

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 3

Resolution planning

Article 10

Resolution plans

1 The resolution authority, after consulting the competent authority and after consulting the resolution authorities of the jurisdictions in which any significant branches are located insofar as is relevant to the significant branch shall draw up a resolution plan for each institution that is not part of a group subject to consolidated supervision pursuant to Articles 111 and 112 of Directive 2013/36/EU. The resolution plan shall provide for the resolution actions which the resolution authority may take where the institution meets the conditions for resolution. Information referred to paragraph 7(a) shall be disclosed to the institution concerned.

2 When drawing up the resolution plan, the resolution authority shall identify any material impediments to resolvability and, where necessary and proportionate, outline relevant actions for how those impediments could be addressed, according to Chapter II of this Title.

3 The resolution plan shall take into consideration relevant scenarios including that the event of failure may be idiosyncratic or may occur at a time of broader financial instability or system wide events. The resolution plan shall not assume any of the following:

- a any extraordinary public financial support besides the use of the financing arrangements established in accordance with Article 100;
- b any central bank emergency liquidity assistance; or
- c any central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms.

4 The resolution plan shall include 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 shall identify those assets which would be expected to qualify as collateral.

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5 Resolution authorities may require institutions to assist them in the drawing up and updating of the plans.

6 Resolution plans shall be reviewed, and where appropriate updated, at least annually and after any material changes to the legal or organisational structure of the institution or to its business or its financial position that could have a material effect on the effectiveness of the plan or otherwise necessitates a revision of the resolution plan.

For the purpose of the revision or update of the resolution plans referred to in the first subparagraph, the institutions and the competent authorities shall promptly communicate to the resolution authorities any change that necessitates such a revision or update.

7 Without prejudice to Article 4, the resolution plan shall set out options for applying the resolution tools and resolution powers referred to in Title IV to the institution. It shall include, quantified whenever appropriate and possible:

- a a summary of the key elements of the plan;
- b a summary of the material changes to the institution that have occurred after the latest resolution information was filed;
- c a demonstration of how critical functions and core business lines could be legally and economically separated, to the extent necessary, from other functions so as to ensure continuity upon the failure of the institution;
- d an estimation of the timeframe for executing each material aspect of the plan;
- e a detailed description of the assessment of resolvability carried out in accordance with paragraph 2 of this Article and with Article 15;
- f a description of any measures required pursuant to Article 17 to address or remove impediments to resolvability identified as a result of the assessment carried out in accordance with Article 15;
- g a description of the processes for determining the value and marketability of the critical functions, core business lines and assets of the institution;
- h a detailed description of the arrangements for ensuring that the information required pursuant to Article 11 is up to date and at the disposal of the resolution authorities at all times;
- i an explanation by the resolution authority as to how the resolution options could be financed without the assumption of any of the following:
 - (i) any extraordinary public financial support besides the use of the financing arrangements established in accordance with Article 100;
 - (ii) any central bank emergency liquidity assistance; or
 - (iii) any central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms;
- j a detailed description of the different resolution strategies that could be applied according to the different possible scenarios and the applicable timescales;
- k a description of critical interdependencies;
- l a description of options for preserving access to payments and clearing services and other infrastructures and, an assessment of the portability of client positions;
- m an analysis of the impact of the plan on the employees of the institution, including an assessment of any associated costs, and a description of envisaged procedures to consult staff during the resolution process, taking into account national systems for dialogue with social partners where applicable;

- n a plan for communicating with the media and the public;
- o the minimum requirement for own funds and eligible liabilities required pursuant to Article 45(1) and a deadline to reach that level, where applicable;
- p where applicable, the minimum requirement for own funds and contractual bail-in instruments pursuant to Article 45(1), and a deadline to reach that level, where applicable;
- q a description of essential operations and systems for maintaining the continuous functioning of the institution's operational processes;
- r where applicable, any opinion expressed by the institution in relation to the resolution plan.

8 Member States shall ensure that resolution authorities have the power to require an institution and an entity referred to in point (b), (c) or (d) of Article 1(1) to maintain detailed records of financial contracts to which it is a party. The resolution authority may specify a time-limit within which the institution or entity referred to in point (b), (c) or (d) of Article 1(1) is to be capable of producing those records. The same time-limit shall apply to all institutions and all entities referred to in point (b), (c) and (d) of Article 1(1) under its jurisdiction. The resolution authority may decide to set different time-limits for different types of financial contracts as referred to in Article 2(100). This paragraph shall not affect the information gathering powers of the competent authority.

