

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 II

### PREPARATION

#### CHAPTER III

##### *Intra group financial support*

###### *Article 19*

##### **Group financial support agreement**

1 Member States shall ensure that a parent institution in a Member State, a Union parent institution, or an entity referred to in point (c) or (d) of Article 1(1) and its subsidiaries in other Member States or third countries that are institutions or financial institutions covered by the consolidated supervision of the parent undertaking, may enter into an agreement to provide financial support to any other party to the agreement that meets the conditions for early intervention pursuant to Article 27, provided that the conditions laid down in this Chapter are also met.

2 This Chapter does not apply to intra-group financial arrangements including funding arrangements and the operation of centralised funding arrangements provided that none of the parties to such arrangements meets the conditions for early intervention.

3 A group financial support agreement shall not constitute a prerequisite:

- a to provide group financial support to any group entity that experiences financial difficulties if the institution decides to do so, on a case-by-case basis and according to the group policies if it does not represent a risk for the whole group; or
- b to operate in a Member State.

4 Member States shall remove any legal impediment in national law to intra-group financial support transactions that are undertaken in accordance with this Chapter, provided that nothing in this Chapter shall prevent Member States from imposing limitations on intra-group transactions in connection with national laws exercising the options provided for in Regulation (EU) No 575/2013, transposing Directive 2013/36/EU or requiring the separation of parts of a group or activities carried on within a group for reasons of financial stability.

5 The group financial support agreement may:

- a cover one or more subsidiaries of the group, and may provide for financial support from the parent undertaking to subsidiaries, from subsidiaries to the parent undertaking,

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between subsidiaries of the group that are party to the agreement, or any combination of those entities;

- b provide for financial support in the form of a loan, the provision of guarantees, the provision of assets for use as collateral, or any combination of those forms of financial support, in one or more transactions, including between the beneficiary of the support and a third party.

6 Where, in accordance with the terms of the group financial support agreement, a group entity agrees to provide financial support to another group entity, the agreement may include a reciprocal agreement by the group entity receiving the support to provide financial support to the group entity providing the support.

7 The group financial support agreement shall specify the principles for the calculation of the consideration, for any transaction made under it. Those principles shall include a requirement that the consideration shall be set at the time of the provision of financial support. The agreement, including the principles for calculation of the consideration for the provision of financial support and the other terms of the agreement, shall comply with the following principles:

- a each party must be acting freely in entering into the agreement;
- b in entering into the agreement and in determining the consideration for the provision of financial support, each party must be acting in its own best interests which may take account of any direct or any indirect benefit that may accrue to a party as a result of provision of the financial support;
- c each party providing financial support must have full disclosure of relevant information from any party receiving financial support prior to determination of the consideration for the provision of financial support and prior to any decision to provide financial support;
- d the consideration for the provision of financial support may take account of information in the possession of the party providing financial support based on it being in the same group as the party receiving financial support and which is not available to the market; and
- e the principles for the calculation of the consideration for the provision of financial support are not obliged to take account of any anticipated temporary impact on market prices arising from events external to the group.

8 The group financial support agreement may only be concluded if, at the time the proposed agreement is made, in the opinion of their respective competent authorities, none of the parties meets the conditions for early intervention.

9 Member States shall ensure that any right, claim or action arising from the group financial support agreement may be exercised only by the parties to the agreement, with the exclusion of third parties.