

EBA/RTS/2021/05

26 May 2021

Final Report

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

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1. Executive Summary

In the course of the adoption of the ‘Risk Reduction Measures Package’ by European legislators in May 2019, CRR¹ updated the own funds framework with certain targeted adjustments and to a larger extent with focus on the regime of supervisory prior permission for the reduction of own funds. In parallel, BRRD² introduced, as part of the existing minimum requirement for own funds and eligible liabilities (MREL), a new core G-SII requirement for own funds and eligible liabilities (internationally known as TLAC).

Previously, the CRR³ mandated the EBA to specify some of the eligibility criteria for own funds and to draft corresponding regulatory technical standards (‘RTS’). The respective mandates resulted in the adoption of Delegated Regulation (EU) No 241/2014 (the ‘RTS on own funds’). As the eligibility criteria have now been amended, albeit to a limited extent, and the rules relating to the prior permission regime to reduce own funds have been changed significantly, in particular with the introduction of the notion of ‘general prior permission’ to the Level 1 text, the RTS on own funds needed amendment to reflect these changes.

The amended CRR also contains several new mandates for the EBA to specify some of the criteria for eligible liabilities instruments, with some conditions derived from the own funds regime, in order to constitute high-quality loss absorbing capacity:

- acquisition of ownership of eligible liabilities must not be directly or indirectly funded by the resolution entity (Article 72b(2)(c) of the CRR);
- eligible liabilities must not contain incentives to redeem (Article 72b(2)(g) of the CRR);
- eligible liabilities may only be called, redeemed, repaid or repurchased once the resolution authority has granted prior permission (Article 77(2) of the CRR).

With regard to the permission regime for reducing eligible liabilities instruments, Article 78a(3) of the CRR mandates the EBA to develop RTS to specify:

- the process of cooperation between the competent authority and the resolution authority;
- the procedure, including the time limits and information requirements, for granting ad-hoc permission;

¹ 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, OJ L 150, 7.6.2019.

² Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms, OJ L 150, 7.6.2019.

³ 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 L176, 27.6.2013.

- the procedure, including the time limits and information requirements, for granting general prior permission;
- the meaning of ‘sustainable for the income capacity of the institution’.

For some of these aspects, the EBA is explicitly required to ensure full alignment between eligible liabilities and own funds.

To ensure consistency between the two regimes, the EBA fulfils the new mandates by way of amending the existing RTS on own funds, now also extending to eligible liabilities.

2. Background and rationale

1. In May 2019, European legislators adopted a series of measures aimed to further strengthen the resilience of EU banks. The ‘Risk Reduction Measures Package’ complements the existing banking framework to lower risks of failure and, where failure is inevitable, to reduce the severity of failure and minimise costs to the tax payer.
2. Part of these risk reduction measures consists in applying targeted adjustments to the own funds framework set out in Regulation (EU) No 575/2013 (‘CRR’) in order to reflect Union specificities and a few broader policy considerations. In parallel, the CRR and Directive 2014/59/EU (‘BRRD’) are amended to implement in the EU the total loss absorbing capacity (TLAC) standard agreed upon for Globally Systemically Important Institutions (G-SIIs) at the G-20 table. ‘Own funds and eligible liabilities’ requirements are set out alongside capital requirements to reinforce loss absorption capacity for banks, both going-concern and in resolution.
3. The EBA has historically been mandated to further specify some of the conditions of the own funds regime. With the introduction of eligible liabilities instruments in the CRR, the EBA is tasked with similar mandates to specify the eligible liabilities regime, in some cases with an explicit obligation for both regimes to be fully aligned. In order to ensure consistency across the spectrum of instruments with similar loss absorption features, it is necessary to approach both sets of mandates together. For this reason, the EBA has chosen to deal with the own funds regime and the eligible liabilities regime in a single set of regulatory technical standards.
4. This document describes the draft amendments to Commission Delegated Regulation (EU) No 241/2014 with regard to regulatory technical standards for Own Funds requirements for institutions (‘RTS on own funds’), now also applicable to eligible liabilities instruments

2.1 Update of the own funds framework

5. Regulation (EU) 2019/876 (‘CRR2’) amending the CRR introduces modified terminology to a number of articles setting out the prudential requirements for own funds. For example, the term ‘acquisition of ownership’ replaces ‘purchase’ in the context of eligibility criteria for own funds instruments. Where those changes relate to CRR articles for which further specifications have been provided in the RTS on own funds, the respective RTS provisions have been revised to accommodate the new terminology used in the Level 1 text.

6. Furthermore, the regime of supervisory prior permission for the reduction of own funds pursuant to Articles 77 and 78 of the CRR is amended to a significant extent. The requirement to obtain the competent authority's prior permission is clarified directly in the Level 1 text to additionally apply in the case of reduction, distribution or reclassification of share premium accounts.
7. As another innovation, the CRR now provides for the possibility to grant general prior permission to institutions for the reduction of own funds for a certain predetermined amount and for a limited period of time. Previously, the notion of 'general prior permission' existed already in the RTS on own funds, albeit limited to market-making purposes. With the Level 1 text taking up the concept as well as the preconditions and limits that the RTS specified before, the amending RTS reflects this accordingly. In addition, given that the CRR now requires the general prior permission for reducing own funds to be granted for a specified period that cannot exceed one year, the EBA has recognised specific reliefs for the renewal of general prior permission in terms of the information to be provided by the institution and the timing of the application.
8. Further amendments to the provisions concerning the prior permission regime for own funds are introduced with a view to codifying existing practices applied by competent authorities.
9. All in all, changes to the provisions of the existing RTS on own funds have been kept to the minimum necessary to align with the changes in the CRR in order to ensure to the greatest extent possible stability of the applicable rules for capital instruments.

2.2 Extension of the standards to eligible liabilities instruments

10. This section sets out general considerations on the extension of the RTS to eligible liabilities.

MANDATES

11. The final revised RTS follow up on mandates laid down by CRR2 in relation to eligible liabilities in three areas:

(1) Direct and indirect funding

Article 72b(2)(c) of the CRR extends to eligible liabilities instruments an eligibility criterion already applicable to own funds, whereby the acquisition of ownership of the liabilities must not be funded directly or indirectly by the resolution entity. This requirement essentially prevents an institution from issuing to entities with which, in one form or another, it has interdependencies that would create, in case of distress, a feedback loop that would diminish or neutralise the loss relief which the instruments are supposed to offer.

Article 72b(7)(a) of the CRR mandates the EBA to draft RTS to specify the applicable forms and nature of indirect funding of eligible liabilities instruments. The new specifications must be fully aligned with those existing for own funds.

Article 8 and 9 of the RTS, which already governed direct and indirect funding of own funds, are now amended to also capture eligible liabilities.

(2) Incentives to redeem

Pursuant to Article 72b(2)(g) CRR, liabilities only qualify as eligible liabilities instruments provided they do not include any incentive ‘for their principal amount to be called, redeemed or repurchased prior to their maturity or repaid early by the institution, as applicable, except in the cases referred to in Article 72c(3)’. This condition, drawing on an existing criterion for own funds, ensures the permanence of loss absorbing capacity also for eligible liabilities. For example, it precludes clauses that would predictably make it more costly over time for an issuing entity to maintain the funding. The consequences of incentives to redeem for eligible liabilities differ from those for own funds – for eligible liabilities, incentives to redeem lead to a shortening of maturity rather than outright ineligibility – but the notion itself is identical. This explains why Article 72b(7)(b) of the CRR mandates the EBA to specify ‘the forms and nature of incentives to redeem’ eligible liabilities, in a ‘fully aligned’ manner with the respective provision for own funds.

Article 20 of the RTS is amended to achieve this outcome.

(3) The permission regime for reducing eligible liabilities instruments

CRR⁴ subjected the reduction of own funds to prior permission of the competent authorities. With CRR2, Article 77(2) extends to eligible liabilities the obligation for institutions to obtain permission before calling, redeeming, repaying or repurchasing instruments. Article 78a of the CRR sets out the conditions under which the resolution authority must grant the permission. Three grounds for permission are provided: replacement with equal or higher quality at terms sustainable for the income capacity; reduction by an institution which exceeds its own funds and eligible liabilities requirements by a sufficient margin; or replacement necessary to ensure compliance with own funds requirements. Where the prior permission is based on the institution’s own funds and eligible liabilities exceeding the requirements in the CRR and BRRD to a sufficient extent, the resolution authority, in agreement with the competent authority, has to determine the margin over these requirements considered necessary.

General prior permission may be given for a specified period and predetermined amount, subject to criteria to ensure that the conditions for the first two grounds of permission would be met. Before granting general prior permission, the resolution authority has to consult the competent authority, and once such permission is granted, the competent authority shall be informed accordingly.

Article 78a(3) of the CRR mandates the EBA to develop RTS to specify:

⁴ Regulation (EU) No 575/2013 in the version applicable before amending Regulation (EU) No 2019/876.

- (a) the process of cooperation between the competent authority and the resolution authority;
- (b) the procedure, including the time limits and information requirements, for granting ad-hoc permission;
- (c) the procedure, including the time limits and information requirements, for granting general prior permission;
- (d) the meaning of ‘sustainable for the income capacity of the institution’ – which must be ‘fully aligned’ with the RTS on own funds.

These final revised RTS implement the above in Articles 32a to 32i.

CONSISTENCY ACROSS OWN FUNDS AND ELIGIBLE LIABILITIES

12. ‘Own funds and eligible liabilities’ requirements are set out alongside capital requirements to reinforce loss absorption capacity for banks, both going-concern and in resolution. While both sets of requirements retain their specific nature and qualities, they are also subject to many identical features (e.g. being directly issued and fully paid up, not being directly or indirectly funded by the institution, not being secured, no incentive to redeem, no acceleration, no set-off etc.). Articles 8, 9 and 20 of the RTS on own funds already specified some of these criteria (indirect funding and incentives to redeem) in relation to own funds. As own funds count both towards own funds requirements and MREL/TLAC requirements, and to avoid an unlevelled playing field between institutions meeting MREL solely with own funds and others, it is essential that common features are approached consistently. Likewise, it is important that the permission regime for the reduction of eligible liabilities, which pursues essentially identical imperatives to those under the permission regime for the reduction of own funds, be subject to broadly similar characteristics.

13. For these reasons, the final revised RTS set out provisions on eligible liabilities that are generally as consistent as possible with own funds provisions, and in any event fully aligned where mandated by the CRR.

SCOPE OF THE RTS IN RELATION TO ELIGIBLE LIABILITIES

14. The introduction of TLAC requirements for G-SIIs in the EU intervenes in a context where banks were already subject to institution-specific MREL requirements set-out in the BRRD. G-SII requirements and MREL requirements are now integrated in such a way that G-SIIs are subject to their G-SII requirement as part of their overall MREL requirement⁵. Both sets of requirements are further integrated across banks through the definition of common eligibility criteria defined in the CRR⁶, cross-referred in part or in whole by the BRRD for MREL purposes⁷. To the extent

⁵ Article 45d BRRD.

⁶ Article 72b CRR.

⁷ Article 45b(1) and 45f(2) BRRD.

the BRRD cross-refers to CRR eligibility criteria covered by these RTS, MREL eligible liabilities are therefore covered as well.

15. As a result, the specifications on direct and indirect funding, incentives to redeem and prior permission for reductions are equally applicable to eligible liabilities for TLAC purposes and for MREL purposes. They are also equally applicable to eligible liabilities for internal TLAC and internal MREL purposes.

SPECIFIC CONSIDERATIONS RELATED TO THE SCOPE OF THE PERMISSION REGIME FOR REDUCTIONS

16. These final revised RTS are bound by the scope delineated in the CRR and BRRD. Thus, the permission requirement in Article 78a of the CRR also applies to MREL eligible liabilities. This means that institutions are required to seek permission to reduce eligible liabilities. They are also required to seek permission a) where eligible liabilities are not subordinated to excluded liabilities, b) in relation to institutions for which MREL does not exceed the loss absorption amount (i.e. institutions without a recapitalisation amount that would be wound up using normal insolvency proceedings); c) even when they do not meet the one year maturity requirement anymore. Under the current Level 1 texts it is legally not admissible to simply carve out those situations from the permission regime.
17. Nevertheless, in developing the revised RTS, the EBA has considered whether the impact of the procedural rules on permissions should be relaxed in those situations.
18. On the one hand, it might be argued that for entities with a recapitalisation amount equal to zero (with a resolution strategy being normal insolvency proceedings; liquidation entities) the risk that a reduction will lead to an MREL breach is limited. The practical impact would be mostly acute for banks that have issued a large number of instruments for general funding purposes that may be MREL eligible and for which permission may be cumbersome.
19. On the other hand, to the extent that those instruments count towards MREL or constitute high-quality loss absorbing capacity, it is justified that they should be subject to prudent rules in the same way as any other instrument eligible for regulatory purpose.
20. A mitigating factor of the possible impact is that CRR2 introduces much more constraining eligibility criteria for eligible liabilities compared with the original Article 45 of BRRD1. For example, acceleration and set-off are prohibited, write-down and conversion references are now compulsory, and the contract must be, as a matter of eligibility, subject to the permission regime for reductions. As a result, coming forward it is conceivable that MREL eligible instruments will be designed on purpose to count towards the requirement, while other *pari passu* instruments that previously might have been 'captured involuntarily' will not meet those requirements and will not be subject to the permission requirement for reductions. For example, it is predictable that an entity for which MREL equals own funds requirements will not issue senior instruments that meet all the new eligibility criteria. This consideration reduces the concern about disproportionate impact.

21. Nevertheless, the EBA has decided to introduce a proportionate treatment of liquidation entities for which the resolution authority has set the MREL at a level that does not exceed an amount sufficient to absorb losses (LAA). Given that for such entities there is no risk that a reduction of eligible liabilities instruments would lead to an MREL breach, the RTS apply a proportionate approach. First, these entities are not subject to the limits applied to other institutions in terms of the maximum predetermined amount that can be authorised for reduction under general prior permission. Second, in terms of process, the RTS introduces the possibility for resolution authorities to grant general prior permission based on the information already provided by liquidation entities in the context of resolution planning. This general prior permission can also be renewed automatically, subject to conditions.
22. It is also recognised that some of the new requirements are grandfathered under CRR2 and therefore the impact will depend much on the maturity profile of legacy instruments. Another aspect to be considered is that the use of the prior permission regime (and corresponding limits as explained further in this final report) by entities for unsubordinated instruments that are eligible liabilities solely as a result of the grandfathering provisions might be rendered unnecessary by the likely absence of call possibilities in the contractual terms of the instruments which were not designed to be eligible liabilities instruments.

3. Draft Regulatory Technical Standards

The text that follows shows changes and amendments compared to **the existing RTS on OFs**. Any text to be deleted is shown in strikethrough and any amendments in bold print and underlined. This has been done in order to enhance readability of the text and enable stakeholders to easily identify the amendments made and the changes applied and see them in the respective context.

The legal text of the amending Regulation, officially submitted to the EU Commission, is presented separately in an annex to this Final Report.

COMMISSION DELEGATED REGULATION (EU) No .../..

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

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012⁸, and in particular third subparagraph of Article 28(5); third subparagraph of Article 29(6); third subparagraph of Article 52(2); fourth subparagraph of Article 72b(7); third subparagraph of Article 76(4); third subparagraph of Article 78(5); fourth subparagraph of Article 78a(3); third subparagraph of Article 79(2) thereof,

Whereas:

- (1) Regulation (EU) 2019/876 of the European Parliament and of the Council⁹, amended, inter alia, the prudential requirements for own funds as set out by Regulation (EU) No 575/2013 in various aspects. Amongst these are changes of the terminology used in a number of articles of this Regulation. In order to reflect these changes appropriately, the provisions in Commission Delegated Regulation (EU) No 241/2014¹⁰ providing further specification on the articles concerned should be amended in a consistent manner.
- (2) Regulation (EU) 2019/876 also introduced into Regulation (EU) No 575/2013 new requirements for own funds and eligible liabilities for global systemically important institutions (G-SIIs) and material subsidiaries of non-EU G-SIIs, as well as harmonised criteria for eligible liabilities items and instruments for the purposes of complying with those requirements. The own funds requirements and the new requirements for own funds and eligible liabilities in Regulation (EU) No 575/2013 pursue both the same objective of ensuring that institutions have sufficient loss absorption capacity. For this reason, the standards for own funds instruments and the standards for eligible liabilities instruments are closely linked, in particular where Regulation (EU) No 575/2013 expressly requires them to be fully aligned. To ensure coherence and consistency with the provisions related to own funds instruments, it is

⁸ OJ L 176, 27.6.2013, p. 1.

⁹ OJ L 150, 7.6.2019, p. 1.

¹⁰ Commission Delegated Regulation (EU) No 241/2014 of 7 January 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 (OJ L 74, 14.3.2014, p. 8).

appropriate to incorporate the regulatory technical standards on eligible liabilities instruments required by Regulation (EU) No 575/2013 into Commission Delegated Regulation (EU) No 241/2014.

- (3) The requirements for own funds and eligible liabilities in Regulation (EU) No 575/2013 and in Directive 2014/59/EU of the European Parliament and of the Council¹¹ share the same objective of ensuring that institutions have sufficient loss absorption capacity. For this reason, for all resolution entities the eligibility criteria for eligible liabilities instruments introduced in Regulation (EU) No 575/2013 by Regulation (EU) 2019/876 were extended, notably with the exception of the subordination criterion referred to in point (d) of Article 72b(2) of that Regulation, to liabilities eligible for meeting the minimum requirement for own funds and eligible liabilities (MREL) by virtue of point (b) of the first subparagraph of Article 45b(1) of that Directive. In relation to resolution entities of G-SIIs and Union material subsidiaries of non-EU G-SIIs, Directive 2014/59/EU made the eligibility of liabilities for meeting the minimum required level of MREL, as provided for in Article 45d(1)(a) and (2)(a) in conjunction with the second subparagraph of Article 45b(1) of that Directive, conditional upon their compliance with the eligibility criteria for eligible liabilities instruments. These include the criteria that the liabilities may not be funded directly or indirectly by the institution, the liabilities have to be subject to a prior permission to be reduced and the liabilities may not contain an incentive to redeem, except in cases referred to in Article 72c(3) of Regulation (EU) No 575/2013. Similarly, in relation to entities that are not resolution entities, points (a)(ii) and (v) of Article 45f(2) of Directive 2014/59/EU also made the eligibility of such liabilities subject to the compliance with certain eligibility criteria for eligible liabilities instruments and to the acquisition of ownership of the liabilities not being funded directly or indirectly by the entity that is subject to that Article, respectively. Therefore, the provisions of this Regulation related to direct and indirect funding of eligible liabilities instruments, form and nature of incentives to redeem and prior permission to reduce such instruments should also be applied in a consistent manner for the purposes of Article 45b(1) and points (a)(ii) and (v) Article 45f(2) of Directive 2014/59/EU. In order to ensure that consistency, the term ‘eligible liabilities instruments’ should be extended to ‘eligible liabilities’ referred to in Article 45b and point (a) of Article 45f(2) regardless of their residual maturity and the term ‘institution’ should also apply to any entity subject to MREL in accordance with Article 45(1) of Directive 2014/59/EU.
- (4) Regulation (EU) No 575/2013 made the eligibility of own funds instruments conditional on them not being funded directly or indirectly by the institution. Regulation (EU) 2019/876 extended this condition to eligible liabilities instruments, with the difference that, in line with the Total Loss-absorbing Capacity (TLAC) standard, eligible liabilities instruments should not be directly or indirectly funded by the resolution entity rather than by the institution. Therefore, since Regulation (EU) No 575/2013 mandates the European Banking Authority (EBA) to draft regulatory technical standards that are fully aligned with the delegated act referred to

¹¹ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

- in point (a) of Article 28(5) of Regulation (EU) No 575/2013, the respective provisions of Commission Delegated Regulation (EU) No 241/2014, which specify the applicable forms and nature of indirect funding for own funds instruments, should also apply to eligible liabilities instruments.
- (5) Rules on direct and indirect funding should capture funding chains maintaining risks within a group, whether they involve an external investor or not. To avoid circumvention of the rules, in order to conclude that capital instruments or liabilities are directly or indirectly funded by the institution issuing such instruments or liabilities, it should not be necessary that the funding is provided by that institution, as long it is provided by an entity included in the scope of prudential or accounting consolidation of the institution, the institutional protection scheme or the network of institutions affiliated to a central body to which it belongs or its scope of supplementary supervision and regardless of whether that other entity is included in another resolution group.
 - (6) The definition of ‘excess spread’ has been removed from Article 242 of Regulation (EU) No 575/2013 as a result of the amendments introduced by Regulation (EU) 2019/876. It is therefore necessary [to introduce a definition of the term excess spread in Delegated Regulation (EU) No 241/2014] [to define the term excess spread by reference to the definition provided for in Regulation (EU) No XX].
 - (7) Regulation (EU) No 575/2013 also made the eligibility of Additional Tier 1 instruments and Tier 2 instruments conditional upon the absence of any incentive for their principal amount to be redeemed. This criterion has been extended by Regulation (EU) 2019/876 to eligible liabilities instruments as well, with the difference that incentives to redeem are permitted in the cases referred to in Article 72c(3) of Regulation (EU) No 575/2013. Therefore, the respective provision of Commission Delegated Regulation (EU) No 241/2014 should be amended to also cover eligible liabilities instruments.
 - (8) With regard to index holdings, Regulation (EU) 2019/876 extended the scope of the prior permission to be granted by the competent authority - allowing an institution to use a conservative estimate of the underlying exposure of the institution to instruments included in indices - to eligible liabilities instruments of institutions. Accordingly, the provisions of Commission Delegated Regulation (EU) No 241/2014 regarding estimates used as an alternative to the calculation of underlying exposures to own funds instruments included in indices being ‘sufficiently conservative’ and the meaning of ‘operationally burdensome’ should be amended to also apply to eligible liabilities instruments.
 - (9) Based on a concept previously existing under Commission Delegated Regulation (EU) No 241/2014 and supplementing the prior permission regime for the reduction of own funds, Regulation (EU) 2019/876 introduced into Regulation (EU) No 575/2013 the possibility for the competent authority to grant to institutions a general prior permission to reduce own funds for a predetermined amount and a limited period of time. Preconditions and limits originally applicable to a prior permission for market-making purposes should be removed from the current Commission Delegated Regulation (EU) No 241/2014 because now they are embedded in the general prior permission regime introduced by Regulation (EU) 2019/876.

- (10) The prior permission regimes for reducing own funds and for reducing eligible liabilities instruments share the aim of safeguarding the compliance with regulatory requirements, and have a number of similar features in common. It is therefore necessary to standardise the processes followed by competent authorities and resolution authorities both for the general prior permission and for any other permissions pursuant to Articles 78 and 78a of Regulation (EU) No 575/2013, respectively. Furthermore, provisions should be introduced to take account of the specificities of any prior permission and ensure that they are appropriately used for their specific purposes. In particular, competent authorities and resolution authorities should be required to specify the period for which a prior permission other than a general prior permission is granted and a maximum limit for this specified period should be established.
- (11) Regulation (EU) No 575/2013 requires the general prior permission for reducing own funds and eligible liabilities instruments to be granted for a specified period that shall not exceed one year. Given that an application for the renewal of a general prior permission, which has already been granted once by the competent authority or the resolution authority, may not necessarily warrant the same level of scrutiny and/or interaction between authorities, and, under specific safeguards, the content of the application to be submitted by institutions and the timing for the submission of the application should be reduced in the cases of such renewals.
- (12) Regulation (EU) No 575/2013 requires institutions to obtain the prior permission of the resolution authority to effect the call, redemption, repayment or repurchase of eligible liabilities instruments. The permission must be granted subject to a number of conditions, including where 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. Since Regulation (EU) No 575/2013, as amended by Regulation (EU) 2019/876, requires the standards on the meaning of 'sustainable for the income capacity of the institution' in the context of eligible liabilities instruments to be fully aligned with its equivalent for own funds, the same meaning of 'sustainable for the income capacity of the institution' should be used for both types of instruments in this Regulation.
- (13) In order to align the general prior permission regime between own funds and eligible liabilities instruments, and to ensure a consistent approach across the EU, the predetermined amount to be set by resolution authorities when granting the general prior permission to reduce eligible liabilities instruments should be subject to limits. This should be without prejudice to the need for the resolution authority, taking into consideration the specific circumstances of the case, to set a lower predetermined amount for a particular institution. In addition, in order to prevent that institutions operate at a level of own funds and eligible liabilities instruments that fails to reflect that part of the own funds and eligible liabilities instruments would not be available to absorb losses when needed, in case of a general prior permission, the predetermined amount for which the relevant authority has given its permission should be deducted from the moment the authorisation is granted.
- (14) In order to introduce a proportionate treatment to institutions whose resolution plans provide that they are to be wound up under normal insolvency proceedings and for which the resolution authority has set the minimum requirement for own funds and

eligible liabilities laid down in Article 45(1) of Directive 2014/59/EU at a level that does not exceed an amount sufficient to absorb losses, resolution authorities should be able to grant a general prior permission based on the information that these institutions have already made available for the purposes of drawing up their resolution plan. The information provided by these institutions to the resolution authority should be deemed to constitute an application for general prior permission, unless requested otherwise by any of the institutions concerned. Given that these institutions do not need to issue eligible liabilities instruments for meeting the minimum requirement for own funds and eligible liabilities, the predetermined amount of eligible liabilities instruments to be reduced should not be subject to the same limits as for other institutions.

- (15) Regulation (EU) No 575/2013, as amended by Regulation (EU) 2019/876 requires to establish a detailed and comprehensive procedure for granting a permission to reduce eligible liabilities instruments, including the process of cooperation between the competent authority and the resolution authority. In order to ensure compliance with own funds and eligible liabilities requirements laid down in Regulation (EU) No 575/2013 and Directives 2013/36/EU and 2014/59/EU, the process of cooperation between the competent authority and the resolution authority should include consultation with the competent authority on the application for prior permission received by the resolution authority, in a way that enables the competent authority to express an informed view on the consultation, including where its agreement is required for establishing the margin by which the institution's own funds and eligible liabilities must exceed its requirements, with an adequate exchange of information and sufficient time to respond to the consultation.
- (16) Regulation (EU) 2019/876 extends the scope of the temporary waiver that competent authorities may grant to institutions for holdings in a financial sector entity from the deduction requirement where such holdings are deemed to provide financial assistance to that entity with a view to safeguard its viability, to eligible liabilities instruments of an institution. As a result, the provisions of Commission Delegated Regulation (EU) No 241/2014 originally developed for institutions' holdings of own funds instruments in financial sector entities should be amended to also apply to institutions' holdings of eligible liabilities instruments in institutions.
- (17) Delegated Regulation (EU) No 241/2014 should therefore be amended accordingly.
- (18) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the EBA.
- (19) EBA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council¹².

