

Question ID	2013_542
Status	Final Q&A
Legal act	Regulation (EU) No 575/2013 (CRR)
Topic	Own funds
Article	52
Paragraph	1
Subparagraph	1
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	Investment firm
Subject matter	Grandfathering of own funds
Question	<p>In question 2013_15 the EBA clarified that legacy step-up Tier 1 instruments with quarterly calls will not be eligible as fully CRR compliant Tier 2 instruments after their first call and step-up date. In question 2013_31 the EBA clarified that non-step-up Tier 1 instruments could be eligible, for the amounts exceeding the grandfathering limits, as fully eligible Tier 2 instruments with no time limit and independently of the frequency of calls, with an important caveat : should the terms of the legacy non-step-up Tier 1 instruments interfere with Articles 28(1)(h)(vii) (CET1) and 52(1)(l)(v) (AT1), then such AT1 and CET1 instruments could be disqualified, while the legacy non-step-up Tier 1 instrument would remain in fully eligible Tier 2. By doing so the EBA referenced to questions 2013_21 and 2013_54. However, these two questions mainly dealt with "stopper provisions" and more precisely about cases where the legacy non-step-up Tier 1 instruments have terms that could prevent (optionally or in a mandatory way) coupons being paid if distributions are skipped on CET1 or AT1 instruments. I have several questions related to this : 1. My first question is to confirm that the same reasoning would apply during the grandfathering period independently of the fact that the bonds would still be within the grandfathering limit or not. Logically the answer should be yes as questions 2013_21 and 2013_54 clarify</p>

	<p>that the impact of the terms of the legacy instrument is not on the regulatory eligibility of this instrument but on the AT1 / CET1 instruments. The effect of the terms of the grandfathered bonds on the CET1 / AT1 bonds is obviously totally independent of the grandfathering status of the grandfathered bond (with the possible exception of contractual provisions that make an explicit reference to pushers / stoppers only on bonds that are included in regulatory capital.) 2. My second question is to confirm that the same reasoning would apply to step-up bonds as I see no reason why the impact of pusher / stopper provisions on CET1 / AT1 bonds would be different if there is a step up or not and application of articles 28(1)(h)(vii) (CET1) and 52(1)(l)(v) (AT1) would be the same for step / non step bonds. 3. My third question is on pusher provisions. Many legacy Tier 1 instruments have pusher provisions saying that a coupon being paid on the legacy Tier 1 instrument forces a payment on "pari passu" bonds, such pari passu bonds being defined in the contract. Could the EBA confirm that, if an additional Tier 1 is included in the list of pari passu bonds defined in the legacy Tier 1 contract, then the AT1 instrument would not be eligible? This is because of the fact that [not paying on AT1 implies not paying on Legacy Tier 1] is logically strictly the same as [paying on Legacy Tier 1 implies paying on AT1], so in such cases not paying coupons on the AT1 would obviously trigger restrictions for the bank, the case specifically considered by the EBA in question 2013_21.</p>
<p>Background on the question</p>	<p>Clarification on grandfathering especially with respect to questions 2013_15, 2013_21 and 2013_31.</p>
<p>Final answer</p>	<ol style="list-style-type: none"> 1. Answers to QA 2013_21 and QA 2013_54 refer to situations where grandfathered Tier 1 instruments may be included in own funds as fully eligible Tier 2 instruments. However, instruments eligible as own funds under the grandfathering provisions of Regulation (EU) No. 575/2013 are not subject to the requirements that apply to capital instruments that are fully eligible in their own right. Therefore grandfathered instruments may include clauses in their terms and conditions according to which the distribution on the instrument would be cancelled if the institution does not make a distribution on another capital instrument without that clause being regarded as interfering with the flexibility of payments required for the fully eligible instrument. 2. The treatment set out in the answer to question 1 applies to capital instruments with or without step-ups. 3. The interpretation cannot be confirmed for the reasons given in the answer to question 1.
<p>Link</p>	<p>https://www.eba.europa.eu/single-rule-book-qa/-/qna/view/publicId/2013_542</p>

