



**SRB COMMUNICATION
ON APPLICATION OF
RTS PROVISIONS ON
PRIOR PERMISSION FOR
REDUCING ELIGIBLE
LIABILITIES
INSTRUMENTS AS OF
1 JANUARY 2022**

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1. Introduction

- 1 Prior to calling, redeeming, repaying or repurchasing eligible liabilities instruments before their contractual maturity, institutions are required to obtain the authorisation of the resolution authority in accordance with Article 77(2) of Regulation (EU) 575/2013 (CRR) ¹, as well as further detailed in Article 78a CRR. There are two categories of permissions: *ad hoc* permission and general prior permission (GPP).
- 2 On 26 May 2021, the final report on the draft regulatory technical standards (RTS) on own funds and eligible liabilities was published on the European Banking Authority (EBA) website² and submitted to the European Commission for endorsement as a Delegated Regulation. The draft RTS are mandated by Article 78a(3) CRR and specify the procedures for granting *ad hoc* permission and GPP, including the time limits and information requirements.
- 3 As of 1 January 2022, the SRB will follow the draft RTS for granting permission (Section 2 Subsection 2 – “Permission for reducing eligible liabilities instruments”). All applications seeking SRB authorisation as of the date of this Communication should be aligned with the requirements in the draft RTS. However, for applications due by 31 August 2021 seeking authorisations as of 1 January 2022, as an exceptional measure, the SRB will accept applications from institutions until 30 September 2021.
- 4 Aligning the permission regime with the draft RTS now and in their final draft form would allow banks to continue with their redemptions transactions following the adoption of the Delegated Regulation without any disruption or the need to submit new applications, under the condition that the Delegated Regulation will not substantively deviate from the draft RTS. It will also provide certainty and transparency on what the SRB is expecting from banks that wish to apply for prior permission to redeem their eligible liabilities instruments early. The SRB will update this Communication if any parts of the draft RTS are changed when the Delegated Regulation is endorsed.³
- 5 This guidance is provided to assist institutions when applying to the SRB for permission in line with the requirements specified in the draft RTS. It summarises and explains in a consistent and comprehensive way

¹ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1–337), as amended by Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012 (OJ L 150, 7.6.2019, p.1-225).

² [EBA/2021/RTS/05](#)

³ The draft RTS will also be complemented over time by dedicated EBA Q&As. They will be published on the EBA website as currently done for those for own funds purposes. Given the approach retained by the EBA to align the permission regime for eligible liabilities to the existing permission regime for own funds wherever relevant, it is expected that similar implementation questions may lead to similar implementation answers.

the procedures that institutions should follow when seeking the SRB's permission to call, redeem, repay or repurchase eligible liabilities instruments before their contractual maturity.

2. Scope

2.1. Institutions

- 6 **The obligation to seek approval applies to resolution entities, non-resolution entities and institutions that will be wound up under normal insolvency proceedings (NIP)**⁴. Resolution entities and non-resolution entities with internal total loss-absorbing capacity (TLAC) requirements have been in the scope of the permission regime since 27 June 2019. Non-resolution entities that are subject to minimum requirement for own funds and eligible liabilities (MREL) are in the scope of the permission regime from 1 January 2022.

2.2. Instruments

- 7 **As of 1 January 2022, the permission regime will apply to all eligible liabilities instruments**⁵. This includes senior unsecured liabilities, subordinated liabilities and internal MREL eligible liabilities.⁶ Eligible liability instruments with a residual maturity of less than one year⁷ are also in scope.

3. Applications for permission

- 8 **To be granted a permission to call, redeem, repay or repurchase eligible liabilities instruments, institutions must send a complete and timely application to the SRB.** Once the SRB has processed the institution's application for permission, it will issue a decision to the institution, and monitor how the institution uses the permission. Redemptions of eligible liabilities instruments can only be announced to holders of the instruments after the institution has obtained the SRB's formal permission⁸.
- 9 **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

⁴ Liquidation entities that would be wound up under NIP with a MREL equal to the loss-absorption amount (LAA) are subject to a simplified regime when it comes to obtaining a General Prior Permission (GPP) – see section 4.2.2. For *ad hoc* permission applications, such entities need to submit an application in line with the regular regime. For liquidation entities with MREL in excess of LAA the regular regime applies for all types of permission applications (i.e. GPP and *ad hoc* permissions).