¹² Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12)

HAS ADOPTED THIS REGULATION:

CHAPTER I

Article 1

Subject matter

This Regulation lays down rules concerning:

(a).....

(b).....

(c) the applicable forms and nature of indirect funding of **own funds** capital instruments, ~~according to~~ **in accordance with** Article 28(5) of Regulation (EU) No 575/2013 **and eligible liabilities instruments in accordance with point (a) of Article 72b(7) of that Regulation;**

(d).....

(hh) the form and nature of incentives to redeem for the purposes of the condition set out in point (g) of the first subparagraph of Article 72b(2) and Article 72c(3) of Regulation (EU) No 575/2013, in accordance with point (b) of Article 72b(7) of that Regulation;

(i) the extent of conservatism required in estimates used as an alternative to the calculation of underlying exposures for indirect holdings arising from index holdings **and the meaning of operationally burdensome for the institution to monitor those underlying exposures,** in accordance with **points (a) and (b) of** Article 76(4) of Regulation (EU) No 575/2013;

(jj) the procedure, including the limits and information requirements, for granting the permission to reduce eligible liabilities instruments, and the process of cooperation between the competent authority and the resolution authority in accordance with Article 78a(3) of Regulation (EU) No 575/2013;

(k) the conditions for a temporary waiver for deduction from own funds **and eligible liabilities** to be provided, in accordance with Article 79(2) of Regulation (EU) No 575/2013;

(l)....

(m).....

(n).....

Article 1a

Application of this Regulation to entities subject to the minimum requirement for own funds and eligible liabilities, and to eligible liabilities referred to in Directive 2014/59/EU

Unless otherwise specified, for the purposes of the application of Articles 8, 9 and 20, and Section 2 of Chapter IV of this Regulation, entities subject to the minimum requirement for own funds and eligible liabilities referred to in Article 45(1) of Directive 2014/59/EU shall be considered to be ‘institutions’, and ‘eligible liabilities’ referred to in Article 45b and point (a) of Article 45f(2) of that Directive shall be considered to be ‘eligible liabilities instruments’.

CHAPTER II

ELEMENTS OF OWN FUNDS AND ELIGIBLE LIABILITIES

SECTION 1

Common Equity Tier 1 capital **and eligible liabilities items** and instruments

Subsection 2

Cooperative societies, savings institutions, mutuals and similar institutions

Article 4

Type of undertaking recognised under applicable national law as a cooperative society for the purposes of Article 27(1)(a)(ii) of Regulation (EU) No 575/2013

1. Competent authorities may determine that a type of undertaking recognised under applicable national law qualifies as a cooperative society for the purpose of Part Two of Regulation (EU) No 575/2013, where all of the **following** conditions in paragraphs 2, 3 and 4 are met.

2. To qualify as a cooperative society for the purposes of paragraph 1, an institution's legal status shall fall within one of the following categories:

- (a) [...];
- (b) [...];
- ...
- (k) in Italy: [...]

(kk) in Lithuania: institutions registered as ‘Centrinė kredito unija’ under the ‘Centrinė kredito unijų įstatymas’;

- (l) in Luxembourg: institutions registered as ‘sociétés coopératives’ as defined in Section VI of the law of 10 August 1915 on commercial companies;
- (m) in the Netherlands: [...];
- (n) [...]
- (r) in Sweden: institutions registered as ‘Medlemsbank’ ~~under ‘Lag (1995:1570) om medlemsbanker’~~ or as ‘Kreditmarknadsförening’ under Lag (2004:297) om bank- och finansieringsrörelse;
- (s) [...]

Subsection 3

Indirect funding

Article 8

*Indirect funding of capital instruments for the purposes of Article 28(1)(b), Article 52(1)(c), and Article 63(c), **and of liabilities for the purpose of Article 72b(2)(c)** of Regulation (EU) No 575/2013*

1. Indirect funding of capital instruments under Article 28(1)(b), Article 52(1)(c) and Article 63(c), **and liabilities under Article 72b(2)(c)** of Regulation (EU) No 575/2013 shall be deemed funding that is not direct.
2. For the purposes of paragraph 1, direct funding shall refer to situations where an institution has granted a loan or other funding in any form to an investor that is used for the ~~purchase~~ **acquisition of ownership** of its ~~the institution's~~ **capital instruments or liabilities**.
3. Direct funding shall also include funding granted for other purposes than ~~purchasing~~ **acquiring ownership of the** an institution's capital instruments **or liabilities of an institution**, to any natural or legal person who has a qualifying holding in the ~~credit~~ institution, as referred to in Article 4**(1), point** (36) of Regulation (EU) No 575/2013,

or who is deemed to be a related party within the meaning of the definitions in paragraph 9 of International Accounting Standard 24 on Related Party Disclosures as applied in the Union ~~according to~~ **in accordance with** Regulation (EC) No 1606/2002 of the European Parliament and of the Council¹³, taking into account any additional guidance as defined by the competent authority **for capital instruments, or the resolution authority in consultation with the competent authority for liabilities**, if the institution is not able to demonstrate all of the following:

- (i) the transaction is realised at similar conditions as other transactions with third parties;
- (ii) the natural or legal person or the related party does not have to rely on the distributions or on the sale of the capital instruments or liabilities held to support the payment of interest and the repayment of the funding.

Article 9

*Applicable forms and nature of indirect funding of capital instruments for the purposes of Article 28(1)(b), Article 52(1)(c) and Article 63(c), **and of liabilities for the purpose of Article 72b(2)(c)** of Regulation (EU) No 575/2013*

1. The applicable forms and nature of indirect funding of the ~~purchase~~ **acquisition of ownership** of an institution's ~~the~~ capital instruments **and liabilities of an institution** shall include the following:
 - (a) funding of an investor's ~~purchase~~ **acquisition of ownership**, at issuance or thereafter, of ~~an institution's~~ **the** capital instruments **or liabilities of an institution** by any entities on which the institution has a direct or indirect control or by entities included in any of the following:
 - (1) the scope of accounting or prudential consolidation of the institution;
 - (2) the scope of the consolidated balance sheet or extended aggregated calculation, where equivalent to consolidated accounts as referred to in Article 49(3)(a)(iv) of Regulation (EU) No 575/2013, that is drawn up by the institutional protection scheme or the network of institutions affiliated to a central body that are not organised as a group to which the institution belongs;

¹³ Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards, (OJ L 243, 11.9.2002, p. 1).

- (3) the scope of supplementary supervision of the institution in accordance with Directive 2002/87/EC of the European Parliament and of the Council¹⁴ on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate;
- (b) funding of an investor's ~~purchase~~ **acquisition of ownership**, at issuance or thereafter, of ~~the an institution's~~ capital instruments **or liabilities of an institution** by external entities that are protected by a guarantee or by the use of a credit derivative or are secured in some other way so that the credit risk is transferred to the institution, or to any entities on which the institution has a direct or indirect control or any entities included in any of the following:
- (1) the scope of accounting or prudential consolidation of the institution;
- (2) the scope of the consolidated balance sheet or extended aggregated calculation, where equivalent to consolidated accounts as referred to in Article 49(3)(a)(iv) of Regulation (EU) No 575/2013, that is drawn up by the institutional protection scheme or the network of institutions affiliated to a central body that are not organised as a group to which the institution belongs;
- (3) the scope of supplementary supervision of the institution in accordance with Directive 2002/87/EC.
- (c) funding of a borrower that passes the funding on to the ultimate investor for the ~~purchase~~ **acquisition of ownership**, at issuance or thereafter, of ~~an institution's~~ **the capital instruments or liabilities of an institution**.
2. In order to be considered as indirect funding for the purposes of paragraph 1, the following conditions shall also be met, where applicable:
- (a) the investor is not included in any of the following:
- (1) the scope of accounting or prudential consolidation of the institution;
- (2) the scope of the consolidated balance sheet or extended aggregated calculation, where equivalent to consolidated accounts as referred to in Article 49(3)(a)(iv) of Regulation (EU) No 575/2013, that is drawn up by the institutional protection scheme or the network of institutions affiliated to a

¹⁴ Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate (OJ L 35, 11.2.2003, p. 1).

central body that are not organised as a group to which the institution belongs. For this purpose an investor is deemed to be included in the scope of the extended aggregated calculation if the relevant capital instrument or liability is subject to consolidation or extended aggregated calculation in accordance with Article 49(3)(a)(iv) of Regulation (EU) No 575/2013 in a way that the multiple use of own funds or eligible liabilities items and any creation of own funds or eligible liabilities between members of the institutional protection scheme is eliminated. Where the permission from competent authorities referred to in Article 49(3) of Regulation (EU) No 575/2013 has not been granted, this condition shall be deemed to be met where both the entities referred to in paragraph 1(a) and the institution are members of the same institutional protection scheme and the entities deduct the funding provided for the ~~purchase~~ **acquisition of ownership** of the capital instruments **or liabilities of the institution**, ~~according to~~ **in accordance with** points (f) to (i) of Article 36(1), points (a) to (d) of Article 56 and points (a) to (d) of Article 66, **for capital instruments, and in accordance with points (a) to (d) of Article 72e** of Regulation (EU) No 575/2013, **for liabilities**, as applicable;

(3) the scope of the supplementary supervision of the institution in accordance with Directive 2002/87/EC;

(b) the external entity is not included in any of the following:

(1) the scope of accounting or prudential consolidation of the institution;

(2) the scope of the consolidated balance sheet or extended aggregated calculation, where equivalent to consolidated accounts as referred to in Article 49(3)(a)(iv) of Regulation (EU) No 575/2013, that is drawn up by the institutional protection scheme or the network of institutions affiliated to a central body that are not organised as a group to which the institution belongs;

(3) the scope of the supplementary supervision of the institution in accordance with Directive 2002/87/EC.

3. When establishing whether the ~~purchase~~ **acquisition of ownership** of a capital instrument **or liability** involves direct or indirect funding in accordance with Article 8, the amount to be considered shall be net of any individually assessed impairment allowance made.

4. In order to avoid a qualification of direct or indirect funding in accordance with Article 8 and where the loan or other form of funding or guarantees is granted to any

natural or legal person who has a qualifying holding in the ~~credit~~-institution, or who is deemed to be a related party as referred to in paragraph 3 **of Article 8**, the institution shall ensure on an on-going basis that it has not provided the loan or other form of funding or guarantees for the purpose of ~~subscribing~~ **acquiring ownership** directly or indirectly of capital instruments **or liabilities** of the institution. Where the loan or other form of funding or guarantees is granted to other types of parties, the institution shall make this control on a best effort basis.

5. With regard to mutuals, cooperative societies and similar institutions, where there is an obligation under national law or the statutes of the institution for a customer to subscribe capital instruments in order to receive a loan, that loan shall not be considered as a direct or indirect funding where all of the following conditions are met:
 - (a) the amount of the subscription is considered immaterial by the competent authority;
 - (b) the purpose of the loan is not the ~~purchase~~ **acquisition of ownership** of capital instruments or liabilities of the institution providing the loan;
 - (c) the subscription of one or more capital instruments of the institution is necessary in order for the beneficiary of the loan to become a member of the mutual, cooperative society or similar institution.

SECTION 2

PRUDENTIAL FILTERS

Article 12

The concept of gain on sale for the purposes of Article 32(1)(a) of Regulation (EU) No 575/2013

[...]

3. The recognised gain on sale which is associated with the future margin income, shall refer, in this context, to the expected future ‘excess spread’ as ~~defined in Article 242 of Regulation (EU) No 575/2013~~.

Scenario 1: [...] as defined in point (b) of Article 1 of Commission Delegated Regulation (EU) No XXX/202X (RTS on Risk Retention), or

Scenario 2: [...] defined as the finance charge collections and other fee income received in respect of the securitised exposures net of costs and expenses.

CHAPTER III

ADDITIONAL TIER 1 AND TIER 2 CAPITAL AND ELIGIBLE LIABILITIES

SECTION 1

Form and nature of incentives to redeem

Article 20

Form and nature of incentives to redeem for the purposes of Articles 52(1)(g) ~~and~~, 63(h), 72b(2)(g) and 72c(3) of Regulation (EU) No 575/2013

1. Incentives to redeem shall mean all features that provide, at the date of issuance, an expectation that the capital instrument **or the liability** is likely to be redeemed.
2. The incentives referred to in paragraph 1 shall include the following forms:
 - (a) a call option combined with an increase in the credit spread of the instrument **or the liability** if the call is not exercised;
 - (b) a call option combined with a requirement or an investor option to convert the instrument **or the liability** into a Common Equity Tier 1 instrument where the call is not exercised;
 - (c) a call option combined with a change in reference rate where the credit spread over the second reference rate is greater than the initial payment rate minus the swap rate;
 - (d) a call option combined with an increase of the redemption amount in the future;
 - (e) a remarketing option combined with an increase in the credit spread of the instrument **or the liability** or a change in reference rate where the credit spread over the second reference rate is greater than the initial payment rate minus the swap rate where the instrument **or the liability** is not remarketed;
 - (f) a marketing of the instrument **or the liability** in a way which suggests to investors that the instrument will be called.

CHAPTER IV

GENERAL REQUIREMENTS

SECTION 1

INDIRECT HOLDINGS ARISING FROM INDEX HOLDINGS

Article 25

Extent of conservatism required in estimates for calculating exposures used as an alternative to the underlying exposures for the purposes of Article 76(2) of Regulation (EU) No 575/2013

1. An estimate is sufficiently conservative when either of the following conditions is met:
 - (a) where the investment mandate of the index specifies that ~~an capital~~ **own funds** instrument of a financial sector entity **or an eligible liabilities instrument of an institution** which is part of the index cannot exceed a maximum percentage of the index, the institution uses that percentage as an estimate for the value of the holdings that is deducted from its Common Equity Tier 1, Additional Tier 1, or Tier 2 items, as applicable in accordance with paragraph 2 of Article 17 or from Common Equity Tier 1 ~~items~~ ~~capital~~ in situations where the institution cannot determine the precise nature of the holding **or, for an institution subject to the requirements of Article 92a of Regulation (EU) No 575/2013, its eligible liabilities items;**
 - (b) where the institution is unable to determine the maximum percentage referred to in point (a) and where the index, as evidenced by its investment mandate or other relevant information, includes ~~capital~~ **own funds** instruments of financial sector entities **or eligible liabilities instruments of institutions,** the institution deducts the full amount of the index holdings from its Common Equity Tier 1, Additional Tier 1, or Tier 2 items, as applicable in accordance with paragraph 2 of Article 17 or from Common Equity Tier 1 ~~items~~ ~~capital~~ in situations where the institution cannot determine the precise nature of the holding **or, for an institution subject to the requirements of Article 92a of Regulation (EU) No 575/2013, its eligible liabilities items.**
2. For the purposes of paragraph 1, the following shall apply:
 - (a) an indirect holding arising from an index holding comprises the proportion of the index invested in the Common Equity Tier 1, Additional Tier 1 and Tier 2 instruments of financial sector entities **and in eligible liabilities instruments of institutions** included in the index;
 - (b) an index includes, but is not limited to, index funds, equity or bond indices or any other scheme where the underlying instrument is ~~an capital~~ **own funds** instrument issued by a financial sector entity **or an eligible liabilities instrument issued by an institution.**

Article 26

Meaning of operationally burdensome in Article 76(3) of Regulation (EU) No 575/2013

1. For the purpose of Article 76(3) of Regulation (EU) No 575/2013, operationally burdensome shall mean situations under which look-through approaches to capital **instruments** holdings in financial sector entities ~~and~~ **or to eligible liabilities instruments holdings in institutions** on an ongoing basis are unjustified, as assessed by the competent authorities. In their assessment of the nature of operationally burdensome situations, competent authorities shall take into account the low materiality and short holding period of such positions. A holding period of short duration shall require the strong liquidity of the index to be evidenced by the institution.
2. For the purpose of paragraph 1, a position shall be deemed to be of low materiality where all of the following conditions are met:
 - (a) the individual net exposure arising from index holdings measured before any look-through is performed does not exceed 2 % of Common Equity Tier 1 items as calculated in point (a) of Article 46(1) of Regulation (EU) No 575/2013;
 - (b) the aggregated net exposure arising from index holdings measured before any look-through is performed does not exceed 5 % of Common Equity Tier 1 items as calculated in point (a) of Article 46(1) of Regulation (EU) No 575/2013;
 - (c) the sum of the aggregated net exposure arising from index holdings measured before any look-through is performed and of any other holdings that shall be deducted pursuant to Article 36(1)(h) of Regulation (EU) No 575/2013 does not exceed 10 % of Common Equity Tier 1 items as calculated in point (a) of Article 46(1) of Regulation (EU) No 575/2013.

SECTION 2

~~SUPERVISORY PERMISSION FOR REDUCING OWN FUNDS~~ **AND ELIGIBLE LIABILITIES**

Subsection 1

SUPERVISORY PERMISSION FOR REDUCING OWN FUNDS

Article 27

*Meaning of sustainable for the income capacity of the institution for the purposes of **point (a) of Article 78(1)(a) and point (d) of Article 78(4)** of Regulation (EU) No 575/2013*

Sustainable for the income capacity of the institution under point (a) of Article 78(1) **and under point (d) of Article 78(4)** of Regulation (EU) No 575/2013 shall mean that the profitability of the institution, as assessed by the competent authority, continues to be sound or does not see any negative change after the replacement of the instruments **or the related share premium accounts referred to in Article 77(1) of that Regulation** with own funds instruments of equal or higher quality, at that date and for the foreseeable future. The competent authority's assessment shall take into account the institution's profitability in stress situations.

Article 28

*Process ~~and data~~ requirements **including the limits and procedures** for an application by an institution to **reduce own funds pursuant to** ~~carry out redemptions, reductions and repurchases~~ **for the purposes of Article 77(1)** of Regulation (EU) No 575/2013*

1. Redemptions, reductions and repurchases of own funds instruments shall not be announced to holders of the instruments before the institution has obtained the prior approval **permission** of the competent authority.
2. Where ~~redemptions, reductions and repurchases~~ **the actions listed in Article 77(1) of Regulation (EU) No 575/2013** are expected to take place with sufficient certainty, and once the prior permission of the competent authority has been obtained, the institution shall deduct the corresponding amounts **of own funds instruments** to be redeemed, reduced or repurchased **or the amounts of the related share premium accounts to be reduced or distributed, as applicable,** from corresponding elements of its own funds before the effective redemptions, reductions, ~~or~~ repurchases **or distributions** occur. Sufficient certainty is deemed to exist in particular when the institution has publicly announced its intention to redeem, reduce or repurchase an own funds instrument.
3. **In the case of a general prior permission referred to in the second subparagraph of Article 78(1) of Regulation (EU) No 575/2013, the predetermined amount for which the competent authority has given its permission shall be deducted from corresponding elements of the institution's own funds from the moment the authorisation is granted.**

4. **When applying for a prior permission, including a general prior permission referred to in the second subparagraph of Article 78(1) of Regulation (EU) No 575/2013, for actions listed in Article 77(1) of that Regulation, institutions shall inform competent authorities where the related own funds instruments are purchased for the purposes of being passed on to employees of the institution as part of their remuneration. By way of derogation from paragraphs 2 and 3, these instruments shall be deducted from corresponding elements of the institution's own funds, for the time they are held by the institution. A deduction is no longer required, where the expenses related to any action in accordance with this paragraph are already included in own funds as a result of an interim or a year-end financial report.**
5. **A prior permission, other than a general prior permission referred to in the second subparagraph of Article 78(1) of Regulation (EU) No 575/2013, shall be granted by the competent authority for a specified period of time, necessary to perform any of the actions listed in Article 77(1) of that Regulation, which shall not exceed one year.**
6. Paragraphs 1 ~~and 2~~ **to 5** shall apply at the consolidated, sub-consolidated and individual levels of application of prudential requirements, where applicable.

Article 29

*Submission of application by the institution to **reduce own funds pursuant to** ~~carry out redemptions, reductions and repurchases for the purposes of Article 77(1) and Article 78 of Regulation (EU) No 575/2013 and appropriate bases of limitation of redemption for the purposes of paragraph 3 of Article 78 of Regulation (EU) No 575/2013~~*

1. An institution shall submit an application **for prior permission, including a general prior permission referred to in the second subparagraph of Article 78(1) of Regulation (EU) No 575/2013,** to the competent authority before ~~reducing or repurchasing Common Equity Tier 1 instruments or calling, redeeming or repurchasing Additional Tier 1 or Tier 2 instruments~~ **taking any of the actions referred to in Article 77(1) of that Regulation.**
2. ~~The application may include a plan to carry out, over a limited period of time, actions listed in Article 77 of Regulation (EU) No 575/2013 for several capital instruments.~~
3. ~~In the case of a repurchase of Common Equity Tier 1 instruments, Additional Tier 1 instruments or Tier 2 instruments for market making purposes, competent authorities may give their permission in accordance with the criteria set out in Article 78 of~~

~~Regulation (EU) No 575/2013 in advance to actions listed in Article 77 of that Regulation for a certain predetermined amount.~~

~~(a) For Common Equity Tier 1 instruments, that amount shall not exceed the lower of the following amounts:~~

~~(1) 3 % of the amount of the relevant issuance;~~

~~(2) 10 % of the amount by which Common Equity Tier 1 capital exceeds the sum of the Common Equity Tier 1 capital requirements pursuant to Article 92 of Regulation (EU) No 575/2013, the specific own funds requirements referred to in Article 104(1)(a) of Directive 2013/36/EU and the combined buffer requirement as defined in point (6) of Article 128 of that Directive.~~

~~(b) For Additional Tier 1 instruments or Tier 2 instruments, that predetermined amount shall not exceed the lower of the following amounts:~~

~~(1) 10 % of the amount of the relevant issuance;~~

~~(2) or 3 % of the total amount of outstanding Additional Tier 1 instruments or Tier 2 instruments, as applicable.~~

~~4. Competent authorities may also give in advance their permission to actions listed in Article 77 of Regulation (EU) No 575/2013 where the related own funds instruments are passed on to employees of the institution as part of their remuneration. Institutions shall inform competent authorities where own funds instruments are purchased for these purposes and deduct these instruments from own funds on a corresponding deduction approach for the time they are held by the institution. A deduction on a corresponding basis is no longer required, where the expenses related to any action in accordance with this paragraph are already included in own funds as a result of an interim or a year end financial report.~~

~~5. A competent authority may give its permission in advance in accordance with the criteria set out in Article 78 of Regulation (EU) No 575/2013 to an action listed in Article 77 of that Regulation for a certain predetermined amount when the amount of own funds instruments to be called, redeemed or repurchased is immaterial in relation to the outstanding amount of the corresponding issuance after the call, redemption or repurchase has taken place.~~

2. Paragraphs 1 and 2 shall apply at the consolidated, sub-consolidated and individual levels of application of prudential requirements, where applicable.

Article 30

Content of the application to be submitted by the institution for the purposes of Article 77(1) of Regulation (EU) No 575/2013

1. The application referred to in Article 29 shall be accompanied by the following information:
 - (a) a well-founded explanation of the rationale for performing ~~any one~~ of the actions referred to in ~~paragraph 1 of Article 29~~ **Article 77(1) of Regulation (EU) No 575/2013;**
 - (b) **whether the permission sought is based on point (a) or (b) of the first subparagraph of Article 78(1) of Regulation (EU) No 575/2013 or whether it is a general prior permission pursuant to the second subparagraph of Article 78(1) of that Regulation;**
 - (c) **where the institution seeks to call, redeem or repurchase Additional Tier 1 or Tier 2 instruments or related share premium accounts during the five years following their date of issuance pursuant to Article 78(4) of Regulation (EU) No 575/2013, how the conditions of that article are met;**
 - (d) ~~(b)-~~**present and forward-looking** information capital ~~that shall~~ covering at least a three year period, on **the amounts and percentages corresponding to the following requirements for own funds and eligible liabilities** including the level and composition of own funds before and after the performing of the action and the impact on regulatory requirements;:
 - (i) **the Common Equity Tier 1 capital requirement laid down in Article 92(1)(a) of Regulation (EU) No 575/2013, the Tier 1 capital requirement laid down in Article 92(1)(b) of that Regulation, and the own funds requirement laid down in Article 92(1)(c) of that Regulation;**
 - (ii) **to address risks other than the risk of excessive leverage, the additional Common Equity Tier 1 capital requirement referred to in Article 104a of Directive 2013/36/EU, where applicable; the additional Tier 1 capital requirement referred to in Article 104a**

- of that Directive, where applicable; and the additional own funds requirement laid down in Article 104a of that Directive, where applicable;**
- (iii) **the combined buffer requirement referred to in point (6) of Article 128 of Directive 2013/36/EU;**
 - (iv) **the leverage ratio requirement laid down in Article 92(1)(d) of Regulation (EU) No 575/2013, and if applicable any adjustment in accordance with Article 429a(7) of that Regulation;**
 - (v) **to address the risk of excessive leverage, the additional Common Equity Tier 1 capital requirement referred to in Article 104a of Directive 2013/36/EU, where applicable; and the additional Tier 1 capital requirement referred to in Article 104a of Directive 2013/36/EU, where applicable;**
 - (vi) **the Tier 1 G-SII leverage ratio buffer requirements laid down in Article 92(1a) of Regulation (EU) No 575/2013, where applicable;**
 - (vii) **the risk-based requirement for own funds and eligible liabilities under Articles 92a(1)(a) and 494(1)(a), or Article 92b of Regulation (EU) No 575/2013, where applicable, as well as the non-risk based requirement for own funds and eligible liabilities under Articles 92a(1)(b) and 494(1)(b), or Article 92b of that Regulation, where applicable;**
 - (viii) **the minimum requirement for own funds and eligible liabilities referred to in Article 45(1) of Directive 2014/59/EU as required in accordance with Articles 45e and 45f of that Directive, as applicable, and calculated as the amount of own funds and eligible liabilities, and expressed as percentages of the total risk exposure amount of the institution, calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, and the amount of own funds and eligible liabilities expressed as percentages of the total exposure measure of the relevant entity, calculated in accordance with Articles 429(4) and 429a of Regulation (EU) No 575/2013;**
- (e) **present and forward-looking information on the level and composition of own funds and the level and composition of own funds and eligible liabilities**

held to ensure compliance, respectively, with the requirements referred to in point (d)(i) to (viii) above before and after performing any of the actions listed in Article 77(1) of Regulation (EU) No 575/2013. The information shall cover at least a three year period and, with regard to liabilities, shall include specifications of the following amounts, as applicable:

- (i) **liabilities which qualify as eligible liabilities instruments pursuant to Article 72b(2) of Regulation (EU) No 575/2013;**
- (ii) **liabilities which the resolution authority has permitted to qualify as eligible liabilities instruments pursuant to Article 72b(3) or (4) of Regulation (EU) No 575/2013;**
- (iii) **liabilities which are included in the amount of own funds and eligible liabilities of resolution entities pursuant to Article 45b(1) of Directive 2014/59/EU;**
- (iv) **liabilities that arise from debt instruments with embedded derivatives included in the amount of own funds and eligible liabilities pursuant to Article 45(b)(2) of Directive 2014/59/EU;**
- (v) **liabilities issued by a subsidiary which qualify for inclusion in the consolidated eligible liabilities instruments of an institution subject to Article 92a of Regulation (EU) No 575/2013 pursuant to Article 88a of that Regulation or of a resolution entity pursuant to Article 45b(3) of Directive 2014/59/EU;**
- (vi) **eligible liability instruments taken into account for the purpose of complying with the requirement for own funds and eligible liabilities for institutions that are material subsidiaries of non-EU G-SIIs pursuant to Article 92b(3) of Regulation (EU) No 575/2013 and for the purpose of complying with the minimum requirement for own funds and eligible liabilities for entities that are not themselves resolution entities, pursuant to point (a) of Article 45f(2) of Directive 2014/59/EU;**
- (f) **the institution's summary assessment on the impact of the action that the institution has planned to take in accordance with Article 77(1) of Regulation (EU) No 575/2013, and any such action that the institution additionally envisages to undertake within a three year period, on compliance with the requirements referred to in point (d)(i) to (viii) above;**

- (g) **where the institution seeks to replace own funds instruments or the related share premium accounts pursuant to point (a) of Article 78(1) or point (d) of Article 78(4) of Regulation (EU) No 575/2013:**
- (i) **information on the residual maturity of the replaced own funds instruments, if any, and the maturity of the own funds instruments replacing them;**
 - (ii) **the ranking in insolvency hierarchy of the replaced own funds instruments and of the own funds instruments replacing them;**
 - (iii) **the cost of the own funds instruments replacing the instruments or the shared premium accounts referred to in Article 77(1) of Regulation (EU) No 575/2013;**
 - (iv) **the planned timing of the issuance of the own funds instruments replacing the instruments or share premium accounts referred to in Article 77(1) of Regulation (EU) No 575/2013;**
 - (v) ~~(e)~~ **the impact on the profitability of the institution of a replacement of a capital instrument as specified in pursuant to point (a) of Article 78(1) or point (d) of Article 78(4) of Regulation (EU) No 575/2013;**
 - (h) ~~(d)~~ an evaluation of the risks to which the institution is or might be exposed and whether the level of own funds **and eligible liabilities** ensures an appropriate coverage of such risks, including **outcomes of** stress tests on main risks evidencing potential losses;
 - (i) **coverage in terms of own funds of the applicable guidance on the proposed level and composition of additional own funds communicated by the competent authority under Article 104b(3) of Directive 2013/36/EU before and after performing any of the actions listed in Article 77(1) of Regulation (EU) No 575/2013, covering a three year period;**
 - (j) ~~(e)~~ any other information considered necessary by the competent authority for evaluating the appropriateness of granting a permission **according to in accordance with** Article 78 of Regulation (EU) No 575/2013.
2. The competent authority shall waive the submission of some of the information listed in paragraph ~~2~~**1** where it is satisfied that this information is already available to it.

