Single Rulebook Q&A

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Status	Final Q&A
Legal act	Regulation (EU) No 575/2013 (CRR)
Topic	Credit risk
Article	132
Paragraph	-
Subparagraph	-
COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations	Not applicable
Article/Paragraph	Not Applicable
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Disclose name of institution / entity	Yes
Name of institution / submitter	Banco Português de Gestão, SA
Country of incorporation / residence	Portugal
Type of submitter	Credit institution
Subject matter	Applicability of Look through Approach to SPV (Article 132 CRR)
Question	May the look-through approach be applied for exposures in Notes issued by a special purpose vehicle, with no tranches, - which is unclear whether it qualifies as an undertaking for collective investment according to the applicable national law -, where the paid out of the each Note are the net

	proceeds of the loan receivables portfolio allocated to such Note (provided the additional requirements set for the look through approach are duly met)?
Background on the question	In order to finance the acquisition of the underlying (loan receivables), the SPV issues notes depending on payments of the underlyings. The notes are “Borrower payment contingent notes”, meaning that all payments (cash outflows) on the notes to the investors will depend on payments (cash inflows) received from the underlyings.Payments on a note to the investors solely and exclusively depend on cash flows from the underlyings that refer to that note. All notes are legally ring-fenced from each other, so that a defined underlying serves only for the referred note. In addition, there is no hierarchy of payments between the note holders. The allocation of losses solely depends on the performance of the underlyings. The notes do not qualify as tranches as defined by CRR. The Issuer is bankruptcy remote, meaning that even if losses occur in the underlyings will not lead to a liquidation or wind-down of the SPV. Losses are solely allocated to the notes they refer to.The notes are guaranteed by neither the Issuer nor an Originator.The issuer functions exactly as a CIU as the performance and, therefore, the risks of the notes issued are solely depending on the underlying assets (loan receivables).
EBA answer	Conditions and eligibility criteria to apply the look through approach to exposures in the form of units or shares in collective investment undertaking (CIUs) are set out in Article 132(3) and (4) of Regulation (EU) No 575/2013 (CRR) as amended by Regulation (EU) 2019/876. Article 4(1)(7) Regulation (EU) No 575/2013 as amended by Regulation (EU) 2019/876 defines a CIU as an UCITS as defined in Article 1(2) of Directive 2009/65/EC of the European Parliament and of the Council or an alternative investment fund (AIF) as defined in point (a) of Article 4(1) of Directive 2011/61/EU of the European Parliament and of the Council. The definition of AIF in Article 4(1)(a) of Directive 2011/61/EU specifies the features of collective investment undertakings that qualify as an AIF - and therefore as CIU for the CRR – as being undertakings “which raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors”. The only additional feature to qualify as AIF is not already qualifying as UCITS, the latter requiring authorisation pursuant to Article 5 of Directive 2009/65/EC. Moreover, the definition of AIF explicitly includes compartments of collective investment undertakings. Additional guidance on the characteristics, which - if all exhibited by an undertaking - should show that an undertaking is a collective investment undertaking mentioned in Article 4(1)(a) of the AIFMD, can be found in paragraph 12 of the ESMA Guidelines on key concepts of the AIFMD. If the entity fulfills the definition set in Article 4(1)(7) CRR, then it qualifies as a CIU. In that respect, institutions shall only determine the risk weight for exposures using

	the look-through approach according to Article 132a(1) CRR and fulfilling the conditions and eligibility criteria of Articles 132(3) and 132(4) CRR to structures qualifying as CIU. Whether the SPV in question and separately each of the compartments, formed by ring-fencing each note and the assigned underlying from each other note and their assigned underlying, might qualify as AIF and therefore as CIU for the purpose of the CRR needs to be assessed individually for the specific case and therefore cannot be finally clarified as part of a Q&A.
Link	https://www.eba.europa.eu/single-rule-book-qa/-/qna/view/publicId/2019_4502

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