

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 X

### **AMENDMENTS TO DIRECTIVES 82/891/EEC, 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 TO REGULATIONS (EU) NO 1093/2010 AND (EU) NO 648/2012**

#### *<sup>F1</sup>Article 116*

#### **[<sup>F1</sup>Amendment to Directive 82/891/EEC]**

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#### **Textual Amendments**

- F1** Deleted by [Directive \(EU\) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law \(codification\) \(Text with EEA relevance\)](#).

#### *Article 117*

#### **Amendments to Directive 2001/24/EC**

Directive 2001/24/EC is amended as follows:

- (1) In Article 1, the following paragraphs are added:
  3. This Directive shall also apply to investment firms as defined in point (2) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council<sup>(1)</sup> and their branches located in Member States other than those in which they have their head offices.
  4. In the event of application of the resolution tools and exercise of the resolution powers provided for in Directive 2014/59/EU of the European Parliament and of the Council<sup>(2)</sup>, this Directive shall also apply to the financial institutions, firms and parent undertakings falling within the scope of Directive 2014/59/EU.
  5. Articles 4 and 7 of this Directive shall not apply where Article 83 of Directive 2014/59/EU applies.
  6. Article 33 of this Directive shall not apply where Article 84 of Directive 2014/59/EU applies.;
- (2) Article 2 is replaced by the following:

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## Article 2

### Definitions

For the purposes of this Directive:

- ‘home Member State’ shall mean a home Member State as defined in Article 4(1)(43) of Regulation (EU) No 575/2013;
- ‘host Member State’ shall mean a host Member State as defined in Article 4(1)(44) of Regulation (EU) No 575/2013;
- ‘branch’ shall mean a branch as defined in Article 4(1)(17) of Regulation (EU) No 575/2013;
- ‘competent authority’ shall mean a competent authority as defined in Article 4(1)(40) of Regulation (EU) No 575/2013 or a resolution authority within the meaning of Article 2(1)(18) of Directive 2014/59/EU in respect of reorganisation measures taken pursuant to that Directive;
- ‘administrator’ shall mean any person or body appointed by the administrative or judicial authorities whose task is to administer reorganisation measures;
- ‘administrative or judicial authorities’ shall mean such administrative or judicial authorities of the Member States as are competent for the purposes of reorganisation measures or winding-up proceedings;
- ‘reorganisation measures’ shall mean measures which are intended to preserve or restore the financial situation of a credit institution or an investment firm as defined in Article 4(1), point (2) of Regulation (EU) No 575/2013 and which could affect third parties’ pre-existing rights, including measures involving the possibility of a suspension of payments, suspension of enforcement measures or reduction of claims; those measures include the application of the resolution tools and the exercise of resolution powers provided for in Directive 2014/59/EU;
- ‘liquidator’ shall mean any person or body appointed by the administrative or judicial authorities whose task is to administer winding-up proceedings;
- ‘winding-up proceedings’ shall mean collective proceedings opened and monitored by the administrative or judicial authorities of a Member State with the aim of realising assets under the supervision of those authorities, including where the proceedings are terminated by a composition or other, similar measure;
- ‘regulated market’ shall mean a regulated market as defined in Article 4(1), point (21) of Directive 2014/65/EU of the European Parliament and of the Council<sup>(3)</sup>;
- ‘instrument’ shall mean a financial instrument as defined in Article 4(1), point (50)(b) of Regulation (EU) No 575/2013.;

(3) Article 25 is replaced by the following:

#### *Article 25*

### **Netting agreements**

Without prejudice to Articles 68 and 71 of Directive 2014/59/EU, netting agreements shall be governed solely by the law of the contract which governs such agreements.;

- (4) Article 26 is replaced by the following:

#### *Article 26*

### **Repurchase agreements**

Without prejudice to Articles 68 and 71 of Directive 2014/59/EU and Article 24 of this Directive, repurchase agreements shall be governed solely by the law of the contract which governs such agreements..

#### *Article 118*

### **Amendment to Directive 2002/47/EC**

Directive 2002/47/EC is amended as follows:

- (1) In Article 1, the following paragraph is added:

6. Articles 4 to 7 of this Directive shall not apply to any restriction on the enforcement of financial collateral arrangements or any restriction on the effect of a security financial collateral arrangement, any close out netting or set-off provision that is imposed by virtue of Title IV, Chapter V or VI of Directive 2014/59/EU of the European Parliament and of the Council<sup>(4)</sup>, or to any such restriction that is imposed by virtue of similar powers in the law of a Member State to facilitate the orderly resolution of any entity referred to in points (c)(iv) and (d) of paragraph 2 which is subject to safeguards at least equivalent to those set out in Title IV, Chapter VII of Directive 2014/59/EU.;

- (2) Article 9a is replaced by the following:

#### *Article 9a*

### **Directives 2008/48/EC and 2014/59/EU**

This Directive shall be without prejudice to Directives 2008/48/EC and 2014/59/EU..