3. Paragraphs 1 and 2 shall apply at the individual, consolidated and sub-consolidated levels of application of ~~prudential~~ requirements, where applicable.

Article 30a

Additional information to be submitted with an application for a general prior permission for actions listed in Article 77(1) of Regulation (EU) No 575/2013

1. **Where a general prior permission pursuant to the second subparagraph of Article 78(1) of Regulation (EU) No 575/2013 for an action under Article 77(1)(a) of that Regulation is sought, the application shall specify the amount of each relevant Common Equity Tier 1 issue subject to the request.**
2. **Where a general prior permission for an action under Article 77(1)(c) of Regulation (EU) No 575/2013 is sought, the institution shall specify in the application:**
 - (a) **the amount of each relevant outstanding issue subject to the request; and**
 - (b) **the total carrying amount of outstanding instruments in each relevant tier of capital.**
3. **An application for a general prior permission for an action under Article 77(1)(a) and (c) of Regulation (EU) 575/2013 may include own funds instruments still to be issued, subject to specification of the information referred to in points (a) and (b) of paragraph 2, as applicable, to be provided to the competent authority following the relevant issuance.**
4. **Paragraphs 1 to 3 shall apply at the consolidated, sub-consolidated and individual levels of application of prudential requirements, where applicable.**

Article 30b

Information to be submitted with an application for a renewal of a general prior permission for actions listed in Article 77(1) of Regulation (EU) No 575/2013

1. **Before the expiry of a general prior permission granted pursuant to the second subparagraph of Article 78(1) of Regulation (EU) No 575/2013, an institution may submit an application for its renewal for a period of up to one additional**

year each time, provided that the institution does not request an increase in the predetermined amount set when the general prior permission was granted and does not change the rationale as referred to in point (a) of Article 30(1) when the general prior permission was initially requested.

2. **When applying for the renewal of a general prior permission referred to in paragraph 1, the institution shall be exempted from the obligation to provide the information referred to in points (a) to (d), (f), (g) and (i) of Article 30(1).**

Article 31

Timing of the application to be submitted by the institution and processing of the application by the competent authority for the purposes of Article 77(1) of Regulation (EU) No 575/2013

1. **For a prior permission, other than a general prior permission referred to in the second subparagraph of Article 78(1) of Regulation (EU) No 575/2013, the institution shall transmit a complete application and the information referred to in Article 29 and 30 to the competent authority at least ~~three~~ **four** months in advance **before** the date **when** one of the actions listed in Article 77(1) of Regulation (EU) No 575/2013 will be announced to the holders of the instruments.**
2. **For a general prior permission referred to in the second subparagraph of Article 78(1) of Regulation (EU) No 575/2013, the institution shall transmit a complete application and the information referred to in Articles 30 and 30a to the competent authority at least four months before the date when any of the actions listed in Article 77(1) of Regulation (EU) No 575/2013 will be carried out.**
3. **By way of derogation from paragraph 2, where a renewal of a general prior permission pursuant to the second subparagraph of Article 78(1) of Regulation (EU) No 575/2013 and Article 30b is sought, the institution shall transmit the application and the information required under Articles 30, 30a and 30b to the competent authority at least three months before the expiration of the period for which the general prior permission was granted.**
4. Competent authorities may allow institutions on a case- by-case basis and under exceptional circumstances to transmit the application referred to in paragraphs 1 **to 3** within a time frame shorter than the ~~three months~~ periods **set out in those paragraphs.**

5. The competent authority shall process an application during either the period of time referred to in paragraphs 1 to 3 or during the period of time referred to in paragraph ~~2~~ 4. Competent authorities shall take into account new information, where any is available and where they consider this information to be material, received during this period. The competent authorities shall begin processing the application only when they are satisfied that all the information required under Article ~~28-30~~ and, where applicable, Articles 30a and 30b, has been received from the institution.

Article 32

Applications for redemptions, reductions and repurchases by mutuals, cooperative societies, savings institutions or similar institutions for the purposes of Article 77(1) of Regulation (EU) No 575/2013

1. With regard to the redemption of Common Equity Tier 1 instruments of mutuals, cooperative societies, savings institutions or similar institutions, the application referred to in Article 29(1); and (2) ~~and (6)~~ and the information referred to in Article 30(1) shall be submitted to the competent authority with the same frequency as that used by the competent body of the institution to examine redemptions.
2. Competent authorities may give their permission in advance to an action listed in Article 77(1) of Regulation (EU) No 575/2013 for a certain predetermined amount to be redeemed, net of the amount of the subscription of new paid in Common Equity Tier 1 instruments during a period up to one year. That predetermined amount may go up to 2 % of Common Equity Tier 1 capital, if they are satisfied that this action will not pose a danger to the current of future solvency situation of the institution.

Subsection 2

PERMISSION FOR REDUCING ELIGIBLE LIABILITIES INSTRUMENTS

Article 32a

Meaning of sustainable for the income capacity of the institution for the purposes of point (a) of Article 78a(1) of Regulation (EU) No 575/2013

Sustainable for the income capacity of the institution under point (a) of Article 78a(1) of Regulation (EU) No 575/2013 shall mean that the profitability of the institution, as

assessed by the resolution authority, continues to be sound or does not see any negative change after the replacement of the eligible liability instruments with own funds or eligible liabilities instruments of equal or higher quality, at that date and for the foreseeable future. The resolution authority's assessment shall take into account the institution's profitability in stress situations.

Article 32b

Process requirements including the limits and procedures for an application by an institution to reduce eligible liabilities instruments pursuant to Article 77(2) of Regulation (EU) No 575/2013

- 1. Calls, redemptions, repayments and repurchases of eligible liabilities instruments shall not be announced to holders of the instruments before the institution has obtained the prior permission of the resolution authority.**
- 2. 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 is deemed to exist in particular when the institution has publicly announced its intention to call, redeem, repay or repurchase an eligible liability instrument.**
- 3. In the case of a general prior permission referred to in the second subparagraph of Article 78a(1) of Regulation (EU) No 575/2013, the predetermined amount for which the resolution authority has given its permission shall be deducted from the institution's eligible liabilities instruments from the moment the authorisation is granted.**
- 4. A prior permission, other than a general prior permission referred to in the second subparagraph of Article 78a(1) of Regulation (EU) No 575/2013, shall be granted by the resolution authority for a specified period of time, necessary to perform any of the actions listed in Article 77(2) of that Regulation, which shall not exceed one year.**
- 5. Where a general prior permission under the second subparagraph of Article 78a(1) of Regulation (EU) No 575/2013 is sought, the predetermined amount for which the general prior permission is granted shall not exceed 10 % of the total amount of outstanding eligible liabilities instruments.**

6. **Paragraphs 1 to 5 shall apply at the consolidated, sub-consolidated and individual levels of application of requirements for own funds and eligible liabilities, where applicable.**

Article 32c

Submission of application by the institution to reduce eligible liabilities instruments pursuant to Article 77(2) of Regulation (EU) No 575/2013

1. **An institution shall submit an application for prior permission, including a general prior permission referred to in the second subparagraph of Article 78a(1) of Regulation (EU) No 575/2013, to the resolution authority before taking an action referred to in Article 77(2) of that Regulation.**
2. **Paragraph 1 shall apply at the individual, consolidated and sub-consolidated levels of application of requirements for own funds and eligible liabilities, where applicable.**

Article 32d

Content of the application to be submitted by the institution for the purposes of Article 77(2) of Regulation (EU) No 575/2013

1. **The application referred to in Article 32c shall be accompanied by the following information:**
 - (a) **a well-founded explanation of the rationale for performing any of the actions referred to in Article 77(2) of Regulation (EU) No 575/2013;**
 - (b) **whether the permission sought is based on Article 78a(1)(a), (b) or (c) of Regulation (EU) No 575/2013, or on the second subparagraph of Article 78a(1) of that Regulation;**
 - (c) **present and forward-looking information that shall cover at least a three year period, on the following requirements for own funds and eligible liabilities:**
 - (i) **the risk-based requirement for own funds and eligible liabilities under Articles 92a(1)(a) and 494(1)(a), or Article 92b of Regulation (EU) No 575/2013, where applicable, as well as the non-risk based**

- requirement for own funds and eligible liabilities under Articles 92a(1)(b) and 494(1)(b), or Article 92b of that Regulation, where applicable;**
- (ii) **the minimum requirement for own funds and eligible liabilities laid down in Article 45 of Directive 2014/59/EU calculated in accordance with Article 45e and 45f of that Directive, as applicable, of that Directive as the amount of own funds and eligible liabilities expressed as percentages of the total risk exposure amount of the relevant entity, calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, and the amount of own funds and eligible liabilities expressed as percentages of the total exposure measure of the relevant entity, calculated in accordance with Articles 429(4) and 429a of Regulation (EU) No 575/2013;**
- (iii) **the combined buffer requirement referred to in point (6) of Article 128 of Directive 2013/36/EU;**
- (d) **present and forward-looking information on the level and composition of own funds and eligible liabilities held to ensure compliance, respectively, with the requirements referred to in point (c)(i) to (iii) above, before and after performing the action in Article 77(2) of Regulation (EU) No 575/2013. The information shall cover at least a three year period and with regard to eligible liabilities, shall include specifications of the following amounts, as applicable:**
- (i) **liabilities which qualify as eligible liabilities instruments pursuant to Article 72b(2) of Regulation (EU) No 575/2013;**
- (ii) **liabilities which the resolution authority has permitted to qualify as eligible liabilities instruments pursuant to Article 72b(3) or (4) of Regulation (EU) No 575/2013;**
- (iii) **liabilities which are included in the amount of own funds and eligible liabilities of resolution entities pursuant to Article 45b(1) of Directive 2014/59/EU;**
- (iv) **liabilities that arise from debt instruments with embedded derivatives included in the amount of own funds and eligible liabilities pursuant to Article 45(b)(2) of Directive 2014/59/EU;**

- (v) **liabilities issued by a subsidiary which qualify for inclusion in the consolidated eligible liabilities instruments of an institution subject to Article 92a of Regulation (EU) No 575/2013 pursuant to Article 88a of that Regulation or of a resolution entity pursuant to Article 45b(3) of Directive 2014/59/EU;**
 - (vi) **eligible liability instruments taken into account for the purpose of complying with the requirement for own funds and eligible liabilities for institutions that are material subsidiaries of non-EU G-SIIs pursuant to Article 92b(3) of Regulation (EU) No 575/2013 and for the purpose of complying with the minimum requirement for own funds and eligible liabilities for entities that are not themselves resolution entities, pursuant to point (a) of Article 45f(2) of Directive 2014/59/EU;**
- (e) **the institution's summary assessment on the impact of the action that the institution has planned to take in accordance with Article 77(2) of Regulation (EU) No 575/2013, and any such action that the institution additionally envisages to undertake within a three year period, on compliance with the requirements referred to in point (c)(i) to (iii) above;**
- (f) **where the institution seeks to replace eligible liabilities instruments pursuant to Article 78a(1)(a) Regulation (EU) No 575/2013:**
- (i) **information on the residual maturity of the replaced eligible liabilities instruments and the maturity of the own funds or eligible liabilities instruments replacing them;**
 - (ii) **the ranking in insolvency of the replaced eligible liabilities instruments and of the own funds or eligible liabilities instruments replacing them;**
 - (iii) **the cost of the own funds or eligible liabilities instruments replacing the eligible liabilities instruments;**
 - (iv) **the planned timing of the issuance of the own funds or eligible liabilities instruments replacing the eligible liabilities instrument referred to in Article 77(2) of Regulation (EU) No 575/2013;**

- (v) **the impact on the profitability of the institution pursuant to point (a) of Article 78a(1) of Regulation (EU) No 575/2013;**

 - (g) **an evaluation of the risks to which the institution is or might be exposed, in particular whether the level of own funds and eligible liabilities ensures an appropriate coverage of such risks, including outcomes of stress tests on main risks evidencing potential losses;**

 - (h) **where Article 78a(1)(c) of Regulation (EU) No 575/2013 applies, demonstration that the partial or full replacement of the eligible liabilities instruments with own funds instruments is necessary to ensure compliance with the own funds requirements;**

 - (i) **any other information considered necessary by the resolution authority for evaluating the appropriateness of granting a permission in accordance with Article 78a of Regulation (EU) No 575/2013.**
2. **The resolution authority shall waive the submission of some of the information listed in paragraph 1 where it is satisfied that this information is already available to it.**

 3. **Paragraphs 1 and 2 shall apply at the individual, consolidated and sub-consolidated levels of application of requirements for own funds and eligible liabilities, where applicable.**

Article 32e

Additional information to be submitted with the application for a general prior permission for actions listed in Article 77(2) of Regulation (EU) No 575/2013

1. **Where a general prior permission pursuant to the second subparagraph of Article 78a(1) of Regulation (EU) No 575/2013 for an action under Article 77(2) of that Regulation is sought, the institution shall specify in the application the total amount of outstanding eligible liabilities instruments, including the total amount of outstanding eligible liabilities instruments that meet the conditions of Article 88a of Regulation (EU) No 575/2013 or Article 45b(3) of Directive 2014/59/EU.**

2. **An application for a general prior permission for an action under Article 77(2) of Regulation (EU) No 575/2013 may include eligible liabilities instruments still**

to be issued, subject to specification of the final amount referred to in paragraph 1, to be provided to the resolution authority following the relevant issuance.

Article 32f

Information to be submitted with an application for a renewal of a general prior permission for actions listed in Article 77(2) of Regulation (EU) No 575/2013

- 1. Before the expiry of a general prior permission granted pursuant to the second subparagraph of Article 78a(1) of Regulation (EU) No 575/2013, an institution may submit an application for its renewal for a period of up to one additional year each time, provided that the institution does not request an increase in the predetermined amount set when the general prior permission was granted and does not change the rationale communicated referred to in point (a) of Article 32d(1) when the general prior permission was initially requested.**
- 2. When applying for the renewal of a general prior permission referred to in paragraph 1, the institution shall be exempted from the obligation to provide the information referred to in points (a) to (c), (e), (f) and (h) of Article 32d(1).**

Article 32g

Timing of the application to be submitted by the institution and processing of the application by the resolution authority for the purposes of Article 77(2) of Regulation (EU) No 575/2013

- 1. For a prior permission, other than a general prior permission referred to in the second subparagraph of Article 78a(1) of Regulation (EU) No 575/2013, the institution shall transmit a complete application and the information referred to in Article 32d to the resolution authority at least four months before the date when one of the actions listed in Article 77(2) of Regulation (EU) No 575/2013 will be announced to the holders of the instruments.**
- 2. For a general prior permission referred to in the second subparagraph of Article 78a(1) of Regulation (EU) No 575/2013, the institution shall transmit a complete application and the information referred to in Articles 32d and 32e to the resolution authority at least four months before the date when one of the actions listed in Article 77(2) of Regulation (EU) No 575/2013 will be carried out.**

3. **By way of derogation from paragraph 2, where a renewal of a general prior permission pursuant to the second subparagraph of Article 78a(1) of Regulation (EU) No 575/2013 and Article 32f is sought, the institution shall transmit a complete application and the information required under Articles 32d, 32e and 32f to the resolution authority at least three months before the expiration of the period for which the general prior permission was granted.**
4. **Resolution authorities may allow institutions on a case-by-case basis and under exceptional circumstances to transmit the application referred to in paragraphs 1 to 3 within a time frame shorter than the periods set out in those paragraphs.**
5. **The resolution authority shall process an application during either the period of time referred to in paragraphs 1 to 3 or during the period of time referred to in paragraph 4. Resolution authorities shall take into account new information, where any is available and where they consider this information to be material, received during this period. The resolution authorities shall begin processing the application only when they are satisfied that all the information required under Article 32d and, where applicable, Articles 32e and 32f has been received from the institution.**

Article 32h

Simplified requirements for institutions for which the resolution authority has set the minimum requirement for own funds and eligible liabilities laid down in Article 45(1) of Directive 2014/59/EU at a level that does not exceed an amount sufficient to absorb losses

1. **By way of derogation from Articles 32c, 32d, 32e, 32f and 32g, for an institution for which the resolution authority has set the minimum requirement for own funds and eligible liabilities laid down in Article 45(1) of Directive 2014/59/EU at a level that does not exceed an amount sufficient to absorb losses in accordance with point (a) of the first subparagraph of Article 45c(2) of that Directive, the resolution authority may grant a general prior permission referred to in the second subparagraph of Article 78a(1) of Regulation (EU) No 575/2013 based on the information available to it for the purposes of drawing up the resolution plan which shall be deemed as a complete application for a general prior permission, and provided that the institution has not submitted a request to be exempted from such a permission.**
2. **The general prior permission granted in accordance with paragraph 1 shall not be subject to the limit set out in Article 32b(5), and shall be renewed**

automatically for the same period and the same predetermined amount for which the permission was granted, subject to both the following conditions:

- (a) the minimum requirement for own funds and eligible liabilities laid down in Article 45(1) of Directive 2014/59/EU applicable to the institution continues to be set at a level that does not exceed an amount sufficient to absorb losses in accordance with point (a) of the first subparagraph of Article 45c(2) of that Directive;**
 - (b) the institution has not applied for a withdrawal.**
- 3. This article shall apply at the individual, consolidated and sub-consolidated levels of application of requirements for own funds and eligible liabilities, where applicable.**

Article 32i

Process of cooperation between the competent authority and the resolution authority when granting the permission referred to in Article 78a of Regulation (EU) No 575/2013

- 1. Where a complete application for prior permission, including a general prior permission, is submitted by an institution, the resolution authority shall promptly transmit that application to the competent authority, including the information referred to in Article 32d and, where applicable, Article 32e, or Article 32f or Article 32h.**
- 2. At the same time of the transmission of the information referred to in paragraph 1, the resolution authority shall make a request for consultation to the competent authority on the application received, which shall include the reciprocal exchange of any other relevant information for the assessment of the application by the resolution or competent authority.**
- 3. The competent authority and the resolution authority shall agree on an adequate time limit for providing a response to the consultation referred to in paragraph 2, which shall not exceed three months from the moment of receipt of the request for consultation, and that shall be reduced to two months where the consultation concerns the renewal of a general prior permission pursuant to Article 32f or a general prior permission pursuant to Article 32h. The resolution authority shall consider the views received from the competent authority before taking a decision on the permission.**
- 4. Where the agreement of the competent authority is required in accordance with point (b) of Article 78a(1) of Regulation (EU) No 575/2013, the resolution**

- authority shall communicate to the competent authority, within two months from the request for consultation referred to in paragraph 2, or within one month where the consultation concerns the renewal of a general prior permission pursuant to Article 32f or a general prior permission pursuant to Article 32h, the proposed margin by which, following the action referred to in Article 77(2) of that Regulation, the resolution authority considers necessary that the own funds and eligible liabilities of the institution must exceed its requirements.**
5. **Within three weeks or, where the consultation concerns the renewal of a general prior permission pursuant to Article 32f or a general prior permission pursuant to Article 32h, within two weeks, after receiving the communication referred to in paragraph 4, the competent authority shall transmit its written agreement to the resolution authority. In the event that the competent authority disagrees or partially disagrees with the resolution authority, it shall inform the resolution authority within that period, stating its reasons.**
 6. **By way of derogation from paragraph 3, where the agreement of the competent authority is required in accordance with point (b) of Article 78a(1) of Regulation (EU) No 575/2013, the competent authority shall provide a response to the consultation referred to in paragraph 2 at the same time as the transmission of its written agreement to the resolution authority referred to in paragraph 5.**
 7. **By way of derogation from paragraphs 3 to 6, where the maximum time period for processing the application referred to in paragraph 1 is shorter than four months in accordance with Article 32g(3) or (4), the periods of time referred to in paragraphs 3 to 5 shall be agreed between the resolution authority and the competent authority taking into account the relevant maximum time period.**
 8. **The resolution authority and the competent authority shall endeavour to reach the agreement referred to in paragraph 5 in order to ensure that the application referred to in paragraph 1 is processed in any event within the period of time referred to in paragraphs 1, 2, 3 or 4 of Article 32g.**
 9. **The resolution authority shall communicate to the competent authority without undue delay the decision taken on the permission. The resolution authority shall also inform the competent authority in case of withdrawal of the general prior permission where an institution breaches any of the criteria provided for the purposes of that permission.**

Section 3

Temporary waiver from deduction from own funds **and eligible liabilities**

Article 33

*Temporary waiver from deduction from own funds **and eligible liabilities** for the purposes of Article 79(1) of Regulation (EU) No 575/2013*

1. A temporary waiver shall be of a duration that does not exceed the timeframe envisaged under the financial assistance operation plan. That waiver shall not be granted for a period longer than 5 years.
2. The waiver shall apply only in relation to new holdings of **own funds** instruments in ~~the~~ financial sector entity **or eligible liabilities instruments in an institution** subject to the financial assistance operation.
3. For the purposes of providing a temporary waiver for deduction from own funds **and eligible liabilities, as applicable,** a competent authority may deem the ~~temporary~~ holdings referred to in Article 79(1) of Regulation (EU) No 575/2013 to be held for the purposes of a financial assistance operation designed to reorganise and save a financial sector entity **or institution** where the operation is carried out under a plan and approved by the competent authority, and where the plan clearly states phases, timing and objectives and specifies the interaction between the ~~temporary~~ holdings and the financial assistance operation.

Accompanying documents

Cost-benefit analysis / impact assessment

1. CRR2 amending Regulation (EU) No 575/2013 (CRR) modifies the existing requirements for own funds and introduces new requirements for eligible liabilities instruments. The current RTS on own funds needs to incorporate these changes and be extended to eligible liabilities instruments.
2. Additionally, CRR2 includes two mandates to the EBA to specify some aspects of the requirements for eligible liabilities instruments. Paragraph 7 of Article 72b of the CRR mandates the EBA to specify:
 - a. the applicable forms and nature of indirect funding of eligible liabilities instruments;
 - b. the form and nature of incentives to redeem that may affect the eligibility of eligible liabilities instruments.
3. Paragraph 3 of Article 78a mandates the EBA to develop RTS to specify:
 - a. the process of cooperation between the competent authority and the resolution authority;
 - b. the procedure, including the time limits and information requirements, for granting ad-hoc permission;
 - c. the procedure, including the time limits and information requirements, for granting a general prior permission;
 - d. the meaning of 'sustainable for the income capacity of the institution'.
4. As per Article 10(1) of the EBA Regulation (Regulation (EU) No 1093/2010 of the European Parliament and of the Council), any RTS developed by the EBA shall be accompanied by an Impact Assessment (IA) annex which analyses 'the potential related costs and benefits' before submitting to the European Commission. Such an annex shall provide the reader with an overview of the findings as regards the problem identification, the options identified to remove the problem and their potential impacts.
5. The EBA prepared the IA with cost-benefit analysis of the policy options included in the regulatory technical standards. Given the nature of the study, the IA is high-level and qualitative in nature.

Problem identification

6. The existing RTS is aligned with the own funds provisions in the CRR. Some of these provisions have been modified with CRR2 and an amendment of the RTS is necessary to be in line with the new provisions.
7. Additionally, CRR2 and BRRD2 have introduced new own funds and eligible liabilities requirements. Eligible liabilities instruments are defined in the amended CRR. The EBA is mandated to further specify some of those criteria and therefore the RTS on own funds needs to be extended to eligible liabilities instruments. In this regard, the revised RTS specifies that the provisions addressing CRR2 eligible liabilities instruments also apply to BRRD2 defined eligible liabilities where the BRRD2 cross-refers to CRR2.

