

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 VI

RELATIONS WITH THIRD COUNTRIES

Article 93

Agreements with third countries

1 In accordance with Article 218 TFEU, the Commission may submit to the Council proposals for the negotiation of agreements with one or more third countries regarding the means of cooperation between the resolution authorities and the relevant third country authorities, inter alia, for the purpose of information sharing in connection with recovery and resolution planning in relation to institutions, financial institutions, parent undertakings and third country institutions, with regard to the following situations:

- a in cases where a third country parent undertaking has subsidiary institutions or branches where such branches are regarded as significant in two or more Member States;
- b in cases where a parent undertaking established in a Member State and which has a subsidiary or a significant branch in at least one other Member State has one or more third country subsidiary institutions;
- c in cases where an institution established in a Member State and which has a parent undertaking, a subsidiary or a significant branch in at least one other Member State has one or more branches in one or more third countries.

2 The agreements referred to in paragraph 1 shall, in particular, seek to ensure the establishment of processes and arrangements between resolution authorities and the relevant third country authorities for cooperation in carrying out some or all of the tasks and exercising some or all of the powers indicated in Article 97.

3 The agreements referred to in paragraph 1 shall not make provision in relation to individual institutions, financial institutions, parent undertakings or third country institutions.

4 Member States may enter into bilateral agreements with a third country regarding the matters referred to in paragraphs 1 and 2 until the entry into force of an agreement referred to in paragraph 1 with the relevant third country to the extent that such bilateral agreements are not inconsistent with this Title.

Article 94

Recognition and enforcement of third-country resolution proceedings

1 This Article shall apply in respect of third-country resolution proceedings unless and until an international agreement as referred to in Article 93(1) enters into force with the relevant

third country. It shall also apply following the entry into force of an international agreement as referred to in Article 93(1) with the relevant third country to the extent that recognition and enforcement of third-country resolution proceedings is not governed by that agreement.

2 Where there is a European resolution college established in accordance with Article 89, it shall take a joint decision on whether to recognise, except as provided for in Article 95, third-country resolution proceedings relating to a third-country institution or a parent undertaking that:

- a has Union subsidiaries established in, or Union branches located in and regarded as significant by, two or more Member States; or
- b has assets, rights or liabilities located in two or more Member States or are governed by the law of those Member States.

Where the joint decision on the recognition of the third-country resolution proceedings is reached, respective national resolution authorities shall seek the enforcement of the recognised third-country resolution proceedings in accordance with their national law.

3 In the absence of a joint decision between the resolution authorities participating in the European resolution college, or in the absence of a European resolution college, each resolution authority concerned shall make its own decision on whether to recognise and enforce, except as provided for in Article 95, third-country resolution proceedings relating to a third-country institution or a parent undertaking.

The decision shall give due consideration to the interests of each individual Member State where a third-country institution or parent undertaking operates, and in particular to the potential impact of the recognition and enforcement of the third-country resolution proceedings on the other parts of the group and the financial stability in those Member States.

4 Member States shall ensure that resolution authorities are, as a minimum, empowered to do the following:

- a exercise the resolution powers in relation to the following:
 - (i) assets of a third-country institution or parent undertaking that are located in their Member State or governed by the law of their Member State;
 - (ii) rights or liabilities of a third-country institution that are booked by the Union branch in their Member State or governed by the law of their Member State, or where claims in relation to such rights and liabilities are enforceable in their Member State;
- b perfect, including to require another person to take action to perfect, a transfer of shares or other instruments of ownership in a Union subsidiary established in the designating Member State;
- c exercise the powers in Article 69, 70 or 71 in relation to the rights of any party to a contract with an entity referred to in paragraph 2 of this Article, where such powers are necessary in order to enforce third-country resolution proceedings; and
- d render unenforceable any right to terminate, liquidate or accelerate contracts, or affect the contractual rights, of entities referred to in paragraph 2 and other group entities, where such a right arises from resolution action taken in respect of the third-country institution, parent undertaking of such entities or other group entities, whether by the third-country resolution authority itself or otherwise pursuant to legal or regulatory requirements as to resolution arrangements in that country, provided that the substantive obligations under the contract, including payment and delivery obligations, and provision of collateral, continue to be performed.

