

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 71

Power to temporarily suspend termination rights

1 Member States shall ensure that resolution authorities have the power to suspend the termination rights of any party to a contract with an institution under resolution from the publication of the notice pursuant to Article 83(4) until midnight in the Member State of the resolution authority of the institution under resolution at the end of the business day following that publication, provided that the payment and delivery obligations and the provision of collateral continue to be performed.

2 Member States shall ensure that resolution authorities have the power to suspend the termination rights of any party to a contract with a subsidiary of an institution under resolution where:

- a the obligations under that contract are guaranteed or are otherwise supported by the institution under resolution;
- b the termination rights under that contract are based solely on the insolvency or financial condition of the institution under resolution; and
- c in the case of a transfer power that has been or may be exercised in relation to the institution under resolution, either:
 - (i) all the assets and liabilities of the subsidiary relating to that contract have been or may be transferred to and assumed by the recipient; or
 - (ii) the resolution authority provides in any other way adequate protection for such obligations.

The suspension shall take effect from the publication of the notice pursuant to Article 83(4) until midnight in the Member State where the subsidiary of the institution under resolution is established on the business day following that publication.

3 Any suspension under paragraph 1 or 2 shall not apply to systems or operators of systems designated for the purposes of Directive 98/26/EC, central counterparties, or central banks.

4 A person may exercise a termination right under a contract before the end of the period referred to in paragraph 1 or 2 if that person receives notice from the resolution authority that the rights and liabilities covered by the contract shall not be:

- a transferred to another entity; or
- b subject to write down or conversion on the application of the bail-in tool in accordance with point (a) of Article 43(2).

5 Where a resolution authority exercises the power specified in paragraph 1 or 2 of this Article to suspend termination rights, and where no notice has been given pursuant to paragraph 4 of this Article, those rights may be exercised on the expiry of the period of suspension, subject to Article 68, as follows:

- a if the rights and liabilities covered by the contract have been transferred to another entity, a counterparty may exercise termination rights in accordance with the terms of that contract only on the occurrence of any continuing or subsequent enforcement event by the recipient entity;
- b if the rights and liabilities covered by the contract remain with the institution under resolution and the resolution authority has not applied the bail-in tool in accordance with Article 43(2)(a) to that contract, a counterparty may exercise termination rights in accordance with the terms of that contract on the expiry of a suspension under paragraph 1.

6 When exercising a power under this Article, resolution authorities shall have regard to the impact the exercise of that power might have on the orderly functioning of the financial markets.

7 Competent authorities or resolution authorities may require an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) to maintain detailed records of financial contracts.

Upon the request of a competent authority or a resolution authority, a trade repository shall make the necessary information available to competent authorities or resolution authorities to enable them to fulfil their respective responsibilities and mandates in accordance with Article 81 of Regulation (EU) No 648/2012.

8 EBA shall develop draft regulatory technical standards specifying the following elements for the purposes of paragraph 7:

- a a minimum set of the information on financial contracts that should be contained in the detailed records; and
- b the circumstances in which the requirement should be imposed.

EBA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

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.