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EBA/RTS/2015/07

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6 July 2015

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# Final Report

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Draft Regulatory Technical Standards on independent valuers  
under Article 36(14) of Directive 2014/59/EU

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# 1. Executive summary

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Article 36 of Directive 2014/59/EU (the Directive) specifies, among other things, that independent valuers shall be appointed to perform valuations of the assets and liabilities of institutions or entities referred to in point (b), (c) or (d) of Article 1(1) of the Directive (relevant entities):

- to determine whether the conditions for resolution are met and to inform the resolution actions to be taken (Article 36(4) of the Directive);
- to establish whether shareholders and creditors would have received better treatment if the relevant entity had entered into normal insolvency proceedings instead of being subject to the application of the resolution tools and powers (Article 74 of the Directive).

In this regard Article 36(14) of the Directive mandates the EBA to draft regulatory technical standards (draft RTS) concerning the circumstances in which a person is to be considered independent from any public authority, including the resolution authority, and the relevant entity and can therefore act as an independent valuer.

To this end the draft RTS set out general criteria which shall be used to determine whether a person complies with the legal requirement of independence. Only two specific situations are identified by the draft RTS as situations which preclude per se a person from being the independent valuer:

- where the person is not separate from any relevant public authority, including the resolution authority, or the relevant entity;
- where the person, in the year preceding the date on which that person's eligibility to act as independent valuer is assessed, has completed a statutory audit of the relevant entity pursuant to Directive 2006/46/EC of the European Parliament and of the Council.

As a precondition for being considered independent, the draft RTS require that the person concerned has the qualifications, experience, ability, knowledge and resources to ensure that they can perform the valuation without depending on support from third parties, in particular the relevant public authorities, including the resolution authority, and the relevant entity.

With regard to the criteria used to assess the circumstances that may affect the independence of the person concerned, the draft RTS define the scope and magnitude of interests which are relevant to assess independence. For this purpose, the draft RTS require the consideration of all actual or potential material interests in common or in conflict with any relevant public authority, including the resolution authority, and the relevant entity which, in the assessment of the authority responsible for appointing the independent valuer (or such other authority as may be appointed to perform this task in the Member State concerned), could influence, or be reasonably perceived to influence, the independent valuer's judgement in carrying out the valuation.

Furthermore, the draft RTS require that this assessment be carried out, in addition, with respect to the senior management and the members of the management body of the relevant entity, the legal or natural persons who control or have a qualifying holding in the relevant entity, the creditors identified to be significant and any group entities of the relevant entity.

This approach will ensure that the process for assessing independence for the purposes of determining eligibility to be an independent valuer is assessed in a consistent manner across the Union, thereby increasing legal certainty, enhancing confidence in the valuation process and ensuring a level playing field.

## Next steps

The draft RTS will be submitted to the Commission for endorsement, following which they will be subject to scrutiny by the European Parliament and the Council before being published in the Official Journal of the European Union. The technical standards will apply from on the twentieth day following that of its publication in the *Official Journal of the European Union*.

## 2. Background and rationale

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1. The present draft regulatory technical standards (draft RTS) form part of the single rulebook strengthening regulatory harmonisation in the Union and are to be read in the wider context of the recovery and resolution rules provided for in Directive 2014/59/EU (the Directive).
2. Article 36 of the Directive sets out a number of tasks for independent valuers, including the conduct of valuations in order to inform the determination of whether an institution or entity referred to in point (b), (c) or (d) of Article 1(1) of the Directive (relevant entity) is failing or is likely to fail and to inform the resolution actions to be taken, and to assess the treatment shareholders and creditors would have received had the relevant entity entered normal insolvency proceedings in order to determine whether or not they are worse off as a result of the resolution action.
3. Article 36(14) of the Directive requires the EBA to prepare draft RTS to identify the circumstances in which a person is to be considered independent from any relevant public authority, including the resolution authority, and the relevant entity. By carrying out this mandate, the draft RTS increase legal certainty, ensure a level playing field and enhance confidence in the quality of the valuation within the resolution process.
4. For these purposes the draft RTS set forth general criteria which shall be used in order to frame the open-ended list of possible situations which may materialise and determine whether a person complies with the legal requirement of independence.
5. In order for a person to be regarded as independent the draft RTS set out a number of conditions that must be met. These are:
  - a. the person concerned possesses the qualifications, experience, ability, knowledge and resources required and can carry out the valuation effectively without undue reliance on any relevant public authority, including the resolution authority, or the relevant entity;
  - b. the person is legally separated from the relevant public authorities, including the resolution authority, and the relevant entity; and
  - c. the person has no material common or conflicting interest within the meaning of the draft RTS.
6. The draft RTS also make clear that the first requirement shall not prevent the provision of instructions, guidance, premises, technical equipment or other forms of support where, in the assessment of the appointing authority (or such other authority as may be empowered to perform the task in the Member State concerned), this is considered necessary for achieving the



goals of the valuation. In addition the payment to the independent valuer of such remuneration and expenses as are reasonable in connection with the conduct of the valuation shall not be prevented.

7. The draft RTS specify two cases in which a person shall be automatically precluded from being the independent valuer:
  - a. where the person concerned is not structurally separated from any relevant public authority, including the resolution authority, and the relevant entity;
  - b. where the person concerned, in the year preceding the date on which that person's eligibility to act as independent valuer is assessed, has completed a statutory audit of the relevant entity pursuant to Directive 2006/46/EC of the European Parliament and of the Council<sup>1</sup>, in which case that person shall be deemed to have a material common or conflicting interest which precludes them from acting as the independent valuer.
8. The draft RTS specify that an actual or potential material interest in common or in conflict with any relevant public authority, including the resolution authority, or the relevant entity shall be material whenever, in the assessment of the appointing authority (or such other authority as may be empowered to perform this task in the Member State concerned), it could influence, or be reasonably perceived to influence, the independent valuer's judgement in carrying out the valuation.

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<sup>1</sup> Directive 2006/46/EC of the European Parliament and of the Council of 14 June 2006 amending Council Directives 78/660/EEC on the annual accounts of certain types of companies, 83/349/EEC on consolidated accounts, 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions and 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings (OJ L 224, 16.8.2006, p. 1.).

