



EBA/RTS/2017/05 - Final draft RTS on
valuation before resolution

EBA/RTS/2017/06 - Final draft RTS on
valuation after resolution

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FINAL DRAFT

Regulatory Technical Standards on valuation for the purposes of resolution and on valuation to determine difference in treatment following resolution under Directive 2014/59/EU on recovery and resolution of credit institutions and investment firms

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1. Executive summary

The Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 (BRRD) provides a comprehensive framework of powers for resolution authorities to intervene in failing banks to protect the public interest. To ensure that authorities exercise these powers in ways that reduce the risk of costs falling on the taxpayer, preserve value where possible and respect the property rights of affected shareholders and creditors, the BRRD requires independent valuations to be carried out to inform the decisions of the authorities.

These valuations are required for several distinct purposes. Prior to resolution, valuations are required to:

- a) inform the determination of whether the conditions for resolution or the write-down or conversion of capital instruments are met (**Valuation 1**);
- b) inform the choice resolution action to be adopted, the extent of any eventual write-down or conversion of capital instruments and other decisions on the implementation of resolution tools (**Valuation 2**).

After the resolution, a valuation is required to determine whether an entity's shareholders and/or creditors would have received better treatment if the entity had entered into normal insolvency proceedings (**Valuation 3**).

These draft technical standards are intended to promote the consistent application of methodologies for these valuations throughout the Union. They seek not to provide detailed valuation rules for particular types of asset or liability, but rather to further specify the principles on the basis of which the independent valuer must apply their own judgement and expertise in particular cases.

The different purposes of these valuations require different approaches to valuation, as recognised in the recitals and text of the BRRD. For **Valuation 1**, the draft technical standards emphasise the importance of producing a valuation that is consistent with the framework of accounting and prudential rules on the basis of which the determination of whether the conditions for resolution are met must be made. However, the valuer is required to apply their independent, sceptical judgement as regards how this framework has been applied. For **Valuation 2**, the standards emphasise the need to assess economic value in order to ensure that losses are fully recognised, even if this requires departures from accounting and prudential rules. This is necessary to ensure that resolved institutions are recapitalised to a prudent extent and because certain resolution actions (e.g. the sale of business tool) will in fact crystallise economic values. For **Valuation 3**, the valuation should be conducted on a gone-concern basis.

2. Background and rationale

The BRRD relies on independent valuations for a number of purposes. These include, under Article 36(4) of the BRRD:

- (i) informing the determination of whether the conditions for resolution or the write-down or conversion of capital instruments are met;
- (ii) where the resolution authority determines that an entity meets those conditions, informing the resolution action to be adopted, the extent of any eventual write-down or conversion of capital instruments, and other decisions on the implementation of resolution tools;

and under Article 74:

- (iii) determining whether an entity's shareholders and/or creditors would have received better treatment if the entity had entered into normal insolvency proceedings.

The Directive permits the EBA to develop regulatory technical standards that set out the criteria on which valuations for the purposes of points (i) and (ii) should be based, and to define the methodology for the valuation under point (iii). Two separate RTS have been drafted covering the deliverables relating to points (i) and (ii), and point (iii), respectively.

Although valuation for the purpose of Article 36 (points (i) and (ii) above) is a single process, the purposes described above require a three-step exercise that is designed to inform the decisions to be adopted by the authorities.

A valuation (Valuation 1) for the purpose of informing a decision over whether or not to trigger resolution requires a consideration of the value of the relevant entity's assets and liabilities prior to the impact of any actions taken by the resolution authority. It must also be closely aligned with the standards that are relevant for determining whether an entity meets the conditions for continuing authorisation and, more generally, assessing the conditions for resolution in Article 32 of the BRRD.

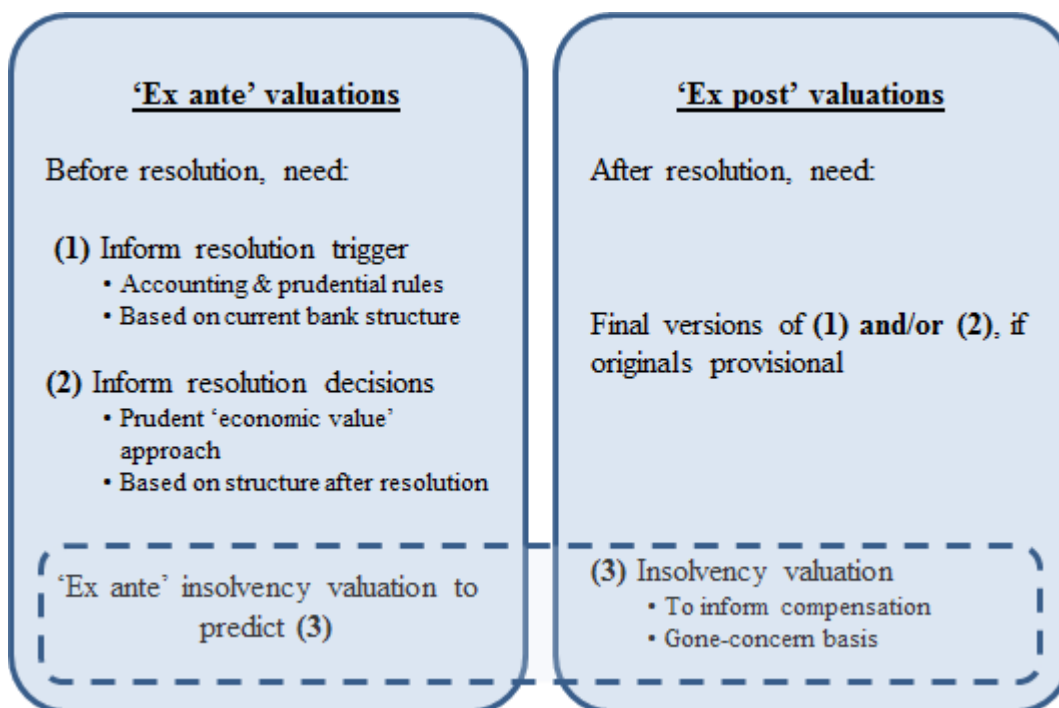
Valuation to inform the resolution decisions described in point (ii) above (Valuation 2) must, however, consider the (as yet hypothetical) impact of actions that may be taken by the resolution authority in implementing its resolution strategy.

These valuations take place before resolution actions are implemented and, therefore, will be referred to as *ex ante* valuations in this consultation paper. It is important to note, however, that these valuations may be conducted on a provisional basis in cases in which it is not possible to fulfil all of the requirements of Article 36 of the BRRD in the time available. In this case, a final, definitive valuation must be carried out after resolution. The provisions of the RTS apply both to

the final definitive valuation and, insofar as is feasible, to any provisional valuation and the related valuation buffer.

Finally, the third step (Valuation 3, or *ex post* valuation, as opposed to the *ex ante* Valuations 1 and 2) takes place after resolution and informs the application of the Directive's legal safeguards to protect the rights of shareholders and creditors against decisions adopted on the basis of Valuation 2. It should also be noted that Article 36 (8) requires the *ex ante* valuation to include an estimate of insolvency treatment, which should be carried out consistently with the principles of these RTS, insofar as they can be applied prior to resolution.

Figure 1: Valuations required by the BRRD



2. Approach to measurement assumptions

As described in recital (51) of the BRRD, informing the determination of whether the conditions are met for an entity's resolution, or for the write-down or conversion of its capital instruments, requires a fair and realistic valuation of the entity's assets and liabilities. Such a valuation is principally aimed at determining whether the aggregate value of the entity's assets exceeds that of its liabilities (in other words, whether the entity is balance-sheet solvent) and whether the conditions for authorisation are met. The conditions for authorisation include that the entity must meet the applicable capital requirements. To assist with this determination, Valuation1 must be closely linked to the accounting principles relevant to the preparation of the entity's financial

statements and the prudential regulations relevant for the calculation of the entity's capital requirements.

This should not prevent the valuer from deviating from assumptions made by the entity's existing management that affect valuation, if this is warranted. The valuation should be adequately supported by evidence and be consistent with existing supervisory guidance or other generally accepted sources of interpretation of accounting standards or regulatory requirements that result in a fair and realistic depiction of the entity's financial position.

Valuation 2 covers situations in which the resolution authority has already determined that an entity meets the conditions for resolution, or the write-down or conversion of capital instruments. This may result in the assumptions underlying the accounting principles and regulatory requirements no longer being valid. In any case, the valuation or valuations aimed at informing any resolution strategy, its extent and its characteristics must reflect all the relevant circumstances known at the valuation date. For instance, application of the sale of business tool requires a valuation of the business on commercial terms. Consistent criteria for valuation methodologies should be applied for all resolution tools to avoid introducing any systematic bias for or against any particular tool that is not justified by the underlying economics. The need to avoid any systematic bias also applies to the determination of the required valuation buffer relating to a potential provisional valuation. Furthermore, as described under recital (52) of the Directive, only by requiring the use of prudent assumptions can resolution authorities ensure that losses are fully recognised upon application of resolution measures or the power to write-down or convert capital instruments.

Finally, the *ex post* valuation seeks to ensure that shareholders and creditors do not receive worse treatment under resolution than they would have expected in a counterfactual liquidation under normal insolvency proceedings. Accordingly, in this case, the assumptions governing the estimation of the treatment that shareholders or creditors would have received in insolvency are driven by the sole purpose of determining the appropriate discounted value of cash flows that could reasonably be expected under the relevant national insolvency procedures.

3. Criteria for Valuations 1 and 2

The criteria for *ex ante* valuation methodologies are directed at reviewing and challenging accounting and regulatory information (in particular as regards Valuation 1) and the estimation of the amount and timing of expected cash flows from the entity's assets and liabilities, and the applicable discount rates, in order to represent fairly the entity's financial position in the context of the opportunities and risks that it confronts. To that end, the valuer may use any relevant information pertinent to the valuation date.

The first step in the valuation process seeks to inform the determination of whether the conditions for resolution or the write-down or conversion of capital instruments are met. In guiding the methodologies pursuant to that goal, the criteria in the RTS refer only to the determination of whether the entity is 'failing or likely to fail'. The determination of whether the

other conditions are met for the write-down or conversion of capital instruments, or for resolution, requires assessing whether the resolution action is in the public interest, or the prospects that an alternative private-sector measure or supervisory action can prevent the entity's failure. This requires a forward-looking impact assessment of the measure or action, which falls beyond the scope of the valuation exercise.

The valuer should prioritise areas that contribute most to the overall valuation uncertainty (e.g. loans or loan portfolios, or repossessed assets) and consider general factors affecting key assumptions, such as the entity's business model or asset selection criteria. It will be for the valuer to determine the most appropriate valuation methodologies consistent with the criteria described in the RTS, which may or may not rely on the entity's internal models, depending on the nature of the entity's risk management framework, and the quality of the data and information available.

If the resolution authority concludes that the entity meets the conditions for resolution, Valuation 2 informs the decision on the appropriate resolution action to be taken and, depending on such action, the decisions on the extent of the cancellation or dilution of shares, the extent of the write-down or conversion of eligible liabilities, the assets, rights, liabilities or shares to be transferred, and the value of any consideration to be paid. For those purposes, the criteria in the RTS aim to guide separate valuations capturing the impact on expected cash flows resulting from a sufficiently diverse range of actions that may be adopted by the resolution authority, including, but not limited to, any resolution strategy described in the entity's resolution plan.

