

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 IV

RESOLUTION

CHAPTER IV

Resolution tools

Section 2

The sale of business tool

Article 39

Sale of business tool: procedural requirements

1 Subject to paragraph 3 of this Article, when applying the sale of business tool to an institution or entity referred to in point (b), (c) or (d) of Article 1(1), a resolution authority shall market, or make arrangements for the marketing of the assets, rights, liabilities, shares or other instruments of ownership of that institution that the authority intends to transfer. Pools of rights, assets, and liabilities may be marketed separately.

2 Without prejudice to the Union State aid framework, where applicable, the marketing referred to in paragraph 1 shall be carried out in accordance with the following criteria:

- a it shall be as transparent as possible and shall not materially misrepresent the assets, rights, liabilities, shares or other instruments of ownership of that institution that the authority intends to transfer, having regard to the circumstances and in particular the need to maintain financial stability;
- b it shall not unduly favour or discriminate between potential purchasers;
- c it shall be free from any conflict of interest;
- d it shall not confer any unfair advantage on a potential purchaser;
- e it shall take account of the need to effect a rapid resolution action;
- f it shall aim at maximising, as far as possible, the sale price for the shares or other instruments of ownership, assets, rights or liabilities involved.

Subject to point (b) of the first subparagraph, the principles referred to in this paragraph shall not prevent the resolution authority from soliciting particular potential purchasers.

Any public disclosure of the marketing of the institution or entity referred to in point (b), (c) or (d) of Article 1(1) of this Directive that would otherwise be required in accordance

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with Article 17(1) of Regulation (EU) No 596/2014 may be delayed in accordance with Article 17(4) or (5) of that Regulation.

3 The resolution authority may apply the sale of business tool without complying with the requirement to market as laid down in paragraph 1 when it determines that compliance with those requirements would be likely to undermine one or more of the resolution objectives and in particular if the following conditions are met:

- a it considers that there is a material threat to financial stability arising from or aggravated by the failure or likely failure of the institution under resolution; and
- b it considers that compliance with those requirements would be likely to undermine the effectiveness of the sale of business tool in addressing that threat or achieving the resolution objective referred to in point (b) of Article 31(2).

4 EBA shall, by 3 July 2015, issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 specifying the factual circumstances amounting to a material threat and the elements relating to the effectiveness of the sale of business tool provided for in points (a) and (b) of paragraph 3.