

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 II

PREPARATION

CHAPTER II

Resolvability

Article 17

Powers to address or remove impediments to resolvability

[^{F1} Member States shall ensure that when, pursuant to an assessment of resolvability for an entity carried out in accordance with Articles 15 and 16, a resolution authority, after consulting the competent authority, determines that there are substantive impediments to the resolvability of that entity, that resolution authority shall notify in writing that determination to the entity concerned, to the competent authority and to the resolution authorities of the jurisdictions in which significant branches are located.]

2 The requirement for resolution authorities to draw up resolution plans and for the relevant resolution authorities to reach a joint decision on group resolution plans in Article 10(1) and Article 13(4) respectively shall be suspended following the notification referred to in paragraph 1 of this Article until the measures to remove the substantive impediments to resolvability have been accepted by the resolution authority pursuant to paragraph 3 of this Article or decided pursuant to paragraph 4 of this Article.

[^{F13} Within four months of the date of receipt of a notification made in accordance with paragraph 1, the entity shall propose to the resolution authority possible measures to address or remove the substantive impediments identified in the notification.

The entity shall, within two weeks of the date of receipt of a notification made in accordance with paragraph 1 of this Article, propose to the resolution authority possible measures and the timeline for their implementation to ensure that the entity complies with Article 45e or 45f of this Directive and the combined buffer requirement, where a substantive impediment to resolvability is due to either of the following situations:

- a the entity meets the combined buffer requirement when considered in addition to each of the requirements referred to points (a), (b) and (c) of Article 141a(1) of Directive 2013/36/EU, but it does not meet the combined buffer requirement when considered in addition to the requirements referred to in Articles 45c and 45d of this Directive when calculated in accordance with point (a) of Article 45(2) of this Directive; or

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- b the entity does not meet the requirements referred to in Articles 92a and 494 of Regulation (EU) No 575/2013 or the requirements referred to in Articles 45c and 45d of this Directive.

The timeline for the implementation of measures proposed under the second subparagraph shall take into account the reasons for the substantive impediment.

The resolution authority, after consulting the competent authority, shall assess whether the measures proposed under the first and second subparagraphs effectively address or remove the substantive impediment in question.

4 Where the resolution authority finds that the measures proposed by an entity in accordance with paragraph 3 do not effectively reduce or remove the impediments in question, it shall, either directly or indirectly through the competent authority, require the entity to take alternative measures that may achieve that objective, and notify in writing those measures to the entity, which shall propose within one month a plan to comply with them.

In identifying alternative measures, the resolution authority shall demonstrate how the measures proposed by the entity would not be able to remove the impediments to resolvability and how the alternative measures proposed are proportionate in removing them. The resolution authority shall take into account the threat that those impediments to resolvability present for financial stability and the effect of the measures on the business of the entity, its stability and its ability to contribute to the economy.]

5 For the purposes of paragraph 4, resolution authorities shall have the power to take any of the following measures:

- a require the [F¹entity] to revise any intragroup financing agreements or review the absence thereof, or draw up service agreements, whether intra-group or with third parties, to cover the provision of critical functions;
- b require the [F¹entity] to limit its maximum individual and aggregate exposures;
- c impose specific or regular additional information requirements relevant for resolution purposes;
- d require the [F¹entity] to divest specific assets;
- e require the [F¹entity] to limit or cease specific existing or proposed activities;
- f restrict or prevent the development of new or existing business lines or sale of new or existing products;
- g require changes to legal or operational structures of the [F¹entity] or any group entity, either directly or indirectly under its control, so as to reduce complexity in order to ensure that critical functions may be legally and operationally separated from other functions through the application of the resolution tools;
- h require an [F¹entity] or a parent undertaking to set up a parent financial holding company in a Member State or a Union parent financial holding company;
- [F²ha require an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) of this Directive to submit a plan to restore compliance with the requirements of Articles 45e or 45f of this Directive, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 and, where applicable, with the combined buffer requirement and with the requirements referred to in Article 45e or 45f of this Directive, expressed as a percentage of the total exposure measure referred to in Articles 429 and 429a of Regulation (EU) No 575/2013;]
- [F¹i require an institution or entity referred to in point (b), (c) or (d) of Article 1(1) to issue eligible liabilities to meet the requirements of Article 45e or Article 45f;
- j require an institution or entity referred to in point (b), (c) or (d) of Article 1(1), to take other steps to meet the minimum requirement for own funds and eligible liabilities under

- Article 45e or Article 45f, including in particular to attempt to renegotiate any eligible liability, additional Tier 1 instrument or Tier 2 instrument it has issued, with a view to ensuring that any decision of the resolution authority to write down or convert that liability or instrument would be effected under the law of the jurisdiction governing that liability or instrument;
- ja for the purpose of ensuring ongoing compliance with Article 45e or Article 45f, require an institution or entity referred to in point (b), (c) or (d) of Article 1(1), to change the maturity profile of:
- (i) own funds instruments, after having obtained the agreement of the competent authority, and
 - (ii) eligible liabilities referred to in Article 45b and in point (a) of Article 45f(2);
- k where an entity is the subsidiary of a mixed-activity holding company, requiring that the mixed-activity holding company set up a separate financial holding company to control the entity, if necessary in order to facilitate the resolution of the entity and to avoid the application of the resolution tools and the exercise of the powers referred to in Title IV having an adverse effect on the non-financial part of the group.]
- 6 A decision made pursuant to paragraph 1 or 4 shall meet the following requirements:
- a it shall be supported by reasons for the assessment or determination in question;
 - b it shall indicate how that assessment or determination complies with the requirement for proportionate application laid down in paragraph 4; and
 - c it shall be subject to a right of appeal.
- [^{F17} Before identifying any measure referred to in paragraph 4, the resolution authority, after consulting the competent authority and, if appropriate, the designated national macroprudential authority, shall duly consider the potential effect of those measures on the particular entity, on the internal market for financial services, and on the financial stability in other Member States and in the Union as a whole.]
- 8 EBA shall, by 3 July 2015, issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 to specify further details on the measures provided for in paragraph 5 and the circumstances in which each measure may be applied.

Textual Amendments

- F1** Substituted by [Directive \(EU\) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC](#).
- F2** Inserted by [Directive \(EU\) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC](#).