

<b>Question ID</b>	2015_2331
<b>Status</b>	Final Q&A
<b>Legal act</b>	Directive 2014/59/EU (BRRD)
<b>Topic</b>	Resolution tools and powers
<b>Article</b>	37
<b>Paragraph</b>	6
<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>	29/09/2015
<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>	Winding up or liquidation of residual entity
<b>Question</b>	Does the residual entity have to be always liquidated or wound up in accordance with Article 37(6) of Directive 2014/59/EU (BRRD)? Does this provision impose a mandatory obligation?
<b>Background on the question</b>	Example: Covered deposits are transferred to BB. Toxic assets are transferred to AST to be wound up. The residual entity does not meet conditions for compulsory insolvency proceedings. Does it have to be liquidated and dissolved, or is there a possibility of the residual institution to carry on its activities under standard legal regime?
<b>Final answer</b>	<p>Article 37(6) BRRD provides that, following the transfer of part of the assets, rights or liabilities of the institution under resolution, the residual institution or entity shall be wound up under normal insolvency proceedings. Therefore, in such circumstances, the residual institution or entity must be wound up.</p> <p>However, Member States have flexibility as to the manner in and timeframe within which the residual institution or entity should be wound-down. Specifically, in addition to utilising “normal insolvency procedures” that exist under national law (which may include provisions for the administration of</p>

the residual institution or entity), the decision to wind up the residual institution or entity must take account of “any need for the [residual institution or entity] to provide services or support pursuant to Article 65 in order to enable the recipient to carry out the activities or services acquired by virtue of that transfer, and any other reason that the continuation of the residual institution or entity [...] is necessary to achieve the resolution objectives or comply with the principles referred to in Article 34”.

It follows that the residual institution or entity should not be wound up until the resolution authority is satisfied that (i) the transferee no longer requires the services or support of the residual institution or entity and (ii) the continuation of the residual institution or entity is not necessary to achieve the resolution objectives or to comply with the principles referred to in Article 34.

Thereafter, it would be appropriate to use the “normal insolvency procedures” that exist within national law which would allow for winding up/liquidation of the institution.

**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.

<b>Link</b>	<a href="https://www.eba.europa.eu/single-rule-book-qa/-/qna/view/publicId/2015_2331">https://www.eba.europa.eu/single-rule-book-qa/-/qna/view/publicId/2015_2331</a>
-------------	---