

Single Rulebook Q&A

Question ID	2019_4949
Status	Final Q&A
Legal act	Regulation (EU) No 575/2013 as amended by Regulation (EU) 2019/876 (CRR2)
Topic	Own funds
Article	494a, 494b
Paragraph	1, 2
Subparagraph	-
COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations	Not applicable
Article/Paragraph	Not applicable
Date of submission	16/10/2019
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Disclose name of institution / entity	No
Type of submitter	Competent authority
Subject matter	Grandfathering according to Articles 494a and 494b of the CRR
Question	Should Article 494a(1) and (2) of the CRR also cover points (p), (q), and (r) of Article 52(1) and points (n), (o) and (p) of Article 63, respectively?
Background on the question	<p>Article 494a (1) and (2), point (a) of Regulation (EU) No 575/2013 as amended by Regulation (EU) 2019/876 (CRR) states that the condition laid down in Article 52(1) (for AT 1 instruments) / Article 63 (for Tier 2 instruments) of the CRR requiring the direct issuance is exempted. However new requirements are also introduced in Article 52 points (p), (q) and (r) and Article 63 points (n), (o) and (p). It does not make sense to only exempt the direct issuance requirement, without also exempting these other new requirements, as „old-style“ instruments issued via SPEs will certainly not meet them.</p>
EBA answer	<p>Regulation (EU) No 575/2013 (CRR), as amended by Regulation (EU) 2019/876, provides for the grandfathering of own funds instruments with respect to certain eligibility criteria, in order to avoid cliff-edge effects (see recital 28 of Regulation (EU) 2019/876).</p> <p>For own funds instruments, the grandfathering ends on 31 December 2021 and on 28 June 2025, respectively, depending on the date of issuance</p>

of the respective instrument and on which eligibility criteria are not met (see, for instance, Articles 494a and 494b of the CRR).

In response to the question raised by the submitter, it has to be noted that the two transitional Articles 494a and 494b of the CRR are complementary with each other and with Articles 52 and 63 of the CRR. They need to be read together, as both constitute derogations from Articles 52 and 63. This means that, when compliance with the conditions in Articles 52 and 63 is checked, the eligibility of the instrument for grandfathering under Articles 494a and/or 494b of the CRR also needs to be assessed.

This might be best explained by considering the following examples that are based on Articles 494a(1) and 494b(1) of the CRR:

- until 31 December 2021,
 - an Additional Tier 1 instrument issued prior to 27 June 2019 does not have to meet the direct issuance criterion set out in point (a) of Article 52(1) nor the criteria laid down in points (p), (q), and (r) of Article 52(1) to be considered eligible;
 - an Additional Tier 1 instrument issued on 27 June 2019, or later, does not have to meet the direct issuance criterion set out in point (a) of Article 52(1), but has to meet the criteria laid down in points (p), (q), and (r) of Article 52(1) to be considered eligible;
- from 1 January 2022 until 28 June 2025, an Additional Tier 1 instrument issued prior to 27 June 2019 has to meet the direct issuance criterion set out in point (a) of Article 52(1), but not the criteria laid down in points (p), (q), and (r) of Article 52(1) to be considered eligible.

The above listed examples apply *mutatis mutandis* to Tier 2 instruments (see Articles 494a(2) and 494b(2) of the CRR, respectively).

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 prejudice the position that the European Commission might take before the Union and national courts.

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