

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 II

#### *Resolvability*

##### *Article 15*

#### **Assessment of resolvability for institutions**

1 Member States shall ensure that, after the resolution authority has consulted the competent authority and the resolution authorities of the jurisdictions in which significant branches are located insofar as is relevant to the significant branch, it assesses the extent to which an institution which is not part of a group is resolvable without the assumption of 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;
- c any central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms.

An institution shall be deemed to be resolvable if it is feasible and credible for the resolution authority to either liquidate it under normal insolvency proceedings or to resolve it by applying the different resolution tools and powers to the institution while avoiding to the maximum extent possible any significant adverse effect on the financial system, including in circumstances of broader financial instability or system-wide events, of the Member State in which the institution is established, or other Member States or the Union and with a view to ensuring the continuity of critical functions carried out by the institution. The resolution authorities shall notify EBA in a timely manner whenever an institution is deemed not to be resolvable.

2 For the purposes of the assessment of resolvability referred to in paragraph 1, the resolution authority shall, as a minimum, examine the matters specified in Section C of the Annex.

3 The resolvability assessment under this Article shall be made by the resolution authority at the same time as and for the purposes of the drawing up and updating of the resolution plan in accordance with Article 10.

4 EBA, after consulting the ESRB, shall develop draft regulatory technical standards to specify the matters and criteria for the assessment of the resolvability of institutions or groups provided for in paragraph 2 of this Article and in Article 16.

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

Power is conferred on the Commission to adopt the draft regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

### *Article 16*

#### **Assessment of resolvability for groups**

1 Member States shall ensure that group-level resolution authorities, together with the resolution authorities of subsidiaries, after consulting the consolidating supervisor and the competent authorities of such subsidiaries, and the resolution authorities of the jurisdictions in which significant branches are located insofar as is relevant to the significant branch, assess the extent to which groups are resolvable without the assumption of 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;
- c any central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms.

A group shall be deemed to be resolvable if it is feasible and credible for the resolution authorities to either wind up group entities under normal insolvency proceedings or to resolve group entities by applying resolution tools and powers to group entities while avoiding to the maximum extent possible any significant adverse effect on the financial system, including in circumstances of broader financial instability or system wide events, of the Member States in which group entities are established, or other Member States or the Union and with a view to ensuring the continuity of critical functions carried out by the group entities, where they can be easily separated in a timely manner or by other means. Group-level resolution authorities shall notify EBA in a timely manner whenever a group is deemed not to be resolvable.

The assessment of group resolvability shall be taken into consideration by the resolution colleges referred to in Article 88.

2 For the purposes of the assessment of group resolvability, resolution authorities shall, as a minimum, examine the matters specified in Section C of the Annex.

3 The assessment of group resolvability under this Article shall be made at the same time as, and for the purposes of drawing up and updating of the group resolution plans in accordance with Article 12. The assessment shall be made under the decision-making procedure laid down in Article 13.

## Article 17

### **Powers to address or remove impediments to resolvability**

1 Member States shall ensure that when, pursuant to an assessment of resolvability for an institution carried out in accordance with Articles 15 and 16, a resolution authority after consulting the competent authority determines that there are substantive impediments to the resolvability of that institution, the resolution authority shall notify in writing that determination to the institution concerned, to the competent authority and to the resolution authorities of the jurisdictions in which significant branches are located.

2 The requirement for resolution authorities to draw up resolution plans and for the relevant resolution authorities to reach a joint decision on group resolution plans in Article 10(1) and Article 13(4) respectively shall be suspended following the notification referred to in paragraph 1 of this Article until the measures to remove the substantive impediments to resolvability have been accepted by the resolution authority pursuant to paragraph 3 of this Article or decided pursuant to paragraph 4 of this Article.

3 Within four months of the date of receipt of a notification made in accordance with paragraph 1, the institution shall propose to the resolution authority possible measures to address or remove the substantive impediments identified in the notification. The resolution authority, after consulting the competent authority, shall assess whether those measures effectively address or remove the substantive impediments in question.

4 Where the resolution authority assesses that the measures proposed by an institution in accordance with paragraph 3 do not effectively reduce or remove the impediments in question, it shall, either directly or indirectly through the competent authority, require the institution to take alternative measures that may achieve that objective, and notify in writing those measures to the institution, which shall propose within one month a plan to comply with them.

In identifying alternative measures, the resolution authority shall demonstrate how the measures proposed by the institution would not be able to remove the impediments to resolvability and how the alternative measures proposed are proportionate in removing them. The resolution authority shall take into account the threat to financial stability of those impediments to resolvability and the effect of the measures on the business of the institution, its stability and its ability to contribute to the economy.

