

Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (Text with EEA relevance)

## TITLE VIII

### PENALTIES

#### *Article 110*

#### **Administrative penalties and other administrative measures**

1 Without prejudice to the right of Member States to provide for and impose criminal penalties, Member States shall lay down rules on administrative penalties and other administrative measures applicable where the national provisions transposing this Directive have not been complied with, and shall take all measures necessary to ensure that they are implemented. Where Member States decide not to lay down rules for administrative penalties for infringements which are subject to national criminal law they shall communicate to the Commission the relevant criminal law provisions. The administrative penalties and other administrative measures shall be effective, proportionate and dissuasive.

2 Member States shall ensure that, where obligations referred to in the first paragraph apply to institutions, financial institutions and Union parent undertakings, in the event of an infringement, administrative penalties can be applied, subject to the conditions laid down in national law, to the members of the management body, and to other natural persons who under national law are responsible for the infringement.

3 The powers to impose administrative penalties provided for in this Directive shall be attributed to resolution authorities or, where different, to competent authorities, depending on the type of infringement. Resolution authorities and competent authorities shall have all information-gathering and investigatory powers that are necessary for the exercise of their respective functions. In the exercise of their powers to impose penalties, resolution authorities and competent authorities shall cooperate closely to ensure that administrative penalties or other administrative measures produce the desired results and coordinate their action when dealing with cross-border cases.

4 Resolution authorities and competent authorities shall exercise their administrative powers to impose penalties in accordance with this Directive and national law in any of the following ways:

- a directly;
- b in collaboration with other authorities;
- c under their responsibility by delegation to such authorities;
- d by application to the competent judicial authorities.

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### *Article 111*

#### **Specific provisions**

1 Member States shall ensure that their laws, regulations and administrative provisions provide for penalties and other administrative measures at least in respect of the following situations:

- a failure to draw up, maintain and update recovery plans and group recovery plans, infringing Article 5 or 7;
- b failure to notify an intention to provide group financial support to the competent authority infringing Article 25;
- c failure to provide all the information necessary for the development of resolution plans infringing Article 11;
- d failure of the management body of an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) to notify the competent authority when the institution or entity referred to in point (b), (c) or (d) of Article 1(1) is failing or likely to fail, infringing Article 81(1).

2 Member States shall ensure that, in the cases referred to in paragraph 1, the administrative penalties and other administrative measures that can be applied include at least the following:

- a a public statement which indicates the natural person, institution, financial institution, Union parent undertaking or other legal person responsible and the nature of the infringement;
- b an order requiring the natural or legal person responsible to cease the conduct and to desist from a repetition of that conduct;
- c a temporary ban against any member of the management body or senior management of the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) or any other natural person, who is held responsible, to exercise functions in institutions or entities referred to in point (b), (c) or (d) of Article 1(1);
- d in the case of a legal person, administrative fines of up to 10 % of the total annual net turnover of that legal person in the preceding business year. Where the legal person is a subsidiary of a parent undertaking, the relevant turnover shall be turnover resulting from the consolidated accounts of the ultimate parent undertaking in the preceding business year;
- e in the case of a natural person, administrative fines of up to EUR 5 000 000, or in the Member States where the Euro is not the official currency, the corresponding value in the national currency on 2 July 2014;
- f administrative fines of up to twice the amount of the benefit derived from the infringement where that benefit can be determined.

### *Article 112*

#### **Publication of administrative penalties**

1 Member States shall ensure that resolution authorities and competent authorities publish on their official website at least any administrative penalties imposed by them for infringing the national provisions transposing this Directive where such penalties have not been the subject of an appeal or where the right of appeal has been exhausted. Such publication

shall be made without undue delay after the natural or legal person is informed of that penalty including information on the type and nature of the infringement and the identity of the natural or legal person on whom the penalty is imposed.

Where Member States permit publication of penalties against which there is an appeal, resolution authorities and competent authorities shall, without undue delay, publish on their official websites information on the status of that appeal and the outcome thereof.

2 Resolution authorities and competent authorities shall publish the penalties imposed by them on an anonymous basis, in a manner which is in accordance with national law, in any of the following circumstances:

- a where the penalty is imposed on a natural person and publication of personal data is shown to be disproportionate by an obligatory prior assessment of the proportionality of such publication;
- b where publication would jeopardise the stability of financial markets or an ongoing criminal investigation;
- c where publication would cause, insofar as it can be determined, disproportionate damage to the institutions or entities referred to in point (b), (c) or (d) of Article 1(1) or natural persons involved.

Alternatively, in such cases, the publication of the data in question may be postponed for a reasonable period of time, if it is foreseeable that the reasons for anonymous publication will cease to exist within that period.

3 Resolution authorities and competent authorities shall ensure that any publication in accordance with this Article shall remain on their official website for a period of at least five years. Personal data contained in the publication shall only be kept on the official website of the resolution authority or the competent authority for the period which is necessary in accordance with applicable data protection rules.

4 By 3 July 2016, EBA shall submit a report to the Commission on the publication of penalties by Member States on an anonymous basis as provided for under paragraph 2 and in particular whether there have been significant divergences between Member States in that respect. That report shall also address any significant divergences in the duration of publication of penalties under national law for Member States for publication of penalties.

### *Article 113*

#### **Maintenance of central database by EBA**

1 Subject to the professional secrecy requirements referred to in Article 84, resolution authorities and competent authorities shall inform EBA of all administrative penalties imposed by them under Article 111 and of the status of that appeal and outcome thereof. EBA shall maintain a central database of penalties reported to it solely for the purpose of exchange of information between resolution authorities which shall be accessible to resolution authorities only and shall be updated on the basis of the information provided by resolution authorities. EBA shall maintain a central database of penalties reported to it solely for the purpose of exchange of information between competent authorities which shall be accessible to competent authorities only and shall be updated on the basis of the information provided by competent authorities.

2 EBA shall maintain a webpage with links to each resolution authority's publication of penalties and each competent authority's publication of penalties under Article 112 and indicate the period for which each Member State publishes penalties.

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#### *Article 114*

### **Effective application of penalties and exercise of powers to impose penalties by competent authorities and resolution authorities**

Member States shall ensure that when determining the type of administrative penalties or other administrative measures and the level of administrative fines, the competent authorities and resolution authorities take into account all relevant circumstances, including where appropriate:

- (a) the gravity and the duration of the infringement;
- (b) the degree of responsibility of the natural or legal person responsible;
- (c) the financial strength of the natural or legal person responsible, for example, as indicated by the total turnover of the responsible legal person or the annual income of the responsible natural person;
- (d) the amount of profits gained or losses avoided by the natural or legal person responsible, insofar as they can be determined;
- (e) the losses for third parties caused by the infringement, insofar as they can be determined;
- (f) the level of cooperation of the natural or legal person responsible with the competent authority and the resolution authority;
- (g) previous infringements by the natural or legal person responsible;
- (h) any potential systemic consequences of the infringement.