Policy objectives

8. The main objective of this RTS is to adapt the existing RTS to the new provisions introduced with CRR2, and with BRRD2, to the extent that the new provisions of BRRD2 cross-refer to CRR2.
9. As a result, the specific objectives are:
 - a. to update the current own funds requirements in line with the amended CRR;
 - b. to define harmonised criteria that instruments will need to meet for qualifying as eligible liabilities instruments with regard to the aspects included in the specific mandates introduced with CRR2 (Paragraph 7 of Article 72b and paragraph 3 of Article 78a), and to BRRD2 eligible liabilities where the BRRD2 introduces cross-references to CRR.
10. The following can be identified as general objectives:
 - a. to increase the prudence as the specification of the criteria for eligible liabilities instruments in the current RTS will provide more clarity and certainty about eligible liabilities instruments;
 - b. to ensure high-quality, stable eligible liabilities instruments available to absorb losses and to reduce recapitalisation costs upon failure;
 - c. to ensure consistency across own funds and eligible liabilities instruments where appropriate, and avoid an unlevelled playing field between institutions meeting MREL solely with own funds and institutions meeting MREL with own funds and eligible liabilities instruments.

Baseline scenario

11. The current RTS contain specifications of requirements for own funds that are now not fully in line with the new or amended provisions introduced with CRR2. Additionally, several criteria underpinning eligible liabilities instruments (indirect funding, incentives to redeem and permission regime) are currently not covered by the Level 2 regulation.

Options considered

12. The modification of the current RTS to adapt the specifications of own funds requirements to the provisions in CRR2 is one of its main objectives. Nevertheless, this adaptation is a legal requirement, so no option has been considered. Likewise, provisions on indirect funding, incentives to redeem and sustainable replacement terms for eligible liabilities have been fully aligned with existing own funds provisions in line with the Level 1 text. Furthermore, the revised RTS clarifies that the rules applicable to eligible liabilities instruments also apply to BRRD-defined eligible liabilities to the extent to which the new BRRD provisions cross-refer to CRR.

13. When drafting the present amending RTS, the EBA considered several policy options under three main areas:

(a) Duration of ad-hoc permission for requesting permission to reduce own funds and eligible liabilities instruments:

- a. Option 1: to maintain the current regime without specifying a maximum limit for the time period for which the ad-hoc permission is granted;
- b. Option 2: to introduce provisions requiring the competent authorities and resolution authorities respectively to grant the ad-hoc permission for a specified period that cannot exceed one year.

(b) Timing of the application for requesting permission to reduce own funds and eligible liabilities instruments:

- a. Option 1: to maintain the status quo and extend the existing regime to eligible liabilities instruments (i.e. three months before the date of announcement to the holders of the instruments), capturing all possible kinds of permissions i.e. ad-hoc, initial GPP and renewal of GPP (the latter being a concept that has been introduced in the revised CRR);
- b. Option 2: to increase the timing of the application to four months before the date of announcement to the holders of the instruments to cater for a more complex assessment to be performed by competent authorities and resolution authorities and to allow sufficient time for the interaction between competent authorities and resolution authorities;
- c. Option 3: to increase the timing of the application to four months before the date of announcement to the holders of the instruments, for the reasons underlying the above, for the ad-hoc and first general prior permission, but to provide for a

reduced time period, i.e. three months before the expiration of existing general prior permission for renewal of GPP.

(c) Information to be submitted with an application for renewal of general prior permission to reduce own funds and eligible liabilities instruments:

- a. Option 1: to maintain the current regime requesting the same set of information to be submitted with an application for initial and renewal of general prior permission;
- b. Option 2: to recognise a relief in terms of information to be provided for renewal of GPP subject to specific conditions and safeguards.

(d) Procedure for requesting and granting permission to reduce eligible liabilities instruments:

To define the prior permission regime for the reduction of eligible liabilities instruments, the following areas have been considered:

1. Which activities are covered by the general prior permission regime for eligible liabilities instruments:
 - a. Option 1: to limit the permission to market-making activities;
 - b. Option 2: to also allow the use of the permission for liability management without a limitation to a specific purpose.
2. What are the limits of the general permission regime:
 - a. Option 1: not to define a limit for the use of the general permission regime;
 - b. Option 2: to include a limit based on the percentage of the issuance;
 - c. Option 3: to include a limit based on the percentage of the stock;
 - d. Option 4: to include a limit based on the percentage of surplus.
3. To specify a deduction regime in the case of prior permission to reduce eligible liabilities instruments:
 - a. Option 1: not to deduct upfront the eligible liabilities instruments covered by the permission;
 - b. Option 2: to fully deduct those instruments upfront;
 - c. Option 3: to deduct those instruments with a derogation during the MREL transitional period.
4. To specify the treatment of liquidation entities whose MREL does not exceed the loss absorption amount (here referred to as 'liquidation entities'):
 - a. Option 1: to apply a broad permission regime (same treatment as for other instruments/entities);
 - b. Option 2: to apply a broad permission regime with a transitional period;
 - c. Option 3: to establish adjusted procedural requirements for liquidation entities.

Assessment of the options and the preferred option(s)

14. The EBA judged that it would be essential to regulate the duration of the ad-hoc permission via the RTS provisions, given that the Level 1 text has now introduced provisions setting a maximum time period for which the general prior permission is granted. In this context, new provisions have been introduced in Articles 28 and 32b of the RTS requiring the competent authorities and resolution authorities respectively to specify the time period for which ad-hoc permission is granted, which cannot exceed one year. Thus, the preferred option is Option 2. It is the EBA's expectation that institutions are well aware of the details of the two types of permissions, i.e. ad-hoc and general prior permission, and they will make use of each of them based on the specificities of the action expected to be taken in accordance with Articles 77, 78 and 78a of the CRR and within the limits of the Level 1 and Level 2 texts.
15. In addition, the RTS specifies the timing of the application to be submitted by the institution and the time period for processing such an application. The RTS raise the minimum time period that an application for prior permission needs to be submitted in advance from three to four months and ensures a consistent approach between the regime for the reduction of own funds and that for the reduction of eligible liabilities instruments. Such an increase was judged to be necessary to cater for the more complex assessment that the competent authority needs to undertake in order to verify not only that the institution's own funds exceed the respective requirements by the necessary margin but also that the institution's eligible liabilities meet this condition. In addition, the increase of the timing of the application seems appropriate to allow resolution authorities sufficient time for interaction with the relevant competent authority as prescribed by Article 78a(3)(a) CRR, while it is also consistent with the policy adopted by the SRB on approval for early repayment.
16. Nevertheless, the EBA considered whether the time period should be shortened in certain cases. For the first-time approval of an application for general prior permission, competent authorities - irrespective of the fact that no formal consultation is required - will need to engage with resolution authorities in order to establish the margin considered necessary, thus necessitating some additional time. The case where an institution applies for the renewal of general prior permission that has already been granted once by the competent authority, on the other hand, may not necessarily warrant the same level of supervisory scrutiny and/or interaction between authorities. EBA also recognises that increasing the time period for the submission of the applications would imply an extra burden for institutions, as they would need to react earlier to request the permission for redemption. This was confirmed by some respondents to the public consultation, who pointed to the need to establish a swift approval process at least for renewal of GPP. This seems especially important for those cases where an institution seeks the renewal of the general prior permission before the expiration of the existing one and for the same predetermined amount. Considering that the general prior permission, as established in the Level 1 text, may only be granted for a period not exceeding one year, the revised RTS introduces provisions aiming to reduce the burden for institutions by setting a shorter three-month notice period for renewal of general prior permissions.

17. While the inclusion of this flexibility defining a shorter notice period for requesting the renewal of general prior permission will reduce the burden, it should also be noted that the period of four months for ad-hoc permissions and initial general prior permissions, and of three months for renewals of GPPs, are the maximum time that the authorities have to evaluate and grant/reject the permission. The authorities could in any case shorten that period and grant/reject the permission earlier where less time is needed. For these reasons, also considering the feedback received from the industry, the preferred option is Option 3: to increase the timing of the application to four months before the date of announcement to the holders of the instruments for the ad-hoc and first general prior permission, but to provide for a reduced time period, i.e. three months, before the expiration of existing general prior permission for renewal of the GPP for the same predetermined amount.
18. On the question of what information is to be submitted with an application for renewal of general prior permission, the following was considered. Concerning the renewal process for general prior permission, as already indicated when the consultation paper on these RTS was published, it is expected that the reduction of the time period that institutions need to apply in advance for the renewal of general prior permission would have only limited added value in practice. Institutions will know in advance whether they intend to continue any market-making activities, or any other liability management exercise, for which they have obtained the general prior permission in the year before the end of the validity of this permission. Thus, they will factor into their annual planning the concrete date on which to apply for the renewal of the permission - whether this is two, three or four months in advance of the renewal date will mainly have practical implications. In this context, the EBA also considered recognising an additional element of relief, in terms of information, in the context of the renewal of general prior permission. Thus, where an institution applies for the renewal of general prior permission which has already been granted once by the competent authority, and subject to specific conditions, i.e. no request to increase the predetermined amount or to change the scope of the initial application, the EBA took the view that it would be appropriate to waive the submission of some of the information required under Article 30 of the RTS. To this end, a new Article 30b has been introduced aiming to provide a relief for institutions in terms of information requirements. Similar provisions have been introduced in the prior permission regime for reducing eligible liabilities instruments with a new Article 32f. Thus, the preferred option is Option 2 (i.e. to recognise a relief in terms of information to be provided for renewal of GPP subject to specific conditions and safeguards).
19. Regarding the procedure for requesting and granting permission to reduce eligible liabilities instruments, the following areas have been considered:
- a. Regarding which activities are covered by the general permission regime for eligible liabilities instruments, also based on stakeholder feedback, Option 2 was retained in order to allow other liability management operations in addition to market-making. Contrary to own funds which are perpetual and/or subject to progressive amortisation in the remaining years of maturity, MREL is subject to a one-year maturity threshold below which instruments are 100% discounted. As a result,

there is the increased necessity for institutions to redeem entire issuances when these are approaching their maturity, provided that contractual terms contain call possibilities for the issuer. For this reason, it is deemed necessary to also allow for general prior permission to redeem issuances, beyond market-making. Therefore, the preferred option is Option 2: to also allow the use of the permission for liability management with some limitations.

- b. Regarding the limits to apply to the general permission regime, limits are an inherent safeguard in general prior permission. Whereas for ad-hoc permission the authority can ascertain the position of the bank vis-à-vis its requirement before and after the reduction, this is not the case for general permission which is expected to be exercised over a longer period of time and in contingent conditions. In order to keep a prudent approach, taking into account the fact that liability management operations would be allowed, the introduction of some limits is necessary to avoid any likely significant deterioration of the MREL and TLAC position of the bank. Although a breach of requirements would not mechanically and immediately cause a failure of the institution, it may lead to a number of remedial measures including restrictions of distributions.

A limit as a percentage of an issuance would preclude redeeming entire issues in the context of a liability management exercise and therefore this limit, currently applicable to own funds, has not been introduced for reducing eligible liabilities instruments. Considering limits as a percentage of surplus and as a percentage of outstanding eligible liabilities instruments set out as for own funds, taking into account the commonalities between eligible liabilities instruments and AT1/T2 instruments, Option 3 was retained (i.e. to include a limit based on the percentage of the stock). While the draft RTS included in the Consultation paper set out a 3% limit of the overall outstanding eligible liabilities instruments regarding the predetermined amount for the general prior permission, following the consultation of stakeholders this limit has been increased to 10% to take into account the demand for flexibility supporting an MREL liability management exercise, and the need to allow banks to make the market for their own MREL eligible liabilities instruments.

- c. Regarding the deduction of eligible liabilities instruments, the deduction obligation for own funds prevents institutions from operating at a level of own funds which fails to reflect that part of the capital may soon disappear and will not be there any longer to absorb losses. The same logic applies to eligible liabilities instruments, and therefore those for which general prior permission to redeem has been granted should be deducted from MREL and TLAC eligible instruments. Separately, the end state MREL requirement will be compulsory by 2024 after the end of the transitional period. The inclusion of the full deduction upfront should not have an undesired effect during the transitional period because, by definition, institutions are not yet required to comply with these requirements in full at this stage (it is

noted that intermediate MREL targets become binding as of 1 January 2022). Additionally, deductions from own funds have been applied similarly during the transitional period in the past. For these reasons, Option 2 was retained, i.e. to fully deduct instruments authorised for redemption from the moment the general prior permission is granted.

- d. Regarding, the treatment of liquidation entities whose MREL does not exceed the Loss Absorption Amount (LAA), it may seem unnecessary to subject instruments issued by these entities to the same strict conditions set for eligible liabilities issued by other institutions, as the redemption of the full stock of eligible liabilities will not imply a breach of the MREL requirements.

The option of including a transitional arrangement (Option 2) would have allowed the application of the tight permission control only during the time those instruments are eligible for MREL. Nevertheless, as the CRR has significantly strengthened the eligibility criteria for MREL, it is likely that going forward a smaller share of senior instruments will fall under the ambit of MREL, concomitantly reducing the scope of the permission requirement. Banks will also be inclined to design their contractual arrangements in a more explicit manner to either meet the MREL requirement (and be subject to the permission regime) or issue for other purposes (and not be subject to the permission regime).

For this reason, Option 3 is maintained. The revised RTS introduces a relaxation for liquidation entities whose MREL is equal to the LAA. In particular, these entities are exempted from the application of the 10% limit of the predetermined amount in the context of the general prior permission, which greatly reduces the burden for these institutions. In addition, the RTS envisage a mechanism according to which, when liquidation entities submit information to the resolution authority for the purposes of drawing up the resolution plan, such transmission of information also constitutes an application for prior permission, unless the bank opts out from this simplified regime. This general prior permission can also be renewed automatically, provided that the entity concerned continues to have its MREL set at a level that does exceed the LAA and that the entity does not opt out from the automatic renewal.

Feedback on the public consultation

The EBA publicly consulted on the draft proposal contained in this paper.

The consultation period ended on 31 August 2020. Thirteen responses were received, with non-confidential responses being available on the EBA website¹⁵.

In general, the draft proposal contained in the consultation paper was well received. Most respondents did not object to the draft RTS provisions, thus it can be argued that the draft RTS was perceived by stakeholders as non-controversial. Some respondents actually asked for clarifications on aspects that relate to the interpretation of the Level 1 text, in particular relating to the scope of application of the permissions regime for eligible liabilities instruments.

This final report presents a summary of the key points raised by stakeholders and a number of other comments arising from the consultation. Also, it analyses those issues and describes the actions taken to address them, where deemed necessary, as explained in the feedback table below.

It is noted that several industry bodies made identical or similar comments, for example with regard to the need to reduce the notice for the prior permission below the originally envisaged four-month period, to increase the overall percentage limit of the predetermined amount for the general prior permission to reduce eligible liabilities instruments, and regarding the need for flexibility towards entities whose MREL is set at the level of LAA.

Changes to the RTS have been included in the text as a result of the stakeholders' responses received during the public consultation, where deemed justified.

¹⁵ <https://www.eba.europa.eu/regulation-and-policy/own-funds/amended-regulatory-technical-standards-rts-own-funds-and-eligible-liabilities#pane-new-7bdd87fb-e02f-492a-99d6-129449e3cf9d>



Summary of responses to the consultation and the EBA’s analysis

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
General comments			
Consistency across own funds and eligible liabilities	Some respondents consider that own funds and eligible liabilities should not be subject to identical requirements as they differ significantly from each other, in particular with regard to their number, use for liquidity control, average maturity and target investors.	<p>With the introduction of the eligible liabilities instruments concept in the CRR, the EBA is mandated to specify the eligible liabilities regime, in some cases with an explicit obligation for both regimes, i.e. own funds and eligible liabilities, to be fully aligned. In order to ensure consistency across the spectrum of instruments with similar loss absorption features, it is necessary to approach both sets of mandates together.</p> <p>‘Own funds and eligible liabilities’ requirements are set out alongside capital requirements to reinforce loss absorption capacity for banks, both in going-concern and in resolution. While both sets of requirements retain their specific nature and qualities, they are also subject to many identical features.</p> <p>As own funds count both towards capital requirements and MREL/TLAC requirements, and to avoid an unlevelled playing field between institutions meeting MREL solely with own funds and others, it is essential that common features are approached consistently. Likewise, it is important that the permission regime for eligible liabilities, which pursues essentially identical imperatives to the permission regime for own funds, be subject to broadly similar characteristics.</p>	No change

		<p>For these reasons, the RTS set out provisions on eligible liabilities that are generally as consistent as possible with own funds provisions, and in any event fully aligned where mandated by the CRR.</p> <p>Some questions raised by the industry during the consultation process are not analysed in this feedback table, as they are out of the RTS's scope, given that they refer to implementation aspects of the Level 1 text or the RTS. These questions might be addressed via the Q&A tool.</p>	
<p>Scope of prior permission regime for eligible liabilities</p>	<p>Some respondents disagree with the application of the permission regime to all liabilities, as they believe it contradicts Article 77 and 78a of the CRR as these articles only refer to eligible liabilities instruments defined in Article 72b CRR, which provides for a subordination requirement. Therefore, if an instrument is not subordinated, it is seen as outside the scope of Articles 77-78a of the CRR and as such it should be excluded from the RTS.</p> <p>One respondent added that some resolution authorities have implemented transitional regimes according to which Article 78a of the CRR only applies to subordinated eligible liabilities instruments and eligible liabilities instruments with a remaining maturity of more than one year.</p> <p>Two respondents asked for the introduction of a <i>de minimis</i> threshold that would allow institutions that exceed the MREL requirements to waive prior permission within <i>de minimis</i> limits and instead implement a subsequent notification procedure.</p> <p>Some respondents asked for clarifications regarding the scope of the permission regime i.e. i) whether the</p>	<p>These RTS are bound by the scope delineated in the CRR and BRRD. Thus, the prior permission regime according with Articles 77 and 78a of the CRR also applies to MREL eligible liabilities. This means that institutions are required to seek permission to reduce MREL eligible liabilities instruments. They are also required to seek prior permission a) where eligible liabilities are not subordinated to excluded liabilities, b) in relation to institutions for which MREL does not exceed the loss absorption amount (i.e. institutions without a recapitalisation amount that would be wound up using normal insolvency proceedings - liquidation entities); c) even when they do not meet the one-year maturity requirement anymore; d) where liabilities arise from debt instruments with embedded derivatives according to Article 45b BRRD; e) where deposits meet the requirements of Article 45b (1) BRRD; f) where liabilities are eligible solely as a result of the grandfathering provisions under Article 494b(3) CRR. Under the current Level 1 text it is legally not admissible to simply carve out those situations from the prior permission regime.</p>	<p>Articles 1a and 32h have been inserted</p>

	<p>RTS applies to instruments eligible by virtue of BRRD derogations to the CRR eligibility criteria, such as structured notes, grandfathered instruments being considered as eligible for MREL (even though the institution does not count it towards it), and ii) whether amortised Tier 2 instruments are considered own funds or eligible liabilities for the purposes of the permission regime.</p> <p>In the same context, some opposed the inclusion of i) legacy instruments and ii) senior preferred and eligible deposits in the permission regime as it would create an additional administrative burden and hamper the flexibility required for liquidity management exercises.</p> <p>Questions raised on prior permission regime for ELs</p> <p>One respondent requested that the EBA clarifies in the RTS that eligible liabilities instruments may be repaid at the date of their contractual maturity, without prior permission, while another asked the EBA to clarify that prior permission should not apply to individual positions but is granted for a certain amount up to an amount corresponding to a specific proportion of the institution's total eligible liabilities.</p>	<p>In addition, the prior permission regime also applies to TLAC eligible liabilities of material subsidiaries of non-EU G-SIIs according to Article 45d BRRD (iTLC) and eligible liabilities issued by subsidiaries of a resolution entity or third-country entity according to Article 45f BRRD (iMREL).</p> <p>More generally, all liabilities qualifying as eligible liabilities instruments fall under the permission regime of Articles 77(2) and 78a CRR.</p> <p>Article 1a of the RTS has been inserted in order to clarify the scope.</p> <p>That said, some adjustments to the permission regime are proposed with regard to the process for liquidation entities with an MREL that does not exceed the loss absorption amount. Notably, newly inserted provisions in Article 32h of the RTS simplify requirements for institutions for which the resolution authority has set the minimum requirement for own funds and eligible liabilities laid down in Article 45(1) BRRD at a level that does not exceed an amount sufficient to absorb losses. The simplification consists of exemption of these entities from the application of general RTS rules: a) derogation from the 10% threshold for the predetermined amount (general prior permission); b) the possibility for the resolution authority to grant general prior permission based on the information that the liquidation entity has already made available for the purposes of drawing up its resolution plan; c) automatic renewal of the general prior permission subject to conditions.</p> <p>This regime is without prejudice to the need for resolution authorities to perform regular</p>	
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		<p>monitoring to ensure that the conditions for the general prior permission and for its renewal continue to be met.</p> <p><i>Regarding the question on Tier 2 during amortisation and taking into account Q&A 2015_2095 (NB: the same question was raised below in the context of the limit for the GPP for eligible liabilities instruments i.e. Question 13):</i></p> <p>Articles 77, 78 and 78a of the CRR as well as the provisions of the RTS refer to the instrument which is subject to the prior permission regime. Therefore, once an instrument has been qualified as Tier 2 eligible, it needs to be continuously considered as an own funds instrument for the prior permission regime and the applicable limits. Therefore, an application in accordance with Articles 77 and 78 of the CRR is required in the event that any action under Article 77(1)(c) of the CRR is taken regarding a Tier 2 instrument during its amortisation period, including the last year. Furthermore, Articles 77(2) and 78a of the CRR are specific to eligible liabilities instruments.</p> <p><i>On the question of whether an eligible liabilities instrument may be repaid at the date of the contractual maturity without prior permission:</i></p> <p>Article 77(2) of the CRR explicitly states that prior permission in accordance with Articles 77 and 78a of the CRR is only required in the case of a redemption prior to the contractual maturity. Therefore, the prior permission regime is not applicable in the case of repayment at the date of the contractual maturity.</p>	
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Transitional arrangements	<p>Some respondents asked for transitional arrangements to accommodate the provisions of the new RTS on own funds and eligible liabilities with the SRB Addendum (MREL Addendum to the SRB 2018 MREL policy), i.e. entry into force should not take place before 2022.</p> <p>Other respondents requested a phase-in approach that is in line with the MREL targets until 1 January 2024, while initially applying the permission regime only to subordinated liabilities and extending it to the other eligible liabilities when final MREL targets are applicable.</p> <p>One respondent requested an extension of the application date beyond the date of the entry into force to smoothen the implementation of the RTS and the effects of the four-month notice period.</p>	<p>The EBA has considered whether transitional arrangements should be provided to cater for the fact that the build-up of eligible liabilities is progressive, with transition periods until 2024 or even later.</p> <p>However, as requirements will only progressively become binding, the impact of a deduction on the risk of breach will also only progressively intensify. In essence, the phase-in of new requirements for ‘own funds and eligible liabilities’ is similar to the phase-in of capital requirements in the past, and in that context the deduction of the prior permission for own funds was introduced with immediate effect.</p>	No change
Deduction rules	<p>Some respondents asked for a drafting modification regarding Article 14(3)(b) of the RTS in order to reflect the amendments of Article 36(1)(b) CRR, in combination with Article 36(4) CRR, regarding the reduced deduction of software assets:</p>	<p>This aspect will be addressed via a separate dedicated Q&A, i.e. Q&A 2020_5567, which is currently in the process of being finalised and published.</p>	No change

	'b) the amount of associated deferred tax liabilities <u>according to Article 37 of the CRR arising from deducted</u> intangible assets and from defined benefit pension fund assets.'		
Transparency	One respondent asked whether the EBA had considered requesting that the basis of redemption decisions be published in order to promote general transparency following similar practices adopted by supervisory authorities in third countries.	The amendments to the Level 1 text did not introduce any change to the current framework regarding the transparency of the decisions taken by the competent authorities and did not introduce any mandate for the EBA to specify such aspects.	No change
Sufficient certainty	Some respondents requested clarifications on the term 'sufficient certainty' under Article 28 of the RTS and suggested that the deductions should not occur once the permission is granted by the competent authorities but once the reduction of the own funds instruments is planned with sufficient certainty (e.g. publicly announced).	The EBA is aware that some published Q&As might allow for different interpretations on the moment of the deduction, in particular regarding the different types of prior permission according to Article 78(1)(a) or (b) of the CRR. Following the adoption of the RTS, EBA will review published Q&As covering the notion of sufficient certainty aiming to provide further clarity on deduction rules for ad-hoc prior permission and to ensure consistency with the revised RTS.	No change
Responses to questions in Consultation Paper EBA/CP/2020/05			
Question 1 What is the percentage of senior non-preferred and senior preferred liabilities in relation to total liabilities for the institution(s) you represent? Within the senior preferred layer, what is the percentage of eligible to non-eligible liabilities for this/these institution(s)?	1) Regarding senior non-preferred liabilities: Answers received on this aspect showed either the absence of senior non-preferred liabilities or an insignificant amount. 2) Regarding senior preferred liabilities: One respondent indicated that senior preferred liabilities account for the majority of its total liabilities	While only a very limited number of responses were received to this question, it was demonstrated that the amount of senior non-preferred liabilities is relatively small compared to the amount of senior preferred liabilities. It is expected that due to the newly introduced comprehensive eligibility criteria in Article 72b(2) of the CRR a shift to issuances of liabilities instruments meeting these criteria will be observed. In addition, the subordination criterion will be observed.	No change

