

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 V

Write down of capital instruments

Article 62

Consolidated application: procedure for determination

1 Member States shall ensure that, before making a determination referred to in point (b), (c), (d) or (e) of Article 59(3) in relation to a subsidiary that issues relevant capital instruments that are recognised for the purposes of meeting the own funds requirements on an individual and a consolidated basis, appropriate authorities comply with the following requirements:

- a an appropriate authority that is considering whether to make a determination referred to in point (b), (c), (d) or (e) of Article 59(3) notifies, without delay, the consolidating supervisor and, if different, the appropriate authority in the Member State where the consolidating supervisor is located;
- b an appropriate authority that is considering whether to make a determination referred to in point (c) of Article 59(3) notifies, without delay, the competent authority responsible for each institution or entity referred to in point (b), (c) or (d) of Article 1(1) that has issued the relevant capital instruments in relation to which the write down or conversion power is to be exercised if that determination were made, and, if different, the appropriate authorities in the Member States where those competent authorities and the consolidating supervisor are located.

2 When making a determination referred to in point (c), (d) or (e) of Article 59(3) in the case of an institution or of a group with cross-border activity, the appropriate authorities shall take into account the potential impact of the resolution in all the Member States where the institution or the group operate.

3 An appropriate authority shall accompany a notification made pursuant to paragraph 1 with an explanation of the reasons why it is considering making the determination in question.

4 Where a notification has been made pursuant to paragraph 1, the appropriate authority, after consulting the authorities notified, shall assess the following matters:

- a whether an alternative measure to the exercise of the write down or conversion power in accordance with Article 59(3) is available;
- b if such an alternative measure is available, whether it can feasibly be applied;

- c if such an alternative measure could feasibly be applied, whether there is a realistic prospect that it would address, in an adequate timeframe, the circumstances that would otherwise require a determination referred to in Article 59(3) to be made.

5 For the purposes of paragraph 4 of this Article, alternative measures mean early intervention measures referred to in Article 27 of this Directive, measures referred to in Article 104(1) of Directive 2013/36/EU or a transfer of funds or capital from the parent undertaking.

6 Where, pursuant to paragraph 4, the appropriate authority, after consulting the notified authorities, assesses that one or more alternative measures are available, can feasibly be applied and would deliver the outcome referred to in point (c) of that paragraph, it shall ensure that those measures are applied.

7 Where, in a case referred to in point (a) of paragraph 1, and pursuant to paragraph 4 of this Article, the appropriate authority, after consulting the notified authorities, assesses that no alternative measures are available that would deliver the outcome referred to in point (c) of paragraph 4, the appropriate authority shall decide whether the determination referred to in Article 59(3) under consideration is appropriate.

8 Where an appropriate authority decides to make a determination under point (c) of Article 59(3), it shall immediately notify the appropriate authorities of the Member States in which the affected subsidiaries are located and the determination shall take the form of a joint decision as set out in Article 92(3) and (4). In the absence of a joint decision no determination under point (c) of Article 59(3) shall be made.

9 The resolution authorities of the Member States where each of the affected subsidiaries are located shall promptly implement a decision to write down or convert capital instruments made in accordance with this Article having due regard to the urgency of the circumstances.