⁵ The permission regime applies to liability instruments that meet all the eligibility conditions of Article 72b CRR including subordination, namely “eligible liabilities instruments”. Art. 1a draft RTS clarifies that “eligible liabilities” referred to in Article 45b and point (a) of Article 45f(2) of BRRD shall also be considered to be “eligible liabilities instruments”.

⁶ Article 12c(1)(b) SRMR 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) SRMR for internal MREL. The permission regime applies also to liabilities that are eligible as a result of the grandfathering provisions under Article 494b(3) CRR. Article 1(a) draft RTS.

⁷ Recital 29 CRR and Recital 3 of the draft RTS.

⁸ Article 32g(1) draft RTS.

institution undertakes to supplement the application with any updates to the information it has provided and/or commits to providing any additional information the SRB may require to ensure the completeness of the application⁹. The institution is encouraged to select English as the applicable language for the application process, to allow for a smooth approval process.

4. Type of permission and requirements

- 10 **Applications for permission must be precise.** The applications should specify which type of permission is being sought and at which level of consolidation (i.e. individual, consolidated or sub-consolidated level)¹⁰.

4.1. Ad hoc permission applications

- 11 **There are three types of *ad hoc* permission for which institutions can apply.** For the three types of *ad hoc* permission applications, institutions are required to submit a complete application to the SRB at least four months¹¹ in advance of the date where one of the actions listed in Article 78a CRR will be announced to the holders of the instruments¹². When the SRB grants permission for an *ad hoc* permission, the permission is granted for a specified period, not exceeding one year¹³.
- 12 **Permission for a replacement¹⁴.** The SRB can grant authorisation for an institution to reduce eligible liabilities instruments, if before or at the same time as the envisaged redemption the institution replaces the eligible liabilities instruments with own funds or eligible liabilities instruments of equal or higher quality at terms that are sustainable for the income capacity of the institution.
- 13 **Permission for a reduction without a replacement¹⁵.** The SRB can grant permission for an institution to reduce eligible liabilities instruments where the institution demonstrates that the capacity for own funds and eligible liabilities would, following the reduction, exceed the requirement on own funds and MREL (including the CBR as applicable) by a margin. The SRB sets the margin in agreement with the ECB or relevant national competent authority, as appropriate. The margin also applies for GPP applications.
- 14 **Permission for a replacement with own funds¹⁶.** Permission can be granted by the SRB to an institution to reduce eligible liabilities instruments and replace them only with own fund instruments. For this to be possible,

⁹ Article 32d(1)(i) draft RTS.

¹⁰ Article 32c(2) draft RTS.

¹¹ Article 32g(1) draft RTS.

¹² Article 32g(1) draft RTS.

¹³ Article 32b(4) draft RTS.

¹⁴ Article 78a(1)(a) CRR.

¹⁵ Article 78a(1)(b) CRR.

¹⁶ Article 78a(1)(c) CRR.

the institution must demonstrate that a partial or full replacement of the eligible liabilities instruments with the own funds instruments is necessary to ensure compliance with own funds requirements for continuing authorisation.

