TO: European Banking Authority

Brussels, 31 August 2020

[EBF_042270]

SUBJECT: EBF response to the EBA Consultation Paper on Draft Regulatory Technical Standards on own funds and eligible liabilities

The European Banking Federation (EBF) welcomes the opportunity to express the views of the European banking industry on the public consultation on the draft Regulatory Technical Standards (RTS) on own funds and eligible liabilities. In this context, we herewith provide you with our general remarks and responses to the questions listed in the Consultation Paper (CP). We appreciate your consideration about our comments and remain at your disposal for further clarifications in the matter.

GENERAL REMARKS

Insufficient account taken of the different circumstances in which eligible liabilities may be called, redeemed, repaid or repurchased

EBF members feel that the draft RTS is insufficiently sensitive to the differences between own funds and eligible liabilities (see following point) and to the different circumstances in which eligible liabilities may be called, redeemed, repaid or repurchased.

We can see 4 different circumstances which can arise, and each should receive different treatment, so that they can be logically aligned in their impacts:

1) Market-making of public benchmark issuances:
These issuances can be quite actively traded in the secondary market, they are large, fungible, and have a wide investor base (100+ holders). It is important to issuers of such debt that there is an active secondary market in their bonds in order to ensure investors liquidity and maintain their appetite for future issuances. Bonds repurchased will generally be sold on to a new investor. This market-making has no impact on the overall level of MREL, except for any inventory unsold at the close of the day. This activity would be well covered by prior general permission up to a maximum inventory level, with deduction of inventory from eligible liabilities.

2) Market-making on privately-placed eligible liabilities:
Although marginal as compared to market-making on public issuances, it can occur that an investor may request the issuer to offer a price for repurchase. In these cases, it is in the issuer's long-term interest to be able to satisfy the investor's requests. In general, such repurchased papers will tend to be cancelled. This activity could be covered by the general prior permission. Deductions would take place as soon as any paper has been repurchased, because until a purchase has taken place, there is not sufficient certainty (indeed no certainty at all) that the repurchase will occur.

3) Exercise of calls and liability management exercises:
These events can concern significantly larger amounts of outstanding instruments than the two previous categories, and, unlike the two previous categories, are organized in advance. They can either be dealt with through ad hoc permissions, or through a general prior permission. The advantage of a general prior permission is to alleviate the administrative burden on both institutions and authorities, but this can only be effective if the deduction regime allows clearly for deductions to take place exclusively after the public announcement of the call or LME. If this is not the case, institutions will simply ask for regular ad hoc permissions.
EBA should bear in mind that the number of occurrences of calls or Liability Management Exercises will be greatly superior concerning eligible liabilities than in the case of Own Funds, for the reasons explained in the section below ('no mandatory treatment').

4) The particular case of calls one year before contractual maturity:
The presence of an issuer call one year before contractual maturity is an increasingly common feature of eligible liabilities. This can be of interest to both investors and issuers. The advantage for investors is that the deal pays a higher coupon because of the option given to the issuer. The advantage for the issuer is that the deal would no longer be MREL eligible in its last year, but would still create significant undue funding costs. It is therefore in their interest to remove it from the market, thus reducing funding costs (in a context where banks profitability is a clear concern for supervisory authorities) and, above all, creating space in investors credit limits for a new, longer, MREL qualifying issuance.
In the case of deals with a call 12 months before maturity, there is no value in a permission process, be it general prior permission or ad hoc permission. Whatever the decision, the MREL ratio is going to decline, either because the bond is called, or because it is not called, but falls below the 12 months maturity. There can be a counter-argument to say that bail-inable liabilities decrease, but this is beside the point: there is no ratio required for bail-inable liabilities, and resolution authorities do not yet take into account bail-inable liabilities in MREL decisions.
We would suggest that calls one year before contractual maturity receive specific treatment, consisting of an automatic permission and no application of any deduction, as they will cease, in any circumstance, to be MREL eligible.

