

Single Rulebook Q&A

Question ID	2015_2523
Status	Final Q&A
Legal act	Directive 2014/59/EU (BRRD)
Topic	Special management
Article	35
Paragraph	8
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	Special manager as insolvency manager
Question	Must national courts adhere to the resolution authority's decision that a special manager should also be insolvency manager?
Background on the question	Regarding the special manager referred to in Article 35(8) of Directive 2014/59/EU (BRRD), it can sometimes be the case, that the insolvency manager is appointed by the court. In such a case, it is not clear if the court has to obey the resolution authority if the resolution authority decides that a special manager should also be insolvency manager.
Final answer	<p>Article 35 of Directive 2014/59/EU (BRRD) requires Member States to empower resolution authorities to appoint a special manager to replace the management body of the institution under resolution. Paragraph 8 of Article 35 BRRD provides that, where national law provides for the appointment of insolvency management, such management may also constitute special management. In substance, there is no need to appoint two bodies, if it is possible to appoint a single one and confer on it both functions.</p> <p>The powers and competences of the insolvency management are governed by the applicable national law. That said, Article 35 BRRD requires resolution</p>

authorities to be able to appoint special managers, but clearly does not provide them with a say in the appointment and powers of the insolvency management. Thus, it is possible that the resolution and the insolvency authority may concur on the appointment of the same person as special and insolvency manager. Conversely, in case of disagreement, the two authorities would make different appointments, if they deem so. In any event, the resolution authority would have no say in the appointment of the insolvency authority.

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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.

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European Banking Authority, 22/05/2022

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