

Question ID	2015_2175
Status	Final Q&A
Legal act	Directive 2014/59/EU (BRRD)
Topic	Resolution objectives and triggers
Article	32, 32a, 33
Paragraph	-
Subparagraph	-
COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations	Not applicable
Article/Paragraph	n.a.
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Disclose name of institution / entity	No
Type of submitter	Competent authority
Subject matter	Clarification on formal decision
Question	Should the determination to be made by the resolution authority under Articles 32(1), 32a and 33 of Directive 2014/59/EU (BRRD) on whether the conditions for resolution are met be enshrined in a formal decision? If so, should the latter be a separate decision from the decision on the actions to take?
Background on the question	Article 32(1) of the BRRD is not clear as to whether a formal decision has to be issued or how a determination has to be communicated if required. It would appear from reading Article 82 (2) that a formal decision should be taken. In addition Article 83 states that the institution should be notified as well as a number of authorities.
Final answer	A joint reading of Articles 81(3) and 82(2) BRRD shows that the framework requires three conceptually distinct determinations to be made: the first one on whether the concerned institution is failing or likely to fail and on whether a reasonable prospect of any alternative private sector measures exists (Article 81(3) BRRD); the second on whether a public interest exists to resolve the concerned institution and on whether or not to take resolution action (Article 82(2)(a) BRRD); and the third one on the action that the

resolution authority intends to take (Article 82(2)(b) BRRD).

Article 81(3) BRRD requires the competent or resolution authority determining the fulfilment of the conditions referred to in points (a) and (b) of Article 32(1) BRRD to be met to communicate such determination to the entities listed in Article 81(3) BRRD. Articles 45(1) and 48(1) of Commission Delegated Regulation (EU) 2016/1075 require such communication to take the form of a formal notification and to be in writing.

The determinations under Article 82(2) BRRD are to be enshrined in a formal decision. In fact, in accordance with Article 83(3), such determinations should take the form of an order or instrument by which the relevant powers are exercised. Such order or instrument must be notified, as soon as practicable, to the entities listed in Article 83(2) BRRD and published on the websites and through the means referred to in Article 83(4) BRRD.

In any event, it is for the applicable national law to govern whether the determinations under letters (a) and (b) of Article 82(2) BRRD should be enshrined within the same formal decision or in two separate ones.

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.

Link

https://www.eba.europa.eu/single-rule-book-qa/-/qna/view/publicId/2015_2175

