount to two times the undertaking's or, where applicable, the resolution group's Pillar 1 and Pillar 2 requirements. The denominator in the risk-weighted subordination requirement is the undertaking's or, where applicable, the resolution group's total risk-weighted exposure amount (TREA).

$$\text{Risk} - \text{weighted subordination requirement } (\% \; of \; TREA) = \frac{2 * (Pillar\ 1 + Pillar\ 2)}{TREA}$$

    b. Non-risk-weighted subordination requirement: The numerator in the non-risk-weighted subordination requirement shall amount to 8 per cent of the undertaking's or, where applicable, the resolution group's total liabilities and own funds (TLOF), but not more than the level of the non-risk-weighted MREL, i.e. 6 per cent of the total exposure amount (LRE). The denominator

[176] Govt Bill 2020/21:155 p. 97.
[177] Govt Bill 2020/21:155 p. 97.

in the non-risk-weighted subordination requirement is the undertaking's or, where applicable, the resolution group's total risk-weighted exposure amount (LRE).

$$\text{Non} - \text{risk} - \text{weighted subordination requirement } (\% \; of \; LRE) = \frac{8\,\% * TLOF|\max 6\% * LRE}{LRE}$$

Minimum levels for subordination

32. The subordination requirement for GSIREs and ESIREs may not fall below certain minimum levels.[178] For NSIREs, the Debt Office is able to decide to apply the same minimum levels as apply to an ESIRE.[179] As a main rule, the Debt Office intends to make such decisions for those undertakings that are NSIREs. The minimum levels are set out in the table below.

	Risk-weighted MREL (percentage of TREA)	Non-risk-weighted MREL (percentage of LRE)
GSIRE	18	6.75
ESIRE and NSIRE	13.5	5

Deadlines for compliance

Transitional rules[180]

33. The Debt Office's decisions concerning MREL, incl. subordination requirement, shall apply as of 1 January 2024.

34. In order to allow a linear build-up of MREL, incl. the subordination requirements, ahead of 1 January 2024, the Debt Office shall decide on a target level that will apply as of 1 January 2022. For ESIREs and NSIREs, this target level may not fall below the minimum levels for MREL and subordination.

35. When necessary and every 12 months, the Debt Office shall notify the undertaking of an informative level for its MREL.

Target level as of 1 January 2022

36. The Debt Office intends to determine the target levels for 1 January 2022 as follows:

Type of undertaking	Risk-weighted MREL (TREA)		Non-risk-weighted MREL (LRE)	
	MREL	Of which subordination	MREL	Of which subordination
Resolution entity (ESIRE & NSIRE)	MREL minus market confidence charge	13.5%	5%	5%
Subsidiary	MREL minus market confidence charge and combined buffer requirement	n/a	Risk-weighted MREL minus market confidence charge (recalculated to LRE)	n/a
Undertaking that shall be managed through bankruptcy or liquidation*	Same as 1 January 2024 (MREL does not exceed capital requirements)			

[178] Articles 92a, 92b and 494 of the Capital Requirements Regulation and Chapter 4, Section 18 of the Resolution Act.
[179] Chapter 4, Section 19 of the Resolution Act.
[180] Transitional provisions to the Resolution Act, Govt Bill 2020/21:155 pp. 50–51.

Informative level as of 1 January 2023

37. In conjunction with decisions by the Debt Office in December 2022, the authority intends to communicate informative levels for MREL and subordination as of 1 January 2023.

38. The informative level will be calculated in a way that achieves a strictly linear phase-in (the target level as of 1 January 2022 + 50 per cent of the difference between the target level as of 1 January 2022 and the final MREL as of 1 January 2024).

Deadlines when classifying resolution entities

39. Undertakings that are classified as resolution entities *before* 1 January 2022 shall comply with MREL in accordance with specific transitional rules.[181] The Resolution Act specifies the following compliance deadlines for undertakings that are classified as resolution entities *after* 1 January 2022.
    - GSIREs shall comply with the subordination requirement as of three years after the day on which the entity has been determined to be such an entity.[182]
    - ESIREs and NSIREs shall comply with the subordination requirement and the minimum levels for subordination as of three years after the day on which the entity has been determined to be such an entity.[183]

40. The Resolution Act does not specify any deadlines by which time GSIREs, ESIREs and NSIREs shall comply with the risk-weighted and non-risk-weighted MREL. The Debt Office intends to establish deadlines for these requirements individually. However, these deadlines will not be shorter than three years.

41. The Resolution Act does not specify any deadlines for compliance with MREL for subsidiaries of undertakings that are classified as resolution entities. Because MREL for such subsidiaries may be affected substantially by the fact that the parent undertaking is classified as a resolution entity, it is necessary to have the ability to apply deadlines for compliance with MREL for these undertakings as well. The Debt Office intends to establish deadlines for these requirements individually.

Deadlines after write-down and conversion

42. After implementation of write-down or conversion, the Debt Office shall determine an appropriate deadline by which time[184]:
    - a resolution entity shall comply with MREL, including the subordination requirements. For ESIREs and NSIREs, the deadlines for compliance with the minimum levels for subordination shall be no longer than two years.[185]
    - a subsidiary of a resolution entity shall comply with MREL.

[181] See points 33 to 38.
[182] Chapter 4, Section 24 of the Resolution Act.
[183] Chapter 4, Section 25, point 1 of the Resolution Act.
[184] Chapter 4, Section 26 of the Resolution Act.
[185] Chapter 4, Section 25, point 2 of the Resolution Act.

43. The Debt Office intends to stipulate deadlines individually on the basis of what is deemed appropriate based on the circumstances at the time of the write-down and conversion.

Decisions concerning MREL – processes etc.

44. Decisions concerning MREL coincide with the annual update of the (group) resolution plans.[186]

45. For undertakings that the Debt Office has deemed possible to wind up through bankruptcy or liquidation, the resolution plan is normally updated, and thus a decision is made concerning MREL, every other year.[187]

46. Decisions concerning MREL are normally made in December. New decisions concerning MREL are applicable as of 1 January of the following year. The time at which decisions are made for undertakings that are part of cross-border groups may differ from that of other undertakings.

47. When making a decision, the Debt Office bases its calculation of MREL on the capital requirements decided most recently by Finansinspektionen. The reference date for these requirements is normally 31 December of the preceding year. Accordingly, 31 December of the preceding year is the reference date for the calculations and decisions that are made in December.

48. If this is justified in view of circumstances that have a material impact on MREL, the decision can be based on data as at another reference date. However, the main rule is that data concerning the undertaking's Pillar 2 requirements is still based on the most recently decided capital requirement.

49. During the transitional period and the phase-in of MREL, the Debt Office will be using the communicated Pillar 2 assessments as a basis until such time as new Pillar 2 requirements are decided and available for an undertaking.

[186] Chapter 4, Section 1 of the Resolution Act.
[187] In accordance with Commission Delegated Regulation (EU) 2019/348 on simplified obligations.

The Swedish National Debt Office works to ensure that the central government's finances are managed effectively and that the financial system is stable. The Debt Office thus plays an important role in both the financial market and the Swedish economy.

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