# 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 VII U.K.

## FINANCING ARRANGEMENTS

### *Article 99* U.K.

### European system of financing arrangements

A European system of financing arrangements shall be established and shall consist of:

(a) national financing arrangements established in accordance with Article 100;

(b) the borrowing between national financing arrangements as specified in Article 106,

(c) the mutualisation of national financing arrangements in the case of a group resolution as referred to in Article 107.

### *Article 100* U.K.

### Requirement to establish resolution financing arrangements

1 Member States shall establish one or more financing arrangements for the purpose of ensuring the effective application by the resolution authority of the resolution tools and powers.

Member States shall ensure that the use of the financing arrangements may be triggered by a designated public authority or authority entrusted with public administrative powers.

The financing arrangements shall be used only in accordance with the resolution objectives and the principles set out in Articles 31 and 34.

2 Member States may use the same administrative structure as their financing arrangements for the purposes of their deposit guarantee scheme.

3 Member States shall ensure that the financing arrangements have adequate financial resources.

4 For the purpose of paragraph 3, financing arrangements shall in particular have the power to:

a raise *ex-ante* contributions as referred to in Article 103 with a view to reaching the target level specified in Article 102;

b raise *ex-post* extraordinary contributions as referred to in Article 104 where the contributions specified in point (a) are insufficient; and

c contract borrowings and other forms of support as referred to in Article 105.

5 Save where permitted under paragraph 6, each Member State shall establish its national financing arrangements through a fund, the use of which may be triggered by its resolution authority for the purposes set out in Article 101(1).

6 Notwithstanding paragraph 5 of this Article, a Member State may, for the purpose of fulfilling its obligations under paragraph 1 of this Article, establish its national financing arrangements through mandatory contributions from institutions which are authorised in its territory, which contributions are based on the criteria referred to in Article 103(7) and which are not held through a fund controlled by its resolution authority provided that all of the following conditions are met:

a the amount raised by contributions is at least equal to the amount that is required to be raised under Article 102;

b the Member State's resolution authority is entitled to an amount that is equal to the amount of such contributions, which the Member State makes immediately available to that resolution authority upon the latter's request, for use exclusively for the purposes set out in Article 101;

c the Member State notifies the Commission of its decision to avail itself of the discretion to structure its financing arrangements in accordance with this paragraph;

d the Member State notifies the Commission of the amount referred to in point (b) at least annually; and

e save as laid down in this paragraph, the financing arrangements comply with Articles 99 to 102, Article 103(1) to (4) and (6) and Articles 104 to 109.

For the purposes of this paragraph, the available financial means to be taken into account in order to reach the target level specified in Article 102 may include mandatory contributions from any scheme of mandatory contributions established by a Member State at any date between 17 June 2010 and 2 July 2014 from institutions in its territory for the purposes of covering the costs relating to systemic risk, failure and resolution of institutions, provided that the Member State complies with this Title. Contributions to deposit guarantee schemes shall not count towards the target level for resolution financing arrangements set out in Article 102.

*Article 101* U.K.

**Use of the resolution financing arrangements**

1 The financing arrangements established in accordance with Article 100 may be used by the resolution authority only to the extent necessary to ensure the effective application of the resolution tools, for the following purposes:

a to guarantee the assets or the liabilities of the institution under resolution, its subsidiaries, a bridge institution or an asset management vehicle;

b to make loans to the institution under resolution, its subsidiaries, a bridge institution or an asset management vehicle;

c to purchase assets of the institution under resolution;

d to make contributions to a bridge institution and an asset management vehicle;

e to pay compensation to shareholders or creditors in accordance with Article 75;

f to make a contribution to the institution under resolution in lieu of the write down or conversion of liabilities of certain creditors, when the bail-in tool is applied and the resolution authority decides to exclude certain creditors from the scope of bail-in in accordance with Article 44(3) to (8);

g to lend to other financing arrangements on a voluntary basis in accordance with Article 106;

h to take any combination of the actions referred to in points (a) to (g).