No mandatory equal treatment of different classes of instruments

We do not consider necessary to design identical permission requirements for eligible liabilities and for own funds. In our view, eligible liabilities and own funds are not comparable since the consequences of failure to comply with quota are different: a failure to comply with MREL requirements may have an impact on resolution capability, while a failure to comply with own funds requirement would have more serious and direct consequences for the institution and thus for the financial market. Own funds and eligible liabilities also differ regarding the number of issuances, their use for liquidity management, maturity and the kind of investor. These aspects must be considered by the EBA when developing the permission requirements.

In particular, own funds must have a minimum maturity of five years, or are even perpetual. In comparison, eligible liabilities have significantly shorter maturity and, consequently, shorter roll-over periods and totally different ratios of the amount of annual maturities to redemptions. The reason for this is that eligible liabilities serve for the fulfillment of MREL requirements but also for funding and liquidity management. Especially for the latter, institutions need more flexibility than for own funds instruments.

Also, the investor expects the issuer to have a greater flexibility to meet a request for early repayment – even if this is never a contractual obligation. Against this background we do not consider it appropriate to implement identical permission requirements to all classes of instruments. For example, an issuance of AT1 instruments is completely different from an issuance of a senior preferred or non-preferred instrument. These differences are not sufficiently taken into account in the draft RTS. In our view, greater degrees of flexibility are required for eligible liabilities than for own funds, because of the more frequent occurrence of repurchases, calls and contractual maturities. In the case of senior preferred issuances, we believe that these instruments should be completely excluded from the permission requirement and the deduction requirement, when they are not used to satisfy either MREL or TLAC requirements.

To conclude, we signal that Article 78a (3) CRR2 requires the requirements within the delegated act to be aligned with the applicable provisions to own funds instruments just for the definition of "sustainable for the income capacity of the institution" (Article 78a (3) letter d CRR2). Since only this individual provision was explicitly emphasised, we assume the legislator certainly sees scope for different rules.

Effects on market making activities

To ensure a smooth functioning of the market for own funds and TLAC/MREL instruments, it is essential that banks provide a secondary market for their own instruments after issuance to meet investors' needs. The regulatory rule should not introduce rigidity and banks should not be required to deduct the whole authorized amount from the moment at which the authorization is granted. This framework highly hampers the ability to conduct market making activities, when they are not proprietary trading, but rather they are needed to fulfil client's needs (which is something very hard to estimate in advance). In practice, the position on own equity or bonds derived from these activities does not depend on the will of the entity, but on its clients' needs and market's developments.

It should be borne in mind that banks have no formal commitment to maintain market making or to accept early redemption. In business as usual mode, any repurchase or inventory will be offset by new issuances. Should new issuances be deemed less probable, a bank is free to stop or reduce its market making and early redemption activities. As such, only the actual portion of the instruments being bought should be netted out of outstanding debt issuance.

Additionally, prolonging the submission period to four months would effectively result in institutions becoming required to plan such activities four months in advance, executing these from the moment of authorisation. The length of the period would not necessarily match the reality of the market, and could thus reduce aftermarket liquidity, which in turn would affect the attractiveness of the instruments from an investor perspective. In this sense, both the prior general permission and the deduction scheme could severely hamper this activity and ultimately have negative effects on the resolvability of institutions. Any such drawbacks should for these reasons be carefully avoided: a four-month submission period, untested in practice, would be incompatible with this objective.

No permission requirement for legacy instruments

We do not agree with the inclusion of legacy instruments. With the entry into force of the final RTS, legacy instruments will be subject to a permission requirement and confront the institutions with costly ad hoc adjustments to their processes, taking into account the limitation of 3% repurchase volume.

