

Question ID	2017_3277
Status	Final Q&A
Legal act	Regulation (EU) No 575/2013 (CRR)
Topic	Own funds
Article	77
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(2)
Date of submission	28/04/2017
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Disclose name of institution / entity	No
Type of submitter	Competent authority
Subject matter	Clarification of the conditions for reduction of own funds due to Article 77 CRR and Article 28 RTS on Own funds.
Question	Should deductions from own funds with regard to a permission to reduce own funds in accordance with Article 77 of Regulation (EU) No 575/2013 (CRR) be made right after the permission from the competent authority (CA) is granted or could it be later at the time of the institution's public announcement 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	An institution applies for a permission to reduce own funds due to Article 77 CRR and receives the permission in December year 1. The institution publicly announces its intention to repurchase (redeem, reduce) the own funds instrument in January the year after, year 2. Due to the institution they do not have to reduce own funds in December year 1, but that they will have to reduce own funds in January the year after (year 2) when the public announcement is made. The institution refers to 28(2) RTS on own funds and that "sufficient certainty" refers to that both the permission is granted by the supervisor and the investors have been informed before own funds have to be reduced. Article 28 of the Commission delegated Regulation (EU) No

241/2014 (RTS on own funds) states: "1. Redemptions, reductions and repurchases of own funds instruments shall not be announced to holders of the instruments before the institution has obtained the prior approval of the competent authority. 2. Where redemptions, reductions and repurchases are expected to take place with sufficient certainty, and once the prior permission of the competent authority has been obtained, the institution shall deduct the corresponding amounts to be redeemed, reduced or repurchased from corresponding elements of its own funds before the effective redemptions, reductions or repurchases occur. Sufficient certainty is deemed to exist in particular when the institution has publicly announced its intention to redeem, reduce or repurchase an own funds instrument".Disclaimer: This Q&A was submitted prior to the amendments introduced with Regulation (EU) 2019/876 (CRR 2) and the enter into force of its relevant delegated acts. Therefore, the legal references made by the submitter are not reflected in the revised answer.

Final answer

~~Pursuant to Article 28(2) of Regulation (EU) No 241/2014 (RTS on Own Funds requirement for institutions) the deduction from own funds should be made from the moment the authorisation from the competent authority has been granted and the redemptions, reductions and repurchases are expected to take place with sufficient certainty.~~

Article 28(1) of Delegated Regulation (EU) No 241/2014 provides that redemptions, reductions and repurchases of own funds instruments shall not be announced to holders of the instruments before the institution has obtained the prior permission of the competent authority.

Article 28(2) of Delegated Regulation (EU) No 241/2014 states: "Where the actions listed in Article 77(1) of Regulation (EU) No 575/2013 are expected to take place with sufficient certainty, and once the prior permission of the competent authority has been obtained, the institution shall deduct the amounts of own funds instruments to be redeemed, reduced or repurchased or the corresponding amounts of the related share premium accounts to be reduced or distributed, as applicable, from corresponding elements of its own funds before the effective redemptions, reductions, repurchases or distributions occur. Sufficient certainty shall in particular be deemed to exist where the institution has publicly announced its intention to redeem, reduce or repurchase an own funds instrument."

~~In accordance with Q&A 2014_1352 S~~ufficient ceertainty is deemed to exist already from the moment the authorisation is granted. However, 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.

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

	<p>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.</p> <p><i>Disclaimer: This Q&A was submitted prior to the amendments introduced by Regulation (EU) 2019/876 (CRR 2). Therefore, references to Commission Delegated Regulation (EU) No 241/2014 in all sections of the Q&A except those in the “EBA Answer” section are to that Regulation as it is currently in force. However, in the “EBA Answer” section, references to Delegated Regulation (EU) No 241/2014 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.</i></p>
Link	<p>https://www.eba.europa.eu/single-rule-book-qa/-/qna/view/publicId/2017_3277</p>

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