Any such valuations are to be based on the present value of cash flows that the entity can reasonably expect, and the valuers shall apply their independent expert judgement to determine the key characteristics of the assets or liabilities being measured. However, the estimation of the amount and timing of cash flows will be significantly affected by the specific choice of resolution tools and characteristics of the resolution actions. In this sense, the intentions of the resolution authority are one key input in valuing the entity's assets and liabilities.

For strategies that involve continuing to hold some or all of the entity's assets with the intention to continue the business or to dispose of assets or a business at a later stage with the objective to maximise value and without being obliged to do so, or having decided to do so as part of the resolution strategy, any factor (favourable or unfavourable) that may potentially affect future cash flows must be considered, especially if it results from the resolution actions. Such values may include, as appropriate, elements of franchise value in addition to the contractual cash flows relating to existing assets and liabilities. However, disposal values expected in a defined disposal period are to be regarded as the main determinants of expected cash flows if the entity lacks the ability to hold the assets or if their sale is necessary or appropriate to implement the resolution actions being considered. Such values are more likely to be limited to contractual cash flows relating to existing assets and liabilities.

Where resolution envisages conversion of capital instruments or other liabilities, Valuation 2 shall also provide an estimate of the post-conversion equity value of new shares transferred or issued

as consideration. This is necessary to enable the resolution authority to determine a rate of conversion into equity that ensures that holders of converted instruments receive equity of sufficient value to be consistent with their fundamental property rights and the ‘no creditor worse off’ safeguard provided by Article 73 of the BRRD. This equity value shall be an estimate of the market price for those shares that would result from generally accepted valuation methodologies, and the estimate shall inform the determination of the conversion rate or rates.

Either step of the *ex ante* valuation may be carried out on a provisional basis in accordance with Article 36(9) of the BRRD when it is not possible to comply with the general requirements of Article 36. For purposes of Valuation 2, which has to be fair, prudent and realistic, a buffer aimed at approximating the amount of losses that would otherwise be determined by the valuer after conducting valuations pursuant to the general criteria contained in the RTS has to be included and justified. The valuer shall apply judgement in identifying factors that may affect expected cash flows as a result of resolution actions that are likely to be adopted. The buffer is aimed at approximating probable losses that the valuer expects to occur or that have occurred but that the valuer has not been able to precisely estimate as part of the provisional valuation. It is not the objective of the buffer to introduce bias into the valuation.

Where appropriate, the valuation should include a discussion of valuation ranges and sources of valuation uncertainty and be supported by an outline of the key methodologies and assumptions used with appropriate justification. The valuation may, in addition, provide information on reasons for differences from other relevant valuations (e.g. those in the bank’s published financial reports), and any additional information that, in the valuer’s opinion, would assist the resolution authority’s decision-making.

4. Valuation 3 methodology

The BRRD provides explicit safeguards to protect the fundamental property rights of shareholders and creditors. Article 73 of the BRRD requires that Member States ensure that shareholders and creditors affected by resolution tools receive at least as much in resolution as they would have received had the entity been wound-up under normal insolvency proceedings, regardless of whether their claims are written down or modified as a result of resolution actions.

In order to make those safeguards effective, the methodology described by the RTS seeks to determine:

- a) the treatment that shareholders and creditors would have received had the entity under resolution entered insolvency proceedings at the time when the authority decided to apply the resolution strategy;
- b) the actual treatment that shareholders and creditors have received in resolution; and
- c) the difference between actual treatment and counterfactual treatment.

In other words, the exercise attempts to determine the treatment actually received, by each class of shareholders and creditors existing as of the date of resolution, but immediately preceding any resolution action, and to compare this with an estimate of the outcome for those classes resulting

from a hypothetical insolvency of the entity under normal insolvency proceedings. As is the case with Valuations 1 and 2, Valuation 3 shall be supported by setting out the key assumptions, sensitivities, uncertainties and any lack of information or other issues encountered.

3. Draft regulatory technical standards on valuation for the purposes of resolution

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Article 36(15) 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 methodology for assessing the value of the assets and liabilities of the institution or entity referred to in point (b), (c) or (d) of Article 1(1) of the Directive;
- (b) the separation of the valuations under Articles 36 and 74 of the Directive;
- (c) the methodology for calculating and including a buffer for additional losses in the provisional valuation.

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 that Article.

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 36(15) of the Directive. A consultation paper was published on the EBA internet site on 7 November 2014, and the consultation closed on 6 February 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 <https://www.eba.europa.eu/regulation-and-policy/recovery-and-resolution/regulatory-technical-standards-on-valuation>, pages [40-43] of the Final Draft Regulatory Technical Standards package.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The draft Regulatory Technical Standards further specify criteria for the methodology to be used for the valuation to be conducted in a resolution scenario. The purpose of the valuation is to form the basis for the decisions of resolution authorities, as referred to in Article 36(1) of the Directive.

The standards specify a necessary distinction between a valuation for the purposes of Article 36(4)(a) of the Directive that considers whether the conditions for the write down and conversion of capital instruments or for resolution have been met, and resolution valuations for the purposes of informing

resolution decisions referred to in points (b) to (g) of Article 36(4) of the Directive. In the first case, the institution is valued before resolution tools are applied and any valuation must be of an appropriate form to assess whether the institution infringes (or is likely to infringe in the near future) prudential requirements for continuing authorisation. In the second case, the impact of resolution tools on the value of the institution, and its assets and liabilities must be taken into account, and losses must be fully recognised. For both cases, the regulatory technical standards provide general criteria for information which the valuer should disclose, sources of information which may be taken into account, and the valuation of entities which are part of a group.

For valuations to determine the conditions for write-down, conversion or resolution, the standards provide that the valuer has to determine appropriate valuation which is on a consistent basis with the applicable accounting and prudential regulatory frameworks. That does not prevent the valuer from disagreeing with existing valuations used by the institution. The regulatory technical standards provide that the valuation should focus in particular on assets and liabilities which could have a significant effect on the overall valuation due to their size or due to uncertainty about their value, and describe factors which may affect the value of those assets and liabilities.

For valuations to inform resolution decisions, the valuer must consult with the resolution authority to identify the proposed resolution actions to be taken into account in the valuations. Where a range of resolution actions is being considered by the resolution authority, the valuer should present separate valuations with an assessment of their impact on expected cash flows. Where the resolution actions include conversion to equity of capital instruments or liabilities, an estimate of the value of the equity should be prepared. In all cases the valuation should assess the economic value of expected cash flows associated with assets or liabilities with a method that is fair, prudent, and realistic, but the valuation of the timing and amount of expected cash flows should take into account whether the resolution strategy implies that the assets or liabilities will continue to be held by the institution after resolution or will be sold. A buffer for additional losses should be applied when a provisional valuation for purposes of determining the adoption of a resolution action in accordance with Article 36(9) of the Directive is carried out.

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 specifying the criteria relating to the methodology for assessing the value of assets and liabilities of institutions or entities**

(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 on establishing a framework for the recovery and resolution of credit institutions and investment firms¹, and in particular Article 36(15) thereof,

Whereas:

- (1) In a resolution scenario it is important to distinguish between, on the one hand, an initial valuation assessing whether the conditions for the write-down and conversion of capital instruments or the condition for resolution have been met, and, on the other hand, a subsequent valuation forming the basis for the decision to apply one or more resolution tools. In relation to the initial valuation, it is appropriate to ensure that when determining whether the conditions for resolution or for the write-down or conversion of capital instruments are met, a fair and realistic valuation of the entity's assets and liabilities, as referred to in recital (51) of Directive 2014/59/EU, is conducted. For purposes of the subsequent valuation informing the decision on the resolution actions, it is important to ensure that the valuation of the assets and liabilities of the entity, which determines the choice of the resolution action and the extent of any potential write-down or conversion of capital instruments at the point of non-viability, is based on fair, prudent and realistic assumptions, as referred to in recital (52) of that Directive.
- (2) To ensure that that valuation is fair, prudent and realistic, it is important that it estimates the impact of events prior to any resolution action or prior to the exercise of the power to write-down or convert capital instruments at the point of non-viability, as well as of different actions that might be taken by the resolution authority.
- (3) The valuer should have access to any sources of relevant information and expertise, such as the internal records, systems, and models of the institution. The ability of internal capabilities and systems to support resolution valuations should be assessed by the resolution authority as part of the resolvability assessment pursuant to Article 15 of Directive 2014/59/EU. The valuer should as well be able to enter into arrangements for specialist advice or expertise as required by the circumstances. Availability of specialist advice or expertise might be relevant, for instance, for preparing an estimate of the difference in treatment pursuant to Article 36(8) of Directive 2014/59/EU. The resolution authority should therefore be satisfied that the valuer has access to either a list of all claims including contingent claims held against the entity and classified according to their rights

¹ OJ L 173, 12.6.2014, p. 190

and priority under normal insolvency proceedings, or to adequate legal expertise for the preparation of such list.

- (4) The determination of whether an entity is failing or likely to fail may be carried out either by the competent authority or by the resolution authority in accordance with the conditions set out in Article 32(1)(a) of Directive 2014/59/EU. For purposes of determining whether an institution is failing or likely to fail, the competent authority should consider the valuation provided for in Chapter II of this Regulation, where already available and should take into account the guidelines issued by the European Banking Authority (EBA) pursuant to Article 32(6) of Directive 2014/59/EU which aim at promoting convergence of practices in relation to the determination of such resolution condition.
- (5) The valuation to inform the determination by the competent or the resolution authority whether the conditions for resolution or for write-down or conversion of capital instruments are met should be consistent with the applicable accounting and prudential regulatory framework. The valuer, however, should be able to depart from assumptions made by the entity's management under which the financial statements are prepared to the extent such departure is consistent with the applicable accounting and prudential regulatory framework. When departing from those assumptions, the valuation should be supported by the best available information and be consistent with existing supervisory guidance or other generally recognised sources of interpretation of accounting standards or the prudential regulatory framework, so as to provide a fair and realistic representation of the entity's financial position.
- (6) It is appropriate to have rules that ensure that valuations for the purposes of informing the choice and design of resolution actions or the extent of write-down and conversion of capital instruments at point of non-viability are fair, prudent and realistic, to ensure that all losses are fully recognised at the moment the resolution tools are applied or the power to write-down or convert relevant capital instruments is exercised. The choice of the most appropriate measurement basis (the hold value or the disposal value) should be made as appropriate for the particular resolution actions being considered by the resolution authority.
- (7) It is appropriate that valuations for the purposes of informing the choice and design of resolution actions or the extent of the write-down and conversion of capital instruments at the point of non-viability assess the economic value and not the accounting value. Those valuations should consider the present value of cash flows that the entity can reasonably expect, even where this requires departing from accounting or prudential valuation frameworks.
- (8) The valuation for the purpose of informing the decision on the choice and the design of resolution actions should reflect that cash flows may arise from continuing to hold the assets, yet should take into account the potential effects of the resolution on future cash flows and fair, prudent and realistic assumptions as to rates of default and severity of losses. Furthermore, to determine the post-conversion equity value of shares, the valuer should be able to take into account reasonable expectations for franchise value.
- (9) Alternatively, where the entity lacks the ability to hold the assets or their disposal is considered necessary or appropriate to achieve the resolution objectives, the valuation should reflect that those cash flows may arise from the disposal of assets, liabilities or business lines, assessed over a defined disposal period.
- (10) The disposal value should generally be understood as equivalent to the observable market price that could be obtained on the market for a particular asset or group of assets and may reflect a discount that is appropriate in view of the amount of assets being transferred. However, the valuer should be able where appropriate having regard to the actions to be

taken under the resolution scheme, to determine the disposal value by applying a reduction to such observable market price for a potential accelerated sale discount. Where the assets do not have a liquid market, the disposal value should be determined by reference to the observable prices on markets where similar assets are traded or to model calculations using observable market parameters with discounts for illiquidity reflected as appropriate. Where the sale of business or the use of the bridge institution tool are contemplated, reasonable expectations for franchise value may be taken into account.