Need for De minimis limit / notification procedure

Overall, we consider the process on the permission to reduce eligible liabilities to be disproportionately costly, for both banks and supervisory/resolution authorities. As far as we know, the prior permission requested by banks for market making activities in own funds instruments represents only a very small percentage of total own funds, and the same applies to eligible liabilities. Given the shorter duration of these instruments, the risk of non-compliance with the required MREL ratios lies more in inadequate planning/implementation of funding activities, liquidity management or general market disruption rather than in repurchase or other redemption activities. In view of annual maturities amounting to a conservative estimation of approximately 20% of the total amount of eligible liabilities, the repurchases applied for are of minor importance. Therefore, we would welcome a process which allows institutions that exceed the MREL requirements to waive prior permission within de minimis limits and instead implement a subsequent notification procedure. We believe that the supervisory monitoring process would thus be both practicable for all parties involved and, given the low level of de minimis limits in relation to the minimum requirements, sufficiently conservative and prudent.

Inclusion of transitional provisions

Taking into account the four-month application period, transitional provisions should be included in the draft RTS or, in general, the entry into force should not take place before 2022.

Proportionality in terms of timing

Sending the application 4 months before the envisaged transaction seems excessive, in particular for simple approvals like renewal of general prior permissions. That is why we consider that for renewals of previously authorized operations, there should be a reduction in the notice period. Moreover, for operations were there is going to be a replacement of own funds or eligible liabilities, we believe the process should be streamlined.

Deduction of own funds and eligible liabilities

The introduction of the notion of the General Prior Permission seems to introduce a different regime from the ad-hoc authorizations in terms of mandatory deductions of the items to be redeemed/repurchased. The General Prior Permission requires that entities deduct the whole authorized amount since the moment the authorization is granted. This seriously limits the potential use that can be done of the new framework which, in practice, will only be used for small amounts.

Moreover, for ad-hoc authorization, the RTS establishes the notion of "sufficient certainty" as the time when the entity has received authorization and there has been a public announcement of the redemption. This framework also poses challenges, as in practice, entities are being obliged to deduct from the moment of the authorization and not from the moment where there is sufficient certainty (which in our view would be the moment when the transaction is publicly announced). We would welcome further clarification by the EBA in the matter.

Reporting on the use of the general prior permission

Reporting on the use of general prior permission should be limited to regular quarterly reporting as implemented by the SRB. Any more detailed reporting is of no added value and simply increases the administrative and reporting burden on banks. This should be made clear in the RTS.

Subsequent adjustment of Article 14 of the RTS due to amendments of software deduction

Due to the amendments of Art. 36(1)(b) CRR, in combination with Art. 36(4) CRR, regarding the reduced deduction of software, clarification on Art. 14(3) b) of the RTS on own Funds is needed. We ask for the following supplement:

"b) the amount of associated deferred tax liabilities **according to article 37 CRR** arising from **deducted** intangible assets and from defined benefit pension fund assets."

Repayment at contractual maturity - CLARIFICATION

In the EBA CP on page 8 under (3), it is said that "With CRR2, Article 77(2) extends to eligible liabilities the obligation to obtain permission before calling, redeeming, repaying or repurchasing instrument." A similar text could be found on page 15 under (9).

Article 77(2) states that "An institution shall obtain the prior permission of the resolution authority to effect a call, redemption, repayment or repurchase of eligible liabilities instruments that are not covered by paragraph 1, *prior to the date of their contractual maturity*."

For clarity reasons the part "prior to the date of their contractual maturity" should be added to the EBA draft RTS in the above-mentioned sentences.

There must be no doubt that a bank is allowed to 'repay' eligible liabilities instruments at their contractual maturity dates without a prior permission.

Exception for institutions suitable for insolvency

The EBA plans to extend the permission requirement to reduce eligible liabilities to all institutions, in contrast to the current practice of the SRB and national resolution authorities.

The extension is extremely problematic, as it would also make institutions which would be liquidated under normal insolvency proceedings (institutions suitable for insolvency) subject to the permission requirement.

