Single Rulebook Q&A

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Status	Final Q&A
Legal act	Regulation (EU) No 575/2013 (CRR)
Topic	Own funds
Article	28
Paragraph	1(i), 1(h)
Subparagraph	i
COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations	Not applicable
Article/Paragraph	Not applicable
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Disclose name of institution / entity	No
Type of submitter	Competent authority
Subject matter	Eligibility of capital instruments for classification as Common Equity Tier 1 instruments when the instruments are supplemented by a contractual obligation of the majority-shareholder to pay a fixed yearly compensation to the minority shareholders
Question	Para 1 point (i) of Article 28 of Regulation (EU) No 575/2013 (CRR) states that "compared to all the capital instruments issued by the institution, the instruments absorb the first and proportionately greatest share of losses as they occur, and each instrument absorbs losses to the same degree as all other Common Equity Tier 1 instruments". The question is, whether a contractual obligation of the majority shareholder of a credit institution to pay a fixed yearly compensation to the minority shareholders even in loss years (by reason that the majority shareholder and the credit institution have entered into a profit and loss transfer agreement) is permissible according to para 1 point (i) of Article 28 CRR?
Background on the question	The majority-shareholder and the credit institution have concluded a profit and loss transfer agreement to make use of preferential tax regulations (group taxation). In the concerned case the minority-shareholders of the credit institution are the owners of the majority-shareholder of the credit institution.

Final answer	Article 28(1)(i) of Regulation (EU) No. 575/2013 (CRR) states that Common Equity Tier 1 (CET1) instruments must absorb the first and proportionately greatest share of losses as they occur, and each instrument absorbs losses to the same degree as all other CET1 instruments. A profit and loss transfer arrangement between the majority shareholder and the credit institution, which results in a contractual obligation of the majority shareholder of the credit institution to pay a fixed compensation to the minority shareholder of the credit institution, does not meet this requirement. Such a profit and loss transfer arrangement could also result in an obligation on the credit institution to pay distributions if this is required to maintain the fixed compensation payment to the minority shareholder, which would be non-compliant with Article 28(1)(h) of the CRR.
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