

EBA/CP/2025/14

9 July 2025

Consultation Paper

Draft Regulatory Technical Standards

amending Commission Delegated Regulation (EU) No 241/2014 on the timing for the application for prior permission to reduce own funds and eligible liabilities instruments under Articles 77, 78 and 78a of Regulation (EU) No 575/2013

Contents

<u>1.Responding to this consultation</u>	<u>3</u>
<u>2.Executive Summary</u>	<u>4</u>
<u>3.Background and rationale</u>	<u>5</u>
<u>4.Draft regulatory technical standards</u>	<u>7</u>
<u>5.Accompanying documents</u>	<u>12</u>
5.1Draft cost-benefit analysis	12
5.2Overview of questions for consultation	14

1. Responding to this consultation

The EBA invites comments on all proposals put forward in this paper and in particular on the specific questions summarised in 5.2.

Comments are most helpful if they:

- respond to the question stated;
- indicate the specific point to which a comment relates;
- contain a clear rationale;
- provide evidence to support the views expressed/ rationale proposed; and
- describe any alternative regulatory choices the EBA should consider.

Submission of responses

To submit your comments, click on the 'send your comments' button on the consultation page by 09.10.2025. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

Publication of responses

Please clearly indicate in the consultation form if you wish your comments to be disclosed or to be treated as confidential. A confidential response may be requested from us in accordance with the EBA's rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the EBA's Board of Appeal and the European Ombudsman.

Data protection

The protection of individuals with regard to the processing of personal data by the EBA is based on Regulation (EU) 1725/2018 of the European Parliament and of the Council of 23 October 2018. Further information on data protection can be found under the Legal notice section of the EBA website.

2. Executive Summary

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 had mandated the EBA to develop draft regulatory technical standards ('RTS') that, inter alia, updated the procedure for granting the permission to reduce own funds and extended it to eligible liabilities, including the time limits and information requirements and the process of co-operation between competent and resolution authorities. This mandate was fulfilled by means of the EBA/RTS/2021/05¹ subsequently adopted by the European Commission with Commission Delegated Regulation (EU) 2023/827² ('RTS on own funds and eligible liabilities').

When publishing its final draft RTS on own funds and eligible liabilities on 26 May 2021, the EBA acknowledged comments received during the consultation that the extension of the prior permission regime timeline from 3 to 4 months was too long. While at the time of the publication of the RTS the extension was justified by the need to adequately cater for the more complex assessment that competent and resolution authorities were expected to undertake, the EBA committed to monitoring the practical implementation and authorities' practices. As a result of the monitoring, it is EBA view that the relevant authorities are now able to process the applications within a shorter period.

Therefore, and also considering feedback received from institutions since the publication of the RTS, the EBA deems it reasonable and justified to revert to the shortened time frame of three months to process applications to reduce own funds and eligible liabilities instruments.

The EBA is publishing this short amending RTS focusing only on this very narrow scope.

Next steps

After a consultation period of three months, the EBA will submit the final draft RTS to the EU Commission for the adoption process. Once published in the EU Official Journal, the draft RTS will amend the Commission Delegated Regulation (EU) No 241/2014.

¹ 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

² Commission Delegated Regulation (EU) 2023/827 of 11 October 2022 laying down regulatory technical standards amending Delegated Regulation (EU) No 241/2014 as regards the prior permission to reduce own funds and the requirements related to eligible liabilities instruments.