These institutions are not subject to any MREL requirements above the capital requirements and therefore do not have to hold any eligible liabilities. Hence, SRB and national resolution authorities have exempted institutions suitable for insolvency from the permission requirement.

COMMENTS TO THE QUESTIONS LISTED IN THE CONSULTATION PAPER

Q3. 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?

The permission regime would limit banks' freedom to choose their refinancing if certain instruments (eligible deposits, preferred senior) became subject to it.

Q4. 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?

Article 8/Article 9 RTS: even if the banking industry is aware of the mandate the EBA is subject to, we would welcome, when implementing it, a higher degree of consideration of the structural differences between eligible liabilities and own funds instruments, in

particular in terms of number of issuances, but also in terms of investors and denomination. More specifically, we consider the regulations affecting the bank's customers as particularly problematic. It is difficult to explain to the customer that the bonds of third institutions (with corresponding default risks) are eligible as collateral for securities loans, but not the banks' own bonds. We consider it necessary to exempt from the direct financing rules such situations where the focus is on customer's investment (and not the bank's financing). At the very least, a de minimis rule should be introduced for such circumstances, according to which exchange-traded bonds held by customers who have received a securities loan at the same time, up to an amount of e.g. EUR 500,000 per customer, should not be regarded as direct financing.

Q6. Do you consider that the general prior permission as per the 2nd subparagraph 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 one-year timeframe)?

From the explanatory box for consultation purposes on Article 28 we understand that, concerning remuneration, the EBA did not want to change the content of the current RTS (Article 29 (4)). On p.31, the EBA accordingly states "(…) have only been moved here from the former Article 29(4) in order to bundle provisions related to deductions in Article 28". In particular, the proposed new RTS still says "deduct these instruments from own funds on a corresponding deduction approach for the time they are held" (Article 28(4)). However, since the proposed new Article 28(4) combines the remuneration topic with "When applying for a general prior permission (…)" (beginning of the first sentence of the proposed new Article 28(4)), it becomes confusing. For a general prior permission, the proposed Article 28(3) clearly specifies that the approved amount has to be deducted once the permission has been obtained. For the remuneration case the proposed new Article 28(4) leads to the impression that the instruments held for this purpose have to be deducted in addition to the general deduction of the predetermined amount for the general prior permission, and that the remuneration buybacks also have to be included in and monitored against the limit of the predetermined amount of the general prior permission. Therefore, we invite the EBA to clarify that for the remuneration topic (currently under Article 29(4)), under which only the instruments actually held need to be deducted, does not change.

Finally, please note that it is possible that employees receive an award of e.g. a number of shares, and not of an EUR-amount as share-equivalent, in order to participate in risks and chances of the bank. As a consequence, the bank has a delivery obligation of a certain number of shares, and hence a purchase requirement in this number of shares. Therefore, in these cases, it would be preferable that permission for share buybacks with respect to remuneration could continue to be approved for a maximum number of shares instead of an EUR-amount. This would avoid seeking approval of an uncertain projection relying on a future share price assumption.

Q7. 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.

Yes, we agree with the proposed rationale.

Q8. 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.

Article 30: we consider the information required to be too extensive. Supervisory and resolution authorities already have a large amount of the requested information on the existing COREP or MREL reporting. We invite the EBA to consider the excessive burden banks will be subject to, also because the validity of the granted prior permission is limited to one year, meaning that the requested information must be submitted on an annual basis. The repeated provision of this data would be an obvious case of double collection of existing information.

It seems to us that the wording of Article 30(1)(e) - Article 30a(2)(a) and 30a(3) RTS, could be interpreted as meaning that prior permission would no longer be granted for a single liability class; instead, all the issuances concerned would have to be listed individually in the application and the authority must be informed at each issuance if this is likely to be repurchased within the envelope.
This does not fit with secondary activities. As a general principle, all issuances need a liquid market and are included in the prior permission scope.
At the present time, ECB does not request banks to disclose the details of capital instruments held at quarter end, and this should remain the rule.
Additionally, it is simply the total amount of repurchased instruments that impacts the capital/MREL/TLAC position of the bank, and not which specific issuances are repurchased. Hence, we ask for the possibility of requesting prior permission for an entire capital class be retained; it should be clear in the RTS that the competent authority shall grant institutions permission to reduce instruments up to a certain amount corresponding to a specific proportion of its total own funds and eligible liabilities instruments, instead of controlling deductions of specific individual instruments.