### 3. Draft regulatory technical standards on independent valuers under Article 36(14) of Directive 2014/59/EU

**COMMISSION DELEGATED REGULATION (EU) No .../..****of XXX****supplementing Directive 2014/59/EU of the European Parliament and of the Council  
with regard to regulatory technical standards on independent valuers**

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<sup>2</sup>, and in particular Article 36(14) thereof,

Whereas:

- (1) When carrying out their valuation tasks for the purposes of Article 36, including Article 49(3), and Article 74 of Directive 2014/59/EU it is necessary to ensure that independent valuers are not being influenced, and are not perceived to be influenced, by public authorities, including the resolution authority, or by the institution or entity referred to in point (b), (c) or (d) of Article 1(1) of that Directive.
- (2) Accordingly, uniform rules should apply to determine the circumstances in which a person shall be considered independent from the relevant public authorities, including the resolution authority, and from the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU. Those rules should encompass requirements as to the expertise and resources of the person concerned and their relation to the relevant public authorities, including the resolution authority, and the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU.
- (3) Independence can be reinforced by conditions ensuring the adequacy of the expertise and resources of the independent valuer. More specifically it should be ensured that the independent valuer possesses the necessary qualifications, knowledge and expertise in all relevant subjects, in particular valuation and accounting in the context of the banking industry. It should also be ensured that the independent valuer holds, or has access to, sufficient human and technical resources to carry out the valuation. For that purpose, it could be appropriate to access sufficient human and technical resources by engaging staff or contractors from other valuation specialists or law firms or other sources, in relation to the carrying out of the valuation. Where staff or contractors are engaged to support the conduct of the valuation they should be subject to conflicts of interest verification so as to

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<sup>2</sup> OJ L 173, 12.6.2014, p.190.

ensure that independence is not undermined. In all cases the independent valuer should remain responsible for the outcome of the valuation.

- (4) Furthermore it should be ensured that the independent valuer is also capable of carrying out the valuation effectively without undue reliance on any relevant public authority, including the resolution authority, and the institution or entity referred to in point (b), (c) or (d) or Article 1(1) of Directive 2014/59/EU. However, the provision of instructions or guidance necessary to support the conduct of the valuation, for example in relation to the methodology provided pursuant to the Union legislation in the field of valuation for purposes relating to resolution, should not be seen as constituting undue reliance where such instructions are, or guidance is, considered necessary to support the conduct of the valuation. In addition, the provision of assistance, such as the provision by the institution or entity concerned of systems, financial statements, regulatory reports, market data, other records or other assistance to the independent valuer should not be prevented where, in the assessment of the appointing authority or such other authority as may be empowered to conduct this task in the Member State concerned, this is considered necessary to support the conduct of the valuation. In accordance with any procedures which may be put in place, the provision of instructions, guidance and other forms of support should be agreed on a case-by-case or pooled basis.
- (5) The payment of reasonable remuneration and the reimbursement of reasonable expenses in connection with the valuation should not be prevented.
- (6) Independence can be endangered if valuation is performed by a person who is employed by or affiliated to any relevant public authority, including the resolution authority, and the institution or entity referred to in point (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU even in cases where full structural separation to address threats such as self-review, self-interest, advocacy, familiarity, trust or intimidation has been established. Therefore, there is a need to ensure that appropriate legal separation is secured such that the independent valuer is not an employee or contractor of, nor in a group with, any relevant public authority, including the resolution authority, or the institution or entity concerned.
- (7) It is also necessary to ensure that the independent valuer does not have any material interest in common or in conflict with any relevant public authority, including the resolution authority, and the institution or entity referred to in point (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU, including its senior management, controlling shareholders, group entities and significant creditors, as could be the case when the independent valuer is a significant creditor of the institution or entity concerned. Similarly, personal relationships could represent a material interest.
- (8) Accordingly, the appointing authority, or such other authority as may be empowered to conduct the task in the Member State concerned, should assess whether any material common or conflicting interests are present. For the purposes of this assessment the independent valuer should notify the appointing authority, or such other authority as may be empowered to conduct this task in the Member State concerned, of any actual or potential interest which the person considers may, in the assessment of that authority, be considered to amount to a material interest and provide any information as may be reasonably requested by the authority to inform this assessment. In the case of legal persons, independence should be assessed by



reference to the company or partnership as a whole but taking account of any structural separation and other arrangements that may be put in place to differentiate between those staff members who may be involved in the valuation and other staff members, to address threats such as self-review, self-interest, advocacy, familiarity, trust or intimidation. If the significance of those threats compared to the safeguards applied is such that the person's independence is compromised, the company or partnership should not be the independent valuer.

- (9) A statutory auditor who has completed an audit of the institution or entity referred to in point (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU in the year preceding the independent valuer's assessment for eligibility to act as valuer should not be regarded as independent under any circumstances. As regards other audit or valuation services provided to the institution or entity concerned in the years immediately preceding the date on which independence is to be assessed, these should also be assumed to present a material interest in common or in conflict unless it is demonstrated to the satisfaction of the appointing authority, or such other authority as may be empowered to conduct this task in the Member State concerned, that this is not the case having regard to all relevant circumstances, including any structural separation or other arrangements in place.
- (10) Following appointment it is essential that the independent valuer maintains policies and procedures in accordance with the applicable codes of ethics and professional standards to identify any actual or potential interest which the valuer considers may amount to a material interest in common or in conflict. The appointing authority, or such other authority as may be identified in the Member State concerned, should be notified immediately of any actual or potential interests identified and should consider whether these amount to a material interest in which case the independent valuer's appointment should be terminated and a new valuer appointed.
- (11) In order to provide additional clarity, a number of definitions are established in this Regulation.
- (12) This Regulation is based on the draft regulatory technical standards submitted by the European Banking Authority (EBA) to the Commission.
- (13) 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 in accordance with Article 15 of Regulation (EU) No 1093/2010 and requested the opinion 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<sup>3</sup>,

HAS ADOPTED THIS REGULATION:

#### *Article 1- Definitions*

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

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<sup>3</sup> 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).

