

<b>Question ID</b>	2022_6436
<b>Status</b>	Final Q&A
<b>Legal act</b>	Regulation (EU) No 575/2013 (CRR)
<b>Topic</b>	Other issues
<b>Article</b>	52
<b>Paragraph</b>	1
<b>Subparagraph</b>	v
<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>	Yes
<b>Name of institution / submitter</b>	Banco Bilbao Vizcaya Argentaria, S.A.
<b>Country of incorporation / residence</b>	SPAIN
<b>Type of submitter</b>	Credit institution
<b>Subject matter</b>	Application of Articles 52 and 54 of Regulation No. 575/2013 (CRR) at consolidated level
<b>Question</b>	How should the consolidated level of AT1 instruments where the issuer is a 100% fully owned subsidiary of an EU institution where the subsidiary is established in a third country and has not been designated in accordance with Article 12 of Directive 2014/59/EU (BRRD) as part of a resolution group the resolution entity of which is established in the Union be treated?
<b>Background on the question</b>	This question is relevant for MPE Banks with subsidiaries in third countries (two main Spanish Banking Groups) and raises a relevant issues for MPEs banks to comply with the SRB expectation for banks 2019 document,, 2.2.4. Principles - Minimum requirement for own funds and eligible liabilities (MREL): banking groups subject to a Multiple Points of Entry (MPE) strategy should not rely on issuances of eligible instruments, beyond equity participations, purchased by other resolution groups of the same banking

group, acknowledging that limited interconnections and interdependencies may exist for operational or financial reasons in order to maintain the group efficiency and compliance with regulatory constraints. Contagion risk shall be deemed minimised insofar as the resolution groups subject to the MPE strategy can be resolved without causing immediate MREL shortfalls in other resolution group(s). In considering this question there are some assumptions that are key to the interpretation: The subsidiary is located in a third country. The parent company is the sole holder of this third-country Subsidiary's Equity. The issuer is 100% owned by an EU Institution. The subsidiary is not part of the parent company's resolution group. The dividend stopper term only refer to payments made by the subsidiary and not to dividends or AT1 payments of the parent company -the impact of the dividend stopper is not extendable to other parts of the group. The third country where the subsidiary is located is Basel compliant. In principle CRR's Articles 52.1 (L) and 53 (b) (i.e. Restrictions on the cancellation of distributions on Additional Tier 1 instruments and features that could hinder the recapitalization of the institution) provide that Distributions under the (AT1) instruments shall have to ensure that the cancellation of distributions imposes no restrictions on the institution and that AT1 instruments shall, in particular, not include a requirement for the payment of distributions on Common Equity Tier 1, AT1 or AT2 instruments to be cancelled in the event that distributions are not made on those AT1 instruments. This requirement could be interpreted in line with the objective of the regulation including recent reforms so, under the circumstances foreseen in this question, a dividend stopper included in a AT1 instrument issued by a third country subsidiary could be counted towards the Own Funds at the Group Level. In the case described the restriction on certain payments is confined to the Issuer and deploys effects at the Issuer's solvency solo level but does not embed any impact at Group level -given the 100% ownership of the subsidiary-. Therefore, this dividend stopper third country feature is not relevant at a consolidated level as the CRR on art. 11 requires to parent institutions to comply with the obligations laid down in Part two (own funds) on the basis of their consolidated situation, in this case, under full consolidation (art. 18.1). The definition made by the CRR art. 4 (47) of 'consolidated situation' means the situation that results from applying the requirements of CRR an institution as if that institution formed, together with one or more other entities, a single institution. For the purpose of applying CRR provisions, the third country subsidiary and the UE parent institution, as a single entity, the intra group dividend cancellation (local dividend AT1 stopper), on a consolidated basis, is not imposing any restriction to the institution. The dividend payments or cancelation of payments of a fully owned subsidiary is not relevant for the CRR application at consolidated level, so this feature for dividend stopper required by the third country regulation should not be considered for assessing the compatibility of this instrument at consolidated level. This interpretation is reinforced by some recent legal amendments. Regulation (EU) 2019/876

amending Regulation (EU) No 575/2013, introduced relevant changes on CRR to introduce among other things the necessary elements to make the prudential framework compatible with the objectives of the European resolution framework, introducing changes that ensures the effectiveness of the own funds and eligible liabilities to guarantee the loss absorption capacity pursued by the regulation. In that respect, and for the purposes of ensuring this loss absorption capacity of AT1 instruments issued by subsidiaries of UE Groups subject to Multiple Point of Entry strategy, changes were introduced on CRR articles 52 and 54. On art. 52 1. (p). Second paragraph, requires that the third regulation and contractual provisions of third country subsidiaries, upon decision of the third country authority may be subject to write-down and conversion powers. The AT1 instrument, to comply with this requirement, has to follow the third country regulation. In the same vein, art. 54 (1), point a, was introduced to specify that it is the third country national law and contractual provisions that govern the instrument that has to be used to calculate the trigger referred in point (a) of the said art. 54 (1) (provided that the EBA is satisfied that those provisions are equivalent to the requirements of the article). Similar changes have been made also to art. 63 for T2 instruments. These changes seem to point towards CRR being interpreted in a way that allow MPE banks to comply with the European Resolution Authority expectation on the principles governing the high quality of eligible instruments.

**Final answer**

Articles 52-54 of Regulation (EU) No. 575/2013 (CRR) stipulate the eligibility criteria for AT1 instruments. In accordance with Q&A [2013\\_385](#) and [the EBA Report on the monitoring of AT1 instruments](#), instruments issued by subsidiaries in third countries shall comply with all requirements that are set out in the CRR and associated regulations in order to be eligible at the level of the group.

Point (e) of Article 54(1) of the CRR, specifies that, in case the instruments have been issued by a subsidiary undertaking established in a third country, the calculations of the trigger event for the write down or conversion of AT1 instruments referred to in point (a) of Article 54(1) shall be made in accordance with the national law of that third country or contractual provisions governing the instruments, provided that the competent authority, after consulting the EBA, is satisfied that those provisions are at least equivalent to the requirements set out in that Article. However, this provision does not derogate from Article 53 CRR on the restrictions on the cancellation of distributions on Additional Tier 1 instruments and features that could hinder the recapitalisation of the institution and as specified further in paragraph 118 of the EBA Report on monitoring AT1 instruments, instruments with a dividend stopper cannot be recognized as AT1 for the purpose of the consolidated solvency position of an EU banking group.

Moreover, the resolution strategy does not impact, nor derogate, the eligibility criteria for determining the consolidated own funds of the EU

	banking group.
<b>Link</b>	<a href="https://www.eba.europa.eu/single-rule-book-qa/qna/view/publicId/2022_6436">https://www.eba.europa.eu/single-rule-book-qa/qna/view/publicId/2022_6436</a>

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