

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 I

Objectives, conditions and general principles

Article 31

Resolution objectives

- 1 When applying the resolution tools and exercising the resolution powers, resolution authorities shall have regard to the resolution objectives, and choose the tools and powers that best achieve the objectives that are relevant in the circumstances of the case.
- 2 The resolution objectives referred to in paragraph 1 are:
 - a to ensure the continuity of critical functions;
 - b to avoid a significant adverse effect on the financial system, in particular by preventing contagion, including to market infrastructures, and by maintaining market discipline;
 - c to protect public funds by minimising reliance on extraordinary public financial support;
 - d to protect depositors covered by Directive 2014/49/EU and investors covered by Directive 97/9/EC;
 - e to protect client funds and client assets.

When pursuing the above objectives, the resolution authority shall seek to minimise the cost of resolution and avoid destruction of value unless necessary to achieve the resolution objectives.

- 3 Subject to different provisions of this Directive, the resolution objectives are of equal significance, and resolution authorities shall balance them as appropriate to the nature and circumstances of each case.

Article 32

Conditions for resolution

- 1 Member States shall ensure that resolution authorities shall take a resolution action in relation to an institution referred to in point (a) of Article 1(1) only if the resolution authority considers that all of the following conditions are met:

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- a the determination that the institution is failing or is likely to fail has been made by the competent authority, after consulting the resolution authority or,; subject to the conditions laid down in paragraph 2, by the resolution authority after consulting the competent authority;
 - [^{F1}b having regard to timing and other relevant circumstances, there is no reasonable prospect that any alternative private sector measures, including measures by an IPS, or supervisory action, including early intervention measures or the write down or conversion of relevant capital instruments and eligible liabilities in accordance with Article 59(2) taken in respect of the institution, would prevent the failure of the institution within a reasonable timeframe;]
 - c a resolution action is necessary in the public interest pursuant to paragraph 5.
- 2 Member States may provide that, in addition to the competent authority, the determination that the institution is failing or likely to fail under point (a) of paragraph 1 can be made by the resolution authority, after consulting the competent authority, where resolution authorities under national law have the necessary tools for making such a determination including, in particular, adequate access to the relevant information. The competent authority shall provide the resolution authority with any relevant information that the latter requests in order to perform its assessment without delay.
- 3 The previous adoption of an early intervention measure according to Article 27 is not a condition for taking a resolution action.
- 4 For the purposes of point (a) of paragraph 1, an institution shall be deemed to be failing or likely to fail in one or more of the following circumstances:
- a the institution infringes or there are objective elements to support a determination that the institution will, in the near future, infringe the requirements for continuing authorisation in a way that would justify the withdrawal of the authorisation by the competent authority including but not limited to because the institution has incurred or is likely to incur losses that will deplete all or a significant amount of its own funds;
 - b the assets of the institution are or there are objective elements to support a determination that the assets of the institution will, in the near future, be less than its liabilities;
 - c the institution is or there are objective elements to support a determination that the institution will, in the near future, be unable to pay its debts or other liabilities as they fall due;
 - d extraordinary public financial support is required except when, in order to remedy a serious disturbance in the economy of a Member State and preserve financial stability, the extraordinary public financial support takes any of the following forms:
 - (i) a State guarantee to back liquidity facilities provided by central banks according to the central banks' conditions;
 - (ii) a State guarantee of newly issued liabilities; or
 - (iii) an injection of own funds or purchase of capital instruments at prices and on terms that do not confer an advantage upon the institution, where neither the circumstances referred to in point (a), (b) or (c) of this paragraph nor the circumstances referred to in Article 59(3) are present at the time the public support is granted.

In each of the cases mentioned in points (d)(i), (ii) and (iii) of the first subparagraph, the guarantee or equivalent measures referred to therein shall be confined to solvent institutions and shall be conditional on final approval under the Union State aid framework. Those measures shall be of a precautionary and temporary nature and shall

be proportionate to remedy the consequences of the serious disturbance and shall not be used to offset losses that the institution has incurred or is likely to incur in the near future.