- (1) ‘appointing authority’ means the legal or natural person responsible for selecting and appointing the independent valuer for the purposes of conducting the valuation referred to in Article 36(1) or Article 74(1) of Directive 2014/59/EU;
- (2) ‘control’ means control as defined in point (37) of Article 4(1) of Regulation (EU) No 575/2013<sup>4</sup>;
- (3) ‘qualifying holding’ means a qualifying holding as defined in point (36) of Article 4(1) of Regulation (EU) No 575/2013;
- (4) ‘relevant entity’ means an institution or an entity referred to in point (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU whose assets and liabilities are to be valued pursuant to Article 36 or 74 of Directive 2014/59/EU;
- (5) ‘relevant public authority’ means the appointing authority, the resolution authority or the authorities referred to in points (a) to (h), and the first authority referred to in point (i) of Article 83(2) of Directive 2014/59/EU.

#### *Article 2- Elements of independence*

An independent valuer, who may be a legal or natural person, shall be deemed to be independent from any relevant public authority and the relevant entity if all the following conditions are met, the independent valuer:

- (a) possesses the qualifications, experience, ability, knowledge and resources required and can carry out the valuation effectively without undue reliance on any relevant public authority or the relevant entity in accordance with Article 3;
- (b) is legally separated from the relevant public authorities and the relevant entity in accordance with Article 4;
- (c) has no material common or conflicting interest within the meaning of Article 5.

#### *Article 3- Qualifications, experience, ability, knowledge and resources*

1. The independent valuer shall possess the necessary qualifications, experience, ability and knowledge in all matters considered relevant by the appointing authority.
2. The independent valuer shall hold, or have access to, such human and technical resources as the appointing authority considers appropriate to carry out the valuation; the assessment of adequacy of resources shall take into account the nature, size and complexity of the valuation to be performed.
3. In relation to the conduct of the valuation the independent valuer shall not:
  - (a) seek nor take instructions or guidance from any relevant public authority or the relevant entity;
  - (b) seek nor accept financial or other advantages from any relevant public authority or the relevant entity.

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<sup>4</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1)..

4. Paragraph 3 shall not prevent:
  - (a) the provision of instructions, guidance, premises, technical equipment or other forms of support where, in the assessment of the appointing authority, or such other authority as may be empowered to conduct this task in the Member State concerned, this is considered necessary for achieving the goals of the valuation;
  - (b) the payment to the independent valuer of such remuneration and expenses as are reasonable in connection with the conduct of the valuation.

*Article 4- Structural separation*

5. The independent valuer shall be a person separate from any relevant public authority, including the resolution authority, and the relevant entity.
6. For the purposes of paragraph 1:
  - (a) in relation to natural persons, the independent valuer shall not be an employee or contractor of any relevant public authority or the relevant entity;
  - (b) in relation to legal persons, the independent valuer shall not belong to the same group of companies as any relevant public authority or the relevant entity.

*Article 5- Material common or conflicting interests*

1. The independent valuer shall not have an actual or potential material interest in common or in conflict with any relevant public authority or the relevant entity.
  2. For the purposes of paragraph 1 an actual or potential interest shall be deemed material whenever, in the assessment of the appointing authority or such other authority as may be empowered to perform this task in the Member State concerned, it could influence, or be reasonably perceived to influence, the independent valuer's judgement in carrying out the valuation.
  3. For the purposes of paragraph 1 interests in common or in conflict with at least the following parties shall be relevant:
    - (a) the senior management and the members of the management body of the relevant entity;
    - (b) the legal or natural persons who control or have a qualifying holding in the relevant entity;
    - (c) the creditors identified by the appointing authority, or such other authority as may be empowered to perform this task in the Member State concerned, to be significant on the basis of the information available to the appointing authority or such other authority as may be empowered to perform this task in the Member State concerned;
    - (d) each group entity.
  4. For the purposes of paragraph 1 at least the following matters shall be relevant:
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- (a) the provision by the independent valuer of services, including the past provision of services, to the relevant entity and the persons referred to in paragraph 3, and in particular the link between these services and the elements relevant for the valuation;
  - (b) personal and financial relationships between the independent valuer and the relevant entity and the persons referred to in paragraph 3;
  - (c) investments or other material financial interests of the independent valuer;
  - (d) in relation to legal persons, any structural separation or other arrangements that shall be put in place to address any threats to independence such as self-review, self-interest, advocacy, familiarity, trust or intimidation, including arrangements to differentiate between those staff members who may be involved in the valuation and other staff members.
5. Without prejudice to paragraphs 3 and 4, a person shall be deemed to have an actual material interest in common or in conflict with the relevant entity where the independent valuer, in the year preceding the date on which that person's eligibility to act as independent valuer is assessed, has completed a statutory audit of the relevant entity pursuant to Directive 2006/46/EC of the European Parliament and of the Council<sup>5</sup>.
6. Any person considered for the position of independent valuer, or appointed as an independent valuer shall:
- (a) maintain, in accordance with any applicable codes of ethics and professional standards, policies and procedures to identify any actual or potential interest which may be considered to constitute a material interest in accordance with paragraph 2;
  - (b) without delay notify the appointing authority or such other authority as may be empowered to perform the task referred to in paragraph 2 in the Member State concerned of any actual or potential interest which the independent valuer considers may, in the assessment of the authority, be considered to amount to a material interest in accordance with paragraph 2;
  - (c) take appropriate steps to ensure that none of the staff or others involved in carrying out the valuation have any material interest of a kind as referred to in paragraph 2.

#### *Article 6- 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*.

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<sup>5</sup> Directive 2006/46/EC of the European Parliament and of the Council of 14 June 2006 amending Council Directives 78/660/EEC on the annual accounts of certain types of companies, 83/349/EEC on consolidated accounts, 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions and 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings (OJ L 224, 16.8.2006, p. 1.)



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

Done at Brussels,

*For the Commission*  
*The President*

*On behalf of the President*  
*[...]*  
*[Position]*

## 4. Accompanying documents

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### 4.1 Draft cost–benefit analysis/impact assessment

Article 36(14) of Directive 2014/59/EU (the Directive) requires the EBA to specify through draft RTS the circumstances under which a person is independent from both the resolution authority and the institution or entity concerned.

