

Question ID	2024_7036
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
Type of submitter	Competent authority
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Subject matter	Permission to reduce AT1, Tier 2 or eligible liabilities instruments and deduction rules in the context of a liability management exercise without replacement.
Question	When should deductions from own funds and eligible liabilities be applied in the context of a liability management exercise without replacement (i.e. a tender offer)? When can the unredeemed part of own funds or eligible liabilities be included in own funds or eligible liabilities again?
Background on the question	<p>Article 77 of Regulation (EU) No 575/2013 (CRR) requires institutions to obtain the prior permission of the competent authority / resolution authority to repurchase AT1, Tier 2 or eligible liabilities instruments. In the case of a liability management exercise without replacement (i.e. a tender offer) after five years, the bank must meet the conditions set in Articles 78(1)(b) or 78a(1)(b) CRR.</p> <p>Articles 28 and 32b of Delegated Regulation (EU) No 241/2014 state that the institution shall deduct the amounts to be repurchased from the institution's own funds and eligible liabilities instruments where the action is expected to take place with sufficient certainty, and once the prior permission of the competent or the resolution authority has been obtained.</p>

	<p>In Q&A 2017_3277, the EBA clarified that “for instruments containing call options [...], in case of the use of the call, sufficient certainty is deemed to exist only at the time of the announcement of the call [...]”.</p> <p>In Q&A 2023_6791, the EBA clarified that in cases of “repurchase of own funds instruments (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” and, thus, “sufficient certainty is deemed to exist when the new issuance is effective [...]”.</p> <p>It remains to be clarified when the deduction should be applied in case of a liability management exercise without replacement (i.e. a tender offer) after five years.</p> <p>Additionally, it remains to be clarified in the general case of a liability management exercise (before or after five years and with or without replacement), if and when the unredeemed part of AT1, Tier 2 or eligible liabilities instruments for which the prior permission has been granted could be added back to own funds or eligible liabilities.</p>
<p>Final answer</p>	<p>For tender offers on AT1 and Tier 2 instruments without replacement under Article 78(1)(b) CRR, “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 transaction.</p> <p>Regardless of the Article under which prior permission was granted, if the institution, while taking one of the actions listed in Article 77(1) CRR, does not reduce the entire amount of AT1 or Tier 2 instruments for which the prior permission was granted, the unredeemed part of AT1 or Tier 2 instruments no longer has to be deducted from the moment the permission expires (that is, once the specified period of time for which the permission is valid has passed) without the need for a permission to do so.</p> <p>The deduction for the unredeemed part of AT1 or Tier 2 instruments shall also cease to be made following the competent authority’s withdrawal of the permission (for example as a result of an institution breaching the criteria provided for the purposes of that permission) or when the institution informs the competent authority in writing that it no longer intends to use the permission.</p> <p>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.</p>
<p>Answer prepared by</p>	<p>Answer prepared by the EBA.</p>

Note to Q&A	
Link	https://www.eba.europa.eu/single-rule-book-qa/qna/view/publicId/2024_7036

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