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<b>Status</b>	Final Q&A
<b>Legal act</b>	Directive 2014/59/EU (BRRD)
<b>Topic</b>	MREL
<b>Article</b>	48, 60
<b>Paragraph</b>	1
<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>	Sequence of bail-in and write down of capital
<b>Question</b>	Are Articles 48 and 60 of Directive 2014/59/EU (BRRD) as well as Article 21 of Regulation (EU) No 806/2014 (SRM) conflicting with Articles 47 BRRD?
<b>Background on the question</b>	Articles 48 and 60 of Directive 2014/59/EU (BRRD) and Article 21 of Regulation (EU) No 806/2014 (SRM) contain, in short, the sequence of write down and conversion in the event of application of the bail-in tool or of write down of capital instruments. These articles state that write down and conversion shall be applied in the reverse order of priority of claims (which is also specified in Article 17 of Regulation (EU) No 806/2014 (SRM)). As a result the write down of conversion powers shall be exercised first with regard to Tier 1 capital instruments, then with regard to Additional Tier 1 (AT1) and Tier 2(AT2).It seems to be implied that a "higher rank" of instruments must be exhausted before write down or conversion may be applied to the next rank. For example Common Equity Tier 1 (CET1) instruments must be reduced "to the extent of their capacity" (Article 60 BRRD, Article 21 SRM) before AT1 instruments may be written down or converted.It is not clear how this relates to Article 47 of Directive 2014/59/EU (BRRD) which relates to the treatment of shareholders in bail-in or write down of capital instruments. Article 47(1)(b), states that: "provided

	<p>that, in accordance to the valuation carried out under Article 36, the institution under resolution has a positive net value, dilute existing shareholders and holders of other instruments of ownership as a result of the conversion into shares or other instruments of ownership of: (i) relevant capital instruments issued by the institution pursuant to the power referred to in Article 59(2); or (ii) bail-inable liabilities issued by the institution under resolution pursuant to the power referred to in point (f) of Article 63(1). With regard to point (b) of the first subparagraph, the conversion shall be conducted at a rate of conversion that severely dilutes existing holdings of shares or other instruments of ownership. "Dilution of existing shareholders implies that those shares (CET1 instruments) are not written down to the extent of their capacity. However the conversion powers are applied to instruments at a lower rank by converting relevant capital instruments or eligible liabilities into shares. This does not seem to be in accordance with the sequence of bail-in / write down of capital instruments in Articles 48 and 60 of Directive 2014/59/EU (BRRD) and Article 21 of Regulation (EU) No 806/2014 (SRM) (especially where specified CET1 must be reduced to the extent of their capacity).</p>
<p><b>Final answer</b></p>	<p>The combined interpretation of the provisions in question entails that, when, in accordance with point (a) of Article 60(1) BRRD, Common Equity Tier 1 items have been reduced in proportion to the losses (established in the valuation under Article 36 BRRD) and the institution under resolution still has a positive net value, there is no obligation to further reduce the Common Equity Tier 1 items. At that point, the bank is recapitalised by converting relevant capital instruments and bail-inable liabilities to the extent necessary. Importantly, in this context, Article 47 BRRD constitutes <i>lex specialis</i>, as it explicitly relates to treatment of shareholders in both bail-in and point of non-viability scenarios.</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/2017_321">https://www.eba.europa.eu/single-rule-book-qa/-/qna/view/publicId/2017_321</a></p>

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