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STATUTORY INSTRUMENTS

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**2014 No. 3348**

**The Bank Recovery and Resolution (No. 2) Order 2014**

**PART 8**

Early intervention

CHAPTER 1

Early intervention with respect to an institution

**Interpretation of Chapter 1**

**107.** In this Chapter—

“measure for early intervention” means a measure which may be taken by the PRA or FCA in exercise of its powers under FSMA with the object of addressing the conditions referred to in Article 27.1 of the recovery and resolution directive for which a competent authority is to have at its disposal the measures set out in sub-paragraphs (a) to (h) of that Article (“conditions for early intervention”); and

“relevant institution” means an institution which is authorised by the PRA or FCA and is not part of a group subject to supervision on a consolidated basis in accordance with Article 111 of the capital requirements directive .

**Notice that institution meets the conditions for early intervention**

**108.** The appropriate regulator must notify the Bank without delay if it determines that a relevant institution meets the conditions for early intervention.

**Deadline for compliance with measure for early intervention**

**109.** The appropriate regulator may not take a measure for early intervention in respect of a relevant institution without prescribing a date before which the action required to be taken in compliance with the measure is to be completed.

CHAPTER 2

Early intervention with respect to groups where the PRA or FCA is the consolidating supervisor

**Application and interpretation of Chapter 2**

**110.—(1)** This Chapter applies where the PRA or FCA is the consolidating supervisor in relation to a relevant group.

(2) In this Chapter—

“measure for early intervention”—

(a) in relation to a UK group entity, has the same meaning as in Chapter 1;

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(b) in relation to a non-UK group entity, means a measure of a kind specified in subparagraphs (a) to (h) of Article 27.1 of the recovery and resolution directive;

“non-UK group entity” means—

- (a) the EEA parent undertaking, if it is set up in another EEA State;
- (b) a group subsidiary which is an institution set up in another EEA State; and

“UK group entity” means—

- (a) the EEA parent undertaking, if it is set up in the United Kingdom;
- (b) a group subsidiary which is an institution authorised by the PRA or FCA.

### **Procedure for early intervention in respect of a UK group entity**

**111.**—(1) This article applies where the appropriate regulator proposes to take a measure for early intervention in respect of a UK group entity.

(2) The appropriate regulator must without delay give notice of its proposal to the Bank, the relevant competent authorities and the EBA.

(3) The appropriate regulator may not take a measure for early intervention in respect of a UK group entity without—

- (a) allowing three days, beginning with the day on which it gives notice under paragraph (2), for consultation with the relevant competent authorities about the proposal; and
- (b) taking account of the potential impact of the measure on group entities set up in another EEA State and the stability of the financial system of that State.

(4) The appropriate regulator must give the recipients of a notice given under paragraph (2) notice of a decision to take a measure for early intervention in respect of a UK group entity.

(5) The appropriate regulator may not take a measure for early intervention without prescribing a date before which the action required to be taken in compliance with the measure is to be completed.

(6) The appropriate regulator must give the UK group entity referred to in a notice given under paragraph (4) and the EEA parent undertaking, if it is not the entity concerned, written notice of its decision to take a measure for early intervention, including a reasoned account of the decision.

### **Procedure for early intervention in respect of a non-UK group entity**

**112.**—(1) This article applies where the appropriate regulator receives notice of a proposal by a relevant competent authority to take a measure for early intervention in respect of a non-UK group entity.

(2) If the appropriate regulator decides to assess the impact that the notified measure would have on any group entity or on the relevant group as a whole, it must make the assessment and send it to the relevant competent authority within three days beginning with the day on which it receives the notice referred to in paragraph (1).

### **Joint decisions about early intervention**

**113.**—(1) Where two or more competent authorities decide to take measures for early intervention, the appropriate regulator must endeavour to reach a decision jointly with the relevant competent authorities on whether to co-ordinate the implementation of such measures.

(2) The appropriate regulator must endeavour to reach a joint decision on that matter—

- (a) where it gives notice of a proposal to take a measure for early intervention in respect of a UK group entity (“UK notice”) before it receives notice of a proposal by a relevant competent authority to take a measure for early intervention in respect of a non-UK group

- entity (“non-UK notice”), within five days beginning with the date on which it receives the first non-UK notice;
- (b) where it gives a UK notice after it receives the first non-UK notice and before it receives a second non-UK notice, within five days beginning with the date on which it gives the UK notice;
  - (c) otherwise, within five days beginning with the date on which it receives a second non-UK notice.
- (3) The appropriate regulator must give the EEA parent undertaking written notice of a joint decision under this article, including a reasoned account of the decision.

### References to EBA

**114.**—(1) Where, before the end of the period referred to in article 111(3)(a) (“the consultation period”), a relevant competent authority has referred to EBA in accordance with Article 19 of the EBA Regulation any matter relating to a proposal by the appropriate regulator to take a referable measure in respect of a UK group entity, the appropriate regulator must—

- (a) defer its decision on the proposal for three days beginning with the date on which the consultation period ends; and
- (b) ensure that the decision conforms with any decision taken by EBA under Article 19.3 of the EBA Regulation within three days beginning with the date on which the consultation period ends.

(2) The appropriate regulator may, within the period referred to in article 112(2), refer to EBA in accordance with Article 19 of the EBA Regulation any matter relating to a proposal by a relevant competent authority to take a referable measure in respect of a non-UK group entity.

(3) Paragraphs (4) and (5) apply where no joint decision has been reached under article 113(1) within the period referred to in article 113(2) (“the 5 day period”).

