

<b>Question ID</b>	2016_2620
<b>Status</b>	Final Q&A
<b>Legal act</b>	Directive 2014/59/EU (BRRD)
<b>Topic</b>	Other topics
<b>Article</b>	3
<b>Paragraph</b>	6
<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>	Direct fiscal impact and systemic implication in Article 3(6)
<b>Question</b>	How can the terms “direct fiscal impact” and “systemic implication” in Article 3(6) be transposed in a way that removes ambiguity?
<b>Background on the question</b>	<p>Article 3(6) of Directive 2014/59/EU (BRRD) requires that the resolution authority has the approval of the competent ministry (unless otherwise provided for in national law) before implementing decisions that have a direct fiscal impact or a systemic implication. How can these terms (direct fiscal impact, systemic implication) be transposed in a way that removes ambiguity? Is it for Member States to define what is meant in this context? Should these terms be defined in the transposing regulations? For instance does the resolutions authority need the ministry’s approval for (i) putting an institution into resolution in first place (this could be considered to have systemic implications), or (ii) where senior creditors need to be bailed in or (iii) where the resolution fund needs to be used. How should this be defined this? In our view it makes for example no sense for ministerial consent to be required for SRB to take action. However Article 5(1) of Regulation (EU) No 806/2014 (SRM Regulation) says that the when the Single Resolution Board exercises its powers, it shall for the purpose of BRRD be the National Resolution Authority. Article 5(2) then goes on to say that functions of the</p>

	<p>Board shall take decisions subject to and to and in compliance with relevant union law. It could be argued that where there is a fiscal impact/systemic implications, ministerial approval could be required. Clarification on this would be appreciated. Also Article 83(2)(g) BRRD provides that the resolution authority, as soon as reasonably practicable after taking a resolution action, shall notify the application of the measure to the competent ministry. So, we cannot understand if the duty of resolution authorities to inform the competent ministry of the decisions taken pursuant to the BRRD only concerns the decisions referred to in Articles 81(3)(i) and 83(2)(g) BRRD, or if are more comprehensive than that and includes, namely, all the decisions related to the resolution plans, the assessments of resolvability and the powers to address or remove impediments to resolvability.</p>
<p><b>Final answer</b></p>	<p>Under Directive 2014/59/EU (BRRD), Member States can largely determine the cases where the consent of the competent ministry is considered necessary. This is suggested by the very language of Article 3(6) BRRD, which reads “[the resolution authority] shall inform the competent ministry of the decisions pursuant to this Directive and, unless otherwise laid down in national law, have its approval before implementing decisions that have a direct fiscal impact or systemic implications”. Member States are, thus, in the position to choose in which decisions they want to have a say. A flexible margin of political appreciation is thus provided for, depending on national constitutional and legal tradition, accountability arrangements among national institutions and administrative bodies among others.</p> <p><b>Disclaimer:</b></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 prejudice the position that the European Commission might take before the Union and national courts.</p>
<p><b>Link</b></p>	<p><a href="https://www.eba.europa.eu/single-rule-book-qa/-/qna/view/publicId/2016_2620">https://www.eba.europa.eu/single-rule-book-qa/-/qna/view/publicId/2016_2620</a></p>

