

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 V

### **[<sup>F1</sup>Write down or conversion of capital instruments and eligible liabilities]**

#### *Article 59*

### **[<sup>F1</sup>Requirement to write down or convert relevant capital instruments and eligible liabilities]**

[<sup>F1</sup> The power to write down or convert relevant capital instruments and eligible liabilities may be exercised either:

- a independently of resolution action; or
- b in combination with a resolution action, where the conditions for resolution specified in Articles 32, 32a or 33 are met.

Where relevant capital instruments and eligible liabilities have been purchased by the resolution entity indirectly through other entities in the same resolution group, the power to write down or convert those relevant capital instruments and eligible liabilities shall be exercised together with the exercise of the same power at the level of the parent undertaking of the entity concerned or at the level of other parent undertakings that are not resolution entities, so that the losses are effectively passed on to, and the entity concerned is recapitalised by, the resolution entity.

After the exercise of the power to write down or convert relevant capital instruments and eligible liabilities independently of resolution action, the valuation provided for in Article 74 shall be carried out, and Article 75 shall apply.]

[<sup>F2</sup>1a The power to write down or convert eligible liabilities independently of resolution action may be exercised only in relation to eligible liabilities that meet the conditions referred to in point (a) of Article 45f(2) of this Directive, except the condition related to the remaining maturity of liabilities as set out in Article 72c(1) of Regulation (EU) No 575/2013.

When that power is exercised, Member States shall ensure that the write-down or conversion is done in accordance with the principle referred to in point (g) of Article 34(1).

1b Where a resolution action is taken in relation to a resolution entity or, in exceptional circumstances in deviation from the resolution plan, in relation to an entity that is not a resolution entity, the amount that is reduced, written down or converted in accordance with Article 60(1)

---

*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.*

---

at the level of such an entity shall count towards the thresholds laid down in Articles 37(10) and point (a) of Article 44(5), or point (a) of Article 44(8) that apply to the entity concerned.]

2 Member States shall ensure that the resolution authorities have the power to write down or convert relevant [<sup>F1</sup>capital instruments, and eligible liabilities as referred to in paragraph 1a,] into shares or other instruments of ownership of institutions and entities referred to in points (b), (c) and (d) of Article 1(1).

[<sup>F13</sup> Member States shall require that resolution authorities exercise the write down or conversion power, in accordance with Article 60 and without delay, in relation to relevant capital instruments, and eligible liabilities as referred to in paragraph 1a, issued by an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) when one or more of the following circumstances apply:

- a where the determination has been made that the conditions for resolution specified in Articles 32, 32a, or 33 have been met, before any resolution action is taken;
- b the appropriate authority determines that unless that power is exercised in relation to the relevant capital instruments, and eligible liabilities as referred to in paragraph 1a, the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) will no longer be viable;]
- c in the case of relevant capital instruments issued by a subsidiary and where those capital instruments are recognised for the purposes of meeting own funds requirements on an individual and on a consolidated basis, the appropriate authority of the Member State of the consolidating supervisor and the appropriate authority of the Member State of the subsidiary make a joint determination taking the form of a joint decision in accordance with Article 92(3) and (4) that unless the write down or conversion power is exercised in relation to those instruments, the group will no longer be viable;
- d in the case of relevant capital instruments issued at the level of the parent undertaking and where those capital instruments are recognised for the purposes of meeting own funds requirements on an individual basis at the level of the parent undertaking or on a consolidated basis, and the appropriate authority of the Member State of the consolidating supervisor makes a determination that unless the write down or conversion power is exercised in relation to those instruments, the group will no longer be viable;
- e extraordinary public financial support is required by the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) except in any of the circumstances set out in point (d)(iii) of Article 32(4).

4 For the purposes of paragraph 3, an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) or a group shall be deemed to be no longer viable only if both of the following conditions are met:

- a the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) or the group is failing or likely to fail;
- b having regard to timing and other relevant circumstances, there is no reasonable prospect that any action, including alternative private sector measures or supervisory action (including early intervention measures), other than the write down or conversion of [<sup>F1</sup>capital instruments, or eligible liabilities as referred to in paragraph 1a], independently or in combination with a resolution action, would prevent the failure of the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) or the group within a reasonable timeframe.