Article 10(1) of the EBA Regulation (Regulation (EU) No 1093/2010 of the European Parliament and of the Council) provides that when any regulatory technical standards developed by the EBA are submitted to the Commission for adoption, they should be accompanied by an analysis of ‘the potential related costs and benefits’. This analysis should provide an overview of the findings regarding the problem to be dealt with, the solutions proposed and the potential impact of these options.

This chapter of the report includes the cost-benefit analysis of the provisions included in the draft RTS set out in this report. Given the nature of the study, the impact assessment is high level and qualitative in nature.

#### A. Problem identification

The absence of a common regulatory framework to ensure the independence of a valuer increases the risk of poor quality of valuations in terms of fairness, prudence and accuracy.

- Under the current framework, situations where independent valuers could be influenced by relevant public authorities, including the resolution authority, or the institution or entity concerned when performing their valuation are hardly captured. Therefore, valuations could be affected by conflicts of interest which could undermine the credibility and the quality of the valuation.
- It also increases the likelihood of litigation cases arising during the resolution process. Litigation cases are more likely to occur when the regulatory framework ensuring the independence of the valuer is not credible. The parties affected by the outcome of the valuation may be more likely to challenge the resolution action in such cases.
- It reduces the overall efficiency of the resolution framework. The current framework is not proactive due to the legal uncertainty on whether a valuer is independent. As a result, potential problems caused by the lack of independence of the valuer would only be raised at a very late stage of the resolution process, which may cause delays and/or disrupt the resolution process as a whole.

Primary legislation defining the circumstances under which a valuer is independent is rare in EU countries, and provides mostly general principles governing the issue.

Two **main problems** emerge when trying to specify the circumstances under which a valuer cannot be considered independent:

- whether general criteria should be identified to assess if the valuer is independent, or a list of specific situations where the valuer cannot be considered independent should be established;
- whether there are certain positive qualitative or quantitative features that can be identified as necessary preconditions that the valuer has to meet in order to be considered independent and whether a particular process should be set forth to identify an independent valuer.

### B. Policy objectives

The draft RTS aim to ensure that the person/entity performing the valuation of the assets and liabilities of an institution or entity under a resolution process is independent from the relevant public authorities, including the resolution authority, and from the institution or entity concerned.

In particular, the draft RTS aim to:

- prevent undue influence from the relevant public authorities, including the resolution authority, or the institution or entity concerned with an interest in the final value and content of the valuation;
- ensure a fair and prudent valuation of the balance sheet;
- enhance transparency and governance over the valuation;
- enhance market confidence in the quality of the valuation of the institution or entity concerned;
- reduce the risk of litigation in relation to the resolution process;
- strengthen the efficiency of the resolution process as a whole.

### C. Baseline scenario

Absent regulatory intervention, divergences in the approach to the assessment of the independence of valuers for the purposes of performing valuations under the Directive could arise in the Member States, giving rise to the risks identified above.

## D. Options considered

In relation to the problems and objectives listed above, the EBA has considered various policy options which are partly cumulative. These options relate to the scope and content of the RTS:

### Policy option 1: List of conflicts of interest

Option 1 proposes the provision by the draft RTS of a detailed list of conflicts of interest between the valuer and the relevant public authorities, including the resolution authority, and the institution or entity concerned.

### Policy option 2: General criteria to frame each specific situation and assess independence on a case-by-case basis

Option 2 proposes that the draft RTS introduce a list of situations which may not be compatible with the requirements for independence.

### Policy option 3: Sufficient expertise and resources

Option 3 proposes the specification of qualitative preconditions for being considered an independent valuer, in addition to the criteria ensuring the legal, structural and operational separation of the valuer from the relevant public authorities, including the resolution authority, and the institution or entity concerned.

This section identifies the advantages and disadvantages of the policy options, taking into account the relevant costs and benefits of the policy options. However, it is worth noting that the implementation of the draft RTS is not expected to generate additional costs. When drafting the RTS, the EBA focused on the key criteria and concepts needed to ensure the independence of the valuer. The circumstances identified in the draft RTS are deemed to be reasonable, clear and simple, which should ensure the smooth and easy implementation of the standards by the public authorities. As a result, the costs stemming from the implementation of the new framework will be limited, while the costs arising from the current legal uncertainties (costs of litigation, disruptions in the resolution process) are expected to decrease.

### *Policy option 1: List of conflicts of interest*

- *Advantages*
  - A prescriptive list of conflicts of interest would decrease the risk for misinterpretation and potential conflicts between parties.
  - It also creates less uncertainty for the institutions and regulators.
- *Disadvantages*

- It is very difficult to identify all potential cases (i.e. introducing a prescriptive list) of conflicts of interest. There may be risks of gaps in regulation.
- A prescriptive list is not proactive and flexible because new cases may arise in the future which will require policy makers to amend the regulatory framework.

*Policy option 2: General criteria to frame each specific situation and assess independence on a case-by-case basis*

- *Advantages*
  - General criteria would decrease the risk of giving false signals, which would be an inherent feature with detailed criteria. In fact, it is likely that detailed criteria would be incomplete right from the start, leading to ‘false negatives’ (i.e. cases of lack of independence in fact which are not considered as such by the draft RTS), and on the other hand too rigid, leading to ‘false positives’ (i.e. cases which would be qualified as incompatible with the requisite of independence even though in fact the valuer is perfectly independent).
  - These criteria would also allow quicker action in cases when a valuer needs to be appointed quickly.
  - General criteria decrease the risk of excluding certain events outside their scope.
- *Disadvantages*
  - General criteria can be considered redundant and may increase the risk of litigation.

*Policy option 3: Sufficient expertise and resources*

- *Advantages*
  - The competence of independent valuers is a necessary precondition for valuations. Without this, the framework will not be able to ensure the complete independence of valuers, as a valuer may need to seek support from third parties or the resolution authority or the institution concerned during a valuation.
  - While minimising legal risks, this option would also allow the competent authorities to react quickly in emergency situations when an independent valuer would have to be appointed or substituted.
  - Requiring that an independent valuer needs to possess sufficient expertise and resources enhances the credibility of the valuer’s performance.



