

Q&A

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Guidelines on classification of own funds

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Question

We are seeking clarification regarding the admissibility of dividend stoppers in Tier 2 and Tier 3 own fund items. Under the Guidelines on classification of own funds (Annex in the attached Report 14/168), “The Guidelines make it clear that the use of dividend stoppers in any own-fund item, regardless of the tier, ... is prohibited as they could discourage new providers of own funds and thus represent a hindrance to recapitalisation” (paragraph 1.13).

Detailed guidance for each Tier and for all Tiers generally is provided in Guidelines 1 to 22 (paragraphs 1.20 to 1.102).

For Tier 1, the prohibition of dividend stoppers is clearly stated in paragraph 1.32.

However, no such prohibition appears in detailed guidance for Tier 2 or Tier 3 items.

As Tier 2, and especially Tier 3, is used by undertakings as softer forms of capital, we wanted to check with EIOPA that it is indeed its intention to prohibit the use of dividend stoppers in Tier 2 and Tier 3 items. Dividend stoppers have been an accepted and expected feature of Tier 2 and Tier 3 subordinated debt instruments and is one of the features distinguishing these items from Tier 1 items.

The wording of paragraph 1.13 of the Guidelines is very clear, but as detailed guidance on Tier 1 differs from that for Tiers 2 and 3, we would appreciate clarification.

EIOPA answer

The admissibility of dividend stoppers in own-fund items is governed principally by Article 71(1)(n) of Commission Delegated Regulation 2015/35, which requires undertakings to have full flexibility over distributions on those Tier 1 own-fund items referred to in this Article.

The 'Guidelines on the classification of own funds' clarify the application of this Article including its effect on the terms of other own-fund items. Guideline 4 paragraph 1.25 (d) and Guideline 5 paragraph 1.32 (b) confirm that for the Tier 1 items referred to in Article 71(n) of Commission Delegated Regulation 2015/35 to satisfy the features determining classification as Tier 1 own funds, there can be no stoppers in any other own-fund item (of any tier) which have the effect of preventing a distribution on those items.

Articles 73 and 77 of Commission Delegated Regulation 2015/35 concerning the features determining classification of Tier 2 and Tier 3 own-fund items do not

contain a requirement for full flexibility, and this is reflected in the Guideline. The Guidelines therefore confirm that the existence of stoppers is not prohibited in Tier 2 and Tier 3 own-fund items as such. However, as stated above, it is clarified that the existence of dividend stoppers in any own-fund item of an undertaking would have the effect of preventing an undertaking's equity from being classified as Tier 1 own-funds.