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Commission Delegated Regulation (EU) 2016/1075 of 23 March 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the content of recovery plans, resolution plans and group resolution plans, the minimum criteria that the competent authority is to assess as regards recovery plans and group recovery plans, the conditions for group financial support, the requirements for independent valuers, the contractual recognition of write-down and conversion powers, the procedures and contents of notification requirements and of notice of suspension and the operational functioning of the resolution colleges (Text with EEA relevance)

[X1COMMISSION DELEGATED REGULATION (EU) 2016/1075

of 23 March 2016

supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the content of recovery plans, resolution plans and group resolution plans, the minimum criteria that the competent authority is to assess as regards recovery plans and group recovery plans, the conditions for group financial support, the requirements for independent valuers, the contractual recognition of write-down and conversion powers, the procedures and contents of notification requirements and of notice of suspension and the operational functioning of the resolution colleges]

(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 Article 5(10), Article 6(8), Articles 10(9), 12(6), 15(4), 23(2), 36(14), 55(3), 82(3) and 88(7) thereof,

Whereas:

(1) The provisions in this Regulation are closely linked to each other, since they deal with the resolution framework set out by Directive 2014/59/EU from the planning stage of the recovery and resolution of an institution, through the early intervention phase, up until the moment of resolution action. To ensure coherence between those provisions, which should enter into force simultaneously and to facilitate the resolution process, there is a need for institutions, authorities and market participants, including investors that are non-Union residents, to have a comprehensive view and compact access to their obligations and rights. It is therefore desirable to include the relevant regulatory technical standards required by Directive 2014/59/EU in a single Regulation.

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(2) Further to the definitions of Directive 2014/59/EU, some specific definitions to technical terms used are necessary.

(3) Uniform rules on the minimum information to be included in recovery plans should take into account but not preclude the competent authorities' powers to determine simplified obligations for certain institutions regarding the contents and details of recovery plans, in accordance with Article 4 of Directive 2014/59/EU.

(4) These uniform rules should further specify, without prejudice to any simplified obligations determined in accordance with Article 4 of Directive 2014/59/EU, the information to be contained in an individual recovery plan and, in accordance with Article 7(5) and (6) of that Directive, in a group recovery plan.

(5) It is essential that the information included in recovery plans be adequate and specific, depending on whether the recovery plans are drawn up by institutions which are not part of a group subject to consolidated supervision pursuant to Articles 111 and 112 of Directive 2013/36/EU of the European Parliament and of the Council[(2)], or are individual recovery plans, as provided for in Article 7(2) of Directive 2014/59/EU, or group recovery plans, as provided for in paragraphs 5 and 6 of Article 7 of Directive 2014/59/EU.

(6) To facilitate the internal structure of the recovery plans, the information requirements should be grouped under a number of sections, some of which should be divided into subsections as set out in this Regulation.

(7) To ensure that recovery plans can effectively be implemented, if necessary, in due time, it is essential to build those plans on a sound governance structure. The recovery plans should therefore contain a description of the specific governance arrangements involved. In particular, a plan should set out how it was developed, who approved it, and how it is integrated in the overall corporate governance of the institution or the group. Where relevant, the measures taken to ensure consistency between an individual recovery plan of a subsidiary, if applicable, and the group recovery plan should be described.

(8) Recovery plans are crucial for assessing the feasibility of recovery options. Therefore, a recovery plan should contain detailed information on the decision-making process with regard to its activation as an essential element of the governance structure, based on an escalation process using indicators within the meaning of Article 9 of Directive 2014/59/EU. Since each crisis is different, the materialisation of an indicator does not automatically activate a specific recovery option or, more generally, prompt an automated framework under which a particular recovery option has to be implemented in accordance with predetermined procedural requirements. Rather, indicators should be used to indicate that an escalation process should be started, involving an analysis of the best way to address a crisis situation. Before those indicators materialise, data and benchmarks used in regular risk management should be also applied to inform the institution or group of the risk of deterioration of its financial situation and of the indicators being triggered. While such early warning signals are not indicators within the meaning of Directive 2014/59/EU and as such do not indicate entry into the recovery

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phase or require escalation outside the business-as-usual processes, they help to ensure consistency between the institution's regular risk management and the monitoring of the indicators. The recovery plan should therefore contain a description of how suitable elements of the institution's risk management are connected with the indicators.

(9) The strategic analysis should take into account international standards for recovery plans such as the Financial Stability Board's 'Key Attributes of effective resolution regimes for financial institutions'. According to the Key Attributes, the strategic analysis should identify the institution's essential and systemically important functions and set out the key steps to maintaining them in recovery scenarios. Accordingly, the strategic analysis should comprise two parts. The first part of the strategic analysis should describe the institution or the group and its core business lines and critical functions. The description of the institution or of the group should provide a general overview of the institution or of the group and of its activities, together with a detailed description of its core business lines and critical functions. In order to facilitate the assessment of recovery options such as divestments and sales of business lines, it is important to identify the legal entities in which core business lines and critical functions are located, and to analyse intra-group interconnectedness. Under Article 6(1) and (2) of Directive 2014/59/EU, institutions are required to demonstrate to the satisfaction of the competent authority that the recovery plan is reasonably likely to be implemented without causing any significant adverse effect on the financial system. In addition, Article 6(2) of Directive 2014/59/EU requires the competent authorities to evaluate the extent to which the recovery plan, or specific options within it, could be implemented without causing any significant adverse effect on the financial system. Recovery plans should therefore contain a description of external interconnectedness.