- *Disadvantages*
  - Qualitative preconditions for an independent valuer are not explicitly covered in Article 36(14) of the BRRD. This article only refers to the circumstances under which a person is independent of the resolution authority and of the institution or entity concerned. The implementation of option 1 will therefore be based on a broad interpretation of Article 36(14) of the BRRD.

#### E. Cost-benefit analysis

The cost-benefit analysis is set out above.

#### F. Preferred option

Given the assessment of the policy options, the most suitable options for the draft RTS are:

- high-level specification of the circumstances under which conflicting or common interests may occur, without establishing a prescriptive list;
- specifying preconditions for being considered an independent valuer to ensure that valuers are able to perform the valuation without support from a third party.

## 4.2 Views of the Banking Stakeholder Group (BSG)

The BSG welcomed the approach proposed in the draft RTS set out in EBA/CP/2014/18, including the EBA's proposal to use a principles-based approach to the assessment of independence instead of prescribing a prescriptive list of rules to be followed by the authorities.

The BSG supported the EBA's proposal to ensure that independence should be assessed not only by reference to the relevant public authorities and the relevant entity concerned but also by reference to other parties, including the senior management and creditors of the relevant entity. The BSG expressed the view that independence should be assessed by reference to associated undertakings and joint ventures. The EBA notes that the general requirement to assess interests in common or in conflict pursuant to Article 5 of the draft RTS will encompass any relevant person (see in particular paragraph (3), which draws attention to, among others, the senior management and members of the management body of the relevant entity and group entities). In addition, Article 5(4) makes it clear that it is relevant to consider, among other matters, the provision by the independent valuer of past services to the relevant entity and persons referred to in paragraph (3), personal and financial relationships between the independent valuer and the persons referred to in Article 5(3) and investments or other material financial interests of the independent valuer.

The BSG supported the proposal to reflect in the draft RTS a presumption that independence is not satisfied where a person has, in the 3 years before the person's assessment of independence, offered services to, or has had business or other relationships with, the relevant entity or any of its affiliates if these services or relationships could influence, or be reasonably perceived to influence, the independent valuer's judgement. In the draft of the RTS included in this report the EBA has omitted this provision on the basis that it is sufficient to rely on the general requirement to assess independence in accordance with Article 5(1) of the draft RTS and because it seems arbitrary to draw a line at 3 years.

The BSG expressed some reservations with the notion of a temporary administrator being appointed as independent valuer. However, the BSG agreed with the proposal to permit authorities to consider the matter on a case-by-case basis.

The BSG also proposed that it should be possible to appoint more than one person as independent valuer for a particular relevant entity (e.g. a very large and complex credit institution). The EBA notes that Directive 2014/59/EU foresees the appointment of one valuer but makes it clear in the draft RTS included in this report that the valuer may appoint staff and use contractors if necessary to assist in the conduct of the valuation. However, such staff and contractors should be subject to conflicts of interest verification and, in all cases, the independent valuer should remain responsible for the outcome of the valuation.

## 4.3 Feedback on the public consultation and on the opinion of the BSG

The EBA publicly consulted on the draft RTS.

The consultation period lasted for 3 months and ended on 11 October 2014. Thirteen responses were received, of which nine are published on the EBA website (four are confidential).

This report presents a summary of the key points and other comments arising from the consultation, the analysis and discussion triggered by these comments and the actions taken to address them if deemed necessary.

In many cases several industry bodies made similar comments or the same body repeated its comments in the response to different questions. In such cases, the comments and EBA analysis are included in the section of this report where EBA considers them most appropriate.

Changes to the draft RTS have been incorporated as a result of the responses received during the public consultation.

### Summary of key issues and the EBA's response

1. On the whole respondents supported the approach proposed by the EBA to the conditions to be satisfied in order for a person to be considered independent. However, some respondents felt that the authority responsible for making the assessment of independence should be given more discretion to make the assessment on a case-by-case basis; others felt that it would be helpful for the draft RTS to prescribe more precisely what constitutes independence.

#### **EBA response**

In light of the feedback received the EBA has made a number of changes to the draft RTS to expand the role for the authority responsible for selecting and appointing the independent valuer (the appointing authority) in determining:

- the qualifications, experience, ability and knowledge required (Article 3 of the draft RTS);
- the cases in which instructions, guidance and financial and other advantages may be given without undermining the person's independence (Article 4(3) of the draft RTS);
- the cases in which a person is to be considered as having a conflicting or common interest (Article 6 of the draft RTS).

For instance, it is now for the appointing authority to determine the qualifications, experience, ability and knowledge which the person appointed as independent valuer needs to have (i.e. in light of the prevailing circumstances) rather than prescribing *ex ante* a list of 'relevant subjects' which may not be relevant in all cases.



The EBA considers that these changes secure the right balance between the objectives of ensuring that (i) a consistent approach is taken across the Union to the assessment of independence for the purposes of Article 36 and Article 74 of the BRRD; (ii) an appropriate standard of independence is secured; and (iii) the authorities are able to take account of all circumstances relevant to the assessment of the independence of each applicant for the role of independent valuer, and the continuing capacity of an independent valuer to perform their tasks. The EBA considers these changes will ensure that authorities responsible for selecting independent valuers can select from the broadest pool of suitably qualified candidates.

2. Respondents expressed mixed views on the proposal to reflect expressly in the draft RTS a presumption that independence is not satisfied where a person has, in the 3 years before the person's assessment of independence, offered services to, or has had business or other relationships with, the relevant entity or any of its affiliates if these services or relationships could influence, or be reasonably perceived to influence, the independent valuer's judgement. Some respondents considered that the time periods helped to provide certainty in the assessment process; others considered the 3-year period to be arbitrary and felt it more appropriate for the nature and materiality of the services provided to be considered, rather than placing emphasis on the time period in which those services were provided.

#### **EBA response**

In the draft RTS included in this report the EBA has omitted this provision on the basis that it is sufficient to rely on the general requirement to assess independence in accordance with Article 5(1) of the draft RTS and because it seems arbitrary to draw a line at 3 years.

3. Respondents expressed mixed views as to the possibility of temporary administrators being appointed as independent valuers, some noting that the person's impartiality may be impeded, others noting that the temporary administrator may be well placed to conduct a swift and comprehensive valuation based on their knowledge of the business of the institution or entity concerned.

