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From:	Presidency
To:	Delegations
Subject:	Articles 72a,72b and 72c CRR Criteria for eligible liabilities

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Delegations will find attached Presidency non-paper for the 6/7 February 2017.

## Articles 72a, 72b and 72c CRR Criteria for eligible liabilities

### Background

In the Commission proposal for a regulation amending CRR, a new Chapter 5a on eligible liabilities has been introduced after the chapters governing own funds.

**NEW Article 72a CRR** lists excluded liabilities that cannot count towards fulfilling the requirement for own funds and eligible liabilities.

**NEW Article 72b CRR** contains the eligibility criteria for eligible liabilities instruments, paragraph 2 reflecting the eligibility criteria for subordinated liabilities, whilst paragraphs 3 and 4 reflect eligibility criteria for liabilities that rank pari passu with excluded liabilities.

**NEW Article 72c CRR** specifies that instruments may count towards eligible liabilities items only where they have a residual maturity of at least one year.

The eligibility criteria exclude liabilities issued through special purpose entities in line with the TLAC term-sheet.

At the **WPFS (RRM) held on 12 & 13 January 2017**, Commission's proposed amendments to Articles 72a, 72b and 72c CRR were discussed.

The main issues highlighted which were also in line with the comments to Questionnaire 2 were the following:

- i) Eligibility criteria are too complex and some may not be required.
- ii) The issue of grandfathering needs to be discussed.
- iii) Further clarification on the role of the Competent and Resolution Authority.
- iv) The concept of derivative features should be clearer.
- v) Role of resolution authority with respect to derogations from the subordination requirement.

### **Questions:**

**Q1:** Please advise which eligibility criteria are not required/need amending. Please provide the necessary justification.

**Q2:** In particular, what are your views on the proposed prohibition of acceleration clauses? In particular, if you believe that the prohibition of acceleration clauses should be deleted, please advise how the repayment of investors close to but before resolution could otherwise be prevented. Should the existing acceleration clauses be grandfathered or should the prohibition be deleted? If you believe in the deletion of the prohibition of acceleration clauses, please also explain why you believe that

grandfathering provisions are insufficient? Please provide the necessary justification.<sup>1</sup>  
(Article 72b(2)(l) CRR following re-numbering)

**Q3:** Provide your views on the role of the competent and resolution authority. Should the competent authority take the lead in examining whether the conditions in Article 72b CRR are fulfilled? (Article 72b(6) CRR)

**Q4:** Should Article 72a(k) & (l) CRR be further clarified? In particular further clarity on the term 'derivative' and 'embedded derivative'. Any suggestions? To what extent could further clarifications of such terms impact the use of the terms throughout the CRR?

**Q5:** What are your views on the derogations from the subordination requirement as proposed in the Commission proposal? (Article 72b(3), (4) & (5) CRR) [Vide Section 11 TLAC Term Sheet]

## **ANNEX I**

### **"CHAPTER 5a**

#### ***Eligible liabilities***

#### **SECTION 1**

#### ***ELIGIBLE LIABILITIES ITEMS AND INSTRUMENTS***

##### ***Article 72a***

##### ***Eligible liabilities items***

*1. Eligible liabilities items shall consist of the following, unless they fall into any of the categories of excluded liabilities laid down in paragraph 2:*

*(a) eligible liabilities instruments where the conditions laid down in Article 72b are met, to the extent that they do not qualify as Common Equity Tier 1, Additional Tier 1 and Tier 2 items;*

*(b) Tier 2 instruments with a residual maturity of at least one year, to the extent that they do not qualify as Tier 2 items in accordance with Article 64.*

*2. By way of derogation from paragraph 1, the following liabilities shall be excluded from eligible liabilities items:*

*(a) covered deposits;*

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<sup>1</sup> One may wish to refer to the [US TLAC implementation](#)

