

Published on 18 December 2020

COMMUNICATION ON SRB PERMISSION REGIME ON REDUCTION OF ELIGIBLE LIABILITIES¹

1. On 25 June 2019, the Single Resolution Board (SRB) published its procedure to assess applications to reduce eligible liabilities instruments under Article 78a of Regulation (EU) 575/2013 amended by Regulation (EU) 2019/876 (revised CRR)². The current procedure provides that institutions are required to seek approval from the SRB to call, redeem, repay or repurchase eligible liabilities instruments before they reach their contractual maturity. The scope of the procedure is limited to liabilities instruments that meet all the eligibility conditions of Article 72b of the revised CRR, including subordination³. On 18 December 2019, the SRB clarified that the procedure will remain in place until the European Banking Authority's (EBA) Regulatory Technical Standards (RTS) under Article 78a(3) of revised CRR come into force⁴.
2. This publication addresses certain regulatory changes and explains how the SRB will transition from its current procedure for assessing prior permission applications to 1 January 2022, which is the deadline for institutions to comply with the intermediate MREL targets set under the Regulation (EU) 2019/877 (SRMR2). The SRB underlines the importance of building up and maintaining an adequate MREL stock. If institutions have a MREL shortfall on 1 January 2022, the consequences of breaching the intermediate MREL targets range from the application of MREL MDA restrictions⁵ to the measures set out in Article 12j of SRMR2 for MREL breaches.

OBJECTIVE OF THIS PUBLICATION

3. The objective of this publication is two-fold: (i) to inform institutions under the SRB's direct remit of two regulatory changes that require the SRB to adapt its current permission regime procedure for calling, redeeming, repaying or repurchasing eligible liabilities instruments ahead of their maturity; and (ii) to explain to institutions how the transition to the updated procedure will work.

¹ This publication is not intended to create any legally binding effect and does not in any way substitute the legal requirements laid down in the relevant applicable European Union (EU) and national laws. It may not be relied upon for any legal purposes, does not establish any binding interpretation of EU or national laws and does not serve as, or substitute for, legal advice.

² Under Article 78a of the revised CRR, in place since 27 June 2019: https://srb.europa.eu/sites/srbsite/files/crr_addendum_to_the_2018_srb_mrel_policy.pdf

³ Article 72b(2)(d) revised CRR, in place since 27 June 2019.

⁴ See SRB's press release published on 18 December 2019: <https://srb.europa.eu/en/node/903>

⁵ Article 10a of the SRMR2.

© Single Resolution Board, 2020. Reproduction is authorised provided the source is acknowledged.

4. The first regulatory change is the application of SRMR2 amending Regulation (EU) 806/2014 (SRMR1). The application of SRMR2 starts on 28 December 2020⁶ with new MREL eligibility criteria applying to liabilities that qualify for MREL. The regulation expands the scope of liabilities subject to the permission regime to all MREL eligible liabilities (including senior unsecured liabilities and internal MREL eligible liabilities)⁷. The date of effect of the enlarged scope for the permission regime is further described in paragraphs 7-9.
5. The second regulatory change is the forthcoming Level 2 legislation on the permission regime. The EBA is mandated under Article 78a(3) of revised CRR to draft RTS specifying the process for prior permission, including information requirements for permission applications and the time frame for resolution authorities to assess applications. The date of effect is further described in paragraphs 10-11.

EXTENSION OF EXISTING GPP

6. To ensure a smooth transition to the new regulatory framework, the SRB will extend the duration of the general prior permissions (GPP) still in effect at the date of this publication until the date at which the National Resolution Authorities (NRAs) communicate the SRMR2 MREL decisions to institutions. Where an institution would like to extend its existing GPP or to obtain a GPP for a lower predetermined amount compared to the existing one, the SRB should be notified and the submission of a new application is not required⁸. Nonetheless, in any other case (e.g. request for a higher predetermined amount), a new application is required and the SRB current procedure for permission will continue to apply.

APPLICATION OF SRMR2

7. The application of the SRMR2 will extend the permission regime to all MREL eligible liabilities (including senior unsecured liabilities), and to liabilities that are eligible for internal MREL.
8. Until the new MREL decisions adopted by the SRB on the basis of the SRMR2 are communicated to institutions by NRAs, the existing MREL decisions taken on the basis of SRMR1/BRRD1 remain valid. Thus, institutions shall continue to comply with the existing MREL decisions, in accordance with the SRMR1/BRRD1 eligibility rules⁹. As a result, the SRB will continue to apply its current policy and procedure for permission applications

⁶ Article 2(2) of the SRMR2.

⁷ Article 12c(1)(b) of the SRMR2 for the senior layer. Article 12c(2) SRMR for structured notes. Article 12c(3) SRMR for liabilities issued to existing shareholders. Article 12g(2)(a)(ii) of the SRMR2 for internal MREL.

⁸ Applications already received by the date of this publication will be considered as due notice for an extension.

⁹ Number 50 of the [European Commission Notice relating to the interpretation of certain legal provisions of the revised bank resolution framework in reply to questions raised by Member States' authorities](#) published in the Official Journal of the EU on 29 September 2020.

submitted by institutions subject to BRRD1/SRMR1 decisions until the new BRRD2/SRMR2 decisions are communicated to institutions by NRAs.

9. After the communication of the SRMR2 MREL decisions by NRAs, the transitional period set out in Article 12k of the SRMR2 starts and institutions will not need to apply for permission for early redemptions of MREL eligible liabilities taking place until 31 December 2021. However, for redemptions of MREL eligible liabilities to be performed after 31 December 2021, institutions will need to submit applications to the SRB four months¹⁰ in advance (e.g. to perform a redemption as of 1 January 2022, an institution will need to submit an application to the SRB at the latest by 31 August 2021).

CURRENT SRB PROCEDURE AND FORTHCOMING EBA RTS

10. The EBA RTS¹¹ on the procedure applicable to early redemptions will have an impact on the SRB's current policy and procedure. The SRB will continue to assess all new applications based on its current policy and procedure until the Delegated Regulation endorsing the EBA RTS applies.
11. The SRB will closely monitor the process for the adoption of the EBA RTS by the European Commission. The statutory transitional period set out in the SRMR2 will be used by the SRB to integrate the new elements of the Delegated Regulation into the SRB policy and procedure, so that the updated permission regime can be operational as of 1 January 2022.

IMPACT FOR TOTAL LOSS-ABSORBING CAPACITY (TLAC) AND INTERNAL TLAC

12. The current SRB policy and procedure includes all TLAC liabilities and internal TLAC liabilities since the date of application of the revised CRR (27 June 2019). Thus, the application of the SRMR2 does not have any effect on TLAC eligible liabilities instruments. Institutions subject to TLAC requirements must continue to request a permission from the SRB if they want to perform redemptions, including market making, on TLAC eligible instruments. The SRB expects all applications for permission to include projections on TLAC capacity for the following three years.

¹⁰ Unless amended by the EBA RTS.

¹¹ Pursuant to Article 78a(3) of the revised CRR.