The financing arrangements may be used to take the actions referred to in the first subparagraph also with respect to the purchaser in the context of the sale of business tool.

2 The resolution financing arrangement shall not be used directly to absorb the losses of an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) or to recapitalise such an institution or an entity. In the event that the use of the resolution financing arrangement for the purposes in paragraph 1 of this Article indirectly results in part of the losses of an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) being passed on to the resolution financing arrangement, the principles governing the use of the resolution financing arrangement set out in Article 44 shall apply.

*Article 102* U.K.

**Target level**

1 Member States shall ensure that, by 31 December 2024, the available financial means of their financing arrangements reach at least 1 % of the amount of covered deposits of all the institutions authorised in their territory. Member States may set target levels in excess of that amount.

2 During the initial period of time referred to in paragraph 1, contributions to the financing arrangements raised in accordance with Article 103 shall be spread out in time as evenly as possible until the target level is reached, but with due account of the phase of the business cycle and the impact pro-cyclical contributions may have on the financial position of contributing institutions.

Member States may extend the initial period of time for a maximum of four years if the financing arrangements have made cumulative disbursements in excess of 0,5 % of covered deposits of all the institutions authorised in their territory which are guaranteed under Directive 2014/49/EU.

3 If, after the initial period of time referred to in paragraph 1, the available financial means diminish below the target level specified in that paragraph, the regular contributions raised in accordance with Article 103 shall resume until the target level is reached. After the target level has been reached for the first time and where the available financial means have subsequently been reduced to less than two thirds of the target level, those contributions shall be set at a level allowing for reaching the target level within six years.

The regular contribution shall take due account of the phase of the business cycle, and the impact procyclical contributions may have when setting annual contributions in the context of this paragraph.

4 EBA shall submit a report to the Commission by 31 October 2016 with recommendations on the appropriate reference point for setting the target level for resolution financing arrangements, and in particular whether total liabilities constitute a more appropriate basis than covered deposits.

5 Based on the results of the report referred to in paragraph 4, the Commission shall, if appropriate, submit, by 31 December 2016, to the European Parliament and to the Council a legislative proposal on the basis for the target level for resolution financing arrangements.

*Article 103* U.K.

**Ex-ante contributions**

1 In order to reach the target level specified in Article 102, Member States shall ensure that contributions are raised at least annually from the institutions authorised in their territory including Union branches.

2 The contribution of each institution shall be pro rata to the amount of its liabilities (excluding own funds) less covered deposits, with respect to the aggregate liabilities (excluding own funds) less covered deposits of all the institutions authorised in the territory of the Member State.

Those contributions shall be adjusted in proportion to the risk profile of institutions, in accordance with the criteria adopted under paragraph 7.

3 The available financial means to be taken into account in order to reach the target level specified in Article 102 may include irrevocable payment commitments which are fully backed by collateral of low risk assets unencumbered by any third party rights, at the free disposal and earmarked for the exclusive use by the resolution authorities for the purposes specified in Article 101(1). The share of irrevocable payment commitments shall not exceed 30 % of the total amount of contributions raised in accordance with this Article.

4 Member States shall ensure that the obligation to pay the contributions specified in this Article is enforceable under national law, and that due contributions are fully paid.

Member States shall set up appropriate regulatory, accounting, reporting and other obligations to ensure that due contributions are fully paid. Member States shall ensure measures for the proper verification of whether the contributions have been paid correctly. Member States shall ensure measures to prevent evasion, avoidance and abuse.

5 The amounts raised in accordance with this Article shall only be used for the purposes specified in Article 101(1).

6 Subject to Articles 37, 38, 40, 41 and 42, the amounts received from the institution under resolution or the bridge institution, the interest and other earnings on investments and any other earnings may benefit the financing arrangements.

