

Question ID	2015_2176
Status	Final Q&A
Legal act	Directive 2014/59/EU (BRRD)
Topic	Resolution objectives and triggers
Article	32, 32b
Paragraph	1
Subparagraph	-
COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations	Not applicable
Article/Paragraph	n.a.
Date of submission	28/07/2015
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Disclose name of institution / entity	No
Type of submitter	Competent authority
Subject matter	Declaration of insolvency / bankruptcy
Question	When the entity is failing or likely to fail and the public interest condition referred to in Directive 2014/59/EU (BRRD) is not fulfilled, who is supposed to take initiative for the purpose of the entity's bankruptcy motion? How do the determination under Article 82(2) BRRD and the assessment of resolvability under Articles 15 and 16 BRRD relate to each other?
Background on the question	Clarification is sought on the impact of the condition for resolution set out on Article 32 (1) (c) in particular where the institution has already been deemed resolvable.
Final answer	Pursuant to Article 32b BRRD, an institution or entity referred to in points (b), (c) or (d) of Article 1(1) BRRD in relation to which the resolution authority considers that the conditions in points (a) and (b) of Article 32(1) BRRD are met, but that a resolution action would not be in the public interest, shall be wound up in an orderly manner in accordance with the applicable national law. It follows that it is for the applicable national law to identify the authority responsible for commencing the winding up and, in any case, to ensure compliance with Article 86 BRRD, which requires the direct or indirect involvement and consent of the resolution authority to the

	<p>opening of the national insolvency proceedings.</p> <p>The resolution authority must determine whether all conditions for resolution are met under Article 82(2) BRRD regardless of the resolvability assessment performed in abstracto at the same time as and for the purposes of the drawing up and updating of the resolution plan under Articles 15 and 16 BRRD.</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 prejudge the position that the European Commission might take before the Union and national courts.</p>
Link	https://www.eba.europa.eu/single-rule-book-qa/-/qna/view/publicId/2015_2176

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