

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 5*

#### *The bail-in tool*

##### *Subsection 3*

#### *Implementation of the bail-in tool*

##### *Article 47*

### **Treatment of shareholders in bail-in or write down or conversion of capital instruments**

1 Member States shall ensure that, when applying the bail-in tool in Article 43(2) or the write down or conversion of capital instruments in Article 59, resolution authorities take in respect of shareholders and holders of other instruments of ownership one or both of the following actions:

- a cancel existing shares or other instruments of ownership or transfer them to bailed-in creditors;
- b provided 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) [F<sup>1</sup>bail-inable liabilities] issued by the institution under resolution pursuant to the power referred to in point (f) of Article 63(1).

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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.

2 The actions referred to in paragraph 1 shall also be taken in respect of shareholders and holders of other instruments of ownership where the shares or other instruments of ownership in question were issued or conferred in the following circumstances:

- a pursuant to conversion of debt instruments to shares or other instruments of ownership in accordance with contractual terms of the original debt instruments on the occurrence of an event that preceded or occurred at the same time as the assessment by the resolution authority that the institution or entity referred to in point (b), (c) or (d) of Article 1(1) met the conditions for resolution;
- b pursuant to the conversion of relevant capital instruments to Common Equity Tier 1 instruments pursuant to Article 60.

3 When considering which action to take in accordance with paragraph 1, resolution authorities shall have regard to:

- a the valuation carried out in accordance with Article 36;
- b the amount by which the resolution authority has assessed that Common Equity Tier 1 items must be reduced and relevant capital instruments must be written down or converted pursuant to Article 60(1); and
- c the aggregate amount assessed by the resolution authority pursuant to Article 46.

4 By way of derogation from Articles 22 to 25 of Directive 2013/36/EU, the requirement to give a notice in Article 26 of Directive 2013/36/EU, Article 10(3), Article 11(1) and(2) and Articles 12 and 13of Directive 2014/65/EU and the requirement to give a notice in Article 11(3) of Directive 2014/65/EU, where the application of the bail-in tool or the conversion of capital instruments would result in the acquisition of or increase in a qualifying holding in an institution as referred to in Article 22(1) of Directive 2013/36/EU or Article 11(1) of Directive 2014/65/EU, competent authorities shall carry out the assessment required under those Articles in a timely manner that does not delay the application of the bail-in tool or the conversion of capital instruments, or prevent resolution action from achieving the relevant resolution objectives.

5 If the competent authority of that institution has not completed the assessment required under paragraph 4 on the date of application of the bail-in tool or the conversion of capital instruments, Article 38(9) shall apply to any acquisition of or increase in a qualifying holding by an acquirer resulting from the application of the bail-in tool or the conversion of capital instruments.

6 EBA shall, by 3 July 2016, issue guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010, on the circumstances in which each of the actions referred to in paragraph 1 of this Article would be appropriate, having regard to the factors specified in paragraph 3 of this Article.

#### 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.](#)