5 For the purposes of point (a) of paragraph 4 of this Article, an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) shall be deemed to be failing or likely to fail where one or more of the circumstances set out in Article 32(4) occurs.

6 For the purposes of point (a) of paragraph 4, a group shall be deemed to be failing or likely to fail where the group infringes or there are objective elements to support a determination that the group, in the near future, will infringe its consolidated prudential requirements in a way that would justify action by the competent authority including but not limited to because the group has incurred or is likely to incur losses that will deplete all or a significant amount of its own funds.

7 A relevant capital instrument issued by a subsidiary shall not be written down to a greater extent or converted on worse terms pursuant to point (c) of paragraph 3 than equally ranked capital instruments at the level of the parent undertaking which have been written down or converted.

8 Where an appropriate authority makes a determination referred to in paragraph 3 of this Article, it shall immediately notify the resolution authority responsible for the institution or for the entity referred to in point (b), (c) or (d) of Article 1(1) in question, if different.

9 Before making a determination referred to in point (c) of paragraph 3 of this Article in relation to a subsidiary that issues relevant capital instruments that are recognised for the purposes of meeting the own funds requirements on an individual and on a consolidated basis, the appropriate authority shall comply with the notification and consultation requirements laid down in Article 62.

10 Before exercising the power to write down or convert [<sup>F1</sup>capital instruments, or eligible liabilities as referred to in paragraph 1a, resolution authorities shall ensure that a valuation of the assets and liabilities of the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) is carried out in accordance with Article 36. That valuation shall form the basis of the calculation of the write down to be applied to the relevant capital instruments, or eligible liabilities as referred to in paragraph 1a in order to absorb losses and the level of conversion to be applied to relevant capital instruments, or eligible liabilities as referred to in paragraph 1a] in order to recapitalise the institution or the entity referred to in point (b), (c) or (d) of Article 1(1).

#### Textual Amendments

- F2** Inserted by [Directive \(EU\) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC](#).

### Article 60

#### **[<sup>F1</sup>Provisions concerning the write down or conversion of relevant capital instruments and eligible liabilities]**

1 When complying with the requirement laid down in Article 59, resolution authorities shall exercise the write down or conversion power in accordance with the priority of claims under normal insolvency proceedings, in a way that produces the following results:

- a Common Equity Tier 1 items are reduced first in proportion to the losses and to the extent of their capacity and the resolution authority takes one or both of the actions specified in Article 47(1) in respect of holders of Common Equity Tier 1 instruments;
- b the principal amount of Additional Tier 1 instruments is written down or converted into Common Equity Tier 1 instruments or both, to the extent required to achieve the resolution objectives set out in Article 31 or to the extent of the capacity of the relevant capital instruments, whichever is lower;

