

For the attention of The Board of Directors and the Executive Leadership Team of Danske Bank A/S
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Minimum requirement for own funds and eligible liabilities

1. Decision

The Danish Financial Supervisory Authority (the Danish FSA) **sets** the minimum requirement for own funds and eligible liabilities (MREL) for Danske Bank A/S on a consolidated basis at the group level at 28 December 2020 at 8.8% of Danske Bank A/S's total liabilities and own funds (total capital) on a consolidated basis at the group level. This corresponds to 30.5% of Danske Bank A/S's risk-weighted exposures. The requirement is based on data at 30 June 2020. At 30 June 2020, the requirement amounted to DKK 201 billion.

At 28 December 2020, only the requirement as a percentage of the risk-weighted exposures will be binding on Danske Bank A/S.

Realkredit Danmark A/S is exempted from the MREL and is therefore not consolidated, neither for the purpose of calculating the risk-weighted exposures on the basis of which the MREL is calculated nor for the purpose of calculating the liabilities and own funds of which the MREL is expressed as a percentage.

The Danish FSA **stipulates** that, out of the MREL (at 30.5% of the REA) plus the combined capital buffer requirement (which was 5.6% of the REA at 30 June 2020), an amount equal to 30.6% of Danske Bank A/S's risk-weighted exposures must be met with capital instruments and debt instruments that, in resolution and insolvency, are written down and converted before unsecured claims. To meet this requirement, Danske Bank A/S may use the capital instruments and debt instruments included to meet the MREL as well as the common equity tier 1 capital instruments included to meet the combined capital buffer requirement.

2. Legal basis

2.1. Minimum requirement for own funds and eligible liabilities

Applicable regulations

After consultation with *Finansiel Stabilitet*, the Danish FSA sets the requirement for the size of a financial institution's eligible liabilities (see section 266(1), first sentence, of the Danish Financial Business Act).

The MREL is set as a percentage of the institution's total liabilities and own funds (see section 266(1), third sentence, of the Danish Financial Business Act).

The MREL is set at the consolidated level for parent undertakings subject to consolidated supervision (see section 266(3)). Mortgage credit institutions are exempted from the MREL (see section 266(1) of the Danish Financial Business Act). Instead, mortgage credit institutions are required to meet a debt buffer requirement (see section 125 of the Danish Financial Business Act). Hence, mortgage credit institutions are not covered by the consolidation when the MREL is set at the consolidated level (see section 266(3), second sentence, of the Danish Financial Business Act).

The MREL is set on the basis of the following criteria (see section 268(1) of the Danish Financial Business Act):

- 1) The group can be wound up using the resolution tools.
- 2) If bail-in is applied, the group has sufficient eligible liabilities to ensure that losses can be absorbed and that the group's common equity tier 1 capital can be restored to a level that allows the group to continue to meet the requirements for authorisation, while sustaining sufficient market confidence.
- 3) The group has sufficient eligible liabilities to ensure that, if certain categories of eligible liabilities are excluded from bail-in, losses can be absorbed and that the group's common equity tier 1 capital can be restored to a level that allows the group to continue to meet the requirements for authorisation.
- 4) The group's size, business model, financing model and risk profile.
- 5) To what extent the Danish Guarantee Fund for Depositors and Investors can help finance the resolution of the group in accordance with section 2a of the Danish Guarantee Fund for Depositors and Investors Act.
- 6) To what extent a negative impact on financial stability, possibly also through a rub-off effect on other financial undertakings and/or groups, will result from the fact that the group is failing.

Commission Delegated Regulation (EU) 2016/1450¹ (the regulation), which specifies the criteria relating to the methodology for setting the minimum requirement for own funds and eligible liabilities, details the criteria set out in section 268(1) of the Danish Financial Business Act.

The MREL consists of a loss absorption amount (see article 1 of the regulation) and a recapitalisation amount (see article 2 of the regulation) as well as the necessary adjustments listed in articles 3-6 (see article 7(1) of the regulation).

The loss absorption amount is generally determined as the institution's solvency need plus the combined capital buffer requirement (see article 1(4) of the regulation).

The recapitalisation amount is determined on the basis of the institution's expected resolution strategy as identified in its resolution plan. The recapitalisation amount is generally set at zero if the resolution strategy is insolvency (see article 2(2) of the regulation). If the resolution strategy is not insolvency, the recapitalisation amount is generally determined as the institution's solvency need plus capital buffers (see article 2(5), (7) and (8) of the regulation).

