Single Resolution Board

# Feedback statement to the consultation on the future of MREL

## 1. INTRODUCTION

The SRB conducted a public consultation on the future of the Minimum Requirements for Own Funds and Eligible Liabilities (MREL) between 14 December 2023 and 13 February 2024. The consultation is part of the SRB's strategic review to ensure that the SRB remains optimally equipped for the future, building on lessons learned from recent crises in the US and Switzerland, together with past SRB resolution cases.

The SRB received 18 responses from banking associations, banks and public institutions. This document summarises the main comments raised by the respondents and sets out how they have been addressed.

## 2. MAIN ISSUES RAISED IN RESPONSE TO THE CONSULTATION

**Market Confident Charge (MCC)**

*Market Confident Charge for external MREL*

Several respondents raised the concern that the statutory default level of the MCC (equal to the Combined Buffer Requirement (CBR) minus the Counter Cyclical Buffer (CCyB) can be detrimental to profitability and weights on bank lending capacity, while suggesting other factors to be important for building market confidence, including clear, regular and supportive communication by the resolution authority as well as the competent authority, ideally jointly. One respondent raised doubts that market confidence after resolution can be ensured by decreased MCC, considered instrumental to access mid- and long-term funding.

Based on the feedback received, the SRB has reviewed its current approach to the calibration of the MCC: from the 2024 RPC, when calibrating the MCC for resolution entities, the SRB will take into account the specific features and situation of the bank, in particular its progress to resolvability. If such progress is considered satisfactory, the SRB may apply a downward adjustment which, depending on the specificities of a given case, could result in an MCC at a level of 80% of the statutory default level.

*Market Confident Charge for internal MREL (iMCC)*

Some respondents suggested that a iMCC is not needed, especially in situations where the subsidiary and the resolution entity are part of the same resolution group and are located in the same Member State. Some respondents also proposed to review the two SRB criteria for wholesale funding and complexity, taking the view that the wholesale funding criterion should not include corporate deposits, and that the complexity criterion should be anchored to firm-specific features considering different indicators such as business model and products offered. One respondent stressed the importance of the iMCC to ensure that the subsidiary has its own market access and is seen as reliable counterparty.

The SRB maintains its general view that the decision on whether a iMCC is necessary for a non-resolution entity should depend on the characteristics of the subsidiary in question, examined on a case-by-case basis.

Building on the feedback received in the consultation and based on experience gained in setting iMCC in four resolution planning cycles, the SRB has revisited the factors that it takes into consideration when determining whether or not to set the iMCC. From the 2024 RPC: The criterion of "complexity" is replaced with the qualification of the non-resolution entity as an "Other Systemically Important Institution", and will operate as alternative instead of cumulative criterion to the existing strong reliance on wholesale funding criterion. This new approach will better capture the systemic footprint of subsidiaries while keeping the adjustment anchored to the specific situation of the bank. Where an iMCC is set on this basis, as the SRB equally introduces from the 2024 RPC the possibility to apply a downward adjustment, it is possible that the iMCC is set at a level of 80% of the statutory default value based on bank specific resolvability considerations, mirroring the new approach to external MCC. The SRB will continue to apply the iMCC for operating banks that are direct subsidiaries of holding company resolution entities, applying the same calibration level as for the resolution entity.

**Monitoring of eligibility**

Respondents generally supported the monitoring of eligible liabilities as long as proportionality is applied, although some considered that the current verification process based on the quarterly management sign-off form may be sufficient. Respondents also asked for clarifications regarding the precise scope of MREL instruments that the SRB intends to review (that is whether it would be all issuances or just a sample, and whether it would include existing or only new stock), and the roles and responsibilities between the ECB and the SRB regarding the monitoring of eligibility of own funds instruments.

The SRB acknowledges the need to minimise administrative burden when carrying out its mandate to monitor the eligibility of MREL instruments. Therefore, the SRB strives to implement checks in the most efficient way possible, leveraging on existing supervisory practices, while tailoring them to the specificities of eligible liabilities compared to own funds instruments. To reach this objective, the SRB eligibility checks in the new standardised format will be phased-in in 2025 on a limited scope of eligible liabilities, avoiding any overlap with supervisory assessments.

