Comments

SRB consultation on the future of MREL policy

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Answers to the consultation questions

1. Adjustment for preferred resolution strategies relying on a combination of resolution tools

Question 1.1. Which criteria would you use to identify the assets/ liabilities subject to a transfer strategy in addition to those listed in guiding principles for perimeter identification (e.g. Business activities, size, separability, marketability)?

n.a.

Question 1.2. Do you have comments on how a partial transfer would influence the composition and risk profile of the balance sheet of the resolved bank for the recapitalisation needs?

n.a.

2. Market confidence charge

Question 2.1. External MCC for resolution entities: What do you view as the main factors for a bank to be able to sustain market confidence during and immediately following its resolution?

n.a.

Question 2.2. Internal MCC for subsidiaries that are non-resolution entities: When setting an MCC for subsidiaries, what do you view as the main drivers for subsidiary banks to regain market confidence after the application of write-down and conversion powers?

n.a.

3. Monitoring of eligibility

Question 3.1. Do you have any comments on the described approach for eligibility monitoring that a resolution authority should implement to ensure effective loss-absorption capacity?

To increase transparency, we would very much welcome it if the responsibilities between the SRB and the ECB in the monitoring of own funds instruments and eligible liabilities could be outlined in the MREL policy. We therefore advocate a clear allocation of roles and responsibilities between the SRB and the ECB in order to avoid any duplication of work for both the authorities and the institutions with regard to any reporting queries.

We also advocate a more pragmatic approach to the monitoring of bonds, as their issuance is generally highly standardized, as noted by the SRB itself.

Question 3.2. While MREL-securities traded on capital markets and/or subscribed by professional investors show a high degree of standardisation and harmonisation of practices, liabilities arising from different legal arrangements (i.e., incorporated into private-placement agreements) do not. Are you aware of any specificities presented by non-standardised claims that would be worth taking into account

for the purpose of monitoring eligibility activities (also in light of the current management sign-off process)?

n.a.

4. Discretionary exclusions

Questions below are aimed at gathering views from the stakeholders on some specific liabilities in order to further inform the thinking of SRB regarding the exercise of its powers under SRMR in planning and resolution. This, however, should not be understood as suggesting a specific policy choice by the SRB or indicate that some liabilities are more or less likely to be considered as excluded on a discretionary basis in resolution. In the planning stage, the SRB will assess all relevant liabilities (including those where no specific questions were raised for the purpose of this consultation).

Moreover, where the SRB expresses an opinion in resolution planning that a liability is likely to be excluded based on the criteria of Commission Delegated Regulation (EU) 2016/860, this does neither indicate nor bind the SRB that write down and conversion powers under SRMR will not be exercised in relation to such liability in case of resolution, which will exclusively be governed by the specific circumstances at the point in time of adoption of the resolution scheme.

Question 4.1. Closing of derivative contracts (valued on a net basis) through bail-in may lead to replacement costs incurred by the bank, particularly in respect of open positions for the bank which require re-hedging. In your view, under what circumstances would the costs related to close-out be high enough to lead to destruction of value (meaning that holders of other/non-excluded liabilities would be better off when particular derivative contracts are excluded from bail-in than if derivatives were bailed-in)?

n.a.

Question 4.2. Under which circumstances and to what extent, could bailing in net liabilities under derivatives (after close out) negatively impact a bank's business, leading to destruction of value? Please elaborate (e.g. potential differences across different banking business models or types of derivatives themselves). Do you think the exclusion of other types of liabilities could lead to such effects?

n.a.

Question 4.3. Some instruments have been hedged externally and thus their bail-in would also require a winding down of the corresponding hedge. In your view, can this lead to destruction of value (meaning that holders of other/non-excluded liabilities would be better off when such liabilities are excluded from bail-in than when they are bailed-in)? If yes, under which circumstances (e.g. does it depend on the hedging purpose such as economic or accounting)? Do you think this could be the case for structured notes with embedded derivatives? In such case, please provide concrete examples of structured notes where destruction of value could appear.

n.a.

Question 4.4. Without prejudice to the considerations for discretionary exclusions regime, as regards bail-in operationalisation:

1) Are there any operational challenges that may hamper the bank's ability to provide, on short notice, the information about its derivative contracts as required for the purposes of valuation pursuant to Articles 36 and 49 of Directive 2014/59/EU? If so, do these challenges concentrate in any particular category of derivatives?

2) Are there particular types of collateral that might create operational challenges to determine – in a short timeframe – the extent by which the value of secured liabilities, or a liability for which collateral is pledged, exceeds the value of the assets, pledge, lien or collateral against which it is secured?

