

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 II

PREPARATION

CHAPTER I

Recovery and resolution planning

Section 2

Recovery planning

Article 5

Recovery plans

1 Member States shall ensure that each institution, that is not part of a group subject to consolidated supervision pursuant to Articles 111 and 112 of Directive 2013/36/EU, draws up and maintains a recovery plan providing for measures to be taken by the institution to restore its financial position following a significant deterioration of its financial situation. Recovery plans shall be considered to be a governance arrangement within the meaning of Article 74 of Directive 2013/36/EU.

2 Competent authorities shall ensure that the institutions update their recovery plans at least annually or after a change to the legal or organisational structure of the institution, its business or its financial situation, which could have a material effect on, or necessitates a change to, the recovery plan. Competent authorities may require institutions to update their recovery plans more frequently.

3 Recovery plans shall not assume any access to or receipt of extraordinary public financial support.

4 Recovery plans shall include, where applicable, an analysis of how and when an institution may apply, in the conditions addressed by the plan, for the use of central bank facilities and identify those assets which would be expected to qualify as collateral.

5 Without prejudice to Article 4, Member States shall ensure that the recovery plans include the information listed in Section A of the Annex. Member States may require that additional information is included in the recovery plans.

Recovery plans shall also include possible measures which could be taken by the institution where the conditions for early intervention under Article 27 are met.

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6 Member States shall require that recovery plans include appropriate conditions and procedures to ensure the timely implementation of recovery actions as well as a wide range of recovery options. Member States shall require that recovery plans contemplate a range of scenarios of severe macroeconomic and financial stress relevant to the institution's specific conditions including system-wide events and stress specific to individual legal persons and to groups.

7 EBA, in close cooperation with the European Systemic Risk Board (ESRB), shall, by 3 July 2015, issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 to specify further the range of scenarios to be used for the purposes of paragraph 6 of this Article.

8 Member States may provide that competent authorities have the power to require an institution to maintain detailed records of financial contracts to which the institution concerned is a party.

9 The management body of the institution referred to in paragraph 1 shall assess and approve the recovery plan before submitting it to the competent authority.

10 EBA shall develop draft regulatory technical standards further specifying, without prejudice to Article 4, the information to be contained in the recovery plan referred to in paragraph 5 of this Article.

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.

Article 6

Assessment of recovery plans

1 Member States shall require institutions that are required to draw up recovery plans under Article 5(1) and Article 7(1) to submit those recovery plans to the competent authority for review. Member States shall require institutions to demonstrate to the satisfaction of the competent authority that those plans meet the criteria of paragraph 2.

2 The competent authorities shall, within six months of the submission of each plan, and after consulting the competent authorities of the Member States where significant branches are located insofar as is relevant to that branch, review it and assess the extent to which it satisfies the requirements laid down in Article 5 and the following criteria:

- a the implementation of the arrangements proposed in the plan is reasonably likely to maintain or restore the viability and financial position of the institution or of the group, taking into account the preparatory measures that the institution has taken or has planned to take;
- b the plan and specific options within the plan are reasonably likely to be implemented quickly and effectively in situations of financial stress and avoiding to the maximum extent possible any significant adverse effect on the financial system, including in scenarios which would lead other institutions to implement recovery plans within the same period.

3 When assessing the appropriateness of the recovery plans, the competent authority shall take into consideration the appropriateness of the institution's capital and funding structure to the level of complexity of the organisational structure and the risk profile of the institution.

4 The competent authority shall provide the recovery plan to the resolution authority. The resolution authority may examine the recovery plan with a view to identifying any actions in the recovery plan which may adversely impact the resolvability of the institution and make recommendations to the competent authority with regard to those matters.

5 Where the competent authority assesses that there are material deficiencies in the recovery plan, or material impediments to its implementation, it shall notify the institution or the parent undertaking of the group of its assessment and require the institution to submit, within two months, extendable with the authorities' approval by one month, a revised plan demonstrating how those deficiencies or impediments are addressed.

Before requiring an institution to resubmit a recovery plan the competent authority shall give the institution the opportunity to state its opinion on that requirement.

Where the competent authority does not consider the deficiencies and impediments to have been adequately addressed by the revised plan, it may direct the institution to make specific changes to the plan.

