

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 VI

##### *Resolution powers*

#### *Article 68*

##### **Exclusion of certain contractual terms in early intervention and resolution**

1 A crisis prevention measure or a crisis management measure taken in relation to an entity in accordance with this Directive, including the occurrence of any event directly linked to the application of such a measure, shall not, per se, under a contract entered into by the entity, be deemed to be an enforcement event within the meaning of Directive 2002/47/EC or as insolvency proceedings within the meaning of Directive 98/26/EC provided that the substantive obligations under the contract, including payment and delivery obligations and the provision of collateral, continue to be performed.

In addition, a crisis prevention measure or crisis management measure shall not, per se, be deemed to be an enforcement event or insolvency proceedings under a contract entered into by:

- a a subsidiary, the obligations under which are guaranteed or otherwise supported by the parent undertaking or by any group entity; or
- b any entity of a group which includes cross-default provisions.

2 Where third country resolution proceedings are recognised pursuant to Article 94, or otherwise where a resolution authority so decides, such proceedings shall for the purposes of this Article constitute a crisis management measure.

3 Provided that the substantive obligations under the contract, including payment and delivery obligations, and provision of collateral, continue to be performed, a crisis prevention measure or a crisis management measure, including the occurrence of any event directly linked to the application of such a measure, shall not, per se, make it possible for anyone to:

- a exercise any termination, suspension, modification, netting or set-off rights, including in relation to a contract entered into by:
  - (i) a subsidiary, the obligations under which are guaranteed or otherwise supported by a group entity;
  - (ii) any group entity which includes cross-default provisions;

- b obtain possession, exercise control or enforce any security over any property of the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) concerned or any group entity in relation to a contract which includes cross-default provisions;
- c affect any contractual rights of the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) concerned or any group entity in relation to a contract which includes cross-default provisions.

4 This Article shall not affect the right of a person to take an action referred to in paragraph 3 where that right arises by virtue of an event other than the crisis prevention measure, the crisis management measure or the occurrence of any event directly linked to the application of such a measure.

5 A suspension or restriction under Article 69, 70 or 71 shall not constitute non-performance of a contractual obligation for the purposes of paragraphs 1 and 2 of this Article.

6 The provisions contained in this Article shall be considered to be overriding mandatory provisions within the meaning of Article 9 of Regulation (EC) No 593/2008 of the European Parliament and of the Council<sup>(1)</sup>.

- (1) Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) ([OJ L 177, 4.7.2008, p. 6](#)).