

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 V

### CROSS-BORDER GROUP RESOLUTION

#### *Article 87*

#### **General principles regarding decision-making involving more than one Member State**

Member States shall ensure that, when making decisions or taking action pursuant to this Directive which may have an impact in one or more other Member States, their authorities have regard to the following general principles:

- (a) the imperatives of efficacy of decision-making and of keeping resolution costs as low as possible when taking resolution action;
- (b) that decisions are made and action is taken in a timely manner and with due urgency when required;
- (c) that resolution authorities, competent authorities and other authorities cooperate with each other to ensure that decisions are made and action is taken in a coordinated and efficient manner;
- (d) that the roles and responsibilities of relevant authorities within each Member State are defined clearly;
- (e) that due consideration is given to the interests of the Member States where the Union parent undertakings are established, in particular the impact of any decision or action or inaction on the financial stability, fiscal resources, resolution fund, deposit guarantee scheme or investor compensation scheme of those Member States;
- (f) that due consideration is given to the interests of each individual Member State where a subsidiary is established, in particular the impact of any decision or action or inaction on the financial stability, fiscal resources, resolution fund, deposit guarantee scheme or investor compensation scheme of those Member States;
- (g) that due consideration is given to the interests of each Member State where significant branches are located, in particular the impact of any decision or action or inaction on the financial stability of those Member States;
- (h) that due consideration is given to the objectives of balancing the interests of the various Member States involved and of avoiding unfairly prejudicing or unfairly protecting the interests of particular Member States, including avoiding unfair burden allocation across Member States;

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- (i) that any obligation under this Directive to consult an authority before any decision or action is taken implies at least that such an obligation to consult that authority on those elements of the proposed decision or action which have or which are likely to have:
  - (i) an effect on the Union parent undertaking, the subsidiary or the branch,; and
  - (ii) an impact on the stability of the Member State where the Union parent undertaking, the subsidiary or the branch, is established or located;
- (j) that resolution authorities, when taking resolution actions, take into account and follow the resolution plans referred to in Article 13 unless the resolution authorities consider, taking into account the circumstances of the case, that the resolution objectives will be achieved more effectively by taking actions which are not provided for in the resolution plans;
- (k) that the requirement for transparency whenever a proposed decision or action is likely to have implications on the financial stability, fiscal resources, resolution fund, deposit guarantee scheme or investor compensation scheme of any relevant Member State; and
- (l) recognition that coordination and cooperation are most likely to achieve a result which lowers the overall cost of resolution.

#### *Article 88*

#### **Resolution colleges**

1 [F1Subject to Article 89, group-level resolution authorities shall establish resolution colleges to carry out the tasks referred to in Articles 12, 13, 16, 18, 45 to 45h, 91 and 92, and, where appropriate, to ensure cooperation and coordination with third-country resolution authorities.]

In particular, resolution colleges shall provide a framework for the group-level resolution authority, the other resolution authorities and, where appropriate, competent authorities and consolidating supervisors concerned to perform the following tasks:

- a exchanging information relevant for the development of group resolution plans, for the application to groups of preparatory and preventative powers and for group resolution;
- b developing group resolution plans pursuant to Articles 12 and 13;
- c assessing the resolvability of groups pursuant to Article 16;
- d exercising powers to address or remove impediments to the resolvability of groups pursuant to Article 18;
- e deciding on the need to establish a group resolution scheme as referred to in Article 91 or 92;
- f reaching the agreement on a group resolution scheme proposed in accordance with Article 91 or 92;
- g coordinating public communication of group resolution strategies and schemes;
- h coordinating the use of financing arrangements established under Title VII;
- i setting the minimum requirements for groups at consolidated and subsidiary level under [F1Articles 45 to 45h].

In addition, resolution colleges may be used as a forum to discuss any issues relating to cross-border group resolution.

2 The following shall be members of the resolution college:

- a the group-level resolution authority;
- b the resolution authorities of each Member State in which a subsidiary covered by consolidated supervision is established;
- c the resolution authorities of Member States where a parent undertaking of one or more institutions of the group, that is an entity referred to in point (d) of Article 1(1), are established;
- d the resolution authorities of Member States in which significant branches are located;
- e the consolidating supervisor and the competent authorities of the Member States where the resolution authority is a member of the resolution college. Where the competent authority of a Member State is not the Member State's central bank, the competent authority may decide to be accompanied by a representative from the Member State's central bank;
- f the competent ministries, where the resolution authorities which are members of the resolution college are not the competent ministries;
- g the authority that is responsible for the deposit guarantee scheme of a Member State, where the resolution authority of that Member State is a member of a resolution college;
- h EBA, subject to paragraph 4.

