

# Single Rulebook Q&A

<b>Question ID</b>	2016_2584
<b>Status</b>	Final Q&A
<b>Legal act</b>	Directive 2014/59/EU (BRRD)
<b>Topic</b>	Valuation
<b>Article</b>	36
<b>Paragraph</b>	13
<b>Subparagraph</b>	-
<b>COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations</b>	Not applicable
<b>Article/Paragraph</b>	n.a.
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<b>Disclose name of institution / entity</b>	No
<b>Type of submitter</b>	Competent authority
<b>Subject matter</b>	Two separate ex-ante valuations for resolution purposes
<b>Question</b>	<p>In case two separate ex-ante valuations for resolution purposes have been prepared, each of which covering different purposes as per Article 36(4) of Directive 2014/59/EU (BRRD), shall both be treated as a part of the valuation and, therefore, the decision on resolution? Should they both be subjected to judicial review in line with Articles 36(13) and 85 BRRD?</p> <p>On a related note, can a resolution authority's decision be appealed if it does not include a decision on a specific resolution action to be taken?</p>
<b>Background on the question</b>	<p>In case two separate ex-ante valuations for resolution purposes have been prepared (one with regard to resolution triggers, in the context of “failing or likely to fail” and the second one for the purpose of deciding on the application of a resolution tool) it is not clear in Directive 2014/59/EU (BRRD) which of both shall be treated as a part of decision on resolution and be subject of judicial review in line with Articles 36 (13) and 85 of Directive 2014/59/EU (BRRD). In addition, the Directive is also not clear on whether a resolution authority's decision can be appealed if it does not include a decision on a specific resolution action to be taken.</p>
<b>Final answer</b>	

Article 36(4) BRRD sets out the purposes that the ex-ante valuation must fulfil (including, but not limited to, determining whether the conditions for resolution are met and informing the decision on the appropriate resolution action), but it is silent on whether the overall valuation may be performed in separate occasions and acts. If a resolution authority decides to rely on more than one valuation, each of them should be considered as a conceptual section of the same overall valuation under Article 36 BRRD and should be judicially reviewable at the same conditions of a single valuation. In this respect, Article 36(13) BRRD excludes that an ex-ante valuation be subject to a separate right of appeal and can only be appealed in the context of the appeal against the resolution decision to apply a resolution tool or exercise write-down or conversion powers. It follows that, where two separate ex-ante valuations are prepared (e.g., one for the purpose of determining whether the conditions for resolution are met and the other for informing the appropriate resolution action) each of them can be challenged when challenging the decision on resolution.

Article 82 BRRD requires the decision of the resolution authority to include always (i) the justification for the determination that the institution meets conditions for resolution and (ii) the resolution actions that the resolution authority intends to take. It may however not always be possible for such initial decisions to cover all resolution tools that may be used. In fact, it may occur that decisions to apply certain powers or tools are spread over time (e.g., partial sale of business, transfers to asset management vehicle). In this case, even separate orders or instruments (i.e. separate formal decisions) may be used. Such separate decisions (and the valuations underlying them) can be appealed in line with Article 36(13) and Article 85 BRRD.

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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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