7 The Commission shall be empowered to adopt delegated acts in accordance with Article 115 in order to specify the notion of adjusting contributions in proportion to the risk profile of institutions as referred to in paragraph 2 of this Article, taking into account all of the following:

a the risk exposure of the institution, including the importance of its trading activities, its off-balance sheet exposures and its degree of leverage;

b the stability and variety of the company’s sources of funding and unencumbered highly liquid assets;

c the financial condition of the institution;

d the probability that the institution enters into resolution;

e the extent to which the institution has previously benefited from extraordinary public financial support;

f the complexity of the structure of the institution and its resolvability;

g the importance of the institution to the stability of the financial system or economy of one or more Member States or of the Union;

h the fact that the institution is part of an IPS.

8 The Commission shall be empowered to adopt delegated acts in accordance with Article 115 in order to specify:

a the registration, accounting, reporting obligations and other obligations referred to in paragraph 4 intended to ensure that the contributions are in fact paid;

b the measures referred to in paragraph 4 to ensure proper verification of whether the contributions have been paid correctly.

*Article 104* U.K.

**Extraordinary ex-post contributions**

1 Where the available financial means are not sufficient to cover the losses, costs or other expenses incurred by the use of the financing arrangements, Member States shall ensure that extraordinary *ex-post* contributions are raised from the institutions authorised in their territory, in order to cover the additional amounts. Those extraordinary *ex-post* contributions shall be allocated between institutions in accordance with the rules laid down in Article 103(2).

Extraordinary *ex-post* contributions shall not exceed three times the annual amount of contributions determined in accordance with Article 103.

2 Article 103(4) to (8) shall be applicable to the contributions raised under this Article.

3 The resolution authority may defer, in whole or in part, an institution's payment of extraordinary *ex-post* contributions to the resolution financing arrangement if the payment of those contributions would jeopardise the liquidity or solvency of the institution. Such a deferral shall not be granted for a period of longer than six months but may be renewed upon the request of the institution. The contributions deferred pursuant to this paragraph shall be paid when such a payment no longer jeopardises the institution's liquidity or solvency.

4 The Commission shall be empowered to adopt delegated acts in accordance with Article 115 to specify the circumstances and conditions under which the payment of contributions by an institution may be deferred pursuant to paragraph 3 of this Article.

*Article 105* U.K.

**Alternative funding means**

Member States shall ensure that financing arrangements under their jurisdiction are enabled to contract borrowings or other forms of support from institutions, financial institutions or other third parties in the event that the amounts raised in accordance with Article 103 are not sufficient to cover the losses, costs or other expenses incurred by the use of the financing arrangements, and the extraordinary *ex-post* contributions provided for in Article 104 are not immediately accessible or sufficient.

*Article 106* U.K.

**Borrowing between financing arrangements**

1 Member States shall ensure that financing arrangements under their jurisdiction may make a request to borrow from all other financing arrangements within the Union, in the event that:

a the amounts raised under Article 103 are not sufficient to cover the losses, costs or other expenses incurred by the use of the financing arrangements;

b the extraordinary *ex-post* contributions provided for in Article 104 are not immediately accessible; and

c the alternative funding means provided for in Article 105 are not immediately accessible on reasonable terms.

2 Member States shall ensure that financing arrangements under their jurisdiction have the power to lend to other financing arrangements within the Union in the circumstances specified in paragraph 1.

3 Following a request under paragraph 1, each of the other financing arrangements in the Union shall decide whether to lend to the financing arrangement which has made the request. Member States may require that that decision is taken after consulting, or with the consent of, the competent ministry or the government. The decision shall be taken with due urgency.

4 The rate of interest, repayment period and other terms and conditions of the loans shall be agreed between the borrowing financing arrangement and the other financing arrangements which have decided to participate. The loan of every participating financing arrangement shall have the same interest rate, repayment period and other terms and conditions, unless all participating financing arrangements agree otherwise.

