

# Q&A

QUESTION ID:

400

REGULATION REFERENCE:

Guidelines on classification of own funds

ARTICLE:

333

STATUS:

Final

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## Question

We would like to ask EIOPA's opinion on the following issue with respect to the classification of own fund items issued by an insurance holding company or a mixed financial holding company at group level.

In article 333 (1)(b) of the Delegated Regulation it is set out that own fund items issued by an insurance holding company or a mixed financial holding company should be free from encumbrances and any connected transaction which would undermine the quality of the item at group level. Recital 127 of the Delegated Regulation provides an example of encumbrance and states that instruments issued by an insurance holding company or a mixed financial holding company should not be considered to be free from encumbrance unless the claims relating to the instrument rank after the claims of policyholders and beneficiaries of insurance and reinsurance undertakings belonging to the group in case of the winding up of any of these undertakings.

We realise that recitals do not have the same legal status as articles in the Delegated Regulations. However, we are of the opinion that the example of encumbrance given in the recital cannot be ignored and hence should be

addressed by holding companies issuing capital instruments.

To sum up, the questions are as follows: (i) if and how the consideration in recital 127 should be addressed (ii) whether a European wide interpretation is required or whether NSAs can decide this nationally (considering level playing field issues).

## EIOPA answer

Recital 127 of Commission Delegated Regulation 2015/35 gives an example of features of own fund items issued by insurance holding companies and mixed financial holding companies which should result in not considering such own funds to be free from encumbrances. The aim of a recital is to explain the requirement laid down in the corresponding Article 333, which therefore needs to be read in light of the recital. Therefore, Recital 127 cannot be disregarded by national supervisory authorities (NSAs) and they should ensure that the condition included in this recital are taken into account when compliance with Article 333 is assessed.

Own-fund items issued by IHC or MFHC which are subject to the transitional arrangements referred to in Article 308b(9) of Solvency II Directive do not have to meet the criteria provided in Article 333 of Delegated Regulation (UE) 2015/35, including the criterion set out in Article 333(1)(b)).

As regards the way of ensuring compliance with Article 333 in the context of the conditions included in this recital, neither the Directive nor the Delegated Regulation provides a specific requirement in this regard.