Accordingly, the SRB will in principle focus its monitoring activities on the qualification of new issuances of eligible liabilities[1] on an *ex-post* basis. The SRB will neither provide prior approval for eligible liabilities, nor expect banks to submit a declaration of eligibility for own funds instruments, the review of which falls into the direct competence of banking supervision. In this vein, it is appropriate to recall that any review by the SRB does not constitute an *ex-ante* approval, and that the primary responsibility for satisfying eligibility requirements rests with institutions.

The new format of standardised eligibility checks will be performed based on the information provided in the self-assessment that banks should carry out on a specific sample of issuances identified periodically by the SRB. It is important to clarify that banks will only be expected to self-assess those issuances explicitly signalled by the SRB.

The SRB will provide a template that banks should use for the self-assessment against the requirements set out in the relevant provisions of CRR and SRMR and Delegated Regulation (EU) No 241/2014 as amended by DR (EU) 2023/827, taking into consideration the relevant European Banking Authority (EBA) Q&As and the EBA monitoring report of TLAC/MREL eligible liabilities instruments. This self-assessment template will mirror the one currently in use for the review of the qualification of Additional Tier 1 and Tier 2 instruments by the ECB, except for the legal references which will be adjusted to the eligibility statutory conditions for eligible liabilities (i.e. Article 12c SRMR and Articles 72a, 72b and 72c of the CRR).

[1] This horizontal priority does not exclude that checks on MREL instruments included in the stock may be performed on an ad-hoc basis, based on its specific characteristics and risk profile of the bank.

**Discretionary exclusions**

Respondents to the consultation considered that the bail-inable amount of derivatives may be rather low for different reasons. At the same time, respondents identified a number of challenges that could impair a timely valuation of derivative liabilities in a resolution-driven close-out. Also, respondents pointed out possible extra-costs associated with the bail-in of derivative liabilities which could lead to destruction of value. Respondents also underlined that if the bail-in of certain instruments requires the liquidation of corresponding hedge, this could result in additional costs. Lastly, it was highlighted that there could be a sort of "second-round effect" when the counterparty of the net derivative liability being bailed-in is also a debtor/borrower of the bank.

The SRB will reflect on those responses in the context of the work it intends to carry out in the medium term.

**Combination of tools**

Several respondents suggested that a combination of transfer tools with bail-in should reduce the recapitalisation component of MREL since it would be impactful from a solvency/liquidity standpoint. For one respondent, such reduction may bear the risk that an alternative strategy based solely on bail-in would no longer be credible nor feasible.

A number of respondents provided suggestions for the criteria to consider in the identification of the transfer perimeter, including that it should mainly be applied for the stand-alone parts of the company which can be sold/transferred rather quickly; that the transfer should protect the franchise; and that it should rely on the work already done by banks on recovery options.

The SRB notes that the prominence of transfer tools in real life experience does not undermine the relevance of the bail-in tool in resolution. The bail-in tool remains an indispensable instrument in the resolution toolbox that can be used in combination with any of the transfer tools. At the same time, the practical relevance of transfer tools indicates that preferred resolution strategies that currently rely exclusively on open bank bail-in could be revisited as to include transfer tools in their preferred resolution strategy for specific scenarios.

Applying the asset separation and/or sale of business tool in resolution in parallel to open-bank bail-in raises questions of operationalisation that need to be assessed and compared to the use of open bank bail-in. The SRB intends to carry out this work in the medium term.

**Long-term policy considerations**

A number of respondents considered the current SRB policy as largely adequate. Other respondents considered that the current calibration is complex and contributes to competitive disadvantage vis-à-vis international competitors.

While a number of respondents supported a single adjustable driver, as long as it is easily understandable, objective, predictable and transparent, most of the respondents expressed doubts about linking the MREL adjustment factor to the resolvability assessment, as it might make that methodology more complex.

The SRB considers the feedback received as valuable input, enriching future discussions of policymakers on a potential revision of the framework as well as its own work on the resolvability assessment methodology.