- (b) sight deposits and short term deposits with an original maturity of less than one year;*
- (c) the part of eligible deposits from natural persons and micro, small and medium-sized enterprises which exceeds the coverage level referred to in Article 6 of Directive 2014/49/EU;*
- (d) deposits that would be eligible deposits from natural persons, micro, small and medium-sized enterprises if they were not made through branches located outside the Union of institutions established within the Union;*
- (e) secured liabilities, including covered bonds and liabilities in the form of financial instruments used for hedging purposes that form an integral part of the cover pool and that according to national law are secured in a way similar to covered bonds, provided that all secured assets relating to a covered bond cover pool remain unaffected, segregated and with enough funding and excluding any part of a secured liability or a liability for which collateral has been pledged that exceeds the value of the assets, pledge, lien or collateral against which it is secured;*
- (f) any liability that arises by virtue of the holding of client assets or client money including client assets or client money held on behalf of collective investment undertakings, provided that such a client is protected under the applicable insolvency law;*
- (g) any liability that arises by virtue of a fiduciary relationship between the resolution entity or any of its subsidiaries (as fiduciary) and another person (as beneficiary) provided that such a beneficiary is protected under the applicable insolvency or civil law;*
- (h) liabilities to institutions, excluding liabilities to entities that are part of the same group, with an original maturity of less than seven days;*
- (i) liabilities with a remaining maturity of less than seven days, owed to systems or operators of systems designated in accordance with Directive 98/26/EC or their participants and arising from the participation in such a system;*
- (j) a liability to any one of the following:*
- (i) an employee, in relation to accrued salary, pension benefits or other fixed remuneration, except for the variable component of remuneration that is not regulated by a collective bargaining agreement, and except for the variable component of the remuneration of material risk takers as referred to in Article 92(2) of Directive 2013/36/EU;*
  - (ii) a commercial or trade creditor, where the liability arises from the provision to the institution or the parent undertaking of goods or services that are critical to the daily functioning of the institution's or parent undertaking's operations, including IT services, utilities and the rental, servicing and upkeep of premises;*
  - (iii) tax and social security authorities, provided that those liabilities are preferred under the applicable law;*
  - (iv) deposit guarantee schemes, where the liability arises from contributions due in accordance with Directive 2014/49/EU.*

- (k) liabilities arising from derivatives;*
- (l) liabilities arising from debt instruments with embedded derivatives.*

#### **Article 72b**

##### **Eligible liabilities instruments**

*1. Liabilities shall qualify as eligible liabilities instruments, provided they comply with the conditions laid down in this Article and only to the extent specified in this Article.*

*2. Liabilities shall qualify as eligible liabilities instruments provided that all of the following conditions are met:*

*(a) the liabilities are directly issued or raised, as applicable, by an institution and are fully paid-up;*

*(b) the liabilities are not purchased by any of the following:*

*(i) the institution or an entity included in the same resolution group;*

*(ii) an undertaking in which the institution has a direct or indirect participation in the form of ownership, direct or by way of control, of 20% or more of the voting rights or capital of that undertaking;*

*(c) the purchase of the liabilities is not funded directly or indirectly by the resolution entity;*

*(d) the claim on the principal amount of the liabilities under the provisions governing the instruments is wholly subordinated to claims arising from the excluded liabilities referred to in Article 72a(2). This subordination requirement shall be considered to be met in any of the following situations:*

*(i) the contractual provisions governing the liabilities specify that in the event of normal insolvency proceedings as defined in point 47 of Article 2(1) of Directive 2014/59/EU, the claim on the principal amount of the instruments ranks below claims arising from any of the excluded liabilities referred to in Article 72a(2);*

*(ii) the law governing the liabilities specifies that in the event of normal insolvency proceedings as defined in point 47 of Article 2(1) of Directive 2014/59/EU, the claim on the principal amount of the instruments ranks below claims arising from any of the excluded liabilities referred to in Article 72a(2);*

*~~(e)~~ (iii) the instruments are issued by a resolution entity which does not have on its balance sheet any excluded liabilities as referred to in Article 72a(2) that rank pari passu or junior to eligible liabilities instruments;*

*~~(f)~~ (e) the liabilities are neither secured, nor subject to a guarantee or any other arrangement that enhances the seniority of the claim by any of the following:*

*(i) the institution or its subsidiaries;*

*(ii) the parent undertaking of the institution or its subsidiaries;*

*(iii) any undertaking that has close links with entities referred to in points (i) 55 and (ii);*

~~(g)~~ *(f) the liabilities are not subject to any set off arrangements or netting rights that would undermine their capacity to absorb losses in resolution;*

~~(h)~~ *(g) the provisions governing the liabilities do not include any incentive for their principal amount to be called, redeemed, repurchased prior to their maturity or repaid early by the institution, as applicable;*

~~(i)~~ *(h) subject to Article 72c(2), the liabilities are not redeemable by the holders of the instruments prior to their maturity;*

~~(j)~~ *(i) where the liabilities include one or more call options or early repayment options, as applicable, the options are exercisable at the sole discretion of the issuer;*

~~(k)~~ *(j) the liabilities may only be called, redeemed, repurchased or repaid early where the conditions laid down in Articles 77 and 78 are met;*