3 The resolution authorities of third countries where a parent undertaking or an institution established in the Union has a subsidiary institution or a branch that would be considered to be significant were it located in the Union may, at their request, be invited to participate in the resolution college as observers, provided that they are subject to confidentiality requirements equivalent, in the opinion of the group-level resolution authority, to those established by Article 98.

4 EBA shall contribute to promoting and monitoring the efficient, effective and consistent functioning of resolution colleges, taking into account international standards. EBA shall be invited to attend the meetings of the resolution college for that purpose. EBA shall not have any voting rights to the extent that any voting takes place within the framework of resolution colleges.

5 The group-level resolution authority shall be the chair of the resolution college. In that capacity it shall:

- a establish written arrangements and procedures for the functioning of the resolution college, after consulting the other members of the resolution college;
- b coordinate all activities of the resolution college;
- c convene and chair all its meetings and keep all members of the resolution college fully informed in advance of the organisation of meetings of the resolution college, of the main issues to be discussed and of the items to be considered;
- d notify the members of the resolution college of any planned meetings so that they can request to participate;
- e decide which members and observers shall be invited to attend particular meetings of the resolution college, on the basis of specific needs, taking into account the relevance of the issue to be discussed for those members and observers, in particular the potential impact on financial stability in the Member States concerned;
- f keep all of the members of the college informed, in a timely manner, of the decisions and outcomes of those meetings.

The members participating in the resolution college shall cooperate closely.

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Notwithstanding point (e), resolution authorities shall be entitled to participate in resolution college meetings whenever matters subject to joint decision-making or relating to a group entity located in their Member State are on the agenda.

6 Group-level resolution authorities are not obliged to establish a resolution college if other groups or colleges perform the same functions and carry out the same tasks specified in this Article and comply with all the conditions and procedures, including those covering membership and participation in resolution colleges, established in this Article and in Article 90. In such a case, all references to resolution colleges in this Directive shall also be understood as references to those other groups or colleges.

7 EBA shall, taking into account international standards, develop draft regulatory standards in order to specify the operational functioning of the resolution colleges for the performance of the tasks referred to in paragraph 1.

EBA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

#### 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](#).

### *[<sup>F1</sup>Article 89*

#### **European resolution colleges**

1 Where a third-country institution or third-country parent undertaking has subsidiaries established in the Union or Union parent undertakings, established in two or more Member States, or two or more Union branches that are regarded as significant by two or more Member States, the resolution authorities of Member States where those entities are established or where those significant branches are located shall establish one single European resolution college.

2 The European resolution college referred to in paragraph 1 of this Article shall perform the functions and carry out the tasks specified in Article 88 with respect to the entities referred in paragraph 1 of this Article and, in so far as those tasks are relevant, to their branches.

The tasks referred to in the first subparagraph of this paragraph shall include the setting of the requirement referred to in Articles 45 to 45h.

When setting the requirement referred to in Articles 45 to 45h, members of the European resolution college shall take into consideration the global resolution strategy, if any, adopted by third-country authorities.

Where, in accordance with the global resolution strategy, subsidiaries established in the Union or a Union parent undertaking and its subsidiary institutions are not resolution entities and the members of the European resolution college agree with that strategy, subsidiaries established in the Union or, on a consolidated basis, the Union parent undertaking shall comply with the requirement of Article 45f(1) by issuing instruments

referred to in points (a) and (b) of Article 45f(2) to their ultimate parent undertaking established in a third country, or to the subsidiaries of that ultimate parent undertaking that are established in the same third country or to other entities under the conditions set out in points (a)(i) and (b)(ii) of Article 45f(2).

3 Where only one Union parent undertaking holds all Union subsidiaries of a third-country institution or third-country parent undertaking, the European resolution college shall be chaired by the resolution authority of the Member State where the Union parent undertaking is established.

Where the first subparagraph does not apply, the resolution authority of a Union parent undertaking or a Union subsidiary with the highest value of total on-balance sheet assets held shall chair the European resolution college.

4 Member States may, by mutual agreement of all of the relevant parties, waive the requirement to establish a European resolution college if another group or college performs the same functions and carries out the same tasks specified in this Article and complies with all of the conditions and procedures, including those covering membership and participation in European resolution colleges, established in this Article and in Article 90. In such a case, all references to European resolution colleges in this Directive shall also be understood as references to those other groups or colleges.

5 Subject to paragraphs 3 and 4 of this Article, the European resolution college shall otherwise function in accordance with Article 88.]

#### 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](#).

### Article 90

#### Information exchange

1 Subject to Article 84, resolution authorities and competent authorities shall provide one another on request with all the information relevant for the exercise of the other authorities' tasks under this Directive.

