

Single Rulebook Q&A

Question ID	2015_2516
Status	Final Q&A
Legal act	Directive 2014/59/EU (BRRD)
Topic	Early intervention
Article	27, 34
Paragraph	1, 4
Subparagraph	d (iii)
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	Relation between precautionary recapitalisation and early intervention measures
Question	What is the relation between precautionary recapitalisation and early intervention measures in case an institution would have to raise its capital base following the negative outcome of stress test?
Background on the question	In case an institution would have to raise its capital base following the negative outcome of stress test, it is not clear what the relation between precautionary recapitalisation and early intervention measures is. It is also not clear if early intervention measures as prescribed in Article 27 of Directive 2014/59/EU (BRRD) - bearing in mind that there is also a possibility of introducing elements of a recovery plan - should be used before precautionary recapitalization. In case of the application of Article 32 (4) (d) (iii) of Directive 2014/59/EU (BRRD) an institution is not deemed to be failing or likely to fail. However it seems reasonable to use early intervention measures and supervisory powers before any public support is granted. On the other hand, Article 27 (1) of Directive 2014/59/EU (BRRD) states that „Where an institution infringes or, due inter alia to a rapidly deteriorating financial condition, including deteriorating liquidity situation, increasing level of leverage, non-performing loans or concentration of exposures, as

	<p>assessed on the basis of a set of triggers, which may include the institution's own funds requirement plus 1,5 percentage points, is likely in the near future to infringe the requirements of Regulation [...], Member States shall ensure that competent authorities, have at their disposal, without prejudice to the measures referred to in Article 104 of Directive 2013/36/EU where applicable, at least the following measures: (a) require the management body of the institution to implement one or more of the arrangements or measures set out in the recovery plan or in accordance with Article 5(2) to update such recovery plan[...]" According to Article 27 it seems that such arrangements set out in the recovery plan are launched when the institution is deemed to be failing or likely to fail.</p>
<p>Final answer</p>	<p>Under Article 32(4)(d)(iii) of Directive 2014/59/EU (BRRD), institutions that are solvent and not deemed to be failing or likely to fail may recur to precautionary recapitalisation. This may be the case, for instance, when, based on the assessment of the results of supervisory stress tests, asset quality review or equivalent exercises, the competent authority detects a capital shortfall.</p> <p>In certain cases, the circumstances from which capital shortfalls materialise may be such that the conditions for early intervention (as listed under Article 27(1) BRRD) are met as well. If that is the case, the relevant early intervention measures could be applied. The two measures (i.e., the precautionary recapitalisation and the early intervention) are independent and may be applied in sequence or combination between each other; in fact, the BRRD does not require any early intervention measures to be taken before a precautionary recapitalisation can take place or vice versa.</p> <p>In any event, precautionary recapitalisation cannot be used to offset losses that the institution has incurred or is likely to incur in the near future.</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_2516</p>