- (11) For purposes of ensuring consistency between the calculation, required by Article 36(8) of Directive 2014/59/EU, of the estimate of the treatment that shareholders and each class of creditors would have been expected to receive had the institution or entity been wound-up under normal insolvency proceedings, and the valuation following resolution pursuant to Article 74 of that Directive, it is important that the valuer use the criteria set out for that valuation when appropriate.
- (12) A provisional valuation pursuant to Article 36(9) of Directive 2014/59/EU forming the basis of the decision on the taking of the appropriate resolution action should include a buffer aimed at approximating the amount of additional losses. That buffer should be based on a fair, prudent, and realistic assessment of those additional losses. The decisions and assumptions supporting the calculation of the buffer should be adequately explained and justified in the valuation report.
- (13) For the valuation referred to in points (a) and (c) of Article 36(15) of Directive 2014/59/EU, the valuer should explain and justify key assumptions, uncertainties, and the sensitivity of the valuation to such key assumptions and uncertainties. Significant differences between assumptions used in the valuation and those underlying accounting or regulatory information, where known to the valuer, should be included in the valuation report. In that report the valuer should also record any additional related information which in the valuer's opinion would assist the resolution authority.
- (14) The criteria laid down in this Regulation should be exclusively set out for conducting the valuations under Article 36 of Directive 2014/59/EU. They should not replace or amend accounting principles and standards or the prudential regulatory framework that apply to entities in contexts other than resolution. It should however be possible to use the information resulting from the valuation to identify potential misapplications by the entity of accounting standards or of the prudential regulatory framework, or to determine changes in the entity's accounting policies or in the assumptions or judgements driving the measurement of assets and liabilities. Those circumstances, for instance, should be taken into account for the preparation of the updated balance sheet pursuant to Article 36(6) of Directive 2014/59/EU. For that purpose the valuer should provide an adequate explanation of the differences between the existing and the updated balance sheets.
- (15) This Regulation is based on the draft regulatory technical standards submitted by the EBA to the Commission.
- (16) 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 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council².

² 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).

HAS ADOPTED THIS REGULATION:

Chapter I
GENERAL PROVISIONS

Article 1
Definitions

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

- (a) ‘valuation’ means either the assessment of an entity’s assets and liabilities conducted by a valuer pursuant to Article 36(1) of Directive 2014/59/EU, or the provisional valuation conducted by the resolution authority or the valuer, as the case may be, pursuant respectively to paragraphs (2) and (9) of Article 36 of that Directive.
- (b) ‘valuer’ means either the independent valuer meeting the conditions laid down in Article 38 of Commission Delegated Regulation (EU) No. 2016/1075³; or the resolution authority when conducting a provisional valuation pursuant to paragraphs (2) and (9) of Article 36 of Directive 2014/59/EU.
- (c) ‘entity’ means an institution or an entity as referred to in points (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU.
- (d) ‘valuation date’ means the reference date for the valuation referred to in Article 3.
- (e) ‘fair value’ means the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the valuation date, as defined in the relevant accounting framework.
- (f) ‘hold value’ means the present value, discounted at an appropriate rate, of cash flows that the entity can reasonably expect under fair, prudent and realistic assumptions from retaining particular assets and liabilities, considering factors affecting customer or counterparty behaviour or other valuation parameters in the context of resolution.
- (g) ‘disposal value’ means the measurement basis referred to in Article 12(5).
- (h) ‘franchise value’ means the net present value of cash flows that can reasonably be expected to result from the maintenance and renewal of assets and liabilities or businesses and includes the impact of any business opportunities, as relevant, including those stemming from the different resolution actions that are assessed by the valuer. Franchise value may be higher or lower than the value arising from the contractual terms and conditions of assets and liabilities existing at the valuation date.
- (i) ‘equity value’ means an estimated market price, for transferred or issued shares, that results from the application of generally accepted valuation methodologies.

³ Commission Delegated Regulation (EU) 2016/1075 of 23 March 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the content of recovery plans, resolution plans and group resolution plans, the minimum criteria that the competent authority is to assess as regards recovery plans and group recovery plans, the conditions for group financial support, the requirements for independent valuers, the contractual recognition of write-down and conversion powers, the procedures and contents of notification requirements and of notice of suspension and the operational functioning of the resolution colleges (OJ L 184, 8.7.2016, p. 1).

Depending on the nature of the assets or business, equity value may comprise franchise value.

- (j) ‘measurement basis’ means the approach for determining the monetary amounts at which assets or liabilities are presented by the valuer.
- (k) ‘resolution date’ means the date on which the decision to resolve an entity is adopted, pursuant to Article 82 of Directive 2014/59/EU.

Article 2

General criteria

1. When performing the valuation the valuer shall consider circumstances affecting the expected cash flows of, and discount rates applicable to an entity’s assets and liabilities, and shall aim to fairly represent the entity’s financial position in the context of the opportunities and risks it deals with.
2. The valuer shall disclose and justify the key assumptions used in the valuation. Any significant deviation in the valuation from the assumptions used by the entity’s management in the preparation of financial statements and in the calculation of the entity’s regulatory capital and capital requirements shall be supported by the best available information.
3. The valuer shall provide the best point estimate of the value of a given asset, liability, or combinations thereof. Where appropriate, the results of the valuation shall also be provided in the form of value ranges.
4. Criteria laid down in this Regulation for the measurement of individual assets and liabilities of an entity, shall also apply to the measurement of portfolios or groups of assets or combined assets and liabilities, businesses, or the entity considered as a whole, as the circumstances require.
5. The valuation shall subdivide creditors in classes according to their priority ranking under applicable insolvency law, and shall include the following estimates:
 - (a) the value of claims of each class according to the applicable insolvency law and, where relevant and feasible, according to the contractual rights conferred on claimants;
 - (b) the proceeds each class would receive if the entity were wound-up under normal insolvency proceedings;

When calculating the estimates pursuant to points (a) and (b), the valuer may apply the criteria set out in Article 4 of Commission Delegated Regulation (EU) No XXXX/XX (EBA RTS/2017/06, valuation after resolution) as appropriate.
6. Where appropriate and feasible, taking into account timing and credibility of the valuation, the resolution authority may request several valuations from the valuer. In that case, the resolution authority shall establish the criteria to determine which valuation shall be used for the purposes set out in Article 36 of Directive 2014/59/EU.

Article 3

Valuation date

The valuation date shall be one of the following dates:

- (a) the reference date as determined by the valuer on the basis of the date as close as possible before the expected date of a decision by the resolution authority to put

the entity in resolution or to exercise the power to write-down or to convert capital instruments,

- (b) where an ex post definitive valuation required by Article 36(10) of Directive 2014/59/EU is conducted, the resolution date,
- (c) in relation to liabilities arising from derivative contracts, the point in time determined pursuant to Article 8 of Commission Delegated Regulation (EU) 2016/1401⁴.

Article 4

Sources of information

The valuation shall be based on any information pertinent to the valuation date which is deemed relevant by the valuer. In addition to the entity's financial statements, related audit reports and regulatory reporting as of a period ending as close as possible to the valuation date, that information may include the following:

- (a) the updated financial statements and regulatory reporting prepared by the entity as close as possible to the valuation date;
- (b) an explanation of the key methodologies, assumptions and judgements used by the entity in order to prepare the financial statements and regulatory reporting;
- (c) data contained in the records of the entity;
- (d) relevant market data;
- (e) conclusions drawn by the valuer from discussion with management and auditors;
- (f) where available, supervisory assessments of the entity's financial condition, including information acquired pursuant to point (h) of Article 27(1) of Directive 2014/59/EU;
- (g) industry-wide assessments of asset quality, where relevant to the entity's assets, as well as stress test results;
- (h) valuations of peers, adequately adjusted to capture the entity's specific circumstances;
- (i) historical information, adequately adjusted to eliminate factors that are no longer relevant, and incorporate others that did not affect the historical information; or
- (j) trend analyses, adequately adjusted to reflect the entity's specific circumstances.

Article 5

Impact of group arrangements

1. Where the entity forms part of a group, the valuer shall take into account the impact that existing contractual intra-group support arrangements can have on the value of the assets and liabilities where, on the basis of the circumstances, it is probable that those arrangements will be put into effect.

⁴ Commission Delegated Regulation (EU) 2016/1401 of 23 May 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms with regard to regulatory technical standards for methodologies and principles on the valuation of liabilities arising from derivatives

2. The valuer shall only take into account the impact of other formal or informal arrangements within the group where, on the basis of the circumstances, it is probable that those arrangements shall remain in place in the context of a group's stressed financial condition or in resolution.
3. The valuer shall determine whether the resources of an entity within the group are available to meet losses of other group entities.

Article 6
Valuation report

The valuer shall prepare a valuation report to the resolution authority which shall include at least the following elements:

- (a) except as provided in Article 36(9) of Directive 2014/59/EU, the information referred to in points (a) to (c) of Article 36(6) of that Directive;
- (b) except as provided in Article 36(9) of Directive 2014/59/EU, the information referred to in Article 36(8) of Directive 2014/59/EU;
- (c) the valuation of the liabilities arising from derivatives carried out in accordance with Commission Delegated Regulation (EU) 2016/1401;
- (d) a summary of the valuation including a discussion of best point estimate, value ranges and sources of valuation uncertainty;
- (e) an explanation of the key methodologies and assumptions used by the valuer when performing the valuation, how sensitive the valuation is to these choices and, where feasible, an explanation of how those methodologies and assumptions differ from those used for other relevant valuations including any preliminary resolution valuations;
- (f) any additional information which in the valuer's opinion would assist the resolution authority or competent authority for purposes of Article 36(1) to (11) of Directive 2014/59/EU.

Chapter II

CRITERIA FOR THE VALUATION FOR THE PURPOSE OF ARTICLE 36(4)(A)

Article 7
General principles

1. The valuations for the purpose referred to in point (a) of Article 36(4) of Directive 2014/59/EU shall be based on fair and realistic assumptions and shall seek to ensure that losses under the appropriate scenario are fully recognised. Where such valuation is available, it shall inform the determination of the competent authority or of the resolution authority as appropriate, that an institution is 'failing or likely to fail' as referred to in Article 32(1)(a) of Directive 2014/59/EU. Based on existing supervisory guidance or other generally recognised sources setting out criteria conducive to the fair and realistic measurement of different types of assets and liabilities, the valuer may challenge the assumptions, data, methodologies and judgements on which the entity based its valuations for financial reporting obligations or for the calculation of regulatory capital and capital requirements and disregard them for the purposes of the valuation.
2. The valuer shall determine the most appropriate valuation methodologies which may rely on the entity's internal models where the valuer deems it appropriate taking into account the nature of the entity's risk management framework and the quality of data and information available.

3. The resulting valuations shall be consistent with the applicable accounting and prudential regulatory framework and with this Regulation.

