

Question ID	2023_6791
Status	Final Q&A
Legal act	Regulation (EU) No 575/2013 (CRR)
Topic	Own funds
Article	77, 78, 78a
Paragraph	-
Subparagraph	-
COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations	Regulation (EU) No 241/2014 - RTS for Own Funds requirements for institutions
Article/Paragraph	28, 32b
Date of submission	03/05/2023
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Disclose name of institution / entity	No
Type of submitter	Other
Subject matter	Permission to reduce own funds or eligible liabilities and deduction rules in the context of a liability management exercise (exchange offer, tender offer or issuance of a replacement instrument concurrent with a tender offer on the existing instrument)
Question	Should deductions from own funds and eligible liabilities with regards to a permission to reduce own funds or eligible liabilities in accordance with Article 77 of Regulation (EU) No 575/2013 (CRR) in the context of a liability management exercise (exchange offer, tender offer or issuance of a replacement instrument concurrent with a tender offer on the existing instrument), rather than upon the exercise of a call option, be made right after the permission from the competent authority / resolution authority is granted or could it be later at the time of the institution's public announcement of the liability management exercise in accordance with Article 28(2) of the RTS on Own Funds? In that context, how should the concept of 'sufficient certainty' of Article 28(2) RTS be applied?
Background on the question	Article 77 CRR requires institutions to obtain the prior permission of the competent authority / resolution authority to repurchase AT1, Tier 2 or eligible liabilities instruments. Such permission should be granted if before or at the same time the institution replace those with instruments of equal or

higher quality at terms that are sustainable for the income capacity of the institution (Article 78(1)a and 78a(1)a CRR or the institution has demonstrated that own funds and eligible liabilities would exceed its capital and MREL requirements by a sufficient amount post repurchase (Article 78(1)b and 78a(1)b CRR). RTS on Own Funds Art. 28 and 32b state that the institution shall deduct the amounts to be repurchased from the institution's own funds and liabilities instruments where the action is expected to take place with sufficient certainty. In the Q&A 3277, the EBA clarified that for instruments containing call options in their terms and conditions, in case of the use of the call, sufficient certainty is deemed to exist only at the time of the announcement of the call of the instrument to the holders and the deduction will take place only at that later point in time. However that clarification on the use of call options does not extend to liability management exercises. Should an institution request permission to purchase own funds or eligible liabilities instruments in the context of a liability management exercise, would the deduction from its capital and MREL ratios occur when a) the permission is granted, b) the liability management exercise is announced or c) the liability management exercise has settled?

Final answer

In [Q&A 3277](#) the EBA clarified that for instruments containing call options in their terms and conditions, in case of the use of the call, "sufficient certainty" pursuant to Article 28(2) of Delegated Regulation (EU) No 241/2014 is deemed to exist only at the time of the announcement of the call of the instrument to the holders and the deduction will take place only at that later point in time.

In the most common case where the actions listed in Article 77(1) of the CRR are intended to be carried out by means of a repurchase of an own funds instrument (liability management exercises notably), under Article 78(1)(a) or 78(4)(d) of the CRR, the authorisation is subject to the condition that the instrument should be replaced before or at the same time as the repurchase. Irrespective of the announcement date of the repurchase, sufficient certainty is deemed to exist when the new issuance is effective and the deduction takes place at that point in time.

As a consequence, in case of the simultaneous announcement to the market of the new issuance and the repurchase, the point in time for the deduction corresponds to the date the new issuance is effective.

As a general principle, when the prior permission from the competent authority is requested under Article 78(1)(a) or 78(4)(d) of the CRR, the replacing and replaced instruments shall not be included in the own funds simultaneously. However, when the prior permission from the competent authority is requested under Article 78(1)(b) of the CRR (i.e. without replacement), both instruments can be included in the own funds simultaneously.

For the sake of completeness, the above answer applies in an identical

	manner to any action described in Article 77(2) CRR to eligible liabilities instruments in accordance with Article 32b(2) of Delegated Regulation (EU) No 241/2014.
Link	https://www.eba.europa.eu/single-rule-book-qa/qna/view/publicId/2023_6791

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