Support measures under point (d)(iii) of the first subparagraph shall be limited to injections necessary to address capital shortfall established in the national, Union or SSM-wide stress tests, asset quality reviews or equivalent exercises conducted by the European Central Bank, EBA or national authorities, where applicable, confirmed by the competent authority.

EBA shall, by 3 January 2015, issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 on the type of tests, reviews or exercises referred to above which may lead to such support.

By 31 December 2015, the Commission shall review whether there is a continuing need for allowing the support measures under point (d)(iii) of the first subparagraph and the conditions that need to be met in the case of continuation and report thereon to the European Parliament and to the Council. If appropriate, that report shall be accompanied by a legislative proposal.

5 For the purposes of point (c) of paragraph 1 of this Article, a resolution action shall be treated as in the public interest if it is necessary for the achievement of and is proportionate to one or more of the resolution objectives referred to in Article 31 and winding up of the institution under normal insolvency proceedings would not meet those resolution objectives to the same extent.

6 EBA shall, by 3 July 2015, issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 to promote the convergence of supervisory and resolution practices regarding the interpretation of the different circumstances when an institution shall be considered to be failing or likely to fail.

Textual Amendments

- F1** Substituted by [Directive \(EU\) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC](#).

f² Article 32a

Conditions for resolution with regard to a central body and credit institutions permanently affiliated to a central body

Member States shall ensure that resolution authorities may take a resolution action in relation to a central body and all credit institutions permanently affiliated to it that are part of the same resolution group when that resolution group complies as a whole with the conditions established in Article 32(1).

Textual Amendments

- F2** Inserted by [Directive \(EU\) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC](#).

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Article 32b

Insolvency proceedings in respect of institutions and entities that are not subject to resolution action

Member States shall ensure that an institution or entity referred to in points (b), (c) or (d) of Article 1(1) in relation to which the resolution authority considers that the conditions in points (a) and (b) of Article 32(1) are met, but that a resolution action would not be in the public interest in accordance with point (c) of Article 32(1), shall be wound up in an orderly manner in accordance with the applicable national law.]

Textual Amendments

- F2** Inserted by [Directive \(EU\) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC](#).

Article 33

Conditions for resolution with regard to financial institutions and holding companies

1 Member States shall ensure that resolution authorities may take a resolution action in relation to a financial institution referred to in point (b) of Article 1(1), when the conditions laid down in Article 32(1), are met with regard to both the financial institution and with regard to the parent undertaking subject to consolidated supervision.

[^{F12} Member States shall ensure that resolution authorities take a resolution action in relation to an entity referred to in point (c) or (d) of Article 1(1), when that entity meets the conditions laid down in Article 32(1).

3 Where the subsidiary institutions of a mixed-activity holding company are held directly or indirectly by an intermediate financial holding company, the resolution plan shall provide that the intermediate financial holding company is identified as a resolution entity and Member States shall ensure that resolution actions for the purposes of group resolution are taken in relation to the intermediate financial holding company. Member States shall ensure that resolution authorities do not take resolution actions for the purposes of group resolution in relation to the mixed-activity holding company.

4 Subject to paragraph 3 of this Article and notwithstanding the fact that an entity referred to in point (c) or (d) of Article 1(1) does not meet the conditions laid down in Article 32(1), resolution authorities may take resolution action with regard to an entity referred to in point (c) or (d) of Article 1(1) where all of the following conditions are fulfilled:

- a the entity is a resolution entity;
- b one or more of the subsidiaries of the entity that are institutions, but not resolution entities, comply with the conditions laid down in Article 32(1);
- c assets and liabilities of the subsidiaries referred to in point (b) are such that the failure of those subsidiaries threatens the resolution group as a whole, and resolution action with regard to the entity is necessary either for the resolution of such subsidiaries which are institutions or for the resolution of the relevant resolution group as a whole.]