~~(l)~~ *(k) the provisions governing the liabilities do not indicate explicitly or implicitly that the liabilities would or might be called, redeemed, repurchased or repaid early, as applicable by the resolution entity other than in case of the insolvency or liquidation of the institution and the institution does not otherwise provide such an indication;*

~~(m)~~ *(l) the provisions governing the liabilities do not give the holder the right to accelerate the future scheduled payment of interest or principal, other than in case of the insolvency or liquidation of the resolution entity;*

~~(n)~~ *(m) the level of interest or dividend payments, as applicable, due on the liabilities is not be amended on the basis of the credit standing of the resolution entity or its parent undertaking;*

~~(o)~~ *(n) the contractual provisions governing the liabilities require that, where the resolution authority exercises write down and conversion powers in accordance with Article 48 of Directive 2014/59/EU, the principal amount of the liabilities be written down on a permanent basis or the liabilities be converted to Common Equity Tier 1 instruments.*

*3. In addition to the liabilities referred to in paragraph 2, liabilities shall qualify as eligible liabilities instruments up to an aggregate amount that does not exceed 3.5% of the total risk exposure amount calculated in accordance with paragraphs 3 and 4 of Article 92, provided that:*

*(a) all the conditions laid down in paragraph 2 except for the condition in point (d) are met;*

*(b) the liabilities rank pari passu with the lowest ranking excluded liabilities referred to in Article 72a(2); and*

*(c) the inclusion of these liabilities in eligible liabilities items does not have a material adverse impact on the resolvability of the institution, as confirmed by the resolution authority after having assessed the elements referred to in points 56 (b) and (c) of Article 45b(3) of Directive 2014/59/EU.*

*An institution may decide not to include in eligible liabilities items the liabilities referred to in the first subparagraph.*

*4. Where an institution takes a decision as referred to in the second subparagraph of paragraph 3, liabilities shall qualify as eligible liabilities instruments in addition to the liabilities referred to in paragraph 2, provided that:*

*(a) the decision by the institution not to include in eligible liabilities items liabilities referred to in the first subparagraph of paragraph 3 is effective, in accordance with paragraph 5;*

*(b) all the conditions laid down in paragraph 2, except for the condition in point (d) of that paragraph, are met;*

*(c) the liabilities rank pari passu or are senior to the lowest ranking excluded liabilities referred to in Article 72a(2);*

*(d) on the balance sheet of the institution, the amount of the excluded liabilities referred to in Article 72a(2) which rank pari passu or below those liabilities in insolvency does not exceed 5% of the amount of the own funds and eligible liabilities of the institution;*

*(e) the inclusion of those liabilities in eligible liabilities items does not have a material adverse impact on the resolvability of the institution, as confirmed by the resolution authority after having assessed the elements referred to in points (b) and (c) of Article 45b(3) of Directive 2014/59/EU.*

*5. The decision referred to in the second sub-paragraph of paragraph 3 shall specify whether the institution intends either to include the liabilities referred to in paragraph 4 in eligible liabilities items or not to include any of the liabilities referred to in paragraphs 3 and 4. An institution may not decide to include liabilities referred to in both paragraphs 3 and 4 in eligible liabilities items.*

*The decision shall be published in the annual report and shall take effect 6 months after the publication of that report. The decision shall be effective for at least one year.*

*6. The competent authority shall consult the resolution authority when examining whether the conditions of this Article are fulfilled.*

#### **Article 72c**

##### ***Amortisation of eligible liabilities instruments***

*1. Eligible liabilities instruments with a residual maturity of at least one year shall fully qualify as eligible liabilities items. Eligible liabilities instruments with a residual maturity below one year shall not qualify as eligible liabilities items.*



*2. For the purposes of paragraph 1, where a eligible liabilities instrument includes a 57 holder redemption option exercisable prior to the original stated maturity of the instrument, the maturity of the instrument shall be defined as the earliest possible date on which the holder can exercise the redemption option and request redemption or repayment of the instrument."*

