

Single Rulebook Q&A

Question ID	2014_1226
Status	Final Q&A
Legal act	Regulation (EU) No 575/2013 (CRR)
Topic	Own funds
Article	63, 66
Paragraph	k, a
Subparagraph	-
COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations	Not applicable
Article/Paragraph	not applicable
Date of submission	21/05/2014
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Disclose name of institution / entity	No
Type of submitter	Law firm
Subject matter	Eligibility of subordinated loans for classification as Tier 2 instruments when the rules governing their issue contemplate an obligation of the issuer to repurchase a percentage of them (eligibility limited to the amount of subordinated loans not subject to such repurchase obligation).
Question	<p>Pursuant to the combined application of articles 63 letter k) and 66 letter a) it is correct that a clause - also included in the rules governing the issue of subordinated loans - according to which an issuer is obliged to repurchase a specified amount of subordinated loans does not prevent from classifying such financial instruments as Tier 2 instruments if, in compliance with article 66 letter a), the percentage of subordinated loans that shall be repurchased by the issuer is deducted from Tier 2 items? In other words, a subordinated loans can be classified as Tier 2 instruments if the provisions governing their issue contemplate the undertaking of the issuer to repurchase a specified percentage of the issued subordinated loans provided that - in compliance with article 66 letter a) of CRR - such percentage is deducted from Tier 2 items? The undertaking of the issuer to repurchase part of subordinated loans deriving from the rules governing the issue of such subordinated loans can be considered as a repurchase “contractual obligation” and as a consequence may it fall within one of the cases contemplated under the provisions of article 66 letter a) of CRR?</p>

<p>Background on the question</p>	<p>Pursuant to article 63 letter k) of CRR subordinated loans are eligible to be qualified as Tier 2 instruments if, among others, the issuer is not bound - neither from the rules governing the subordinated loans nor from any other provisions - to repurchase them. However, article 66 letter a) of CRR provides the obligation to deduct from Tier 2 instruments “direct, indirect and synthetic holdings by an institution of its own Tier 2 instruments, including its own Tier 2 instruments that an institution could be obliged to purchase as a result of existing contractual obligations”. The rules governing a subordinated loan contemplate the undertaking of the issuer to repurchase a specified percentage (10%) of the issue.</p>
<p>Final answer</p>	<p>A subordinated loan whose provisions contain an obligation on the borrower to repurchase any portion of the loan amount breaches the criteria contained in Article 63(i) & (k) of Regulation (EU) No 575/2013 (CRR) and renders the full amount of the loan ineligible for Tier 2 (cf. Article 65 lit. a CRR).</p> <p>The reference to "existing contractual obligations" in CRR Article 66(a) means contractual obligations other than those deriving from the terms and conditions of Tier 2 subordinated loans.</p>
<p>Link</p>	<p>https://www.eba.europa.eu/single-rule-book-qa/-/qna/view/publicId/2014_1226</p>

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