

<b>Question ID</b>	2021_6203
<b>Status</b>	Final Q&A
<b>Legal act</b>	Regulation (EU) No 575/2013 (CRR)
<b>Topic</b>	Own funds
<b>Article</b>	Article 72b
<b>Paragraph</b>	2
<b>Subparagraph</b>	j
<b>COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations</b>	Not applicable
<b>Article/Paragraph</b>	N/A
<b>Date of submission</b>	10/09/2021
<b>Published as Final Q&amp;A</b>	15/07/2022
<b>Disclose name of institution / entity</b>	No
<b>Type of submitter</b>	Resolution authority
<b>Subject matter</b>	Implementation of Article 72b(2)(j) of Regulation (EU) No 575/2013 (“CRR”) and whether the contractual provisions governing liabilities are required to refer to the permission regime in order for the liabilities to qualify as eligible liabilities instruments
<b>Question</b>	<p>In question 2013_544, the EBA stated that for Tier 2 instruments, Article 63(j) CRR, in conjunction with Article 77 of the CRR, stipulates that an institution must not effect the call, redemption, repayment or repurchase prior to the date of an instrument's contractual maturity without the prior permission of the competent authority, and that such instruments should therefore contain an explicit reference to these regulatory conditions in their terms.</p> <p>Article 72b(2)(j) CRR states that liabilities may only be called, redeemed, repaid or repurchased early where the conditions set out in Articles 77 and 78a are met. As there is no explicit positive obligation in the legislation to include a reference to the need for resolution authority approval, should eligible liabilities instruments contain an explicit reference to these regulatory conditions in their terms?</p>
<b>Background on the</b>	Article 72a(1)(a) CRR provides that liabilities are considered as eligible

<b>question</b>	<p>liabilities instruments where the conditions in Article 72b (except paragraphs 3-5) and Article 72c are met. In the eligibility conditions in Article 72b(2), point (j) provides that liabilities may only be called, redeemed, repaid or repurchased early where the conditions set out in Articles 77 and 78a are met. Article 77 and 78a CRR provide that resolution authority permission is needed to reduce eligible liabilities and set out the conditions for such permission. However, it is not clear how point (j) of Article 72b(2) CRR should be interpreted and how point (j) of Article 72b(2) CRR applies as an eligibility condition.</p>
<b>Final answer</b>	<p>Any call options, redemptions or repurchase transactions related to liabilities must meet the requirements of Article 72b(2)(i), (j) and (k) of Regulation (EU) No 575/2013 (CRR) for those liabilities to qualify as eligible liabilities instruments. For liabilities to qualify as eligible liabilities instruments, Article 72b(2)(j) stipulates that the institution may only effect the call, redemption, repayment or repurchase prior to the date of an instrument's contractual maturity where the conditions set out in Article 77 and 78a are met (i.e. where the prior permission of the resolution authority has been obtained).</p> <p>In line with EBA Q&amp;A 2013_544 liabilities, which shall qualify as eligible liabilities, should therefore contain an explicit reference to these regulatory conditions in their terms.</p> <p>The inclusion of a reference to these regulatory conditions in their terms would be in line with the EBA recommendation (14) of the EBA report on the monitoring of TLAC/MREL-eligible liabilities instruments (EBA/REP/2020/27) stating that the terms and conditions of eligible liabilities instruments should contain an explicit reference to the need for prior approval from resolution authorities of reductions in eligible liabilities, as in the case of own funds instruments.</p>
<b>Link</b>	<p><a href="https://www.eba.europa.eu/single-rule-book-qa/qna/view/publicId/2021_6203">https://www.eba.europa.eu/single-rule-book-qa/qna/view/publicId/2021_6203</a></p>

European Banking Authority, 01/04/2023

[www.eba.europa.eu](http://www.eba.europa.eu)