

## Q&A document on SRB administrative practices on prior permission

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Following the entry into force of the Commission Delegated Regulation (EU) 2023/827, amending Delegated Regulation (EU) No 241/2014<sup>1</sup> ('Delegated Regulation' or 'DR'); the SRB provides answers to questions that institutions may have when preparing applications for a permission to redeem Eligible Liabilities Instruments ('ELIs') in accordance with Articles 77(2) and Article 78a of Regulation (EU) 575/2013<sup>2</sup> (CRR).

### **The Commission Delegated Regulation (EU) 2023/827 entered into force on 9 May 2023. Does it change the SRB approach to prior permission?**

Since 1 January 2022, the SRB has been authorising redemptions under Articles 77(2) and 78a CRR, following the provisions of the draft EBA Regulatory Technical Standards on own funds and eligible liabilities (draft EBA RTS), and, in particular, its Section 2, Subsection 2 "*Permission for reducing eligible liabilities instruments*". The objective was to allow institutions to continue with their redemptions of ELIs following the adoption of the Delegated Regulation without any disruption or need to submit new applications.

The Delegated Regulation reflects the content of the draft EBA RTS, except for the simplified procedure for institutions with the Minimum Requirement for own funds and Eligible Liabilities (MREL) equal to the Loss Absorption Amount (LAA) (see next question). The adoption of the Delegated Regulation therefore does not change the SRB approach to prior permission for institutions in respect of which the SRB has not set the MREL equal to the LAA.

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<sup>1</sup> Commission Delegated Regulation (EU) 2023/827 of 11 October 2022 laying down regulatory technical standards amending Delegated Regulation (EU) No 241/2014 as regards the prior permission to reduce own funds and the requirements related to eligible liabilities instruments, OJ L 104, 19.4.2023, p. 1–22.

<sup>2</sup> 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).

## **How does the Commission Delegated Regulation (EU) 2023/827 change the regime for institutions with MREL equal to LAA?**

While the draft EBA RTS established automatic applications and renewals of permissions for institutions with MREL equal to LAA, the Delegated Regulation requires such institutions to formally apply for permission under Article 78a CRR for both *ad-hoc* permissions and general prior permissions ('GPP'). An application needs to be submitted at least three months in advance; as minimum set of information, it should specify the predetermined amount requested, the rationale of the request, and the relevant legal basis.

A new procedure of tacit approval (Article 32h DR) provides that an application submitted by institution for which the SRB has set the MREL at a level that does not exceed the LAA, is deemed to be approved unless the resolution authority rejects it in writing within three months from the time of the application.

The SRB is aware that the EU legislative process finalising the implementation of the Basel III regulatory reforms (banking package) may amend Regulation (EU) No 806/2014<sup>3</sup> (SRMR) to exclude institutions with MREL equal to LAA from the scope of the prior permission regime. The SRB will implement the new framework as soon as it enters into force, should such an exclusion be confirmed in the adopted legislation.

## **APPLICATION**

### **What should be the form of the application submitted to the SRB for prior permission?**

Institutions should specify in their applications all the information that is required in the DR, including the requested pre-determined amount and the timeframe for the permission.

The application should be signed by a person authorised to formally represent the institution and should contain a statement that the information provided is reliable and accurate. The institution is encouraged to select English as the applicable language for the application process, to allow for a smooth approval process.

### **In the case of a renewal of a general prior permission ('GPP'), can the institution consider the unused part of the predetermined amount of the existing GPP in the information on the current and future level of own funds and eligible liabilities?**

When submitting information under point (d) of Article 32d DR for a new application, institutions should exclude the unused part of the predetermined amount related to an existing GPP from their MREL capacity. Institutions can partially or totally consider such unused part in their MREL capacity after their existing authorisation period for the purpose of the information to be provided under point (d) of Article 32d DR, only if they unequivocally confirm in the new application that they will not use such amount during the remaining period of the expiring GPP.

### **How should institutions specify in their application the estimated cost of the replacement for permissions under Article 78a(1)(a) CRR?**

Since market conditions may change substantially from the time of the application to the time of the replacement, hence affecting the cost of the replacement, information under Article 32d(f)(iii) DR can be provided as a range of values related to the estimated cost of the replacement in several scenarios (baseline scenario and one or multiple adverse scenarios), provided that such values are considered to be credible.

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<sup>3</sup> Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (SRMR).

### **What should be taken into account when considering ELIs not yet issued in the application?**

The DR allows ELIs still to be issued at the time of the application to be included in the application for the purpose of the authorisation (Article 32e(2) DR). The issuance should have already been planned at the time the GPP application is submitted.

Once the issuance has taken place the institution should notify the SRB, specifying the final updated total amount of outstanding ELIs.

## **DEDUCTION**

### **When are institutions expected to deduct the amounts to be redeemed from the institution's eligible liabilities?**

According to Article 32b of the DR, "calls, redemptions, reductions and repurchases of ELIs shall not be announced to holders of the instruments before the institution has obtained the prior permission of the resolution authority. Where the actions listed in Article 77(2) of Regulation (EU) No 575/2013 are expected to take place with sufficient certainty, and once the prior permission of the resolution authority has been obtained, the institution shall deduct the amounts to be called, redeemed, repaid or repurchased from the institution's eligible liabilities instruments before the effective calls, redemptions, repayments or repurchases occur. Sufficient certainty shall in particular be deemed to exist where the institution has publicly announced its intention to call, redeem, repay or repurchase an eligible liabilities instrument."

