

Single Rulebook Q&A

Question ID	2016_2814
Status	Final Q&A
Legal act	Directive 2014/59/EU (BRRD)
Topic	Write-down and conversion of capital instruments
Article	44
Paragraph	2
Subparagraph	e
COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations	Not applicable
Article/Paragraph	Not applicable
Date of submission	04/07/2016
Published as Final Q&A	18/03/2022
Disclose name of institution / entity	Yes
Name of institution / submitter	Resonance Capital Technologies
Country of incorporation / residence	UK
Type of submitter	Consultancy firm
Subject matter	Clarification on EBA Final Q&A 2015_2469 / Exemption from bail-in of liabilities to institutions in order to avoid risk of systemic contagion
Question	The answer to Q&A 2015_2469 clarifies that the exception to bail-in in Article 44(2)(e) of Directive 2014/59/EU (BRRD) captures inter-bank unsecured liabilities with an original maturity of less than seven days. Does this exception apply to all inter-institutional unsecured liabilities with an original maturity of less than seven days? In other words, does this exception also capture the liabilities of investment firms that are defined as institutions in Article 2(1)(23) BRRD, alongside the liabilities of other banks or credit institutions?
Background on the question	The EBA has reviewed our question (Q&A 2015_2469) and has provided a partial clarification. In its answer the EBA clarifies that exemption 44(2)(e) captures interbank sight deposits as long as the deposit holder is not part of the same group as the entity under resolution. This clarifies the status of

	<p>sight deposits as deposits that are deemed to have a maturity of less than seven days for the purposes of the application of Article 44(2)(e).As per our original question we seek clarification as to the status of sight deposits of not only banks but also of non-bank entities such as those investment firms that are defined as "institutions" as per BRRD Article 2(1)(23) (copied here "(23) 'institution' means a credit institution or an investment firm;").</p>
Final answer	<p>Since Article 44(2)(e) BRRD excludes from bail-in liabilities to institutions, and Article 2(1), point (23) BRRD states that both credit institutions and investment firms qualify as 'institutions' under the BRRD, the exclusion under Article 44(2)(e) must be interpreted as to include also liabilities (with a maturity of less than seven days) owed to investment firms that are not part of the same group.</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>
Link	<p>https://www.eba.europa.eu/single-rule-book-qa/-/qna/view/publicId/2016_2814</p>

European Banking Authority, 03/07/2022

www.eba.europa.eu