## ANNEX II

### Comparison of eligibility criteria in the Commission proposal / FSB TLAC Term Sheet/ Tier 2<sup>2</sup>

Eligibility criteria required according to the European Commission's proposal - Articles 72a, 72b and 72c	Eligibility criteria required according to the FSB TLAC Term Sheet	Tier 2 eligibility criteria
<b>Art72a(2)(a)</b> covered deposits;	<b>Sect.10a:</b> TLAC-eligible instruments must not include insured deposits;	
<b>Art72a(2)(b)</b> sight deposits and short term deposits with an original maturity of less than one year;	<b>Sect.10b:</b> TLAC-eligible instruments must not include sight deposits and short term deposits (deposits with original maturity of less than one year).	<b>Art63(g) CRR:</b> the instruments or subordinated loans, as applicable, have an original maturity of at least five years;
<b>Art72a(2)(c)</b> the part of eligible deposits from natural persons and micro, small and medium-sized enterprises which exceeds the coverage level referred to in Article 6 of Directive 2014/49/EU;	<b>Sect. 10f:</b> TLAC-eligible instruments must not include liabilities which are preferred to senior unsecured creditors under the relevant insolvency law;	<b>Art63(d) CRR:</b> the claim on the principal amount of the instruments under the provisions governing the instruments or the claim of the principal amount of the subordinated loans under the provisions governing the subordinated loans, as applicable, ranks below any claim from eligible liabilities instruments;
<b>Art72a(2)(d)</b> deposits that would be eligible deposits from natural persons, micro, small and medium-sized enterprises if they were not made through branches located outside the Union of institutions established within the Union;	<b>Sect. 10f:</b> TLAC-eligible instruments must not include liabilities which are preferred to senior unsecured creditors under the relevant insolvency law;	<b>Art63(d) CRR:</b> the claim on the principal amount of the instruments under the provisions governing the instruments or the claim of the principal amount of

<sup>2</sup> Commission staff was informally consulted in the preparation of this table in order to understand how the criteria in the Commission proposal have been linked to the TLAC term sheet.



		the subordinated loans under the provisions governing the subordinated loans, as applicable, ranks below any claim from eligible liabilities instruments;
<b>Art72a(2)(e)</b> secured liabilities, including covered bonds and liabilities in the form of financial instruments used for hedging purposes that form an integral part of the cover pool and that according to national law are secured in a way similar to covered bonds, provided that all secured assets relating to a covered bond cover pool remain unaffected, segregated and with enough funding and excluding any part of a secured liability or a liability for which collateral has been pledged that exceeds the value of the assets, pledge, lien or collateral against which it is secured;	<b>Sect. 9b:</b> TLAC eligible instruments must be unsecured.	<b>Art63(e) CRR:</b> the instruments or subordinated loans, as applicable, are neither secured, nor subject to a guarantee that enhances the seniority of the claim by any of the following: (i) the institution or its subsidiaries; (ii) the parent undertaking of the institution or its subsidiaries; (iii) the parent financial holding company or its subsidiaries; (iv) the mixed activity holding company or its subsidiaries; (v) the mixed financial holding company or its subsidiaries; (vi) any undertaking that has close links with entities referred to in points (i) to (v);
<b>Art72a(2)(f)</b> any liability that arises by virtue of the holding of client assets or client money including client assets or client money held on behalf of collective investment undertakings, provided that such a client is protected under the applicable insolvency law;	<b>Sect. 10f:</b> TLAC-eligible instruments must not include liabilities which are preferred to senior unsecured creditors under the relevant insolvency law;  <b>Sect. 10g:</b> TLAC-eligible instruments must not include any liabilities that, under the laws governing the issuing entity, are excluded from bail-in or cannot be written down or converted into equity by the relevant resolution authority without giving rise to material risk of successful legal challenge or valid compensation claims.	<b>Art63(d) CRR:</b> the claim on the principal amount of the instruments under the provisions governing the instruments or the claim of the principal amount of the subordinated loans under the provisions governing the subordinated loans, as applicable, ranks below any claim from eligible liabilities instruments;