The Danish FSA may decide to increase or decrease the loss absorption and recapitalisation amounts (see article 1(5) and article 2(3) and (9) of the regulation). The Danish FSA may also make adjustments in accordance with articles 3-6 of the regulation.

Forthcoming regulations

The bill to amend the Danish Financial Business Act, the Danish Act on Reconstruction and Resolution of Certain Financial Undertakings and the Danish Capital Markets Act and to repeal the Danish Act on Finansiell Stabilitet (the bill) will be passed on 28 December 2020. The Danish Executive Order on the Minimum Requirement for Own Funds and Eligible Liabilities will enter into force on the same date. The bill implements parts of 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 (BRRD II) and Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding

¹ 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.

companies, remuneration, supervisory measures and powers and capital conservation measures (CRD V). The Danish Executive Order implements parts of BRRD II.

The passing of the bill means that common equity tier 1 (CET1) capital used for meeting the combined capital buffer requirement (see section 125b(1) of the Danish Financial Business Act) cannot also be used for meeting the MREL (see section 125a(8)(iv) of the bill).

2.2. Requirement of subordination of the minimum requirement for own funds and eligible liabilities

Applicable regulations

The Danish FSA may require the eligible liabilities to consist, wholly or partly, of liabilities that can be converted (see section 268(2), second sentence, of the Danish Financial Business Act).

2.3. Resolution plan and public interest

The Danish FSA must prepare, adopt and maintain a resolution plan (see sections 259 and 260). In the resolution plan, an assessment is made of whether public interest calls for the implementation of resolution measures as this is a condition for reconstruction or resolution (see section 4(1)(iii) of the Danish Act on the Reconstruction and Resolution of Certain Financial Undertakings).

Public interest covers the following (see section 5 of the Danish Act on the Reconstruction and Resolution of Certain Financial Undertakings):

- 1) ensuring the maintenance of critical functions if discontinuance is likely to result in interruptions to services that are of vital importance to the real economy or to result in interruptions to financial stability
- 2) avoiding substantial negative consequences for financial stability, especially by preventing the spread of such consequences, including to market infrastructures, and by maintaining market discipline
- 3) protecting public funds by minimising the dependence on extraordinary public financial support
- 4) protecting depositors and investors covered under the Danish Guarantee Fund for Depositors and Investors Act
- 5) protecting customer funds and assets

It is also a condition that the individual resolution objectives cannot be met to the same extent through insolvency proceedings (see the comments on section 4(1)(iii) of the Danish Act on the Reconstruction and Resolution of Certain Financial Undertakings).

3. The Danish FSA's assessment

The Danish FSA sets the MREL (see section 266 of the Danish Financial Business Act) on the basis of the criteria set out in section 268(1) of the Danish Financial Business Act and the resolution plan for Danske Bank A/S.

3.1. Resolution plan

Public interest

At the consolidated level, Danske Bank A/S has been designated as a systemically important financial institution, and the Group has critical functions that would have to be maintained in a resolution situation.

As a result, the resolution plan assesses that public interest, as a general rule, calls for the implementation of one or more resolution measures if the Group is failing (see section 4(1)(iii) of the Danish Act on the Reconstruction and Resolution of Certain Financial Undertakings).

Resolution strategy

The resolution strategy is based on a single-point-of-entry strategy that involves keeping the Group as one entity in the event of resolution. In general, Danske Bank A/S would remain on the market and be re-established as a viable undertaking. This would take place through a recapitalisation of the Group on a consolidated basis at the group level by writing down and converting claims advanced by creditors.

3.2. Minimum requirement for own funds and eligible liabilities

The MREL is set as a loss absorption amount (see article 1 of the regulation) and a recapitalisation amount (see article 2 of the regulation).

Loss absorption amount

The passing of the bill means that the MREL and the combined capital buffer requirement must be met as two separate requirements as CET1 capital used for meeting the combined capital buffer requirement cannot also be used for meeting the MREL.

The Danish FSA is of the opinion that the loss absorption amount must be determined as Danske Bank A/S's solvency need.

Recapitalisation amount

In general, the Group will be re-established as a viable undertaking by *Finansiel Stabilitet* (see section 3.1). The Danish FSA therefore assesses that the recapitalisation amount for Danske Bank A/S must be determined as the solvency need plus the combined capital buffer requirement not including the countercyclical buffer.