6 If the institution fails to submit a revised recovery plan, or if the competent authority determines that the revised recovery plan does not adequately remedy the deficiencies or potential impediments identified in its original assessment, and it is not possible to adequately remedy the deficiencies or impediments through a direction to make specific changes to the plan, the competent authority shall require the institution to identify within a reasonable timeframe changes it can make to its business in order to address the deficiencies in or impediments to the implementation of the recovery plan.

If the institution fails to identify such changes within the timeframe set by the competent authority, or if the competent authority assesses that the actions proposed by the institution would not adequately address the deficiencies or impediments, the competent authority may direct the institution to take any measures it considers to be necessary and proportionate, taking into account the seriousness of the deficiencies and impediments and the effect of the measures on the institution's business.

The competent authority may, without prejudice to Article 104 of Directive 2013/36/EU, direct the institution to:

- a reduce the risk profile of the institution, including liquidity risk;
- b enable timely recapitalisation measures;
- c review the institution's strategy and structure;
- d make changes to the funding strategy so as to improve the resilience of the core business lines and critical functions;
- e make changes to the governance structure of the institution.

The list of measures referred to in this paragraph does not preclude Member States from authorising competent authorities to take additional measures under national law.

7 When the competent authority requires an institution to take measures according to paragraph 6, its decision on the measures shall be reasoned and proportionate.

The decision shall be notified in writing to the institution and subject to a right of appeal.

8 EBA shall develop draft regulatory technical standards specifying the minimum criteria that the competent authority is to assess for the purposes of the assessment of paragraph 2 of this Article and of Article 8(1).

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

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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.

Article 7

Group recovery plans

1 Member States shall ensure that Union parent undertakings draw up and submit to the consolidating supervisor a group recovery plan. Group recovery plans shall consist of a recovery plan for the group headed by the Union parent undertaking as a whole. The group recovery plan shall identify measures that may be required to be implemented at the level of the Union parent undertaking and each individual subsidiary.

2 In accordance with Article 8, competent authorities may require subsidiaries to draw up and submit recovery plans on an individual basis.

3 The consolidating supervisor shall, provided that the confidentiality requirements laid down in this Directive are in place, transmit the group recovery plans to:

- a the relevant competent authorities referred to in Articles 115 and 116 of Directive 2013/36/EU;
- b the competent authorities of the Member States where significant branches are located insofar as is relevant to that branch;
- c the group- level resolution authority; and
- d the resolution authorities of subsidiaries.

4 The group recovery plan shall aim to achieve the stabilisation of the group as a whole, or any institution of the group, when it is in a situation of stress so as to address or remove the causes of the distress and restore the financial position of the group or the institution in question, at the same time taking into account the financial position of other group entities.

The group recovery plan shall include arrangements to ensure the coordination and consistency of measures to be taken at the level of the Union parent undertaking, at the level of the entities referred to in points (c) and (d) of Article 1(1) as well as measures to be taken at the level of subsidiaries and, where applicable, in accordance with Directive 2013/36/EU at the level of significant branches.

5 The group recovery plan, and any plan drawn up for an individual subsidiary, shall include the elements specified in Article 5. Those plans shall include, where applicable, arrangements for intra-group financial support adopted pursuant to an agreement for intra-group financial support that has been concluded in accordance with Chapter III.

6 Group recovery plans shall include a range of recovery options setting out actions to address those scenarios provided for in Article 5(6).

For each of the scenarios, the group recovery plan shall identify whether there are obstacles to the implementation of recovery measures within the group, including at the level of individual entities covered by the plan, and whether there are substantial practical or legal impediments to the prompt transfer of own funds or the repayment of liabilities or assets within the group.

7 The management body of the entity drawing up the group recovery plan pursuant to paragraph 1 shall assess and approve the group recovery plan before submitting it to the consolidating supervisor.

Article 8

Assessment of group recovery plans

1 The consolidating supervisor shall, together with the competent authorities of subsidiaries, after consulting the competent authorities referred to in Article 116 of Directive 2013/36/EU and with the competent authorities of significant branches insofar as is relevant to the significant branch, review the group recovery plan and assess the extent to which it satisfies the requirements and criteria laid down in Articles 6 and 7. That assessment shall be made in accordance with the procedure established in Article 6 and with this Article and shall take into account the potential impact of the recovery measures on financial stability in all the Member States where the group operates.

