

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 VII

Safeguards

Article 73

Treatment of shareholders and creditors in the case of partial transfers and application of the bail-in tool

Member States shall ensure that, where one or more resolution tools have been applied and, in particular for the purposes of Article 75:

- (a) except where point (b) applies, where resolution authorities transfer only parts of the rights, assets and liabilities of the institution under resolution, the shareholders and those creditors whose claims have not been transferred, receive in satisfaction of their claims at least as much as what they would have received if the institution under resolution had been wound up under normal insolvency proceedings at the time when the decision referred to in Article 82 was taken;
- (b) where resolution authorities apply the bail-in tool, the shareholders and creditors whose claims have been written down or converted to equity do not incur greater losses than they would have incurred if the institution under resolution had been wound up under normal insolvency proceedings immediately at the time when the decision referred to in Article 82 was taken.

Article 74

Valuation of difference in treatment

1 For the purposes of assessing whether shareholders and creditors would have received better treatment if the institution under resolution had entered into normal insolvency proceedings, including but not limited to for the purpose of Article 73, Member States shall ensure that a valuation is carried out by an independent person as soon as possible after the resolution action or actions have been effected. That valuation shall be distinct from the valuation carried out under Article 36.

2 The valuation in paragraph 1 shall determine:

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

- a the treatment that shareholders and creditors, or the relevant deposit guarantee schemes, would have received if the institution under resolution with respect to which the resolution action or actions have been effected had entered normal insolvency proceedings at the time when the decision referred to in Article 82 was taken;
 - b the actual treatment that shareholders and creditors have received, in the resolution of the institution under resolution; and
 - c if there is any difference between the treatment referred to in point (a) and the treatment referred to in point (b).
- 3 The valuation shall:
- a assume that the institution under resolution with respect to which the resolution action or actions have been effected, would have entered normal insolvency proceedings at the time when the decision referred to in Article 82 was taken;
 - b assume that the resolution action or actions had not been effected;
 - c disregard any provision of extraordinary public financial support to the institution under resolution.
- 4 EBA may develop draft regulatory technical standards specifying the methodology for carrying out the valuation in this Article, in particular the methodology for assessing the treatment that shareholders and creditors would have received if the institution under resolution had entered insolvency proceedings at the time when the decision referred to in Article 82 was taken.

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 75

Safeguard for shareholders and creditors

Member States shall ensure that if the valuation carried out under Article 74 determines that any shareholder or creditor referred to in Article 73, or the deposit guarantee scheme in accordance with Article 109(1), has incurred greater losses than it would have incurred in a winding up under normal insolvency proceedings, it is entitled to the payment of the difference from the resolution financing arrangements.

Article 76

Safeguard for counterparties in partial transfers

- 1 Member States shall ensure that the protections specified in paragraph 2 apply in the following circumstances:
- a a resolution authority transfers some but not all of the assets, rights or liabilities of an institution under resolution to another entity or, in the exercise of a resolution tool, from a bridge institution or asset management vehicle to another person;
 - b a resolution authority exercises the powers specified in point (f) of Article 64(1).
- 2 Member States shall ensure appropriate protection of the following arrangements and of the counterparties to the following arrangements:
- a security arrangements, under which a person has by way of security an actual or contingent interest in the assets or rights that are subject to transfer, irrespective of

- whether that interest is secured by specific assets or rights or by way of a floating charge or similar arrangement;
- b title transfer financial collateral arrangements under which collateral to secure or cover the performance of specified obligations is provided by a transfer of full ownership of assets from the collateral provider to the collateral taker, on terms providing for the collateral taker to transfer assets if those specified obligations are performed;
 - c set-off arrangements under which two or more claims or obligations owed between the institution under resolution and a counterparty can be set off against each other;
 - d netting arrangements;
 - e covered bonds;
 - f structured finance arrangements, including securitisations and instruments used for hedging purposes which form an integral part of the cover pool and which according to national law are secured in a way similar to the covered bonds, which involve the granting and holding of security by a party to the arrangement or a trustee, agent or nominee.

The form of protection that is appropriate, for the classes of arrangements specified in points (a) to (f) of this paragraph is further specified in Articles 77 to 80, and shall be subject to the restrictions specified in Articles 68 to 71.

