

Question ID	2015_2333
Status	Final Q&A
Legal act	Directive 2014/59/EU (BRRD)
Topic	Resolution tools and powers
Article	37
Paragraph	7
Subparagraph	c
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	Reimbursement of resolution expenses via sale of the asset management vehicle
Question	Is it possible to implement a power in national legislation to pay the resolution expenses out of the proceeds of the sale of the asset management vehicle?
Background on the question	Article 37 (7) (c) of Directive 2014/59/EU (BRRD) permits to recover resolution expenses from the sale of the asset management vehicle (AMV) "as a preferred creditor". However, in case the asset management vehicle is sold (which is the most likely outcome), there is no insolvency and the words "preferred creditor" have no meaning. Would it be possible to implement a power to pay the expenses simply out of the proceeds of the sale of the asset management vehicle? Would that be considered as a proportionate interpretation of the text?
Final answer	Member States should ensure that resolutions authorities are empowered to recover reasonable expenses properly incurred in connection with the use of the resolution tools or powers or government stabilisation in at least one of the ways described in Article 37(7) BRRD.

	<p>This means that, in case the asset management vehicle is placed into insolvency, the resolution authority may recover such expenses as a preferred creditor in the insolvent estate. In the case of a sale, instead, the resolution authority or any financing arrangement acting pursuant to Article 101 BRRD may recover resolution-related expenses from the proceeds of the sale of the asset management vehicle, by way of a preferred claim on such proceeds, whether or not in the context of an insolvency proceedings.</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_2333

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