2 The consolidating supervisor and the competent authorities of subsidiaries shall endeavour to reach a joint decision on:

- a the review and assessment of the group recovery plan;
- b whether a recovery plan on an individual basis shall be drawn up for institutions that are part of the group; and
- c the application of the measures referred to in Article 6(5) and (6).

The parties shall endeavour to reach a joint decision within four months of the date of the transmission by the consolidating supervisor of the group recovery plan in accordance with Article 7(3).

EBA may, at the request of a competent authority, assist the competent authorities in reaching a joint decision in accordance with Article 31(c) of Regulation (EU) No 1093/2010.

3 In the absence of a joint decision between the competent authorities, within four months of the date of transmission, on the review and assessment of the group recovery plan or on any measures the Union parent undertaking is required to take in accordance with Article 6(5) and (6), the consolidating supervisor shall make its own decision with regard to those matters. The consolidating supervisor shall make its decision having taken into account the views and reservations of the other competent authorities expressed during the four-month period. The consolidating supervisor shall notify the decision to the Union parent undertaking and to the other competent authorities.

If, at the end of that four-month period, any of the competent authorities referred to in paragraph 2 has referred a matter mentioned in paragraph 7 to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the consolidating supervisor shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in accordance with the decision of EBA. The four-month period shall be deemed to be the conciliation period within the meaning of the Regulation. EBA shall take its decision within one month. The matter shall not be referred to EBA after the end of the four-month period or after a joint decision has been reached. In the absence of an EBA decision within one month, the decision of the consolidating supervisor shall apply.

4 In the absence of a joint decision between the competent authorities within four months of the date of transmission on:

- a whether a recovery plan on an individual basis is to be drawn up for the institutions under its jurisdiction; or

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b the application at subsidiary level of the measures referred to in Article 6(5) and (6); each competent authority shall make its own decision on that matter.

If, at the end of the four-month period, any of the competent authorities concerned has referred a matter mentioned in paragraph 7 to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the competent authority of the subsidiary shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in accordance with the decision of EBA. The four-month period shall be deemed to be the conciliation period within the meaning of that Regulation. EBA shall take its decision within one month. The matter shall not be referred to EBA after the end of the four-month period or after a joint decision has been reached. In the absence of an EBA decision within one month, the decision of the competent authority responsible for the subsidiary at an individual level shall apply.

5 The other competent authorities which do not disagree under paragraph 4 may reach a joint decision on a group recovery plan covering group entities under their jurisdictions.

6 The joint decision referred to in paragraph 2 or 5 and the decisions taken by the competent authorities in the absence of a joint decision referred to in paragraphs 3 and 4 shall be recognised as conclusive and applied by the competent authorities in the Member States concerned.

7 Upon request of a competent authority in accordance with paragraph 3 or 4, EBA may only assist the competent authorities in reaching an agreement in accordance with Article 19(3) of Regulation (EU) No 1093/2010 in relation to the assessment of recovery plans and implementation of the measures of point (a), (b) and (d) of Article 6(6).

Article 9

Recovery Plan Indicators

1 For the purpose of Articles 5 to 8, competent authorities shall require that each recovery plan includes a framework of indicators established by the institution which identifies the points at which appropriate actions referred to in the plan may be taken. Such indicators shall be agreed by competent authorities when making the assessment of recovery plans in accordance with Articles 6 and 8. The indicators may be of a qualitative or quantitative nature relating to the institution's financial position and shall be capable of being monitored easily. Competent authorities shall ensure that institutions put in place appropriate arrangements for the regular monitoring of the indicators.

Notwithstanding the first subparagraph, an institution may:

- a take action under its recovery plan where the relevant indicator has not been met, but where the management body of the institution considers it to be appropriate in the circumstances; or
- b refrain from taking such an action where the management body of the institution does not consider it to be appropriate in the circumstances of the situation.

A decision to take an action referred to in the recovery plan or a decision to refrain from taking such an action shall be notified to the competent authority without delay.

2 EBA shall, by 3 July 2015, issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 to specify the minimum list of qualitative and quantitative indicators as referred to in paragraph 1.