

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 III

##### *Intra group financial support*

###### *Article 19*

##### **Group financial support agreement**

1 Member States shall ensure that a parent institution in a Member State, a Union parent institution, or an entity referred to in point (c) or (d) of Article 1(1) and its subsidiaries in other Member States or third countries that are institutions or financial institutions covered by the consolidated supervision of the parent undertaking, may enter into an agreement to provide financial support to any other party to the agreement that meets the conditions for early intervention pursuant to Article 27, provided that the conditions laid down in this Chapter are also met.

2 This Chapter does not apply to intra-group financial arrangements including funding arrangements and the operation of centralised funding arrangements provided that none of the parties to such arrangements meets the conditions for early intervention.

3 A group financial support agreement shall not constitute a prerequisite:

- a to provide group financial support to any group entity that experiences financial difficulties if the institution decides to do so, on a case-by-case basis and according to the group policies if it does not represent a risk for the whole group; or
- b to operate in a Member State.

4 Member States shall remove any legal impediment in national law to intra-group financial support transactions that are undertaken in accordance with this Chapter, provided that nothing in this Chapter shall prevent Member States from imposing limitations on intra-group transactions in connection with national laws exercising the options provided for in Regulation (EU) No 575/2013, transposing Directive 2013/36/EU or requiring the separation of parts of a group or activities carried on within a group for reasons of financial stability.

5 The group financial support agreement may:

- a cover one or more subsidiaries of the group, and may provide for financial support from the parent undertaking to subsidiaries, from subsidiaries to the parent undertaking, between subsidiaries of the group that are party to the agreement, or any combination of those entities;

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- b provide for financial support in the form of a loan, the provision of guarantees, the provision of assets for use as collateral, or any combination of those forms of financial support, in one or more transactions, including between the beneficiary of the support and a third party.

6 Where, in accordance with the terms of the group financial support agreement, a group entity agrees to provide financial support to another group entity, the agreement may include a reciprocal agreement by the group entity receiving the support to provide financial support to the group entity providing the support.

7 The group financial support agreement shall specify the principles for the calculation of the consideration, for any transaction made under it. Those principles shall include a requirement that the consideration shall be set at the time of the provision of financial support. The agreement, including the principles for calculation of the consideration for the provision of financial support and the other terms of the agreement, shall comply with the following principles:

- a each party must be acting freely in entering into the agreement;
- b in entering into the agreement and in determining the consideration for the provision of financial support, each party must be acting in its own best interests which may take account of any direct or any indirect benefit that may accrue to a party as a result of provision of the financial support;
- c each party providing financial support must have full disclosure of relevant information from any party receiving financial support prior to determination of the consideration for the provision of financial support and prior to any decision to provide financial support;
- d the consideration for the provision of financial support may take account of information in the possession of the party providing financial support based on it being in the same group as the party receiving financial support and which is not available to the market; and
- e the principles for the calculation of the consideration for the provision of financial support are not obliged to take account of any anticipated temporary impact on market prices arising from events external to the group.

8 The group financial support agreement may only be concluded if, at the time the proposed agreement is made, in the opinion of their respective competent authorities, none of the parties meets the conditions for early intervention.

9 Member States shall ensure that any right, claim or action arising from the group financial support agreement may be exercised only by the parties to the agreement, with the exclusion of third parties.

## *Article 20*

### **Review of proposed agreement by competent authorities and mediation**

1 The Union parent institution shall submit to the consolidating supervisor an application for authorisation of any proposed group financial support agreement proposed pursuant to Article 19. The application shall contain the text of the proposed agreement and identify the group entities that propose to be parties.

2 The consolidating supervisor shall forward without delay the application to the competent authorities of each subsidiary that proposes to be a party to the agreement, with a view to reaching a joint decision.

3 The consolidating supervisor shall, in accordance with the procedure set out in paragraphs 5 and 6 of this Article, grant the authorisation if the terms of the proposed agreement are consistent with the conditions for financial support set out in Article 23.

4 The consolidating supervisor may, in accordance with the procedure set out in paragraphs 5 and 6 of this Article, prohibit the conclusion of the proposed agreement if it is considered to be inconsistent with the conditions for financial support set out in Article 23.

5 The competent authorities shall do everything within their power to reach a joint decision, taking into account the potential impact, including any fiscal consequences, of the execution of the agreement in all the Member States where the group operates, on whether the terms of the proposed agreement are consistent with the conditions for financial support laid down in Article 23 within four months of the date of receipt of the application by the consolidating supervisor. The joint decision shall be set out in a document containing the fully reasoned decision, which shall be provided to the applicant by the consolidating supervisor.

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

6 In the absence of a joint decision between the competent authorities within four months, the consolidating supervisor shall make its own decision on the application. The decision shall be set out in a document containing the full reasoning and shall take into account the views and reservations of the other competent authorities expressed during the four-month period. The consolidating supervisor shall notify its decision to the applicant and the other competent authorities.

7 If, at the end of the four-month period, any of the competent authorities concerned has referred the matter 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 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.

#### *Article 21*

### **Approval of proposed agreement by shareholders**

1 Member States shall require that any proposed agreement that has been authorised by the competent authorities be submitted for approval to the shareholders of every group entity that proposes to enter into the agreement. In such a case, the agreement shall be valid only in respect of those parties whose shareholders have approved the agreement in accordance with paragraph 2.

2 A group financial support agreement shall be valid in respect of a group entity only if its shareholders have authorised the management body of that group entity to make a decision that the group entity shall provide or receive financial support in accordance with the terms of the agreement and in accordance with the conditions laid down in this Chapter and that shareholder authorisation has not been revoked.

