Single Rulebook Q&A

Question ID	2019_4950
Status	Final Q&A
Legal act	Regulation (EU) No 575/2013 (CRR)
Topic	Own funds
Article	63
Paragraph	1
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	No
Type of submitter	Competent authority
Subject matter	Amended ranking requirement in point (d) of Article 63 of the CRR
Question	Which interpretation of the new requirement in point (d) of Article 63 of Regulation (EU) No 575/2013 (CRR), as amended by Regulation (EU) 2019/876 is correct? • Do all banks need to amend the T&Cs of their Tier 2 instruments due to the new wording of point (d) of Article 63 of the CRR in order to be CRR-compliant (considering that there is no respective grandfathering provision in the CRR)? or • Do banks for which the resolution authority does not set a subordination requirement with respect to MREL or banks for which the MREL requirement consists solely of the loss absorption amount (as the respective bank is to be wound up under normal insolvency proceedings and not subject to resolution) remain compliant with the new wording in point (d) of Article 63 of the CRR without the need to amend their respective T&Cs?
Background on the question	According to Regulation (EU) No 575/2013 as amended by Regulation (EU) 2019/876, the new text of point (d) of Article 63 is the following: "...the claim on the principal amount of the instruments under the provisions governing

	the instruments ranks below any claim from eligible liabilities instruments;" instead of "...is wholly subordinated to claims of all non-subordinated creditors".G-SIIs and top-tier banks are generally subject to a minimum MREL requirement that must be met with own funds and subordinated eligible liabilities (subordinated MREL). Other banks (i.e. non G-SIIs and non top-tier banks) are not subject to a minimum subordinated MREL requirement. However, when setting the institution-specific MREL requirement, the resolution authority may decide to set a subordination requirement. For banks, which are to be wound up under normal insolvency proceedings, the resolution authority may decide to set the MREL requirement equal to the loss absorption amount solely.
EBA answer	Regulation (EU) No 575/2013 (EU), as amended by Regulation (EU) 2019/876, provides that own funds instruments should rank junior in insolvency to eligible liabilities instruments that are defined in Article 72b of the CRR, by amending the corresponding eligibility criterion for Tier 2 instruments (i.e. point (d) of Article 63 of the CRR). The CRR does not provide for a grandfathering period as regards the amended criterion. The terms and conditions of existing instruments nevertheless do not need to be modified as long as claims from Tier 2 instruments are *de jure* (statutorily or by contract) subordinated to claims stemming from eligible liabilities instruments, assuming the institution issued any. **Disclaimer:** The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.
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