

Question ID	2022_6651
Status	Final Q&A
Legal act	Regulation (EU) No 575/2013 (CRR)
Topic	Own funds
Article	78
Paragraph	a
Subparagraph	-
COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations	Regulation (EU) No 241/2014 - RTS for Own Funds requirements for institutions
Article/Paragraph	32b
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Disclose name of institution / entity	No
Type of submitter	Competent authority
Subject matter	Deduction of eligible liabilities instrument pursuant to Article 32b of RTS on Own Funds and Eligible Liabilities
Question	How should an institution deduct the amount for which the resolution authority has given its prior permission under Article 78a of Regulation No 575/2013 (CRR) to reduce eligible liabilities instruments and where the permission granted only specifies a total amount of eligible liabilities instruments?
Background on the question	This question is being posed to clarify how an institution shall deduct its eligible liabilities instruments when it receives a prior permission to reduce eligible liabilities instrument, and where the permission only specifies the total amount of eligible liabilities instruments that can be redeemed, leaving it up to the institution to redeem different layers of eligible liabilities, i.e., subordinated eligible liabilities and eligible liabilities which are not subordinated to excluded liabilities.
Final answer	According to Article 32b(2) and (3) of Commission Delegated Regulation (EU) No 241/2014 and Q&A 1352 and Q&A 3277 , institutions shall deduct

the amounts for which the resolution authority has given its permission for actions listed under Article 77(2) of Regulation (EU) No 575/2013 (CRR).

As specified by Article 1a of Commission Delegated Regulation (EU) No 241/2014 and for the purpose of, inter alia, Article 32b of Commission Delegated Regulation (EU) No 241/2014, 'eligible liabilities' referred to in Article 45b and Article 45f(2)(a) of Directive 2014/59/EU shall be considered to be 'eligible liabilities instruments'. Hence, Article 77(2) of the CRR and Article 32b of the Commission Delegated Regulation (EU) No 241/2014 apply to both subordinated eligible liabilities (senior non-preferred) as well as eligible liabilities which are not subordinated to excluded liabilities (senior unsecured).

As a consequence, when a prior permission is granted for reducing specific instruments, according to Article 78a(1) (a), (b) or (c) of the CRR, the deduction of the amount shall be made in relation to, and corresponding to the ranking of, the actual instrument(s) to be redeemed. The same deduction rule applies for a general prior permission according to Article 78a(1) second subparagraph of the CRR where the permission specifies the amount to be repurchased for each specific category of eligible liabilities instruments. Therefore, in case the institution specifies in its application the respective amounts of the different layers of eligible liabilities it intends to subject to the prior permission, the deduction should take place on a corresponding amount for each layer affected.

While it is possible for institutions to also apply and to receive a general prior permission that does not specify the ranking of the instruments to be repurchased (e.g., by only referring to 'eligible liabilities instruments'), the full deduction of the predetermined amount shall be made from the eligible liabilities instruments with the lowest ranking.

Disclaimer: References to Commission Delegated Regulation (EU) No 241/2014 in all sections of the Q&A are to that Regulation after its forthcoming amendment by the Draft Regulated Technical Standard on Own Funds and Eligible Liabilities ([EBA/RTS/2021/05](#)) as adopted by the Commission ([C\(2022\)7138](#)), but which is not yet in force, and this should be considered. The EBA will revise its response, where needed, after these amending technical standards come into force.

Link

https://www.eba.europa.eu/single-rule-book-qa/qna/view/publicId/2022_6651