4.1.1 CONTENT

15 **Institutions need to provide the SRB with information to support their application.** Institutions should specify the information in their applications as required in the draft RTS¹⁷, including:

- i. the legal basis for the application¹⁸;
- ii. a well-founded explanation of the rationale for performing the redemption in question¹⁹;
- iii. Information on current and future²⁰ requirements for MREL²¹, TLAC²² (where applicable) and the Combined Buffer Requirement (CBR)²³ that have already been made known to the institution by the SRB;
- iv. Information on the current and future level²⁴ and composition of own funds and eligible liabilities that are held to ensure compliance with the requirements in point (iii) above, both before and after performing the redemption. Depending on the eligible liabilities instruments to which the permission application pertains, information on the following is required, as applicable:
 - a. the amount of eligible liabilities instruments at the date of the application that meet all the conditions in Article 72b(2) CRR²⁵;
 - b. the amount of senior unsecured liabilities that the SRB has permitted the institution to qualify as eligible liabilities instruments for TLAC²⁶;
 - c. the amount of senior unsecured liabilities that count towards meeting MREL²⁷;

¹⁷ Article 32d draft RTS.

¹⁸ Article 32d(1)(b) draft RTS.

¹⁹ Article 32d(1)(a) draft RTS.

²⁰ Covering at least a three-year period.

²¹ External and internal MREL in TREA and LRE.

²² External and internal TLAC in TREA and LRE.

²³ Article 32d(1)(c) draft RTS. The CBR refers to in point (6) of Article 128 of Directive 2013/36/EU (CRD IV).

²⁴ Covering at least a three-year period.

²⁵ Article 32d(1)(d)(i) draft RTS. For the MREL purposes this only relates to subordinated eligible liabilities instruments.

²⁶ Article 32d(1)(d)(ii) draft RTS. Note this is only relevant for institutions with a TLAC requirement.

²⁷ Article 32d(1)(d)(iii) draft RTS. See Article 12c(1)(b) SRMR.

- d. the amount of liabilities that arise from debt instruments with embedded derivatives²⁸;
 - e. the amount of liabilities issued by a subsidiary to an external shareholder that count towards the external TLAC/MREL requirement²⁹;
 - f. the amount of internal MREL eligible liabilities instruments and internal TLAC eligible liabilities instruments, where applicable³⁰.
- v. A summary assessment on the impact of the redemptions. In addition, information on any additional action envisaged on the applicable MREL, TLAC and CBR requirements covering a three-year period³¹;
 - vi. An evaluation of the risks which the institution is or might be exposed to, including whether the institution's level of MREL ensures an appropriate coverage of such risks, including outcomes of stress tests on main risks evidencing potential losses³²; and
 - vii. Any additional information the SRB deems necessary for the assessment process³³.

16 **Where permission is sought for a replacement of eligible liabilities instruments**³⁴, the following additional information³⁵ is required: (i) the residual maturity of the replaced instrument and the maturity of the replacement instrument; (ii) the ranking in the creditor hierarchy for both the replaced and replacement instrument; (iii) the cost of the replacement instrument; (iv) the planned timing of the issuance of the replacement instrument; and (v) the impact of the replacement instrument on the profitability of the institution³⁶.

17 **Where permission is sought to replace eligible liabilities instruments with own funds instruments**, the following additional information is required: a demonstration³⁷ that the partial or full replacement of the eligible

²⁸ Article 32d(1)(d)(iv) draft RTS. For MREL purposes only as per Article 12c(2) SRMR.

²⁹ Article 32d(1)(d)(v) draft RTS. For MREL purposes as per Article 12c(3) SRMR. For TLAC purposes as per Article 88a CRR.

³⁰ Article 32d(1)(vi) draft RTS. For internal MREL purposes as per Article 12g2 SRMR. For internal TLAC purposes as per Article 92b(3) CRR.

³¹ Article 32d(1)(e) draft RTS.

³² Article 32d(1)(g) draft RTS.

³³ Article 32d(1)(i) draft RTS.

³⁴ Article 78a(1)(a) CRR.

³⁵ Article 32d(1)(f) draft RTS.

³⁶ In line with the definition in Article 32a of the draft RTS on the meaning of sustainable for the income capacity of the institution.

³⁷ Article 32d(1)(h) draft RTS.

liabilities instruments with own funds instruments is necessary to ensure compliance with own funds requirements laid down in the CRR and Directive 2013/36/EU³⁸ (CRD) for continuing authorisation³⁹.

