Single Rulebook Q&A

Question ID	2019_4732
Status	Final Q&A
Legal act	Regulation (EU) No 575/2013 as amended by Regulation (EU) 2019/876 (CRR2)
Topic	Own funds
Article	26
Paragraph	2
Subparagraph	b
COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations	Regulation (EU) No 241/2014 - RTS for Own Funds requirements for institutions
Article/Paragraph	2/10
Date of submission	20/05/2019
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Disclose name of institution / entity	No
Type of submitter	Competent authority
Subject matter	Scrip-dividends at investors' discretion
Question	Can Article 2(10) of the Commission delegated regulation 241/2014 be applied in case the holder of the CET1 instruments has the option to decide whether to receive the dividends in cash or in shares?
Background on the question	Some institutions provide their shareholders with the option to elect whether to receive the dividends in shares or in cash. Those institutions claim that the provision of Article 2(10) can be applied given that - based on past evidence - a certain percentage of shareholders always decide to receive shares and that therefore this amount of dividends should not be deducted from the interim profits.
EBA answer	Article 2(10) of the Commission Delegated Regulation 241/2014 ("RTS on Own Funds") provides that the amount of foreseeable dividends to be paid in a form that does not reduce the amount of CET1 items (such as scrip-dividends) shall not be deducted from the interim or year-end profits to be included in CET1 items. According to Article 2, paragraphs (4), (5) and (7) of the RTS on Own Funds, "*the amount of foreseeable dividends to be deducted […] shall equal the amount of interim or year-end profits*

	multiplied by the dividend payout ratio" and the dividend payout ratio is calculated based on the approved dividend policy of the institution or, in the absence of such dividend policy, based on past dividend payout ratios. Where the shareholder has, according to the articles of association or the approved dividend policy, the option to elect whether to receive the dividends in shares or in cash, the institution must look at past dividend payments and the form of those payments (i.e. shares or cash). The derogation from deduction provided in Article 2(10) of the RTS on Own Funds shall apply to the foreseeable dividend, which, based on past dividend payments, is made in shares only. In any event, in accordance with Article 26(2)(b) of Regulation (EU) No 575/2013 as amended by Regulation (EU) 2019/876 (CRR2) and Article 2(11) of the RTS on Own Funds, the institution must demonstrate to the satisfaction of the competent authority that any foreseeable dividend has been deducted and that such deductions have been made before the inclusion of the interim or year-end profit in CET1.
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