

Single Rulebook Q&A

Question ID	2015_2334
Status	Final Q&A
Legal act	Directive 2014/59/EU (BRRD)
Topic	Resolution tools and powers
Article	38, 38
Paragraph	7, 11
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	Authorisation of the purchaser of a (bridge) institution in another Member State
Question	<p>Article 38(11) of Directive 2014/59/EU (BRRD) (and similarly, Article 40(9) BRRD as to the bridge institution tool) provides that, for the purposes of the rights to provide services or to establish itself in another Member State, the purchaser or the bridge institution shall be considered to be a continuation of the institution under resolution and may exercise any such right that was exercised by the institution under resolution in respect to the rights, assets, and liabilities transferred?</p> <p>Does Article 38(11) BRRD exempt the purchaser or the bridge institution from obtaining the authorisation to operate in another Member State by way of derogation to Article 38(7) BRRD?</p>
Background on the question	Article 38 (7) of Directive 2014/59/EU (BRRD) states that such purchaser (or the bridge institution) should have the appropriate authorisation to carry out the activities transferred; it is however not clear whether the purchaser (or the bridge institution) should be considered the continuation of the

	<p>institution under resolution only with respect to the rights, assets or liabilities transferred or also with respect to other rights, assets or liabilities that the purchaser (or the bridge institution) may acquire in the course of its business.</p>
<p>Final answer</p>	<p>Article 38(7) BRRD requires the purchaser to be appropriately authorised to carry out the business it acquires and the competent authority to consider the relevant application in a timely manner and in conjunction with the transfer.</p> <p>Article 38(11) BRRD does not exempt the purchaser from obtaining the necessary authorisation, in the event it does not already hold it. Such provision rather clarifies that, upon authorisation of the purchaser by its domestic competent authority, the purchaser shall be treated as a continuation of the institution under resolution for the purposes of exercising rights to provide cross border services or to establish itself in another Member State. Accordingly, the purchaser may continue to exercise any such right that was exercised by the institution under resolution in respect of the assets, rights or liabilities transferred. Therefore, if the institution under resolution already holds the relevant authorisations under Directive 2013/36/EU and/or Directive 2014/64/EU, notwithstanding the requirements of those Directives, the purchaser does not need to re-apply (i) to its home competent authority to open a branch or to exercise the freedom to provide services pursuant to Articles 33-39 of Directive 2013/36/EU; nor (ii) to any host competent authority to establish a subsidiary in another Member State pursuant to Articles 8-16 of Directive 2013/36/EU.</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>
<p>Link</p>	<p>https://www.eba.europa.eu/single-rule-book-qa/-/qna/view/publicId/2015_233</p>

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