5 The amount lent by each participating resolution financing arrangement shall be pro rata to the amount of covered deposits in the Member State of that resolution financing arrangement, with respect to the aggregate of covered deposits in the Member States of participating resolution financing arrangements. Those rates of contribution may vary upon agreement of all participating financing arrangements.

6 An outstanding loan to a resolution financing arrangement of another Member State under this Article shall be treated as an asset of the resolution financing arrangement which provided the loan and may be counted towards that financing arrangement's target level.

*Article 107* U.K.

**Mutualisation of national financing arrangements in the case of a group resolution**

1 Member States shall ensure that, in the case of a group resolution as referred to in Article 91 or Article 92, the national financing arrangement of each institution that is part of a group contributes to the financing of the group resolution in accordance with this Article.

2 For the purposes of paragraph 1, the group-level resolution authority, after consulting the resolution authorities of the institutions that are part of the group, shall propose, if necessary before taking any resolution action, a financing plan as part of the group resolution scheme provided for in Articles 91 and 92.

The financing plan shall be agreed in accordance with the decision-making procedure referred to in Articles 91 and 92.

3 The financing plan shall include:

a a valuation in accordance with Article 36 in respect of the affected group entities;

b the losses to be recognised by each affected group entity at the moment the resolution tools are exercised;

c for each affected group entity, the losses that would be suffered by each class of shareholders and creditors;

d any contribution that deposit guarantee schemes would be required to make in accordance with Article 109(1);

e the total contribution by resolution financing arrangements and the purpose and form of the contribution;

f the basis for calculating the amount that each of the national financing arrangements of the Member States where affected group entities are located is required to contribute to the financing of the group resolution in order to build up the total contribution referred to in point (e);

g the amount that the national financing arrangement of each affected group entity is required to contribute to the financing of the group resolution and the form of those contributions;

h the amount of borrowing that the financing arrangements of the Member States where the affected group entities are located, will contract from institutions, financial institutions and other third parties under Article 105;

i a timeframe for the use of the financing arrangements of the Member States where the affected group entities are located, which should be capable of being extended where appropriate.

4 The basis for apportioning the contribution referred to in point (e) of paragraph 3 shall be consistent with paragraph 5 of this Article and with the principles set out in the group resolution plan in accordance with point (f) of Article 12(3), unless otherwise agreed in the financing plan.

5 Unless agreed otherwise in the financing plan, the basis for calculating the contribution of each national financing arrangement shall in particular have regard to:

a the proportion of the group's risk-weighted assets held at institutions and entities referred to in points (b), (c) and (d) of Article 1(1) established in the Member State of that resolution financing arrangement;

b the proportion of the group's assets held at institutions and entities referred to in points (b), (c) and (d) of Article 1(1) established in the Member State of that resolution financing arrangement;

c the proportion of the losses, which have given rise to the need for group resolution, which originated in group entities under the supervision of competent authorities in the Member State of that resolution financing arrangement; and

d the proportion of the resources of the group financing arrangements which, under the financing plan, are expected to be used to benefit group entities established in the Member State of that resolution financing arrangement directly.

6 Member States shall establish rules and procedures in advance to ensure that each national financing arrangement can effect its contribution to the financing of group resolution immediately without prejudice to paragraph 2.

7 For the purpose of this Article, Member States shall ensure that group financing arrangements are allowed, under the conditions laid down in Article 105, to contract borrowings or other forms of support, from institutions, financial institutions or other third parties.

8 Member States shall ensure that national financing arrangements under their jurisdiction may guarantee any borrowing contracted by the group financing arrangements in accordance with paragraph 7.

9 Member States shall ensure that any proceeds or benefits that arise from the use of the group financing arrangements are allocated to national financing arrangements in accordance with their contributions to the financing of the resolution as established in paragraph 2.