Article 30(1)(g) specifies the required information of the replacement instrument when institutions seek permission under Article 78(1)(a), such as the maturity and cost of the replacing instrument. However, this information can be provided only when the replacement instrument has already been issued at the time of the submission of the application. For planned issuances, especially as the application may be sent several months before a planned issuance, only estimates of such detailed information will be available. E.g. both the cost and to some extent also the choice of maturity will depend on market conditions at the time of issuance.

Referring to Art. 28 (2) RTS, we believe that "sufficient certainty" exists only where the redemption is publicly announced. In this regard, we point out that there are situations where a prior permission of the competent authority has been obtained but it is still uncertain whether the institution will exercise the permission or not. In the cases where a quarterly report is published in-between, a deduction of the own funds instrument would lead to misleading information on the capital situation, and infringe the market rules (because investor will infer that the redemption will happen before it is announced publicly). In our opinion, the capital deduction should occur only when, along with the prior permission of the competent authority, a sufficient degree of certainty is deemed to exist (i.e. a public announcement has been made).

Finally, we would welcome also if the re-submission of the multiannual planning were to be waived when the application is submitted. Alternatively, if a resubmission is necessary, it must be made clear in the RTS that this is the bank's multi-year planning, which is updated annually, and that no update to the time of application is necessary.

Q9. 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.

In general, we consider a four-month submission period to be disproportionately long for a permission with a validity of one year.
The three-month period has proven to be workable for own funds so far and we see no reason to increase it. Data can be shared with the resolution authority at inception to avoid extending the examination timeline.

In detail, the three-months period would be a better choice especially for individual permissions since, in case the four-months deadline were to be adopted, a so wide period would make the actual management of early redemptions and LMEs very difficult: in such a wide time period market conditions can vary, considerably changing the rationale of the actions to be performed.
Additionally, we signal that institutions generally prefer to pre-finance an upcoming call of an instrument to be able to ensure a sufficient level of capital is maintained also after the call. Extending the deadline by one month would therefore in practice mean that institutions would need to issue one month earlier, which in turn would imply one additional month of double instrument cost to maintain a certain level of capital.

In any case, we consider that for renewals of previously authorized operations there should be a reduction in notice periods. Moreover, for operations were there is going to be a replacement of own funds or eligible liabilities, we believe the process should be streamlined.

We welcome the efforts to shorten the submission period for follow-up applications.

Q10. 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?

Copying 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. Thus, mandating RAs to assess any reduction with a view on the long-term profitability seems excessive. In addition, the assessment by the RA is not well defined and leaves room for interpretation.

We would also point out that the greatest threat to the sustainability of institutions income capacity is the possibility of excessive and unnecessary MREL requirements, exacerbated by an inappropriate deduction regime being imposed on institutions. This is a far greater threat to sustainability than the possibility that the marginal cost of a given tranche of eligible liabilities may increase when replaced by a new liability.

Q11. 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?

Deducting eligible liabilities when the general permission is granted would be inappropriate and disproportionate.

The purpose of MREL is to set a sufficient amount of own funds and eligible liabilities, for which a complex calculation is applied and a dedicated regime for handling breaches is in place. In addition, the introduction of an M-MDA and the ineligibility of own funds used for buffer requirements (CBR) both act as safeguards and buffers above MREL, with the aim to ensure that sufficient capacity for loss-absorption and recapitalization is available at all times. The extension of the deduction regime envisaged by the EBA for own funds, not only ignores the different qualities and riskiness of the instruments in question (CET1, AT1 and T2 instruments as the first instruments classes to bear losses while eligible liabilities are senior in nature and rank above all own funds), but also reduces the complex bank-specific calculation of MREL with its complex add-ons, buffers and group-specific adjustments.