<p><b>Art72a(2)(g)</b> any liability that arises by virtue of a fiduciary relationship between the resolution entity or any of its subsidiaries (as fiduciary) and another person (as beneficiary) provided that such a beneficiary is protected under the applicable insolvency or civil law;</p>	<p><b>Sect. 10f:</b> TLAC-eligible instruments must not include liabilities which are preferred to senior unsecured creditors under the relevant insolvency law;</p> <p><b>Sect. 10g:</b> TLAC-eligible instruments must not include any liabilities that, under the laws governing the issuing entity, are excluded from bail-in or cannot be written down or converted into equity by the relevant resolution authority without giving rise to material risk of successful legal challenge or valid compensation claims.</p>	<p><b>Art63(d) CRR:</b> the claim on the principal amount of the instruments under the provisions governing the instruments or the claim of the principal amount of the subordinated loans under the provisions governing the subordinated loans, as applicable, ranks below any claim from eligible liabilities instruments;</p>
<p><b>Art72a(2)(h)</b> liabilities to institutions, excluding liabilities to entities that are part of the same group, with an original maturity of less than seven days;</p>	<p><b>Sect. 10g:</b> TLAC-eligible instruments must not include any liabilities that, under the laws governing the issuing entity, are excluded from bail-in or cannot be written down or converted into equity by the relevant resolution authority without giving rise to material risk of successful legal challenge or valid compensation claims.</p>	
<p><b>Art72a(2)(i)</b> liabilities with a remaining maturity of less than seven days, owed to systems or operators of systems designated in accordance with Directive 98/26/EC or their participants and arising from the participation in such a system;</p>	<p><b>Sect. 10g:</b> TLAC-eligible instruments must not include any liabilities that, under the laws governing the issuing entity, are excluded from bail-in or cannot be written down or converted into equity by the relevant resolution authority without giving rise to material risk of successful legal challenge or valid compensation claims.</p>	
<p><b>Art72a(2)(j)</b> a liability to any one of the following: (i) an employee, in relation to accrued salary, pension benefits or other fixed remuneration, except for the variable component of remuneration that is not regulated by a collective bargaining agreement, and except for the variable component of the remuneration of material risk takers as referred to in Article 92(2) of Directive 2013/36/EU;</p>	<p><b>Sect. 10f:</b> TLAC-eligible instruments must not include liabilities which are preferred to senior unsecured creditors under the relevant insolvency law;</p> <p><b>Sect. 10g:</b> TLAC-eligible instruments must not include any liabilities that, under the laws governing the issuing entity, are excluded from bail-in or cannot be written down or converted into equity by the relevant resolution authority without giving rise to material risk of successful legal challenge or valid compensation claims.</p>	<p><b>Art63(d) CRR:</b> the claim on the principal amount of the instruments under the provisions governing the instruments or the claim of the principal amount of the subordinated loans under the provisions governing the subordinated loans, as applicable, ranks below any claim from eligible liabilities instruments;</p>

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(ii) a commercial or trade creditor, where the liability arises from the provision to the institution or the parent undertaking of goods or services that are critical to the daily functioning of the institution's or parent undertaking's operations, including IT services, utilities and the rental, servicing and upkeep of premises;	<p><b>Sect.10e:</b> TLAC eligible instruments must not include liabilities arising other than through a contract, such as tax liabilities</p> <p><b>Sect. 10g:</b> TLAC-eligible instruments must not include any liabilities that, under the laws governing the issuing entity, are excluded from bail-in or cannot be written down or converted into equity by the relevant resolution authority without giving rise to material risk of successful legal challenge or valid compensation claims.</p>	
(iii) tax and social security authorities, provided that those liabilities are preferred under the applicable law;	<p><b>Sect.10e:</b> TLAC eligible instruments must not include liabilities arising other than through a contract, such as tax liabilities</p> <p><b>Sect. 10g:</b> TLAC-eligible instruments must not include any liabilities that, under the laws governing the issuing entity, are excluded from bail-in or cannot be written down or converted into equity by the relevant resolution authority without giving rise to material risk of successful legal challenge or valid compensation claims.</p>	
(iv) deposit guarantee schemes, where the liability arises from contributions due in accordance with Directive 2014/49/EU.	<p><b>Sect. 10f:</b> TLAC-eligible instruments must not include liabilities which are preferred to senior unsecured creditors under the relevant insolvency law;</p> <p><b>Sect. 10g:</b> TLAC-eligible instruments must not include any liabilities that, under the laws governing the issuing entity, are excluded from bail-in or cannot be written down or converted into equity by the relevant resolution authority without giving rise to material risk of successful legal challenge or valid compensation claims.</p>	
<b>Art72a(2)(k)</b> liabilities arising from derivatives;	<b>Sect. 10c:</b> TLAC eligible instruments must not include liabilities arising from derivatives	
<b>Art72a(2)(l)</b> liabilities arising from debt instruments with embedded derivatives.	<b>Sect. 10d:</b> TLAC eligible instruments must not include debt instruments with derivative-linked features, such as structured notes.	
<b>Art72b(2)(a)</b> the liabilities are directly issued or raised, as applicable, <u>by an institution</u> and are fully paid-up;	<p><b>Sect. 8:</b> External TLAC must be issued and maintained directly <u>by resolution entities</u> subject to the following exceptions: [a. CET1 consolidation + b. cooperative groups + c. grandfathering until 2021];</p> <p><b>Sect 9a :</b> TLAC eligible instruments must be paid up</p>	<b>Art63(a) CRR:</b> the instruments are issued or the subordinated loans are raised, as applicable, and fully paid-up;
<b>Art72b(2)(b)</b> the liabilities are not purchased by any of the following: (i) the institution or an entity included in the same resolution group; (ii) an undertaking in which the	<b>Sect. 9f:</b> TLAC eligible instruments must not be funded directly or indirectly by the resolution entity or a related party of the resolution entity, except where the relevant home and host authorities in the	<b>Art63(b) CRR:</b> the instruments are not purchased or the subordinated loans are not