(10) The second part of the strategic analysis should identify and assess possible recovery options. Recovery options available to the institution or the group should initially be described without reference to a specific scenario of financial stress. These are a means to enhance general crisis-preparedness and assist the institution or the group in reacting flexibly to a crisis. The strategic analysis should then set out how recovery options have been tested against specific scenarios of financial stress in order to tentatively assess which recovery options would be efficient in each of these scenarios, thereby providing a practical test of the efficiency of recovery options and of the adequacy of the indicators. Recovery options should include measures which could be taken by the institution where the conditions for early intervention under Article 27 of Directive 2014/59/EU are met.

(11) Communication of the recovery plan is crucial to implementing it effectively and to avoiding adverse effects on the financial system. A recovery plan should therefore also contain a section on communication and disclosure to address both internal communication to relevant internal bodies and the institution or group's staff, and external communication.

(12) A recovery plan could imply changes to the business organisation of the institution, either to facilitate the update of the plan and its implementation in the future, to monitor indicators, or because the process has identified some impediments complicating the

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implementation of recovery options. Those organisational preparatory and follow-up actions to be taken by the institution or the group should be described in the recovery plan in order to facilitate effective assessment of whether its implementation is reasonably likely, and to facilitate monitoring of its implementation by the institution or the group, and by competent authorities.

(13) It is essential to specify the minimum criteria that a competent authority must take into consideration when assessing recovery plans drawn up by institutions as provided for in Article 6(2) and Article 8(1) of Directive 2014/59/EU.

(14) Article 16 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council[3] empowers the European Banking Authority (EBA) to issue guidelines to ensure the common, uniform and consistent application of Union law and requires that competent authorities and financial institutions to which such guidelines are addressed make every effort to comply with such guidelines. Since Directive 2014/59/EU mandates the EBA to issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010, to specify further certain aspects of the Directive, competent authorities should take into account in accordance with that Article, the guidelines on scenarios for recovery planning and indicators to be included in recovery plans issued by EBA by making every effort to comply with those guidelines in line with Article 16(3) of Regulation (EU) No 1093/2010.

(15) The objective of recovery planning, as set out in Directive 2014/59/EU, is to identify options to maintain or restore the viability and financial position of an institution or group when it is subject to severe stress. The criteria for assessing a recovery plan should therefore seek to ensure that the plan is appropriate to the entities it covers and that the plan and the options identified in it are viable and can be implemented in due course. The exact matters that the competent authority must assess will depend on the content and extent of the recovery plan. Uniform rules concerning the minimum criteria to be assessed should be laid down in order to take into account the ability of competent authorities to impose simplified obligations for certain institutions regarding the contents and details of recovery plans, in accordance with Article 4 of Directive 2014/59/EU.

(16) Where appropriate, additional criteria should be specified that apply to the assessment of group recovery plans in order to reflect the additional requirements set out in Directive 2014/59/EU that apply to such plans.

(17) Recovery plans should be complete and contain all information required by Directive 2014/59/EU, including elements further specified in this Regulation. The plans should also be comprehensive, including sufficient detail and a sufficient range of options for the circumstances of the entity or entities they cover.

(18) Requirements for the content of resolution plans should take account of ongoing work to coordinate these developments at a global level through the Financial Stability Board.

(19) Standards for the content of resolution plans and the assessment of resolvability should be sufficiently flexible to take account of the circumstances of the institution or group

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being considered, to ensure that plans are targeted and useful for the implementation of resolution strategies.

(20) Resolution authorities should assess whether liquidation under normal insolvency procedures can credibly and feasibly achieve the resolution objectives. To do this they may need to draw on the relevant expertise of deposit guarantee schemes. The assessment of whether liquidation is feasible and credible does not exclude the need to assess whether the resolution objectives will be achieved to the same extent in liquidation in national insolvency proceedings, including that of minimising reliance on extraordinary financial support.

(21) Assessment of resolvability is an iterative process and is only possible on the basis of an identified preferred resolution strategy. Resolution authorities could conclude at the end of the process that an amended or wholly different strategy is more appropriate.

(22) Variants of the preferred strategy should also be considered in order to take account of circumstances which prevent implementation of the preferred resolution strategy, such as where a single point of entry strategy using the bail-in tool could no longer be feasible if losses exceed the eligible liabilities issued by the parent entity.

(23) Standards for group resolution plans and assessment of resolvability should allow a resolution strategy based on either of the stylised approaches provided by the Financial Stability Board and referred to in recital 80 of Directive 2014/59/EU. Namely, resolution strategies can involve a single resolution authority applying resolution tools at the holding or parent company level of a group (single point of entry), involve more than one resolution authority applying resolution tools in respect of more than one regional or functional subgroup or entity in a cross-border group (multiple point of entry); or can combine aspects of both.

(24) In any case, resolution planning and assessment of resolvability should take account of any supporting action required from resolution authorities other than those taking resolution action, for instance through provision of information, continued provision of critical shared services, or decisions to refrain from taking resolution action, taking into account the right of other resolution authorities to act on their own initiative if necessary to achieve domestic financial stability in the absence of effective action by lead resolution authorities.

(25) Section C of the Annex to Directive 2014/59/EU specifies a number of matters which must be considered in assessing the resolvability of an institution or group, but is not exhaustive and requires further specification.

(26) Pursuant to Article 32 of Directive 2014/59/EU, resolution action should only be taken when winding up an institution or group under normal insolvency proceedings would not be in the public interest, and therefore the assessment of resolvability should consider such winding up as an alternative to resolution action.

(27) Article 23(1) of Directive 2014/59/EU sets out various conditions which must be fulfilled to permit a parent institution, a Union parent institution and certain other entities in a group and their subsidiaries in other Member States or third countries that are institutions or financial institutions, on the basis of a group financial support