It is a core task of resolution authorities to set an appropriate MREL level. This is the very nature of MREL, governed by the specific laws and policies for MREL. Thus, there is neither a need nor a mandate for EBA to go beyond this and interfere by means of an automatic deduction.

By means of not granting a permission, the resolution authorities already have the ability to prevent connected risks. Yet the automatic deduction of the general prior permission would:

1. violate proportionality
2. unduly interfere with the existing MREL requirements by effectively increasing them through the back door, and
3. unduly limit banks' flexibility in managing their stock of issuances according to changing market conditions.

We would also like to point out that, for the transitory time between the entry into force of the revised CRR provisions and the publication of the RTS, the SRB refrained from demanding automatic deduction.

Another practical case that would be relevant would occur in case an instrument were to be replaced with a similar instrument: in this case, the MREL contribution would have to be deducted when the permission is granted (irrespective of whether it would concern a general prior permission or an individual application), while the replacement could only be executed with a certain delay (of at least several days) after the approval (due to administrative and processing reasons). Thus, timewise there would inevitably be a gap during which a bank's apparent MREL capacity is effectively reduced, ultimately exacerbating risk, despite the fact that it is the goal of the regime to prevent this.

Q12. 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.

From a resolution and bail-in perspective, the motivations for, and the impacts of market-making and liability management, are different. Market-making aims to provide investor flexibility that reinforces the attractivity of the eligible liability as an investment. Eligible liabilities subject to market making are bought by the bank and will not serve the purpose of resolution and bail-in until they are re-sold into the market. Hence, some limits are understandable, both in terms of amount allowed and deduction of the amount held in the market-making book. On the other hand, eligible liabilities subject to liability management are the liabilities that meet the regulatory criteria for resolution and bail-in purposes. The purpose of liability management exercises is to replace shorter-term liabilities with longer-

term liabilities since doing so improves the maturity of the eligible liabilities stock, which is positive from a resolution and bail-in perspective. Consequently, we believe that the general prior permissions should not be confined only to market making. Particularly, the amount allowed should be increased and the timing for deductions should be aligned with ad hoc prior permissions. However, if this is accompanied by a demanding deductions rule, prior permission rules will not be fit for purpose.

Additionally, the drafting of ad-hoc requests and the processing by the RAs would take far too long to handle matters flexibly. Take for instance the case of an individual investor who has bought an eligible instrument as a private placement and approaches the bank with a request for early redemption. This customer expects an instant reaction from the bank. However, preparing an application and receiving approval form the RA would take weeks, so that neither the creditor's interest to receive a swift answer nor the bank's interest to offer customer-centered solutions are met. Note that all of this does not affect or endanger MREL or loss-absorption capacity, as MREL has to be maintained at all times and a breach would have to be notified by the bank in any case.

General prior permissions are more efficient and more organized than ad hoc prior permissions. Banks submit the applications in relation to the yearly resolution planning process. SRB, in cooperation with ECB, assesses the application and makes the approval during the yearly resolution planning process. The decision for the approval is included as part of the resolution planning decision. This is more efficient and more organized compared to ad hoc permissions.

Q13. 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 instruments you would suggest and justify based on your experience.

A maximum limit of 3% would, in our opinion, be insufficient to cover both market making and liability management exercises or the exercise of calls on callable issuances.

The question of the size of limits is inextricably linked to the deduction regime. If a general prior permission is to be systematically deducted from eligible instruments, then banks will have every motivation to limit the amount of general prior permission by applying every quarter, or even every month, for a quarterly or monthly limit, thus multiplying administrative work both for themselves and for the authorities, but with the advantage for institutions of minimizing undue deductions.