5 Resolution authorities may take, where necessary in the public interest, resolution action with respect to a parent undertaking where the relevant third-country authority determines that an institution that is incorporated in that third country meets the conditions for resolution under the law of that third country. To that end, Member States shall ensure that resolution authorities are empowered to use any resolution power in respect of that parent undertaking, and Article 68 shall apply.

6 The recognition and enforcement of third-country resolution proceedings shall be without prejudice to any normal insolvency proceedings under national law applicable, where appropriate, in accordance with this Directive.

Article 95

Right to refuse recognition or enforcement of third-country resolution proceedings

The resolution authority, after consulting other resolution authorities, where a European resolution college is established under Article 89, may refuse to recognise or to enforce third-country resolution proceedings pursuant to Article 94(2) if it considers:

- (a) that the third-country resolution proceedings would have adverse effects on financial stability in the Member State in which the resolution authority is based or that the proceedings would have adverse effects on financial stability in another Member State;
- (b) that independent resolution action under Article 96 in relation to a Union branch is necessary to achieve one or more of the resolution objectives;
- (c) that creditors, including in particular depositors located or payable in a Member State, would not receive the same treatment as third-country creditors and depositors with similar legal rights under the third-country home resolution proceedings;
- (d) that recognition or enforcement of the third-country resolution proceedings would have material fiscal implications for the Member State; or
- (e) that the effects of such recognition or enforcement would be contrary to the national law.

Article 96

Resolution of Union branches

1 Member States shall ensure that resolution authorities have the powers necessary to act in relation to a Union branch that is not subject to any third-country resolution proceedings or that is subject to third-country proceedings and one of the circumstances referred to in Article 95 applies.

Member States shall ensure that Article 68 applies to the exercise of such powers.

2 Member States shall ensure that the powers required in paragraph 1 may be exercised by resolution authorities where the resolution authority considers that action is necessary in the public interest and one or more of the following conditions is met:

- a the Union branch no longer meets, or is likely not to meet, the conditions imposed by national law for its authorisation and operation within that Member State and there is no prospect that any private sector, supervisory or relevant third-country action would restore the branch to compliance or prevent failure in a reasonable timeframe;

- b the third-country institution is, in the opinion of the resolution authority, unable or unwilling, or is likely to be unable, to pay its obligations to Union creditors, or obligations that have been created or booked through the branch, as they fall due and the resolution authority is satisfied that no third-country resolution proceedings or insolvency proceedings have been or will be initiated in relation to that third-country institution in a reasonable timeframe;
- c the relevant third-country authority has initiated third-country resolution proceedings in relation to the third-country institution, or has notified to the resolution authority its intention to initiate such a proceeding.

3 Where a resolution authority takes an independent action in relation to a Union branch, it shall have regard to the resolution objectives and take the action in accordance with the following principles and requirements, insofar as they are relevant:

- a the principles set out in Article 34;
- b the requirements relating to the application of the resolution tools in Chapter III of Title IV.

Article 97

Cooperation with third-country authorities

1 This Article shall apply in respect of cooperation with a third country unless and until an international agreement as referred to in Article 93(1) enters into force with the relevant third country. It shall also apply following the entry into force of an international agreement provided for in Article 93(1) with the relevant third country to the extent that the subject matter of this Article is not governed by that agreement.

