

<b>Question ID</b>	2020_5147
<b>Status</b>	Final Q&A
<b>Legal act</b>	Regulation (EU) No 575/2013 as amended by Regulation (EU) 2019/876 (CRR2)
<b>Topic</b>	Own funds
<b>Article</b>	52
<b>Paragraph</b>	1
<b>Subparagraph</b>	(g) to (k)
<b>COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations</b>	Not applicable
<b>Article/Paragraph</b>	Not applicable
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<b>Disclose name of institution / entity</b>	No
<b>Type of submitter</b>	Competent authority
<b>Subject matter</b>	Continuous call option in AT1 instruments
<b>Question</b>	<p>Can AT1 instruments include terms whereby an issuer may call an instrument on any day over a fixed period of time (e.g. six months) before the first coupon reset date but after five years from date of issuance? Would the EBA's answer be different for prospective Tier 2 or Article 72b CRR2 instruments (i.e. TLAC/ MREL eligible liabilities instruments)?</p>
<b>Background on the question</b>	<p>Some recent AT1 issuances have contained such a continuous call option. Other issuers have not included this feature pending EBA confirmation that the instruments would be eligible for AT1 recognition with such a feature. This Q&amp;A is intended to provide clarity to the market on the EBA's position in respect of continuous call options in AT1, Tier 2 and Article 72b CRR2 instruments.</p>
<b>EBA answer</b>	<p>Article 52(1)(i) of Regulation (EU) No. 575/2013 as amended by Regulation (EU) 2019/876 (CRR2) requires that the first call of an AT1 instrument may not occur before five years from date of issuance. The CRR2 does not prescribe the frequency of subsequent call options. The terms and conditions of an AT1 instrument can therefore include a daily call option</p>

for a fixed period of time after the first call date and before the first reset date, provided that the eligibility criteria set out in points (g) to (k) of Article 52(1) CRR2 relating to permanence are met.

Given this is a relatively new feature in contracts, institutions should expect practices around the marketing and exercise of such options to be carefully assessed by the EBA and relevant competent authorities.

In accordance with Article 28(1) of Commission Delegated Regulation (EU) No 241/2014 (RTS on Own Funds), institutions should not announce the call of the instruments before they obtain the prior supervisory approval. Institutions should not expect the exceptional timeframe for a request for supervisory permission as specified in Article 31(2) of the RTS on Own Funds to apply purely because the terms contain a continuous call option. A continuous call option is not on its own deemed to constitute "exceptional circumstances" for the purposes of that paragraph. Should the competent authority grant its permission for the call, the institution shall deduct the corresponding amount from its AT1 capital in accordance with Article 28(2) of the RTS on Own Funds.

There is no legal or prudential rationale to have a different treatment for Tier 2 instruments containing such a feature. Tier 2 instruments may therefore include continuous call options of the form referred to in the question, including those exercisable during the instruments' amortisation period, provided that the eligibility criteria set out in points (g) to (k) of Article 63 CRR2 are met.

Similarly, Article 72b CRR2 instruments may contain continuous call options provided that the eligibility criteria set out in points (g) to (k) of Article 72b CRR2 are met. The duration of recognition as eligible liabilities shall be determined in accordance with Article 72c CRR2.

**Link**

[https://eba.europa.eu/single-rule-book-qa/qna/view/publicId/2020\\_5147](https://eba.europa.eu/single-rule-book-qa/qna/view/publicId/2020_5147)

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