#### **EBA response**

The EBA agrees that, depending on the circumstances, a temporary administrator could be appointed as the independent valuer. In assessing eligibility for appointment the authorities should apply the uniform set of principles provided in the draft RTS.

4. Respondents offered several examples of cases in which independent valuers could be ruled out *ex ante* (e.g. auditors appointed by public authorities, in addition to the case referred to above).



### **EBA response**

The EBA does not consider it appropriate to specify *ex ante* a long list of cases in which persons should be automatically excluded from being appointed as independent valuer. Rather the EBA considers it more appropriate to ensure that the authorities can take account of all relevant circumstances whilst at the same time applying a uniform set of principles to determine what may or may not amount to a material interest in common or in conflict.



## Summary of responses to the consultation and the EBA's analysis

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
<b>Responses to questions in Consultation Paper EBA/CP/2014/18</b>			
<p><b>Question 1.</b> Do you agree that the approach followed in the draft RTS to determine and identify conflicts of interest is the appropriate one?</p>	<p><u>General remarks</u></p> <p>Two respondents agreed with the approach adopted for the purposes of ensuring that valuers are independent. However, it was felt that what constitutes independence is too narrow (e.g. having regard to Article 4(5) of the draft RTS and the reference to the offering of services (see further below)).</p> <p>One respondent expressed the view that the definition for independence set out in the draft RTS (i.e. the valuer has not performed an audit for the bank or its affiliates over the previous year or [provided] any other services which could be perceived to influence independence for the previous three years) is too strict and may not be workable in practice.</p> <p>Two respondents noted that the underlying premise – that valuation should be undertaken by independent professionals – is appropriate but consideration should be given to mirroring leading practice governing the independence of professionals (e.g. ICAEW, RICS, IVSC). In particular, the RTS should leave more space for the exercise of judgement on the part of the appointing authority rather than setting out inflexible rules, in particular the rule set out in Article 4(5) of the</p>	<p>The EBA notes that a balance needs to be struck between the objectives of ensuring that (i) a consistent approach is taken across the Union to the assessment of independence for the purposes of Article 36 and Article 74 of the BRRD; (ii) an appropriate standard of independence is secured; and (iii) the authorities are able to take account of all circumstances relevant to the assessment of the independence of each applicant for the role of independent valuer, and the continuing capacity of an independent valuer to perform their tasks.</p> <p>In light of these considerations, and in accordance with the mandate prescribed by Article 36(14) of the BRRD, the EBA considers it necessary to establish in the draft RTS a common set of conditions to be satisfied in order for a person to be considered independent for the purposes of Article 36 and Article 74 of the BRRD.</p> <p>The EBA notes that there are three important conditions that must be satisfied in order for a person to be considered independent. These are listed in Article 2 of the draft RTS.</p> <p>The first of these conditions concerns the</p>	<p>In light of the feedback received, the EBA has made a number of changes to the draft RTS to expand the role of the authority responsible for selecting and appointing the independent valuer (the appointing authority) in determining:</p> <ul style="list-style-type: none"> <li>- the qualifications, experience, ability and knowledge required (Article 3 of the draft RTS);</li> <li>- the cases in which instructions, guidance and financial and other advantages may be given without undermining the</li> </ul>



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>draft RTS. Similarly, one respondent noted that it would broadly support an approach based on the consideration of the materiality of previous services provided to the institution, providing there was sufficient guidance on materiality, rather than rigid <i>ex ante</i> rules (e.g. under Article 4(5) of the draft RTS).</p> <p>Two respondents considered that the approach proposed in the draft RTS is inappropriate.</p> <ul style="list-style-type: none"> <li>- In the view of one respondent this is because: (a) it leaves the judgement of whether or not a valuer is independent in the hands of the valuer himself; and (b) the requirements regarding expertise and resources (Article 2 of the draft RTS) is not a suitable counterbalance, in particular, because it does not relate to independence and because it is not very realistic. One respondent also felt that it would be possible to specify <i>ex ante</i> more cases in which a person would not meet the independence requirement (e.g. where the person is a shareholder or creditor of the institution/entity under resolution; is a co-owner of assets also owned by the institution/entity; is a customer of the institution/entity; or is a partner or direct relative of one of the members of the board of directors of the institution/entity). The respondent also</li> </ul>	<p>requirement for the person to possess the expertise and resources required to carry out the valuation (Article 3 of the draft RTS). This is an important condition of independence because, in the absence of adequate expertise and resources, the person's capacity to perform the tasks of the independent valuer effectively without undue reliance on parties that may have a material interest in the outcome of the valuation could be, or be perceived to be, severely undermined. Accordingly the EBA considers it essential that this condition is retained in the draft RTS.</p> <p>The second condition concerns the requirement for separation from the public authorities and the institution or entity under resolution (Article 5 of the draft RTS). The EBA considers that it is crucial that the independent valuer is legally separate from the relevant public authorities and the institution or entity under resolution. This should extend to companies affiliated to or in the same group as the public authorities and the institution or entity under resolution.</p> <p>Finally the third condition concerns the requirement for there to be no material interest in common or in conflict with relevant parties (Article 6 of the draft RTS). The EBA agrees that it is important to ensure that the assessment of independence takes account of relations between the person concerned and the</p>	<p>person's independence (Article 3(4) of the draft RTS);</p> <ul style="list-style-type: none"> <li>- the cases in which a person is to be considered as having a conflicting or common interest (Article 6 of the draft RTS).</li> </ul> <p>In particular, it is now for the appointing authority to determine the qualifications, experience, ability and knowledge which the person appointed as independent valuer needs to have (i.e. in light of the prevailing circumstances) rather than prescribing <i>ex ante</i> a list of 'relevant subjects' which may not be relevant in all</p>



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felt that it is also possible to give specific indicators when a common or conflicting interest may be material (e.g. regarding financial or personal interest).

- In the view of one respondent the current proposal is too restrictive and may have the effect of discouraging the best candidates. Introducing general rules against which independence is to be assessed might exclude professionals who are not necessarily in a position which presents a material conflict of interest (e.g. when a valuer may have carried out a single minor appointment for the institution/entity). Instead, as basic conditions, the independent valuer should (a) possess the necessary qualifications and (b) be sufficiently regulated to ensure that the highest level of professional, ethical and business standards are met and maintained (e.g. through a system of self-regulation in accordance with professional standards).