For *ad hoc* permissions for a reduction without a replacement (Article 78a(1)(b) CRR), "sufficient certainty is deemed to exist already from the moment the authorisation is granted. However, for instruments containing call options in their terms and conditions, in case of the use of the call, sufficient certainty is deemed to exist only at the time of the announcement of the call of the instrument to the holders and the deduction will take place only at that later point in time" (EBA Q&A 2017\_3277). Where the instruments are redeemed via a public tender, the SRB expects sufficient certainty to exist in principle at the time of the announcement of such tender to the market.<sup>4</sup>

For *ad hoc* permissions with replacement, institutions are required to deduct the full amount to be replaced at the same time as the issuance of the replacement instruments.<sup>5</sup>

For GPPs, institutions are required to deduct the full predetermined amount from their ELIs from the moment the authorisation has been granted (Article 32b(3) DR).

### **How should an institution apply the *ex-ante* deduction as referred to in Article 32b(2) and (3) DR?**

When a prior permission is granted for reducing specific instruments according to Article 78a(1)(a),(b) or (c) of the CRR (*ad hoc* permission), the deduction of the amount shall be made in relation to, and corresponding to the ranking of, the actual instrument(s) to be redeemed. Therefore, the institution is required to deduct the amount of subordinated liabilities from its subordinated resources, and the envelope of non-subordinated liabilities from its non-subordinated resources (EBA Q&A 2022\_6651).

In case of GPPs, the SRB encourages institutions to specify in their GPP applications the amount to be redeemed for each category of ELIs (see EBA Q&A 2022\_6651). Institutions can divide their predetermined amount into three different categories or 'envelopes', namely: a) subordinated ELIs with a residual maturity of at least one year; b) non-subordinated ELIs with a residual maturity of at least one year; and c) ELIs with a residual maturity below one year. Envelope (a) can be used to redeem all ELIs, while envelope (b) can only

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<sup>4</sup> Interim position of the SRB pending further clarification by the EBA.

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be used to redeem ELIs from (b) and (c), while envelope (c) can only be used to redeem instruments with a residual maturity below one year (c).

Where institutions apply for a GPP without specifying the ranking of the instruments that may be reduced (e.g. by only referring to 'eligible liabilities instruments'), the full deduction of the predetermined amount should be made from the ELIs of the lowest ranking.

For instruments that are redeemed by the institution after they have lost eligibility due to a residual maturity of less than one year, the respective amount is not deducted from ELIs with a residual maturity of at least one year. In other words, the envelope of the GPP related to ELIs with a residual maturity below one year does not need to be deducted from liabilities eligible to meet the MREL, on the condition that institutions use permissions related to instruments with a residual maturity below one year only at the same time or after such instruments lose eligibility. The same applies to *ad hoc* permissions.

In accordance with Art. 32g(4) DR, in case of new GPP applications starting in January 2024, the SRB exceptionally allows institutions to submit the application at least three months before the authorization period where the increase of the predetermined amount compared to the previous GPP is due to the envelope for ELIs with a residual maturity below one year.

## REPORTING

### What and how frequently should institutions report to the SRB on the use of a 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, the reporting of specific information is required from institutions. The following information should be submitted to the SRB within 30 days from the end of each six-month period, since the time of the authorisation:

- i. A confirmation that the institution continues to comply with the conditions under which the GPP was granted;
- ii. The list of instruments *that have been* reduced, repurchased, called or redeemed, their ISINs and their respective amount (at the end of the semester, per instrument);
- iii. The aggregate amount that has been reduced, repurchased, called or redeemed by the institution until that point in time (at the end of the semester);
- iv. The amount of instruments (total amount) that may still be reduced, repurchased, called or redeemed under the applicable limits.

If the institution's compliance with the permission conditions during the authorization period depends on future issuances, the institution should notify the planned date of the issuances and the ISINs of these issuances to the SRB.

Institutions are expected to provide the above-mentioned data in a computable format (e.g. spreadsheet).

## MARGIN

### How is the margin under Art. 78a(b) CRR calculated?

Institutions can be authorised to redeem ELIs only if they can demonstrate that they would meet their MREL and the Combined Buffer Requirement (CBR) plus a margin after the transaction has been performed. The margin is set by the resolution authority in agreement with the relevant competent authority.

The SRB concluded an "in principle" agreement with the ECB on the margin that institutions under Single Supervisory Mechanism (SSM) supervision will have to comply with in order to be authorised to redeem eligible liabilities. For GPPs, the margin is set at the lower value of either the requested GPP predetermined amount

or the institution's Pillar 2 Guidance. Nonetheless, a different margin may be set depending on the circumstances of the case.

For *ad hoc* permission without replacement, the SRB proposes to the ECB on a case-by case basis to set the margin as the lower value of either the requested amount to be reduced or the institution's Pillar 2 Guidance.

The margin is set in addition to MREL and the CBR (in case of MREL expressed in TREA). No margin is set in addition to any applicable subordination requirement. Notwithstanding, institutions subject to the subordination requirement can be authorised to redeem subordinated eligible liabilities only if they demonstrate that they would continue to comply with the subordination requirement after the transaction has been performed.