

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 VIII

Procedural obligations

Article 81

Notification requirements

1 Member States shall require the management body of an institution or any entity referred to in point (b), (c) or (d) of Article 1(1) to notify the competent authority where they consider that the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) is failing or likely to fail, within the meaning specified in Article 32(4).

2 Competent authorities shall inform the relevant resolution authorities of any notifications received under paragraph 1 of this Article, and of any crisis prevention measures, or any actions referred to in Article 104 of Directive 2013/36/EU they require an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) of this Directive to take.

3 Where a competent authority or resolution authority determines that the conditions referred to in points (a) and (b) of Article 32(1) are met in relation to an institution or an entity referred to in point (b), (c) or (d) of Article 1(1), it shall communicate that determination without delay to the following authorities, if different:

- a the resolution authority for that institution or entity referred to in point (b), (c) or (d) of Article 1(1);
- b the competent authority for that institution or entity referred to in point (b), (c) or (d) of Article 1(1);
- c the competent authority of any branch of that institution or entity referred to in point (b), (c) or (d) of Article 1(1);
- d the resolution authority of any branch of that institution or entity referred to in point (b), (c) or (d) of Article 1, (1)
- e the central bank;
- f the deposit guarantee scheme to which a credit institution is affiliated where necessary to enable the functions of the deposit guarantee scheme to be discharged;
- g the body in charge of the resolution financing arrangements where necessary to enable the functions of the resolution financing arrangements to be discharged;
- h where applicable, the group-level resolution authority;

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- i the competent ministry;
- j where the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) of this Directive is subject to supervision on consolidated basis under Chapter 3 of Title VII of Directive 2013/36/EU, the consolidating supervisor; and
- k the ESRB and the designated national macro-prudential authority.

4 Where the transmission of information referred to in paragraphs 3(f) and 3(g) does not guarantee the appropriate level of confidentiality, the competent authority or resolution authority shall establish alternative communication procedures that achieve the same objectives while ensuring the appropriate level of confidentiality.

Article 82

Decision of the resolution authority

1 On receiving a communication from the competent authority pursuant to paragraph 3 of Article 81, or on its own initiative, the resolution authority shall determine, in accordance with Article 32(1) and Article 33, whether the conditions of that paragraph are met in respect of the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) in question.

2 A decision whether or not to take resolution action in relation to an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) shall contain the following information:

- a the reasons for that decision, including the determination that the institution meets or does not meet the conditions for resolution;
- b the action that the resolution authority intends to take including, where appropriate, the determination to apply for winding up, the appointment of an administrator or any other measure under applicable normal insolvency proceedings or, subject to Article 37(9), under national law.

3 EBA shall develop draft regulatory technical standards in order to specify the procedures and contents relating to the following requirements:

- a the notifications referred to in Article 81(1), (2) and (3);
- b the notice of suspension referred to in Article 83.

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 83

Procedural obligations of resolution authorities

1 Member States shall ensure that, as soon as reasonably practicable after taking a resolution action, resolution authorities comply with the requirements laid down in paragraphs 2, 3 and 4.

2 The resolution authority shall notify the institution under resolution and the following authorities, if different:

- a the competent authority for the institution under resolution;

- b the competent authority of any branch of the institution under resolution;
- c the central bank;
- d the deposit guarantee scheme to which the credit institution under resolution is affiliated;
- e the body in charge of the resolution financing arrangements;
- f where applicable, the group-level resolution authority;
- g the competent ministry;
- h where the institution under resolution is subject to supervision on a consolidated basis under Chapter 3 of Title VII of Directive 2013/36/EU, the consolidating supervisor;
- i the designated national macroprudential authority and the ESRB;
- j the Commission, the European Central Bank, ESMA, the European Supervisory Authority (European Investment and Occupational Pensions Authority) ('EIOPA') established by Regulation (EU) No 1094/2010 and EBA;
- k where the institution under resolution is an institution as defined in Article 2(b) of Directive 98/26/EC, the operators of the systems in which it participates.

3 The notification referred to in paragraph 2 shall include a copy of any order or instrument by which the relevant powers are exercised and indicate the date from which the resolution action or actions are effective.

4 The resolution authority shall publish or ensure the publication of a copy of the order or instrument by which the resolution action is taken, or a notice summarising the effects of the resolution action, and in particular the effects on retail customers and, if applicable, the terms and period of suspension or restriction referred to in Articles 69, 70 and 71, by the following means:

- a on its official website;
- b on the website of the competent authority, if different from the resolution authority, and on the website of EBA;
- c on the website of the institution under resolution;
- d where the shares, other instruments of ownership or debt instruments of the institution under resolution are admitted to trading on a regulated market, the means used for the disclosure of regulated information concerning the institution under resolution in accordance with Article 21(1) of Directive 2004/109/EC of the European Parliament and of the Council⁽¹⁾.