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institution has a direct or indirect participation in the form of ownership, direct or by way of control, of 20% or more of the voting rights or capital of that undertaking;	CMG agree that it is consistent with the resolution strategy to allow TLAC-eligible instruments or liabilities issued to a parent of a resolution entity to count towards external TLAC of the resolution entity.	granted, as applicable, by any of the following: (i) the institution or its subsidiaries; (ii) an undertaking in which the institution has participation in the form of ownership, direct or by way of control, of 20 % or more of the voting rights or capital of that undertaking;
<b>Art72b(2)(c)</b> the purchase of the liabilities is not funded directly or indirectly by the resolution entity;	<b>Sect. 9f:</b> TLAC eligible instruments must not be funded directly or indirectly by the resolution entity or a related party of the resolution entity, except where the relevant home and host authorities in the CMG agree that it is consistent with the resolution strategy to allow TLAC-eligible instruments or liabilities issued to a parent of a resolution entity to count towards external TLAC of the resolution entity.	<b>Art63(c) CRR:</b> the purchase of the instruments or the granting of the subordinated loans, as applicable, is not funded directly or indirectly by the institution;
<b>Art72b(2)(d)</b> the claim on the principal amount of the liabilities under the provisions governing the instruments is wholly subordinated to claims arising from the excluded liabilities referred to in Article 72a(2). This subordination requirement shall be considered to be met in any of the following situations:	<b>Sect. 11:</b> To ensure that eligible external TLAC absorbs losses prior to liabilities that are excluded from TLAC (see Section 10) and therefore to support the aim of ensuring that the G-SIB is credibly and feasibly resolvable, eligible instruments must be	<b>Art63(d) CRR:</b> the claim on the principal amount of the instruments under the provisions governing the instruments or the claim of the principal amount of the subordinated loans under the provisions governing the subordinated loans, as applicable, ranks below any claim from eligible liabilities instruments;
(i) the contractual provisions governing the liabilities specify that in the event of normal insolvency proceedings as defined in point 47 of Article 2(1) of Directive 2014/59/EU, the claim on the principal amount of the instruments ranks below claims arising from any of the excluded liabilities referred to in Article 72a(2);	a. contractually subordinated to excluded liabilities on the balance sheet of the resolution entity ("contractual subordination")	<b>Art63(n) CRR:</b> the law or contractual provisions governing the instruments require that, upon a decision by the resolution authority to exercise the power referred to in Article 59 of Directive 2014/59/EU, the principal amount of the instruments is to be written down on a permanent basis

		or the instruments are to be converted to Common Equity Tier 1 instruments;
(ii) the law governing the liabilities specifies that in the event of normal insolvency proceedings as defined in point 47 of Article 2(1) of Directive 2014/59/EU, the claim on the principal amount of the instruments ranks below claims arising from any of the excluded liabilities referred to in Article 72a(2);	b. junior in the statutory creditor hierarchy to excluded liabilities on the balance sheet of the resolution entity ("statutory subordination"); or	<b>Art63(n) CRR:</b> the law or contractual provisions governing the instruments require that, upon a decision by the resolution authority to exercise the power referred to in Article 59 of Directive 2014/59/EU, the principal amount of the instruments is to be written down on a permanent basis or the instruments are to be converted to Common Equity Tier 1 instruments;
(iii) the instruments are issued by a resolution entity which does not have on its balance sheet any excluded liabilities as referred to in Article 72a(2) that rank pari passu or junior to eligible liabilities instruments;	c. issued by a resolution entity which does not have any excluded liabilities (for example, a holding company) on its balance sheet that rank pari passu or junior to TLAC-eligible instruments on its balance sheet ("structural subordination").	
<b>Art72b(2)(e)</b> the liabilities are neither secured, nor subject to a guarantee or any other arrangement that enhances the seniority of the claim by any of the following: (i) the institution or its subsidiaries; (ii) the parent undertaking of the institution or its subsidiaries; (iii) any undertaking that has close links with entities referred to in points (i) and (ii);	<b>Sect. 10f:</b> TLAC-eligible instruments must not include liabilities which are preferred to senior unsecured creditors under the relevant insolvency law;	<b>Art62(e) CRR:</b> the instruments or subordinated loans, as applicable, are neither secured, nor subject to a guarantee that enhances the seniority of the claim by any of the following: (i) the institution or its subsidiaries; (ii) the parent undertaking of the institution or its subsidiaries; (iii) the parent financial holding company or its subsidiaries; (iv) the mixed activity holding company or its subsidiaries; (v) the mixed financial holding company or its subsidiaries;