## *[F1 Article 108* U.K.

### Ranking in insolvency hierarchy

1 Member States shall ensure that in their national laws governing normal insolvency proceedings:

a the following have the same priority ranking which is higher than the ranking provided for the claims of ordinary unsecured creditors:

(i) that part of eligible deposits from natural persons and micro, small and medium-sized enterprises which exceeds the coverage level provided for in Article 6 of Directive 2014/49/EU;

(ii) deposits that would be eligible deposits from natural persons and micro, small and medium-sized enterprises were they not made through branches located outside the Union of institutions established within the Union;

b the following have the same priority ranking which is higher than the ranking provided for under point (a):

(i) covered deposits;

(ii) deposit guarantee schemes subrogating to the rights and obligations of covered depositors in insolvency.

2 Member States shall ensure that, for entities referred to in points (a) to (d) of the first subparagraph of Article 1(1), ordinary unsecured claims have, in their national laws governing normal insolvency proceedings, a higher priority ranking than that of unsecured claims resulting from debt instruments that meet the following conditions:

a the original contractual maturity of the debt instruments is of at least one year;

b the debt instruments contain no embedded derivatives and are not derivatives themselves;

c the relevant contractual documentation and, where applicable, the prospectus related to the issuance explicitly refer to the lower ranking under this paragraph.

3 Member States shall ensure that unsecured claims resulting from debt instruments that meet the conditions laid down in points (a), (b) and (c) of paragraph 2 of this Article have a higher priority ranking in their national laws governing normal insolvency proceedings than the priority ranking of claims resulting from instruments referred to in points (a) to (d) of Article 48(1).

4 Without prejudice to paragraphs 5 and 7, Member States shall ensure that their national laws governing normal insolvency proceedings as they were adopted at 31 December 2016

apply to the ranking in normal insolvency proceedings of unsecured claims resulting from debt instruments issued by entities referred to in points (a) to (d) of the first subparagraph of Article 1(1) of this Directive prior to the date of entry into force of measures under national law transposing Directive (EU) 2017/2399 of the European Parliament and of the Council[(1)].

5 Where, after 31 December 2016 and before 28 December 2017, a Member State adopted a national law governing the ranking in normal insolvency proceedings of unsecured claims resulting from debt instruments issued after the date of application of such national law, paragraph 4 of this Article shall not apply to claims resulting from debt instruments issued after the date of application of that national law, provided that all of the following conditions are met:

a under that national law, and for entities referred to in points (a) to (d) of the first subparagraph of Article 1(1), ordinary unsecured claims have, in normal insolvency proceedings, a higher priority ranking than that of unsecured claims resulting from debt instruments that meet the following conditions:

(i) the original contractual maturity of the debt instruments is of at least one year;

(ii) the debt instruments contain no embedded derivatives and are not derivatives themselves; and

(iii) the relevant contractual documentation and, where applicable, the prospectus related to the issuance explicitly refer to the lower ranking under the national law;

b under that national law, unsecured claims resulting from debt instruments that meet the conditions laid down in point (a) of this subparagraph have, in normal insolvency proceedings, a higher priority ranking than the priority ranking of claims resulting from instruments referred to in points (a) to (d) of Article 48(1).

On the date of entry into force of measures under national law transposing Directive (EU) 2017/2399, the unsecured claims resulting from debt instruments referred to in point (b) of the first subparagraph shall have the same priority ranking as the one referred to in points (a), (b) and (c) of paragraph 2 and in paragraph 3 of this Article.

6 For the purposes of point (b) of paragraph 2 and point (a)(ii) of the first subparagraph of paragraph 5, debt instruments with variable interest derived from a broadly used reference rate and debt instruments not denominated in the domestic currency of the issuer, provided that principal, repayment and interest are denominated in the same currency, shall not be considered to be debt instruments containing embedded derivatives solely because of those features.

