



Minimum Requirement for Own Funds and Eligible Liabilities (MREL)

Addendum to the SRB 2018 MREL policy on new CRR requirements

Published on 25 06 2019

ADDENDUM ON NEW CRR REQUIREMENTS

- 1 The objective of this publication is to inform institutions in the Single Resolution Board's ("SRB") remit of the interplay between certain key regulatory changes in the so-called "Banking Package" (CRR2/CRD5/BRRD2/SRMR2¹) and the SRB's minimum requirement for own funds and eligible liabilities ("MREL") policies and decisions.
- 2 This publication focuses on the provisions of Regulation (EU) 2019/876 amending Regulation (EU) 575/2013, which become immediately applicable on 27 June 2019 ("CRR"). The SRB has the task of ensuring compliance with CRR within the powers and procedures set out in Directive 2014/59/EU ("BRRD"). Notably, to ensure compliance with the requirements concerning own funds and eligible liabilities, the SRB cooperates with the competent authorities (Article 2 CRR).
- 3 This publication is an addendum to the "2018 SRB MREL policy for the second wave of resolution plans" (published on 16 January 2019), which applies to all institutions for which MREL decisions have or will be taken for the 2018 and 2019 cycles.
- 4 With this addendum, the SRB informs institutions of the implementation of CRR provisions relating to total loss-absorbing capacity ("TLAC") requirements for global-systemically important institutions (G-SIIs), as well as the permission regime under Article 78a CRR applicable to all institutions. This addendum aims to summarise and explain key new elements of the CRR that are relevant for the SRB and its tasks. However, it does not purport to cover all the new legislative provisions that may be relevant for the institutions under the SRB's remit in other areas of regulation.

TLAC requirements for G-SIIs

- 5 Pillar 1 requirements for G-SIIs are applicable as of 27 June 2019. This Pillar 1 requirement is a statutory obligation applying directly to G-SIIs, without the need for any implementing action. G-SIIs have a responsibility to hold at all times a sufficient amount of own funds and eligible liabilities (after deductions) to meet the Pillar 1 requirement.
- 6 **Requirement.** In adherence with the Financial Stability Board ("FSB") TLAC standards, resolution entities that are G-SIIs or part of a G-SII shall at all times:

¹ Regulation (EU) 2019/876 (CRR2); Directive (EU) 2019/879 (CRDV); Directive (EU) 2019/879 (BRRD2); Regulation (EU) 2019/877 (SRMR2).

- satisfy an external TLAC requirement² of a risk-based ratio of 16% of Total Risk Exposure Amount (“TREA”)/ a non-risk based ratio of 6% of Leverage Ratio Exposure Measure (“LREM”), calculated on a consolidated basis at resolution group level, from 27 June 2019 until 31 December 2021³, and
- 18% of TREA/ 6.75% of LREM from 1 January 2022.

Material subsidiaries of G-SIIs headquartered outside the EU, which are not resolution entities are subject to an internal TLAC requirement at a sub-consolidated level, scaled at 90% of their external TLAC requirement⁴.

- 7 **Capacity.** The CRR lays down conditions for TLAC eligible liabilities including deduction rules for holdings of TLAC instruments issued by other G-SII entities. In particular, only liabilities subordinated to excluded liabilities are eligible for meeting the TLAC requirement. With regard to eligibility criteria other than subordination, instruments issued prior to 27 June 2019 are grandfathered in relation to some conditions introduced by the new framework.
- 8 For external TLAC purposes, the SRB may grant an allowance for senior instruments:
- of up to 2.5% of TREA until 31 December 2021 (3.5% of TREA from 1 January 2022)⁵, or
 - where excluded liabilities ranking *pari passu* or lower do not exceed 5% of the amount of the own funds and eligible liabilities of the institution⁶.

In both cases, the allowances will only be possible if not giving rise to material risk of successful legal challenge or valid compensation claims in relation to the no creditor worse off (“NCWO”) principle. As a transitional arrangement in the CRR, an allowance of 2.5% of TREA⁷ is applicable for G-SIIs (or resolution entities that are part of a G-SII) until the SRB makes the aforementioned assessment following the Regulation’s application date. The SRB will conduct this assessment in the current resolution planning cycle on the basis of the applicable policy⁸ to decide whether to maintain an allowance. The conclusions

² Article 92a CRR.

³ Article 494(1) CRR.