Article 8

Areas requiring particular attention in the valuation

The valuer shall particularly focus on areas subject to significant valuation uncertainty which have a significant impact on the overall valuation. For those areas the valuer shall provide the results of the valuation in the form of best point estimates and, where appropriate, value ranges, as laid down in Article 2(3). Those areas shall include:

- (a) loans or loan portfolios, the expected cash flows of which depend on a counterparty's ability, willingness or incentive to perform on its obligation, where those expectations are driven by assumptions relating to delinquency rates, probabilities of default, loss given default, or instrument characteristics, especially where evidenced by loss patterns for a portfolio of loans;
- (b) repossessed assets, the cash flows of which are affected by both the asset's fair value at the time the entity forecloses on the related security or lien, and the expected evolution of such value after foreclosure;
- (c) instruments measured at fair value where the determination of that value in accordance with accounting or prudential requirements on their marking to market or marking to model is no longer applicable or valid taking into account the circumstances;
- (d) goodwill and intangibles, where the impairment test may depend on subjective judgement, including as regards the reasonably attainable cash flow stream, discount rates, and the perimeter of cash generating units;
- (e) legal disputes and regulatory actions, the expected cash flows of which may be subject to varying degrees of uncertainty relating to their amount and/or timing;
- (f) items including pension assets and liabilities and deferred tax items, as appropriate.

Article 9

Factors affecting the valuation

1. The valuer shall take into account general factors that may affect the key assumptions on which the values of assets and liabilities in the areas referred to in Article 8 are based, including the following factors:
 - (a) the economic and industry circumstances affecting the entity, including relevant market developments;
 - (b) the entity's business model and changes in its strategy;
 - (c) the entity's asset selection criteria, including loan underwriting policies;
 - (d) circumstances and practices that are likely to lead to payment shocks;
 - (e) circumstances affecting the parameters used to determine risk weighted assets for the calculation of minimum capital requirements;
 - (f) the impact of the entity's financial structure on the capacity of the entity to retain assets for the expected holding period and the entity's ability to generate predictable cash flows;
 - (g) general or entity-specific liquidity or funding concerns.

2. The valuer shall clearly separate any material unrealised gains identified in the valuation process, to the extent that those gains have not been recognised in the valuation, and shall provide adequate information in the valuation report of the exceptional circumstances that have led to those gains.

Chapter III

CRITERIA FOR THE VALUATION FOR THE PURPOSE OF ARTICLE 36(4)(B),(C), (D), (E), (F), (G) AND OF ARTICLE 36(9), SECOND SUB-PARAGRAPH

Article 10

General principles

1. The valuer shall assess the impact on the valuation of each resolution action that the resolution authority may adopt to inform the decisions referred to in points (b) to (g) of Article 36(4) of Directive 2014/59/EU. Without prejudice to the valuer's independence, the resolution authority may consult with the valuer in order to identify the range of resolution actions being considered by that authority, including actions contained in the resolution plan or, if different, any proposed resolution scheme.
2. To ensure a fair, prudent and realistic valuation, the valuer shall, where appropriate and in consultation with the resolution authority, present separate valuations that reflect the impact of a sufficiently diverse range of resolution actions.
3. The valuer shall ensure that when the resolution tools are applied or when the power to write-down or convert relevant capital instruments is exercised, any losses on the assets of the entity are fully recognised under scenarios that are relevant to the ranges of resolution actions being considered.
4. Where the values of the valuation diverge significantly from the values presented by the entity in the financial statements, the valuer shall use the assumptions of that valuation, to inform the adjustments to the assumptions and to the accounting policies necessary for the preparation of the updated balance sheet required under Article 36(6) of Directive 2014/59/EU, in a way consistent with the applicable accounting framework. As regards losses identified by the valuer which cannot be recognised in the updated balance sheet, the valuer shall specify the amount, describe the reasons underlying the determination of the losses and the likelihood and time horizon of their occurrence.
5. Where capital instruments or other liabilities are converted to equity, a valuation shall provide an estimate of the post-conversion equity value of new shares transferred or issued as consideration to holders of converted capital instruments or other creditors. That estimate shall form the basis for the determination of the conversion rate or rates pursuant to Article 50 of Directive 2014/59/EU.

Article 11

Selection of the measurement basis

1. In selecting the most appropriate measurement basis or bases, the valuer shall take into account the range of resolution actions to be examined according to Article 10(1).
2. The valuer shall determine the cash flows that the entity can expect on the basis of fair, prudent and realistic assumptions from existing assets and liabilities following adoption of the examined resolution action or actions, discounted at an appropriate rate as described in paragraph (6).
3. Cash flows shall be determined at the appropriate level of aggregation, ranging from individual assets and liabilities to portfolios or businesses, with due consideration to differences in the risk profiles.

4. Where the resolution actions referred to in Article 10(1) require that assets and liabilities are to be retained by an entity that continues to be a going concern institution, the valuer shall use the hold value as the appropriate measurement basis. The hold value may, if considered fair, prudent and realistic, anticipate a normalisation of market conditions.

The hold value shall not be used as the measurement basis where assets are transferred to an asset management vehicle pursuant to Article 42 of Directive 2014/59/EU or to a bridge institution pursuant to Article 40 of that Directive, or where a sale of business tool pursuant to Article 38 of Directive 2014/59/EU is used.
5. Where the resolution actions referred to in Article 10(1) envisage the sale of assets the expected cash flows shall correspond to the disposal values foreseen for the expected disposal horizon.
6. The discount rates shall be determined having regard to the timing of cash flows, risk profile, financing costs and market conditions as appropriate to the asset or liability being measured, the disposal strategy considered and the entity's post-resolution financial position.

Article 12

Specific factors relating to the estimation and discounting of expected cash flows

1. For the purpose of estimating cash flows, the valuer shall apply expert judgement in determining key characteristics of the assets or liabilities being measured. The valuer shall also apply expert judgement in determining how the continuation, potential renewal or refinancing, run-off or disposal of those assets or liabilities, as envisaged in the examined resolution action, affect those cash flows.
2. Where the resolution action envisages an entity holding an asset, maintaining a liability, or continuing a business, the valuer may take into account factors potentially affecting future cash flows, including the following:
 - (a) changes in assumptions or expectations, as compared to those prevailing as of the valuation date, consistent with long-term historical trends and a reasonable horizon consistent with the contemplated holding period of assets or for the recovery of the entity; or
 - (b) additional or alternative valuation bases or methodologies that are considered appropriate by the valuer and consistent with this Regulation, including in the context of assessing the post-conversion equity value of shares.
3. As regards groups of assets and liabilities or businesses envisaged to be run off, the valuer shall take into account workout costs and benefits.
4. Where an entity's situation prevents it from holding an asset or continuing a business, or where the sale is otherwise considered necessary by the resolution authority to achieve the resolution objectives, the expected cash flows shall be referenced to disposal values expected within a given disposal period.
5. The disposal value shall be determined by the valuer on the basis of the cash flows, net of disposal costs and net of the expected value of any guarantees given, that the entity can reasonably expect in the currently prevailing market conditions through an orderly sale or transfer of assets or liabilities. Where appropriate, having regard to the actions to be taken under the resolution scheme, the valuer may determine the disposal value by applying a reduction for a potential accelerated sale discount to the observable market price of that sale or transfer. To determine the disposal value of assets which do not have a liquid market, the valuer shall consider observable prices on markets where similar assets are

- traded or model calculations using observable market parameters, with discounts for illiquidity reflected as appropriate.
6. The valuer shall have regard to factors that might affect disposal values and disposal periods, including the following:
 - (a) the disposal values and disposal periods observed in similar transactions, adequately adjusted to take into account differences in the business model and in the financial structure of the parties to those transactions;
 - (b) advantages or disadvantages of a particular transaction that are specific to the parties involved or to a subset of market participants;
 - (c) particular attributes of an asset or business that may only be relevant to a potential purchaser, or to a subset of market participants;
 - (d) the likely impact of expected sales on the entity's franchise value.
 7. When assessing the value of businesses for purposes of the use of the sale of business or of the bridge institution tool, the valuer may take into account reasonable expectations for franchise value. Such expectation for franchise value shall include that resulting from a renewal of assets, from a refinancing of an open portfolio, or from a continuation or resumption of business in the context of the resolution actions.
 8. A valuer assessing that no realistic prospect for the disposal of an asset or business can reasonably be expected, shall not be required to determine the disposal value, but shall estimate the related cash flows on the basis of the relevant prospects for continuation or run-off. This provision shall not apply to the asset separation tool or to the sale of business tool.
 9. For parts of a group of assets or of a business that are likely to be liquidated under ordinary insolvency procedures, the valuer may consider the disposal values and disposal periods observed in auctions involving assets of a similar nature and condition. The determination of expected cash flows shall take into account illiquidity, the absence of reliable inputs for the determination of disposal values, and the resulting need to rely on valuation methodologies based on unobservable inputs.

Article 13

Methodology for calculating and including a buffer for additional losses

1. To address the uncertainty of provisional valuations conducted in accordance with points (b) to (g) of Article 36(4) of Directive 2014/59/EU, the valuer shall include a buffer with a view to reflecting in the valuation facts and circumstances supporting the existence of additional losses of uncertain amount or timing. In order to avoid double counting of uncertainty, the assumptions supporting the calculation of the buffer shall be adequately explained and justified by the valuer.
2. In order to determine the size of the buffer, the valuer shall identify factors that may affect expected cash flows as a result of resolution actions likely to be adopted.
3. For the purposes of paragraph (2), the valuer may extrapolate losses estimated for a part of the entity's assets to the remainder of the entity's balance sheet. Where available, average losses estimated for assets of peer competitors may also be extrapolated, subject to the necessary adjustments for differences in the business model and financial structure.

Article 14
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,

For the Commission
The President

On behalf of the President

[Position]

4. Draft regulatory technical standards on valuation to determine difference in treatment following resolution

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Article 74 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 criteria relating to the methodology for valuation of difference in treatment in resolution.

In accordance with Article 10(1) of Regulation No (EU) 1093/2010, 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 that Article.

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 74 of the Directive. A consultation paper was published on the EBA internet site on 07 November 2014, and the consultation closed on 06 February 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 <https://www.eba.europa.eu/regulation-and-policy/recovery-and-resolution/regulatory-technical-standards-on-valuation>, pages [40-43] of the Final Draft Regulatory Technical Standards package.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The draft Regulatory Technical Standards further specify the methodology for the valuation of the difference between the treatment that shareholders or creditors of an institution under resolution have received, and the treatment they would have received had the institution entered normal insolvency proceedings.

The standards first specify that the reference date for this valuation should be the date of resolution, and specifies requirements on the use of discounting and the use of information which becomes available only after that date in the valuation. They provide that, as a first step to assessing difference in treatment of claims on the institution, the valuer must establish an inventory of claims and of assets.

The standards provide that assessment of the treatment which shareholders or creditors would have received had the institution entered normal insolvency proceedings should be carried out on the basis of estimated discounted expected cash flows in these proceedings. This estimation should take account of insolvency law and practice in the relevant jurisdiction, including costs which would be incurred in an insolvency process. For assets traded in active markets, observed market prices should be used. For assets not traded in active markets, several factors to be taken into account are identified.

Assessment of the actual treatment of shareholders or creditors of the institution under resolution, the valuer must provide an estimate of the value of equity issued or transferred to holders of capital instruments or liabilities through exercise of either the bail-in tool provided for in Article 44 of the Directive or the power to convert capital instruments provided in Article 60 of the Directive. The valuer should also identify claims on the institution under resolution which continue to be outstanding.