3 The management body of each entity that is party to an agreement shall report each year to the shareholders on the performance of the agreement, and on the implementation of any decision taken pursuant to the agreement.

## Article 22

### **Transmission of the group financial support agreements to resolution authorities**

Competent authorities shall transmit to the relevant resolution authorities the group financial support agreements they authorised and any changes thereto.

## Article 23

### **Conditions for group financial support**

1 Financial support by a group entity in accordance with Article 19 may only be provided if all the following conditions are met:

- a there is a reasonable prospect that the support provided significantly redresses the financial difficulties of the group entity receiving the support;
- b the provision of financial support has the objective of preserving or restoring the financial stability of the group as a whole or any of the entities of the group and is in the interests of the group entity providing the support;
- c the financial support is provided on terms, including consideration in accordance with Article 19(7);
- d there is a reasonable prospect, on the basis of the information available to the management body of the group entity providing financial support at the time when the decision to grant financial support is taken, that the consideration for the support will be paid and, if the support is given in the form of a loan, that the loan will be reimbursed, by the group entity receiving the support. If the support is given in the form of a guarantee or any form of security, the same condition shall apply to the liability arising for the recipient if the guarantee or the security is enforced;
- e the provision of the financial support would not jeopardise the liquidity or solvency of the group entity providing the support;
- f the provision of the financial support would not create a threat to financial stability, in particular in the Member State of the group entity providing support;
- g the group entity providing the support complies at the time the support is provided with the requirements of Directive 2013/36/EU relating to capital or liquidity and any requirements imposed pursuant to Article 104(2) of Directive 2013/36/EU and the provision of the financial support shall not cause the group entity to infringe those requirements, unless authorised by the competent authority responsible for the supervision on an individual basis of the entity providing the support;
- h the group entity providing the support complies, at the time when the support is provided, with the requirements relating to large exposures laid down in Regulation (EU) No 575/2013 and in Directive 2013/36/EU including any national legislation exercising the options provided therein, and the provision of the financial support shall not cause the group entity to infringe those requirements, unless authorised by the competent authority responsible for the supervision on an individual basis of the group entity providing the support;
- i the provision of the financial support would not undermine the resolvability of the group entity providing the support.

2 EBA shall develop draft regulatory technical standards to specify the conditions laid down in points (a), (c), (e) and (i) of paragraph 1.

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

Power is conferred on 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.

3 EBA shall, by 3 January 2016, issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 to promote convergence in practices to specify the conditions laid down in points (b), (d), (f), (g) and (h) of paragraph 1 of this Article.

#### *Article 24*

### **Decision to provide financial support**

The decision to provide group financial support in accordance with the agreement shall be taken by the management body of the group entity providing financial support. That decision shall be reasoned and shall indicate the objective of the proposed financial support. In particular, the decision shall indicate how the provision of the financial support complies with the conditions laid down in Article 23(1). The decision to accept group financial support in accordance with the agreement shall be taken by the management body of the group entity receiving financial support.

#### *Article 25*

### **Right of opposition of competent authorities**

1 Before providing support in accordance with a group financial support agreement, the management body of a group entity that intends to provide financial support shall notify:

- a its competent authority;
- b where different from authorities in points (a) and (c), where applicable, the consolidating supervisor;
- c where different from points (a) and (b), the competent authority of the group entity receiving the financial support; and
- d EBA.

The notification shall include the reasoned decision of the management body in accordance with Article 24 and details of the proposed financial support including a copy of the group financial support agreement.

2 Within five business days from the date of receipt of a complete notification, the competent authority of the group entity providing financial support may agree with the provision of financial support, or may prohibit or restrict it if it assesses that the conditions for group financial support laid down in Article 23 have not been met. A decision of the competent authority to prohibit or restrict the financial support shall be reasoned.

3 The decision of the competent authority to agree, prohibit or restrict the financial support shall be immediately notified to:

- a the consolidating supervisor;
- b the competent authority of the group entity receiving the support; and
- c EBA.

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The consolidating supervisor shall immediately inform other members of the supervisory college and the members of the resolution college.

4 Where the consolidating supervisor or the competent authority responsible for the group entity receiving support has objections regarding the decision to prohibit or restrict the financial support, they may within two days refer the matter to EBA and request its assistance in accordance with Article 31 of Regulation (EU) No 1093/2010.

5 If the competent authority does not prohibit or restrict the financial support within the period indicated in paragraph 2, or has agreed before the end of that period to that support, financial support may be provided in accordance with the terms submitted to the competent authority.

6 The decision of the management body of the institution to provide financial support shall be transmitted to:

- a the competent authority;
- b where different from authorities in points (a) and (c), and where applicable, the consolidating supervisor;
- c where different from points (a) and (b), the competent authority of the group entity receiving the financial support; and
- d EBA.

The consolidating supervisor shall immediately inform the other members of the supervisory college and the members of the resolution college.

7 If the competent authority restricts or prohibits group financing support pursuant to paragraph 2 of this Article and where the group recovery plan in accordance with Article 7(5) makes reference to intra-group financial support, the competent authority of the group entity in relation to whom the support is restricted or prohibited may request the consolidating supervisor to initiate a reassessment of the group recovery plan pursuant to Article 8 or, where a recovery plan is drawn up on an individual basis, request the group entity to submit a revised recovery plan.

#### *Article 26*

#### **Disclosure**

1 Member States shall ensure that group entities make public whether or not they have entered into a group financial support agreement pursuant to Article 19 and make public a description of the general terms of any such agreement and the names of the group entities that are party to it and update that information at least annually.

Articles 431 to 434 of Regulation (EU) No 575/2013 shall apply.

2 EBA shall develop draft implementing technical standards to specify the form and content of the description referred to in paragraph 1.

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

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