If the aim of a general prior permission regime is to alleviate administrative burdens at both the banks and the authorities, then higher limits can be considered but, in this case, the deduction regime must be appropriately designed and should not mandate deductions until 'sufficient certainty' (i.e. the announcement of a call or LME, or the actual repurchase of the liabilities) has occurred.

In details, we believe there are the following main fundamental issues with the imposition of a limit to the general prior permission for eligible liabilities:

a. market making volumes for eligible liabilities are much higher than own funds:

The market making of eligible liabilities, in particular of senior vanilla or structured bonds sold to private investors, is featured by significant higher volumes if compared to own funds instruments. As such, the adoption of the same quantitative threshold in force for own funds (3%) also for eligible liabilities would be totally incompatible with the actual

market volumes of these instruments. The proposed limit would therefore risk reducing liquidity in many of these outstanding instruments.

b. Unfair level playing field with non-EU banks:
Non-EU banks do not have such a hard limit on market making. This would give them a strong competitive advantage both in funding cost terms (higher flexibility in increasing and decreasing their own liabilities) and in direct market making activity on issuances from European banks.

c. EBA went beyond his mandate in setting such a limit:
More significantly, we note that the 3% cap proposed by the EBA is not required by the mandate to the EBA in the Level 1 text, nor are the limitations required to meet prudential objectives. The level 1 text also does not require alignment with the redemption rules that apply to own funds in this area. The question therefore arises as to why the EBA feels that it is appropriate to suggest this limitation, given Article 78a bestows the power to the relevant Resolution Authority to set the limit of the eligible liabilities in case of general prior permission.

Q15. 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.

We refer to our comments to Q8.
The information request under Art. 32d RTS is also far too detailed. The provision of a three-year prognosis is disproportionate, as institutions regularly provide such information as part of their capital trajectory and MREL reporting (at least in the banking union). Considering the small amounts of total MREL capacity in scope of the considerations, these requests would effectively set up a whole new reporting process, error-prone and duplicating existing MREL reporting, which seems unnecessary given the fact that MREL compliance is already ensured by regular reporting to RAs.

For internal MREL, a simplified information package should be considered.

With reference to Art. 32d 1 (f) (and correspondingly to Art. 30 1 (g) for own funds), it should be clarified that the detailed information on the replacement instruments should not be requested in case of general prior permissions (because also such permission is given under conditions at points (a) or (b) of CRR Art 78(1) or 78a(1)): as already mentioned for Q8, at the moment of the request for general prior permission, the bank has not yet detailed information on the replacement instrument features, which depend also on the market environment in which the transaction is performed.

Art. 32e RTS:
This is not limited to market making. It is the very nature of a general prior permission to cover all kinds of liabilities, including those that may not even have been issued at the time of applying for said permission (e.g. private placements). Consequently, requesting a full list is simply not feasible. A list of outstanding liabilities is regularly provided to RAs through the annual resolution reporting (CIR, LDR for the banking union) and the published Pillar 3 reports.

We also refer to our comments to art. 30e RTS.

Q16. 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.

We refer to our comments to Q9.

In general, we consider a four-month submission period to be disproportionately long for a permission with a validity of one year.

The three-month period was already tested to be workable for own funds so far and we see no reason to increase it.

We welcome the efforts to shorten the submission period for follow-up applications.

Much more important, however, is the point in time when the bank is informed about the outcome of a decision. Resolution authorities must commit to providing feedback fast and inform the bank with sufficient leeway about the outcome of the permission so that there is sufficient time to adapt. There should be time in the process to check and grant a resubmission if problems had been identified in a first round.

Art. 32g - Process between RA and competent authority:
We do see reasons here for unnecessary complications in the back and forth between authorities. Given the relatively low amounts and their removability from actual loss-absorption in comparison to own funds, such cumbersome processes stand in no proportion to the effort they require and the risks they cover.