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 specifying the criteria relating to the methodologies for valuation of difference in treatment in resolution**

(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 on establishing a framework for the recovery and resolution of credit institutions and investment firms⁵, and in particular Article 74 thereof,

Whereas:

- (1) It is appropriate to have rules establishing a methodology for carrying out valuations aimed at determining whether there is any difference between the actual treatment of shareholders and creditors in respect of which resolution action or actions have been effected, and the amount that those shareholders and creditors would have received had the institution or entity as referred to in points (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU ('entity') been subject to normal insolvency proceedings at the date on which the decision to resolve that entity was adopted according to Article 82 of Directive 2014/59/EU.
- (2) Any difference in treatment resulting in greater losses in resolution for particular shareholders and creditors should entitle those shareholders and creditors to compensation from the resolution financing arrangements, pursuant to point (e) of Article 101(1) of Directive 2014/59/EU.
- (3) The ex post valuation is to be carried out by the required independent person meeting the conditions set out in Article 38 of Commission Delegated Regulation 2016/1075⁶ ('valuer'), as soon as possible after the resolution action or actions have been effected, even though its completion could take some time. That valuation should be based on available information relevant to the date when the decision to resolve an entity is adopted, in order to adequately reflect specific circumstances, such as distressed market conditions, existing at that resolution decision date. Information obtained after the resolution decision date should only be used where it could reasonably have been known at that date.

⁵ OJ L 173, 12.6.2014, p. 190.

⁶ Commission Delegated Regulation (EU) 2016/1075 of 23 March 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the content of recovery plans, resolution plans and group resolution plans, the minimum criteria that the competent authority is to assess as regards recovery plans and group recovery plans, the conditions for group financial support, the requirements for independent valuers, the contractual recognition of write-down and conversion powers, the procedures and contents of notification requirements and of notice of suspension and the operational functioning of the resolution colleges (OJ L 184, 8.7.2016, p. 1).

- (4) In order to ensure that a comprehensive and credible valuation is carried out, the valuer should have access to any appropriate legal documentation, including to a list of all claims and contingent claims against the entity, classified according to their priority under normal insolvency proceedings. The valuer should as well be able to enter into arrangements for specialist advice or expertise as required by the circumstances.
- (5) For purposes of determining the treatment that shareholders and creditors would have received had the entity been put under normal insolvency proceedings, the valuer should determine the expected timing and amount of net cash flows that each shareholder and creditor would have received from the insolvency proceedings, discounted at the relevant discount rate or rates. In determining such estimate, and where available and relevant, the valuer could also refer to information on recent past experiences of insolvency of similar credit insitutions.
- (6) The actual treatment received by shareholders and creditors in resolution should be determined having regard to whether such shareholders and creditors have respectively received compensation in the form of equity, debt or cash as a result of the adoption of the resolution action.
- (7) This Regulation is based on the draft regulatory technical standards submitted by the European Banking Authority (EBA) to the Commission.
- (8) 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 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council⁷,

HAS ADOPTED THIS REGULATION:

Article 1
General provisions

1. For the purposes of determining the treatment of shareholders and creditors under normal insolvency proceedings, the valuation shall only be based on information about facts and circumstances which existed and could reasonably have been known at the resolution decision date which, had they been known, would have affected the measurement of the assets and liabilities of the entity at that date.

For the purposes of this Regulation, ‘resolution decision date’ means the date on which the decision to resolve an entity, is adopted pursuant to Article 82 of Directive 2014/59/EU.
2. For purposes of determining the actual treatment of shareholders and creditors in resolution, the valuer shall rely on available information concerning facts and circumstances existing as of the actual treatment date or dates at which shareholders and creditors receive compensation (‘actual treatment date or dates’).
3. The reference date of the valuation shall be the resolution decision date, which may differ from the actual treatment date. Insofar as the valuer deems the impact of any discounting of the proceeds to be negligible, the undiscounted proceeds at the date the resolution

⁷ 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.

action has been implemented may be directly compared with the discounted amount of hypothetical proceeds that shareholders and creditors would have received had the entity entered normal insolvency proceedings at the resolution decision date.

Article 2
Inventory of assets and claims

1. The valuer shall establish an inventory of all identifiable and contingent assets owned by the entity. Such inventory shall include assets for which the existence of associated cash flows is demonstrated or can reasonably be expected.
2. A list of all claims and contingent claims against the entity, shall be made available to the valuer. That list shall classify all claims and contingent claims according to their priority levels in normal insolvency proceedings. The valuer shall be able to enter into arrangements for specialist advice or expertise as regards the consistency of the ranking of claims with the applicable insolvency law.
3. Encumbered assets and claims secured by those assets shall be identified separately by the valuer.

Article 3
Steps of the valuation

For the purposes of determining whether a difference in treatment as referred to in Article 74(2) of Directive 2014/59/EU exists the valuer shall assess:

- (a) the treatment that shareholders and creditors in respect of which resolution actions have been effected, or the relevant deposit guarantee scheme, would have received had the entity, entered normal insolvency proceedings at the resolution decision date, disregarding any provision of extraordinary public financial support;
- (b) the value of the restructured claims following the application of the bail-in tool or other resolution powers and tools, or of other proceeds received by shareholders and creditors as at the actual treatment date or dates, discounted back to the resolution decision date if deemed necessary to enable a fair comparison with the treatment referred to in point (a);
- (c) whether the outcome of the treatment in point (a) exceeds the outcome of the value referred to in point (b) for each creditor in accordance with the priority levels in normal insolvency proceedings as identified according to Article 2.

Article 4
Determination of the treatment of shareholders and creditors under normal insolvency proceedings

1. The methodology for conducting the valuation pursuant to point (a) of Article 3 shall be limited to determining the discounted amount of expected cash flows under normal insolvency proceedings.
2. Expected cash flows shall be discounted at the rate or rates reflecting, as appropriate, the timing associated with expected cash flows, prevailing circumstances as of the resolution decision date, risk-free interest rates, risk premia for similar financial instruments issued by similar entities, market conditions or discount rates applied by potential acquirers and other relevant characteristics of the element or elements being valued ('relevant discount rate'). Such relevant discount rate shall not apply where particular rates, if relevant for the purposes of the valuation, are specified in applicable insolvency law or practice.

3. The valuer shall take the following into account in the determination of the discounted amount of expected cash flows under normal insolvency proceedings:
 - (a) applicable insolvency law and usual insolvency practice in the relevant jurisdiction, which may influence factors such as the expected disposal period or recovery rates;
 - (b) reasonably foreseeable administration, transaction, maintenance, disposal and other costs which would have been incurred by an administrator or insolvency practitioner, as well as financing costs.
 - (c) the information on recent past insolvency cases of similar entities, where available and relevant.
4. For assets traded in an active market, the valuer shall use the observed price, except where specific circumstances hamper the marketability of the assets of the entity, such as concentration, saturation and depth of the market.
5. For assets not traded in an active market, the valuer shall consider a number of factors when determining the amount and timing of expected cash flows, including:
 - (a) prices observed in active markets where similar assets are traded;
 - (b) prices observed in insolvency proceedings or otherwise distressed transactions involving assets of a similar nature and condition;
 - (c) prices observed in transactions involving the sale of business or the transfer to a bridge institution or an asset management vehicle in a resolution context relating to similar entities;
 - (d) the likelihood of an asset generating net cash inflows under normal insolvency proceedings;
 - (e) expected market conditions within a given disposal period, including market depth and the ability of the market to exchange the relevant volume of assets within that period; and
 - (f) the length of such disposal period shall reflect the implications of the applicable insolvency law and proceedings, including the expected length of the liquidation process, or the the characteristics of the relevant assets.
6. The valuer shall consider whether the financial condition of the entity would have affected the expected cash flows, including through restrictions on the administrator's ability to negotiate terms with potential purchasers.
7. Where possible, and subject to any applicable provision of the relevant insolvency regime, the cash flows shall reflect the contractual, statutory, or other legal rights of creditors or normal insolvency practices.
8. The hypothetical proceeds resulting from the valuation shall be allocated to shareholders and creditors in accordance with their priority level under the applicable insolvency law, as provided for in Article 3.
9. For the purpose of determining any unsecured amount of derivatives claims in insolvency, the valuer shall apply methodologies set out in Commission Delegated Regulation (EU) 2016/1401⁸, to the extent consistent with normal insolvency law and practice.

⁸ OJ L 228 o 23.8.2016, p. 7.

Article 5

Determination of the actual treatment of shareholders and creditors in resolution

1. The valuer shall identify all claims outstanding after the write-down or conversion of capital instruments and the application of any resolution actions, and shall assign those claims to the legal and natural persons who were the entity's shareholders and creditors at the resolution decision date. Except where the legal and natural persons who were the entity's shareholders and creditors at the resolution decision date receive cash compensation as a result of the resolution, the valuer shall determine their actual treatment in accordance with this Article.
2. Where the legal and natural persons who were the entity's shareholders and creditors at the resolution decision date receive equity compensation as a result of the resolution, the valuer shall determine their actual treatment by providing an estimate of the overall value of shares transferred or issued as consideration to the holders of converted capital instruments or to the bailed-in creditors.
3. For shares referred to in paragraph 2, the estimate required in that paragraph may be based on the assessed market price resulting from generally accepted valuation methodologies.
4. Where the legal and natural persons who were the entity's shareholders and creditors at the resolution decision date receive debt compensation as a result of resolution, the valuer shall determine the actual treatment by taking into account factors such as the changes in contractual cash flows that result from the write-down or conversion, or the application of other resolution actions, as well as the relevant discount rate.
5. For any outstanding claim, the valuer may take into account, where available and together with the factors described in paragraphs 2 and 3, prices observed in active markets for the same or similar instruments issued by that institution or entity under resolution or other similar entities.

Article 6

Valuation report

The valuer shall prepare a valuation report to the resolution authority which shall include at least the following elements:

- (a) a summary of the valuation including a presentation of valuation ranges and sources of valuation uncertainty;
- (b) an explanation of the key methodologies and assumptions adopted, and how sensitive the valuation is to these choices;
- (c) an explanation, where feasible, why the valuation differs from other relevant valuations, including the resolution valuations conducted in accordance with Commission Delegated Regulation RTS/EBA/XXX (Valuation before resolution) or other regulatory or accounting valuations.

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,

For the Commission
The President

On behalf of the President

[Position]

5. Accompanying documents

5.1 Cost- Benefit Analysis / Impact Assessment for RTS on *ex ante* valuation

Introduction

Article 36(15) of the BRRD mandates the EBA to develop draft RTS to specify the valuation methodologies applied by valuation experts both (1) when determining whether the conditions for the write-down or conversion of capital are met and (2) when informing the resolution authority on the most appropriate resolution action to be taken and its impact on the treatment of shareholders and creditors. The valuation methodology should also specify the calculation of a potential buffer for additional losses in the event that a provisional valuation is carried out.

Article 10(1) of the EBA Regulation provides that when any regulatory technical standards developed by the EBA are submitted to the Commission for adoption, they should be accompanied by a cost and benefit analysis. Such annex shall provide an overview of the findings regarding the options identified to solve the problem and their potential impacts. .

This section presents the impact assessment of the policy options considered in these RTS. However, given the nature of the policy options considered in these RTS, the impact assessment is qualitative.

Policy background

The BRRD provides the resolution authority with a set of tools and powers to deal effectively with unsound or failing credit institutions and investment firms. However, before applying these tools, the resolution authority should be informed about whether or not the conditions for resolution or the write-down or conversion of capital instruments are met. It should also identify the most appropriate resolution strategy, as well as the impact on the treatment of shareholders and creditors.

