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Status	Final Q&A
Legal act	Regulation (EU) No 575/2013 (CRR)
Topic	Own funds
Article	28
Paragraph	1
Subparagraph	1
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-holder of those instruments to pay compensation to the minority shareholders even in loss years
Question	Paragraph 1 (I) (ii) of Article 28 Regulation (EU) No. 575/2013 (CRR) states that “the instruments are not secured, or subject to a guarantee that enhances the seniority of the claim by the parent undertaking of the institution”. The question is, whether a contractual obligation of the majority shareholder of a credit institution to pay a 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 paragraph 1 (I) (ii) of Article 28 CRR? In more general terms, what is the meaning of the word “claim” in paragraph 1 (I) of Article 28 CRR (claim only to the substance/equity of the credit institution, or also to a dividend or to a compensation payment or all)?
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	<p>Article 28(1)(l) of Regulation (EU) No. 575/2013 (CRR) prohibits the enhancement by the issuer or related entity, as specified in points (i) to (v), of any claim on an instrument to payment vis-à-vis unsecured/-guaranteed claims or claims of more senior positions in the institution's creditor hierarchy. The claim on an instrument includes, <i>inter alia</i>, the payment of principal, dividends, or in the event of the institution's liquidation, its residual assets.</p> <p>An arrangement, contractual or otherwise, whereby the issuer or related entity guarantees to pay a compensation to shareholders even in loss years enhances the seniority of those shareholders and therefore is non-compliant with Article 28(1)(l) of the CRR.</p>
Link	https://www.eba.europa.eu/single-rule-book-qa/-/qna/view/publicId/2013_543

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