

Question ID	2021_5720
Status	Final Q&A
Legal act	Regulation (EU) No 575/2013 (CRR)
Topic	Own funds
Article	63
Paragraph	1
Subparagraph	-
COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations	Not applicable
Article/Paragraph	NA
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Disclose name of institution / entity	No
Type of submitter	Competent authority
Subject matter	Early repayment upon a common agreement between the issuer and the subscriber
Question	Is a clause in provisions governing the capital instruments allowing that the parties (issuer and the investor) may mutually agree to have the issuer repay, at any time, but not before five years after the date of issuance, totally or partially, the principal amount of the capital instrument compliant with the eligibility criteria for own funds instruments?
Background on the question	Articles 52(1)(h),(j) and 63(i),(k) CRR provide for eligibility criteria governing the early repayment / call / redemption / repurchase of capital instruments which qualify as AT1 and T2 instruments. Articles 52(1)(h) and 63(i) CRR require that where the instruments include one or more early repayment options including call options, the options are exercisable at the sole discretion of the issuer. Furthermore, Articles 52(1)(j) and 63(k) CRR prescribe that the provisions governing the instruments do not indicate explicitly or implicitly that the instruments would be called, redeemed or repurchased, as applicable, by the institution other than in the case of the insolvency or liquidation of the institution and the institution does not otherwise provide such indication.

<p>Final answer</p>	<p>Articles 52(1)(h) and 63(i) of Regulation (EU) No 575/2013 (CRR) state that where instruments include one or more early repayment options including call options, the options are exercisable at the sole discretion of the issuer.</p> <p>Articles 52(1)(j) and 63(k) of the CRR provide that the provisions governing the instruments do not indicate explicitly or implicitly that the instruments would be called, redeemed or repurchased, as applicable, by the institution other than in the case of the insolvency or liquidation of the institution, and the institution does not otherwise provide such an indication. When assessing any AT1 or T2 instrument, Article 79a of the CRR has to be taken into account, which stipulates that the substance of the instrument's features and not only its legal form, as well as all arrangements related to the instrument need to be taken into account when assessing the eligibility of the instrument.</p> <p>While a conclusive assessment is only possible on a case-by-case basis taking into account the precise drafting of the relevant clauses, a call or any early repayment option embedded in AT1 or T2 instruments that requires a consensus by both parties prevents the sole discretion of the issuer, given that the early repayment is subject to the holder's agreement. Call or any early repayment options may only be included in these instruments if they are exercisable by the issuer at its sole discretion.</p> <p>Depending on the precise drafting of such a clause, which has to be assessed on a case by case basis, the assessment may conclude that this eligibility criterion is also not met due to the fact that it creates an expectation to holders that the instrument will be redeemed as soon as there is an agreement between the holder and the issuer.</p>
<p>Link</p>	<p>https://www.eba.europa.eu/single-rule-book-qa/qna/view/publicId/2021_5720</p>

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