3. Background and rationale

1. Regulation (EU) 575/2013 of the European Parliament and of the Council (CRR1) subjected the reduction of own funds to prior permission of the competent authorities and introduced a mandate for the EBA to develop RTS to specify, among other aspects, the procedure for granting this permission. As a result, Delegated Regulation (EU) 241/2014 set out a detailed and comprehensive process for competent authorities to grant a supervisory permission for reducing own funds. When defining the timing of the application to be submitted and its processing, Article 31(1) RTS set a timeframe of three month in advance of the date when one of the actions listed in Article 77 CRR are announced to the holders for institutions to transmit the application of the prior permission.
2. Regulation (EU) 2019/876 of the European Parliament and of the Council (CRR2) extended to eligible liabilities the obligation for institutions to obtain permission from the resolution authority before calling, redeeming, repaying or repurchasing eligible liabilities instruments and set out the conditions under which the resolution authority must grant the permission. Moreover, CRR2 introduced significant amendments related to the prior permission regime to reduce own funds, in particular, the notion of 'general prior permission'. Further amendments to the provisions were introduced with a view to codifying existing practices applied by competent authorities. These and other updates in the area of own funds and eligible liabilities were reflected in the Commission Delegated Regulation (EU) 2023/873 amending Delegated Regulation (EU) No 241/2014 that laid down Regulatory Technical Standards developed by the EBA³.
3. The new RTS extended from three to four months the deadline for the application to be submitted to the competent and resolution authorities for ad hoc and general prior permission before the date on which any of the actions referred to in Article 77 of Regulation (EU) No 575/2013 would be taken. During the consultation phase, respondents considered the four-month timeline too long.
4. However, the four-month period seemed necessary to cater for the more complex assessment that the competent and resolution authorities needed to undertake in order to verify not only that the institution's own funds exceeded the respective requirements by the necessary margin but also that the institution's eligible liabilities met this condition. In addition, the increase in the minimum timeline for the application of the prior permission seemed appropriate at that time to allow resolution authorities sufficient time for interaction with the relevant competent authority as prescribed by Article 78a(3)(a) CRR. The same timing (four months) was set for the application for the general prior permission. Nonetheless, the RTS set the timing of the applica-

³ EBA/RTS/2021/05

tion for a renewal of general prior permission at three months before the expiration of the existing permission and recognised the possibility of competent and resolution authorities processing the applications within a shorter time frame.

5. Moreover, the EBA committed to monitoring how the four and three-month time periods for the submission and assessment of applications would be implemented in practice, with a particular focus on how competent authorities and resolution authorities would operationalise their respective assessments as well as their cooperation and consultation. It is considered that authorities have gained the necessary experience and are now able to process ad hoc and general prior permissions within a period shorter than four months. Reverting to a shorter period will give more flexibility to institutions in their requests for permission for redemption and capital planning purposes while it is still seen as a sufficient and prudent timeline from a supervisory perspective. This would also be in line with repeated comments received from stakeholders on the four-month period since the implementation of the RTS. Therefore, it is proposed to further amend the Commission Delegated Regulation (EU) No 241/2014 with regard to the timeline for the submission of applications for ad hoc and general prior permissions for reductions in own funds and eligible liabilities instruments.
6. The new RTS also set simplified requirements for institutions for which the resolution authority has set an MREL at a level that does not exceed the loss absorption amount. However, Directive (EU) 2024/1174 of the European Parliament and of the Council of 11 April 2024 amending Directive 2014/59/EU and Regulation (EU) No 806/2014 as regards certain aspects of the minimum requirement for own funds and eligible liabilities rendered this simplified procedure void by excluding liquidation entities, for which the resolution authority has not determined the requirement referred to in article 45(1) of that Directive, from the requirement to obtain the prior permission of the resolution authority to effect the call, redemption, repayment or repurchase of liabilities that would meet the eligibility requirements for the MREL. Therefore, the references to this simplified requirement for liquidation entities, with an MREL set at the loss absorption amount, are proposed to be deleted from the Commission Delegated Regulation (EU) No 241/2014. This is in line with the proportionate approach for such entities described in the EBA Opinion on the European Commission's amendments relating to the final draft RTS for own funds and eligible liabilities published on 7 April 2022. For reasons of proportionality and legal certainty, the proposed amendments have been limited to cases where changes to L1 have directly impacted the RTS. While amendments to other L1 provisions might necessitate a comprehensive review of the RTS, a proportional and efficient approach has been maintained.