Determining these pre-conditions requires ensuring a fair, prudent and realistic valuation of the institution's balance-sheet items. In this context, Article 36(15) of the BRRD requires the EBA to develop RTS to specify the valuation methodology to be used by independent valuers when determining the elements mentioned above.

Problem identification

A fair, accurate and realistic valuation of the assets and liabilities of an institution is key to ensuring an effective and efficient implementation of the resolution powers and tools. It is also crucial to ensure an adequate treatment of shareholders and creditors in the event that they have

to absorb losses. The absence of a common EU framework to specify the methodology on valuation would thus:

- create an uneven regulatory playing field across EU banks and stakeholders when applying the resolution tools;
- increase the complexity of the resolution of cross-border institutions; and
- increase legal risks when applying the resolution tools due to uncertainties surrounding the valuation rules.

However, if a common EU framework on valuation is required to ensure an efficient implementation of the BRRD, such a framework should also be defined in a context in which there are already accounting rules both at the national and international levels, the purpose of which is properly to specify the methodology to be followed when assessing the value of an institution's balance sheet. Therefore, when defining an EU framework on the valuation methodology for the purpose of resolution, these RTS should also remain consistent with the existing accounting rules and should duly justify any potential deviations. This makes the drafting of these RTS quite challenging and time-consuming.

Objectives

Given the identified problems, the general objectives of the RTS are to:

- set out an EU harmonised methodology for assessing the value of assets and liabilities in a context of resolution while remaining consistent with current accounting and prudential frameworks;
- ensure a consistent implementation of the BRRD across EU Member States by ensuring a fair, effective and efficient implementation of the resolution power and tools.

More specifically, these RTS aim to:

- support the resolution authority to adopt the most appropriate resolution actions when deciding to apply its resolution power;
- accelerate the valuation process by defining a clear toolkit to be applied easily by independent valuers, thus allowing a resolution authority to take quicker action; and
- increase transparency and reduce uncertainties regarding the treatment of shareholders, thus minimising the risk of legal disputes that may arise during the resolution process.

Policy options

While drafting the RTS, the EBA identified five areas, under each of which two alternative policy options have been considered:

1. Overreaching principles

Option 1: The RTS aim for consistency with existing accounting and prudential rules.

Option 2: The RTS aim for an economic valuation approach, rather than focusing on accounting and prudential values.

2. Date of Valuation 2

Option 1: The valuation takes into account the last available financial statement (last known value by market).

Option 2: The valuation is performed at the expected date of resolution.

3. Information to be used

Option 1: The valuation relies only on financial statements and (where available) supervisory information.

Option 2: The valuation relies on all available pertinent information.

4. Measurement basis

Option 1: The measurement basis is standardised (same valuation methodology is applied to all types of assets and liabilities).

Option 2: The measurement basis is tailored (different valuation methodology applied to different types of assets).

5. Buffer for additional losses

Option 1: A complete valuation of the institution's assets for the purpose of calculating a buffer for additional losses to address the uncertainty of provisional valuation is required.

Option 2: The valuer is allowed to extrapolate losses from part of the entity's assets or those of peer competitors for the purpose of calculating a buffer for additional losses.

Baseline

There is no common EU framework specifying the valuation methodology to be followed for resolution purposes. Most Member States rely on a combination of valuation based on rules defined in the accounting and prudential frameworks, or on valuations prepared by external experts in line with market valuation practices.

Comparison of the policy options

Given the nature of the policy options considered in these RTS, the present cost-benefit analysis is qualitative.

Area	Policy options	Costs	Benefits
<p>1) Overreaching principles</p>	<p>Option 1: The RTS aim for consistency with existing accounting and prudential rules</p>	<ul style="list-style-type: none"> • Risk of incompatibility with the specific objectives of Valuation 2 for resolution purposes. (While valuation as per the accounting standards aim to provide market participants with information that is relevant for making economic decisions, Valuation 2 for resolution purposes aims to ensure that the best resolution strategy is implemented.) • Risk of inconsistency. • Leaving valuers with room for judgement when valuing assets and liabilities while achieving a consistent implementation of the BRDD requires specific harmonised methodologies and rules for assessing assets and liabilities in a context of resolution. 	<ul style="list-style-type: none"> • Accounting rules provide for valuation methodologies that are understood by entities as well as by supervisors, auditors and markets. Relying on accounting rules thus offers transparency and predictability and avoids disconnecting valuation for accounting purposes and valuation for resolution purposes. • Low cost of design and implementation, as the RTS rely on existing frameworks.
	<p>Option 2: The RTS aim for an economic valuation approach, rather than focusing on accounting and prudential values</p>	<ul style="list-style-type: none"> • Risk of creating a parallel valuation framework for the purpose of resolution, which is possibly disconnected from accounting and prudential rules. • For Valuation 1, there is a risk of inconsistency with the supervisory assessment required to trigger resolution, which means that it may not be fit for purpose. • May make the legal framework on valuation more complex and potentially confusing. 	<ul style="list-style-type: none"> • Allow a tailored approach to the valuation methodology, which could better meet the objective of providing prudent valuation than the one already defined by accounting rules. • Economic value necessary to estimate likely sale proceeds if the sale of business tool is used or if the resolution scheme otherwise envisages asset sales. • Prudent valuation is especially important for Valuation 2 given that the resolution cannot be repeated if the valuation is insufficiently conservative.
<p>2) Valuation date</p>	<p>Option 1: Date of the last available public financial</p>	<ul style="list-style-type: none"> • Risk of missing pertinent information, as data may be outdated. 	<ul style="list-style-type: none"> • Ensures higher transparency and objectivity, as the valuation will be based on historical data. • No additional cost, as the valuation date is directly given in the RTS and does not rely on the identification of a specific

	statement		model.
	Option 2: Expected resolution date	<ul style="list-style-type: none"> • Adds complexity and opacity to the framework, as the determination of the valuation date will be based on estimates (model-based approach) and will not be predictable. • More costly and time-consuming, as, before assessing the value of an institution’s assets and liabilities, the independent valuer will have to perform an additional specific exercise to determine the resolution date. 	<ul style="list-style-type: none"> • Most effective way to ensure that the valuation is prudent and realistic, as it takes into account the most accurate value of an institution about to be resolved.
3) Information to be used	Option 1: Only financial statement and (where available) supervisory information	<ul style="list-style-type: none"> • Risk of missing pertinent information. Resolution authorities would not have the benefit of the most up-to-date information when valuing (the situations or circumstances leading to the valuation of assets are likely to have changed since the last supervisory reporting became available to authorities) and might miss some valuable market information that is not collected by supervisors. 	<ul style="list-style-type: none"> • Easy to implement, as resolution authorities have access to the information either directly or via supervisory authorities. • Allows time to be gained when analysing the data, as it focuses on a limited range on information. • Supervisory information contained in supervisory reporting is confidential, which allows resolution authorities to make a decision while benefiting from a more insightful view of the entity than if they were relying on public information, which may serve purposes different from resolution.
	Option 2: All pertinent information	<ul style="list-style-type: none"> • More costly than considering only supervisory information, as resolution authorities will incur information-gathering costs (compared with a situation in which supervisory information is already available to them at no or little cost). 	<ul style="list-style-type: none"> • Most effective way to ensure the efficiency of valuation (i.e. this valuation reflects all the available information as of the valuation date).
4) Measurement base	Option 1: Standardised base	<ul style="list-style-type: none"> • Risk of undermining the outcome of the valuation, as the methodology will not reflect the specific risk profile of each asset and liability. 	<ul style="list-style-type: none"> • Simple to implement and easy to monitor, as all assets and liabilities will be subject to the same general methodology.
	Option 2: Tailored base	<ul style="list-style-type: none"> • Assets and liabilities to be valued have their particularities, due to their risk peculiar profile and the economics underlying the 	<ul style="list-style-type: none"> • Risk of a gap in the valuation provisions might arise over time due to, in particular, financial innovation leading to the development of new types of assets and

		<p>transactions to which they are related. Different valuation methodologies according to their specificities would ensure that the valuation is truly reflective of them.</p> <ul style="list-style-type: none"> • Ensuring the harmonised implementation of the BRDD would require detailed provisions regarding the implementation of valuation rules to specific types of assets and liabilities. 	<p>liabilities, which could then require frequent updates to the RTS.</p>
5) Buffer for additional losses	Option 1: Calculation based on all entity's asset	<ul style="list-style-type: none"> • Significantly increased costs and non-monetary resources (in particular, time) required for calculating the buffer for additional losses in a provisional valuation process, potentially delaying significantly resolution actions by resolution authorities. 	<ul style="list-style-type: none"> • Potentially reducing the degree of uncertainty related to additional buffers for provisional valuations by requiring a granular valuation of the entity's assets.
	Option 2: Calculation based on part of entity's assets or average losses estimated for assets of peer competitors	<ul style="list-style-type: none"> • Increased risk of additional losses estimated in provisional valuation process not being fully accurate. 	<ul style="list-style-type: none"> • Allowing for sufficient consideration of potential additional losses in provisional valuation process to facilitate prudent valuation of entity's balance sheet. • Accelerated process of valuation and consequently chance for quicker decision-making and actions by resolution authorities, contributing to improving effectiveness of resolution framework.

Preferred policy options

Based on the comparison of the policy options, the EBA has decided for these draft RTS:

1. to rely on accounting and regulatory rules for Valuation 1, where alignment with the supervisory determination of whether an institution is failing or likely to fail is necessary, and to aim for an economic value approach for Valuation 2 (mix of options 1.1 and 1.2);
2. to rely on the expected resolution date (option 2.2);
3. to adopt a holistic approach to valuation and to consider any information pertinent to the valuation (option 3.2);
4. to apply the same valuation methodologies to all types of assets and liabilities, but to take due account of the specificities of the latter in determining cash flows. For instance, cash flows should be determined at the appropriate level of aggregation (which can, in principle, range from individual asset or liability to portfolios and businesses), with

consideration of the different risk profiles of assets and liabilities (mix of option 4.1 and 4.2);

5. to allow the valuer to extrapolate losses estimated for a part of the entity's assets to the remainder of its balance sheet or to extrapolate average losses estimated for assets of peer competitors.

5.2 Cost- Benefit Analysis / Impact Assessment for RTS on *ex post* valuation

Introduction

Article 74(2) of the BRRD mandates the EBA to specify the valuation methodology to be followed by independent valuers when comparing the treatment that shareholders and creditors actually receive in resolution with the treatment that they would have received had the institution entered into insolvency process.

Article 10(1) of the EBA Regulation provides that when any draft regulatory technical standards developed by the EBA are submitted to the Commission for adoption, they should be accompanied by a cost and benefit analysis. Such annex shall provide an overview of the findings regarding the options identified to solve the problem and their potential impacts. .

This section presents the impact assessment (IA) of the policy options considered in these RTS. However, given the absence of relevant data, the IA is only qualitative.

Policy background

With a view to minimising the cost of a failing institution to taxpayers as well as the negative externalities to financial stability, the BRRD provides resolution authorities with the power to identify and impose losses to shareholders and creditors first. However, when using its power, the resolution authority should also ensure that the shareholders and creditors do not incur greater losses than they would have incurred if the institution had been wound-up under normal insolvency proceedings in its jurisdiction ('no creditor worse off' principle).

In this context, Article 74(4) requires the EBA to develop RTS specifying the methodology for carrying out a valuation to determine:

- (a) the treatment that shareholders and creditors would have received if the institution under resolution had entered into normal insolvency proceedings at the time when the authority decided to apply the resolution strategy;
- (b) the actual treatment that shareholders and creditors have received in the resolution of the institution under resolution; and
- (c) if there is any difference between the treatment referred to in point (a) and the treatment received in point (b).

