

For the attention of the Board of Directors and the Executive Leadership Team of Danske Bank A/S

20 December 2021

File no. 21-014970

## **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 at 1 January 2022 on a consolidated basis at the resolution group level (see section 267(1) of the Danish Financial Business Act) at 29.6% of Danske Bank A/S's total risk exposure amount (risk-weighted exposures) and at 6.0% of Danske Bank A/S's total exposure measure (leverage ratio). The requirement is based on figures at year-end 2020. However, the requirement takes into consideration an expected decrease of 0.5 percentage points in the Pillar II add-on to the solvency need in the fourth quarter of 2021. The requirement based on the total risk exposure amount would have been the binding requirement at the end of 2020.

The Danish FSA **sets** the subordination requirement for Danske Bank A/S at 1 January 2022 on a consolidated basis at the resolution group level at twice the solvency need plus the capital buffer requirement (see section 267c(4)(ii)), or 29.7% of the total risk exposure amount. The requirement is based on figures at year-end 2020. However, the requirement takes into consideration an expected decrease of 0.5 percentage points in the Pillar II add-on to the solvency need in the fourth quarter of 2021.

At 30 September 2022, the subordination requirement for Danske Bank A/S is set at 30.4% of the total risk exposure amount due to the reactivation of the countercyclical capital buffer.

### **2. Legal basis**

#### **2.1. Minimum requirement for own funds and eligible liabilities**

Banks must at all times comply with an MREL set by the Danish FSA after consulting with Finansielt Stabilitet (see section 266(1), first sentence, of the Danish Financial Business Act).

#### *Setting of the minimum requirement for own funds and eligible liabilities*

The Danish FSA must set the MREL as a percentage of the undertaking's total risk exposure amount and total exposure measure (see section 266(5) of the Danish Financial Business Act).

The MREL is set on the basis of the following criteria (see section 266a(1) of the Danish Financial Business Act):

- 1) The resolution group can be resolved by the application of the resolution tools to the resolution entity in a way that meets the resolution objectives.
- 2) The resolution entity and its subsidiaries that are not resolution entities have sufficient own funds and eligible liabilities to ensure that the losses can be absorbed and that the capital ratio and leverage ratio of the entities in question can be restored to a level that allows the resolution entity and its subsidiaries that are not resolution entities to continue to meet the requirements

for authorisation and to carry on the activities for which they are authorised while sustaining sufficient market confidence.

- 3) The resolution entity has sufficient own funds and eligible liabilities to absorb losses and restore the resolution entity's capital ratio and leverage ratio to a level that allows the resolution entity to continue to meet the requirements for authorisation and to carry on the activities for which it is authorised while sustaining sufficient market confidence when the resolution plan anticipates the possibility for certain categories of own funds and eligible liabilities to be excluded from a bail-in or to be transferred in full to a recipient under a partial transfer.
- 4) The undertaking's size, business model, funding model and risk profile.
- 5) The extent to which the failure of the undertaking will have an adverse effect on financial stability, including through contagion on other undertakings.

The Danish FSA also sets the MREL for a resolution entity on the basis of whether the resolution plan states that the resolution entity's subsidiaries established in a country outside the European Union with which the Union has not entered into an agreement for the financial area form part of the same resolution group as the resolution entity (see section 266a(2) of the Danish Financial Business Act).

The Danish FSA sets the MREL at an amount that is sufficient to ensure that the losses that the undertaking is expected to incur are fully absorbed (loss absorption) and that the resolution entity and its subsidiaries that are not resolution entities are recapitalised to a level necessary to allow them to continue to meet the requirements for authorisation and to carry on the activities for which they are authorised for an appropriate period not longer than one year (recapitalisation) (see section 3 of the Danish Executive Order on the Minimum Requirement for Own Funds and Eligible Liabilities).

For a resolution entity, the MREL (see section 266 of the Danish Financial Business Act, cf. section 5 of the Danish Executive Order on the Minimum Requirement for Own Funds and Eligible Liabilities) is set as the following:

- 1) A percentage of the resolution entity's total risk exposure amount (risk-weighted exposures) (see section 266(5)(i) of the Danish Financial Business Act) calculated in accordance with Schedule 1, no 1. The MREL is set as a percentage calculated in accordance with Schedule 1, no 2.
- 2) A percentage of the resolution entity's total exposure measure (leverage ratio) (see section 266(5)(ii) of the Danish Financial Business Act) calculated in accordance with Schedule 1, no 3. The MREL is set as a percentage calculated in accordance with Schedule 1, no 4.

#### *Loss absorption amount*

The loss absorption amount is determined as the amount of losses to be absorbed in resolution that corresponds to the requirements for the resolution entity (see article 92(1)(c) of Regulation (EU) no 575/2013 of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms and section 124 of the Danish Financial Business Act) on a consolidated basis at the resolution group level (see Schedule 1, nos 1 and 3 of the Danish Executive Order on the Minimum Requirement for Own Funds and Eligible Liabilities).

