

<b>Question ID</b>	2021_5765
<b>Status</b>	Final Q&A
<b>Legal act</b>	Directive 2014/59/EU (BRRD)
<b>Topic</b>	Interactions with the CRR / CRD IV and the BRRD
<b>Article</b>	63
<b>Paragraph</b>	1
<b>Subparagraph</b>	b
<b>COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations</b>	Not applicable
<b>Article/Paragraph</b>	Not applicable
<b>Date of submission</b>	04/03/2021
<b>Published as Final Q&amp;A</b>	22/12/2022
<b>Disclose name of institution / entity</b>	Yes
<b>Name of institution / submitter</b>	Banca d'Italia
<b>Country of incorporation / residence</b>	Italy
<b>Type of submitter</b>	Competent authority
<b>Subject matter</b>	Qualifying holdings assessment pursuant to the exercise of resolution powers
<b>Question</b>	<p>In the context of the application of resolution tools or the exercise of resolution powers under Directive 2014/59/EU (BRRD), that may imply the creation or increase of qualifying holdings, does the exercise of control by a resolution authority over an institution under resolution or of some or all the rights and powers conferred upon the shareholders of an institution under resolution make the resolution authority subject to the prudential assessment envisaged by Article 22 CRD?</p> <p>Where the RA of Member State A applies resolution tools or exercises resolution powers in respect of an entity under resolution located in Member State A, which owns qualifying holdings in an entity located in Member State B, is the RA of Member State A subject to the prudential assessment of the competent authority of Member State B in as much as holder of indirect qualifying holding?</p>

**Background on the question**

Article 22 CRD provides that “Member States shall require any natural or legal person or such persons acting in concert [...], who have taken a decision to acquire, directly or indirectly, a qualifying holding in a credit institution or to further increase, directly or indirectly, such qualifying holding in a credit institution as a result of which a proportion of the voting rights or of the capital held would each exceed 20%, 30% or 50% or so that the credit institution would become its subsidiary [...], to notify the competent authorities of the credit institution in which they are seeking to acquire or increase a qualifying holding in writing in advance of the acquisition, indicating the size of the intended holding and the relevant information, as specified in accordance with Article 23(4) [...]. Article 3(1) BRRD provides that “Each Member State shall designate one, or exceptionally, more resolution authorities that are empowered to apply the resolution tools and exercise the resolution powers”. Article 3(8) BRRD requires Member States to “ensure that each resolution authority has the expertise, resources and operational capacity to apply resolution actions, and is able to exercise their powers with the speed and flexibility that are necessary to achieve the resolution objectives”. Article 63(1)(b) BRRD requires Member States to ensure that the RA have “the power to take control of an institution under resolution and exercise all the rights and powers conferred upon the shareholders other owners and the management body of the institution under resolution”. Article 63(2) BRRD provides that “Member States shall take all necessary measures to ensure that, when applying the resolution tools and exercise the resolution powers, resolution authorities are not subject to any of the following requirements that would otherwise apply by virtue of national law or contract or otherwise: [...] a) subject to Article 3(6) [prior ministry’s approval of action bearing fiscal impact] and 85(1) [judicial approval of the resolution action, if provided for by national legislation] requirements to obtain approval or consent from any person either public or private, including shareholders and creditors of the institution under resolution; b) prior to the exercise of the power, procedural requirements to notify any person including any requirement to publish any notice or prospectus or to file or register any document with any authority. In particular, Member States shall ensure that resolution authorities can exercise the powers under this Article irrespective of any restriction on, requirement for consent for, transfer of the financial instruments, rights, assets or liabilities in question that might otherwise apply”. Article 2 of Directive 2001/24/EC on the winding-up of credit institutions and investment firms, as amended by Article 117 BRRD, includes the “application of resolution tools and the exercise of resolution powers” by the RA within the notion of “reorganisation measures” set out therein. Article 3(2) of Directive 2001/24/EC provides that reorganisation measures enjoy automatic mutual recognition throughout the EU: “They shall be fully effective in accordance with the legislation of that Member State throughout the Community without any further formalities, including as against third parties in other Member States, even where the rules of the host Member State applicable to them do

	<p>not provide for such measures or make their implementation subject to conditions which are not fulfilled. The reorganisation measures shall be effective throughout the Community once they become effective in the Member State where they have been taken”.</p>
<b>Final answer</b>	<p>No. The resolution authority is appointed by Member States (as a public administrative authority or authority entrusted with public administrative powers), in accordance with Article 3 BRRD, ensuring it has the necessary expertise, resources and operational capacity, as well as independence. It is entitled to take control of an entity under resolution and a bridge bank and to exercise all the rights and powers conferred upon the shareholders of an institution under resolution pursuant to Articles 63(1)(b) and 72(1) BRRD.</p> <p>Moreover, the resolution authority’s action is not subject to procedural requirements (which would otherwise apply) to obtain approval/consent from any private or public person (cf. Article 63(2) BRRD).</p> <p>These elements entail that, if the resolution authority, as a result of the exercise of resolution powers or the use of resolution tools, acquires or increases a direct or indirect qualifying holding (as defined in Article 4(1)(36) CRR) over the institution under resolution or a bridge bank, the assessment under Article 22 CRD does not apply to the resolution authority.</p> <p>It follows from above that, whenever the institution under resolution in Member State A owns or increases a qualifying holding in an entity located in Member State B, Article 22 CRD does not entail that the resolution authority of Member State A is subject to the qualifying holding assessment by the competent authority of Member State B.</p> <p>Disclaimer:</p> <p>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.</p>
<b>Link</b>	<p><a href="https://www.eba.europa.eu/single-rule-book-qa/qna/view/publicId/2021_5765">https://www.eba.europa.eu/single-rule-book-qa/qna/view/publicId/2021_5765</a></p>

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