9 EBA, after consulting the ESRB, shall develop draft regulatory technical standards further specifying the contents of the resolution plan.

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 11

Information for the purpose of resolution plans and cooperation from the institution

1 Member States shall ensure that resolution authorities have the power to require institutions to:

- a cooperate as much as necessary in the drawing up of resolution plans;
- b provide them, either directly or through the competent authority, with all of the information necessary to draw up and implement resolution plans.

In particular the resolution authorities shall have the power to require, among other information, the information and analysis specified in Section B of the Annex.

2 Competent authorities in the relevant Member States shall cooperate with resolution authorities in order to verify whether some or all of the information referred to in paragraph 1 is already available. Where such information is available, competent authorities shall provide that information to the resolution authorities.

3 EBA shall develop draft implementing technical standards to specify procedures and a minimum set of standard forms and templates for the provision of information under this Article.

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

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Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

Article 12

Group resolution plans

1 Member States shall ensure that group-level resolution authorities, together with the resolution authorities of subsidiaries and after consulting the resolution authorities of significant branches insofar as is relevant to the significant branch, draw up group resolution plans. Group resolution plans shall include a plan for resolution of the group headed by the Union parent undertaking as a whole, either through resolution at the level of the Union parent undertaking or through break up and resolution of the subsidiaries. The group resolution plan shall identify measures for the resolution of:

- a the Union parent undertaking;
- b the subsidiaries that are part of the group and that are located in the Union;
- c the entities referred to in points (c) and (d) of Article 1(1); and
- d subject to Title VI, the subsidiaries that are part of the group and that are located outside the Union.

2 The group resolution plan shall be drawn up on the basis of the information provided pursuant to Article 11.

3 The group resolution plan shall:

- a set out the resolution actions to be taken in relation to group entities, both through resolution actions in respect of the entities referred to in points (b), (c) and (d) of Article 1(1), the parent undertaking and subsidiary institutions and through coordinated resolution actions in respect of subsidiary institutions, in the scenarios provided for in Article 10(3);
- b examine the extent to which the resolution tools and powers could be applied and exercised in a coordinated way to group entities established in the Union, including measures to facilitate the purchase by a third party of the group as a whole, or separate business lines or activities that are delivered by a number of group entities, or particular group entities, and identify any potential impediments to a coordinated resolution;
- c where a group includes entities incorporated in third countries, identify appropriate arrangements for cooperation and coordination with the relevant authorities of those third countries and the implications for resolution within the Union;
- d identify measures, including the legal and economic separation of particular functions or business lines, that are necessary to facilitate group resolution when the conditions for resolution are met;
- e set out any additional actions, not referred to in this Directive, which the group-level resolution authority intends to take in relation to the resolution of the group;
- f identify how the group resolution actions could be financed and, where the financing arrangement would be required, set out principles for sharing responsibility for that financing between sources of funding in different Member States. The plan shall not assume any of the following:
 - (i) any extraordinary public financial support besides the use of the financing arrangements established in accordance with Article 100;
 - (ii) any central bank emergency liquidity assistance; or

- (iii) any central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms.

Those principles shall be set out on the basis of equitable and balanced criteria and shall take into account, in particular Article 107(5) and the impact on financial stability in all Member States concerned.

4 The assessment of the resolvability of the group under Article 16 shall be carried out at the same time as the drawing up and updating of the group resolution plan in accordance with this Article. A detailed description of the assessment of resolvability carried out in accordance with Article 16 shall be included in the group resolution plan.

5 The group resolution plan shall not have a disproportionate impact on any Member State.

6 EBA shall, after consulting the ESRB, develop draft regulatory technical standards specifying the contents of group resolution plans, by taking into account the diversity of business models of groups in the internal market.

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 13

Requirement and procedure for group resolution plans

1 Union parent undertakings shall submit the information that may be required in accordance with Article 11 to the group-level resolution authority. That information shall concern the Union parent undertaking and to the extent required each of the group entities including entities referred to in points (c) and (d) of Article 1(1).