3) Are there particular challenges – in a short timeframe – in identifying the amount of a deposit that exceeds the coverage level provided for in Article 6 of the Deposit Guarantee Scheme Directive which would be eligible for bail-in?

n.a.

5. Long-term policy considerations: Rethinking approach to adjustments in the MREL policy

Question 5.1. What are your views on the current MREL calibration methodology? How do you assess the complexity of the current framework and would you support an approach to MREL by developing a new methodology with a harmonised floor and a single adjustment driver? In your view, does a single adjustment driver based on factors like resolution strategy, resolvability, etc. reduce complexity?

In the long term, the SRB is considering replacing the approach for determining institution-specific MREL. In future, MREL could be determined on the basis of a harmonized minimum value for all banks. The SRB would take into account institution-specific features by means of an adjustment factor. The level of the adjustment factor could also be based on the overall assessment of resolvability.

We reject a change in the approach to determining MREL. The SRB itself rightly points out that changes can only be made if the European legislator first creates a mandate in the BRRD legal framework. It is also unclear whether, according to the SRB, such an approach should also apply to institutions for which normal insolvency proceedings have been defined in the resolution planning. For these institutions, the competent resolution authorities regularly do not set MREL that exceed the own funds requirements (see Art. 45c (2) subpara. 2 BRRD), although the resolution authority remains free to deviate in individual cases. In any case, this tried and tested approach should not be deviated from by setting a harmonized minimum value, as small and medium-sized institutions regularly do not have access to capital markets and issuing additional liabilities causes difficulties and excessive costs. These institutions should also not be burdened with additional bureaucracy, e.g. through further reporting or notification obligations.

In our view, the SRB's ideas on the future design of the approach for determining MREL also indicate that they do not reduce complexity. We would like to point out that the current approach to determining MREL already allows the resolution authorities to make adjustments with regard to the suitability of institution-specific resolution strategies that also take aspects of resolvability into account. In addition, the level of institution-specific MREL requirements also plays a role in other regulations, e.g. when determining the level of contributions to the Single Resolution Funds. These contributions are determined on a risk basis: MREL-eligible liabilities held via MREL are risk-reducing and will have the effect of reducing contributions

in future. A harmonized minimum value with only one adjustment factor would have a counterproductive effect here and should therefore be rejected.

In addition, we generally consider it essential that the SRB presents the approach for determining the institution-specific MREL to the institutions in a more transparent manner than before. To this end, key aspects of the calculation logic for MREL calibration, including the procedure for institution-specific adjustments, should be published in a more detailed and comprehensible manner as part of the MREL policy.

This also applies to the format and criteria used by the SRB for calculating an appropriate MREL level when institutions apply for the withdrawal of MREL in accordance with Art. 78a CRR. Here too, the SRB should make transparent its key criteria for assessing the application and, in particular, how it deals with the results of the MREL planning and forecast calculations to be included under baseline and stress conditions. We consider this to be essential in order to be able to efficiently adapt the MREL management of the institutions to future administrative decisions of the SRB.

Question 5.2. Do you see any merits or disadvantages to linking the calibration of MREL with the resolvability assessment? If so, please explain and elaborate.

We are critical of linking the MREL determination with the results of the resolvability assessment. Such a link would not lead to an increase in transparency, but rather would significantly worsen the planning certainty and reliability of the MREL determination. Before such a link is pursued further, the transparency, comparability and verifiability of the assessment of resolvability should first be increased.

Question 5.3. Which other factors should be included in the calibration of MREL? How could a harmonised floor be determined?

We see no need for the establishment of a harmonized MREL minimum value, as clear subordination minimum requirements have already been defined in the BRRD and SRMR in this regard, which were also only introduced in the course of the last revision of the BRRD and SRMR. In our view, such deviations would further increase the complexity of the MREL definition.

For legal and planning certainty, we would also welcome it if the SRB could also provide an outlook on the requirements under CRR III in its MREL policy, as most of these will come into force on January 1, 2025. Specifically, we would be grateful if the SRB could confirm at an early stage that the new requirements under Art. 128 (1) (c) CRR III relate to subordinated liabilities held as assets in accordance with Art. 72b (2) CRR, so that the subordination criterion under Art. 72b (2) (d) CRR must also be met (i.e. senior non-preferred instruments). In view of the regulatory purpose and the scope of application of Art. 128 CRR III ("Subordinated debt exposures"), we assume that the application of the higher risk weight of 150% for senior preferred instruments for G-SIBs in accordance with Art. 72 (3) CRR cannot be appropriate.