7 Member States that, prior to 31 December 2016, adopted a national law governing normal insolvency proceedings whereby ordinary unsecured claims resulting from debt instruments issued by entities referred to in points (a) to (d) of the first subparagraph of Article 1(1) are split into two or more different priority rankings, or whereby the priority ranking of ordinary unsecured claims resulting from such debt instruments is changed in relation to all other ordinary unsecured claims of the same ranking, may provide that debt instruments with the lowest priority ranking among those ordinary unsecured claims have the same ranking as that of claims that meet the conditions of points (a), (b) and (c) of paragraph 2 and of paragraph 3 of this Article.**]**

**Textual Amendments**

**F1** Substituted by Directive (EU) 2017/2399 of the European Parliament and of the Council of 12 December 2017 amending Directive 2014/59/EU as regards the ranking of unsecured debt instruments in insolvency hierarchy.

*Article 109* U.K.

**Use of deposit guarantee schemes in the context of resolution**

1 Member States shall ensure that, where the resolution authorities take resolution action, and provided that that action ensures that depositors continue to have access to their deposits, the deposit guarantee scheme to which the institution is affiliated is liable for:

a when the bail-in tool is applied, the amount by which covered deposits would have been written down in order to absorb the losses in the institution pursuant to point (a) of Article 46(1), had covered deposits been included within the scope of bail-in and been written down to the same extent as creditors with the same level of priority under the national law governing normal insolvency proceedings; or

b when one or more resolution tools other than the bail-in tool is applied, the amount of losses that covered depositors would have suffered, had covered depositors suffered losses in proportion to the losses suffered by creditors with the same level of priority under the national law governing normal insolvency proceedings.

In all cases, the liability of the deposit guarantee scheme shall not be greater than the amount of losses that it would have had to bear had the institution been wound up under normal insolvency proceedings.

When the bail-in tool is applied, the deposit guarantee scheme shall not be required to make any contribution towards the costs of recapitalising the institution or bridge institution pursuant to point (b) of Article 46(1).

Where it is determined by a valuation under Article 74 that the deposit guarantee scheme's contribution to resolution was greater than the net losses it would have incurred had the institution been wound up under normal insolvency proceedings, the deposit guarantee scheme shall be entitled to the payment of the difference from the resolution financing arrangement in accordance with Article 75.

2 Member States shall ensure that the determination of the amount by which the deposit guarantee scheme is liable in accordance with paragraph 1 of this Article complies with the conditions referred to in Article 36.

3 The contribution from the deposit guarantee scheme for the purpose of paragraph 1 shall be made in cash.

4 Where eligible deposits at an institution under resolution are transferred to another entity through the sale of business tool or the bridge institution tool, the depositors have no claim under Directive 2014/49/EU against the deposit guarantee scheme in relation to any part of their deposits at the institution under resolution that are not transferred, provided that the amount of funds transferred is equal to or more than the aggregate coverage level provided for in Article 6 of Directive 2014/49/EU.

5 Notwithstanding paragraphs 1 to 4, if the available financial means of a deposit guarantee scheme are used in accordance therewith and are subsequently reduced to less than two thirds of the target level of the deposit guarantee scheme, the regular contribution to the deposit guarantee scheme shall be set at a level allowing for reaching the target level within six years.

In all cases, the liability of a deposit guarantee scheme shall not be greater than the amount equal to 50 % of its target level pursuant to Article 10 of Directive 2014/49/EU.

Member States, may, by taking into account the specificities of their national banking sector, set a percentage which is higher than 50 %.

In any circumstances, the deposit guarantee scheme's participation under this Directive shall not exceed the losses it would have incurred in a winding up under normal insolvency proceedings.

**(1)** **[**[F1]Directive (EU) 2017/2399 of the European Parliament and of the Council of 12 December 2017 amending Directive 2014/59/EU as regards the ranking of unsecured debt instruments in insolvency hierarchy (OJ L 345, 27.12.2017, p. 96).**]**

**Textual Amendments**

**F1** Substituted by Directive (EU) 2017/2399 of the European Parliament and of the Council of 12 December 2017 amending Directive 2014/59/EU as regards the ranking of unsecured debt instruments in insolvency hierarchy.