Problem identification

A fair, accurate and realistic valuation of the assets and liabilities of an institution is key to ensuring an effective and efficient implementation of the resolution powers and tools. It is also crucial to ensure a fair and adequate treatment of shareholders and creditors in the event that

they have to absorb losses. The absence of a common EU framework to specify the methodology on valuation would thus:

- create an uneven regulatory playing field across EU banks and stakeholders when applying the resolution tools;
- increase legal risks when applying the resolution tools due to uncertainties surrounding valuations rules and the assessment of the treatment of shareholders; and
- make the resolution of cross-border institutions more complex.

However, if a common EU framework on valuation is required to ensure an efficient implementation of the BRRD, such a framework should also be defined in a context in which there are already accounting and solvency rules of which the purpose is properly to specify the methodology to be followed when assessing the value of an institution's balance sheet. Therefore, when defining an EU framework on the valuation methodology, these RTS should also remain consistent with the existing accounting and solvency rules and should duly justify any potential deviations.

Objectives

Given the identified problems, the general objectives of the RTS are to:

- set out an EU harmonised methodology for assessing whether shareholders and creditors are incurring greater losses under the resolution process than they would have incurred under normal insolvency proceedings;
- ensure a consistent implementation of the BRRD across EU Member States by ensuring a fair and transparent assessment of the impact of the implementation of the resolution power and tools;
- accelerate the valuation process by defining a clear toolkit to be applied easily by independent valuers, thus allowing a resolution authority to take quicker action; and
- increase transparency and reduce uncertainties regarding the treatment of shareholders, thus minimising the risk of legal disputes that may arise during the resolution process.

Policy options

While drafting the RTS, the EBA identified an area, under which two alternative policy options have been considered:

1. Valuation date

Option 1: Information available at the resolution decision date.

Option 2: Information available at the date when the actions are effective.

Baseline

There is no common EU framework specifying the valuation methodology to be followed for resolution purposes. Most Member States rely on a combination of valuation based on rules defined in the accounting and prudential frameworks, or on valuations prepared by external experts in line with market valuation practices.

Comparison of the policy options

Given the nature of the policy options considered in these RTS, the present cost-benefit analysis is qualitative.

Area	Policy options	Costs	Benefits
<p>1) Valuation date</p>	<p>Option 1: Information available at the resolution decision date</p>		<ul style="list-style-type: none"> • Limiting any market incentives for speculative and potentially manipulative behaviour following the resolution decision, in potential bets for eligibility for compensation claims under the no creditor worse off safeguard. • Clear and transparent date for conduct of valuation, taking into account pertinent information (and contained in market prices) until the date of the resolution decision.
	<p>Option 2: Information available at the date when the actions are effective.</p>	<ul style="list-style-type: none"> • Risk of unequal treatment of shareholders considering that effectiveness of resolution actions may depend on various elements. Potential discrimination among shareholders and creditors in different MS where effectiveness of resolution actions may be delayed by technical factors and depend on the varying periods of time required for implementation of resolution decisions. • Uncertainty and risk of moral hazard and market manipulation in the period between resolution decision and effectiveness of its implementation, potentially resulting in reduced efficiency and effectiveness of the EU resolution framework. 	<ul style="list-style-type: none"> •

Preferred policy options

Based on the comparison of the policy options, the EBA has decided for these draft RTS to require valuation to take the resolution decision date as the reference date (option 1).

5.3 Views of the Banking Stakeholder Group (BSG)

The BSG agreed to a large extent with the general content of the two RTS. In particular, the BSG is of the opinion that no detailed methodology should be imposed on the valuers, as they should have the knowledge and experience to be able to choose the best valuation approach in accordance with generally accepted valuation standards.

However, the BSG proposed that this freedom needs to be accompanied by a justification of the approach used and the assumptions made (especially those that deviate from management assumptions), as well as the economic and financial variables included in the valuation model. Valuers should provide this information within a valuation report that should also include an explicit statement of independence.

The BSG felt that some definitions in the draft needed to be revised in order to make them clear and to avoid overlapping. In particular, the definition of 'exit value' used in the RTS could be taken to refer to forced transactions; therefore, the definition should be changed into 'forced exit value'. In addition, specific guidance on the formation and use of discount rates could support their use in a homogeneous way within each Member State and across EU countries. However, this does not mean that the standards should restrict the valuer's decision on the appropriate discount rates to use.

With regard to the list of areas with valuation uncertainty, the BSG suggested incorporating the uncertainty created by: the model if a mark to model approach is used; the identification of cash generating units (CGUs) with regard to the valuation of goodwill and intangibles, as well as the valuation of collateral.

Furthermore, the BSG is in favour of limiting the use of hindsight information by considering only information that could reasonably and without undue effort be known at the resolution date and that would have a material impact on the institution's value.

5.4 Feedback on the public consultation

The EBA publicly consulted on the draft Guidelines.

The consultation period lasted for 3 months and ended on 6 February 2015. A total of 13 responses were received, of which 10 were published on the EBA website.

This paper 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 response to different questions. In such cases, the comments, and the EBA analysis, are included in the section of this paper that the EBA considers most appropriate.

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

Summary of the key issues and the EBA's response

The majority of respondents agreed that the valuation methodologies to be used are relatively standard for an experienced valuer and do not need to be described in further detail in the RTS, as there are generally accepted valuation standards in place in every Member State. This also caters for the fact that every resolution is different and that a valuation expert should have the ability to choose the best methodology given the individual circumstances.

However, respondents were concerned about the limited information and data on which valuers will probably have to rely when performing their valuations. In particular with regard to valuations pursuant to Article 74 of Directive 2014/59/EU, for the purposes of assessing whether shareholders and creditors would have received better treatment in a normal insolvency situation ('Valuation 3'), valuers need detailed information about hypothetical cash flows and market developments and must give due consideration to the applicable national insolvency law.

In general, valuers may seek assistance when they need to rely on input that they cannot provide on their own, which is consistent with the provisions laid down in the EBA technical standards on independent valuers. This may include, for example, seeking expert legal or insolvency practitioner advice on what a realistic insolvency scenario would involve, given the national insolvency law, or seeking advice from resolution authorities on likely resolution strategies/actions.

In addition, valuers will probably rely to a large extent on an institution's internal models and systems that might not currently provide for data with a sufficient level of detail as the provisions of Directive 2014/59/EU regarding the necessity to conduct valuations for resolution purposes are completely new. The development of appropriate infrastructures, processes and data warehouses to provide that information is an objective of the resolution planning process, which falls within the scope of the EBA draft RTS on resolution planning.

A large number of respondents were in favour of the valuer needing to produce a detailed valuation report, which should include a detailed explanation and justification of the methodologies, assumptions and choices that led to the outcome of the valuation. The EBA has amended the draft RTS to clarify that an unsupported valuation would not meet the objectives of the BRRD and that the valuer should therefore set out clearly how they have arrived at the values they present.

Respondents argued that definitions need to be revised in order to make them clear and to avoid overlapping. In particular, the distinction between equity value and franchise value needs to be clarified.