4.1.2 DEDUCTION

- 18 **Ex-ante deduction is required.** For *ad hoc* permission authorisations, the institution is required to deduct the amounts to be called, redeemed, repaid or repurchased from its eligible liabilities instruments where the transaction is expected to take place with sufficient certainty⁴⁰ and once the SRB prior permission has been obtained⁴¹. The draft RTS provide that sufficient certainty is deemed to exist when the institution has publicly announced its intention to call, redeem, repay or repurchase the eligible liability instrument.

4.2 General prior permission

- 19 **Institutions can apply for a GPP.** This means that the institution can perform early redemptions for a predetermined amount set by the SRB and for a specified period of time. The predetermined amount cannot exceed 10% of the total amount of outstanding eligible liabilities instruments⁴². The time period for the GPP cannot exceed one year. For a GPP, including market making, institutions shall provide sufficient safeguards as to their capacity to operate at levels above their own funds and MREL requirements (including the CBR as applicable) by a margin set by the SRB, in agreement with the competent authority. Institutions are required to submit a complete application to the SRB at least four months in advance of the date when the first GPP transaction will be carried out⁴³. However, as mentioned in paragraph 3 for authorisations as of 1 January 2022 this timeframe is exceptionally shortened to three months, as the SRB will accept applications until 30 September 2021.

³⁸ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338–436), as amended by Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures (OJ L 150, 7.6.2019, p. 253–295).

³⁹ Article 78a(1)(c) CRR.

⁴⁰ Please take the EBA Q&As on the aspect of “sufficient certainty”, which were published in the context of own funds, into account. In its final report on the draft RTS, EBA communicated that these Q&As will be updated once the RTS is endorsed (Feedback table; page 61 of the final report). It is expected that this update will integrate aspects related to eligible liabilities in a manner similar to own funds aspects.

⁴¹ Article 32b(2) draft RTS.

⁴² Article 32b(5) draft RTS.

⁴³ Article 32g(2) draft RTS.

4.2.1 CONTENT

- 20 **Specific information is required for the SRB to assess if a GPP should be granted.** The information requirements listed in paragraph 15⁴⁴ should be provided to the SRB when applying for a GPP. Additionally, institutions should provide information⁴⁵ on: (i) the total amount of outstanding eligible liabilities instruments, including eligible liabilities instruments issued by a subsidiary to an external shareholder⁴⁶; and (ii) eligible liabilities instruments still to be issued. For the purposes of point (ii), eligible liabilities instruments still to be issued may be included, subject to specification of the final amount referred to in (i), to be provided to the SRB following the relevant issuance. The application should also provide the desired pre-determined amount and timeframe for the GPP.

4.2.2 SIMPLIFIED PROCEDURE FOR GPP FOR INSTITUTIONS THAT WILL BE WOUND UP UNDER NIP⁴⁷

- 21 **Institutions that will be wound up under NIP are in the scope of the permission regime⁴⁸.** Under the draft RTS, a simplified procedure applies for institutions that will be wound up under NIP that have a MREL equal to the loss-absorption amount (LAA). Under the simplified procedure, the information available to the SRB for the purposes of drawing up the resolution plan is considered as a full application. Further to that, the limit to the pre-determined amount of 10% of outstanding eligible liabilities instruments does not apply. Such entities are encouraged to communicate to the SRB their willingness to benefit (or not) from a GPP.

4.2.3 DEDUCTION

- 22 **Ex-ante deduction is required from the moment of the GPP authorisation⁴⁹.** For GPP authorisation, the institution is required to deduct the full predetermined amount from their eligible liabilities instruments. This should happen immediately at the moment the SRB authorisation is granted. This also applies for GPPs granted to institutions that will be wound up under NIP that have a MREL equal to LAA. The MREL quarterly reporting submitted to the SRB must reflect any upfront deductions effective at the applicable reference date of the report.