⁴ Article 92b CRR. Subsidiaries not meeting the materiality thresholds of point 135 of Article 4(1) CRR are not subject to internal TLAC requirements. It is noted that the 90% scalar only applies for internal TLAC, and not for any other internal MREL requirement under Directive 2014/59/EU applicable in addition or in lieu of internal TLAC.

⁵ Article 72b(3) CRR.

⁶ Article 72b(4) CRR, of potential relevance for financial holding companies identified as resolution entities.

⁷ No corresponding transitional arrangement exists for the 72b(4) CRR allowance.

⁸ See para 32 of the 2018 SRB MREL policy for the second wave of resolution plans.

reached will then be subject to re-assessment of the NCWO risk in subsequent planning cycles based on an enhanced assessment methodology and new liability data.

- 9 In accordance with the revised Pillar 3 disclosure standards published by the Basel Committee on Banking Supervision, CRR obliges institutions to disclose their TLAC capacity on a quarterly basis, as part of their key metrics. Further details on the composition of own funds and eligible liabilities, their maturity and main features of TLAC, the amount of issuances included in the senior allowance, the amount of excluded liabilities, and the ranking of eligible liabilities in the creditor hierarchy shall be disclosed semi-annually.

Interplay between TLAC requirements and SRB MREL decisions

- 10 The major elements of the new MREL framework, other than the TLAC requirement, will become applicable on 28 December 2020. National transposition and application of BRRD2 by Member States will be due by the same date. Until then, MREL decisions issued by the SRB, including any applicable transition periods, will be based on the current legal framework of SRMR1/BRRD1⁹, implemented via the SRB's "[2018 MREL policy for the second wave of resolution plans](#)". The new legal framework will apply to MREL setting from 28 December 2020. The SRB will develop a new policy for this (see below para. 16).
- 11 Until 28 December 2020, resolution entities of G-SIIs and material subsidiaries of G-SIIs headquartered in a third country will be subject to the respective CRR statutory TLAC and internal TLAC requirements and the binding SRB MREL decisions based on BRRD1/SRMR1 in parallel. Hence, G-SIIs need to comply with two formally separate requirements. At the same time, resources eligible for the TLAC requirements are also eligible for BRRD1/SRMR1 MREL, allowing the bank to count TLAC resources to meet BRRD1 MREL decisions, including any amount deducted under the deduction regime for G-SII holdings introduced by CRR.

Obligation to request SRB approval for early repayment of eligible liability instruments (Article 78a CRR)

- 12 As of 27 June 2019, all institutions are required to seek approval from the SRB to call, redeem, repay or repurchase eligible liabilities instruments, including those with residual maturity of less than one year, before they reach their contractual maturity. The CRR introduces two types of permissions for this purpose: (i) an instrument-by-instrument permissions regime; and (ii) a general prior permissions regime, where the institution can perform early repayments for a predetermined amount set by the SRB and for a specified period not exceeding one year, subject to the fulfilment of certain conditions specified in

⁹ Regulation (EU) 2014/806 (SRMR1); Directive (EU) 2014/59 (BRRD1).

CRR. The general prior permissions may be renewed. The CRR also mandates the EBA to develop draft regulatory technical standards to specify certain elements of the regime.

- 13 The obligation to seek approval applies to G-SIIs and other institutions with MREL decisions higher than the loss absorption amount. For institutions with MREL shortfalls¹⁰, approvals can be granted only in case of replacement of eligible liabilities instruments by other eligible liabilities instruments or own funds. This is because in order to reduce eligible liabilities instruments without replacing them, institutions would first need to exceed their MREL requirement by a margin.
- 14 In order to be granted permission to call, redeem, repay or repurchase eligible liabilities instruments, institutions must send an application to the SRB, specifying which type of permission they seek. Once the SRB has processed the institution's application for permission, the SRB will issue a decision to the institution, and monitor how institutions use their prior permissions.
- 15 The procedure in **Annex I** describes the key aspects of the approval process, including time-limits and documentation supporting the application. As a transitional arrangement, no prior permission will be required to perform market making and other secondary market activities in own eligible liabilities instruments until 31 December 2019, under the conditions detailed in Annex I. To continue performing these activities as of 1 January 2020 without instrument-by-instruments approval, banks must have obtained a general prior permission.