<p>CRR2 introduces new granular eligibility criteria for eligible liabilities related, inter alia, to acceleration, set-off and netting, reference to write-down and conversion, etc. and the requirement that the instrument be subject to permission. However, some of these criteria are grandfathered indefinitely for existing instruments (legacy instruments) under Article 72b(2)(n) or Article 494b(3) CRR.</p>	<p>(excluding own funds) and that the predominant amount are eligible liabilities.</p> <p>Other respondents indicated that only a very small fraction of their total liabilities is senior preferred liabilities but almost all of them are eligible due to the grandfathering provisions.</p>		
<p>Question 2.</p> <p>What is the quantitative significance and maturity distribution, for the institution(s) you represent, of unsubordinated instruments that are eligible liabilities solely as a result of the grandfathering provisions under Article 72b(2)(n) or Article 494b(3) of the CRR, compared to unsubordinated instruments qualifying under their own right as MREL, total MREL eligible liabilities and total liabilities? Do these instruments contain call options?</p>	<p>One respondent indicated that all its eligible unsubordinated instruments are eligible liabilities due to the provisions of Article 494b(3) with a minority of these instruments containing a call option.</p> <p>One respondent answered that in the senior preferred layer the share of liabilities that are eligible solely thanks to the grandfathering provisions represents the very vast majority of its liabilities. The reason for those instruments being grandfathering is the absence of a reference to the prior permission regime for reductions and accelerations clauses and not the existence of call options.</p> <p>One respondent estimated that the volume of its grandfathered instruments constitutes around half of its eligible liabilities stock.</p> <p>One respondent replied that it does not have instruments that would qualify as eligible liabilities instruments due to the grandfathering provisions.</p>	<p>While only a very limited number of responses were received on this question, it can be observed that a predominant amount of liabilities are eligible due to the grandfathering provisions and not due to their own features. The answers provided do not allow an understanding of whether the grandfathered instruments contain call options or not (recalling that due to the absence of call options institutions would not be able to reduce the instruments before their final maturity and therefore would not trigger the permission regime).</p>	<p>No change</p>

<p>Question 3.</p> <p>Once the stock of legacy instruments described above is exhausted, instruments will only be eligible to MREL if they meet all eligibility criteria, including the new criteria. Do you expect that, as a result, going forward the amount of eligible liabilities as a share of senior instruments, would be narrowed concomitantly with the scope of the permission requirement?</p>	<p>Some respondents expected that the refinancing choices of institutions will be reduced as a consequence of the permission regime, in particular if certain instruments (e.g. eligible deposits and senior preferred instruments) are in scope. The customers would not understand the creation of an additional class of bail-in eligible but not MREL-eligible instruments. Furthermore, this would cause an insolvency institution to lack MREL capital in the case of resolution. Therefore, the permission regime's scope should be reduced.</p> <p>One respondent expected that some parts of the maturing senior preferred liabilities will be rolled over as senior preferred instruments that are not MREL eligible, while other instruments will change into senior non-preferred and eligible senior preferred in order to take advantage of the 3,5% allowance for senior unsubordinated instruments.</p> <p>Others considered that the permission regime will not cause a reduction of senior instruments, as they will be gradually replaced with issuances of instruments compliant with CRR/BRRD, while one respondent asked to implement a flexible permission regime in order to foster such a replacement. Some respondents were of the opinion that the banks will build up their stock of eligible instruments gradually, while not necessarily replacing other senior liabilities. The majority of such liabilities would most likely be interbank liabilities and usually represent the majority of the senior unsecured layer.</p>	<p>As previously mentioned, as per Level 1 provisions, all liabilities qualifying as eligible liabilities instruments fall under the permission regime of Articles 77 (2) and 78a CRR. These include MREL eligible liabilities, as the BRRD cross-refers to CRR eligibility criteria (Art. 45b BRRD). By contrast, liabilities that do not meet the MREL eligibility criteria do not fall under the permission regime.</p> <p>Taking into account the received responses, the EBA is of the opinion that institutions will progressively replace eligible liabilities instruments which are eligible solely as a result of the grandfathering provisions under Article 494b(3) CRR with eligible liabilities instruments meeting the eligibility criteria set out in Article 72b(2) of the CRR and, with the exception of subordination, applicable to MREL eligible liabilities.</p>	<p>No change</p>
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<p>Question 4.</p> <p>It is recalled that, as per the mandate to the EBA, the RTS on eligible liabilities for the purpose of indirect funding has to be fully aligned with the one on own funds. Are the interactions and consequences of the rules on direct and indirect funding appropriately described and captured for eligible liabilities and resolution groups?</p>	<p>One respondent considered the existing rules for own funds appropriate for eligible liabilities and did not see any impediments towards intragroup funding, notably in the light of internal MREL requirements. Regarding cooperative groups, the recognition of the special statute of their customers and the fact that the subscription of the latter to capital instruments would not be considered on its own as a case of indirect funding was welcomed.</p> <p>Some respondents agreed to the proposal while one pointed out that in its group one case would be within the scope of these provisions (i.e. Articles 8 and 9 of the RTS).</p> <p>Few respondents stressed that eligible liabilities instruments differ significantly/structurally from own funds instruments, particularly with regard to the number of issues, the types of investors and denominations. They were concerned that bank customers are affected in the case of loans secured by the banks' own bonds/debentures/debt instruments. The solution implemented for own funds could be extended to eligible liabilities by excluding them from the hypothecation agreement and collateral eligibility calculation already at the contract stage. However, it could be difficult to convey to the market that a third party bond may be accepted as collateral, but not when it is issued by the lender. One of these respondents explained further that the extension of the permanent monitoring of a customer's securities accounts would lead to considerable additional operational cost and effort. The respondents requested that situations focusing on the customer's assets investment should be excluded from the scope, or at least a <i>de minimis</i> rule</p>	<p>Based on the answers provided, the EBA understands that the proposed provisions on direct and indirect funding are generally adequate, also for resolution purposes.</p> <p>As indicated in the consultation paper, the provisions are not intended to prevent normal transactions between a parent and its subsidiaries or between entities belonging to the same accounting or prudential group (intragroup transactions). However, Article 8(3) of the RTS clarifies that this is only acceptable when the transactions are made on an arm's length basis and the investing entity does not have to rely on the distributions or on the sale of the instruments held to support the payment of interest and the repayment of the funding.</p> <p>Article 1a of the RTS clarifies that the notion of direct and indirect funding also applies to entities referred to in Article 45(1) BRRD and to eligible liabilities referred to in Article 45b and point (a) of Article 45f(2) BRRD.</p> <p>On the more specific question on how to treat the case of loans secured by the bank's own debt, this issue will be dealt with separately by a dedicated Q&A (as per the format already existing in the area of own funds).</p>	<p>Recitals have been amended and Article 1a has been introduced.</p>
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	<p>should be included, where securities loans up to e.g. EUR 500,000 are not considered self-funding, in the event that the borrower uses exchange-traded bonds or stock exchange listed debt instruments.</p> <p>One respondent requested further clarification in the case of internal MREL/TLAC transactions, given that it is normal business practice for a subsidiary to deposit and receive funds from its parent entity. It should be clarified, even though the respondent did not consider it within the scope, that a lawful dividend payment or an early repayment of an MREL instrument occurring at a point in time when the institution was also receiving new MREL/TLAC from its parent, which might arise in refinancing or restructuring of an institution's internal MREL/TLAC for capital efficiency or as part of a double leverage transaction, should not be considered a case of (in)direct funding. A double leverage transaction occurs where a holding company issues a debt offering to an external third party to acquire equity in one of its own subsidiaries (as may be pursued to meet internal TLAC/MREL requirements).</p>		
<p>Question 5.</p> <p>Would you agree that the existing percentage values for the thresholds are still suitable? If not please provide evidence and rationale for having different values.</p>	<p>All respondents who provided feedback on this question deemed the thresholds still suitable and no adjustment was suggested.</p>	<p>The relevant provisions in RTS are judged adequate by respondents.</p>	<p>No change</p>
<p>Question 6</p> <p>Do you consider that the general prior permission as per</p>	<p>Some respondents welcomed the inclusion of the repurchase of own funds instruments for employee</p>	<p>Repurchases of own funds instruments then to be passed on to employees as part of their remuneration can be requested through general</p>	<p>Article 28(4) of the RTS has been slightly amended.</p>

<p>subparagraph 2 of Article 78(1) CRR, with the limits included therein, would be sufficient to cater for permissions to repurchase own funds instruments then to be passed on to employees as part of their remuneration (former Article 29(4) of the RTS), in addition to market-making and other repurchase activities? Would you consider any derogations to be needed (in particular in terms of limits and the one-year timeframe)?</p>	<p>remuneration purposes in the general prior permission regime.</p> <p>However, many respondents expressed their preference for maintaining a differentiated regime. Some highlighted that the features of the employee remuneration purpose are different (e.g. fiduciary nature and limited holding period of the instruments) and not comparable with other type of repurchases under the general prior permission.</p> <p>The majority of the respondents provided an answer on the possible derogations, while requesting that the moment of deduction in case of employee remuneration should be the one under current Article 29(4) of the RTS.</p> <p>Some confirmed that in the case of employee remuneration the need for the bank to deduct only the instruments actually held does not change and that the new Article 28(4) of the RTS - read together with new Article 28(3) of the RTS - does not require a double deduction of instruments held for employee remuneration. They highlighted further that the remuneration cases should not be included in and monitored against the limit of the predetermined amount of the general prior permission and that permission for share buybacks for employee remuneration purposes should continue to cover the approval of a maximum number of shares instead of a EUR amount.</p> <p>Some considered that the timeline of the general prior permission would not work for remuneration programmes, since they usually have a longer period of validity and do not change on an annual basis.</p>	<p>prior permission or through ad-hoc permission. No restrictions are imposed by the RTS in this regard.</p> <p>The RTS has been slightly amended to recognise that whatever the type of prior permission requested by the institution, i.e. ad-hoc permission or general prior permission, the deduction rules for repurchase of own funds instruments for remuneration purposes are different from the rules envisaged in paragraph 2 and 3 of Article 28 of the RTS and remain the same as per the current RTS on own funds (i.e. Article 29(4) of the RTS).</p> <p>However, the EBA clarifies that when such repurchases of own funds instruments are processed through general prior permission then the limits set by the Level 1 text in terms of the period and amount for which the permission is granted should be respected. This means that permissions for repurchases of own funds instruments to be passed on to employees as part of their remuneration should be set and monitored against the limit of the predetermined amount and exercised within the specified period that cannot exceed one year.</p> <p>The EBA also clarifies that when institutions request permission, being ad-hoc or general prior permission, for repurchasing own funds instruments for remuneration purposes they should express their request as an amount and not in terms of numbers of shares so to allow competent authorities to assess clearly the expected impact on the institution's own funds.</p> <p>If institutions are applying through general prior permission for various purposes, for example</p>	<p>New recital and a new paragraph 5 have been introduced in Article 28 of the RTS.</p>
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	<p>One respondent recommended to keep the possibility to apply under current Article 29(4) of the RTS and in addition to allow an application for remuneration purposes under the general prior permission as an option and not an obligation for the bank.</p> <p>Some requested to further clarify the process for cases where more than one general prior permission is sought in one application.</p>	<p>repurchases for market-making, and for employees' remuneration, such applications should still follow the overall/total limits set by subparagraph 2 of Article 78(1) CRR.</p> <p>Given that the Level 1 text has now introduced provisions setting a maximum time period for which the general prior permission is granted, it was felt essential to regulate the same aspect via the RTS provisions for the ad-hoc permissions. In this context, a new recital and a new paragraph in Article 28 have been introduced in the RTS. It is the EBA's expectation that institutions are well aware of the details of the two types of permission, i.e. ad-hoc and general prior permission, and they will make use of each of them based on the specificities of the action expected to be taken in accordance with Article 77(1) of the CRR and within the limits of the Level 1 text and the RTS.</p>	
<p>Question 7. Do you agree that the provision regarding permission for immaterial amounts to be called, redeemed or repurchased (former Article 29(5) of the RTS) is no longer needed? If you disagree please provide a substantiated rationale.</p>	<p>Some respondents agreed that the permission for immaterial amounts is no longer needed.</p> <p>Others would be in favour of maintaining the permission regime for immaterial amounts. It would reduce the bureaucratic burden and is absolutely necessary to cover the needs of smaller and non-complex institutions and that the widening of the permission regime (by including the immaterial amount and not applying the one-year rule) can give more flexibility to the competent authorities. Some respondents suggested to introduce a notification procedure for deduction of immaterial amounts.</p>	<p>The EBA reiterates its understanding that subparagraph 2 of Article 78(1) of the CRR does not limit the general prior permission to market-making but encompasses all other possible circumstances.</p> <p>Given that neither the Level 1 text provides for the possibility to recognise an additional kind of application that will derogate from the general prior permission rules for immaterial amounts, and that there is not much evidence from supervisors during these years that followed the adoption of the current RTS to support the view that a separate regime is necessary, the EBA expects that permissions for immaterial amounts to be called, redeemed or repurchased could be dealt with via the general prior permission.</p>	<p>No change</p>

<p>Question 8. Is the information required appropriate? Please specify any change you would make and why. Please consider consistency with the prior permission regime for eligible liabilities instruments.</p>	<p>One respondent considered it logical to keep the forward-looking information on both capital demand and supply as these figures are intrinsically linked to banks' budgetary planning and not necessary available to competent authorities.</p> <p>The majority of the respondents considered the required information as too extensive by highlighting that it would overlap with the information already obtained by the supervisory/resolution authorities through other channels (COREP/MREL reporting) or refers to requirements set by them and it was considered as an unnecessary increase of the reporting burden.</p> <p>The majority of the respondents did not see a need for such a requirement mainly due to the lack of availability of these figures at the time of the application and the annual update of the multi-annual planning to be forwarded to the supervisory authorities in a timely manner. If, in the view of the competent authority, a resubmission is necessary, the RTS should clarify that this is the bank's annually updated multi-year planning (and that no update to the time of application is necessary).</p> <p>One respondent highlighted that, unless explicitly required by the Level 1 text, the three-year planning requirements should be reduced to a more reasonable time period (e.g. two years). In particular it should not be required to implement a new calculation process, given that not all required numbers are available and would cause an additional workload.</p>	<p>Article 30 of the RTS details the exact type of information institutions have to provide along with their application for prior permission for any of the actions listed in Article 77(1) CRR. Information to this end was already expected to be provided together with applications for prior permission under the former Article 30 of the existing framework. Information requirements under Article 30 of the RTS have been specified in more detail and now cross-refer in a clear manner to the relevant requirements set out in the CRR, CRD and BRRD, reflecting also any changes introduced by the 'Risk Reduction Measures Package' to the Level 1 text.</p> <p>In addition, the information requirement has been expanded to also capture TLAC and MREL requirements, given that the competent authority, when considering a request for permission under Article 78(1)(b) CRR, is now required to assess whether the own funds and eligible liabilities of the institution would, following the reduction, exceed the relevant requirements set out in the CRR, CRD and BRRD, by a necessary margin.</p> <p>The EBA notes that a significant part of the information expected to be provided under Article 30 of the RTS is on a forward-looking basis which is not necessarily available through reporting based on the ITS on Supervisory Reporting or the ITS on disclosure and reporting on MREL and TLAC. Regarding the comments received and suggestions for competent authorities to refer to the information provided by institutions in their capital planning, the EBA finds that such information might be quite divergent in practice across institutions and</p>	<p>Article 30 of the RTS has been slightly amended.</p> <p>New Article 30b has been introduced.</p>
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	<p>Some respondents agreed with most of the information required in the case of the first application, but suggested to delete Article 30(1)(e) of the RTS as the detailed information is overshooting and linked solely to eligible liabilities instruments.</p> <p>Some respondents suggested to change in point (iv) of Article 30(1)(d) the 'Tier 1 Capital' requirement to the 'Leverage Ratio' requirement. In addition, point (v) of Article 30(1)(d) should be adapted in order to point out that the additional own funds requirement for the leverage ratio can only be made up of CET 1 and AT1 capital.</p> <p>Some highlighted that the required information under Article 30(1)(g) of the RTS may not be available for the upcoming issuances. Furthermore, they requested the deletion of point (iii) of Article 30(1)(g) as the costs for replacement are already considered under point (v) of Article 30(g).</p> <p>Many respondents asked to maintain the possibility to apply for an entire class of capital under Article 30a of the RTS, as it seems that the prior permission would no longer be granted for a whole capital class (while all the issuances concerned would have to be listed individually in the application and the authority must be informed of each issuance if this is likely to be within the scope of the application). Therefore, some respondents do not see the need to add the list of instruments as an appendix to the general prior permission application.</p> <p>Some respondents suggested to define additional reliefs for example in the form of a fast process in the case of renewal of general prior permission where the</p>	<p>it cannot be used as a basis for assessing institutions' applications.</p> <p>The EBA also underlines the importance of ensuring that competent authorities are provided with information that is relevant, up to date and immediately available so they are in a position to assess institutions' applications in a timely manner.</p> <p>With regard to comments on points (iv) and (v) of Article 30(1)(d) of the RTS, the EBA acknowledges that these are valid suggestions and relevant changes have been applied to these provisions of the RTS.</p> <p>On the comments made on point (g) of Article 30(1) of the RTS, the EBA sees the information listed under this point as absolutely necessary so the competent authority is in a position to assess all factors envisaged in Article 78(1)(a) and Article 78(4)(d) of the CRR in terms of the quality of the replacing instruments, the timing of the planned replacement, and the effect of the intended action on the profitability of the institution. Considering the comment received during the consultation that points (iii) and (v) of Article 30(1)(g) of the RTS are overlapping and only one should be maintained, EBA sees them as complementary rather than as requesting identical information, given that one concerns the cost, while the other the impact on profitability, so both have been maintained.</p> <p>On the comments submitted on Article 30a of the RTS on the possibility for general prior permission to be granted for a whole capital class, the EBA points out that the Level 1 text sets specific limits based on which the predetermined amount is</p>	
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	<p>amount and the instruments covered are highly comparable with the first original approval.</p>	<p>defined and such limits do not recognise that the actions taken by the institution in accordance with Article 77(1) of the CRR may concern whole issuances. The required information in Article 30a(2)(a) of the RTS is seen as necessary in order for the competent authority to set the predetermined amount for general prior permission. However, Article 30a(3) of the RTS acknowledges that institutions may use the predetermined amount granted under general prior permission to redeem parts of issuances which are issued after the general prior permission is granted, within the limits set out in the permission.</p> <p>The EBA also highlights the fact that the competent authorities might waive some of the information required based on the provisions of Article 30(2) of the RTS, in particular in cases where some of the required information is already available to competent authorities through other sources. To this end, institutions can indicate, along with the submission of the application, if, in their view, any of the information required under Article 30 is already available to the competent authority.</p> <p>Under the revised CRR, the general prior permission is now granted for a specified period that cannot exceed one year, which was not the case under the prior permission regime for market-making that competent authorities could grant under the current Article 29 of the RTS.</p> <p>In this context, taking into account the feedback received during the consultation, and on proportionality grounds, where an institution applies for the renewal of general prior permission and subject to specific conditions (i.e. no request to</p>	
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<p>Question 9. Do you consider the four months deadline appropriate? Would you consider making a difference between the individual permissions pursuant to Article 78(1) points (a) or (b) CRR and the general prior permission pursuant to the 2nd subparagraph of Article 78(1) CRR? In case the four months deadline was kept for first time applications for general prior permission, would you see merit in: a) shortening the deadline for applications for the renewal of the permission? b) adjusting the content of the application to be submitted to the competent authority? Please provide some rationale. Also, please consider consistency with the prior permission regime for eligible liabilities instruments.</p>	<p>All respondents considered the four-month timeline for the submission of the application as too long a period, providing a range of arguments:</p> <ul style="list-style-type: none"> - it would introduce more complexity for banks (e.g. in terms of disclosures, cost of carrying the instrument) and/or hamper the operational bank funding and LME. - the necessary interaction between authorities is no valid argument to extend the deadlines to the detriment of banks. A longer deadline increases uncertainty on a topic that is highly relevant to investors and reduces flexibility for banks. - the length of the time period is disproportionate compared to the permission that is valid for one year. As the approval process can be highly standardised, three months should be more than sufficient. - the three-month period currently in place was already tested and found to be workable for own funds and there is no reason to increase it. - the four-month deadline (in combination with the rules on deduction envisaged in 	<p>The EBA has considered various options while developing the relevant provisions concerning the timing of the application to be submitted to the competent authority. The EBA maintains its view that for ad-hoc and first-time general prior permissions four months will be appropriate to cater for the more complex assessment that the competent authority needs to undertake in order to verify not only that the institution's own funds exceed the respective requirements by the necessary margin but also that the institution's eligible liabilities meet this condition. It is also necessary given that in practice the competent authorities will need to consult with the resolution authorities before granting the permission, even if this is not a requirement derived from the Level 1 text. To this end, this time period is consistent with the timing specified for reduction of eligible liabilities instruments in Article 32g of the RTS.</p> <p>The EBA also clarifies that Articles 77 and 78 of the CRR envisage that the institution should obtain the competent authority's prior permission for any of the actions listed in Article 77(1) CRR, including in the context of initial general prior permission or</p>	<p>Changes have been applied in Article 31 of the RTS.</p>

	<p>Article 28 of the RTS) would affect institutions' market-making activities and consequently the resolvability of institutions.</p> <ul style="list-style-type: none"> - it would be more difficult for banks to forecast the replacement cost of own funds instruments four months in advance with a reasonable confidence level; - the market conditions may vary during such a long period; - in the case of refinancing an existing instrument with an upcoming call, i.e. issuing a replacing instrument, institutions will have for four months two outstanding instruments. <p>As to the renewal of general prior permission, the majority of respondents proposed to reduce the period for the submission of the application and information requirements, by e.g. limiting them to the data which has changed or been updated (e.g. if related to market-making activities, immaterial amounts or operations with replacement of own funds/eligible liabilities). In the same context, some proposed to introduce a fast-track procedure of one or maximum two months or a notification procedure. One respondent urged not to implement any information requirement, which would generate an additional internal process. In the same context, there were also few suggestions for the RTS to differentiate between first-time and subsequent applications and to introduce in the RTS an automatic renewal/non-objection procedure for the latter.</p>	<p>renewal of general prior permission, meaning that there is no flexibility provided by the Level 1 text for such permissions to be substituted by a notification procedure or an automatic renewal.</p> <p>Nevertheless, the case where an institution applies for the renewal of general prior permission that has already been granted once by the competent authority may not necessarily warrant the same level of supervisory scrutiny and/or interaction between authorities. In this context, Article 31 of the RTS has been amended to reduce the timing of the application for a renewal of general prior permission to three months before the expiration of the existing permission.</p> <p>The EBA will monitor how the four and three-month time periods for the submission and assessment of applications will be implemented in practice, with particular interest in how competent authorities and resolution authorities will operationalise the administration of their respective assessments and their cooperation/consultation given that this is a new element in the prior permission regime.</p> <p>The EBA also points out that the RTS provisions recognise the possibility for the permission to be processed by the competent authorities and resolution authorities within a shorter timeframe and in this context the EBA encourages authorities to make use of these provisions as they deem it appropriate.</p> <p>It also needs to be recalled that the new timelines are needed to ensure consistency between the provisions for own funds and eligible liabilities instruments (see also Article 32g of the RTS,</p>	
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	<p>Some respondents suggested that supervisors should implement a standardised procedure, ensuring that all applications for general prior permission are dealt with at the same point in time (like it is in the case of SREP decisions), to ensure a level playing field. In addition, supervisors should be granted some flexibility and the possibility to extend the previous permission for three months, in case the new decision will not be granted in due time.</p>	<p>amended in accordance to the respective provision for own funds for the renewal of general prior permission).</p> <p>With regard to suggestions to introduce and implement a standardised procedure, ensuring that all applications for general prior permission are dealt with at same point in time to ensure a level playing field, the EBA believes that such provisions are neither desirable nor in keeping with the spirit of the prior permission regime as they would unnecessarily limit the discretion and freedom of institutions to request reduction of own funds for various purposes like market-making. Furthermore, it has to be recalled that permission in accordance with Articles 77, 78 and 78a of the CRR is a decision taking into account the specific situation of the individual institution and the circumstances of any planned reduction.</p>	
<p>Question 10. It is recalled that, as per the mandate to the EBA, the RTS on eligible liabilities for the purpose of specifying the meaning of sustainable for the income capacity of the institution has to be fully aligned with the one on own funds. Do you see any unintended consequences stemming from the drafting of Article 32a?</p>	<p>Several respondents argued that applying the mechanism for own funds to eligible liabilities creates a disproportionate burden for banks, as eligible liabilities, unlike own funds, do not absorb losses in a business-as-usual or crisis situation, but only in the extreme case of a resolution. These respondents argued that mandating resolution authorities to assess any reduction with a view to long-term profitability seemed like a case of ‘gold-plating’. In addition, they stressed that the assessment by the resolution authority as detailed in Article 32a of the RTS was not well defined and left room for interpretation.</p> <p>Some respondents emphasised that the sustainability assessment of the resolution authority should fully</p>	<p>These RTS are bound by the mandate laid down in Articles 78(5)(a) and 78(3)(d) of the CRR and cannot deviate from the provisions of Articles 78(1)(a) and (2) and 78a(1)(a) and (2) of the CRR. The Level 1 text clearly assigns the task of assessing the criteria of ‘sustainable for the income capacity’ to the competent authorities in relation to the replacement of own funds instruments and to the resolution authorities in relation to the replacement of eligible liabilities instruments.</p> <p>The assessment described in Articles 78(1)(a) and 78a(1)(a) of the CRR concerns the replacement of a specific own funds instrument or eligible liabilities instrument. Therefore, the authority responsible for the assessment has to take into account the</p>	<p>No change</p>