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		(vi) any undertaking that has close links with entities referred to in points (i) to (v);
<b>Art72b(2)(f)</b> the liabilities are not subject to any set off arrangements or netting rights that would undermine their capacity to absorb losses in resolution;	<b>Sect.9c:</b> TLAC eligible instruments must not be subject to set off or netting rights that would undermine their loss absorbing capacity in resolution	<b>Art 63(p) CRR:</b> the instruments are not subject to any set-off arrangements or netting rights that would undermine their capacity to absorb losses
<b>Art72b(2)(g)</b> the provisions governing the liabilities do not include any incentive for their principal amount to be called, redeemed, repurchased prior to their maturity or repaid early by the institution, as applicable;	<b>Sect.10d:</b> have a minimum remaining contractual maturity of at least one year or be perpetual (no maturity date); [A call-option for the issuer in combination with an incentive to redeem would allow circumvention of this maturity provision. The termsheet also states that "the appropriate authority should ensure that the maturity profile of a G-SIB's TLAC is adequate", which would create uncertainty with regard to instruments with an incentive to redeem as the authority would have to form a view as to the likelihood of the instruments to be called]	<b>Article 63(h) CRR:</b> the provisions governing the instruments or subordinated loans, as applicable, do not include any incentive for their principal amount to be redeemed or repaid, as applicable by the institution prior to their maturity;
<b>Art72b(2)(h)</b> subject to Article 72c(2), the liabilities are not redeemable by the holders of the instruments prior to their maturity;	<b>Sect. 9d:</b> TLAC eligible instruments must not be redeemable by the holder (i.e., not contain an exercisable put) prior to maturity. As an exception to this principle, an instrument that includes a holder redemption option allowing the holder to redeem the instrument prior to the original stated maturity may be TLAC-eligible if it meets the one year minimum residual maturity threshold. The maturity of the instrument would be defined for this purpose as the earliest possible date on which the holder can exercise the redemption option and request redemption or prepayment of the instrument. The date must be specified as a date certain in the instrument.	<b>Art63(l) CRR:</b> the provisions governing the instruments or subordinated loans, as applicable, do not give the holder the right to accelerate the future scheduled payment of interest or principal, other than in the insolvency or liquidation of the institution;
<b>Art72b(2)(i)</b> where the liabilities include one or more call options or early repayment options, as applicable, the options are exercisable at the sole discretion of the issuer;	<b>Sect. 9d:</b> [TLAC termsheet in principle does not allow for holder redemption options. An issuer redemption option which would be not under the sole control of the issuer would violate this principle]	<b>Article 63(i) CRR:</b> where the instruments or subordinated loans, as applicable, include one or more call options or early repayment options, as applicable, the options are exercisable at the sole discretion of the issuer or debtor, as applicable;

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<p><b>Art72b(2)(j)</b> the liabilities may only be called, redeemed, repurchased or repaid early where the conditions laid down in Articles 77 and 78 are met;</p>	<p><b>Sect .12:</b> G-SIBs should be prohibited from redeeming eligible external TLAC prior to maturity without supervisory approval if the redemption would lead to a breach of the G-SIB's TLAC requirements.</p>	<p><b>Article 63(j) CRR:</b> the instruments or subordinated loans, as applicable, may be called, redeemed or repurchased or repaid early only where the conditions laid down in Article 77 are met, and not before five years after the date of issuance or raising, as applicable, except where the conditions laid down in Article 78(4) are met;</p>
<p><b>Art72b(2)(k)</b> the provisions governing the liabilities do not indicate explicitly or implicitly that the liabilities would or might be called, redeemed, repurchased or repaid early, as applicable by the resolution entity other than in case of the insolvency or liquidation of the institution and the institution does not otherwise provide such an indication;</p>	<p><b>Sect.10d:</b> have a minimum remaining contractual maturity of at least one year or be perpetual (no maturity date); [A call-option for the issuer in combination with an incentive to redeem would allow circumvention of this maturity provision. If the issuer creates a market expectation that the instrument would be called, redeemed, repurchased or repaid early, this market expectation would constitute and incentive to redeem. The termsheet also states that "the appropriate authority should ensure that the maturity profile of a G-SIB's TLAC is adequate", which would create uncertainty with regard to instruments with an incentive to redeem as the authority would have to form a view as to the likelihood of the instruments to be called]</p>	<p><b>Article 63(k) CRR:</b> the provisions governing the instruments or subordinated loans, as applicable, do not indicate explicitly or implicitly that the instruments or subordinated loans, as applicable, would or might be called, redeemed, repurchased or repaid early, as applicable by the institution other than in the insolvency or liquidation of the institution and the institution does not otherwise provide such an indication;</p>
<p><b>Art72b(2)(l)</b> the provisions governing the liabilities do not give the holder the right to accelerate the future scheduled payment of interest or principal, other than in case of the insolvency or liquidation of the resolution entity;</p>	<p><b>Sect9d:</b> TLAC eligible instruments must not be redeemable by the holder . [A right to accelerate payment outside or before resolution would undermine the loss-absorption of the instrument in resolution]</p>	<p><b>Article 63(l) CRR:</b> the provisions governing the instruments or subordinated loans, as applicable, do not give the holder the right to accelerate the future scheduled payment of interest or principal, other than in the insolvency or liquidation of the institution;</p>