#### *Recapitalisation amount*

The recapitalisation amount is determined as the amount that allows the resolution group to restore compliance with its total capital ratio requirement described in article 92(1)(c) of Regulation (EU) no 575/2013 of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms and section 124 of the Danish Financial Business Act on a consolidated basis at the resolution group level after the implementation of the preferred resolution

strategy (see Schedule 1, nos 1 and 3, of the Danish Executive Order on the Minimum Requirement for Own Funds and Eligible Liabilities).

The Danish FSA may adjust the recapitalisation amount upwards or downwards (see Schedule 1, nos 1 and 3, of the Danish Executive Order on the Minimum Requirement for Own Funds and Eligible Liabilities). The Danish FSA may increase the recapitalisation amount by an appropriate amount necessary to ensure that, following resolution, the resolution entity is able to sustain sufficient market confidence for an appropriate period not exceeding one year (see Schedule 1, no 1, of the Danish Executive Order on the Minimum Requirement for Own Funds and Eligible Liabilities).

#### *Compliance with the minimum requirement for own funds and eligible liabilities*

A resolution entity is required to meet the MREL on a consolidated basis at the resolution group level (see section 267(1) of the Danish Financial Business Act). The consolidation applies solely to undertakings subject to an MREL (see section 267(2), first sentence, of the Danish Financial Business Act).

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 268 of the Danish Financial Business Act). Consequently, mortgage credit institutions are not covered by the consolidation when the MREL is set at the consolidated level.

Own funds and eligible liabilities used for complying with an MREL to be met at the consolidated level may not also be used for meeting or financing liabilities included to meet the requirements in section 268(1)-(4) or the requirements in section 268d, cf. section 267(2), second sentence, of the Danish Financial Business Act.

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

After having consulted Finansielt Stabilitet, the Danish FSA must stipulate that a proportion of the MREL must be met with own funds, subordinated eligible instruments or liabilities covered by section 267a(1)(v) (subordination requirement) for resolution units that are not global systemically important financial institutions (G-SIFIs) but form part of a resolution group whose total assets exceed EUR 100 billion (see section 267c(1)(ii) of the Danish Financial Business Act).

However, after having consulted Finansielt Stabilitet, the Danish FSA may stipulate that the subordination requirement must be an amount that does not exceed the higher of 8% of the resolution group's total liabilities and own funds and the amount calculated on the basis of the formula in Schedule 9, no 3, if one of the following conditions is met (see section 267c(4) of the Danish Financial Business Act):

- 1) The Danish FSA and Finansielt Stabilitet have identified substantive impediments to resolvability (see sections 262 and 263) and ascertained that no remedial action has been taken in accordance with an order issued by the Danish FSA pursuant to section 264(5) within the deadline or that the substantive impediments identified cannot be addressed by executing the order referred to in section 264(5) and that the determination of the proportion referred to in (1) under this provision compensates for the negative impact of the substantive impediment on resolvability.
- 2) According to the resolution plan for the resolution entity, the resolution entity's preferred resolution strategy is feasible and credible to a limited extent considering the resolution entity's size; the nature, scope and complexity of its activities; the risks associated with its activities; its interconnectedness; and its legal status and shareholder structure.

- 3) The individual solvency requirement calculated pursuant to section 124(3) or the individual solvency need calculated pursuant to section 124(2) reflects the fact that the resolution entity is, in terms of risk, among the top 20% of undertakings for which the Danish FSA sets the MREL.

### 2.3. Transition period

After having consulted Finansiell Stabilitet, the Danish FSA sets a deadline within which the undertakings must meet the MREL and the subordination requirement (see section 5(11), first sentence, of the Consolidation Act to amend the Danish Financial Business Act).<sup>1</sup> The undertakings must meet the requirements by 1 January 2024 (see section 5(11), second sentence, of the Consolidation Act to amend the Danish Financial Business Act). In relation to compliance with the requirements, the Danish FSA sets intermediate target levels that the undertakings must meet by 1 January 2022 (see section 5(11), fourth sentence, of the Consolidation Act to amend the Danish Financial Business Act). The Danish FSA sets intermediate target levels for each 12-month period in the transition period for the undertaking (see section 5(11), fifth sentence, of the Consolidation Act to amend the Danish Financial Business Act).

### 2.4. Resolution plan and public interest

The Danish FSA must prepare, adopt and maintain a resolution plan (see sections 259 and 260 of the Danish Financial Business Act). The resolution plan must identify the resolution entities and resolution groups of the group in question (see section 260(2), second sentence, of the Danish Financial Business Act). In the resolution plan, an assessment is made of whether public interest calls for the implementation of resolution measures since 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 the resolution objectives in section 5 of the Danish Act on the Reconstruction and Resolution of Certain Financial Undertakings):

- 1) ensuring the continuity 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 explanatory notes to section 4(1)(iii) of the Danish Act on the Reconstruction and Resolution of Certain Financial Undertakings).

---

<sup>1</sup> Consolidation Act no. 2110 of 22 December 2020 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.