(4) Where, before the end of the 5 day period, a relevant competent authority has referred to EBA in accordance with Article 19 of the EBA Regulation any matter relating to a proposal by the appropriate regulator to take a referable measure in respect of a UK group entity, the appropriate regulator must—

- (a) defer its decision on the proposal for three days beginning with the date on which the 5 day period ends; and
- (b) ensure that the decision conforms with any decision taken by EBA under Article 19.3 of the EBA Regulation within three days beginning with the date on which the 5 day period ends.

(5) The appropriate regulator may, within the 5 day period, refer to EBA in accordance with Article 19 of the EBA Regulation any matter relating to a proposal by a relevant competent authority to take a referable measure in respect of a non-UK group entity.

(6) For the purposes of a reference to EBA of a matter to which paragraph (4) or (5) refers the 5 day period is deemed to be the conciliation phase referred to in Article 19.2 of the EBA Regulation.

(7) In this article “referable measure” means a measure for early intervention which is also—

- (a) a measure of the kind specified in sub-paragraph (a) of Article 27.1 of the recovery and resolution directive relating to information included in a recovery plan or group recovery plan by virtue of points (4), (10), (11) and (19) of Section A of the Annex to that directive (information to be included in recovery plans); or
- (b) a measure of the kind specified in sub-paragraph (e) or (g) of Article 27.1 of that directive.

## **Requesting the assistance of EBA**

**115.** The appropriate regulator may ask EBA to assist the competent authorities in accordance with Article 31(c) of the EBA Regulation to reach a joint decision on the matter referred to in article 113(1).

## **CHAPTER 3**

Early intervention with respect to groups where neither  
the PRA nor the FCA is the consolidating supervisor

### **Application and interpretation of Chapter 3**

**116.—**(1) This Chapter applies where neither the PRA nor the FCA is the consolidating supervisor in relation to a relevant group.

(2) In this Chapter “measure for early intervention” and “UK group entity” have the same meaning for the relevant group as they have for a relevant group in Chapter 2.

### **Procedure for early intervention in respect of a UK group entity**

**117.—**(1) This article applies where the appropriate regulator proposes to take a measure for early intervention in respect of a UK group entity.

(2) The appropriate regulator must without delay give notice of its proposal to the Bank, other relevant competent authorities, the consolidating supervisor and the EBA.

(3) The appropriate regulator must not take a measure for early intervention in respect of a UK group entity without—

- (a) allowing three days, beginning with the day on which it gives notice under paragraph (2), for consultation with the consolidating supervisor about the proposal; and
- (b) taking account of—
  - (i) any assessment by the consolidating supervisor of the impact that the measure would have on any group entity or on the relevant group as a whole; and
  - (ii) the potential impact of the measure on group entities set up in another EEA State and the stability of the financial system of that State.

(4) The appropriate regulator must give the recipients of a notice given under paragraph (2) notice of a decision to take a measure for early intervention in respect of a UK group entity.

(5) The appropriate regulator may not take a measure for early intervention in respect of a UK group entity without prescribing a date before which the action required to be taken in compliance with the measure is to be completed.

(6) The appropriate regulator must give the UK group entity referred to in a notice given under paragraph (4) and the EEA parent undertaking, if it is not the entity concerned, written notice of its decision to take a measure for early intervention, including a reasoned account of the decision.

### **Joint decisions about early intervention**

**118.—**(1) Where the appropriate regulator and one or more other competent authorities decide to take measures for early intervention, the appropriate regulator must endeavour to reach a decision jointly with those authorities on whether to co-ordinate the implementation of such measures.

(2) The appropriate regulator must endeavour to reach a joint decision on that matter within five days beginning with the date on which it receives notice from the consolidating supervisor that one or more other competent authorities have decided to take measures for early intervention.

## References to EBA

**119.**—(1) Where, before the end of the period referred to in article 117(3)(a) (“the consultation period”), the consolidating supervisor has referred to EBA in accordance with Article 19 of the EBA Regulation any matter relating to a proposal by the appropriate regulator to take a referable measure in respect of a UK group entity, the appropriate regulator must—

- (a) defer its decision on the proposal for three days beginning with the date on which the consultation period ends; and
- (b) ensure that the decision conforms with any decision taken by EBA under Article 19.3 of the EBA Regulation within three days beginning with the date on which the consultation period ends.

(2) Paragraphs (3) and (4) apply where no joint decision has been reached under article 118(1) within the period referred to in article 118(2) (“the 5 day period”).

(3) Where, before the end of the 5 day period, another competent authority has referred to EBA in accordance with Article 19 of the EBA Regulation any matter relating to a proposal by the appropriate regulator to take a referable measure in respect of a UK group entity, the appropriate regulator must—

- (a) defer its decision on the proposal for three days beginning with the date on which the 5 day period ends; and
- (b) ensure that the decision conforms with any decision taken by EBA under Article 19.3 of the EBA Regulation within three days beginning with the date on which the 5 day period ends.

(4) The appropriate regulator may, within the 5 day period, refer to EBA in accordance with Article 19 of the EBA Regulation any matter relating to a proposal by another competent authority to take a referable measure in respect of a group entity.

(5) For the purposes of a reference to EBA of a matter to which paragraph (3) or (4) refers the 5 day period is deemed to be the conciliation phase referred to in Article 19.2 of the EBA Regulation.

(6) In this article “referable measure” has the same meaning as in article 114(7).

## Requesting the assistance of EBA

**120.** The appropriate regulator may ask EBA to assist the competent authorities in accordance with Article 31(c) of the EBA Regulation to reach a joint decision on the matter referred to in article 118(1).

**Status:**

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**Changes to legislation:**

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