---

*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.*

---

- c the principal amount of Tier 2 instruments is written down or converted into Common Equity Tier 1 instruments or both, to the extent required to achieve the resolution objectives set out in Article 31 or to the extent of the capacity of the relevant capital instruments, whichever is lower<sup>[F1]</sup>;
  - <sup>[F2]</sup>d the principal amount of eligible liabilities referred to in Article 59(1a) is written down or converted into Common Equity Tier 1 instruments or both, to the extent required to achieve the resolution objectives set out in Article 31 or to the extent of the capacity of the relevant eligible liabilities, whichever is lower.]
- <sup>[F12]</sup> Where the principal amount of a relevant capital instrument, or an eligible liability as referred to in Article 59(1a) is written down:
- a the reduction of that principal amount shall be permanent, subject to any write up in accordance with the reimbursement mechanism in Article 46(3);
  - b no liability to the holder of the relevant capital instrument, or of the eligible liability as referred to in Article 59(1a), shall remain under or in connection with that amount of the instrument, which has been written down, except for any liability already accrued, and any liability for damages that may arise as a result of an appeal challenging the legality of the exercise of the write down power;
  - c no compensation is paid to any holder of the relevant capital instruments, or of the liabilities as referred to in Article 59(1a), other than in accordance with paragraph 3 of this Article.]
- 3 <sup>[F1]</sup>In order to effect a conversion of relevant capital instruments, and eligible liabilities as referred to in Article 59(1a), under points (b), (c) and (d) of paragraph 1 of this Article, resolution authorities may require institutions and entities referred to in points (b), (c) and (d) of Article 1(1) to issue Common Equity Tier 1 instruments to the holders of the relevant capital instruments and such eligible liabilities. Relevant capital instruments and such liabilities may only be converted where the following conditions are met:]
- a those Common Equity Tier 1 instruments are issued by the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) or by a parent undertaking of the institution or the entity referred to in point (b), (c) or (d) of Article 1(1), with the agreement of the resolution authority of the institution or the entity referred to in points (b), (c) or (d) of Article 1(1) or, where relevant, of the resolution authority of the parent undertaking;
  - b those Common Equity Tier 1 instruments are issued prior to any issuance of shares or other instruments of ownership by that institution or that entity referred to in point (b), (c) or (d) of Article 1(1) for the purposes of provision of own funds by the State or a government entity;
  - c those Common Equity Tier 1 instruments are awarded and transferred without delay following the exercise of the conversion power;
  - d the conversion rate that determines the number of Common Equity Tier 1 instruments that are provided in respect of <sup>[F1]</sup>each relevant capital instrument, or each eligible liability as referred to in Article 59(1a)] complies with the principles set out in Article 50 and any guidelines developed by EBA pursuant to Article 50(4).
- 4 For the purposes of the provision of Common Equity Tier 1 instruments in accordance with paragraph 3, resolution authorities may require institutions and entities referred to in points (b), (c) and (d) of Article 1(1) to maintain at all times the necessary prior authorisation to issue the relevant number of Common Equity Tier 1 instruments.
- 5 Where an institution meets the conditions for resolution and the resolution authority decides to apply a resolution tool to that institution, the resolution authority shall comply with the requirement laid down in Article 59(3) before applying the resolution tool.

### Textual Amendments

- F2** Inserted by [Directive \(EU\) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC](#).

## Article 61

### Authorities responsible for determination

1 Member States shall ensure that the authorities responsible for making the determinations referred to in Article 59(3) are those set out in this Article.

2 Each Member State shall designate in national law the appropriate authority which shall be responsible for making determinations pursuant to Article 59. The appropriate authority may be the competent authority or the resolution authority, in accordance with Article 32.

3 Where the relevant capital instruments are recognised for the purposes of meeting the own funds requirements in accordance with Article 92 of Regulation (EU) No 575/2013 on an individual basis, the authority responsible for making the determination referred to in Article 59(3) of this Directive shall be the appropriate authority of the Member State where the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) has been authorised in accordance with Title III of Directive 2013/36/EU.

[<sup>F2</sup>Where the relevant capital instruments, or eligible liabilities as referred to in Article 59(1a) of this Directive, are recognised for the purposes of meeting the requirement referred to in Article 45f(1) of this Directive, the authority responsible for making the determination referred to in Article 59(3) of this Directive shall be the appropriate authority of the Member State where the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) of this Directive has been authorised in accordance with Title III of Directive 2013/36/EU.]

4 Where relevant capital instruments are issued by an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) that is a subsidiary and are recognised for the purposes of meeting the own funds requirements on an individual and on a consolidated basis, the authority responsible for making the determinations referred to in Articles 59(3) shall be the following:

- a the appropriate authority of the Member State where the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) of this Directive that issued those instruments has been established in accordance with Title III of Directive 2013/36/EU shall be responsible for making the determinations referred to in (b) of Article 59(3) of this Directive;
- b the appropriate authority of the Member State of the consolidating supervisor and the appropriate authority of the Member State where the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) of this Directive that issued those instruments has been established in accordance with Title III of Directive 2013/36/EU shall be responsible for making the joint determination taking the form of a joint decision referred to in point (c) of Article 59(3) of this Directive.