Setting of the minimum requirement for own funds and eligible liabilities

The Danish FSA thus assesses that the MREL must amount to twice the solvency need plus the combined capital buffer requirement not including the countercyclical buffer.

The Danish FSA assesses that the MREL for Danske Bank A/S on a consolidated basis at the group level at 28 December 2020 must be set at 8.8% of Danske Bank A/S's total liabilities and own funds. This corresponds to 30.5% of Danske Bank A/S's risk-weighted exposures on a consolidated basis at the group level. The requirement is based on data at 30 June 2020. At 30 June 2020, the requirement amounted to DKK 201 billion.

At 28 December 2020, only the requirement as a percentage of the risk-weighted exposures will be binding on Danske Bank A/S.

Since mortgage credit institutions are exempted from the MREL, Realkredit Danmark A/S is not included in the consolidation underlying the setting of the consolidated MREL for Danske Bank A/S (see section 266(3), second sentence, of the Danish Financial Business Act).

3.3. Requirement of subordination of the minimum requirement for own funds and eligible liabilities

The Danish FSA assesses that, out of the MREL (at 30.5% of the REA) plus the combined capital buffer requirement (which was 5.6% of the REA at 30 June 2020), an amount equal to 30.6% of Danske Bank A/S's risk-weighted exposures must be met with capital instruments and debt instruments that, in resolution and insolvency, are written down and converted before unsecured claims. To meet this requirement, Danske Bank A/S may use the capital instruments and debt instruments included to meet the MREL as well as the common equity tier 1 capital instruments included to meet the combined capital buffer requirement.

4. Consultation

The Danish FSA submitted the decision to Danske Bank A/S for consultation on 4 November 2020, and the deadline for the bank's response was 18 November 2020. The Danish FSA received the bank's response on 17 November 2020.

4.1. Subordination requirement under BRRD II

The bank notes that the subordination requirement must be the higher level of either 1) twice the solvency need plus the combined capital buffer requirement or 2) 8% of total liabilities and own funds. The bank is of the opinion that 8% of total liabilities and own funds is an appropriate level of subordinated funds to implement the preferred resolution strategy without any creditors incurring larger losses in resolution than in insolvency (the No Creditor Worse Off (NCWO) principle). This level of the subordination requirement will follow the approach to the determination of the subordination requirement taken by the Single Resolution Board (the SRB). In continuation of this, the bank is also concerned that the increased subordination requirement will result in an uneven playing field for Danske Bank vis-à-vis global SIFIs in the banking union.

The Danish FSA finds that the approach to the determination of the subordination requirement in this year's NEP decision for Danske Bank is not to be changed. The NEP decision for the bank is based on applicable legislation (BRRD I), but – in line with the announcement on 1 May 2020 – takes into consideration the maximum level of the subordination requirement applicable under BRRD II.

5. Complaints procedure

Decisions made by the Danish FSA may be brought before the Danish Company Appeals Board no later than four weeks after the receipt of such decisions (see section 372(1) of the Danish Financial Business Act). Complaints must be forwarded by email to ean@naevneneshus.dk or by letter to the Danish Company Appeals Board (Secretariat), Toldboden 2, DK-8800 Viborg.

In accordance with section 7(2) of the Danish Executive Order on the Company Appeals Board, complaints made to the Company Appeals Board of the Danish Ministry of Industry, Business and Financial Affairs are subject to a fee of DKK 4,000. If the complaint does not concern the complainant's current or future business activities, the fee is DKK 2,000. In accordance with section 15(4) of the Danish Executive Order on the Company Appeals Board, the board or its chairman may decide to refund part of or the whole fee paid if Danske Bank A/S's claim is upheld in whole or in part. The fee is refunded if the board decides not to consider the complaint.

6. Publication

This decision has been made by the Governing Board of the Danish FSA. In general, decisions must be published (see section 354a of the Danish Financial Business Act). Publication may be omitted, however, if publication means disproportionate detriment to the undertaking (see section 354a(4) of the Danish Financial Business Act). If publication is omitted, publication must take place when the considerations necessitating omission no longer apply (see section 354(5) of the Danish Financial Business Act).

The Danish FSA finds no reason to delay publication of the decision since the Danish FSA assesses that publication will not result in any disproportionate detriment to Danske Bank A/S. Hence, the decision must be published (see section 354a of the Danish Financial Business Act).

Yours faithfully

Uffe Mikkelsen
Deputy Director