4. Draft regulatory technical standards

COMMISSION DELEGATED REGULATION (EU) .../...

of XXX

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 investment firms and amending Regulation (EU) No 648/2012⁴, and in particular, Article 78(5) third subparagraph and Article 78a(3) fourth subparagraph;

Whereas:

- (1) Commission Delegated Regulation (EU) 2023/827⁵ extended the application period for the prior permission to reduce own funds referred to in Article 78(1) of Regulation No (EU) 575/2013 from three to four months in order to allow sufficient time for the interaction of the resolution authority with the relevant competent authority. The same application period was set for the reduction of the eligible liabilities referred to in Article 78a(1) of that Regulation as well as for new general prior permissions to reduce own funds and eligible liabilities referred to in Articles 78(1) second subparagraph and 78a(1) second subparagraph of the said Regulation. Nonetheless, the timing of the application for a renewal of a general prior permission was set at three months.

⁴ OJ L 176, 27.6.2013, p. 1.

⁵ Commission Delegated Regulation (EU) 2023/827 of 11 October 2022 laying down regulatory technical standards amending Delegated Regulation (EU) No 241/2014 as regards the prior permission to reduce own funds and the requirements related to eligible liabilities instruments (OJ L 104, 19.4.2023, p. 1–22)

- (2) After the entry into force of the Commission Delegated Regulation (EU) 2023/827 and considering the experience gained by the relevant authorities during the first years of practical implementation, it was observed that competent and resolution authorities are now in a position to process the applications in a shorter period. Accordingly, the application period for the reduction of own funds and eligible liabilities, including general prior permissions, should be shortened to three months.
- (3) To ensure that resolution authorities have sufficient time to assess the applications for the reduction of eligible liabilities instruments under Article 78a(1) of Regulation No (EU) 575/2013 and to consult with the competent authorities within a three-month period, the period of consultation between the competent and the resolution authority should be reduced to a maximum of two months. Accordingly, the period for the resolution authority to communicate to the competent authority its proposed margin by which it considers necessary that the own funds and eligible liabilities of the institution must exceed its requirements should not exceed one month.
- (4) Following the adoption of Directive (EU) 2024/1174 of the European Parliament and of the Council of 11 April 2024 amending Directive 2014/59/EU and Regulation (EU) No 806/2014 as regards certain aspects of the minimum requirement for own funds and eligible liabilities, liquidation entities for which the resolution authority has not determined the requirement referred to in article 45 of Directive 2014/59/EU no longer require the prior permission of the resolution authority to effect the call, redemption, repayment or repurchase of liabilities that would meet the eligibility criteria for liabilities that may be used to comply with the MREL. Therefore, the provisions in Commission Delegated Regulation (EU) 2023/827 setting a simplified procedure for the prior permission to reduce eligible liabilities 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 becomes obsolete. Delegated Regulation (EU) No 241/2014 should therefore be amended accordingly.
- (5) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Banking Authority.
- (6) The European Banking Authority 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 Council⁶.

⁶ 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 173, 12.6.2014, p. 190).

HAS ADOPTED THIS REGULATION:

Article 1

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

(1) Article 31 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. For a prior permission, other than a general prior permission as referred to in Article 78(1), second subparagraph, 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 three months before the date on which one of the actions listed in Article 77(1) of Regulation (EU) No 575/2013 will be announced to the holders of the instruments.’;

(b) paragraph 2 is replaced by the following:

‘2. For a general prior permission as referred to in Article 78(1), second subparagraph, 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 three months before the date on which any of the actions listed in Article 77(1) of Regulation (EU) No 575/2013 will be carried out.’;

(c) paragraph 3 is replaced by the following:

‘3. Where a renewal of a general prior permission pursuant to Article 78(1), second subparagraph, 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 original general prior permission was granted.’

(2) Article 32g is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. For a prior permission, other than the general prior permission referred to in Article 78a(1), second subparagraph, 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 three months before the date on which one of the actions listed in Article 77(2) of Regulation (EU) No 575/2013 will be announced to the holders of the instruments.’;

(b) paragraph 2 is replaced by the following:

‘2. For the general prior permission referred to in Article 78a(1), second subparagraph, 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 three months before the date on which one of the actions listed in Article 77(2) of Regulation (EU) No 575/2013 will be carried out.’;

(c) paragraph 3 is replaced by the following:

‘3. Where a renewal of the general prior permission pursuant to Article 78a(1), second subparagraph, 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 original general prior permission was granted.’