Textual Amendments

- F1** Substituted by [Directive \(EU\) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC](#).

f^{F2} Article 33a

Power to suspend certain obligations

1 Member States shall ensure that resolution authorities, after consulting the competent authorities, which shall reply in a timely manner, have the power to suspend any payment or delivery obligations pursuant to any contract to which an institution or an entity referred to in points (b), (c) or (d) of Article 1(1) is a party, where all of the following conditions are met:

- a a determination that the institution or entity is failing or likely to fail has been made under point (a) of Article 32(1);
- b there is no immediately available private sector measure referred to in point (b) of Article 32(1) that would prevent the failure of the institution or entity;
- c the exercise of the power to suspend is deemed necessary to avoid the further deterioration of the financial conditions of the institution or entity; and
- d the exercise of the power to suspend is either:
 - (i) necessary to reach the determination provided for in point (c) of Article 32(1); or
 - (ii) necessary to choose the appropriate resolution actions or to ensure the effective application of one or more resolution tools.

2 The power referred to in paragraph 1 of this Article shall not apply to payment or delivery obligations to the following:

- a systems and operators of systems designated in accordance with Directive 98/26/EC;
- b CCPs authorised in the Union pursuant to Article 14 of Regulation (EU) No 648/2012 and third-country CCPs recognised by ESMA pursuant to Article 25 of that Regulation;
- c central banks.

The resolution authorities shall set the scope of the power referred to in paragraph 1 of this Article having regard to the circumstances of each case. In particular, resolution authorities shall carefully assess the appropriateness of extending the suspension to eligible deposits according to the definition in point (4) of Article 2(1) of Directive 2014/49/EU, especially to covered deposits held by natural persons and micro, small and medium-sized enterprises.

3 Member States may provide that where the power to suspend payment or delivery obligations is exercised in respect of eligible deposits, resolution authorities ensure that depositors have access to an appropriate daily amount from those deposits.

4 The period of the suspension pursuant to paragraph 1 shall be as short as possible and shall not exceed the minimum period of time that the resolution authority considers necessary for the purposes indicated in points (c) and (d) of paragraph 1 and in any event shall not last longer than the period from the publication of a notice of suspension pursuant to paragraph 8 to midnight in the Member State of the resolution authority of the institution or entity at the end of the business day following the day of the publication.

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At the expiry of the period of suspension referred to in the first subparagraph, the suspension shall cease to have effect.

5 When exercising the power referred to in paragraph 1 of this Article, resolution authorities shall have regard to the impact the exercise of that power might have on the orderly functioning of financial markets and shall consider the existing national rules, as well as supervisory and judicial powers, to safeguard creditors' rights and equal treatment of creditors in normal insolvency proceedings. Resolution authorities shall in particular have regard to the potential application of national insolvency proceedings to the institution or entity as a result of the determination in point (c) of Article 32(1) and shall make the arrangements they deem appropriate to ensure adequate coordination with the national administrative or judicial authorities.

6 When payment or delivery obligations under a contract are suspended pursuant to paragraph 1, the payment or delivery obligations of any counterparties to that contract shall be suspended for the same period of time.

7 A payment or delivery obligation that would have been due during the period of the suspension shall be due immediately upon expiry of that period.

8 Member States shall ensure that resolution authorities notify the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) and the authorities referred to in points (a) to (h) of Article 83(2) without delay when exercising the power referred to in paragraph 1 of this Article after a determination has been made that the institution is failing or likely to fail pursuant to point (a) of Article 32(1) and before the resolution decision is taken.

The resolution authority shall publish or ensure the publication of the order or instrument by which obligations are suspended under this Article and the terms and period of suspension, by the means referred to in Article 83(4).

