

Single Rulebook Q&A

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Status	Final Q&A
Legal act	Directive 2014/59/EU (BRRD)
Topic	Resolution tools and powers
Article	44
Paragraph	2
Subparagraph	g
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	Variable component of the remuneration of material risk takers
Question	What types of liabilities are excluded from the exemption under Article 44(2)(g)(i)is by the reference to Article 92(2) of Directive 2013/36/EU (CRD) in the second subparagraph of Article 44(2) of Directive 2014/59/EU (BRRD)?
Background on the question	Article 44(2) (g) of Directive 2014/59/EU (BRRD) states that “ [...] Point (g) (i) of the first subparagraph shall not apply to the variable component of the remuneration of material risk takers as identified in Article 92(2) of Directive 2013/36/EU”It is not clear from this paragraph how exactly its requirements should be implemented. First, the stated requirement excludes “material risk takers” from the exclusion in Article (g) (i) (“[...] an employee, in relation to accrued salary, pension benefits or other fixed remuneration, except for the variable component of remuneration that is not regulated by a collective bargaining agreement;”, with the (presumably unintended) consequence that it may not be possible to bail in the variable remuneration of such material risk takers.Second, it refers to “[...] material risk takers as identified in Article 92 (2) of Directive 2013/36/EU [CRD]”, but that specific article does not identify material risk takers. Article 92(2) of Directive 2013/36/EU (CRD) refers to “[...] categories of staff including senior management, risk takers,

	<p>staff engaged in control functions and any employee receiving total remuneration that take them into the same remuneration bracket as senior management and risk takers, whose professional activities have a material impact on their risk profile”. Article 92(2) of Directive 2013/36/EU (CRD) refers to a pay bracket, which could include people who work in many different parts of the bank, such as accountants, lawyers and HR professionals, who would not be considered “material risk takers”. How should this provision be implemented? It would be preferable to implement Article 44 (2) (g) (i) and consider that it includes the implementation of all categories of staff referred to in Article 92 (2) of Directive 2013/36/EU (CRD) in order to be able to use the bail in power on all variable remuneration that is not subject to a collective bargaining agreement. This would include all variable remuneration of “material risk takers”.</p>
<p>Final answer</p>	<p>Article 44(2), second subparagraph BRRD intends to subject to bail-in, in addition to the variable component of remuneration not regulated by a collective bargaining agreement, also the variable component of the remuneration of material risk-takers, whether it is regulated by a collective bargaining agreement or not.</p> <p>Said differently, Article 44(2), second subparagraph BRRD establishes the bail-inability of the variable remuneration of material risk takers, even when it is regulated by a collective bargaining agreement, in derogation from Article 44(2)(g)(i) 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 prejudice 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_2432</p>