### 3. The Danish FSA's assessment

The Danish FSA sets the MREL (see section 266(1), first sentence, of the Danish Financial Business Act) on the basis of the criteria set out in section 266a 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 in the event of failure (see section 4(1)(iii) of the Danish Act on the Reconstruction and Resolution of Certain Financial Undertakings).

##### *Resolution strategy*

Danske Bank A/S has been designated as a resolution entity.

The resolution strategy is based on the transfer of control over Danske Bank A/S to Financial Stabilitet if the conditions for resolution are met.

The resolution strategy is based on a single-point-of-entry strategy that involves identifying the Group as a resolution group and 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 resolution group on a consolidated basis at the resolution group level by writing down and converting claims advanced by creditors.

#### 3.2. Minimum requirement for own funds and eligible liabilities

##### *Loss absorption amount*

The Danish FSA is of the opinion that the loss absorption amount must be determined as Danske Bank A/S's solvency need (see section 3 of the Danish Executive Order on the Minimum Requirement for Own Funds and Eligible Liabilities).

##### *Recapitalisation amount*

In general, the resolution 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*

Accordingly, the Danish FSA assesses that the MREL must amount to twice the solvency need plus the combined capital buffer requirement not including the countercyclical buffer (loss absorption and recapitalisation).

The Danish FSA assesses the MREL for Danske Bank A/S at 1 January 2024 and the intermediate target level at 1 January 2022 on a consolidated basis at the resolution group level at 29.6% of Danske Bank A/S's total risk exposure amount (risk-weighted exposures) and at 6.0% of Danske Bank A/S's total

exposure measure (leverage ratio). The requirement is based on figures at year-end 2020. However, the requirement takes into consideration an expected decrease of 0.5 percentage points in the Pillar II add-on to the solvency need in the fourth quarter of 2021. The requirement based on the total risk exposure amount would have been the binding requirement at the end of 2020.

The Danish FSA assesses that the intermediate target levels must ensure a linear build-up of own funds and eligible liabilities towards the MREL at 1 January 2024. This means that, because Danske Bank A/S already meets the MREL applicable at 1 January 2024, the intermediate target level applicable at January 2022 is the same as the MREL applicable at 1 January 2024.

Since mortgage credit institutions are exempted from the MREL (see section 266(1) of the Danish Financial Business Act), Realkredit Danmark A/S is not included in the consolidation underlying the consolidated MREL set for Danske Bank A/S (see section 267(2), first 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 sets the subordination requirement for Danske Bank A/S at 1 January 2022 and the intermediate target level at 1 January 2022 on a consolidated basis at the resolution group level at twice the solvency need plus the capital buffer requirement for Danske Bank A/S. The requirement is set pursuant to section 267c(4)(ii) of the Danish Financial Business Act. The Danish FSA sets the subordination requirement at 1 January 2022 at 29.7% of the total risk exposure amount. The requirement is based on figures at year-end 2020. However, the requirement takes into consideration an expected decrease of 0.5 percentage points in the Pillar II add-on to the solvency need in the fourth quarter of 2021.

Danske Bank A/S is a SIFI with a high degree of internal and external interdependencies. The Danish FSA assesses that the preferred resolution strategy for Danske Bank A/S is feasible and credible only to a limited extent if it is not supported by adequate subordinated funds since the risk of a bail-in in respect of unsecured claims (non-subordinated funds) increases as subordinated funds available in the event of resolution decrease. A bail-in in respect of unsecured creditors may have significant, negative effects on the financial system, confidence in the market and the real economy, and there may be derived consequences for other financial institutions in Denmark. In addition, the undertaking's activities are so extensive that a bail-in in respect of unsecured creditors increases the complexity of resolution.

Moreover, the subordination requirement is also increased in view of Danske Bank's importance to the Danish economy. Danske Bank is a category 5 SIFI with a balance-sheet total at the end of 2020 equalling 152.8% of Denmark's GDP (according to the Danish FSA's designation of SIFI institutions in June 2021).

Additional subordinated funds also mean that unsecured creditors will incur smaller losses if a bail-in in respect of unsecured claims proves necessary. A high degree of subordination also increases transparency for investors in terms of which creditors are expectedly required to contribute in the event of resolution since subordinated funds are inherently designed to absorb losses.

The Danish FSA assesses that the intermediate target levels must ensure a linear build-up of subordinated liabilities towards the subordination requirement at 1 January 2024. This means that, because Danske Bank A/S already meets the subordination requirement applicable at 1 January 2024, however, with an increase at 30 September 2022 after the reactivation of the countercyclical capital buffer, the intermediate target level applicable at January 2022 is the same as the subordination requirement applicable at 1 January 2024.

#### **4. Consultation**

The Danish FSA submitted the decision to Danske Bank A/S for consultation on 26 October 2021, and the deadline for the bank's response is 12 November 2021.

#### **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. Decisions must generally be published (see section 354a of the Danish Financial Business Act). Publication may be omitted, however, if publication causes 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

Steffen Ulrik Lind

Deputy Director