

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 49

Derivatives

1 Member States shall ensure that this Article is complied with when resolution authorities apply the write-down and conversion powers to liabilities arising from derivatives.

2 Resolution authorities shall exercise the write-down and conversion powers in relation to a liability arising from a derivative only upon or after closing-out the derivatives. Upon entry into resolution, resolution authorities shall be empowered to terminate and close out any derivative contract for that purpose.

Where a derivative liability has been excluded from the application of the bail-in tool under Article 44(3), resolution authorities shall not be obliged to terminate or close out the derivative contract.

3 Where derivative transactions are subject to a netting agreement, the resolution authority or an independent valuer shall determine as part of the valuation under Article 36 the liability arising from those transactions on a net basis in accordance with the terms of the agreement.

4 Resolution authorities shall determine the value of liabilities arising from derivatives in accordance with the following:

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- a appropriate methodologies for determining the value of classes of derivatives, including transactions that are subject to netting agreements;
- b principles for establishing the relevant point in time at which the value of a derivative position should be established; and
- c appropriate methodologies for comparing the destruction in value that would arise from the close out and bail-in of derivatives with the amount of losses that would be borne by derivatives in a bail-in.

5 EBA, after consulting the European Supervisory Authority (European Securities and Markets Authority) ('ESMA'), established by Regulation (EU) No 1095/2010, shall develop draft regulatory technical standards specifying methodologies and the principles referred to in points (a), (b) and (c) of paragraph 4 on the valuation of liabilities arising from derivatives.

In relation to derivative transactions that are subject to a netting agreement, EBA shall take into account the methodology for close-out set out in the netting agreement.

EBA shall submit those draft regulatory technical standards to the Commission by 3 January 2016.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.