

<b>Question ID</b>	2015_2174
<b>Status</b>	Final Q&A
<b>Legal act</b>	Directive 2014/59/EU (BRRD)
<b>Topic</b>	Resolution objectives and triggers
<b>Article</b>	32
<b>Paragraph</b>	1
<b>Subparagraph</b>	-
<b>COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations</b>	Not applicable
<b>Article/Paragraph</b>	n.a.
<b>Date of submission</b>	28/07/2015
<b>Published as Final Q&amp;A</b>	21/01/2022
<b>Disclose name of institution / entity</b>	No
<b>Type of submitter</b>	Competent authority
<b>Subject matter</b>	Determination the failure of an institution
<b>Question</b>	If, when performing the valuation under Article 36 of Directive 2014/59/EU (BRRD), the resolution authority finds that the conditions for resolution or for the write down or conversion of capital instruments and eligible liabilities in accordance with Article 59 are not met, can it 'reverse' the competent authority's determination that the institution is failing or likely to fail?
<b>Background on the question</b>	According to valuation provisions contained in Article 36 the resolution authority should ensure that the proper valuation is carried out, and the purpose of this valuation is to inform the determination of whether the conditions for resolution are met. However one of the conditions, the "failure condition", can be determined by the competent authority.
<b>Final answer</b>	The general rule under Article 32(1) BRRD is that the determination that an entity is failing or likely to fail (FOLF) is to be done by the competent authority, after consulting the resolution authority. However, in order to address the potential problem of supervisory forbearance, Member States are given discretion to provide in their national law that the resolution authority can also make this determination, after consulting the competent authority, when the applicable national law entrusts to the resolution

authority the necessary tools for making such determination, such as access to the necessary information. Any differences in the assessment of FOLF can be expected to be discussed as part of the consultation process that is provided by Article 32 BRRD, under both paragraphs 1(a) and 2.

In case the competent authority determines an institution as FOLF, and the valuation subsequently carried out according to Article 36 BRRD suggests that the FOLF determination may be incorrect, the resolution authority can be expected to communicate such conclusion to the competent authority as part of the consultation process, but it cannot legally reverse the determination. It would be for the competent authority to withdraw or amend its previous position, if it deems so appropriate.

However, the resolution authority can always abstain from resolution action, if it considers that the remaining conditions for resolution under Article 32(1) BRRD are not met.

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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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