

# Single Rulebook Q&A

<b>Question ID</b>	2021_6257
<b>Status</b>	Final Q&A
<b>Legal act</b>	Regulation (EU) No 575/2013 (CRR)
<b>Topic</b>	Credit risk
<b>Article</b>	4
<b>Paragraph</b>	1
<b>Subparagraph</b>	1
<b>COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations</b>	Not applicable
<b>Article/Paragraph</b>	n/a
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<b>Disclose name of institution / entity</b>	No
<b>Type of submitter</b>	Competent authority
<b>Subject matter</b>	Purchase of credit receivables as a form of 'granting credits'
<b>Question</b>	<p>Should the purchase of credit receivables be classified as 'granting credits' within the meaning of CRR's definition of credit institution? And if so, would a subject (a natural or legal person) whose activity is that of repeatedly purchasing credit receivables from a credit institution and concurrently taking deposits or other repayable funds from public, be required to obtain a license under Article 8 CRD?</p>
<b>Background on the question</b>	<p>The 'credit institution' within the meaning of Article 4(1)(1) of CRR, which is referred to by Article 3(1)(1) of Directive 2013/36/EU (CRD), is defined by (apart from taking deposits or other repayable funds) the business activity of 'grant[ing] credits for [undertaking's] own account'. The expression 'to grant credits' is not explicitly defined within CRR. The EBA's Opinion on elements of credit institution under CRR (EBA/OP/2020/15) also does not provide sufficiently clear guidance. Pursuant to point 2 of Annex 1 to CRD, the term Lending includes, among others, 'factoring, with or without recourse, financing of commercial transactions (including forfeiting)' (as relevant for the single European banking license's purposes). In like manner, the</p>

purchase of credit receivables generally presents a monetary transaction whereby an original receivable from a credit (or a comparable financial obligation to repay provided funds) is transferred from an original creditor (e.g. a bank) to a new subject - transferee (in exchange for respective payment). Consequently, exposure from financial activities with credit risks is transferred from the original creditor to the transferee. As such, the transaction resembles the characteristics of factoring, resp. forfeiting - in the end, the transferee is exposed to the credit risk of the obligor (borrower). Thus, business activity of purchasing credit receivables would fall into the scope of Lending under CRD. Assuming that each credit institution under CRR requires a license pursuant to Article 9(1) of CRD and should be entitled to benefit from the mutual recognition of activities under CRD, activities within Lending should fall within the scope of granting credit. This view is also supported by the by the EBA's Guidelines on loan origination and monitoring (EBA/GL/2020/06). The definition of "Loan" within these guidelines refer to the Commission Implementing Regulation (EU) No 680/2014 of 16 April 2014 (currently replaced by the new regulation Commission Implementing Regulation (EU) 2021/451 of 17 December 2020). The concept of loan provided by both said regulations, although provided "for the reporting" purposes as per Article 430(7) of CRR, similarly includes wide range of lending schemes, including "factoring and similar transactions, like acceptances, outright purchase of trade receivables, forfaiting..." (see point 5.1(32) of Part One and point 5(85) of Part Two of the Annex V to Regulation (EU) No 680/2014, resp. point 5.1(32) of Part One and point 5(85) of Part Two of the Annex V to Regulation (EU) 2021/451. Therefore, purchased credit receivables would be reported in the asset part of a balance sheet of a credit institution. Against this background, should a subject's (a natural or legal person) activity of repeatedly purchasing credit receivables from a credit institution and concurrently taking deposits or other repayable funds from public be classified as 'granting credits' within the meaning of CRR's definition of credit institution, it should be required to obtain a license under Article 9(1) CRD and Point 14 of recital of CRD. On the contrary, there are several arguments supporting the conclusion that purchase of credit receivables should not be regarded as "granting credits" under EU law, including CRR. Firstly, it can be argued that CRR explicitly differentiates between the risks of "purchased receivables" (purchased receivables exposures) and credit exposures, and thus, these are not interchangeable (although both are exposures to debtor and the differentiation is introduced for the technical purposes of capital ratio calculation). Similarly, Regulation (EU) 2017/2402 (on securitization) differentiates between the granting credits and purchase of receivables from third parties within the definition of the "originator" (see Article 2(3) of Regulation (EU) 2017/2402). Moreover, as further stressed out by EBA's Q&A no. 2014/1530 commenting on CRR, a securitisation special purpose entity (SSPE) is not a financial institution according to Article 4 (27) CRR as it is not carrying out any of the activities listed under Annex I to the CRDIV (i. e. the purchase of credit exposures that

	<p>are subsequently tranching is not considered as Lending). Also, the purchase of (and trading with) specific receivables will be covered by the new directive on credit servicers, credit purchasers and the recovery of collateral (COM/2018/0135), where the terminology uses different limitation of 'granting a credit'. In the context of this directive proposal, should it be accepted that the purchase of credit receivables presents "granting credits" within the meaning of CRR, then in case a credit purchaser as defined by the proposed Article 3(7) starts taking deposits or other repayable funds from the public, it would need to obtain a license under Article 9(1) CRD as a credit institution. This would seem to be at odds with the definition of a credit purchaser that emphasizes the credit purchaser is not a credit institution. Practical Example: A special purpose vehicle (continuously) issuing bonds is to provide the raised funds to a credit institution from the same group by the means of either - funded participation (i.e. the SPV will provide funds (the participation) corresponding to a part of nominal value of a specific loan to the credit institution while the credit institution is to repay the participation to SPV following the repayment from the original obligor) or - plain purchase of credit receivables (by a so called "silent assignment" or similar means).</p>
<p><b>Final answer</b></p>	<p>For the purpose of Article 4(1)(1) of Regulation (EU) No 575/2013, the purchase of credit receivables should be understood as granting credits since the credit risk is transferred to the (natural or legal) person buying those receivables.</p> <p>In case a (natural or legal) person performing such activities also takes deposits or other repayable funds from the public as referred to in Article 4(1)(1) of Regulation (EU) No 575/2013, that person is a credit institution in accordance with that point, and should hence be required to obtain an authorisation before commencing its activities in accordance with Article 8 of Directive 2013/36/EU.</p> <p><i>The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.</i></p>
<p><b>Link</b></p>	<p><a href="https://www.eba.europa.eu/single-rule-book-qa/qna/view/publicId/2021_6257">https://www.eba.europa.eu/single-rule-book-qa/qna/view/publicId/2021_6257</a></p>

