

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	38
Paragraph	6
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	Power of the resolution authority to transfer back
Question	How should the transfer back procedure be applied in the context of the sale of business tool?
Background on the question	As regard the sale of business tool, there is no reference to the particular cases or requirements for the use of transfer back as in Articles 40 (7) and 42(10) in relation to bridge bank tool and segregation tool, respectively. Moreover, in practical terms it might be very difficult to carry out the “send-back- procedure”. In particular if you have used the sale of shares tool and the purchaser has handed the price over the resolution authority in order to manage the payment to the shareholders and that after a distribution the actual shareholder receives the money, how could one justify the “sending-back” of the money?It would seem that a misevaluation has to be “compensated” rather than wiping the transaction out. An additional question arises whether the “send-back” procedure is discretionary for the authority.
Final answer	In the context of the sale of business tool, Article 38(6) of Directive 2014/59/EU (BRRD) requires Member States to empower resolution authorities to transfer assets, rights and liabilities back to the institution

under resolution, and shares/other instruments of ownership to their original owners, provided that the purchaser consents to the transferral back. The modalities of exercise of such powers are to be governed by the applicable national law. In this respect, while Articles 40(7) and 42(10) BRRD set minimum conditions for the exercise of analogous powers of transferral back when the bridge bank and the asset separation are the tools applied, Article 38(6) BRRD makes the transfer back conditional solely on the consent of the purchaser. The purchaser's consent may be obtained a priori by including specific provisions in the purchase contract, if national law allows for it.

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