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COVER NOTE

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 10 May 2016

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

No. Cion doc.: C(2016) 2665 final

Subject: COMMISSION DELEGATED REGULATION (EU) No .../.. of 10.5.2016
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

Delegations will find attached document C(2016) 2665 final.

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COMMISSION DELEGATED REGULATION (EU) No .../..

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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)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Article 52 of Directive (EU) No 2014/59 ('the Directive') empowers the Commission to adopt, following submission of draft standards by the European Banking Authority (EBA), and in accordance with Articles 10 to 14 of Regulation No (EU) 1093/2010, delegated acts specifying (a) the minimum elements that should be included in a business reorganisation plan; and (b) the minimum contents of the reports in relation to the business reorganisation plan. In accordance with Article 10(1) of Regulation No (EU) 1093/2010 establishing the EBA, the Commission shall decide within three months of receipt of the draft standards whether to endorse the drafts submitted. The Commission may also endorse the draft standards in part only, or with amendments, where the Union's interests so require, having regard to the specific procedure laid down in those Articles.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In accordance with the third subparagraph of Article 10(1) of Regulation No (EU) 1093/2010, the EBA has carried out a public consultation on the draft technical standards submitted to the Commission in accordance with Article 52 of Directive (EU) No 2014/59 ('the Directive'). A consultation paper was published on the EBA internet site on 9 March 2015 and the consultation closed on 9 June 2015. Moreover, the EBA invited the EBA's Banking Stakeholder Group set up in accordance with Article 37 of Regulation No (EU) 1093/2010 to provide advice on them. Together with the draft technical standards, the EBA has submitted an explanation on how the outcome of these consultations has been taken into account in the development of the final draft technical standards submitted to the Commission.

Together with the draft technical standards, and in accordance with the third subparagraph of Article 10(1) of Regulation No (EU) 1093/2010, the EBA has submitted its Impact Assessment, including its analysis of the costs and benefits, related to the draft technical standards submitted to the Commission. This analysis is available at <http://www.eba.europa.eu/regulation-and-policy/recovery-and-resolution/regulatory-technical-standards-and-guidelines-on-business-reorganisation-plans> pages 25-33 of the Final Draft Regulatory Technical Standards package.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The draft Regulatory Technical Standards further specify (a) the minimum elements that should be included in a business reorganisation plan and (b) the minimum contents of the reports in relation to the business reorganisation plan described in Articles 51 and 52 of Directive (EU) No 2014/59.

The standards require a complete and prudent business reorganisation plan that addresses the causes of the institution's failure and sets out how it will be restored to long-term viability. Restoring the long term viability of the institution or entity following resolution means that, at the latest by the end of the reorganisation period, the institution or entity (i) is capable of fulfilling its internal capital adequacy assessment process, according to the relevant provisions of Directive 2013/36/EU

(CRD IV);¹ (ii) fulfils all the relevant prudential and other regulatory requirements on a forward-looking basis, such as liquidity, regulatory capital adequacy and the minimum requirement for own funds and eligible liabilities (Article 45 of BRRD) and (iii) has a viable business model that is considered sustainable in the long-term and does not threaten its capacity to fulfil the above two conditions, in line with the business model analysis framework and methodology provided in the guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP).²

The viability analysis should include a significant, albeit plausible, set of worst-case assumptions relating to the context in which the firm will operate (worst-case scenario). The business reorganisation plan should also ensure that the reorganisation measures do not pose a threat to financial stability, will not require further resolution in the foreseeable future and that they ensure the continuity of the institution or entity's critical functions.

¹ Directive 2013/36/EU, OJ L 176, 27.6.2013, p. 338.

² EBA/GL/2014/13, 19 December 2014.

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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 Council³, 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.

³ OJ L 173, 12.6.2014, p.190.

- (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 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 Council⁴,

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

⁴ Regulation (EU) No 1093/2010 of the European Parliament and of the Council 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.)

- 1(1) of Directive 2014/59/EU before the submission of the business reorganisation plan;
- (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.

