***Changes to legislation:*** *There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2016/1400. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)EUR 2016 No. 1400 may be subject to amendment by EU Exit Instruments made by the Bank of England under powers set out in The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115), regs. 2, 3, Sch. Pt. 3. These amendments are not currently available on legislation.gov.uk. Details of relevant amending instruments can be found on their website/s. (See end of Document for details) View outstanding changes*

# Commission Delegated Regulation (EU) 2016/1400 of 10 May 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the minimum elements of a business reorganisation plan and the minimum contents of the reports on the progress in the implementation of the plan (Text with EEA relevance)

## COMMISSION DELEGATED REGULATION (EU) 2016/1400

## of 10 May 2016

## supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the minimum elements of a business reorganisation plan and the minimum contents of the reports on the progress in the implementation of the plan

## (Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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[(1)], and in particular points (a) and (b) of Article 52(12) thereof,

Whereas:

(1) It is essential to lay down detailed rules on the minimum elements that should be included in a business reorganisation plan for its approval and on the minimum contents of the reports drawn up in case of reorganisation of the institutions and entities subject to the provisions of Directive 2014/59/EU.

(2) The guidelines and communications adopted by the Commission in relation to the assessment of compliance with the Union State aid framework relating to the restructuring of firms in difficulties in the financial sector, pursuant to Article 107(3) of the Treaty, may provide useful reference for the elaboration of the business reorganisation plan even where no State aid has been granted, since they share with the business reorganisation plan the objective of restoring the institution or entity's long-term viability.

(3) Business reorganisation plans should be able to use information contained in the recovery plan and the resolution plan, to the extent that such information is still relevant to the restoration of the long-term viability of the institution or entity referred to in points (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU and taking into account the application of the bail-in tool.

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(4) The restructuring of the institution or entity referred to in points (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU and its activities subsequent to the application of the bail-in tool should address the reasons for its failure. The basis for the reorganisation strategy should therefore be the factors that caused the entry of any institution or entity into resolution. That strategy may also take into account the crisis prevention and management measures that have been taken and implemented by the competent authority or the resolution authority respectively. The source and extent of the difficulties encountered by such institution or entity may be illustrated by including information on the fulfilment of the relevant regulatory and prudential requirements prior to resolution.

(5) Although the failure of the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU may have been caused by a particular set of reasons, such institution or entity may have suffered from other shortcomings which did not trigger the failure, but could undermine its long-term viability. The reorganisation should address any shortcomings. A successful reorganisation strategy should follow a comprehensive analysis of both the institution or entity under reorganisation, its strengths and weaknesses, as well as the relevant markets where that institution or entity operates and the risks and opportunities that they present. In order for a business reorganisation plan to be considered credible by the resolution authority and the competent authority, it should restore the institution's long term viability based on prudent assumptions.

(6) Restoring the long-term viability of the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU following resolution means that, at the latest by the end of the reorganisation period, the institution or entity is capable of fulfilling its internal capital adequacy assessment process, and all the relevant prudential and other regulatory requirements on a forward-looking basis, and that it has a viable business model that is also sustainable in the long-term.

(7) The resolution authority and the competent authority should be provided with sufficiently detailed information to assess the business reorganisation plan and monitor its implementation. The requirement to provide such information should take into account its relevance for the corporate structure of the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU, and its relevance for the reorganisation and its reliability, especially in the case of a systemic crisis.

(8) Fluctuations are an inherent part of the economic cycle. Any business plan should therefore be subject to analyses of alternative scenarios, with appropriate changes in the key underlying assumptions. Although long-term viability should be restored under any scenario, the development of full alternative reorganisation strategies would incur disproportionate costs for the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU, while alternative scenarios should in principle be less likely to occur than the base-case scenario.

(9) The business reorganisation plan should allow the resolution authority and the competent authority to assess its impact on achieving the resolution objectives, and in

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particular ensuring continuity of critical functions and avoiding a significant adverse effect on the financial system.

(10) The frequency and detail of the monitoring of the implementation of the business reorganisation plan should allow early identification of any deviations or other difficulties. Quarterly reporting of data and performance is a common methodology in the financial sector and allows such timely observation. The business reorganisation plan should also allow for adjustments to the milestones or measures originally envisaged therein, when justified by the circumstances.

(11) This Regulation is based on the draft regulatory technical standards submitted by the European Banking Authority ('EBA') to the Commission.

(12) The EBA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 15(1) of Regulation (EU) No 1093/2010 of the European Parliament and of the Council[(2)],

HAS ADOPTED THIS REGULATION:

*Article 1*

**Definitions**

For the purposes of this Regulation, the following definitions apply:

(1) 'reorganisation period' means the period, which shall be of a reasonable timescale, between the application of the bail-in tool and the moment when the institution or entity referred to in points (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU under resolution is expected to have restored its long-term viability, during which measures included in the business reorganisation plan are implemented;

(2) 'base case' means the business scenario which the management body or the person or persons appointed to operate the institution or entity referred to in points (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU consider as most likely to materialise in the process of restoring the long-term viability of the institution or entity.

*Article 2*

**Strategy and measures**

1 The business reorganisation plan shall include all of the following:

a a historic and financial account of the factors that contributed to the difficulties of the institution or entity referred to in points (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU including the relevant performance indicators that deteriorated in the period preceding the resolution and the reason for their deterioration;

b a short description of crisis prevention and crisis management measures, where such measures have been applied by the competent authority, the resolution authority or the institution or entity referred to in points (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU before the submission of the business reorganisation plan;

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c a description of the business reorganisation strategy and the measures intended to restore the long-term viability of the institution or entity during the reorganisation period including a description of each of the following:

(i) the reorganised business model;

(ii) the measures implementing the business reorganisation strategy at group, entity and business line level;

(iii) the target duration of the reorganisation period and important milestones;

(iv) the interaction with the resolution authority and the competent authority;

(v) the strategy regarding the involvement of relevant external stakeholders such as labour unions or organisations;

(vi) the internal and external communication strategy for the business reorganisation measures.

2 Where parts of the institution or entity referred to in points (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU are to be wound down or sold, the reorganisation strategy referred to in paragraph 1(c) of this Article shall identify all of the following:

a the relevant entity or business line, the method for the winding down or sale, including the underlying assumptions and any possible expected losses;

b the expected timescale;

c any financing or services provided by or to the remaining institution or entity.

3 Any proceeds from the divestment of assets, entities or business lines envisaged by the business reorganisation plan shall be calculated prudently and with reference either to a reliable benchmark or valuation, such as an expert valuation, a market sounding exercise or the value of similar business lines or entities. The calculation shall take into account the likelihood of loss realisation.

4 For the parts of the institution or entity referred to in points (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU that will not be wound down or sold, the business reorganisation plan shall indicate ways to remedy any shortcomings in their operation or performance that may have an impact on their long-term viability, even if these shortcomings are not directly related to the failure of that institution or entity.

5 The measures set out in the business reorganisation plan shall take into account the strengths and weaknesses of the institution or entity referred to in points (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU and its reorganised business model by reference to the economic and market environment in which it operates.

6 The reorganisation strategy may include measures previously identified in the recovery plan or in the resolution plan, provided the resolution plan is accessible to the institution or entity referred to in points (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU and when such measures remain valid following resolution. This option does not imply any obligation on the resolution authority to share the resolution plan with the management body or with the person or persons appointed in accordance with Article 72(1) of Directive 2014/59/EU.