	<p>build on that performed by the supervisory authority. They argued that profitability of institutions in stress situations is not the focus of resolution authorities and thus currently not assessed by them. In their opinion, it should be avoided that resolution authorities start acting as ‘shadow supervisors’ and duplicate the assessments of supervisors. The respondents suggested that such an assessment should be provided by supervisory authorities to resolution authorities, with the latter considering that input while assessing an application in accordance to Article 78a(1)(a) CRR. To reflect this, these respondents required the wording in Article 32a of the draft RTS to be changed as follows: <i>‘The resolution authority’s assessment shall take into account the supervisory assessment of institution’s profitability in a stress situation.’</i></p> <p>One of these respondents furthermore pointed out that the definition of the term <i>‘sustainable for the income capacity of the institution’</i> could be found both in Article 27 of the current RTS and now in Article 32a of the draft RTS. The definitions did not differ from each other, except that the competent authority was the supervisory authority on the one hand and the resolution authority on the other. The respondent therefore suggested to merge these articles in order to avoid the different authorities arriving at different assessments or applying different criteria in the future (irrespective of the fact that the respondent does not consider such an assessment to be necessary for eligible liabilities in the first place).</p> <p>Some respondents could not identify any unintended consequences caused by the drafting.</p>	<p>specificities of the relevant application and concerned instruments.</p> <p>Given that the assessment is limited to a specific application of a substitution of an own funds instrument or eligible liabilities instrument, it lies within the competence of the relevant authority to evaluate the impact of the intended replacement.</p> <p>That said, Article 32i of the RTS ensures comprehensive cooperation between the supervisory authorities and the resolution authorities. Therefore, a coordinated assessment of all aspects, including the criteria of ‘sustainable for the income capacity’, is safeguarded.</p>	
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<p>Question 11. Do you consider the deduction rules appropriate for eligible liabilities? If not, what would be the rationale for departing from the rules applicable for own funds?</p>	<p>Most respondents considered the deduction rules applied to eligible liabilities to be disproportionate, excessive, inappropriate and beyond the CRR mandate: imposing such requirement would ignore the different qualities of eligible liabilities with respect to own funds and the strict regulations already in force governing MREL (e.g. M-MDA, stacking order approach, safety margin). In particular, many respondents remark that requiring automatic deduction early at the moment of granting permission (i) limits banks' flexibility in managing funding, (ii) results in massive damage to the liquidity of the instruments, and (iii) treats differently comparable situations (i.e. general and ad-hoc permission, since the latter requires - as an additional trigger - the 'sufficient certainty' of the intention to repurchase).</p> <p>Some respondents suggested that deduction should be required only when the permission is actually used (in particular, at least, in the case of market-making activities and preferably only if the instrument is repurchased on a permanent basis). One respondent pointed out that in accordance with EBA Q&As sufficient certainty required not only prior permission, but also a public announcement. More specifically, two respondents suggested applying a 'real-time' deduction to market-making activities and the ad-hoc prior permission regime (i.e. the 'sufficient certainty' approach) to liability management exercises. One of them suggested also that a bank should be able to reverse the deduction immediately at the point when it decides not to proceed with a planned redemption.</p>	<p>'Own funds and eligible liabilities' requirements are set out alongside capital requirements to reinforce loss absorption capacity for banks, both going-concern and in resolution. While both sets of requirements retain their specific nature and qualities, they are also subject to many identical features.</p> <p>As own funds count both towards capital requirements and MREL/TLAC requirements, and to avoid an unlevelled playing field between institutions meeting MREL solely with own funds, and others, it is essential that common features are approached consistently. Likewise, it is important that the prior permission regime for eligible liabilities, which pursues essentially identical imperatives as the permission regime for own funds, be subject to broadly similar characteristics.</p> <p>Due to the lack of any concrete reasons that would justify a deviation in the deduction approach for both frameworks, an alignment of the rules applicable to own funds and eligible liabilities instruments is established. Applying the deduction only when the permission is actually used would be very imprudent from a prudential perspective and would just present resolution authorities with a 'fait accompli'. This conclusion also applies to market-making activities, as also those activities may result in the reduction of the entire predetermined amount.</p> <p>The scope of the RTS and therefore the scope of the deduction regime are not limited to subordinated eligible liabilities, but extends to all MREL eligible liabilities.</p>	<p>No change</p>
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	<p>One respondent proposed to adapt the approach taken so far by the EBA for own funds in line with the practice currently applied by SRB and apply it also to eligible liabilities. Under the provisional SRB approach, no upfront deduction of the predetermined amount is applied. Banks are requested to report any redemption on a quarterly basis. This quarterly review in the case of market-making takes into account the net amount of market-making transactions. The deduction is not applied ex ante, but at the time when the transaction is actually performed.</p> <p>Some respondents suggested to apply the deduction rule only to senior non-preferred instruments (i.e. to refer to the subordination requirement only). Otherwise, it was highlighted that there is a need to clarify either that repurchases of senior preferred instruments are not deducted from the senior non-preferred class not to impact on the subordination requirement or, at least, from which stock the deduction should be performed in each case.</p>	<p>As previously mentioned, it is the EBA's intention to revise the Q&As applicable to the notion of sufficient certainty once the RTS is final, including for the scope of eligible liabilities instruments.</p> <p>One difference between the own funds and eligible liabilities framework concerns the approach followed for the application of the deduction in the case of own funds instruments i.e. the deduction applies from 'the corresponding elements'. That concept was developed in the context of own funds (i.e. if the bank redeems an Additional Tier 1 instrument, then the deduction applies to the AT1 supply; if a bank redeems a Tier 2 instrument, the deduction applies to the Tier 2 supply). The same distinction is not present in the context of eligible liabilities instruments, and therefore the concept is not replicated in the eligible liabilities framework. It may be argued that in the context of MREL one could distinguish between subordinated and unsubordinated liabilities, but given that the subordination requirement is part of the MREL, a reduction of a subordinated instrument would not only imply a deduction from the subordinated layer, but also from the entire MREL capacity.</p>	
<p>Question 12. Do you agree that general prior permissions should not be confined only to market making? Why would liability management operations not be sufficiently covered, as for own funds, via ad-hoc permissions? Please substantiate based on concrete experience.</p>	<p>Most respondents thought that the general prior permission should not be confined only to market-making since the drafting of ad-hoc requests and the processing by the resolution authorities would take far too long to handle matters flexibly, especially in the last year of maturity when liabilities cease to qualify for MREL purposes. In particular, it was stressed that, in contrast to the management of own funds instruments, decisions in liability management must be made at short notice, taking into account</p>	<p>Taking into account the feedback received during the consultation period and due to the fact that Article 78a(1) of the CRR does not limit the general prior permission regime to any specific purpose, it is confirmed that the general prior permission is not limited to market-making only. Therefore, an institution may apply for an action listed in Article 77(2) of the CRR within the limits set out in Article 78a of the CRR and Article 32b(5) of this RTS for any reason.</p>	<p>No change</p>

	<p>current market conditions and within the framework of liquidity management. An application for prior permission would therefore have to be made and approved within one to two days. More specifically, two respondents highlighted that the purpose of liability management exercises is precisely to replace shorter-term liabilities with longer-term liabilities, which is positive from a resolution and bail-in perspective. Hence, such permission regimes should differ from market-making with regard to the timing of deduction and maximum permissible limit under the general prior permission.</p> <p>Some respondents suggested to establish in the RTS - based on the principle of proportionality - a separate and eased general prior permission for immaterial amounts of eligible liabilities instruments, and for eligible liabilities instruments that are not subordinated (e.g. implement a possible derogation from the one-year time limit). Another respondent suggested to allow authorities to grant permission to adjust the liabilities up to a certain threshold without requiring a specific permission.</p> <p>Some respondents requested to provide for a general prior permission for immaterial amounts with a reduced information requirement.</p>		
<p>Question 13. Is the maximum limit of 3% of the total amount of outstanding eligible liabilities instruments sufficient? If not, please explain which percentage value of outstanding eligible liabilities</p>	<p>Most respondents stressed that the maximum limit proposed in the RTS (i.e. 3%) is not appropriate for eligible liabilities instruments since i) it is not sufficient to cover both market-making and liability management exercises (e.g. secondary market operations for eligible liabilities instruments are much higher than own funds), therefore risking to reduce</p>	<p>Taking into account the feedback, the EBA has reconsidered the limit of 3% of the total amount of outstanding eligible liabilities instruments. Given that there is only one class of eligible liabilities instruments, which consists of a great variety of</p>	<p>Maximum limit set on the basis of the total amount of outstanding eligible liabilities instruments has</p>

<p>instruments you would suggest and justify based on your experience.</p>	<p>liquidity of the outstanding instruments, impacting on possible retail investors and increasing funding costs for banks (given that an institution may be forced to refinance some instruments without the ability to call them); ii) it will disadvantage EU banks vis-à-vis non-EU banks that do not have such a hard limit; iii) such a limit is not envisaged by the Level 1 text and there is no legal requirement for aligning the redemption rules with the ones applying to own funds in this area, allowing room for the EBA to ensure flexibility.</p> <p>Some respondents suggested that, if applicable, the limit should be applied to non-preferred and preferred liabilities separately (3% each) to reflect and differentiate in the ranking of liabilities. In this respect, it is also stated that it is not clear how the amount of amortised Tier 2 instruments is considered and whether it would be taken into account for the purposes of calculating the 3% limit.</p> <p>A number of respondents asked for clarification on the basis on which the 3% limit is calculated (i.e. at the time of application, at the time of approval, meaning that this can then be only a forecast estimate, or based on the last official reporting day).</p> <p>Some respondents considered necessary clarification on which specific eligible liabilities are to be included in the basis for calculating the 3% limit and, therefore, how the term 'outstanding eligible liabilities instruments' is defined and if it refers to the same value as considered for the calculation of the amount eligible for MREL (see Commission Implementing Regulation EU 2018/1624, Annex II). Alternatively a limit of 1% TREA was suggested.</p>	<p>instruments, the limit of 3% might constitute too big a constraint.</p> <p>On the other hand, the EBA received only very limited feedback on the appropriate level of the limit. In all cases, the EBA does not see any strong objection for raising the proposed percentage limit, as long as the upfront deduction approach for general prior permissions is maintained. It is to be recalled that this is a maximum limit, meaning that banks could fill applications for a level below this maximum.</p> <p>After carefully assessing the input received, the limit is set at 10%. This higher threshold is also aimed to address the concerns raised by some respondents regarding the inclusion of grandfathered instruments in the scope of the prior permission regime. In this context, the EBA believes that a higher limit of 10% warrants a wider margin of manoeuvre for institutions willing to roll grandfathered instruments over. The EBA will monitor the application of this limit with a view to potentially reassessing the threshold suggested in these revised RTS in the next years on the basis of the experience to be gained.</p> <p>Some aspects raised by respondents will be addressed via separate dedicated Q&As.</p> <p><i>On the Tier 2 and taking into account Q&A 2015_2095:</i></p> <p>Articles 77, 78 and 78a of the CRR as well as the provisions of the RTS refer to the instrument, which is subject to the prior permission regime. Therefore,</p>	<p>been increased from 3% to 10%.</p>
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	<p>Two respondents suggested that the maximum limit should be increased at least to 5% and be disregarded altogether for entities subject to simplified obligations. One respondent suggested a maximum limit of at least 10%. One other a limit of 15-20%.</p>	<p>once an instrument has been qualified as Tier 2 eligible, it needs to be continuously considered as an own funds instrument for the prior permission regime and the applicable limits. Therefore, an application in accordance with Articles 77 and 78 of the CRR is required in the event that any action under Articles 77, 78 and 78a of the CRR as well as the provisions of the RTS refer to the instrument, which is subject to the prior permission regime. Given that an instrument which has been qualified as Tier 2 eligible needs to be continuously considered as an own funds instrument for the permission regime and the applicable limits. Therefore, the amortised amount is not relevant for the calculation of the 10% limit which is only applicable to eligible liabilities instruments.</p> <p><i>On the question of whether the limit should be applied to non-preferred and preferred liabilities separately:</i></p> <p>Articles 77(2) and 78a of the CRR refer to eligible liabilities instruments and do not acknowledge differentiated classes of instruments. BRRD eligibility criteria cross-refer to Article 72b(2) CRR, including to the eligibility condition in point (j) of Article 72b(2) CRR, thus bringing all MREL eligible instruments into the scope of the permissions regime. Therefore, the percentage limit applies to the total amount of outstanding eligible liabilities instruments which, for the purposes of the permissions regime, also include MREL eligible liabilities.</p>	
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<p>Question 14. Would you see some good rationale for exempting certain types of entities from the limits foreseen in Article 32c¹⁶? Please describe cases and substantiate your rationale.</p>	<p>Most respondents rejected the inclusion of liquidation entities in the scope of application of the permission process. It was also stated that the same should apply to institutions for which MREL is waived. By contrast, two respondents considered that there was not a good reason to exclude liquidation entities, as this would give them a comparative advantage and would therefore discriminate against resolution entities.</p> <p>It was also argued that the permission regime should not apply to instruments with a remaining maturity of less than one year since these instruments, although still eligible, do not contribute to the MREL requirement.</p> <p>One respondent suggested that intragroup operations that would have a bearing on the internal MREL should be exempt.</p>	<p>Please see answers to comments provided under the general comments section, in particular the EBA analysis concerning the scope of the prior permission regime.</p> <p>The liquidation entities for which the resolution authority has set the MREL at the level that does not exceed the loss absorption amount fall within the scope of the permission regime as per the Level 1 provisions, as they undoubtedly are institutions. That said, as anticipated in the section of this table on the scope of application of the RTS, the EBA sees merits in introducing some proportionate adjustments to the permission regime in terms of the process for these entities due to the fact that the risk that a reduction of eligible liabilities instruments will lead to an MREL breach is limited. With regard to the limit set in Article 32b(5) for the predetermined amount, Article 32h exempts liquidation entities from such a limit.</p>	<p>New Article 32h has been introduced.</p> <p>Changes in Article 32i of the RTS have been applied.</p>
<p>Question 15. Do you think the information required in Article 32d is appropriate? Please precise any change you would suggest and why. Please consider consistency with the prior permission regime for own funds.</p>	<p>Several respondents highlighted that the information requested pursuant to Article 32d of the RTS is too detailed. Furthermore, they also opposed the submission of forward-looking information on a three-year horizon pursuant to Article 32d(1)(c), which is considered as disproportionate given that institutions regularly provide such information as part of their COREP and MREL reporting.</p> <p>In addition, one respondent highlighted that, in the case of MREL, banks already report their multi-annual forecast to the SRB on a quarterly basis.</p>	<p>Article 32d of the RTS is the equivalent of Article 30 of the RTS for eligible liabilities instruments. It details the information items which institutions have to provide along with their application.</p> <p>A similar approach has been retained for both articles and it has been sought to define own funds, MREL and TLAC requirements in a consistent manner.</p> <p>Resolution authorities need updated information at the moment the institution submits a prior permission application (reports based on the ITS on</p>	<p>Changes have been applied to Article 32d of the RTS.</p> <p>New Article 32e has been added to the RTS.</p>

¹⁶ Following the public consultation the relevant limit is now set in Article 32b(5) of the RTS.

	<p>Some respondents emphasised that the information request is disproportionate for institutions that are subject to insolvency based on their resolution plan or are under simplified obligations since a permission request is probably limited to senior preferred liabilities eligible for MREL based on grandfathering. Some respondents suggested that the application for both ad-hoc and general prior permission involving eligible liabilities instruments in their final year of maturity should be significantly simplified (e.g. no information required on the capital demand side and on the multi-annual forecasts of MREL levels), as such instruments would be no more eligible to count towards the MREL requirement, thus applying the same treatment as for fully fledged eligible liabilities instruments would generate a non-negligible burden both from a business and regulatory perspective. One respondent recommended a simplified information package for internal MREL purposes. Some respondents referred to specific points of Article 32d of the RTS,</p> <ul style="list-style-type: none"> • suggesting that the expression '<i>well-founded explanation</i>' in Article 32d(1)(a) should be defined / explained more precisely; • arguing that detailed information pursuant to Article 32d(1)(f) on the replacing instruments may not be available at the moment of the request for general prior permission; • noting that the requirement under Article 32d(1)(g) for the institution to provide an evaluation of the risks to which it is or might be exposed, reflecting on whether the level 	<p>Supervisory Reporting, the ITS on disclosure and the ITS on reporting on MREL and TLAC).</p> <p>Also, there is a need for updated forward-looking information.</p> <p>The EBA also points out that the resolution authorities might waive some of the information required based on the provisions of Article 32d(2) of the RTS, in particular in cases where some of the required information is already available to resolution authorities through other sources. To this end, institutions can indicate, along with the submission of the application, if, in their view, any of the information required under Article 32d(1) is already available to the resolution authority. The above described logic also applies to internal MREL.</p> <p>In this context, taking into account the feedback received during the consultation, and on proportionality grounds, where an institution applies for the renewal of general prior permission and subject to specific conditions (i.e. no request to increase the predetermined amount or to change the scope of the initial application), the submission of some of the information required under Article 32d of the RTS is waived. To this end, a new Article 32f of the RTS has been introduced aiming to provide a relief for institutions in terms of information requirements. This is combined with a shorter time period for the submission of applications for renewal of general prior permission. In the same vein, the shortened time frame was reflected in the provisions on the cooperation between the resolution authorities and competent authorities.</p>	
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	<p>of own funds and eligible liabilities ensures sufficient coverage of such risks, including outcomes of stress tests on main risks evidencing potential losses, does not seem appropriate since many other risk buffers and other risk mitigation instruments (e.g. M-MDA) are already in place.</p> <p>With regard to the additional information to be submitted with the application for general prior permission pursuant to Article 32e of the RTS, some respondents point out that the general prior permission is not limited to market-making. Given that general prior permission might cover all kinds of liabilities, including those still to be issued, for example private placements, it would be impossible for institutions to provide a full list of eligible liabilities. These respondents also point out that a list of outstanding liabilities is regularly provided to resolution authorities through the annual resolution reporting (CIR, LDR for the banking union) and the published Pillar 3 reports.</p> <p>One respondent suggested to reduce the forward looking time span to two years and to not ask for information which requires additional internal processes.</p>	<p>On the comments made on point (f) of Article 32d(1) of the RTS, the EBA sees the information listed under this point as absolutely necessary so the resolution authority is in a position to assess all factors envisaged in Article 78a(1)(a) of the CRR in terms of the quality of the replacing instruments, the timing of the planned replacement, and the effect of the intended action on the profitability of the institution.</p> <p>In addition:</p> <ul style="list-style-type: none"> ▪ The expression ‘well-founded explanation’ is used for own funds redemptions ▪ Article 32d(1)(g) of the RTS only requires the applicant institution to provide an evaluation of the risks. This does not preempt the application of other legislative provisions. <p>Institutions should be able to identify the liabilities they are willing to redeem.</p> <p>Article 32e(2) of the RTS allows for an application for general prior permission to include eligible liabilities instruments still to be issued, subject to specification of the final amount referred to Article 32e(1) , to be provided to the resolution authority following the relevant issuance.</p> <p>The requirement to submit forward-looking information covering three years is in line with existing practices.</p>	
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<p>Question 16. Do you consider the four months deadline in Article 32f appropriate? Would you consider making a difference between the individual prior permission pursuant to Article 78a(1) points (a), (b) or (c) CRR and the general prior permission pursuant to the 2nd subparagraph of Article 78a(1) CRR? In case the four months deadline was kept for first time applications for general prior permission, would you see merit in: a) shortening the deadline for applications for the renewal of the permission? b) adjusting the content of the application to be submitted to the competent authority? Please provide some rationale. Also, please consider consistency with the prior permission regime for own funds.</p>	<p>All respondents argued that the four-month deadline could be disproportionate for general and ad-hoc permissions.</p> <p>One respondent highlighted the changing circumstances in the market in the four-month period based on the uncertain forecast of replacement costs, the exercise of call options and the cost of carrying instruments subject to sale as part of market-making activities. Moreover, and based on suggestions made on the scope of the prior permission regime and the information required, they believe that the approval process can be highly standardised, meaning that the current practice of a three-month timeline followed for own funds instruments can be sufficient for processing applications for eligible liabilities.</p> <p>Four respondents argued for keeping the deadline to a maximum of three months in the case of ad-hoc permissions. For general prior permissions which are to be renewed every 12 months, the four-month authorisation period would be inappropriate.</p> <p>One respondent suggesting reducing the timeline regarding ad-hoc prior permissions since they mostly concern liability management exercises which would require a swift answer.</p> <p>One respondent suggested that the application for both ad-hoc and general prior permissions involving formerly eligible liabilities instruments in their final</p>	<p>Article 32g of the RTS is the equivalent of Article 31 but for eligible liabilities instruments and it is clarified that Articles 77 and 78a of the CRR envisage that the institution should obtain the resolution authority's prior permission for any of the actions listed in Article 77(2) CRR, including in the context of initial general prior permission or renewal of general prior permission, meaning that such permission cannot be substituted by a notification procedure or an automatic renewal.</p> <p>Where an application for the renewal of general prior permission that has already been granted once by the resolution authority is sought, may not necessarily warrant the same level of scrutiny and/or interaction between authorities. This is reflected in paragraph 2 of Article 32g of the RTS by reducing the timing of the application to three months before the expiration of the existing permission. This reduced timeframe is reflected in Article 32i of the RTS in order to ensure that the consultation between the resolution authority and the competent authority is completed in due time.</p> <p>As noted above, in order to introduce a proportionate treatment of institutions for which the resolution authority has set the minimum requirement for own funds and eligible liabilities laid down in Article 45(1) BRRD at a level that does not exceed an amount sufficient to absorb losses, resolution authorities can grant general prior permission to these entities based on the information that is already available to them for the purpose of drawing up the resolution plans (i.e. with no need for liquidation entities to submit a dedicated application). In addition, the relevant</p>	<p>Articles 32g and f have been amended.</p> <p>New Article 32h has been introduced.</p>
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	<p>year should be significantly simplified with a much shorter notification period (e.g. two weeks).</p> <p>One respondent proposed to distinguish between ad-hoc and general prior permissions in the case of eligible liabilities. This could be done by using individual permissions as a top-up for early redemptions/repurchases that have not been foreseen at the time the general prior permission was granted. In the case of a general prior permission, it is recommended to fix a limit ex ante when granting the authorisation, while the individual prior permission should not have an ex-ante cap.</p> <p>According to two respondents, supervisory authorities should consider implementing a standardised and transparent process similar for SREP decisions. When a decision cannot be ensured to be delivered on time, additional discretion and flexibility shall be provided to the resolution authorities by the EBA for a further three-month extension of the GPP if the expiration of the permission without renewal would lead to adverse effects to the business of the institution.</p>	<p>general prior permissions can be automatically renewed, provided that certain conditions are met. This is reflected in Article 32h of the RTS.</p> <p>Concerning the suggestion to not include a cap for ad-hoc permissions, in order to use them as a top-up for general prior permission, it has to be recalled that permission in accordance with points (a) or (b) of Article 78a(1) of the CRR may only be granted for a specific action and hence, for a specific amount only. The ad-hoc permission cannot be used for circumventing the limits or purpose of general prior permission.</p> <p>With regard to suggestions to introduce and implement a standardised procedure, ensuring that all applications for general prior permission are dealt with at same point in time to ensure a level playing field, the EBA believes that such provisions are neither desirable nor in keeping with the spirit of the prior permission regime as they would unnecessarily limit the discretion and freedom of institutions to request reduction of eligible liabilities instruments for various purposes like market-making. Furthermore, it has to be recalled that permission in accordance with Articles 77, 78 and 78a of the CRR is a decision taking into account the specific situation of the individual institution and the circumstances of any planned reduction.</p>	
<p>Others</p>	<p>Following the end of the consultation, it was flagged to the EBA that the 'excess spread' definition is no longer included in Article 242 of CRR2. Paragraph 3 of Article 12 of the existing RTS refers to 'excess</p>	<p>Even though there are no amendments in substance, Article 12(3) of the RTS needs to be amended in order either i) to refer to the Commission Delegated Regulation that will result once the RTS on Risk Retention are adopted, or ii)</p>	<p>Article 12(3) has been amended.</p>

	<p>spread' as defined in Article 242 of Regulation (EU) No 575/2013. An identical definition can now be found in point (b) of Article 1 of the RTS on Risk Retention, which is at a draft stage and has not been yet adopted by the Commission.</p>	<p>to include itself a definition of the 'excess spread' term. Both possible scenarios are presented in the RTS noting that there is no preference over one or the other, but it is rather a matter to be determined by the timing of adoption of the RTS on OFs and ELs and the RTS on Risk Retention.</p>	
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Annex – Amending Regulation

COMMISSION DELEGATED REGULATION (EU) No .../..

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

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012¹⁷, and in particular third subparagraph of Article 28(5); third subparagraph of Article 29(6); third subparagraph of Article 52(2); fourth subparagraph of Article 72b(7); third subparagraph of Article 76(4); third subparagraph of Article 78(5); fourth subparagraph of Article 78a(3); third subparagraph of Article 79(2) thereof,

Whereas:

- (1) Regulation (EU) 2019/876 of the European Parliament and of the Council¹⁸, amended, inter alia, the prudential requirements for own funds as set out by Regulation (EU) No 575/2013 in various aspects. Amongst these are changes of the terminology used in a number of articles of this Regulation. In order to reflect these changes appropriately, the provisions in Commission Delegated Regulation (EU) No 241/2014¹⁹ providing further specification on the articles concerned should be amended in a consistent manner.
- (2) Regulation (EU) 2019/876 also introduced into Regulation (EU) No 575/2013 new requirements for own funds and eligible liabilities for global systemically important institutions (G-SIIs) and material subsidiaries of non-EU G-SIIs, as well as harmonised criteria for eligible liabilities items and instruments for the purposes of complying with those requirements. The own funds requirements and the new requirements for own funds and eligible liabilities in Regulation (EU) No 575/2013 pursue both the same objective of ensuring that institutions have sufficient loss absorption capacity. For this reason, the standards for own funds instruments and

¹⁷ OJ L 176, 27.6.2013, p. 1.

¹⁸ OJ L 150, 7.6.2019, p. 1.

¹⁹ Commission Delegated Regulation (EU) No 241/2014 of 7 January 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 (OJ L 74, 14.3.2014, p. 8).

the standards for eligible liabilities instruments are closely linked, in particular where Regulation (EU) No 575/2013 expressly requires them to be fully aligned. To ensure coherence and consistency with the provisions related to own funds instruments, it is appropriate to incorporate the regulatory technical standards on eligible liabilities instruments required by Regulation (EU) No 575/2013 into Commission Delegated Regulation (EU) No 241/2014.

- (3) The requirements for own funds and eligible liabilities in Regulation (EU) No 575/2013 and in Directive 2014/59/EU of the European Parliament and of the Council²⁰ share the same objective of ensuring that institutions have sufficient loss absorption capacity. For this reason, for all resolution entities the eligibility criteria for eligible liabilities instruments introduced in Regulation (EU) No 575/2013 by Regulation (EU) 2019/876 were extended, notably with the exception of the subordination criterion referred to in point (d) of Article 72b(2) of that Regulation, to liabilities eligible for meeting the minimum requirement for own funds and eligible liabilities (MREL) by virtue of point (b) of the first subparagraph of Article 45b(1) of that Directive. In relation to resolution entities of G-SIIs and Union material subsidiaries of non-EU G-SIIs, Directive 2014/59/EU made the eligibility of liabilities for meeting the minimum required level of MREL, as provided for in Article 45d(1)(a) and (2)(a) in conjunction with the second subparagraph of Article 45b(1) of that Directive, conditional upon their compliance with the eligibility criteria for eligible liabilities instruments. These include the criteria that the liabilities may not be funded directly or indirectly by the institution, the liabilities have to be subject to a prior permission to be reduced and the liabilities may not contain an incentive to redeem, except in cases referred to in Article 72c(3) of Regulation (EU) No 575/2013. Similarly, in relation to entities that are not resolution entities, points (a)(ii) and (v) of Article 45f(2) of Directive 2014/59/EU also made the eligibility of such liabilities subject to the compliance with certain eligibility criteria for eligible liabilities instruments and to the acquisition of ownership of the liabilities not being funded directly or indirectly by the entity that is subject to that Article, respectively. Therefore, the provisions of this Regulation related to direct and indirect funding of eligible liabilities instruments, form and nature of incentives to redeem and prior permission to reduce such instruments should also be applied in a consistent manner for the purposes of Article 45b(1) and points (a)(ii) and (v) Article 45f(2) of Directive 2014/59/EU. In order to ensure that consistency, the term ‘eligible liabilities instruments’ should be extended to ‘eligible liabilities’ referred to in Article 45b and point (a) of Article 45f(2) regardless of their residual maturity and the term ‘institution’ should also apply to any entity subject to MREL in accordance with Article 45(1) of Directive 2014/59/EU.
- (4) Regulation (EU) No 575/2013 made the eligibility of own funds instruments conditional on them not being funded directly or indirectly by the institution.

