

II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2021/1340

of 22 April 2021

supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards determining the content of the contractual terms on recognition of resolution stay powers

(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 71a(5), third subparagraph thereof,

Whereas:

- (1) Directive 2014/59/EU as amended by Directive (EU) 2019/879 of the European Parliament and of the Council ⁽²⁾ introduced certain safeguards to enhance effective resolution execution in relation to financial contracts governed by third-country law.
- (2) In accordance with Article 71a(1) of Directive 2014/59/EU, institutions and entities are required to include terms that recognise the stay powers of resolution authorities in their financial contracts that they enter into and which are governed by third-country law.
- (3) In order to improve the efficiency of resolution, Article 68 of Directive 2014/59/EU lays down that certain crisis prevention measures or crisis management measures should not be deemed to be enforcement events or as insolvency proceedings. Furthermore, that article lays down that such measures should not entitle contracting counterparties in relevant contracts to exercise certain contractual rights solely as a result of the application of such measures. It is therefore necessary to include the parties' acceptance to be bound by these requirements in the content of the contractual terms. In addition, under Articles 33a, 69, 70 and 71 of Directive 2014/59/EU, resolution authorities may, for a limited period of time, suspend contractual payment or delivery obligations due under a contract with an institution or an entity under resolution or in certain circumstances before resolution, restrict the enforcement of security interests and suspend certain rights of counterparties to, for instance, close out, net gross obligations, accelerate future payments or otherwise terminate financial contracts. As these powers of the resolution authorities might not be effective when applied to financial contracts under third-country law, they should be explicitly recognised in the terms of financial contracts.

⁽¹⁾ OJ L 173, 12.6.2014, p. 190.

⁽²⁾ 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 (OJ L 150, 7.6.2019, p. 296).

- (4) In order to ensure the effectiveness of resolution and promote consistency in the approaches adopted by Member States, and in order to ensure that differences in their legal systems or differences arising from a particular contractual form or structure can be taken into account by resolution authorities, institutions and entities, it is appropriate to lay down the mandatory content for the contractual terms. The content of these contractual terms should take into account institutions' and entities' different business models. However, as financial contracts in international transactions generally do not vary in accordance with the institutions' or the entities' business model, it is not necessary to create different content for contractual recognition clauses.
- (5) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Banking Authority (EBA).
- (6) 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 advice of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council ⁽³⁾,

HAS ADOPTED THIS REGULATION:

Article 1

Content of the contractual terms

The contractual recognition terms of a relevant financial contract governed by third-country law which an institution or entity, as referred to in Article 1(1), point (b), (c) or (d), of Directive 2014/59/EU enters into, shall include the following:

- (1) the acknowledgement and acceptance by the parties that the contract may be subject to the exercise of powers by a resolution authority to suspend or restrict rights and obligations arising from such a contract under Articles 33a, 69, 70 and 71 of Directive 2014/59/EU as transposed by the applicable national law and that the conditions set out in Article 68 of that Directive as transposed by the applicable national law will apply.
- (2) a description of or a reference to the powers of the resolution authority as set out in Articles 33a, 69, 70 and 71 of Directive 2014/59/EU, as transposed by the applicable national law, and a description of or a reference to the conditions of Article 68 of Directive 2014/59/EU as transposed by the applicable national law.
- (3) the acknowledgement and acceptance by the parties:
 - (a) that they are bound by the effect of an application of the following powers:
 - the suspension of any payment or delivery obligation in accordance with Article 33a of Directive 2014/59/EU as transposed by the applicable national law;
 - the suspension of any payment or delivery obligation in accordance with Article 69 of Directive 2014/59/EU as transposed by the applicable national law;
 - the restriction of enforcement of any security interest in accordance with Article 70 of Directive 2014/59/EU as transposed by the applicable national law;
 - the suspension of any termination right under the contract in accordance with Article 71 of Directive 2014/59/EU as transposed by the applicable national law;
 - (b) that they are bound by the provisions of Article 68 of Directive 2014/59/EU as transposed by the applicable national law;
- (4) the acknowledgement and acceptance by the parties that the contractual recognition terms are exhaustive on the matters described therein to the exclusion of any other agreements, arrangements or understandings between the counterparties relating to the subject matter of the relevant agreement.

⁽³⁾ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

*Article 2***Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 22 April 2021.

For the Commission
The President
Ursula VON DER LEYEN