2 EBA may conclude non-binding framework cooperation arrangements with the following relevant third-country authorities:

- a in cases where a Union subsidiary is established in two or more Member States, the relevant authorities of the third country where the parent undertaking or a company referred to in points (c) and (d) of Article 1(1) are established;
- b in cases where a third-country institution operates Union branches in two or more Member States, the relevant authority of the third country where that institution is established;
- c in cases where a parent undertaking or a company referred to in points (c) and (d) of Article 1(1) established in a Member State with a subsidiary institution or significant branch in another Member State also has one or more third-country subsidiary institutions, the relevant authorities of the third countries where those subsidiary institutions are established;
- d in cases where an institution with a subsidiary institution or significant branch in another Member State has established one or more branches in one or more third countries, the relevant authorities of the third countries where those branches are located.

The arrangements referred to in this paragraph shall not make provision in relation to specific institutions. They shall not impose legal obligations upon Member States.

3 The framework cooperation agreements referred to in paragraph 2 shall establish processes and arrangements between the participating authorities for sharing information necessary for and cooperation in carrying out some or all of the following tasks and exercising some or all of the following powers in relation to institutions referred to in points (a) to (d) of paragraph 2 or groups including such institutions:

- a the development of resolution plans in accordance with Articles 10 to 13 and similar requirements under the law of the relevant third countries;
- b the assessment of the resolvability of such institutions and groups, in accordance with Articles 15 and 16 and similar requirements under the law of the relevant third countries;
- c the application of powers to address or remove impediments to resolvability pursuant to Articles 17 and 18 and any similar powers under the law of the relevant third countries;
- d the application of early intervention measures pursuant to Article 27 and similar powers under the law of the relevant third countries;
- e the application of resolution tools and exercise of resolution powers and similar powers exercisable by the relevant third-country authorities.

4 Competent authorities or resolution authorities, where appropriate, shall conclude non-binding cooperation arrangements in line with EBA framework arrangement with the relevant third-country authorities indicated in paragraph 2.

This Article shall not prevent Member States or their competent authorities from concluding bilateral or multilateral arrangements with third countries, in accordance with Article 33 of Regulation (EU) No 1093/2010.

5 Cooperation arrangements concluded between resolution authorities of Member States and third countries in accordance with this Article may include provisions on the following matters:

- a the exchange of information necessary for the preparation and maintenance of resolution plans;
- b consultation and cooperation in the development of resolution plans, including principles for the exercise of powers under Articles 94 and 96 and similar powers under the law of the relevant third countries;
- c the exchange of information necessary for the application of resolution tools and exercise of resolution powers and similar powers under the law of the relevant third countries;
- d early warning to or consultation of parties to the cooperation arrangement before taking any significant action under this Directive or relevant third-country law affecting the institution or group to which the arrangement relates;
- e the coordination of public communication in the case of joint resolution actions;
- f procedures and arrangements for the exchange of information and cooperation under points (a) to (e), including, where appropriate, through the establishment and operation of crisis management groups.

6 Member States shall notify EBA of any cooperation arrangements that resolution authorities and competent authorities have concluded in accordance with this Article.

Article 98

Exchange of confidential information

1 Member States shall ensure that resolution authorities, competent authorities and competent ministries exchange confidential information, including recovery plans, with relevant third-country authorities only if the following conditions are met:

- a those third-country authorities are subject to requirements and standards of professional secrecy at least considered to be equivalent, in the opinion of all the authorities concerned, to those imposed by Article 84.

In so far as the exchange of information relates to personal data, the handling and transmission of such personal data to third-country authorities shall be governed by the applicable Union and national data protection law.

- b the information is necessary for the performance by the relevant third-country authorities of their resolution functions under national law that are comparable to those under this Directive and, subject to point (a) of this paragraph, is not used for any other purposes.

2 Where confidential information originates in another Member State, resolution authorities, competent authorities and competent ministries shall not disclose that information to relevant third-country authorities unless the following conditions are met:

- a the relevant authority of the Member State where the information originated (the originating authority) agrees to that disclosure;
- b the information is disclosed only for the purposes permitted by the originating authority.

3 For the purposes of this Article, information is deemed to be confidential if it is subject to confidentiality requirements under Union law.