²⁰ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

Regulation (EU) 2019/876 extended this condition to eligible liabilities instruments, with the difference that, in line with the Total Loss-absorbing Capacity (TLAC) standard, eligible liabilities instruments should not be directly or indirectly funded by the resolution entity rather than by the institution. Therefore, since Regulation (EU) No 575/2013 mandates the European Banking Authority (EBA) to draft regulatory technical standards that are fully aligned with the delegated act referred to in point (a) of Article 28(5) of Regulation (EU) No 575/2013, the respective provisions of Commission Delegated Regulation (EU) No 241/2014, which specify the applicable forms and nature of indirect funding for own funds instruments, should also apply to eligible liabilities instruments.

- (5) Rules on direct and indirect funding should capture funding chains maintaining risks within a group, whether they involve an external investor or not. To avoid circumvention of the rules, in order to conclude that capital instruments or liabilities are directly or indirectly funded by the institution issuing such instruments or liabilities, it should not be necessary that the funding is provided by that institution, as long it is provided by an entity included in the scope of prudential or accounting consolidation of the institution, the institutional protection scheme or the network of institutions affiliated to a central body to which it belongs or its scope of supplementary supervision and regardless of whether that other entity is included in another resolution group.
- (6) The definition of ‘excess spread’ has been removed from Article 242 of Regulation (EU) No 575/2013 as a result of the amendments introduced by Regulation (EU) 2019/876. It is therefore necessary [to introduce a definition of the term excess spread in Delegated Regulation (EU) No 241/2014] [to define the term excess spread by reference to the definition provided for in Regulation (EU) No XX].
- (7) Regulation (EU) No 575/2013 also made the eligibility of Additional Tier 1 instruments and Tier 2 instruments conditional upon the absence of any incentive for their principal amount to be redeemed. This criterion has been extended by Regulation (EU) 2019/876 to eligible liabilities instruments as well, with the difference that incentives to redeem are permitted in the cases referred to in Article 72c(3) of Regulation (EU) No 575/2013. Therefore, the respective provision of Commission Delegated Regulation (EU) No 241/2014 should be amended to also cover eligible liabilities instruments.
- (8) With regard to index holdings, Regulation (EU) 2019/876 extended the scope of the prior permission to be granted by the competent authority - allowing an institution to use a conservative estimate of the underlying exposure of the institution to instruments included in indices - to eligible liabilities instruments of institutions. Accordingly, the provisions of Commission Delegated Regulation (EU) No 241/2014 regarding estimates used as an alternative to the calculation of underlying exposures to own funds instruments included in indices being ‘sufficiently

- conservative’ and the meaning of ‘operationally burdensome’ should be amended to also apply to eligible liabilities instruments.
- (9) Based on a concept previously existing under Commission Delegated Regulation (EU) No 241/2014 and supplementing the prior permission regime for the reduction of own funds, Regulation (EU) 2019/876 introduced into Regulation (EU) No 575/2013 the possibility for the competent authority to grant to institutions a general prior permission to reduce own funds for a predetermined amount and a limited period of time. Preconditions and limits originally applicable to a prior permission for market-making purposes should be removed from the current Commission Delegated Regulation (EU) No 241/2014 because now they are embedded in the general prior permission regime introduced by Regulation (EU) 2019/876.
- (10) The prior permission regimes for reducing own funds and for reducing eligible liabilities instruments share the aim of safeguarding the compliance with regulatory requirements, and have a number of similar features in common. It is therefore necessary to standardise the processes followed by competent authorities and resolution authorities both for the general prior permission and for any other permissions pursuant to Articles 78 and 78a of Regulation (EU) No 575/2013, respectively. Furthermore, provisions should be introduced to take account of the specificities of any prior permission and ensure that they are appropriately used for their specific purposes. In particular, competent authorities and resolution authorities should be required to specify the period for which a prior permission other than a general prior permission is granted and a maximum limit for this specified period should be established.
- (11) Regulation (EU) No 575/2013 requires the general prior permission for reducing own funds and eligible liabilities instruments to be granted for a specified period that shall not exceed one year. Given that an application for the renewal of a general prior permission, which has already been granted once by the competent authority or the resolution authority, may not necessarily warrant the same level of scrutiny and/or interaction between authorities, and, under specific safeguards, the content of the application to be submitted by institutions and the timing for the submission of the application should be reduced in the cases of such renewals.
- (12) Regulation (EU) No 575/2013 requires institutions to obtain the prior permission of the resolution authority to effect the call, redemption, repayment or repurchase of eligible liabilities instruments. The permission must be granted subject to a number of conditions, including where 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. Since Regulation (EU) No 575/2013, as amended by Regulation (EU) 2019/876, requires the standards on the meaning of ‘sustainable for the income capacity of the institution’ in the context of eligible liabilities instruments to be fully aligned with its equivalent for own funds, the same meaning of ‘sustainable for the income capacity of the institution’ should be used for both types of instruments in this Regulation.

- (13) In order to align the general prior permission regime between own funds and eligible liabilities instruments, and to ensure a consistent approach across the EU, the predetermined amount to be set by resolution authorities when granting the general prior permission to reduce eligible liabilities instruments should be subject to limits. This should be without prejudice to the need for the resolution authority, taking into consideration the specific circumstances of the case, to set a lower predetermined amount for a particular institution. In addition, in order to prevent that institutions operate at a level of own funds and eligible liabilities instruments that fails to reflect that part of the own funds and eligible liabilities instruments would not be available to absorb losses when needed, in case of a general prior permission, the predetermined amount for which the relevant authority has given its permission should be deducted from the moment the authorisation is granted.
- (14) In order to introduce a proportionate treatment to institutions whose resolution plans provide that they are to be wound up under normal insolvency proceedings and for which the resolution authority has set the minimum requirement for own funds and eligible liabilities laid down in Article 45(1) of Directive 2014/59/EU at a level that does not exceed an amount sufficient to absorb losses, resolution authorities should be able to grant a general prior permission based on the information that these institutions have already made available for the purposes of drawing up their resolution plan. The information provided by these institutions to the resolution authority should be deemed to constitute an application for general prior permission, unless requested otherwise by any of the institutions concerned. Given that these institutions do not need to issue eligible liabilities instruments for meeting the minimum requirement for own funds and eligible liabilities, the predetermined amount of eligible liabilities instruments to be reduced should not be subject to the same limits as for other institutions.
- (15) Regulation (EU) No 575/2013, as amended by Regulation (EU) 2019/876 requires to establish a detailed and comprehensive procedure for granting a permission to reduce eligible liabilities instruments, including the process of cooperation between the competent authority and the resolution authority. In order to ensure compliance with own funds and eligible liabilities requirements laid down in Regulation (EU) No 575/2013 and Directives 2013/36/EU and 2014/59/EU, the process of cooperation between the competent authority and the resolution authority should include consultation with the competent authority on the application for prior permission received by the resolution authority, in a way that enables the competent authority to express an informed view on the consultation, including where its agreement is required for establishing the margin by which the institution's own funds and eligible liabilities must exceed its requirements, with an adequate exchange of information and sufficient time to respond to the consultation.
- (16) Regulation (EU) 2019/876 extends the scope of the temporary waiver that competent authorities may grant to institutions for holdings in a financial sector entity from the

deduction requirement where such holdings are deemed to provide financial assistance to that entity with a view to safeguard its viability, to eligible liabilities instruments of an institution. As a result, the provisions of Commission Delegated Regulation (EU) No 241/2014 originally developed for institutions' holdings of own funds instruments in financial sector entities should be amended to also apply to institutions' holdings of eligible liabilities instruments in institutions.

- (17) Delegated Regulation (EU) No 241/2014 should therefore be amended accordingly.
- (18) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the EBA.
- (19) EBA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council²¹.

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) No 241/2014

Delegated Regulation (EU) No 241/2014 is amended as follows:

- (1) The title is replaced by the following:

‘Commission Delegated Regulation (EU) No 241/2014 of 7 January 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for Own Funds and Eligible Liabilities requirements for institutions’;

- (2) Article 1 is amended as follows:

- (a) point (c) is replaced by the following:

²¹ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12)

‘(c) the applicable forms and nature of indirect funding of own funds instruments, in accordance with Article 28(5) of Regulation (EU) No 575/2013 and eligible liabilities instruments in accordance with point (a) of Article 72b(7) of that Regulation;’;

(b) the following point (hh) is added:

‘(hh) the form and nature of incentives to redeem for the purposes of the condition set out in point (g) of the first subparagraph of Article 72b(2) and Article 72c(3) of Regulation (EU) No 575/2013, in accordance with point (b) of Article 72b(7) of that Regulation;’;

(c) point (i) is replaced by the following:

‘(i) the extent of conservatism required in estimates used as an alternative to the calculation of underlying exposures for indirect holdings arising from index holdings and the meaning of operationally burdensome for the institution to monitor those underlying exposures, in accordance with points (a) and (b) of Article 76(4) of Regulation (EU) No 575/2013;’;

(d) the following point (jj) is added:

‘(jj) the procedure, including the limits and information requirements, for granting the permission to reduce eligible liabilities instruments, and the process of cooperation between the competent authority and the resolution authority in accordance with Article 78a(3) of Regulation (EU) No 575/2013;’;

(e) point (k) is replaced by the following:

‘(k) the conditions for a temporary waiver for deduction from own funds and eligible liabilities to be provided, in accordance with to Article 79(2) of Regulation (EU) No 575/2013;’;

(3) In Chapter I, after Article 1, the following Article 1a is inserted:

‘Article 1a

Application of this Regulation to entities subject to the minimum requirement for own funds and eligible liabilities, and to eligible liabilities referred to in Directive 2014/59/EU

Unless otherwise specified, for the purposes of the application of Articles 8, 9 and 20, and Section 2 of Chapter IV of this Regulation, entities subject to the minimum requirement for own funds and eligible liabilities referred to in Article 45(1) of Directive

2014/59/EU shall be considered to be ‘institutions’, and ‘eligible liabilities’ referred to in Article 45b and point (a) of Article 45f(2) of that Directive shall be considered to be ‘eligible liabilities instruments’.

(4) The title of Chapter II is replaced by the following:

‘ELEMENTS OF OWN FUNDS AND ELIGIBLE LIABILITIES’;

(5) In Chapter II, the title of Section 1 is replaced by the following:

‘Common Equity Tier 1 capital and eligible liabilities items and instruments’;

(6) In Article 4(2), a new point (kk) is inserted:

‘(kk) in Lithuania: institutions registered as ‘Centrinė kredito unija’ under the ‘Centrinių kredito unijų įstatymas’;’

(7) In Article 4(2), point (r) is replaced by the following:

‘(r) in Sweden: institutions registered as ‘Medlemsbank’ or as ‘Kreditmarknadsförening’ under Lag (2004:297) om bank- och finansieringsrörelse’;

(8) Articles 8 and 9 are replaced by the following:

‘Article 8

Indirect funding of capital instruments for the purposes of Article 28(1)(b), Article 52(1)(c), and Article 63(c), and of liabilities for the purpose of Article 72b(2)(c) of Regulation (EU) No 575/2013

1. Indirect funding of capital instruments under Article 28(1)(b), Article 52(1)(c) and Article 63(c), and liabilities under Article 72b(2)(c) of Regulation (EU) No 575/2013 shall be deemed funding that is not direct.
2. For the purposes of paragraph 1, direct funding shall refer to situations where an institution has granted a loan or other funding in any form to an investor that is used for the acquisition of ownership of the institution’s capital instruments or liabilities.
3. Direct funding shall also include funding granted for other purposes than acquiring ownership of the capital instruments or liabilities of an institution, to any natural or legal person who has a qualifying holding in the institution, as referred to in Article 4(1), point (36) of Regulation (EU) No 575/2013, or who is deemed to be a related party within the meaning of the definitions in paragraph 9 of International Accounting Standard 24 on Related Party Disclosures as applied in the Union in

accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council²², taking into account any additional guidance as defined by the competent authority for capital instruments, or the resolution authority in consultation with the competent authority for liabilities, if the institution is not able to demonstrate all of the following:

- (a) the transaction is realised at similar conditions as other transactions with third parties;
- (b) the natural or legal person or the related party does not have to rely on the distributions or on the sale of the capital instruments or liabilities held to support the payment of interest and the repayment of the funding.

Article 9

Applicable forms and nature of indirect funding of capital instruments for the purposes of Article 28(1)(b), Article 52(1)(c) and Article 63(c), and of liabilities for the purpose of Article 72b(2)(c) of Regulation (EU) No 575/2013

1. The applicable forms and nature of indirect funding of the acquisition of ownership of the capital instruments and liabilities of an institution shall include the following:
 - (a) funding of an investor's acquisition of ownership, at issuance or thereafter, of the capital instruments or liabilities of an institution by any entities on which the institution has a direct or indirect control or by entities included in any of the following:
 - (1) the scope of accounting or prudential consolidation of the institution;
 - (2) the scope of the consolidated balance sheet or extended aggregated calculation, where equivalent to consolidated accounts as referred to in Article 49(3)(a)(iv) of Regulation (EU) No 575/2013, that is drawn up by the institutional protection scheme or the network of institutions affiliated to a central body that are not organised as a group to which the institution belongs;
 - (3) the scope of supplementary supervision of the institution in accordance with Directive 2002/87/EC of the European Parliament and of the Council²³ on the

²² Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243, 11.9.2002, p. 1).

²³ Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate (OJ L 35, 11.2.2003, p. 1).

supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate;

- (b) funding of an investor's acquisition of ownership, at issuance or thereafter, of the capital instruments or liabilities of an institution by external entities that are protected by a guarantee or by the use of a credit derivative or are secured in some other way so that the credit risk is transferred to the institution, or to any entities on which the institution has a direct or indirect control or any entities included in any of the following:
 - (1) the scope of accounting or prudential consolidation of the institution;
 - (2) the scope of the consolidated balance sheet or extended aggregated calculation, where equivalent to consolidated accounts as referred to in Article 49(3)(a)(iv) of Regulation (EU) No 575/2013, that is drawn up by the institutional protection scheme or the network of institutions affiliated to a central body that are not organised as a group to which the institution belongs;
 - (3) the scope of supplementary supervision of the institution in accordance with Directive 2002/87/EC.
 - (c) funding of a borrower that passes the funding on to the ultimate investor for the acquisition of ownership, at issuance or thereafter, of the capital instruments or liabilities of an institution.
2. In order to be considered as indirect funding for the purposes of paragraph 1, the following conditions shall also be met, where applicable:
- (a) the investor is not included in any of the following:
 - (1) the scope of accounting or prudential consolidation of the institution;
 - (2) the scope of the consolidated balance sheet or extended aggregated calculation, where equivalent to consolidated accounts as referred to in Article 49(3)(a)(iv) of Regulation (EU) No 575/2013, that is drawn up by the institutional protection scheme or the network of institutions affiliated to a central body that are not organised as a group to which the institution belongs. For this purpose an investor is deemed to be included in the scope of the extended aggregated calculation if the relevant capital instrument or liability is subject to consolidation or extended aggregated calculation in accordance with Article 49(3)(a)(iv) of Regulation (EU) No 575/2013 in a way that the

multiple use of own funds or eligible liabilities items and any creation of own funds or eligible liabilities between members of the institutional protection scheme is eliminated. Where the permission from competent authorities referred to in Article 49(3) of Regulation (EU) No 575/2013 has not been granted, this condition shall be deemed to be met where both the entities referred to in paragraph 1(a) and the institution are members of the same institutional protection scheme and the entities deduct the funding provided for the acquisition of ownership of the capital instruments or liabilities of the institution, in accordance with points (f) to (i) of Article 36(1), points (a) to (d) of Article 56 and points (a) to (d) of Article 66, for capital instruments, and in accordance with points (a) to (d) of Article 72e of Regulation (EU) No 575/2013, for liabilities, as applicable;

(3) the scope of the supplementary supervision of the institution in accordance with Directive 2002/87/EC;

(b) the external entity is not included in any of the following:

(1) the scope of accounting or prudential consolidation of the institution;

(2) the scope of the consolidated balance sheet or extended aggregated calculation, where equivalent to consolidated accounts as referred to in Article 49(3)(a)(iv) of Regulation (EU) No 575/2013, that is drawn up by the institutional protection scheme or the network of institutions affiliated to a central body that are not organised as a group to which the institution belongs;

(3) the scope of the supplementary supervision of the institution in accordance with Directive 2002/87/EC.

3. When establishing whether the acquisition of ownership of a capital instrument or liability involves direct or indirect funding in accordance with Article 8, the amount to be considered shall be net of any individually assessed impairment allowance made.

4. In order to avoid a qualification of direct or indirect funding in accordance with Article 8 and where the loan or other form of funding or guarantees is granted to any natural or legal person who has a qualifying holding in the institution or who is deemed to be a related party as referred to in paragraph 3 of Article 8, the institution shall ensure on an on-going basis that it has not provided the loan or other form of funding or guarantees for the purpose of acquiring ownership directly or indirectly of capital instruments or liabilities of the institution. Where the loan or other form of

funding or guarantees is granted to other types of parties, the institution shall make this control on a best effort basis.

5. With regard to mutuals, cooperative societies and similar institutions, where there is an obligation under national law or the statutes of the institution for a customer to subscribe capital instruments in order to receive a loan, that loan shall not be considered as a direct or indirect funding where all of the following conditions are met:
 - (a) the amount of the subscription is considered immaterial by the competent authority;
 - (b) the purpose of the loan is not the acquisition of ownership of capital instruments or liabilities of the institution providing the loan;
 - (c) the subscription of one or more capital instruments of the institution is necessary in order for the beneficiary of the loan to become a member of the mutual, cooperative society or similar institution.’;

(9) In Article 12, paragraph 3 is replaced by the following:

‘3. The recognised gain on sale which is associated with the future margin income, shall refer, in this context, to the expected future ‘excess spread’
 Scenario 1: [...] as defined in point (b) of Article 1 of Commission Delegated Regulation (EU) No XXX/202X (RTS on Risk Retention), or
 Scenario 2: [...] defined as the finance charge collections and other fee income received in respect of the securitised exposures net of costs and expenses.’;

(10) The title of Chapter III is replaced by the following:

‘ADDITIONAL TIER 1 AND TIER 2 CAPITAL AND ELIGIBLE LIABILITIES’

(11) Article 20 is replaced by the following:

‘Article 20

Form and nature of incentives to redeem for the purposes of Articles 52(1)(g), 63(h), 72b(2)(g) and 72c(3) of Regulation (EU) No 575/2013

1. Incentives to redeem shall mean all features that provide, at the date of issuance, an expectation that the capital instrument or the liability is likely to be redeemed.
2. The incentives referred to in paragraph 1 shall include the following forms:

- (a) a call option combined with an increase in the credit spread of the instrument or the liability if the call is not exercised;
- (b) a call option combined with a requirement or an investor option to convert the instrument or the liability into a Common Equity Tier 1 instrument where the call is not exercised;
- (c) a call option combined with a change in reference rate where the credit spread over the second reference rate is greater than the initial payment rate minus the swap rate;
- (d) a call option combined with an increase of the redemption amount in the future;
- (e) a remarketing option combined with an increase in the credit spread of the instrument or the liability or a change in reference rate where the credit spread over the second reference rate is greater than the initial payment rate minus the swap rate where the instrument or the liability is not remarketed;
- (f) a marketing of the instrument or the liability in a way which suggests to investors that the instrument will be called.’;

(12) Article 25 is replaced by the following:

‘Article 25

Extent of conservatism required in estimates for calculating exposures used as an alternative to the underlying exposures for the purposes of Article 76(2) of Regulation (EU) No 575/2013

1. An estimate is sufficiently conservative when either of the following conditions is met:
 - (a) where the investment mandate of the index specifies that an own funds instrument of a financial sector entity or an eligible liabilities instrument of an institution which is part of the index cannot exceed a maximum percentage of the index, the institution uses that percentage as an estimate for the value of the holdings that is deducted from its Common Equity Tier 1, Additional Tier 1, or Tier 2 items, as applicable in accordance with paragraph 2 of Article 17 or from Common Equity Tier 1 items in situations where the institution cannot determine the precise nature of the holding, or, for an institution subject to the requirements of Article 92a of Regulation (EU) No 575/2013, its eligible liabilities items;
 - (b) where the institution is unable to determine the maximum percentage referred to in point (a) and where the index, as evidenced by its investment mandate or other relevant information, includes own funds instruments of financial sector entities or eligible liabilities instruments of institutions, the institution deducts the full amount of the index holdings from its Common Equity Tier 1, Additional Tier 1, or Tier 2

items, as applicable in accordance with paragraph 2 of Article 17 or from Common Equity Tier 1 items in situations where the institution cannot determine the precise nature of the holding or, for an institution subject to the requirements of Article 92a of Regulation (EU) No 575/2013, its eligible liabilities items.

2. For the purposes of paragraph 1, the following shall apply:

- (a) an indirect holding arising from an index holding comprises the proportion of the index invested in the Common Equity Tier 1, Additional Tier 1 and Tier 2 instruments of financial sector entities and in eligible liabilities instruments of institutions included in the index;
- (b) an index includes, but is not limited to, index funds, equity or bond indices or any other scheme where the underlying instrument is an own funds instrument issued by a financial sector entity or an eligible liabilities instrument issued by an institution.’;

(13) In Article 26, paragraph 1 is replaced by the following:

- ‘1. For the purpose of Article 76(3) of Regulation (EU) No 575/2013, operationally burdensome shall mean situations under which look-through approaches to capital instruments holdings in financial sector entities or to eligible liabilities instruments holdings in institutions on an ongoing basis are unjustified, as assessed by the competent authorities. In their assessment of the nature of operationally burdensome situations, competent authorities shall take into account the low materiality and short holding period of such positions. A holding period of short duration shall require the strong liquidity of the index to be evidenced by the institution.’;

(14) Section 2 is replaced by the following:

‘SECTION 2

PERMISSION FOR REDUCING OWN FUNDS AND ELIGIBLE LIABILITIES

Subsection 1

Supervisory permission for reducing own funds

Article 27

Meaning of sustainable for the income capacity of the institution for the purposes of point (a) of Article 78(1) and point (d) of Article 78(4) of Regulation (EU) No 575/2013

Sustainable for the income capacity of the institution under point (a) of Article 78(1) and under point (d) of Article 78(4) of Regulation (EU) No 575/2013 shall mean that the profitability of the institution, as assessed by the competent authority, continues to be

sound or does not see any negative change after the replacement of the instruments or the related share premium accounts referred to in Article 77(1) of that Regulation with own funds instruments of equal or higher quality, at that date and for the foreseeable future. The competent authority's assessment shall take into account the institution's profitability in stress situations.

Article 28

Process requirements including the limits and procedures for an application by an institution to reduce own funds pursuant to Article 77(1) of Regulation (EU) No 575/2013

1. Redemptions, reductions and repurchases of own funds instruments shall not be announced to holders of the instruments before the institution has obtained the prior permission of the competent authority.
2. Where the actions listed in Article 77(1) of Regulation (EU) No 575/2013 are expected to take place with sufficient certainty, and once the prior permission of the competent authority has been obtained, the institution shall deduct the corresponding amounts of own funds instruments to be redeemed, reduced or repurchased or the amounts of the related share premium accounts to be reduced or distributed, as applicable, from corresponding elements of its own funds before the effective redemptions, reductions, repurchases or distributions occur. Sufficient certainty is deemed to exist in particular when the institution has publicly announced its intention to redeem, reduce or repurchase an own funds instrument.
3. In the case of a general prior permission referred to in the second subparagraph of Article 78(1) of Regulation (EU) No 575/2013, the predetermined amount for which the competent authority has given its permission shall be deducted from corresponding elements of the institution's own funds from the moment the authorisation is granted.
4. When applying for a prior permission, including a general prior permission referred to in the second subparagraph of Article 78(1) of Regulation (EU) No 575/2013, for actions listed in Article 77(1) of that Regulation, institutions shall inform competent authorities where the related own funds instruments are purchased for the purposes of being passed on to employees of the institution as part of their remuneration. By way of derogation from paragraphs 2 and 3, these instruments shall be deducted from corresponding elements of the institution's own funds, for the time they are held by the institution. A deduction is no longer required, where the expenses related to any action in accordance with this paragraph are already included in own funds as a result of an interim or a year-end financial report.

5. A prior permission, other than a general prior permission referred to in the second subparagraph of Article 78(1) of Regulation (EU) No 575/2013, shall be granted by the competent authority for a specified period of time, necessary to perform any of the actions listed in Article 77(1) of that Regulation, which shall not exceed one year.
6. Paragraphs 1 to 5 shall apply at the consolidated, sub-consolidated and individual levels of application of prudential requirements, where applicable.

Article 29

Submission of application by the institution to reduce own funds pursuant to Article 77(1) of Regulation (EU) No 575/2013

1. An institution shall submit an application for prior permission, including a general prior permission referred to in the second subparagraph of Article 78(1) of Regulation (EU) No 575/2013, to the competent authority before taking any of the actions referred to in Article 77(1) of that Regulation.
2. Paragraph 1 shall apply at the consolidated, sub-consolidated and individual levels of application of prudential requirements, where applicable.

