

EMEA DC Meeting Statement 7 June 2022

regarding the Failure to Pay Credit Event in relation to The Russian Federation

Issue number 2022052501

1. INTRODUCTION

1.1 The DC met on 1 June 2022 to discuss whether a Failure to Pay Credit Event had occurred in relation to the Russian Federation (the **Reference Entity**).

1.2 The DC resolved by Supermajority that:

- (i) a Failure to Pay Credit Event has occurred with respect to the Russian Federation;
- (ii) the date of the Failure to Pay Credit Event was 19 May 2022; and
- (iii) the date on which the DC Secretary first effectively received both a request to convene the DC and Publicly Available Information that satisfies the requirements of Section 2.1(b) of the DC Rules for the Failure to Pay Credit Event (i.e. the Credit Event Resolution Request Date) was, in relation to 2014 Transactions and Updated 2003 Transactions, 26 May 2022.

1.3 Capitalised terms used but not defined in this statement relating to:

- (i) credit derivatives have the meanings given to them in the 2018 ISDA Credit Derivatives Determinations Committees Rules (September 28, 2018 Version) (as amended on January 27, 2020, March 30, 2020 and October 2, 2020) (the **DC Rules**) or the 2014 Definitions or Updated 2003 Definitions (each as defined in the DC Rules), as applicable; or
- (ii) the 4.5 per cent. Bonds due 2022 issued by the Russian Federation (the **2022 Bonds**) have the meaning given to them in the Prospectus of the Russian Federation dated 2 April 2012 relating to, *inter alia*, the 2022 Bonds (the **Prospectus**).¹

2. THE 2022 BONDS AND REPAYMENT AT MATURITY

2.1 The DC previously determined that the 2022 Bonds are Obligations of the Reference Entity (see DC Issue Number 2022040801 in respect of the Potential Failure to Pay DC Question).

2.2 Condition 6(a) of the 2022 Bonds provides that "Unless previously redeemed, or purchased and cancelled, each Bond will be redeemed at its principal amount on 4 April 2022 (the "**Maturity Date**") subject as provided in Condition 7."

2.3 According to press reports², the Russian Federation did not make payment in USD in respect of (i) principal and interest due on the 2022 Bonds on the due date (4 April 2022); and (ii) interest due on 4 April 2022 in respect of other bonds with a maturity date occurring in 2042.

¹ The DC notes that the Prospectus is publicly available via subscription databases.

² For example, see: www.reuters.com/world/europe/russia-says-it-had-pay-roubles-holders-eurobonds-2022-04-06/

2.4 According to further news reports, on or around 2 May 2022 the Russian Federation made payment in respect of the 2022 Bonds to cure the non-payment of (i) principal; and (ii) interest that had accrued prior to 4 April 2022.³

2.5 The DC was asked to consider whether or not a Failure to Pay Credit Event had occurred due to the non-payment of interest arising under the following part of Condition 5 of the 2022 Bonds (such interest, the "**Post 4 April Interest**"):

"Each Bond will cease to bear interest from the due date for redemption unless, after surrender of such Bond, payment of principal is improperly withheld or refused, in which case the outstanding principal amount of such Bond will continue to bear interest at the rate specified above (after as well as before judgment) until whichever is the earlier of (a) the day on which all sums due in respect of such Bond up to that day are received by or on behalf of the relevant Bondholder and (b) the day which is seven days after notice has been given to the Bondholders that the Fiscal Agent has received all sums due in respect of the Bonds up to such seventh day (except, in the case of payment to the Fiscal Agent, to the extent that there is any subsequent default in payment in accordance with these Conditions)."

2.6 The Post 4 April Interest is not described under the 2022 Bonds as default interest. Instead, Condition 5 provides that, in the specified circumstances, the 2022 Bonds will continue to bear interest at the original interest rate on the outstanding principal amount until "*the day on which all sums due in respect of such Bond up to that day are received by or on behalf of the relevant Bondholder*".