2 The group-level resolution authority shall coordinate the flow of all relevant information between resolution authorities. In particular, the group-level resolution authority shall provide the resolution authorities in other Member States with all the relevant information in a timely manner with a view to facilitating the exercise of the tasks referred to in points (b) to (i) of the second subparagraph of Article 88(1).

3 Upon a request for information which has been provided by a third-country resolution authority, the resolution authority shall seek the consent of the third-country resolution authority for the onward transmission of that information, save where the third-country resolution authority has already consented to the onward transmission of that information.

Resolution authorities shall not be obliged to transmit information provided from a third-country resolution authority if the third-country resolution authority has not consented to its onward transmission.

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4 Resolution authorities shall share information with the competent ministry when it relates to a decision or matter which requires notification, consultation or consent of the competent ministry or which may have implications for public funds.

### *Article 91*

#### **Group resolution involving a subsidiary of the group**

1 Where a resolution authority decides that an institution or any entity referred to in point (b), (c) or (d) of Article 1(1) that is a subsidiary in a group meets the conditions referred to in Article 32 or 33, that authority shall notify the following information without delay to the group-level resolution authority, if different, to the consolidating supervisor, and to the members of the resolution college for the group in question:

- a the decision that the institution or entity referred to in point (b), (c) or (d) of Article 1(1) meets the conditions referred to in Article 32 or 33;
- b the resolution actions or insolvency measures that the resolution authority considers to be appropriate for that institution or that entity referred to in point (b), (c) or (d) of Article 1(1).

2 On receiving a notification under paragraph 1, the group-level resolution authority, after consulting the other members of the relevant resolution college, shall assess the likely impact of the resolution actions or other measures notified in accordance with point (b) of paragraph 1, on the group and on group entities in other Member States, and, in particular, whether the resolution actions or other measures would make it likely that the conditions for resolution would be satisfied in relation to a group entity in another Member State.

3 If the group-level resolution authority, after consulting the other members of the resolution college, assesses that the resolution actions or other measures notified in accordance with point (b) of paragraph 1, would not make it likely that the conditions laid down in Article 32 or 33 would be satisfied in relation to a group entity in another Member State, the resolution authority responsible for that institution or that entity referred to in point (b), (c) or (d) of Article 1(1) may take the resolution actions or other measures that it notified in accordance with point (b) of paragraph 1 of this Article.

4 If the group-level resolution authority, after consulting the other members of the resolution college, assesses that the resolution actions or other measures notified in accordance with point (b) of paragraph 1 of this Article, would make it likely that the conditions laid down in Article 32 or 33 would be satisfied in relation to a group entity in another Member State, the group-level resolution authority shall, no later than 24 hours after receiving the notification under paragraph 1, propose a group resolution scheme and submit it to the resolution college. That 24-hour period may be extended with the consent of the resolution authority which made the notification referred to in paragraph 1 of this Article.

5 In the absence of an assessment by the group-level resolution authority within 24 hours, or a longer period that has been agreed, after receiving the notification under paragraph 1, the resolution authority which made the notification referred to in paragraph 1 may take the resolution actions or other measures that it notified in accordance with point (b) of that paragraph.

6 A group resolution scheme required under paragraph 4 shall:

- a take into account and follow the resolution plans as referred to in Article 13 unless resolution authorities assess, taking into account circumstances of the case, that

resolution objectives will be achieved more effectively by taking actions which are not provided for in the resolution plans;

- b outline the resolution actions that should be taken by the relevant resolution authorities in relation to the Union parent undertaking or particular group entities with the aim of meeting the resolution objectives and principles referred to in Articles 31 and 34;
- c specify how those resolution actions should be coordinated;
- d establish a financing plan which takes into account the group resolution plan, principles for sharing responsibility as established in accordance with point (f) of Article 12(3) and the mutualisation as referred to in Article 107.

7 Subject to paragraph 8, the group resolution scheme shall take the form of a joint decision of the group-level resolution authority and the resolution authorities responsible for the subsidiaries that are covered by the group resolution scheme.

EBA may, at the request of a resolution authority, assist the resolution authorities in reaching a joint decision in accordance with Article 31(c) of Regulation (EU) No 1093/2010.

8 If any resolution authority disagrees with or departs from the group resolution scheme proposed by the group-level resolution authority or considers that it needs to take independent resolution actions or measures other than those proposed in the scheme in relation to an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) for reasons of financial stability, it shall set out in detail the reasons for the disagreement or the reasons to depart from the group resolution scheme, notify the group-level resolution authority and the other resolution authorities that are covered by the group resolution scheme of the reasons and inform them about the actions or measures it will take. When setting out the reasons for its disagreement, that resolution authority shall take into consideration the resolution plans as referred to in Article 13, the potential impact on financial stability in the Member States concerned as well as the potential effect of the actions or measures on other parts of the group.

