

Single Rulebook Q&A

Question ID	2015_2437
Status	Final Q&A
Legal act	Directive 2014/59/EU (BRRD)
Topic	MREL
Article	55
Paragraph	-
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	MREL regarding liabilities governed by the law of a third-country
Question	What are the obligations of an institution regarding liabilities governed by the law of a third-country and how are the requirements of Article 55 of Directive 2014/59/EU (BRRD) assessed? Should the competent authority or the resolution authority be in charge of gathering and assessing the evidence?
Background on the question	Article 55 (1) of Directive 2014/59/EU (BRRD) provides that Member States “shall require institutions and entities referred to in points (b), (c) and (d) of Article 1(1) to include a contractual term by which the creditor or party to the agreement creating the liability recognises that liability may be subject to the write-down and conversion powers and agrees to be bound by any reduction of the principal or outstanding amount due, conversion or cancellation that is effected by the exercise of those powers by a resolution authority, provided that such liability is: (a) not excluded under Article 44(2); (b) not a deposit referred to in point (a) of Article 108; (c) governed by the law of a third country; and (d) issued or entered into after the date on which a Member State applies the provisions adopted in order to transpose this Section. The first subparagraph shall not apply where the resolution authority of a Member State determines that the liabilities or instruments referred to in the first subparagraph can be subject to write down and

conversion powers by the resolution authority of a Member State pursuant to the law of the third country or to a binding agreement concluded with that third country. Member States shall ensure that resolution authorities may require institutions and entities referred to in points (b), (c) and (d) of Article 1(1) to provide authorities with a legal opinion relating to the legal enforceability and effectiveness of such a term." Article 55 (1) states that: "If an institution or entity referred to in point (b), (c) or (d) of Article 1(1) fails to include in the contractual provisions governing a relevant liability a term required in accordance paragraph 1, that failure shall not prevent the resolution authority from exercising the write down and conversion powers in relation to that liability." In this context, what should be the scope of the obligation of an institution regarding liabilities governed by the law of a third-country for the entity? Should it contract by contract / liability by liability? Should it be the competent authority or the resolution authority in charge of gathering and assessing the evidence?

Final answer

Institutions are required to comply with the obligation under Article 55(1) BRRD for every liability falling within its scope, without prejudice to the exemptions under the second and third subparagraphs of that provision and under Article 55(2) BRRD.

It is for the resolution authority to assess compliance with the requirements under Article 55 BRRD and, particularly, to assess whether it is legally or otherwise impracticable to include in the contractual provisions governing a relevant liability the term required in accordance with Article 55(1) BRRD, following a notification from the institution, pursuant to Article 55(2) BRRD. The assessment of compliance with Article 55 BRRD is also carried out in the context of the assessment of the resolvability, as implied by the fifth subparagraph of Article 55(2) BRRD. Additionally, under Article 55(3) BRRD, resolution authorities are entitled to require from institutions a legal opinion on the legal enforceability and effectiveness of the contractual term inserted in the contracts governed by third-country law.

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_2437

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