Article 3

Financial performance – Regulatory requirements

1. The business reorganisation plan shall include the projected financial performance of the institution or entity referred to in points (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU during the reorganisation period and demonstrate how long-term viability will be restored. It shall set out in particular:
 - (a) the costs and the impact of the reorganisation on the profit and loss statement and the balance sheet of the institution or entity;
 - (b) a description of the funding requirements during the reorganisation period and potential sources of funding;
 - (c) the way the institution or entity will be able to operate covering all its costs, including depreciation and financial charges and provide an acceptable financial return by the end of the reorganisation period;
 - (d) a post-resolution balance sheet reflecting the new debt and capital structure and the write-down of assets based on the valuation conducted pursuant to Article 36(1) of Directive 2014/59/EU or the *ex-post* definitive valuation referred to in Article 36(10) thereof ;
 - (e) a projection of the key financial metrics at group, entity and business line level, relating to, in particular, liquidity, loan performance, funding profile, profitability and efficiency.
2. The business reorganisation plan shall set out the actions the institution or entity will take to ensure that it is able to fulfil all the applicable prudential and other regulatory requirements on a forward-looking basis as quickly as possible and at the latest by the end of the reorganisation period, including the minimum requirements for own funds and eligible liabilities within the meaning of Article 45 of Directive 2014/59/EU.

Article 4

Viability assessment

1. The business reorganisation plan shall contain sufficient information to allow the resolution authority and the competent authority to assess the feasibility of the proposed measures. The business reorganisation plan shall set out at least:
 - (a) the assumptions regarding the expected macro-economic and market developments in the base case, compared with appropriate sector-wide benchmarks;

- (b) a concise presentation of alternative reorganisation strategies or set of measures and justification as to why the measures in the business reorganisation plan have been chosen to restore 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, while respecting the resolution objectives and principles.
2. The business reorganisation plan shall include the necessary information to enable the resolution authority or the competent authority to conduct a detailed analysis of the business reorganisation's impact on the critical functions of the institution or entity referred to in points (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU and on financial stability.
 3. The business reorganisation plan shall include an analysis of an alternative set of key underlying assumptions, in which best-case and worst-case scenarios are considered. Restoration of long-term viability shall be possible under all scenarios, although the period, the measures and the financial performance may differ.
 4. With regard to the best-case and worst-case scenarios referred to in paragraph 3, the business reorganisation plan shall include a summary of the key information used in developing each scenario and the performance of the institution or entity referred to in points (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU under each scenario. Such summary shall include in particular:
 - (a) the underlying assumptions, such as key macro-economic variables;
 - (b) the projection of the profit and loss statement and the balance sheet;
 - (c) the key financial metrics at group, entity and business line level.

Article 5
Implementation and adjustments

1. The business reorganisation plan shall include specific, appropriate and at least quarterly implementation milestones and performance indicators. These milestones and indicators may be adjusted, in line with the process laid down in paragraph 2.
2. The business reorganisation plan shall provide for the possibility for the management body or any person or persons appointed in accordance with Article 72(1) of Directive 2014/59/EU to adjust the reorganisation strategy or individual measures where their implementation is no longer expected to contribute to the restoration of the long-term viability within the contemplated timescale. Such adjustments shall be communicated to the resolution authority and the competent authority in the progress report on the implementation of the business reorganisation plan referred to in Article 6. Where necessary for reasons of urgency, such adjustments may also be communicated through extraordinary reports.
3. The management body or the person or persons appointed in accordance with Article 72(1) of Directive 2014/59/EU shall not deviate from the implementation of the business reorganisation plan before obtaining approval for the adjustments according to the procedure set out in paragraphs (7), (8) and (9) of Article 52 of Directive 2014/59/EU.

Article 6
Progress report

1. The progress report to be submitted to the resolution authority pursuant to Article 52(10) of Directive 2014/59/EU shall include a review and assessment of the progress of the implementation of business reorganisation plan, covering at least the following:
 - (a) the milestones that are met, the measures that are realised and how their impact compares to that envisaged by the business reorganisation plan;
 - (b) the performance of the institution or entity and a comparison with the forecasts of the business reorganisation plan and previous progress reports;
 - (c) the reasons why any milestones or performance indicators have not been achieved and proposals to remedy the delays or shortfalls;
 - (d) any other issues arising in the execution of the business reorganisation plan that may prevent the restoration of 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;
 - (e) the upcoming measures and milestones and an assessment of how likely they are to be met;
 - (f) updated financial performance projections;
 - (g) where necessary and justified, a proposal for adjustments to individual measures, milestones or performance indicators, in accordance with Article 5(2).

2. Resolution authorities may at all times require the management body or the person or persons appointed in accordance with Article 72(1) of Directive 2014/59/EU to provide information relating to the implementation of the business reorganisation plan.

Article 7
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, 10.5.2016

For the Commission

The President
Jean-Claude JUNCKER