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<p><b>Art72b(2)(m)</b> the level of interest or dividend payments, as applicable, due on the liabilities is not be amended on the basis of the credit standing of the resolution entity or its parent undertaking;</p>	<p><b>Principle (viii):</b> Instruments that are eligible to meet Minimum TLAC requirements should be stable, long-term claims that are not repayable on demand or at short notice.  The term “TLAC-eligible instrument” refers to any capital instrument, debt instrument, liability or other item that is eligible as TLAC under the term sheet. Maturity restrictions on TLAC-eligible instruments are necessary <b>to ensure that, if a firm’s financial situation deteriorates, the loss-absorbing capacity available in any subsequent resolution is not diminished through a withdrawal of funds.</b> The risk of a sudden and unexpected breach of TLAC is therefore much reduced.</p>	<p><b>Article 63(m) CRR:</b> the level of interest or dividend payments, as applicable, due on the instruments or subordinated loans, as applicable, will not be amended on the basis of the credit standing of the institution or its parent undertaking;</p>
<p><b>Art72b(2)(n)</b> the contractual provisions governing the liabilities require that, where the resolution authority exercises write down and conversion powers in accordance with Article 48 of Directive 2014/59/EU, the principal amount of the liabilities be written down on a permanent basis or the liabilities be converted to Common Equity Tier 1 instruments.</p>	<p><b>Sect. 13:</b> Eligible external TLAC must be subject to the law of the jurisdiction in which the relevant resolution entity is incorporated. It may be issued under or be <u>otherwise subject to the laws of another jurisdiction</u> if, under those laws, the application of resolution tools by the relevant resolution authority is effective and enforceable on the basis of binding statutory provisions or <u>legally enforceable contractual provisions for the recognition of resolution actions.</u>  <b>Sect 14 :</b> Eligible external TLAC should contain a contractual trigger or be subject to a statutory mechanism which permits the relevant resolution authority to effectively write it down or convert it to equity in resolution.</p>	<p><b>Art63(n):</b> the law or contractual provisions governing the instruments require that, upon a decision by the resolution authority to exercise the power referred to in Article 59 of Directive 2014/59/EU, the principal amount of the instruments is to be written down on a permanent basis or the instruments are to be converted to Common Equity Tier 1 instruments;</p>
<p><b>Art72c(1)</b> Eligible liabilities instruments with a residual maturity of at least one year shall fully qualify as eligible liabilities items. Eligible liabilities instruments with a residual maturity below one year shall not qualify as eligible liabilities items.</p>	<p><b>Sect. 9d:</b> TLAC-eligible instruments must have a minimum remaining contractual maturity of at least one year or be perpetual (no maturity date)</p>	
<p><b>Art72c(2)</b> For the purposes of paragraph 1, where a eligible liabilities instrument includes a holder redemption option exercisable prior to the original stated maturity of the instrument, the maturity of the instrument shall be defined as the earliest possible date on which the holder can exercise the redemption option and request redemption or repayment of the instrument.</p>	<p><b>Sect. 9e (footnote):</b> As an exception to the principle [of not being redeemable by the holder], an instrument that includes a holder redemption option allowing the holder to redeem the instrument prior to the original stated maturity may be TLAC-eligible if it meets the one year minimum residual maturity threshold. The maturity of the instrument would be defined for this purpose as the earliest possible date on which the holder can exercise the redemption option and request redemption or prepayment of the instrument. The date must be specified as a date certain in the instrument.</p>	