(3) Article 32h is repealed;

(4) Article 32i is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Where a complete application for a prior permission, including the general prior permission referred to in Article 78a(1), second subparagraph, of Regulation (EU) No 575/2013, 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.’

(b) paragraph 3 is replaced by the following:

‘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 two months from the moment of receipt of the request for consultation, including where the consultation concerns the renewal of a general prior permission pursuant to Article 32f. The resolution authority shall consider the views received from the competent authority before taking a decision on the permission.’

(c) paragraph 4 is replaced by the following:

‘4. Where the agreement of the competent authority is required in accordance with Article 78a(1), point (b), of Regulation (EU) No 575/2013, the resolution authority shall communicate to the competent authority, within one month from the request for consultation referred to in paragraph 2, including where the consultation concerns the renewal of a general prior permission pursuant to Article 32f, 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.’

(d) paragraph 5 is replaced by the following:

‘5. Within three weeks or, where the consultation concerns the renewal of a general prior permission pursuant to Article 32f, 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.’

(e) paragraph 7 is replaced by the following:

‘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 three months in accordance with Article 32g, paragraph 4, the periods of time referred to in paragraphs 3, 4

and 5 shall be agreed between the resolution authority and the competent authority taking into account the relevant maximum time period.’

Article 2

This Regulation shall enter into force on the twentieth 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

5. Accompanying documents

5.1 Draft cost-benefit analysis

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. The analysis below provides the reader with an overview of the problem identification, the options identified to remove the problem and their potential impacts.

This analysis is commensurate to the limited and target amendments of the RTS, and is kept at high-level and is qualitative in nature.

A. Problem identification

The latest update of the RTS extended the timeline for the submission of applications of ad hoc permissions and new general prior permissions from three to four months. During the consultation phase, respondents considered the four-month timeline too long.

The EBA committed to monitoring the implementation of these provisions, with a particular focus on how competent authorities and resolution authorities would operationalise their respective assessments as well as their cooperation and consultation. It was concluded in 2024 that authorities were able to process ad hoc and new general prior permissions within a period shorter than four months.

B. Policy objectives

The main objective of this RTS is to shorten the minimum time frame for institutions to submit their applications for ad-hoc and new general prior permissions to reduce own funds and eligible liabilities. This will give institutions more flexibility in their requests for permission for redemption and capital planning purposes while maintaining a sufficient and prudent timeline from a supervisory perspective. This reduction will be in line with repeated comments received by stakeholders on the length of the period.

C. Baseline scenario

In the absence of the proposed changes, competent and resolution authorities may allow institutions to submit the application within a time frame shorter than four months only on a case-by-case basis and under exceptional circumstances, as stated in Articles 31(4) and 32g(4) of Delegated Regulation 241/2014.

D. Options considered

In order to ensure a harmonised and consistent approach in the Union concerning the time frame for institutions to submit their applications for ad-hoc and new general prior permissions to reduce own funds and eligible liabilities, the amendment of the RTS was considered as the sole option.

Maintaining the current drafting of the RTS could not be considered as an available option, because even though Articles 31(4) and 32g(4) allow competent authorities to permit institutions ‘on a case-by-case basis and under exceptional circumstances’ to transmit their prior permission applications within a time frame shorter than four months, those Articles would not allow for the transmission of the prior permissions on a systematic basis and the adherence to the convergent and comprehensive process described in the RTS.

E. Cost-Benefit Analysis

The respondents to the public consultation of the latest update of the RTS will welcome this change, as the proposed amendments would be in line with repeated comments received from stakeholders on the lengthy four-month period applicable since the implementation of the revised RTS. In addition, the results of the monitoring work carried out by the EBA have shown that competent and resolution authorities, after several years of practical implementation of the RTS provisions, are now in a position to process the applications received in a three-month timeframe. It is therefore expected that they can implement these amendments to the RTS smoothly and without additional burden and cost. Finally, the proposed amendments follow the steps of the mandate under Articles 78(5) and 78a(3) CRR, without altering the objectives.

5.2 Overview of questions for consultation

Q1: Do you consider it appropriate to revert to a three-month deadline for the prior permission regime for own funds and eligible liabilities instruments?