

Single Rulebook Q&A

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Status	Final Q&A
Legal act	Directive 2014/59/EU (BRRD)
Topic	BRRD Reporting
Article	45i
Paragraph	1
Subparagraph	1, letter (a) and (c)
COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations	Regulation (EU) 2021/763 - ITS with regard to the supervisory reporting and public disclosure of MREL
Article/Paragraph	3, 4, 5 and 6, and the Annexes cross-referred therein
Date of submission	07/09/2022
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Disclose name of institution / entity	Yes
Name of institution / submitter	Single Resolution Board
Country of incorporation / residence	EU
Type of submitter	Resolution authority
Subject matter	MREL - reporting of the impact of general prior permissions
Question	Reporting entities should deduct the pre-determined amount of a general prior permission for eligible liabilities instruments from the amount of their eligible liabilities from the moment the authorisation is granted. Against this background, how should this deduction obligation be reflected by the reporting entities in the reporting templates to be submitted in accordance with Regulation (EU) 2021/763?
Background on the question	According to paragraph 3 of Article 32b of the EBA Final Report on the Draft Regulatory Technical Standards on own funds and eligible liabilities amending Delegated Regulation (EU) No 241/2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for Own Funds requirements for institutions ("draft EBA RTS"), in the case of a general prior permission ("GPP") referred to in the second subparagraph of Article 78a(1) of

Regulation (EU) No 575/2013 (“CRR”), the predetermined amount for which the resolution authority has given its permission should be deducted from the institution’s eligible liabilities instruments from the moment the authorisation is granted. The same applies for ad hoc permissions under paragraph 2 of Article 32b of the draft EBA RTS, where the actions listed in Article 77(2) of the CRR are expected to take place with sufficient certainty, and once the prior permission of the resolution authority has been obtained. Regulation (EU) 2021/763 was adopted before the development of the said draft EBA RTS and, therefore, does not account for the deduction rules framed in Article 32b, paragraphs 2 and 3 of the draft EBA RTS. For this reason, according to the CIR instructions, the amounts of eligible liabilities to be reported in several data fields in MREL_TLAC reporting templates annexed to the same Regulation do not reflect the deductions that reporting entities should perform following the granting of prior permissions (if any). As a consequence, the MREL_TLAC reporting templates of Regulation (EU) 2021/763 to be submitted to resolution authorities for monitoring MREL compliance purposes would give to the receiving authorities an inaccurate picture of the MREL and TLAC capacity and composition of the reporting entities.

Final answer

The answer below distinguishes between the treatment of used prior permission amounts, and unused prior permission amounts. Regulation (EU) 2021/763 (ITS on disclosures and reporting on MREL and TLAC), as it currently stands, addresses and accommodates, albeit not explicitly, the treatment of the used amount, which is recapped below for completeness purposes.

Having said that, both amounts covered by a general permission to buy back own instruments, and amounts covered by an ad hoc permission to buy back own funds instruments, in accordance with Article 78a CRR should be reflected as follows in the templates of Annex I to Regulation (EU) 2021/763:

M 01.00 and M 02.00

Used prior permission amounts

Amounts covered by a prior permission, to the extent the reporting entity has already used up that amount to call, redeem, repay or repurchase instruments, should reduce the amount reported in the row pertaining to the specific (type of) instruments that were bought back. Consequently, they will also be reflected in any row corresponding to a sub-total or total (starting with rows 0090 or 0140 of template M 02.00).

Unused prior permission amounts

Amounts covered by a prior permission, to the extent the reporting entity has not yet used up that amount to call, redeem, repay or repurchase instruments, should reduce the amounts reported in rows 0090 (eligible

liabilities subordinated to excluded liabilities) or row 0140 (eligible liabilities not subordinated to eligible liabilities), as applicable in accordance with the guidance provided in [Q&A 6651](#).

This may lead to a breach of validation rules v10761_m and/or v10763_m (both are of the severity 'warning' and a breach will be accepted by competent and resolution authorities if a justification is provided).

Used and unused prior permission amounts

As a consequence of reflecting the prior permissions in rows 0090 and 0140, the figures reported in rows 0010 (own funds and eligible liabilities), 0060 (eligible liabilities), 0070 (eligible liabilities items before adjustments) and 0400 ('free CET1') of template M 02.00, as well as the figures presented in rows 0200 (own funds and eligible liabilities), 0210 (own funds and subordinated liabilities), and 0300 to 0330 (ratios) of template M 01.00 are 'net' figures after deducting the amounts covered by the prior permission.

If the deductions from eligible liabilities (row 0190 of M 02.00) exceed the stock of eligible liabilities items (row 0070 of M 02.00) as a consequence of reflecting the prior permissions, institutions should fill in a zero in row 0060 of M 02.00 (i.e. they should not report a negative figure). This may lead to a breach of validation rules v10758_m and/or v10759_m. In accordance with Article 66, point (e), of Regulation (EU) No 575/2013 (CRR), such an 'excess of deductions' entails a deduction from Tier 2 capital, and therefore effectively reduces the amounts reported in r0050 of M 02.00.

M 03.00

Used prior permission amounts

Amounts covered by a prior permission, to the extent the reporting entity has already used up that amount to call, redeem, repay or repurchase instruments, should reduce the amount reported in row 0260. Consequently, they will also be reflected in any row corresponding to a sub-total or total (starting with row 0250 of template M 03.00).

Unused prior permission amounts

Amounts covered by a prior permission, to the extent the reporting entity has not yet used up that amount to call, redeem, repay or repurchase instruments, shall reduce the amounts reported in row 0250 (eligible liabilities and guarantees). This may entail a breach of validation rules v10776_m and v10777_m.

Used and unused prior permission amounts

As a consequence of reflecting the prior permissions in row 0250, the values in row 0200 (eligible own funds and eligible liabilities), 0400 to 0430 (ratios) and 0440 ('free CET1') are 'net' figures after deducting the amounts covered

	<p>by the prior permission.</p> <p><u>M 04.00, M 05.00, M 06.00, M 07.00</u></p> <p><i>Used prior permission amounts</i></p> <p>Amounts covered by a prior permission, to the extent the reporting entity has already used up that amount to call, redeem, repay or repurchase instruments, should reduce the amount reported in the row pertaining to the specific type of instrument that was bought back.</p> <p><i>Unused prior permission amounts</i></p> <p>Amounts covered by a prior permission, to the extent the reporting entity has not yet used up that amount to call, redeem, repay or repurchase instruments should be disregarded for the purposes of reporting information in templates M 04.00, M 05.00, M 06.00 and M 07.00.</p> <p><i>Used and unused prior permission amounts</i></p> <p>As a consequence, the values reported in template M 04.00 should reflect the amount of instruments issued and other items before deducting the unused part, but net of amounts already spent on buying back or redeeming instruments.</p> <p>With regard to template M 04.00, this may lead to a breach of validation rule v10812_m (M 02.00 <-> M 04.00).</p>
Link	https://www.eba.europa.eu/single-rule-book-qa/qna/view/publicId/2022_6576