

# Single Rulebook Q&A

<b>Question ID</b>	2021_5787
<b>Status</b>	Final Q&A
<b>Legal act</b>	Regulation (EU) No 575/2013 (CRR)
<b>Topic</b>	Own funds
<b>Article</b>	26
<b>Paragraph</b>	2
<b>Subparagraph</b>	-
<b>COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations</b>	Regulation (EU) No 241/2014 - RTS for Own Funds requirements for institutions
<b>Article/Paragraph</b>	2
<b>Date of submission</b>	19/03/2021
<b>Published as Final Q&amp;A</b>	11/02/2022
<b>Disclose name of institution / entity</b>	No
<b>Type of submitter</b>	Competent authority
<b>Subject matter</b>	Applicability of fix amount dividend policy to mutuals, cooperative societies, saving institutions and similar institutions
<b>Question</b>	Is Q&A 4731 applicable to mutuals, cooperative institutions, savings institutions and similar institutions?
<b>Background on the question</b>	<p>Paragraph 1 of the EBA answer to Q&amp;A 2019_4731 requires that “If a dividend policy envisages payment of dividend in a specified amount (and not a pay-out ratio to be applied on profits), then the deduction to be applied to the respective interim or year-end profits shall be the specified amount times the number of shares entitled to dividend (in the example above, option 2). In the case of interim profits, the institution may only include them with the prior permission of the competent authority and provided that the interim profits exceed the amount of dividends specified in the dividend policy”.</p> <p>Paragraph 2 spells out the following recommendation: “As a general note, banks should not set their dividend policies in terms of absolute amounts because this may give wrong expectations to investors, given that distributions may only be paid out of distributable items”. The provisions of Article 26(2) CRR and Article 2 Commission Delegated Regulation 241/2014 apply to all institutions regardless of their legal nature as no derogation or specific treatment is introduced for mutuals, cooperative societies, saving</p>

institutions and similar. However, with regard to setting the dividend policies in terms of absolute amounts, the CRR allows for an exception: - Article 28(1)(h)(iii) CRR states that “the conditions governing the instruments do not include a cap or other restriction on the maximum level of distributions, except in the case of the instruments referred to in Article 27” - Article 28(1)(h)(iv) CRR states that “the level of distributions is not determined on the basis of the amount for which the instruments were purchased at issuance, except in the case of the instruments referred to in Article 27” - Article 29(3) CRR, which is applicable to mutuals, cooperative societies, saving institutions and similar institutions, states that “the capital instruments may include a cap or restriction on the maximum level of distributions only where that cap or restriction is set out under applicable national law or the statute of the institution.” It is unclear whether these three provisions could imply that mutuals, cooperative societies, saving institutions and similar institutions may set their distributions as a fixed rate of the contribution value, i.e. an absolute amount.

**Final answer**

The provisions of Article 26(2) CRR and Article 2 Commission Delegated Regulation 241/2014 apply to all institutions regardless of their legal nature as no derogation or specific treatment is introduced for mutuals, cooperative societies, saving institutions and similar. Therefore, paragraph 1 of that EBA [Q&A 2019\\_4731](#) is applicable to mutuals, cooperative societies, saving institutions and similar institutions.

If the dividend policy of these institutions envisages payment of dividend in a specified amount, which is for example determined by applying annual fixed rate on contribution value (and not a pay-out ratio to be applied on profits), then the deduction to be applied to their respective interim or year-end profits shall be the full specified amount times the number of shares entitled to dividend.

With regard to setting the dividend policies in terms of absolute amounts, the CRR allows for an exception:

- Article 28(1)(h)(iii) CRR states that “the conditions governing the instruments do not include a cap or other restriction on the maximum level of distributions, except in the case of the instruments referred to in Article 27”

- Article 28(1)(h)(iv) CRR states that “the level of distributions is not determined on the basis of the amount for which the instruments were purchased at issuance, except in the case of the instruments referred to in Article 27”

- Article 29(3) CRR, which is applicable to mutuals, cooperative societies, saving institutions and similar institutions, states that “the capital instruments may include a cap or restriction on the maximum level of distributions only where that cap or restriction is set out under applicable

	<p>national law or the statute of the institution.”</p> <p>These three provisions would imply that mutuals, cooperative societies, saving institutions and similar institutions may set their distributions as a fixed rate of the contribution value, i.e. an absolute amount.</p> <p>In any event, as highlighted in the EBA Report on the monitoring of CET1 instruments issued by EU institutions, institutions should make it clear that the dividend policy are not binding at all and can be changed at any time, to pay more, or less, or nothing at all, in order not to compromise the flexibility of payments of the instrument.</p>
<b>Link</b>	<a href="https://www.eba.europa.eu/single-rule-book-qa/qna/view/publicId/2021_5787">https://www.eba.europa.eu/single-rule-book-qa/qna/view/publicId/2021_5787</a>

European Banking Authority, 30/11/2022  
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