#### *Article 119*

### **Amendment to Directive 2004/25/EC**

In Article 4(5) of Directive 2004/25/EC, the following subparagraph is added:

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Member States shall ensure that Article 5(1) of this Directive does not apply in the case of use of resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU of the European Parliament and of the Council<sup>(5)</sup>..

*F<sup>I</sup>Article 120*

**[F<sup>I</sup>Amendment to Directive 2005/56/EC]**

**Textual Amendments**

- F1** Deleted by [Directive \(EU\) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law \(codification\) \(Text with EEA relevance\)](#).

*Article 121*

**Amendments to Directive 2007/36/EC**

Directive 2007/36/EC is amended as follows:

- (1) in Article 1, the following paragraph is added:
  4. Member States shall ensure that this Directive does not apply in the case of the use of resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU of the European Parliament and of the Council<sup>(6)</sup>;
- (2) in Article 5, the following paragraphs are added:
  5. Member States shall ensure that for the purposes of Directive 2014/59/EU the general meeting may, by a majority of two-thirds of the votes validly cast, issue a convocation to a general meeting, or modify the statutes to prescribe that a convocation to a general meeting is issued, at shorter notice than as laid down in paragraph 1 of this Article, to decide on a capital increase, provided that that meeting does not take place within ten calendar days of the convocation, that the conditions of Article 27 or 29 of Directive 2014/59/EU are met, and that the capital increase is necessary to avoid the conditions for resolution laid down in Articles 32 and 33 of that Directive.
  6. For the purposes of paragraph 5, the obligation on each Member State to set a single deadline in Article 6(3), the obligation to ensure timely availability of a revised agenda in Article 6(4) and the obligation on each Member State to set a single record date in Article 7(3) shall not apply..

*F<sup>I</sup>Article 122*

**[F<sup>I</sup>Amendment to Directive 2011/35/EU]**

**Textual Amendments**

- F1** Deleted by [Directive \(EU\) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law \(codification\) \(Text with EEA relevance\)](#).

*F1 Article 123*

**Amendment to Directive 2012/30/EU]**

**Textual Amendments**

- F1** Deleted by [Directive \(EU\) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law \(codification\) \(Text with EEA relevance\)](#).

*Article 124*

**Amendment to Directive 2013/36/EU**

In Article 74 of Directive 2013/36/EU, paragraph 4 is deleted.

*Article 125*

**Amendment to Regulation (EU) No 1093/2010**

Regulation (EU) No 1093/2010 is amended as follows:

- (1) In Article 4, point (2) is replaced by the following:
- (2) 'competent authority' means:
  - (i) competent authority as defined in Article 4(1)(40) of Regulation (EU) No 575/2013, and within the meaning of Directives 2007/64/EC and 2009/110/EC;
  - (ii) with regard to Directives 2002/65/EC and 2005/60/EC, the authorities competent for ensuring compliance with the requirements of those Directives by credit and financial institutions;
  - (iii) with regard to Directive 2014/49/EU of the European Parliament and of the Council<sup>(7)</sup>, a designated authority as defined in Article 2(1)(18) of that Directive;
  - (iv) with regard to Directive 2014/59/EU of the European Parliament and of the Council<sup>(8)</sup>, a resolution authority as defined in Article 2(1)(18) of that Directive.;
- (2) In Article 40(6), the following subparagraph is added:

For the purpose of acting within the scope of Directive 2014/59/EU, the member of the Board of Supervisors referred to in point (b) of paragraph 1 may, where

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appropriate, be accompanied by a representative from the resolution authority in each Member State, who shall be non-voting..

*Article 126*

**Amendment to Regulation (EU) No 648/2012**

In Article 81(3) of Regulation (EU) No 648/2012, the following point is added:

- (k) the resolution authorities designated under Article 3 of Directive 2014/59/EU of the European Parliament and the Council<sup>(9)</sup>..

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- (1) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).
- (2) 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 (OJ L 173, 12.6.2014, p. 190).’;
- (3) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).’;
- (4) 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 (OJ L 173, 12.6.2014, p. 190).’;
- (5) 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 (OJ L 173, 12.6.2014, p. 190).’.
- (6) 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 (OJ L 173, 12.6.2014, p. 190).’;
- (7) Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on Deposit Guarantee Schemes (OJ L 173, 12.6.2014, p. 149).
- (8) 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 (OJ L 173, 12.6.2014, p. 190).’;
- (9) 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 (OJ L 173, 12.6.2014, p. 190).’.