3. ANALYSIS

3.1 The DC noted that the news reports submitted by the Eligible Market Participant that raised the question were from (i) Debtwire; and (ii) Wall Street Journal Pro. The DC determined that both Debtwire and Wall Street Journal Pro were Public Sources for the purposes of both the 2014 Definitions and the Updated 2003 Definitions.

3.2 The DC noted that the articles that were submitted state that, *inter alia*,:

(a) "However, some bondholders have said that Moscow forgot to include an estimated \$1.9 million of accrued interest that was generated in the interim, which is now overdue beyond the grace period, and they have accordingly informed Euroclear, the records show" (*Wall Street Journal Pro*);⁴

(b) "However, although Russia has settled payments on principal and coupon interest on its 4.5% 2022 bond, it has not paid interest accrued during the grace period which would amount to USD 1.9m, according to a source close to the situation" (*Debtwire*);⁵ and

(c) "Euroclear Holding SA/NV received a default notice on 11 May in respect to a non-payment of accrued interest on Russia's matured USD 2bn 4.5% 2022 bonds, according to a document seen by Debtwire" (*Debtwire*).⁶

³ For example, see: <https://www.reuters.com/business/russia-looks-avoid-default-after-bond-payments-sent-creditors-2022-05-03/>

⁴ <https://www.wsj.com/articles/russia-bondholders-say-debt-default-could-already-be-here-11653506582>

⁵ <https://www.debtwire.com/intelligence/view/intelcms-xrsfvm?shared&u=FCB4A8B1-9766-4E96-820D-F8ED18A2EB1E>

⁶ <https://www.debtwire.com/intelligence/view/intelcms-xrsfvm?shared&u=FCB4A8B1-9766-4E96-820D-F8ED18A2EB1E>

- 3.3 The DC also noted:
- (a) the statement of the Russian Federation's Finance Ministry that it had paid USD564.8m in respect of the 2022 Bonds (as reported by Reuters on 29 April 2022);⁷
 - (b) news reports that the Russian Federation's Finance Ministry had informed the Paying Agent that the outstanding principal amount of the 2022 Bonds was USD552.4m as at the end of March (as reported by Reuters on 31 March 2022);⁸
 - (c) on the basis of an interest rate of 4.5 per cent. per annum (payable semi-annually), the interest due on USD552.4m as at 4 April 2022 was USD12.429m; and
 - (d) the aggregate amount due on 4 April 2022 was therefore approximately USD564.829m.
- 3.4 Therefore, on the basis of Eligible Information, the DC Members forming the Supermajority determined that no amount of Post 4 April Interest was paid by the Russian Federation at the time the Russian Federation paid (i) the principal amount of the 2022 Bonds; and (ii) the interest that had accrued to 4 April 2022 on the 2022 Bonds.
- 3.5 As noted above, under the terms of the 2022 Bonds, Post 4 April Interest accrues from the due date for redemption if "after surrender of such Bond, payment of principal is improperly withheld or refused". The DC Members forming the Supermajority noted that surrender was also a condition for the payment of principal under Condition 7(a) and that the 2022 Bonds were due for redemption on 4 April 2022. The DC Members forming the Supermajority were of the view that the payment of principal was due on 4 April 2022 and, therefore, if the requirement for surrender was satisfied in relation to the payment of principal (and noting that the principal payment was ultimately made), it must also have been satisfied in relation to Post 4 April Interest. Furthermore, the DC Members forming the Supermajority were of the view that the requirements for "surrender" in the terms and conditions of the bonds (as set out in Condition 7(a) and Condition 5 and disclosed in the Prospectus) should be considered in the context of the 2022 Bonds being held in global format. The global bond for the 2022 Bonds directly cleared in Euroclear and Clearstream was held in the name of a nominee for the clearing systems and deposited with the common depository for Euroclear and Clearstream. Similarly, the global bond for the 2022 Bonds directly cleared in DTC was deposited with a custodian and registered in the name of Cede & Co. as nominee for DTC. Based on their understanding of market practice, and on balance, the DC Members forming the Supermajority were of the view that the global bonds would likely have been deposited with the Paying Agent (or an affiliate) as common depository and custodian (as applicable) at the time the 2022 Bonds were issued and the arrangements for surrender and/or destruction of the relevant global bond would take place in accordance with the terms of the Fiscal Agency Agreement and any additional terms of the relevant global bond and the arrangements for its safekeeping (which are not public and have not been reviewed by the DC). As the 2022 Bonds were due for redemption on 4 April 2022 and held in global form, on balance, the DC Members forming the Supermajority determined that the requirements for surrender in relation to both the payment of principal and Post 4 April Interest would have been satisfied on 4 April 2022.
- 3.6 Condition 9(a) of the 2022 Bonds sets out the Event of Default under the terms of the 2022 Bonds for non-payment of principal or interest and states: "*Non-payment. The Russian Federation fails to pay any amount of principal or interest in respect of the Bonds, as the case may be, when due and such failure continues for a period of 30 calendar days*". If an Event of Default occurs under the terms of the 2022 Bonds, holders of 25 per cent. or more are entitled