One respondent also noted that the way the RTS is drafted creates a lot of uncertainty regarding the criteria for being considered independent and would unduly restrict the pool of potential candidates. This is particularly relevant for the resolution of a G-SIFI or a large cross-border bank. Perceived independence is vague and difficult to

public authorities and the institution or entity under resolution. This should include an assessment of the materiality of any relations with the senior management of the institution or entity concerned, persons with a controlling interest or qualified holding in the institution or entity concerned, creditors and group companies. However, it should be a matter for the authority responsible for selecting and appointing the independent valuer to determine whether a specific interest amounts to a material interest as defined in Article 5(2) of the draft RTS such that it would preclude a person from being considered independent.

cases. Article 3(2) of the draft RTS also makes it clear that it is sufficient for the person to have access to such resources as the appointing authority considers appropriate. This reflects the fact that the independent valuer may be a natural person and may rely on staff to assist in the valuation work, albeit only the valuer would be legally responsible for the conclusion of the valuation.

As per the draft RTS included in the CP, Article 5(1) of the draft reflects the general principle that the person appointed as valuer



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measure and could leave the choice of valuer open to legal challenge. The lack of safeguards and protection for the valuer in the draft RTS would leave the independent valuer open to legal challenge on its valuation decisions. This could deter valuers from applying for relevant roles.

### Expertise and resources (Article 2 of the draft RTS)

Four respondents noted that the sufficiency of resources and expertise is not an independence issue. Rather it is a matter of competency/capability and should be considered elsewhere as a precondition for possible selection as an independent valuer.

Three respondents raised concerns about whether it was realistic for a single valuer to have expertise and competence of the type required in the RTS. In addition one remarked that it was surprising that 'valuation' was not included in this list.

One respondent noted that where additional expertise needs to be brought in to support the valuation process (e.g. valuation professionals with particular expertise in the field of property valuation), those persons should also be free from conflicts of interest. This could be made clear in the recitals.

### Scope of the legal/structural separation requirement (Article 3 of the draft RTS)

One respondent agreed that the assessment of independence should be carried out not only with

shall not have a material interest of a kind described in paragraph (2), and paragraph (5) makes it clear that a person who has audited the institution or entity under resolution in the year preceding the date on which the person's eligibility for appointment as independent valuer is assessed is automatically disqualified from acting as valuer.

However in all other cases, it is for the appointing authority to determine whether, on the basis of the information available, the person has a material



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	<p>respect to the resolution authority and the distressed institution/entity but also with respect to the shareholders and the creditors of the institution.</p> <p>One respondent agreed that the independent valuer should not be an affiliated undertaking and should not belong to the same group of companies as the institution/entity. However, the BSG noted that the scope of the entities in Article 3(2) of the draft RTS should be enlarged so that ‘associated undertaking’ and ‘joint ventures’ have the same meaning as that in the Accounting Directive (Directive 2013/34/EU) or equivalent for the banking industry.</p> <p>One respondent suggested that the test of independence also needs to be carried out with regard to the group and other related parties of the institution (e.g. senior management or directors).</p> <p>One respondent acknowledged the appropriateness of valuers being legally, structurally and operationally separate from the resolution authorities and institutions/entities and affiliated companies due to the purposes for which the valuations are to be conducted. However, in other contexts, e.g. the valuation of property for lending purposes, internal valuers and external valuers can perform tasks effectively, provided they are protected from undue influence (e.g. from</p>		<p>interest which would preclude that person from being appointed or, following appointment, from continuing to act as the independent valuer. This ensures that the appointing authority can look at, for example, the full historical provision of services by the person to the institution under resolution. Guidance is included in the Article and the recitals on the matters to be taken into consideration in assessing whether there is a material interest in common or in conflict (in contrast to the approach in Article 4(5) of the draft RTS included in the CP, which placed</p>



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any unit involved in the lending process).

### Balance between the need for independence and the need to perform the valuation tasks effectively

Two respondents noted that clarifications could be provided in the RTS to make it clear that the independence requirements would not prevent the valuer from having technical support from the staff of the institution/entity concerned to support the valuation process.

### References to public authorities

Three respondents suggested that to avoid any ambiguities or uncertainties the public authorities should also be included in Article 1 of the draft RTS (bearing in mind that the assessment informs the question of whether resolution should be triggered).

One respondent noted that it is not clear to what extent other public authorities are included, in particular those to which the BRRD refers. It was suggested that the RTS should refer to 'public authorities, including the resolution authorities' instead of 'public, including the resolution, authorities'. At a minimum, independence from government departments, the central bank, competent authorities and resolution authorities should be ensured. Article 3(1) refers to separation from the resolution authority while Article 3(3) mentions any public authority. The position should be further clarified.

special emphasis on the services offered in the 3 years before the assessment of the valuer's independence). Article 5(3) specifies that it is necessary to take into consideration interests in common or in conflict with specified persons including senior management, persons with material interests in the institution or entity concerned and the creditors. Article 5(4) also gives guidance on the matters which it is particularly relevant to consider (this is not an exhaustive list) in assessing what may constitute a material interest, but ultimately this is a



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matter for the appointing authority to determine in light of the facts.

The EBA considers that these changes secure the right balance between the considerations set out in the previous column and will ensure that appointing authorities can select from the broadest pool of suitably qualified candidates.

The EBA has also made a number of general drafting changes to improve the text (e.g. the inclusion of articles on the subject matter and definitions and drafting clarifications to ensure appropriate



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**Question 2.** Do you agree that three years is the appropriate period of time for the purposes of Article 4(5) of the draft RTS?

### General remarks

One respondent noted that time limits help in providing certainty. However, ultimately there should be emphasis on the materiality of services provided.

However, four respondents considered that it is important to consider the nature and materiality of the services provided rather than the timeframe in which they were provided. Indeed the historical provision of services before the start of the cooling-off period specified in Article 4(5) of the draft RTS could also give rise to material conflicts. Where work carried out is not directly relevant to the balance sheet position of the financial institution or other matters in scope, or the work is not material, the appointing authority should be able to assess that that work does not preclude the person from acting as valuer.

