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Status	Final Q&A
Legal act	Regulation (EU) No 575/2013 (CRR)
Topic	Own funds
Article	62, 63
Paragraph	-
Subparagraph	-
COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations	Not applicable
Article/Paragraph	N/A
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Disclose name of institution / entity	No
Type of submitter	Competent authority
Subject matter	Treatment of Upper Tier 2 instruments under CRR
Question	Can existing Upper Tier 2 instruments with a provision such as "the institution has the right to defer the payment of interest because the institution has not paid dividends on ordinary shares (Core Equity Tier 1 - CET1) and on hybrid instruments (Additional Tier 1 - AT1)" qualify as fully eligible Tier 2 instruments under Regulation (EU) No 575/2013 (CRR)?
Background on the question	Some existing Upper Tier 2 instruments include such terms which are more stringent than those provided for Tier 2 instruments under the CRR. However, including such a provision in terms and conditions of instruments raises the question of eligibility of CET 1 and AT1 instruments as the provisions for CET1 instruments (Art. 28 (1) (h) (vii) of the CRR) and AT1 instruments (Art. 52 (1) (l) (v) of the CRR) require that "the cancellation of distribution imposes no restrictions on the institution".
EBA answer	While a provision as the one in the question would not disqualify existing Upper Tier 2 instruments as fully eligible Tier 2 instruments under Regulation (EU) No 575/2013 (CRR), it could have an effect on the CET 1 and AT1 instruments it refers to.

	<p>In the example described in the question, a decision not to make a distribution on CET1 or AT1 instruments gives the institution the right to defer on certain Tier 2 instruments.</p> <p>This 'right to defer' would generally not represent an indirect restriction on the institution according to the Article 28(1)(h)(vii) of the CRR for CET1 instruments or according to Article 52(1)(l)(v) of the CRR for AT1 instruments. The assessment of the whether this 'right to defer' amounts to a such a restriction depends on the exact terms and conditions of the contract. In that respect this example is different from the mandatory deferral or cancellation of distributions in Q&A 2013 021.</p>
Link	https://www.eba.europa.eu/single-rule-book-qa/-/qna/view/publicId/2013_54

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