4.2.4 REPORTING

- 23 **Reporting every six months is required by institutions that are granted a GPP on the use of the GPP.** In order for the SRB to monitor how the GPP is being used and to ensure that the conditions under which the GPP was granted continue to be met, reporting will be required from institutions. The following information should be submitted to the SRB within 30 days of the end of each six-month period:
- i. A confirmation that the institution continues to comply with the conditions under which the GPP was granted;

⁴⁴ Article 32d draft RTS.

⁴⁵ Article 32e draft RTS.

⁴⁶ For TLAC purposes as per Article 88a CRR and for MREL purposes as per Article 12c(3) SRMR.

⁴⁷ Article 32h(1) draft RTS.

⁴⁸ Article 32h draft RTS.

⁴⁹ Article 32b(3) draft RTS.

- ii. The type and the identifiers, e.g. ISINs, of instruments that have been reduced, repurchased, called or redeemed;
- iii. The long gross position the institution holds on the reduced, repurchased, called or redeemed instruments at that point in time;
- iv. The amount of instruments that may still be reduced, repurchased, called or redeemed under the applicable limits; and
- v. If the permission refers to future issuances, a notification of the date on which the permitted predetermined amount was effectively used for new issuances, including the ISINs of these issuances. This information must be provided without undue delay following the issuance date.

24 **Annual reporting will be required from institutions that will be wound up under NIP with an MREL equal to LAA.** In order for the SRB to monitor that the conditions under which the GPP⁵⁰ was granted continue to be met, institutions that will be wound up under NIP that have a MREL equal to the LAA should report the information on condition (i) of paragraph 23 to the SRB on an annual basis.

4.2.5 WITHDRAWAL

25 **GPPs can be withdrawn by the SRB.** As a matter of general administrative law and irrespective of the GPP's maximum period of validity, the GPP will be withdrawn by the SRB where, among others, the institution fails to continue to meet the conditions under which the GPP was granted. The SRB assesses whether compliance with the GPP conditions continue to be met based on the reporting it receives every six months from institutions. Furthermore, a GPP withdrawal can be conducted if the institution no longer needs or wants to have the GPP in place.

4.3 Renewal of general prior permission

26 **Three months before the expiry of a GPP⁵¹, applications to renew the GPP should be sent to the SRB.** The SRB will consider the application to constitute a renewal⁵² if there is: (i) no request for an increase in the predetermined amount that was set when the original GPP was granted; and (ii) no change in the rationale⁵³ of the GPP from the rationale communicated to the SRB when the original GPP was sought. The renewal is limited to a maximum of one additional year each time⁵⁴. If conditions (i) and (ii) are not met then a full application needs to be submitted for another GPP four months before the expiry of the current GPP – in order for the institutions to be able to continue to perform actions listed in Article 78a(1) CRR.

⁵⁰ For GPPs granted under section 4.2.2.

⁵¹ Article 32g(3) draft RTS.

⁵² Article 32f(1) draft RTS.

⁵³ Article 32d(1)(a) draft RTS.

⁵⁴ Article 32f(1) draft RTS.

4.3.1 CONTENT

- 27 **Applications for GPP renewals require the submission of information from the institution.** When applying for a GPP renewal, institutions should provide an application. The application should include information pertaining to points (iv), (vi) and (vii) of paragraph 15, and points (i) and (ii) of paragraph 20.

4.3.2 SIMPLIFIED PROCEDURE FOR GPP RENEWAL FOR INSTITUTIONS THAT WILL BE WOUND UP UNDER NIP⁵⁵

- 28 **GPPs are renewed automatically.** Institutions that will be wound up under NIP that have a MREL equal to the LAA can avail of automatic renewal of their GPP for the same pre-determined amount and timeframe, provided that both of the following conditions are met: (i) the MREL for the institution is set at LAA; and (ii) the institution has not notified the SRB that it no longer requires the GPP. The annual reporting mentioned in paragraph 24 applies.

⁵⁵ Article 32h draft RTS.