Going forward

- 16 The SRB intends to publish by the beginning of 2020 its "MREL policy 2020", which will form the basis for MREL setting under the new framework of BRRD2/ SRMR2 for all institutions in the resolution planning cycle starting in 2020. The SRB expects to communicate these future MREL decisions to banks in early 2021.

¹⁰ In practice institutions with transition periods.

ANNEX I

The European Banking Authority (EBA) is mandated under Article 78a (3) CRR to draft Regulatory Technical Standards (RTS) specifying the process for prior permissions, including the time limits and information requirements. Until this Level 2 Regulation comes into application, the following provisional procedure applies:

Scope of instruments. At this stage, the SRB considers that the permission regime applies to eligible liabilities instruments as defined in Article 72b CRR.

Time-limit for applications. Institutions shall transmit a complete application to the SRB at least four months in advance of the date where one of the actions listed in Article 78a CRR (hereafter: "Redemption") is intended to be performed.

Content of the application. The application shall be accompanied by the following information:

- a) Specification of the legal basis for the application (Article 78a(1)(a) or (b) or (c) or 2nd subparagraph CRR);
- b) A well-founded explanation of the rationale for performing the Redemption in question;
- c) Information on MREL planning covering at least the following three years, in particular:
 - the level of eligible liabilities before and after the Redemptions;
 - the impact of the Redemptions on the applicable MREL requirements;
- d) For replacement of eligible liabilities instruments (Article 78a(1)(a) CRR):
 - information on the residual maturity of the replaced instrument and the maturity of the replacement instrument;
 - the ranking in the creditor hierarchy of the replaced and the replacement instrument;
 - the cost of the replacement instrument; and
 - the impact of replacing eligible liabilities on the sustainability for the income capacity (profitability) of the institution
- e) For a Redemption under Article 78a(1)(c) CRR, a demonstration that the partial or full replacement of the eligible liabilities with own funds instruments is necessary to ensure compliance with own funds requirements laid down in CRR and Directive 2013/36/EU for continuing authorisation; and
- f) Any other information considered necessary for evaluating the appropriateness of granting a permission.

The SRB may request any additional information it deems necessary for the approval process.

Representation. The application should be signed by a person authorised to formally represent the institution. The application should also contain a statement that the information provided is reliable and accurate and that the institution undertakes to supplement the application with any updates to the information it has provided and/or



commits to provide any additional information the SRB may require to ensure the completeness of the application.

Language. The institution is encouraged to select English as the applicable language for the application process, including the SRB decision to avoid translation-related delays of the approval process.

Market making and other secondary market activities. To avoid discontinuation of these activities in an interim period until institutions can obtain approval for Redemptions performed in market making and other secondary market activities, no prior permission will be required for market making and other secondary market activities, provided that:

- These activities are performed during an interim period from 27 June 2019 to 31 December 2019;
- The aggregate trading volume in these activities during this interim period does not exceed 1% of TREA on a consolidated basis at the level of the resolution group; and
- Any MREL shortfall, or increase thereof, resulting from these activities has been compensated with eligible liabilities instruments on a quarterly basis.

To continue performing these activities as of 1 January 2020 without instrument-by-instruments approval, banks must have obtained a general prior permission. The SRB is considering to grant prior permission to banks for market making and other secondary market activities irrespective of an existing MREL shortfall under the condition that any creation of temporary shortfall or increase of an existing shortfall that may result from these activities is compensated on a quarterly basis. The SRB will re-assess the limit of 1% TREA for market making on the basis of the experience gained in the course of the interim period.

ABBREVIATIONS

BRRD	Bank Recovery and Resolution Directive
CBR	combined buffer requirement
CRR	Capital Requirements Regulation
DGS	deposit guarantee scheme
DR	Commission Delegated Regulation
EU	European Union
FSB	Financial Stability Board
G-SII	Global Systemically Important Institution
MCC	market confidence charge
MPE	multiple points of entry
MREL	minimum requirement for own funds and eligible liabilities
NCWO	no creditor worse off
P1	Pillar 1 requirement
P2R	Pillar 2 requirement
RC	resolution college
RCA	recapitalisation amount
RWA	risk-weighted assets
SPE	single point of entry
SRB	Single Resolution Board
SRMR	Single Resolution Mechanism Regulation
TLAC	total loss-absorbing capacity



Single Resolution Board

Treurenberg 22, 1049 Brussels

<https://srb.europa.eu/>