3 The requirement under paragraph 2 applies irrespective of the number of parties involved in the arrangements and of whether the arrangements:

- a are created by contract, trusts or other means, or arise automatically by operation of law;
- b arise under or are governed in whole or in part by the law of another Member State or of a third country.

4 The Commission shall adopt delegated acts in accordance with Article 115 further specifying the classes of arrangement that fall within the scope of points (a) to (f) of paragraph 2 of this Article.

Article 77

Protection for financial collateral, set off and netting agreements

1 Member States shall ensure that there is appropriate protection for title transfer financial collateral arrangements and set-off and netting arrangements so as to prevent the transfer of some, but not all, of the rights and liabilities that are protected under a title transfer financial collateral arrangement, a set-off arrangement or a netting arrangement between the institution under resolution and another person and the modification or termination of rights and liabilities that are protected under such a title transfer financial collateral arrangement, a set-off arrangement or a netting arrangement through the use of ancillary powers.

For the purposes of the first subparagraph, rights and liabilities are to be treated as protected under such an arrangement if the parties to the arrangement are entitled to set-off or net those rights and liabilities.

2 Notwithstanding paragraph 1, where necessary in order to ensure availability of the covered deposits the resolution authority may:

- a transfer covered deposits which are part of any of the arrangements mentioned in paragraph 1 without transferring other assets, rights or liabilities that are part of the same arrangement; and

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

- b transfer, modify or terminate those assets, rights or liabilities without transferring the covered deposits.

Article 78

Protection for security arrangements

- 1 Member States shall ensure that there is appropriate protection for liabilities secured under a security arrangement so as to prevent one of the following:
 - a the transfer of assets against which the liability is secured unless that liability and benefit of the security are also transferred;
 - b the transfer of a secured liability unless the benefit of the security are also transferred;
 - c the transfer of the benefit of the security unless the secured liability is also transferred; or
 - d the modification or termination of a security arrangement through the use of ancillary powers, if the effect of that modification or termination is that the liability ceases to be secured.
- 2 Notwithstanding paragraph 1, where necessary in order to ensure availability of the covered deposits the resolution authority may:
 - a transfer covered deposits which are part of any of the arrangements mentioned in paragraph 1 without transferring other assets, rights or liabilities that are part of the same arrangement; and
 - b transfer, modify or terminate those assets, rights or liabilities without transferring the covered deposits

Article 79

Protection for structured finance arrangements and covered bonds

- 1 Member States shall ensure that there is appropriate protection for structured finance arrangements including arrangements referred to in points (e) and (f) of Article 76(2) so as to prevent either of the following:
 - a the transfer of some, but not all, of the assets, rights and liabilities which constitute or form part of a structured finance arrangement, including arrangements referred to in points (e) and (f) of Article 76(2), to which the institution under resolution is a party;
 - b the termination or modification through the use of ancillary powers of the assets, rights and liabilities which constitute or form part of a structured finance arrangement, including arrangements referred to in points (e) and (f) of Article 76(2), to which the institution under resolution is a party.
- 2 Notwithstanding paragraph 1, where necessary in order to ensure availability of the covered deposits the resolution authority may:
 - a transfer covered deposits which are part of any of the arrangements mentioned in paragraph 1 without transferring other assets, rights or liabilities that are part of the same arrangement, and
 - b transfer, modify or terminate those assets, rights or liabilities without transferring the covered deposits.

Article 80

Partial transfers: protection of trading, clearing and settlement systems

1 Member States shall ensure that the application of a resolution tool does not affect the operation of systems and rules of systems covered by Directive 98/26/EC, where the resolution authority:

- a transfers some but not all of the assets, rights or liabilities of an institution under resolution to another entity; or
- b uses powers under Article 64 to cancel or amend the terms of a contract to which the institution under resolution is a party or to substitute a recipient as a party.

2 In particular, a transfer, cancellation or amendment as referred to in paragraph 1 of this Article shall not revoke a transfer order in contravention of Article 5 of Directive 98/26/EC; and shall not modify or negate the enforceability of transfer orders and netting as required by Articles 3 and 5 of that Directive, the use of funds, securities or credit facilities as required by Article 4 thereof or protection of collateral security as required by Article 9 thereof.