5 For the purposes of paragraph 4, resolution authorities shall have the power to take any of the following measures:

- a require the institution to revise any intragroup financing agreements or review the absence thereof, or draw up service agreements, whether intra-group or with third parties, to cover the provision of critical functions;
- b require the institution to limit its maximum individual and aggregate exposures;
- c impose specific or regular additional information requirements relevant for resolution purposes;
- d require the institution to divest specific assets;
- e require the institution to limit or cease specific existing or proposed activities;
- f restrict or prevent the development of new or existing business lines or sale of new or existing products;
- g require changes to legal or operational structures of the institution or any group entity, either directly or indirectly under its control, so as to reduce complexity in order to

- ensure that critical functions may be legally and operationally separated from other functions through the application of the resolution tools;
- h require an institution or a parent undertaking to set up a parent financial holding company in a Member State or a Union parent financial holding company;
  - i require an institution or entity referred to in point (b), (c) or (d) of Article 1(1) to issue eligible liabilities to meet the requirements of Article 45;
  - j require an institution or entity referred to in point (b), (c) or (d) of Article 1(1), to take other steps to meet the minimum requirement for own funds and eligible liabilities under Article 45, including in particular to attempt to renegotiate any eligible liability, additional Tier 1 instrument or Tier 2 instrument it has issued, with a view to ensuring that any decision of the resolution authority to write down or convert that liability or instrument would be effected under the law of the jurisdiction governing that liability or instrument; and
  - k where an institution is the subsidiary of a mixed-activity holding company, requiring that the mixed-activity holding company set up a separate financial holding company to control the institution, if necessary in order to facilitate the resolution of the institution and to avoid the application of the resolution tools and powers referred to in Title IV having an adverse effect on the non-financial part of the group.
- 6 A decision made pursuant to paragraph 1 or 4 shall meet the following requirements:
- a it shall be supported by reasons for the assessment or determination in question;
  - b it shall indicate how that assessment or determination complies with the requirement for proportionate application laid down in paragraph 4; and
  - c it shall be subject to a right of appeal.
- 7 Before identifying any measure referred to in paragraph 4, the resolution authority, after consulting the competent authority and, if appropriate, the designated national macroprudential authority, shall duly consider the potential effect of those measures on the particular institution, on the internal market for financial services, on the financial stability in other Member States and Union as a whole.
- 8 EBA shall, by 3 July 2015, issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 to specify further details on the measures provided for in paragraph 5 and the circumstances in which each measure may be applied.

### *Article 18*

#### **Powers to address or remove impediments to resolvability: group treatment**

1 The group-level resolution authority together with the resolution authorities of subsidiaries, after consulting the supervisory college and the resolution authorities of the jurisdictions in which significant branches are located insofar as is relevant to the significant branch, shall consider the assessment required by Article 16 within the resolution college and shall take all reasonable steps to reach a joint decision on the application of measures identified in accordance with Article 17(4) in relation to all institutions that are part of the group.

2 The group-level resolution authority, in cooperation with the consolidating supervisor and EBA in accordance with Article 25(1) of Regulation (EU) No 1093/2010, shall prepare and submit a report to the Union parent undertaking, to the resolution authorities of subsidiaries, which will provide it to the subsidiaries under their supervision, and to the resolution authorities of jurisdictions in which significant branches are located. The report shall be prepared after consulting the competent authorities, and shall analyse the substantive impediments to the

effective application of the resolution tools and the exercising of the resolution powers in relation to the group. The report shall consider the impact on the institution's business model and recommend any proportionate and targeted measures that, in the authority's view, are necessary or appropriate to remove those impediments.

3 Within four months of the date of receipt of the report, the Union parent undertaking may submit observations and propose to the group-level resolution authority alternative measures to remedy the impediments identified in the report.

4 The group-level resolution authority shall communicate any measure proposed by the Union parent undertaking to the consolidating supervisor, EBA, the resolution authorities of the subsidiaries and the resolution authorities of the jurisdictions in which significant branches are located insofar as is relevant to the significant branch. The group-level resolution authorities and the resolution authorities of the subsidiaries, after consulting the competent authorities and the resolution authorities of jurisdictions in which significant branches are located, shall do everything within their power to reach a joint decision within the resolution college regarding the identification of the material impediments, and if necessary, the assessment of the measures proposed by the Union parent undertaking and the measures required by the authorities in order to address or remove the impediments, which shall take into account the potential impact of the measures in all the Member States where the group operates.

5 The joint decision shall be reached within four months of submission of any observations by the Union parent undertaking or at the expiry of the four-month period referred to in paragraph 3, whichever the earlier. It shall be reasoned and set out in a document which shall be provided by the group-level resolution authority to the Union parent undertaking.

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.

6 In the absence of a joint decision within the period referred to in paragraph 5, the group-level resolution authority shall make its own decision on the appropriate measures to be taken in accordance with Article 17(4) at the group level.

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.

If, at the end of the four-month period, any resolution authority has referred a matter mentioned in paragraph 9 of this Article 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.

7 In the absence of a joint decision, the resolution authorities of subsidiaries shall make their own decisions on the appropriate measures to be taken by subsidiaries at individual level in accordance with Article 17(4). The decision shall be fully reasoned and shall take into account the views and reservations of the other resolution authorities. The decision shall be provided to the subsidiary concerned and to the group-level resolution authority.

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

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

9 In the absence of a joint decision on the taking of any measures referred to in point (g), (h) or (k) of Article 17(5), EBA may, upon the request of a resolution authority in accordance with paragraph 6 or 7 of this Article, assist the resolution authorities in reaching an agreement in accordance with Article 19(3) of Regulation (EU) No 1093/2010.