

Question ID	2015_2338
Status	Final Q&A
Legal act	Directive 2014/59/EU (BRRD)
Topic	Resolution tools and powers
Article	38, 40, 42
Paragraph	13, 11, 12
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	Rights over or in relation to assets, rights and liabilities transferred
Question	According to Articles 38 (13), 40 (11) and 42 (12) of Directive 2014/59/EU (BRRD), parties whose assets, rights and liabilities are not transferred, shall not have any rights over or in relation to the assets, rights and liabilities that are transferred. What is the rationale of these provisions?
Background on the question	We do not understand on which ground these parties can have a right over or in relation to the transferred assets in the first place, so why is it necessary to say that they do not have such a right? But even if they have such a right, why should they lose it when the assets concerned are transferred?
Final answer	Article 75 BRRD provides that, where a shareholder or creditor of an institution has incurred, as a result of a resolution tool, greater losses than it would have incurred in a winding up under normal insolvency proceedings, the relevant shareholder or creditor shall be entitled to the difference from the resolution financing arrangements as compensation. The effectiveness of the resolution tools would be undermined if, notwithstanding the safeguards laid down in Chapter VII of Title IV, shareholders and creditors of the institution under resolution or other third parties whose assets, rights or

liabilities have not been transferred could have claims over assets, rights or liabilities that have been transferred. The provisions in Articles 38(13), 40(11) and 42(12) BRRD ensure the dissolution of any links that may have existed prior to the transfer or under national law between the assets, liabilities and rights that are transferred and those that are not.

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_2338
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