The group-level resolution authority shall, provided that the confidentiality requirements laid down in this Directive are in place, transmit the information provided in accordance with this paragraph to:

- a EBA;
- b the resolution authorities of subsidiaries;
- c the resolution authorities of the jurisdictions in which significant branches are located insofar as is relevant to the significant branch;
- d the relevant competent authorities referred to in Articles 115 and 116 of Directive 2013/36/EU; and
- e the resolution authorities of the Member States where the entities referred to in points (c) and (d) of Article 1(1) are established.

The information provided by the group-level resolution authority to the resolution authorities and competent authorities of subsidiaries, resolution authorities of the jurisdiction in which any significant branches are located, and to the relevant competent authorities referred to in Articles 115 and 116 of Directive 2013/36/EU, shall include at a minimum all information that is relevant to the subsidiary or significant branch. The information provided to EBA shall include all information that is relevant to the

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role of EBA in relation the group resolution plans. In the case of information relating to third-country subsidiaries, the group-level resolution authority shall not be obliged to transmit that information without the consent of the relevant third-country supervisory authority or resolution authority.

2 Member States shall ensure that group-level resolution authorities, acting jointly with the resolution authorities referred to in the second subparagraph of paragraph 1 of this Article, in resolution colleges and after consulting the relevant competent authorities, including the competent authorities of the jurisdictions of Member States in which any significant branches are located, draw up and maintain group resolution plans. Group-level resolution authorities may, at their discretion, and subject to them meeting the confidentiality requirements laid down in Article 98 of this Directive, involve in the drawing up and maintenance of group resolution plans third-country resolution authorities of jurisdictions in which the group has established subsidiaries or financial holding companies or significant branches as referred to in Article 51 of Directive 2013/36/EU.

3 Member States shall ensure that group resolution plans are reviewed, and where appropriate updated, at least annually, and after any change to the legal or organisational structure, to the business or to the financial position of the group including any group entity, that could have a material effect on or require a change to the plan.

4 The adoption of the group resolution plan shall take the form of a joint decision of the group-level resolution authority and the resolution authorities of subsidiaries.

Those resolution authorities shall make a joint decision within four months of the date of the transmission by the group-level resolution authority of the information referred to in the second subparagraph of paragraph 1.

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

5 In the absence of a joint decision between the resolution authorities within four months, the group-level resolution authority shall make its own decision on the group resolution plan. The decision shall be fully reasoned and shall take into account the views and reservations of other resolution authorities. The decision shall be provided to the Union parent undertaking by the group-level resolution authority.

Subject to paragraph 9 of this Article, if, at the end of the four-month period, any resolution authority has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the group-level resolution authority 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 group-level resolution authority shall apply.

6 In the absence of a joint decision between the resolution authorities within four months, each resolution authority responsible for a subsidiary shall make its own decision and shall draw up and maintain a resolution plan for the entities under its jurisdiction. Each of the individual decisions shall be fully reasoned, shall set out the reasons disagreement with the proposed group resolution plan and shall take into account the views and reservations of the

other competent authorities and resolution authorities. Each resolution authority shall notify its decision to the other members of the resolution college.

Subject to paragraph 9 of this Article, if, at the end of the four-month period, any resolution authority has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the resolution authority concerned 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 resolution authority of the subsidiary shall apply.

7 The other resolution authorities which do not disagree under paragraph 6 may reach a joint decision on a group resolution plan covering group entities under their jurisdictions.

8 The joint decisions referred to in paragraphs 4 and 7 and the decisions taken by the resolution authorities in the absence of a joint decision referred to in paragraphs 5 and 6 shall be recognised as conclusive and applied by the other resolution authorities concerned.

9 In accordance with paragraphs 5 and 6 of this Article, upon request of a resolution authority, EBA may assist the resolution authorities in reaching an agreement in accordance with Article 19(3) of Regulation (EU) No 1093/2010 unless any resolution authority concerned assesses that the subject matter under disagreement may in any way impinge on its Member States' fiscal responsibilities.

10 Where joint decisions are taken pursuant to paragraphs 4 and 7 and where a resolution authority assesses under paragraph 9 that the subject matter of a disagreement regarding group resolution plans impinges on the fiscal responsibilities of its Member State, the group-level resolution authority shall initiate a reassessment of the group resolution plan, including the minimum requirement for own funds and eligible liabilities.

Article 14

Transmission of resolution plans to the competent authorities

1 The resolution authority shall transmit the resolution plans and any changes thereto to the relevant competent authorities.

2 The group-level resolution authority shall transmit group resolution plans and any changes thereto to the relevant competent authorities.