Single Rulebook Q&A

Question ID	2016_2957
Status	Final Q&A
Legal act	Directive 2014/59/EU (BRRD)
Topic	Write-down and conversion of capital instruments
Article	59
Paragraph	-
Subparagraph	-
COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations	Not applicable
Article/Paragraph	n.a.
Date of submission	19/10/2016
Published as Final Q&A	21/01/2022
Disclose name of institution / entity	No
Type of submitter	Competent authority
Subject matter	Difference in treatment of viable subsidiaries for the application of write down and conversion of capital instruments and resolution tools and powers
Question	Can the power of write down or conversion of capital instruments be exercised in relation to instruments issued by a still viable subsidiary belonging to a failing group?
Background on the question	Article 59 of Directive 2014/59/EU (BRRD) on the power of write down or conversion of capital instruments can be exercised in relation to instruments issued by a subsidiary, even if that subsidiary is still viable in itself and does not in itself meet the criteria of “failing or likely to fail”, provided that the group would no longer be viable unless the write down or conversion of capital instruments takes place. Article 91 of Directive 2014/59/EU (BRRD) however refers back to the conditions laid out in Articles 32 and 33 of Directive 2014/59/EU (BRRD).In Article 33, specifically subparagraph 4, the exercise of resolution powers in relation to viable subsidiaries that are not themselves “failing or likely to fail”, is simply not possible. Is this the correct assessment on the difference in treatment of viable subsidiaries in the conditions for the exercise of write down and conversion of capital instruments, compared to the application of the resolution tools and powers (including bail-in)?

Final answer	The power of write-down or conversion of capital instruments can be exercised in relation to instruments issued by a still viable subsidiary belonging to a failing group, provided that the conditions laid down in Article 59(3)(c) of Directive 2014/59/EU (BRRD) materialise. Pursuant to such provision, resolution authorities can write-down or convert the relevant capital instruments issued by a subsidiary, provided that (i) those instruments are recognised for the purposes of meeting own funds requirements on an individual and on a consolidated basis; and (ii) a joint decision adopted in accordance with Article 92(3) and (4) BRRD determines that the group would no longer be viable unless those instruments are written-down or converted. A group shall be deemed to be no longer viable when the condition of Article 59(4) BRRD are met. With reference to the background of the question, mentioning Article 33(4) BRRD, it is worth to remind that conversion and write-down are not resolution tools and the power to exercise them is not a resolution power, as per points (19) and (20) of Article 2(1) BRRD. Indeed, both actions may be exercise independently from resolution action, pursuant to Article 59(1)(a) BRRD. **Disclaimer:** 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.
Link	https://www.eba.europa.eu/single-rule-book-qa/-/qna/view/publicId/2016_2957