Article 30

Content of the application to be submitted by the institution for the purposes of Article 77(1) of Regulation (EU) No 575/2013

1. The application referred to in Article 29 shall be accompanied by the following information:
 - (a) a well-founded explanation of the rationale for performing any of the actions referred to in Article 77(1) of Regulation (EU) No 575/2013;
 - (b) whether the permission sought is based on point (a) or (b) of the first subparagraph of Article 78(1) of Regulation (EU) No 575/2013 or whether it is a general prior permission pursuant to the second subparagraph of Article 78(1) of that Regulation;
 - (c) where the institution seeks to call, redeem or repurchase Additional Tier 1 or Tier 2 instruments or related share premium accounts during the five years following

their date of issuance pursuant to Article 78(4) of Regulation (EU) No 575/2013, how the conditions of that article are met;

- (d) present and forward-looking information that shall cover at least a three year period, on the amounts and percentages corresponding to the following requirements for own funds and eligible liabilities:
- (i) the Common Equity Tier 1 capital requirement laid down in Article 92(1)(a) of Regulation (EU) No 575/2013, the Tier 1 capital requirement laid down in Article 92(1)(b) of that Regulation, and the own funds requirement laid down in Article 92(1)(c) of that Regulation;
 - (ii) to address risks other than the risk of excessive leverage, the additional Common Equity Tier 1 capital requirement referred to in Article 104a of Directive 2013/36/EU, where applicable; the additional Tier 1 capital requirement referred to in Article 104a of that Directive, where applicable; and the additional own funds requirement laid down in Article 104a of that Directive, where applicable;
 - (iii) the combined buffer requirement referred to in point (6) of Article 128 of Directive 2013/36/EU;
 - (iv) the leverage ratio requirement laid down in Article 92(1)(d) of Regulation (EU) No 575/2013, and if applicable any adjustment in accordance with Article 429a(7) of that Regulation;
 - (v) to address the risk of excessive leverage, the additional Common Equity Tier 1 capital requirement referred to in Article 104a of Directive 2013/36/EU, where applicable; and the additional Tier 1 capital requirement referred to in Article 104a of Directive 2013/36/EU, where applicable;
 - (vi) the Tier 1 G-SII leverage ratio buffer requirements laid down in Article 92(1a) of Regulation (EU) No 575/2013, where applicable;
 - (vii) the risk-based requirement for own funds and eligible liabilities under Articles 92a(1)(a) and 494(1)(a), or Article 92b of Regulation (EU) No 575/2013, where applicable, as well as the non-risk based requirement for own funds and eligible liabilities under Articles

92a(1)(b) and 494(1)(b), or Article 92b of that Regulation, where applicable;

(viii) the minimum requirement for own funds and eligible liabilities referred to in Article 45(1) of Directive 2014/59/EU as required in accordance with Articles 45e and 45f of that Directive, as applicable, and calculated as the amount of own funds and eligible liabilities, and expressed as percentages of the total risk exposure amount of the institution, calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, and the amount of own funds and eligible liabilities expressed as percentages of the total exposure measure of the relevant entity, calculated in accordance with Articles 429(4) and 429a of Regulation (EU) No 575/2013;

(e) present and forward-looking information on the level and composition of own funds and the level and composition of own funds and eligible liabilities held to ensure compliance, respectively, with the requirements referred to in point (d)(i) to (viii) above before and after performing any of the actions listed in Article 77(1) of Regulation (EU) No 575/2013. The information shall cover at least a three year period and, with regard to liabilities, shall include specifications of the following amounts, as applicable:

- (i) liabilities which qualify as eligible liabilities instruments pursuant to Article 72b(2) of Regulation (EU) No 575/2013;
- (ii) liabilities which the resolution authority has permitted to qualify as eligible liabilities instruments pursuant to Article 72b(3) or (4) of Regulation (EU) No 575/2013;
- (iii) liabilities which are included in the amount of own funds and eligible liabilities of resolution entities pursuant to Article 45b(1) of Directive 2014/59/EU;
- (iv) liabilities that arise from debt instruments with embedded derivatives included in the amount of own funds and eligible liabilities pursuant to Article 45(b)(2) of Directive 2014/59/EU;
- (v) liabilities issued by a subsidiary which qualify for inclusion in the consolidated eligible liabilities instruments of an institution subject to Article 92a of Regulation (EU) No 575/2013 pursuant to Article 88a of that Regulation or of a resolution entity pursuant to Article 45b(3) of Directive 2014/59/EU;

- (vi) eligible liability instruments taken into account for the purpose of complying with the requirement for own funds and eligible liabilities for institutions that are material subsidiaries of non-EU G-SIIs pursuant to Article 92b(3) of Regulation (EU) No 575/2013 and for the purpose of complying with the minimum requirement for own funds and eligible liabilities for entities that are not themselves resolution entities, pursuant to point (a) of Article 45f(2) of Directive 2014/59/EU;
 - (f) the institution's summary assessment on the impact of the action that the institution has planned to take in accordance with Article 77(1) of Regulation (EU) No 575/2013, and any such action that the institution additionally envisages to undertake within a three year period, on compliance with the requirements referred to in point (d)(i) to (viii) above;
 - (g) where the institution seeks to replace own funds instruments or the related share premium accounts pursuant to point (a) of Article 78(1) or point (d) of Article 78(4) of Regulation (EU) No 575/2013:
 - (i) information on the residual maturity of the replaced own funds instruments, if any, and the maturity of the own funds instruments replacing them;
 - (ii) the ranking in insolvency hierarchy of the replaced own funds instruments and of the own funds instruments replacing them;
 - (iii) the cost of the own funds instruments replacing the instruments or the shared premium accounts referred to in Article 77(1) of Regulation (EU) No 575/2013;
 - (iv) the planned timing of the issuance of the own funds instruments replacing the instruments or share premium accounts referred to in Article 77(1) of Regulation (EU) No 575/2013;
 - (v) the impact on the profitability of the institution pursuant to point (a) of Article 78(1) or point (d) of Article 78(4) of Regulation (EU) No 575/2013;
 - (h) an evaluation of the risks to which the institution is or might be exposed and whether the level of own funds and eligible liabilities ensures an appropriate
-

coverage of such risks, including outcomes of stress tests on main risks evidencing potential losses;

- (i) coverage in terms of own funds of the applicable guidance on the proposed level and composition of additional own funds communicated by the competent authority under Article 104b(3) of Directive 2013/36/EU before and after performing any of the actions listed in Article 77(1) of Regulation (EU) No 575/2013, covering a three year period;
 - (j) any other information considered necessary by the competent authority for evaluating the appropriateness of granting a permission in accordance with Article 78 of Regulation (EU) No 575/2013.
2. The competent authority shall waive the submission of some of the information listed in paragraph 1 where it is satisfied that this information is already available to it.
 3. Paragraphs 1 and 2 shall apply at the individual, consolidated and sub-consolidated levels of application of requirements, where applicable.

Article 30a

Additional information to be submitted with an application for a general prior permission for actions listed in Article 77(1) of Regulation (EU) No 575/2013

1. Where a general prior permission pursuant to the second subparagraph of Article 78(1) of Regulation (EU) No 575/2013 for an action under Article 77(1)(a) of that Regulation is sought, the application shall specify the amount of each relevant Common Equity Tier 1 issue subject to the request.
2. Where a general prior permission for an action under Article 77(1)(c) of Regulation (EU) No 575/2013 is sought, the institution shall specify in the application:
 - (a) the amount of each relevant outstanding issue subject to the request; and
 - (b) the total carrying amount of outstanding instruments in each relevant tier of capital.
3. An application for a general prior permission for an action under Article 77(1)(a) and (c) of Regulation (EU) 575/2013 may include own funds instruments still to be issued, subject to specification of the information referred to in points (a) and (b) of

paragraph 2, as applicable, to be provided to the competent authority following the relevant issuance.

4. Paragraphs 1 to 3 shall apply at the consolidated, sub-consolidated and individual levels of application of prudential requirements, where applicable.

Article 30b

Information to be submitted with an application for a renewal of a general prior permission for actions listed in Article 77(1) of Regulation (EU) No 575/2013

1. Before the expiry of a general prior permission granted pursuant to the second subparagraph of Article 78(1) of Regulation (EU) No 575/2013, an institution may submit an application for its renewal for a period of up to one additional year each time, provided that the institution does not request an increase in the predetermined amount set when the general prior permission was granted and does not change the rationale as referred to in point (a) of Article 30(1) when the general prior permission was initially requested.
2. When applying for the renewal of a general prior permission referred to in paragraph 1, the institution shall be exempted from the obligation to provide the information referred to in points (a) to (d), (f), (g) and (i) of Article 30(1).

Article 31

Timing of the application to be submitted by the institution and processing of the application by the competent authority for the purposes of Article 77(1) of Regulation (EU) No 575/2013

1. For a prior permission, other than a general prior permission referred to in the second subparagraph of Article 78(1) of Regulation (EU) No 575/2013, the institution shall transmit a complete application and the information referred to in Article 30 to the competent authority at least four months before the date when one of the actions listed in Article 77(1) of Regulation (EU) No 575/2013 will be announced to the holders of the instruments.
2. For a general prior permission referred to in the second subparagraph of Article 78(1) of Regulation (EU) No 575/2013, the institution shall transmit a complete application and the information referred to in Articles 30 and 30a to the competent authority at least four months before the date when any of the actions listed in Article 77(1) of Regulation (EU) No 575/2013 will be carried out.

3. By way of derogation from paragraph 2, where a renewal of a general prior permission pursuant to the second subparagraph of Article 78(1) of Regulation (EU) No 575/2013 and Article 30b is sought, the institution shall transmit the application and the information required under Articles 30, 30a and 30b to the competent authority at least three months before the expiration of the period for which the general prior permission was granted.
4. Competent authorities may allow institutions on a case- by-case basis and under exceptional circumstances to transmit the application referred to in paragraphs 1 to 3 within a time frame shorter than the periods set out in those paragraphs.
5. The competent authority shall process an application during either the period of time referred to in paragraphs 1 to 3 or during the period of time referred to in paragraph 4. Competent authorities shall take into account new information, where any is available and where they consider this information to be material, received during this period. The competent authorities shall begin processing the application only when they are satisfied that all the information required under Article 30 and, where applicable, Articles 30a and 30b, has been received from the institution.

Article 32

Applications for redemptions, reductions and repurchases by mutuals, cooperative societies, savings institutions or similar institutions for the purposes of Article 77(1) of Regulation (EU) No 575/2013

1. With regard to the redemption of Common Equity Tier 1 instruments of mutuals, cooperative societies, savings institutions or similar institutions, the application referred to in Article 29(1) and (2) and the information referred to in Article 30(1) shall be submitted to the competent authority with the same frequency as that used by the competent body of the institution to examine redemptions.
2. Competent authorities may give their permission in advance to an action listed in Article 77(1) of Regulation (EU) No 575/2013 for a certain predetermined amount to be redeemed, net of the amount of the subscription of new paid in Common Equity Tier 1 instruments during a period up to one year. That predetermined amount may go up to 2 % of Common Equity Tier 1 capital, if they are satisfied that this action will not pose a danger to the current of future solvency situation of the institution.

Subsection 2

Permission for reducing eligible liabilities instruments

Article 32a

Meaning of sustainable for the income capacity of the institution for the purposes of point (a) of Article 78a(1) of Regulation (EU) No 575/2013

Sustainable for the income capacity of the institution under point (a) of Article 78a(1) of Regulation (EU) No 575/2013 shall mean that the profitability of the institution, as assessed by the resolution authority, continues to be sound or does not see any negative change after the replacement of the eligible liability instruments with own funds or eligible liabilities instruments of equal or higher quality, at that date and for the foreseeable future. The resolution authority's assessment shall take into account the institution's profitability in stress situations.

Article 32b

Process requirements including the limits and procedures for an application by an institution to reduce eligible liabilities instruments pursuant to Article 77(2) of Regulation (EU) No 575/2013

1. Calls, redemptions, repayments and repurchases of eligible liabilities instruments shall not be announced to holders of the instruments before the institution has obtained the prior permission of the resolution authority.
2. 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 is deemed to exist in particular when the institution has publicly announced its intention to call, redeem, repay or repurchase an eligible liability instrument.
3. In the case of a general prior permission referred to in the second subparagraph of Article 78a(1) of Regulation (EU) No 575/2013, the predetermined amount for which the resolution authority has given its permission shall be deducted from the institution's eligible liabilities instruments from the moment the authorisation is granted.

4. A prior permission, other than a general prior permission referred to in the second subparagraph of Article 78a(1) of Regulation (EU) No 575/2013, shall be granted by the resolution authority for a specified period of time, necessary to perform any of the actions listed in Article 77(2) of that Regulation, which shall not exceed one year.
5. Where a general prior permission under the second subparagraph of Article 78a(1) of Regulation (EU) No 575/2013 is sought, the predetermined amount for which the general prior permission is granted shall not exceed 10% of the total amount of outstanding eligible liabilities instruments.
6. Paragraphs 1 to 5 shall apply at the consolidated, sub-consolidated and individual levels of application of requirements for own funds and eligible liabilities, where applicable.

Article 32c

Submission of application by the institution to reduce eligible liabilities instruments pursuant to Article 77(2) of Regulation (EU) No 575/2013

1. An institution shall submit an application for prior permission, including a general prior permission referred to in the second subparagraph of Article 78a(1) of Regulation (EU) No 575/2013, to the resolution authority before taking an action referred to in Article 77(2) of that Regulation.
2. Paragraph 1 shall apply at the individual, consolidated and sub-consolidated levels of application of requirements for own funds and eligible liabilities, where applicable.

Article 32d

Content of the application to be submitted by the institution for the purposes of Article 77(2) of Regulation (EU) No 575/2013

1. The application referred to in Article 32c shall be accompanied by the following information:
 - (a) a well-founded explanation of the rationale for performing any of the actions referred to in Article 77(2) of Regulation (EU) No 575/2013;
 - (b) whether the permission sought is based on Article 78a(1)(a), (b) or (c) of Regulation (EU) No 575/2013, or on the second subparagraph of Article 78a(1) of that Regulation;

- (c) present and forward-looking information that shall cover at least a three year period, on the following requirements for own funds and eligible liabilities:
- (i) the risk-based requirement for own funds and eligible liabilities under Articles 92a(1)(a) and 494(1)(a), or Article 92b of Regulation (EU) No 575/2013, where applicable, as well as the non-risk based requirement for own funds and eligible liabilities under Articles 92a(1)(b) and 494(1)(b), or Article 92b of that Regulation, where applicable;
 - (ii) the minimum requirement for own funds and eligible liabilities laid down in Article 45 of Directive 2014/59/EU calculated in accordance with Article 45e and 45f of that Directive, as applicable, of that Directive as the amount of own funds and eligible liabilities expressed as percentages of the total risk exposure amount of the relevant entity, calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, and the amount of own funds and eligible liabilities expressed as percentages of the total exposure measure of the relevant entity, calculated in accordance with Articles 429(4) and 429a of Regulation (EU) No 575/2013;
 - (iii) the combined buffer requirement referred to in point (6) of Article 128 of Directive 2013/36/EU;
- (d) present and forward-looking information on the level and composition of own funds and eligible liabilities held to ensure compliance, respectively, with the requirements referred to in point (c)(i) to (iii) above, before and after performing the action in Article 77(2) of Regulation (EU) No 575/2013. The information shall cover at least a three year period and with regard to eligible liabilities, shall include specifications of the following amounts, as applicable:
- (i) liabilities which qualify as eligible liabilities instruments pursuant to Article 72b(2) of Regulation (EU) No 575/2013;
 - (ii) liabilities which the resolution authority has permitted to qualify as eligible liabilities instruments pursuant to Article 72b(3) or (4) of Regulation (EU) No 575/2013;
 - (iii) liabilities which are included in the amount of own funds and eligible liabilities of resolution entities pursuant to Article 45b(1) of Directive 2014/59/EU;

- (iv) liabilities that arise from debt instruments with embedded derivatives included in the amount of own funds and eligible liabilities pursuant to Article 45(b)(2) of Directive 2014/59/EU;
 - (v) liabilities issued by a subsidiary which qualify for inclusion in the consolidated eligible liabilities instruments of an institution subject to Article 92a of Regulation (EU) No 575/2013 pursuant to Article 88a of that Regulation or of a resolution entity pursuant to Article 45b(3) of Directive 2014/59/EU;
 - (vi) eligible liability instruments taken into account for the purpose of complying with the requirement for own funds and eligible liabilities for institutions that are material subsidiaries of non-EU G-SIIs pursuant to Article 92b(3) of Regulation (EU) No 575/2013 and for the purpose of complying with the minimum requirement for own funds and eligible liabilities for entities that are not themselves resolution entities, pursuant to point (a) of Article 45f(2) of Directive 2014/59/EU;
- (e) the institution's summary assessment on the impact of the action that the institution has planned to take in accordance with Article 77(2) of Regulation (EU) No 575/2013, and any such action that the institution additionally envisages to undertake within a three year period, on compliance with the requirements referred to in point (c)(i) to (iii) above;
- (f) where the institution seeks to replace eligible liabilities instruments pursuant to Article 78a(1)(a) Regulation (EU) No 575/2013:
- (i) information on the residual maturity of the replaced eligible liabilities instruments and the maturity of the own funds or eligible liabilities instruments replacing them;
 - (ii) the ranking in insolvency of the replaced eligible liabilities instruments and of the own funds or eligible liabilities instruments replacing them;
 - (iii) the cost of the own funds or eligible liabilities instruments replacing the eligible liabilities instruments;
 - (iv) the planned timing of the issuance of the own funds or eligible liabilities instruments replacing the eligible liabilities instrument referred to in Article 77(2) of Regulation (EU) No 575/2013;

- (v) the impact on the profitability of the institution pursuant to point (a) of Article 78a(1) of Regulation (EU) No 575/2013;
 - (g) an evaluation of the risks to which the institution is or might be exposed, in particular whether the level of own funds and eligible liabilities ensures an appropriate coverage of such risks, including outcomes of stress tests on main risks evidencing potential losses;
 - (h) where Article 78a(1)(c) of Regulation (EU) No 575/2013 applies, demonstration that the partial or full replacement of the eligible liabilities instruments with own funds instruments is necessary to ensure compliance with the own funds requirements;
 - (i) any other information considered necessary by the resolution authority for evaluating the appropriateness of granting a permission in accordance with Article 78a of Regulation (EU) No 575/2013.
2. The resolution authority shall waive the submission of some of the information listed in paragraph 1 where it is satisfied that this information is already available to it.
 3. Paragraphs 1 and 2 shall apply at the individual, consolidated and sub-consolidated levels of application of requirements for own funds and eligible liabilities, where applicable.

Article 32e

Additional information to be submitted with the application for a general prior permission for actions listed in Article 77(2) of Regulation (EU) No 575/2013

1. Where a general prior permission pursuant to the second subparagraph of Article 78a(1) of Regulation (EU) No 575/2013 for an action under Article 77(2) of that Regulation is sought, the institution shall specify in the application the total amount of outstanding eligible liabilities instruments, including the total amount of outstanding eligible liabilities instruments that meet the conditions of Article 88a of Regulation (EU) No 575/2013 or Article 45b(3) of Directive 2014/59/EU.
2. An application for a general prior permission for an action under Article 77(2) of Regulation (EU) No 575/2013 may include eligible liabilities instruments still to be issued, subject to specification of the final amount referred to in paragraph 1, to be provided to the resolution authority following the relevant issuance.

Article 32f

Information to be submitted with an application for a renewal of a general prior permission for actions listed in Article 77(2) of Regulation (EU) No 575/2013

1. Before the expiry of a general prior permission granted pursuant to the second subparagraph of Article 78a(1) of Regulation (EU) No 575/2013, an institution may submit an application for its renewal for a period of up to one additional year each time, provided that the institution does not request an increase in the predetermined amount set when the general prior permission was granted and does not change the rationale communicated referred to in point (a) of Article 32d(1) when the general prior permission was initially requested.
2. When applying for the renewal of a general prior permission referred to in paragraph 1, the institution shall be exempted from the obligation to provide the information referred to in points (a) to (c), (e), (f) and (h) of Article 32d(1).

Article 32g

Timing of the application to be submitted by the institution and processing of the application by the resolution authority for the purposes of Article 77(2) of Regulation (EU) No 575/2013

1. For a prior permission, other than a general prior permission referred to in the second subparagraph of Article 78a(1) of Regulation (EU) No 575/2013, the institution shall transmit a complete application and the information referred to in Article 32d to the resolution authority at least four months before the date when one of the actions listed in Article 77(2) of Regulation (EU) No 575/2013 will be announced to the holders of the instruments.
2. For a general prior permission referred to in the second subparagraph of Article 78a(1) of Regulation (EU) No 575/2013, the institution shall transmit a complete application and the information referred to in Articles 32d and 32e to the resolution authority at least four months before the date when one of the actions listed in Article 77(2) of Regulation (EU) No 575/2013 will be carried out.
3. By way of derogation from paragraph 2, where a renewal of a general prior permission pursuant to the second subparagraph of Article 78a(1) of Regulation (EU) No 575/2013 and Article 32f is sought, the institution shall transmit a complete application and the information required under Articles 32d, 32e and 32f to the

resolution authority at least three months before the expiration of the period for which the general prior permission was granted.

4. Resolution authorities may allow institutions on a case-by-case basis and under exceptional circumstances to transmit the application referred to in paragraphs 1 to 3 within a time frame shorter than the periods set out in those paragraphs.
5. The resolution authority shall process an application during either the period of time referred to in paragraphs 1 to 3 or during the period of time referred to in paragraph 4. Resolution authorities shall take into account new information, where any is available and where they consider this information to be material, received during this period. The resolution authorities shall begin processing the application only when they are satisfied that all the information required under Article 32d and, where applicable, Articles 32e and 32f has been received from the institution.

Article 32h

Simplified requirements for institutions for which the resolution authority has set the minimum requirement for own funds and eligible liabilities laid down in Article 45(1) of Directive 2014/59/EU at a level that does not exceed an amount sufficient to absorb losses

1. By way of derogation from Articles 32c, 32d, 32e, 32f and 32g, for an institution for which the resolution authority has set the minimum requirement for own funds and eligible liabilities laid down in Article 45(1) of Directive 2014/59/EU at a level that does not exceed an amount sufficient to absorb losses in accordance with point (a) of the first subparagraph of Article 45c(2) of that Directive, the resolution authority may grant a general prior permission referred to in the second subparagraph of Article 78a(1) of Regulation (EU) No 575/2013 based on the information available to it for the purposes of drawing up the resolution plan which shall be deemed as a complete application for a general prior permission, and provided that the institution has not submitted a request to be exempted from such a permission.
2. The general prior permission granted in accordance with paragraph 1 shall not be subject to the limit set out in Article 32b(5), and shall be renewed automatically for the same period and the same predetermined amount for which the permission was granted, subject to both the following conditions:
 - (a) the minimum requirement for own funds and eligible liabilities laid down in Article 45(1) of Directive 2014/59/EU applicable to the institution continues to be set at a level that does not exceed an amount sufficient to absorb losses in

accordance with point (a) of the first subparagraph of Article 45c(2) of that Directive;

(b) the institution has not applied for a withdrawal.

3. This article shall apply at the individual, consolidated and sub-consolidated levels of application of requirements for own funds and eligible liabilities, where applicable.

Article 32i

Process of cooperation between the competent authority and the resolution authority when granting the permission referred to in Article 78a of Regulation (EU) No 575/2013

1. Where a complete application for prior permission, including a general prior permission, is submitted by an institution, the resolution authority shall promptly transmit that application to the competent authority, including the information referred to in Article 32d and, where applicable, Article 32e, or Article 32f or Article 32h.
2. At the same time of the transmission of the information referred to in paragraph 1, the resolution authority shall make a request for consultation to the competent authority on the application received, which shall include the reciprocal exchange of any other relevant information for the assessment of the application by the resolution or competent authority.
3. The competent authority and the resolution authority shall agree on an adequate time limit for providing a response to the consultation referred to in paragraph 2, which shall not exceed three months from the moment of receipt of the request for consultation, and that shall be reduced to two months where the consultation concerns the renewal of a general prior permission pursuant to Article 32f or a general prior permission pursuant to Article 32h. The resolution authority shall consider the views received from the competent authority before taking a decision on the permission.
4. Where the agreement of the competent authority is required in accordance with point (b) of Article 78a(1) of Regulation (EU) No 575/2013, the resolution authority shall communicate to the competent authority, within two months from the request for consultation referred to in paragraph 2, or within one month where the consultation concerns the renewal of a general prior permission pursuant to Article 32f or a general prior permission pursuant to Article 32h, the proposed margin by which, following the action referred to in Article 77(2) of that Regulation, the resolution

authority considers necessary that the own funds and eligible liabilities of the institution must exceed its requirements.

5. Within three weeks or, where the consultation concerns the renewal of a general prior permission pursuant to Article 32f or a general prior permission pursuant to Article 32h, within two weeks, after receiving the communication referred to in paragraph 4, the competent authority shall transmit its written agreement to the resolution authority. In the event that the competent authority disagrees or partially disagrees with the resolution authority, it shall inform the resolution authority within that period, stating its reasons.
 6. By way of derogation from paragraph 3, where the agreement of the competent authority is required in accordance with point (b) of Article 78a(1) of Regulation (EU) No 575/2013, the competent authority shall provide a response to the consultation referred to in paragraph 2 at the same time as the transmission of its written agreement to the resolution authority referred to in paragraph 5.
 7. By way of derogation from paragraphs 3 to 6, where the maximum time period for processing the application referred to in paragraph 1 is shorter than four months in accordance with Article 32g(3) or (4), the periods of time referred to in paragraphs 3 to 5 shall be agreed between the resolution authority and the competent authority taking into account the relevant maximum time period.
 8. The resolution authority and the competent authority shall endeavour to reach the agreement referred to in paragraph 5 in order to ensure that the application referred to in paragraph 1 is processed in any event within the period of time referred to in paragraphs 1, 2, 3 or 4 of Article 32g.
 9. The resolution authority shall communicate to the competent authority without undue delay the decision taken on the permission. The resolution authority shall also inform the competent authority in case of withdrawal of the general prior permission where an institution breaches any of the criteria provided for the purposes of that permission.
- (15) In Chapter IV, Section 3 is amended as follows:
- (a) the title of Section 3 is replaced by the following:
‘Temporary waiver from deduction from own funds and eligible liabilities’;
 - (b) the title of Article 33 is replaced by the following:

‘Temporary waiver from deduction from own funds and eligible liabilities for the purposes of Article 79(1) of Regulation (EU) No 575/2013’;

(c) in Article 33, paragraphs 2 and 3 are replaced by the following:

‘2. The waiver shall apply only in relation to new holdings of own funds instruments in a financial sector entity or eligible liabilities instruments in an institution subject to the financial assistance operation.

3. For the purposes of providing a temporary waiver for deduction from own funds and eligible liabilities, as applicable, a competent authority may deem the holdings referred to in Article 79(1) of Regulation (EU) No 575/2013 to be held for the purposes of a financial assistance operation designed to reorganise and save a financial sector entity or institution where the operation is carried out under a plan and approved by the competent authority, and where the plan clearly states phases, timing and objectives and specifies the interaction between the holdings and the financial assistance operation.’.

Article 2

Entry into force

This Regulation shall enter into force on the day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission

The President

On behalf of the President
[Position]