9 The resolution authorities which did not disagree under paragraph 8 may reach a joint decision on a group resolution scheme covering group entities in their Member State.

10 The joint decision referred to in paragraph 7 or 9 and the decisions taken by the resolution authorities in the absence of a joint decision referred to in paragraph 8 shall be recognised as conclusive and applied by the resolution authorities in the Member States concerned.

11 Authorities shall perform all actions under this Article without delay, and with due regard to the urgency of the situation.

12 In any case where a group resolution scheme is not implemented and resolution authorities take resolution actions in relation to any group entity, those resolution authorities shall cooperate closely within the resolution college with a view to achieving a coordinated resolution strategy for all the group entities that are failing or likely to fail.

13 Resolution authorities that take any resolution action in relation to any group entity shall inform the members of the resolution college regularly and fully about those actions or measures and their on-going progress.

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## Article 92

### Group resolution

1 Where a group-level resolution authority decides that a Union parent undertaking for which it is responsible meets the conditions referred to in Article 32 or 33 it shall notify the information referred to in points (a) and (b) of Article 91(1) without delay to the consolidating supervisor, if different, and to the other members of the resolution college of the group in question.

The resolution actions or insolvency measures for the purposes of point (b) of Article 91(1) may include the implementation of a group resolution scheme drawn up in accordance with Article 91(6) in any of the following circumstances:

- a resolution actions or other measures at parent level notified in accordance with point (b) of Article 91(1) make it likely that the conditions laid down in Article 32 or 33 would be fulfilled in relation to a group entity in another Member State;
- b resolution actions or other measures at parent level only are not sufficient to stabilise the situation or are not likely to provide an optimum outcome;
- c one or more subsidiaries meet the conditions referred to in Article 32 or 33 according to a determination by the resolution authorities responsible for those subsidiaries; or
- d resolution actions or other measures at group level will benefit the subsidiaries of the group in a way which makes a group resolution scheme appropriate.

2 Where the actions proposed by the group-level resolution authority under paragraph 1 do not include a group resolution scheme, the group-level resolution authority shall take its decision after consulting the members of the resolution college.

The decision of the group-level resolution authority shall take into account:

- a and follow the resolution plans as referred to in Article 13 unless resolution authorities assess, taking into account circumstances of the case, that resolution objectives will be achieved more effectively by taking actions which are not provided for in the resolution plans;
- b the financial stability of the Member States concerned.

3 Where the actions proposed by the group-level resolution authority under paragraph 1 include a group resolution scheme, the group resolution scheme shall take the form of a joint decision of the group-level resolution authority and the resolution authorities responsible for the subsidiaries that are covered by the group resolution scheme.

EBA may, at the request of a resolution authority, assist the resolution authorities in reaching a joint decision in accordance with Article 31(c) of Regulation (EU) No 1093/2010.

4 If any resolution authority disagrees with or departs from the group resolution scheme proposed by the group-level resolution authority or considers that it needs to take independent resolution actions or measures other than those proposed in the scheme in relation to an institution or entity referred to in point (b), (c) or (d) of Article 1(1) for reasons of financial stability, it shall set out in detail the reasons for the disagreement or the reasons to depart from the group resolution scheme, notify the group-level resolution authority and the other resolution authorities that are covered by the group resolution scheme of the reasons and inform them about the actions or measures it intends to take. When setting out the reasons for its disagreement, that resolution authority shall give consideration to the resolution plans as referred to in Article



13, the potential impact on financial stability in the Member States concerned as well as the potential effect of the actions or measures on other parts of the group.

5 Resolution authorities which did not disagree with the group resolution scheme under the paragraph 4 may reach a joint decision on a group resolution scheme covering group entities in their Member State.

6 The joint decision referred to in paragraph 3 or 5 and the decisions taken by the resolution authorities in the absence of a joint decision referred to in paragraph 4 shall be recognised as conclusive and applied by the resolution authorities in the Member States concerned.

7 Authorities shall perform all actions under this Article without delay, and with due regard to the urgency of the situation.

In any case where a group resolution scheme is not implemented and resolution authorities take resolution action in relation to any group entity, those resolution authorities shall cooperate closely within the resolution college with a view to achieving a coordinated resolution strategy for all affected group entities.

Resolution authorities that take resolution action in relation to any group entity shall inform the members of the resolution college regularly and fully about those actions or measures and their on-going progress.