5 If the shares, instruments of ownership or debt instruments are not admitted to trading on a regulated market, the resolution authority shall ensure that the documents providing proof of the instruments referred to in paragraph 4 are sent to the shareholders and creditors of the institution under resolution that are known through the registers or databases of the institution under resolution which are available to the resolution authority.

Article 84

Confidentiality

1 The requirements of professional secrecy shall be binding in respect of the following persons:

- a resolution authorities;
- b competent authorities and EBA;
- c competent ministries;

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- d special managers or temporary administrators appointed under this Directive;
- e potential acquirers that are contacted by the competent authorities or solicited by the resolution authorities, irrespective of whether that contact or solicitation was made as preparation for the use of the sale of business tool, and irrespective of whether the solicitation resulted in an acquisition;
- f auditors, accountants, legal and professional advisors, valuers and other experts directly or indirectly engaged by the resolution authorities, competent authorities, competent ministries or by the potential acquirers referred to in point (e);
- g bodies which administer deposit guarantee schemes;
- h bodies which administer investor compensation schemes;
- i the body in charge of the resolution financing arrangements;
- j central banks and other authorities involved in the resolution process;
- k a bridge institution or an asset management vehicle;
- l any other persons who provide or have provided services directly or indirectly, permanently or occasionally, to persons referred to in points (a) to (k);
- m senior management, members of the management body, and employees of the bodies or entities referred to in points (a) to (k) before, during and after their appointment.

2 With a view to ensuring that the confidentiality requirements laid down in paragraphs 1 and 3 are complied with, the persons in points (a), (b), (c), (g), (h), (j) and (k) of paragraph 1 shall ensure that there are internal rules in place, including rules to secure secrecy of information between persons directly involved in the resolution process.

3 Without prejudice to the generality of the requirements under paragraph 1, the persons referred to in that paragraph shall be prohibited from disclosing confidential information received during the course of their professional activities or from a competent authority or resolution authority in connection with its functions under this Directive, to any person or authority unless it is in the exercise of their functions under this Directive or in summary or collective form such that individual institutions or entities referred to in point (b), (c) or (d) of Article 1(1) cannot be identified or with the express and prior consent of the authority or the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) which provided the information.

Member States shall ensure that no confidential information is disclosed by the persons referred to in paragraph 1 and that the possible effects of disclosing information on the public interest as regards financial, monetary or economic policy, on the commercial interests of natural and legal persons, on the purpose of inspections, on investigations and on audits, are assessed.

The procedure for checking the effects of disclosing information shall include a specific assessment of the effects of any disclosure of the contents and details of recovery and resolution plan as referred to in Articles 5, 7, 10, 11 and 12 and the result of any assessment carried out under Articles 6, 8 and 15.

Any person or entity referred to in paragraph 1 shall be subject to civil liability in the event of an infringement of this Article, in accordance with national law.

- 4 This Article shall not prevent:
- a employees and experts of the bodies or entities referred to in points (a) to (j) of paragraph 1 from sharing information among themselves within each body or entity; or
 - b resolution authorities and competent authorities, including their employees and experts, from sharing information with each other and with other Union resolution authorities, other Union competent authorities, competent ministries, central banks, deposit

guarantee schemes, investor compensation schemes, authorities responsible for normal insolvency proceedings, authorities responsible for maintaining the stability of the financial system in Member States through the use of macroprudential rules, persons charged with carrying out statutory audits of accounts, EBA, or, subject to Article 98, third-country authorities that carry out equivalent functions to resolution authorities, or, subject to strict confidentiality requirements, to a potential acquirer for the purposes of planning or carrying out a resolution action.

5 Notwithstanding any other provision of this Article, Member States may authorise the exchange of information with any of the following:

- a subject to strict confidentiality requirements, any other person where necessary for the purposes of planning or carrying out a resolution action;
- b parliamentary enquiry committees in their Member State, courts of auditors in their Member State and other entities in charge of enquiries in their Member State, under appropriate conditions; and
- c national authorities responsible for overseeing payment systems, the authorities responsible for normal insolvency proceedings, the authorities entrusted with the public duty of supervising other financial sector entities, the authorities responsible for the supervision of financial markets and insurance undertakings and inspectors acting on their behalf, the authorities of Member States responsible for maintaining the stability of the financial system in Member States through the use of macroprudential rules, the authorities responsible for protecting the stability of the financial system, and persons charged carrying out statutory audits;

6 This Article shall be without prejudice to national law concerning the disclosure of information for the purpose of legal proceedings in criminal or civil cases.

7 EBA shall, by 3 July 2015, issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 to specify how information should be provided in summary or collective form for the purposes of paragraph 3.

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- (1) Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38).