9 This Article is without prejudice to the provisions contained in the national law of Member States granting powers to suspend payment or delivery obligations of the institutions and entities referred to in paragraph 1 of this Article before a determination is made that those institutions or entities are failing or likely to fail under point (a) of Article 32(1) or to suspend payment or delivery obligations of institutions or entities which are to be wound up under normal insolvency proceedings, and that exceed the scope and duration provided for in this Article. Such powers shall be exercised in accordance with the scope, duration and conditions provided for in the relevant national laws. The conditions provided for in this Article shall be without prejudice to the conditions related to such power of suspension payment or delivery obligations.

10 Member States shall ensure that when a resolution authority exercises the power to suspend payment or delivery obligations with respect to an institution or an entity referred to in points (b), (c) or (d) of Article 1(1) pursuant to paragraph 1 of this Article, the resolution authority is also able, for the duration of that suspension, to exercise the power to:

- a restrict secured creditors of that institution or entity from enforcing security interests in relation to any of the assets of that institution or entity for the same duration, in which case Article 70(2), (3) and (4) shall apply; and
- b suspend the termination rights of any party to a contract with that institution or entity for the same duration, in which case Article 71(2) to (8) shall apply.

11 In the event that, after making a determination that an institution or entity is failing or likely to fail pursuant to point (a) of Article 32(1), a resolution authority has exercised the power to suspend payment or delivery obligations in the circumstances set out in paragraph 1 or 10 of this Article, and if resolution action is subsequently taken with respect to that institution or

entity, the resolution authority shall not exercise its powers under Article 69(1), 70(1) or 71(1) with respect to that institution or entity.]

Textual Amendments

- F2** Inserted by [Directive \(EU\) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC](#).

Article 34

General principles governing resolution

1 Member States shall ensure that, when applying the resolution tools and exercising the resolution powers, resolution authorities take all appropriate measures to ensure that the resolution action is taken in accordance with the following principles:

- a the shareholders of the institution under resolution bear first losses;
- b creditors of the institution under resolution bear losses after the shareholders in accordance with the order of priority of their claims under normal insolvency proceedings, save as expressly provided otherwise in this Directive;
- c management body and senior management of the institution under resolution are replaced, except in those cases when the retention of the management body and senior management, in whole or in part, as appropriate to the circumstances, is considered to be necessary for the achievement of the resolution objectives;
- d management body and senior management of the institution under resolution shall provide all necessary assistance for the achievement of the resolution objectives;
- e natural and legal persons are made liable, subject to Member State law, under civil or criminal law for their responsibility for the failure of the institution;
- f except where otherwise provided in this Directive, creditors of the same class are treated in an equitable manner;
- g no creditor shall incur greater losses than would have been incurred if the institution or entity referred to in point (b), (c) or (d) of Article 1(1) had been wound up under normal insolvency proceedings in accordance with the safeguards in Articles 73 to 75;
- h covered deposits are fully protected; and
- i resolution action is taken in accordance with the safeguards in this Directive.

2 Where an institution is a group entity resolution authorities shall, without prejudice to Article 31, apply resolution tools and exercise resolution powers in a way that minimises the impact on other group entities and on the group as a whole and minimises the adverse effects on financial stability in the Union and its Member States, in particular, in the countries where the group operates.

3 When applying the resolution tools and exercising the resolution powers, Member States shall ensure that they comply with the Union State aid framework, where applicable.

4 Where the sale of business tool, the bridge institution tool or the asset separation tool is applied to an institution or entity referred to in point (b), (c) or (d) of Article 1(1), that institution or entity shall be considered to be the subject of bankruptcy proceedings or analogous insolvency proceedings for the purposes of Article 5(1) of Council Directive 2001/23/EC⁽¹⁾.

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5 When applying the resolution tools and exercising the resolution powers, resolution authorities shall inform and consult employee representatives where appropriate.

6 Resolution authorities shall apply resolution tools and exercise resolution powers without prejudice to provisions on the representation of employees in management bodies as provided for in national law or practice.

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- (1) Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses ([OJ L 82 22.3.2001, p. 16](#)).