---

*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.*

---

### Textual Amendments

- F2** Inserted by [Directive \(EU\) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC](#).

## Article 62

### Consolidated application: procedure for determination

<sup>[F1]</sup> Member States shall ensure that, before making a determination referred to in point (b), (c), (d) or (e) of Article 59(3) in relation to a subsidiary that issues relevant capital instruments, or eligible liabilities as referred to in Article 59(1a), for the purposes of meeting the requirement referred to in Article 45f on an individual basis or relevant capital instruments that are recognised for the purposes of meeting the own funds requirements on an individual or consolidated basis, an appropriate authority complies with the following requirements:

- a when considering whether to make a determination referred to in point (b), (c), (d) or (e) of Article 59(3), after consulting the resolution authority of the relevant resolution entity, it notifies, within 24 hours of consulting that resolution authority
  - (i) the consolidating supervisor and, if different, the appropriate authority in the Member State where the consolidating supervisor is located;
  - (ii) resolution authorities of other entities within the same resolution group that directly or indirectly purchased liabilities referred to in Article 45f(2) from the entity that is subject to Article 45f(1);
- b when considering whether to make a determination referred to in point (c) of Article 59(3), it notifies, without delay, the competent authority responsible for each institution or entity referred to in point (b), (c) or (d) of Article 1(1) that has issued the relevant capital instruments in relation to which the write down or conversion powers are to be exercised if that determination were made, and, if different, the appropriate authorities in the Member States where those competent authorities and the consolidating supervisor are located.]

2 When making a determination referred to in point (c), (d) or (e) of Article 59(3) in the case of an institution or of a group with cross-border activity, the appropriate authorities shall take into account the potential impact of the resolution in all the Member States where the institution or the group operate.

3 An appropriate authority shall accompany a notification made pursuant to paragraph 1 with an explanation of the reasons why it is considering making the determination in question.

4 <sup>[F1]</sup>Where a notification has been made pursuant to paragraph 1, the appropriate authority, after consulting the authorities notified in accordance with points (a)(i) or (b) of that paragraph, shall assess the following matters:]

- a whether an alternative measure to the exercise of the write down or conversion power in accordance with Article 59(3) is available;
- b if such an alternative measure is available, whether it can feasibly be applied;
- c if such an alternative measure could feasibly be applied, whether there is a realistic prospect that it would address, in an adequate timeframe, the circumstances that would otherwise require a determination referred to in Article 59(3) to be made.

5 For the purposes of paragraph 4 of this Article, alternative measures mean early intervention measures referred to in Article 27 of this Directive, measures referred to in Article 104(1) of Directive 2013/36/EU or a transfer of funds or capital from the parent undertaking.

6 Where, pursuant to paragraph 4, the appropriate authority, after consulting the notified authorities, assesses that one or more alternative measures are available, can feasibly be applied and would deliver the outcome referred to in point (c) of that paragraph, it shall ensure that those measures are applied.

7 Where, in a case referred to in point (a) of paragraph 1, and pursuant to paragraph 4 of this Article, the appropriate authority, after consulting the notified authorities, assesses that no alternative measures are available that would deliver the outcome referred to in point (c) of paragraph 4, the appropriate authority shall decide whether the determination referred to in Article 59(3) under consideration is appropriate.

8 Where an appropriate authority decides to make a determination under point (c) of Article 59(3), it shall immediately notify the appropriate authorities of the Member States in which the affected subsidiaries are located and the determination shall take the form of a joint decision as set out in Article 92(3) and (4). In the absence of a joint decision no determination under point (c) of Article 59(3) shall be made.

9 The resolution authorities of the Member States where each of the affected subsidiaries are located shall promptly implement a decision to write down or convert capital instruments made in accordance with this Article having due regard to the urgency of the circumstances.

---

#### **Textual Amendments**

- F1** Substituted by [Directive \(EU\) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC](#).