### Article 4(5) of the draft RTS

Two respondents considered 3 years to be too long and would restrict the participation of the big

The EBA has reflected further on the formulation of the article dealing with conflicting or common interests (Article 5 in the draft RTS) with a view to ensuring that an appropriate standard for independence is established in the RTS and that it strikes the appropriate balance between the objectives of ensuring that (i) a consistent approach is taken across the Union to the assessment of independence for the purposes of Article 36 and Article 74 of the BRRD and (ii) the authorities are able to take account of all circumstances relevant to the process for assessing the independence of a particular applicant for the role of independent valuer.

The EBA considers it essential that the 'automatic disqualification' provision (Article 5(5)) be retained in the draft RTS for a person involved in the auditing of the institution or entity concerned in the year preceding the assessment of independence.

reference is made to public authorities and to make clear that the independent valuer may be a legal or natural person).

### Article 4(5)

The EBA has not retained Article 4(5) of the draft RTS included in the CP (which placed particular emphasis on the past provision or offering of services in the 3 years before the assessment of the valuer's independence), as this could be perceived to imply that more historical relationships should not be considered although they could amount to material interests.



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valuer firms which regularly conduct business with banks in small markets. One respondent also raised concerns in this regard and felt that the time limit was too inflexible. Stricter monitoring of potential conflicts would be, perhaps, a better approach.

Two respondents considered that the timeframe could potentially lead to a shortage of valuers.

Two respondents considered that the reference to the 'offering' of services was problematic and would seriously restrict the choice of possible independent valuers. Instead 'provided' or 'contracted' may be more appropriate.

### Article 4(7) of the draft RTS

Two respondents agreed with the cooling-off period in Article 4(7) of the draft RTS. This is because the auditor verifies accounting valuations and disclosures with the objective of establishing whether or not the financial statements give a true and fair view of the position and the activity of the institution/entity.

One respondent considered that the prohibition should be extended to auditors of the group (i.e. such that the prohibition should extend to auditors of the institution/entity, their affiliates or other entities in common control with the institution/entity concerned).

### Relation between Article 4(5) and 4(7) of the draft RTS

### Article 4(7)

Article 4(7) of the draft RTS included in the CP has been retained in slightly amended form.



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	<p>Four respondents considered that Article 4(5) and 4(7) should be aligned in terms of the timeframes involved should the rigid time limits remain in the text.</p> <p>Two respondents did not respond to this question.</p>		
<p><b>Question 3.</b> Do you agree with the possibility to task the temporary administrator as an independent valuer, subject to the conditions set forth in Article 4(6) of the draft RTS?</p>	<p>One respondent noted that the role of the temporary administrator is, by nature, different from the role of the independent valuer. In addition, the temporary administrator may have views and expectations as a result of the performance of his tasks which could, or could be perceived to, taint their objectivity as an independent valuer. Therefore the appointment of a temporary administrator as an independent valuer must be avoided.</p> <p>The other respondents who provided responses to this question, on balance, had no objection in principle to the possibility of appointing a temporary administrator as an independent valuer (in particular, because the temporary administrator may be best placed to conduct a swift and comprehensive valuation based on their knowledge of the business of the institution or entity concerned), but the decision should be taken on a case-by-case basis having regard to the tasks allocated to the temporary administrator (see Article 29 of the BRRD).</p> <p>Two respondents observed that in practice the temporary administrator is likely to need different</p>	<p>The EBA considers that a temporary administrator may be appointed as an independent valuer provided that the conditions set out in the draft RTS are satisfied. Indeed, the temporary administrator may be well placed to conduct the valuation in light of their familiarity with the business of the institution or entity concerned.</p>	<p>On reflection the EBA does not consider it necessary to refer in the operative text of the draft RTS to the temporary administrator, as the administrator will fall within the scope of the term ‘person’ and may apply for the role of independent valuer and be assessed against the conditions set out in the draft RTS along with any other person.</p>



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
<p><b>Question 4.</b> Do you reckon there are other cases where independence should be ruled out in any case?</p>	<p>skills from that of an independent valuer and therefore it may not be possible for both roles to be fulfilled by the same person.</p> <p>Four respondents did not respond to this question.</p> <p>Most respondents did not identify any other cases in which independence should be ruled out <i>ex ante</i> (see also the remarks about the inclusion of ‘rigid’ rules set out in the summary of responses to Question 1).</p> <p>However, the following additional cases were suggested as situations in which the person concerned should be ineligible to be an independent valuer:</p> <ul style="list-style-type: none"> <li>- auditors appointed by competent authorities (as statutory auditors);</li> <li>- persons who are not members of, and regulated by, a professional body which has a clear policy of managing conflicts of interest;</li> <li>- persons who have, in the 3 years prior to the consideration of appointment, conducted valuations of assets and liabilities for the institution or entity concerned in relation to a merger/an acquisition.</li> </ul>	<p>The EBA agrees that it is appropriate to include in the draft RTS a definition of material interests in common or in conflict with the relevant parties (see Article 5(2) of the draft RTS).</p> <p>However, the EBA does not consider it appropriate to include in the draft RTS a comprehensive list of cases in which an interest is to be considered material, as it is not possible to identify <i>ex ante</i> all possible cases.</p>	<p>The EBA has amended Article 5 to specify a non-exhaustive list of considerations to be taken into account in determining whether there are material interests within the scope of Article 5(1) of the draft RTS.</p> <p>See also the comments above in relation to Article 4(5) of the draft RTS included in the CP.</p>
<p>One respondent considered that there should be consideration of <i>any</i> historic provision of valuation services, in particular if the person concerned has</p>			



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>acted in an advocacy role for the institution [or entity] concerned which might affect their objectivity and hence ability to perform an independent valuation role.</p> <p>One respondent did not respond to this question.</p>		
<p><b>Question 5.</b> Do you agree with the approach outlined in the IA and more specifically, with the elements included in the assessment of costs and benefits (CBA)?</p>	<p>Of those respondents who commented on the IA, all broadly agreed with the approach outlined in the IA.</p> <p>Three respondents did not comment on the IA.</p>	-	-

