

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 18

Powers to address or remove impediments to resolvability: group treatment

[^{F1} The group-level resolution authority together with the resolution authorities of subsidiaries, after consulting the supervisory college and the resolution authorities of the jurisdictions in which significant branches are located insofar as is relevant to the significant branch, shall consider the assessment required by Article 16 within the resolution college and shall take all reasonable steps to reach a joint decision on the application of measures identified in accordance with Article 17(4) in relation to all resolution entities and their subsidiaries that are entities referred to in Article 1(1) and are part of the group.

2 The group-level resolution authority, in cooperation with the consolidating supervisor and EBA in accordance with Article 25(1) of Regulation (EU) No 1093/2010, shall prepare and submit a report to the Union parent undertaking, to the resolution authorities of subsidiaries, which shall provide it to the subsidiaries within their remit, and to the resolution authorities of jurisdictions in which significant branches are located. The report shall be prepared after consulting the competent authorities, and shall analyse the substantive impediments to the effective application of the resolution tools and the exercising of the resolution powers in relation to the group, and also in relation to resolution groups where a group is composed of more than one resolution group. The report shall consider the impact on the group's business model and recommend any proportionate and targeted measures that, in the view of the group-level resolution authority, are necessary or appropriate to remove those impediments.

Where an impediment to the resolvability of the group is due to a situation of a group entity referred to in the second subparagraph of Article 17(3), the group-level resolution authority shall notify its assessment of that impediment to the Union parent undertaking after consulting the resolution authority of the resolution entity and the resolution authorities of its subsidiary institutions.

3 Within four months of the date of receipt of the report, the Union parent undertaking may submit observations and propose to the group-level resolution authority alternative measures to remedy the impediments identified in the report.

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Where the impediments identified in the report are due to a situation of a group entity referred to in the second subparagraph of Article 17(3) of this Directive, the Union parent undertaking shall, within two weeks of the date of receipt of a notification made in accordance with the second subparagraph of paragraph 2 of this Article, propose to the group-level resolution authority possible measures and the timeline for their implementation to ensure that the group entity complies with the requirements referred to in 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 and 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.

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 those measures effectively address or remove the substantive impediment.

4 The group-level resolution authority shall communicate any measure proposed by the Union parent undertaking to the consolidating supervisor, EBA, the resolution authorities of the subsidiaries and the resolution authorities of the jurisdictions in which significant branches are located insofar as is relevant to the significant branch. The group-level resolution authorities and the resolution authorities of the subsidiaries, after consulting the competent authorities and the resolution authorities of jurisdictions in which significant branches are located, shall do everything within their power to reach a joint decision within the resolution college regarding the identification of substantive impediments, and if necessary, the assessment of the measures proposed by the Union parent undertaking and the measures required by the authorities in order to address or remove the impediments, which shall take into account the potential impact of the measures in all Member States where the group operates.

5 The joint decision shall be reached within four months of submission of any observations by the Union parent undertaking. Where the Union parent undertaking has not submitted any observations, the joint decision shall be reached within one month from the expiry of the four-month period referred to in the first subparagraph of paragraph 3.

The joint decision concerning the impediment to resolvability due to a situation referred to in the second subparagraph of Article 17(3) shall be reached within two weeks of the submission of any observations by the Union parent undertaking in accordance with paragraph 3 of this Article.

The joint decision shall be reasoned and set out in a document which shall be provided by the group-level resolution authority to the Union parent undertaking.

EBA may, at the request of a resolution authority, assist the resolution authorities in reaching a joint decision in accordance with point (c) of the second paragraph of Article 31 of Regulation (EU) No 1093/2010.

6 In the absence of a joint decision within the relevant period referred to in paragraph 5, the group-level resolution authority shall make its own decision on the appropriate measures to be taken in accordance with Article 17(4) at the group level.

The decision shall be fully reasoned and shall take into account the views and reservations of other resolution authorities. The decision shall be provided to the Union parent undertaking by the group-level resolution authority.

If, at the end of the relevant period referred to in paragraph 5 of this Article, a resolution authority has referred a matter mentioned in paragraph 9 of this Article to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the group-level resolution authority shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in accordance with the decision of EBA. The relevant period referred to in paragraph 5 of this Article shall be deemed to be the conciliation period within the meaning of Regulation (EU) No 1093/2010. EBA shall take its decision within one month. The matter shall not be referred to EBA after the end of the relevant period referred to in paragraph 5 of this Article or after a joint decision has been reached. In the absence of an EBA decision, the decision of the group-level resolution authority shall apply.

6a In the absence of a joint decision within the relevant period referred to in paragraph 5 of this Article, the resolution authority of the relevant resolution entity shall make its own decision on the appropriate measures to be taken in accordance with Article 17(4) at the resolution group level.

The decision referred to in the first subparagraph shall be fully reasoned and shall take into account the views and reservations of resolution authorities of other entities of the same resolution group and the group-level resolution authority. The decision shall be provided to the resolution entity by the relevant resolution authority.

If, at the end of the relevant period referred to in paragraph 5 of this Article, a resolution authority has referred a matter mentioned in paragraph 9 of this Article to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the resolution authority of the resolution entity shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in accordance with the decision of EBA. The relevant period referred to in paragraph 5 of this Article shall be deemed to be the conciliation period within the meaning of Regulation (EU) No 1093/2010. EBA shall take its decision within one month. The matter shall not be referred to EBA after the end of the relevant period referred to in paragraph 5 of this Article or after a joint decision has been reached. In the absence of an EBA decision, the decision of the resolution authority of the resolution entity shall apply.

7 In the absence of a joint decision, the resolution authorities of subsidiaries that are not resolution entities shall make their own decisions on the appropriate measures to be taken by subsidiaries at individual level in accordance with Article 17(4).

The decision shall be fully reasoned and shall take into account the views and reservations of the other resolution authorities. The decision shall be provided to the subsidiary concerned and to the resolution entity of the same resolution group, to the resolution authority of that resolution entity and, where different, to the group-level resolution authority.

If, at the end of the relevant period referred to in paragraph 5 of this Article, a resolution authority has referred a matter mentioned in paragraph 9 of this Article to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the resolution authority of the subsidiary shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in accordance with the decision of EBA. The relevant period referred to in paragraph 5 of this Article shall be deemed to be the conciliation period within the meaning of Regulation (EU) No 1093/2010. EBA shall take its decision within one month. The matter shall not be referred to EBA after the end of the relevant period referred to in

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paragraph 5 of this Article or after a joint decision has been reached. In the absence of an EBA decision, the decision of the resolution authority of the subsidiary shall apply.]

8 The joint decision referred to in paragraph 5 and the decisions taken by the resolution authorities in the absence of a joint decision referred to in paragraph 6 shall be recognised as conclusive and applied by the other resolution authorities concerned.

9 In the absence of a joint decision on the taking of any measures referred to in point (g), (h) or (k) of Article 17(5), EBA may, upon the request of a resolution authority in accordance with paragraph 6 or 7 of this Article, assist the resolution authorities in reaching an agreement in accordance with Article 19(3) of Regulation (EU) No 1093/2010.

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](#).