⁷ <https://www.reuters.com/world/europe/russia-makes-last-gasp-dollar-bond-payments-bid-avoid-default-2022-04-29/>

⁸ <https://www.reuters.com/article/russia-finmin-eurobond-buyback-idCNL2N2VY23Z>

to declare the Bonds to be immediately due and payable. However, as at 4 April 2022, the principal amount of the Bonds was already immediately due and payable under Condition 6(a) and the Russian Federation was under an obligation to pay such principal amount on 4 April 2022. Such principal amount remained overdue throughout the grace period specified in Condition 9(a) of the 2022 Bonds until it was ultimately paid by the Russian Federation. The DC Members forming the Supermajority were of the view that there was no applicable condition of the 2022 Bonds that permitted the Russian Federation to withhold or refuse to make payment of such principal amount on 4 April 2022. Therefore, on balance, the DC Members forming the Supermajority were also of the view that payment of principal was improperly withheld or refused as the Russian Federation was contractually obliged to pay such amount on 4 April 2022 and failed to do so.

- 3.7 On the basis of the analysis set out above, on balance, the DC Members forming the Supermajority determined that:
- (i) information sufficient to satisfy the requirement for Publicly Available Information had been submitted to the DC;
 - (ii) on the basis that the principal amount was not paid on the due date (4 April 2022), payment of principal was improperly withheld or refused and Post 4 April Interest began accruing on 4 April 2022 and continued to accrue in respect of each day following 4 April 2022 until the date on which the principal was paid;
 - (iii) the most natural construction of the terms of the 2022 Bonds was that (i) the principal amount of the Bonds was due on 4 April 2022 and was overdue in respect of each day following 4 April 2022; and (ii) the accrued Post 4 April Interest was payable together with such principal on each such day;
 - (iv) accordingly, on each day after 4 April 2022, the Russian Federation had a matured obligation to pay the principal amount (which was overdue) and the accrued Post 4 April Interest up until such day;
 - (v) the accrued Post 4 April Interest exceeded the Payment Requirement of USD1,000,000 on 19 April 2022;⁹ and
 - (vi) the 30 calendar day Grace Period provided for under Condition 9(a) of the 2022 Bonds expired on 19 May 2022.

Accordingly, the DC Members forming the Supermajority determined that a Failure to Pay Credit Event occurred on 19 May 2022.

⁹ This was calculated on the basis that (i) the outstanding principal amount is USD552.4m; (ii) the interest rate is 4.50 per cent; and (iii) Condition 5 states: "*If interest is required to be calculated for a period of less than a complete Interest Period, it will be calculated on the basis of a year of 360 days consisting of 12 months of 30 days each and, in the case of an incomplete month, the actual number of days elapsed*".