Summary of responses to the consultation and the EBA’s analysis

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
General comments			
Valuation methodologies	<p>In general, the feedback received on the valuation methodologies can be divided into two basic opinions:</p> <ul style="list-style-type: none"> On the one hand, the majority of respondents argue that the valuation methodologies to be used are relatively standard for an experienced valuer and do not need to be described in further detail in the RTS, as there are generally accepted valuation standards in place in every Member State. This also caters for the fact that every resolution is different and that a valuation expert should have the ability to choose the best methodology given the individual circumstances. On the other hand, a minority of respondents would like to have a precise description of the valuation methodologies to be used for different resolution/insolvency situations in order to establish similar treatment in all Member States ('level playing field'). 	<p>The RTS on independent valuers require the valuer to have a sufficient level of knowledge and experience with regard to valuation and accounting topics. Therefore, the two RTS on valuation for resolution purposes leave the choice of the valuation methodology to be used to a large extent to the discretion of the valuer. In order to enable valuers to make their choices on a similar basis, both RTS describe the nature of the required valuations for the different resolution purposes pursuant to Article 36(4) and 74(2) of Directive 2014/59/EU in detail and introduce appropriate valuation methodologies.</p> <p>However, further clarification is necessary in order to guide independent valuers on what is expected of them. In addition, the definitions in Article 2 of both RTS need to be revised (e.g. to ensure a clear distinction of valuation methodology and basis (see comments to Question 1).</p>	<p>Definitions relating to hold value, disposal value, franchise value and equity value (collectively identified as economic value bases) have been amended. Exit value renamed disposal value to avoid confusion with International Financial Reporting Standards (IFRS) fair value.</p>
The (limited) role of valuers	<p>Respondents argued that the RTS should make clear that a valuation of future or hypothetical situations must naturally be based on vast assumptions that a valuer cannot set. As preparatory work, lawyers must cater for a realistic insolvency scenario given the</p>	<p>Independent valuers shall base their valuations on any relevant information pertinent to the valuation date. A list of appropriate sources of information has already been included in Article 4 of the RTS. In addition, valuers are required to ask for assistance</p>	<p>Amendment to recitals and articles to emphasise that a valuer may assess alternative</p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>national insolvency law, whereas resolution authorities have to provide the valuer with detailed resolution strategies/actions.</p>	<p>when they need to rely on input that they cannot provide on their own, notwithstanding the provisions laid down in the RTS on independent valuers. That preparatory work may include, for example, that lawyers cater for a realistic insolvency scenario given the national insolvency law or that resolution authorities provide for detailed resolution strategies/actions.</p>	<p>measures if these are believed to result in a higher value.</p>
<p>Reliance on an institution’s systems or models</p>	<p>Some respondents argued that it is not clear whether the valuer should place reliance on the systems or models of the firm in question. If this is to be expected, then it should be considered that firms can currently generate up-to-date going-concern balance sheets on a daily basis for the financial instruments in their trading books, as these are carried at fair value. This is not currently the case, however, for banking books for which the timescales are much greater.</p> <p>With regard to Valuation 2, banks would be required to have comprehensive data readily available on an instrument-by-instrument basis. As a matter of fact, banks do not currently have the infrastructure, capability or processes to generate such volumes of reliably accurate asset-by-asset data.</p>	<p>Independent valuers will probably rely to a large extent on an institution’s internal models and systems. We are aware of the fact that the provisions of Directive 2014/59/EU regarding the necessity to conduct valuations for resolution purposes are completely new. In particular, the quality of valuations required to inform the decision on the appropriate resolution action pursuant to Article 36(4)(b) of Directive 2014/59/EU (Valuation 2 in the RTS) largely relies on the availability of data with regard to future cash flows on an instrument-by-instrument basis. The development of appropriate infrastructures, processes and data warehouses to provide that information should be assessed as part of regular resolvability assessments, as required under the EBA draft technical standards on resolution valuation.</p>	<p>Recital introduced that additionally links the availability of data to the resolvability assessment.</p>
<p>Reference of Valuation 1 to ‘failing or likely to fail’ conditions under Article 32 of the BRRD</p>	<p>Some respondents would like to include a detailed transition of Valuation 1 to the conditions that lead to the status of ‘failing or likely to fail’ pursuant to Article 32(4) of the BRRD. In particular, respondents question whether the valuation can cater for the</p>	<p>A direct reference to Article 32(1)(a) of Directive 2014/59/EU and to the EBA Guidelines on the circumstances in which an institution should be considered failing or likely to fail should be included in the RTS.</p>	<p>Reference to Article 32(1)(a) of Directive 2014/59/EU and to the Guidelines on</p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>requirements for continuing authorisation pursuant to Article 32(4)(a) of the BRRD. If it should not cater for these requirements, the RTS should clarify that the failing or likely to fail valuation is aimed only at the test under Article 32(4)(b) of the BRRD. If it should cater for these requirements, more guidance is necessary concerning the kind of information that must be provided to inform the minimum capital requirements test.</p>		<p>failing or likely to fail have been included in the RTS.</p>
Valuation report	<p>The majority of respondents are in favour of a detailed valuation report that the valuer has to produce. This valuation report should include a detailed explanation of the methodologies, assumptions and choices that lead to the outcome of the valuation.</p> <p>One respondent argues that an explicit statement of independence with respect to the entity and the resolution authority would be welcome within the text of the report.</p> <p>Some respondents asked if the documentation/valuation report will be disclosed in public after all resolution actions have been conducted so that every shareholder/creditor has the chance to evaluate the valuation process that led to her or his actual treatment in resolution. This would support transparency and fairness within the resolution decision-making process.</p>	<p>In order to cater for the valid concern that the outcome of the valuations is not comprehensible because it needs to be based on a large number of assumptions, the valuer shall document all relevant assumptions, valuation methodologies and choices used during the valuation process. This needs to be included in the RTS text.</p> <p>With regard to the comment on an explicit statement of independence, we are of the opinion that this does not lie within the scope of the RTS, as there are other RTS that deal with the conditions of a valuer's independence.</p> <p>We understand that there is a valid interest in favouring a public disclosure of the valuation report. However, whether the valuation report will be disclosed in public or not does not lie within the scope of the RTS.</p>	<p>A new Article 6 has been included in the Valuation 1 and 2 RTS and a revised Article 6 in the <i>ex post</i> RTS, which clarifies the duty on the valuer to explain and justify their valuation.</p>
Valuation 1	<p>One respondent argues that a valuation that is closely linked to accounting principles and prudential</p>	<p>Valuation 1 shall inform the determination of whether the conditions for resolution or the</p>	<p>No changes/amendmen</p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>regulations is hardly a reasonable criterion to determine the institution’s value, as only certain assets and liabilities have to be carried on the balance sheet at current value and some items that contribute to the overall earnings of a business are excluded (e.g. most intangible assets). Many items will be on the balance sheet at depreciated cost, which accords with the relevant accounting requirements but which bears no relation to the price that might be paid for them in the market.</p>	<p>conditions for the write-down or conversion of capital instruments are met. Therefore, it naturally aims at the conditions that lead to an institution’s status of ‘failing or likely to fail’ pursuant to Article 32 of Directive 2014/59/EU.</p> <p>There are many reasons that support the decision to closely link Valuation 1 with the applicable accounting principles and prudential regulations:</p> <ul style="list-style-type: none"> • The RTS cannot provide for a complete new valuation rulebook, as this would be far beyond the scope of the RTS. Therefore, it must refer to existing standards that are in place in the Member States. • The RTS should not introduce valuation standards with regard to the determination of whether an institution is failing or likely to fail (Valuation 1) that differ significantly from former going-concern valuations in order not to get completely unexpected results. • The RTS must not introduce valuation standards with regard to Valuation 1 that are more prudent than existing going-concern valuation standards in order not to determine many institutions into a failing or likely to fail status. 	<p>ts</p>
<p>Provisional valuation</p>	<p>Respondents would find it helpful for the RTS to provide some guidance on what a provisional valuation may mean in terms of information-generating capabilities or</p>	<p>As a matter of course, the reasons that lead to the necessity to conduct a provisional valuation are based on the individual circumstances and, in</p>	<p>No changes/amendments</p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>expected outputs.</p>	<p>particular, on the time and information that are available to conduct the valuation. Therefore, the RTS must not be too precise with regard to determining a provisional valuation process.</p>	
<p>Contradiction within/questions with regard to the BRRD</p>	<p>As a matter of fact, the provision to cater for a ‘realistic’ valuation contradicts the provision for a ‘prudent’ valuation. In addition, ‘realistic’ is not a defined term within the commonly understood valuation standards.</p> <p>One respondent is concerned about the consequences of a wrong or questionable valuation performance. The provisions of the RTS are much too brief to support security with regard to a suitable result of the valuations. Further work is needed to ensure that the valuation details in all respects will be clear, robust and public.</p> <p>One respondent highlights that it is not fair that wrong or questionable valuations or resolution decisions lead to compensation claims on the public resolution funds.</p>	<p>In general, technical standards cannot amend level 1 requirements. In this case, while there may be a trade-off between ‘fair and realistic’ on the one hand and ‘prudent’ on the other hand, these are factors that the valuer must balance appropriately in each case, bearing in mind the legal framework and the purpose of the valuation. In particular, for the reasons described in the consultation paper, valuations that inform the determination of whether the institution is failing or likely to fail may need to strike this balance differently from valuations that inform the decision on the appropriate resolution action, as reflected in the recitals of the BRRD. In order to cater for different resolution situations, the two RTS on valuation for resolution purposes leave the choice of the detailed valuation methodology to be used to a large extent to the discretion of the valuer. In order to enable valuers to make their choices on a similar basis, both RTS describe the nature of the required valuations for the different resolution purposes pursuant to Articles 36(4) and 74(2) of Directive 2014/59/EU in detail and introduce appropriate valuation methodologies. In addition, valuers shall explain and justify their methodologies, assumptions and choices that lead to the outcome of the valuation in detail.</p> <p>As the provision that compensation claims are paid</p>	<p>No changes/amendments</p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		by resolution funds has been established within Directive 2014/59/EU, it cannot be changed in the RTS.	
Responses to questions in Consultation Paper EBA/CP/2014/25			
<p>Question 1: Would you suggest any changes to the definitions of valuation approaches (letters e–i)? In particular, are there specific valuation methodologies to which the definition of equity value should refer?</p>	<p>A lot of comments have been received that refer to definitions of valuation approaches. The following summarises the main proposals:</p> <p>General comments on definitions:</p> <ul style="list-style-type: none"> • Further clarity should be provided on the type and principles of the valuation that are required at each stage of the resolution process. • Clarity needs to be given over whether or not the definitions are intended to be understood on an accounting basis. • The definitions in the RTS rather refer to measures used in valuation and not to valuation approaches. Therefore, some of these measures are complementary, and could be used together, or even overlapping. This should be made clear in the RTS. Another opinion was that the RTS should not mention valuation methodologies at all, as these must be left completely to the discretion of the valuer. • A diagram included in the RTS would be useful 	<p>The EBA agrees with respondents that the definitions of both RTS need to be revised, for example to ensure a clear distinction between the valuation methodology and basis and to avoid overlapping of definition scopes.</p> <p>A diagram that visually illustrates the three stages of valuation and what is required at each stage would not form part of the text of these RTS, but the EBA has published accompanying explanatory material that aims to serve similar purposes, including the presentation from the public hearing on these RTS (http://www.eba.europa.eu/documents/10180/886934/PH+Draft+Technical+Standards+on+valuation+for+resolution+%2816+Jan+2015%29.pdf). The RTS should make clear that Valuation 1 is required to be in line with applicable accounting standards and prudential regulation, while Valuation 2 should be based on an economic value approach. Respondents proposed that ‘exit value’ should be changed to ‘disposal value’, as this is in line with generally accepted valuation definitions.</p> <p>Finally, the EBA agrees with several of the suggestions for clarifying the definitions of the</p>	<p>Definitions relating to hold value, disposal value, franchise value and equity value have been amended. Exit value renamed disposal value to avoid confusion with IFRS fair value.</p>

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	<p>to visualise the three stages of valuation and the types and principles required at each stage, including their inter-relation.</p> <ul style="list-style-type: none"> • In general, the basis of value may need to be more widely defined. For example, Valuation 1 defined as the current accounting basis (i.e. amortised cost or such other basis as appropriate under accounting and prudential standards applicable to the firm) could be mentioned. <p>(e) fair value:</p> <ul style="list-style-type: none"> • The definition is in line with the fair value definition of IFRS 13 and is thus useful. • The concept of ‘fair value’ is consistent with that of ‘market value’. <p>(f) hold value:</p> <ul style="list-style-type: none"> • Further clarification is needed, as no similar definition exists in IFRS. • Economic value is not defined in the RTS; therefore, it might be helpful to clarify if these terms (economic and hold value) are being used interchangeably. • ‘Prudent’ and ‘realistic’ are conflicting assumptions. • Consider inserting ‘back to the valuation date’ after ‘discounted’. • An element of subjective judgement should be 	<p>valuation bases.</p>	

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	<p>included as regards the reasonably attainable cash flow stream, discount rates, etc.</p> <ul style="list-style-type: none"> • Further guidance on how to anticipate future cash flows (given that new business opportunities arise from the resolution actions) would be useful. <p>(g) exit value</p> <ul style="list-style-type: none"> • The difference between exit value and fair value is not clear. • ‘Fair value’ and ‘exit value’ are not necessarily to be seen as mutually exclusive terms. • Disposal value or realisable value would be more readily understood than exit value. • Consider inserting ‘the present value of’ after ‘means’. <p>(i) equity value:</p> <ul style="list-style-type: none"> • The reference to generally accepted valuation standards is appropriate. • Clarity that this is intended to refer to each individual share immediately following the resolution actions. • This definition should refer to each individual share that is in existence immediately following the resolution action, which means an estimate of the assessed market price for each individual share in existence post conversion regardless of whether it is transferred or newly issued. 		

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<p>Question 2: Should specific types of information be required on deviations from management assumptions, for example on differences in expected cash flows and/or the discount rates?</p>	<p>The majority of respondents favour detailed explanations and justifications regarding all deviations from management assumptions. As the adequate scope and detail of these explanations depend largely on the nature of the deviation, most of the feedback received does not suggest a detailed list in the RTS that encompasses specific types of information to be disclosed.</p> <p>A few respondents ask for further guidance within the RTS on the circumstances that might cause a deviation from management assumptions. Such a list of examples of circumstances might encompass the following elements:</p> <ul style="list-style-type: none"> • historical evidence based on supervision authorities’ warnings as regards the correct use of prudential assumptions by the failing entity; • evidence, such as benchmarking, that the reason for the change in the assumptions is based on market practice. 	<p>The independent valuer can rely on former valuations conducted for financial statement purposes as a source of information but has to conduct his or her own valuation independently. That is why the valuer is not bound by former management assumptions and can implicitly change them.</p> <p>In order to introduce transparency, valuers shall describe, explain and document all deviations from management assumptions.</p>	<p>The RTS require for the justification of the deviations: ‘Any significant deviation in the valuation from the assumptions used by the entity’s management in the preparation of financial statements and in the calculation of the entity’s regulatory capital and capital requirements shall be supported by the best available information.’ Furthermore, Article 6(1)(e) requires the valuer to explain in the valuation report ‘the key methodologies and assumptions used by the valuer when performing the valuation, how sensitive the</p>

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			valuation is to these choices and, where feasible, an explanation of how those methodologies and assumptions differ from those used for other relevant valuations including any preliminary resolution valuations’ Article 2(2)
<p>Question 3: Would you add, amend or remove any areas that are likely to be subject to significant valuation uncertainty?</p>	<p>In general, respondents agreed that this list of areas that are likely to be subject to significant valuation uncertainty cannot be exhaustive. However, the feedback received included some amendments that are summarised in the following:</p> <ul style="list-style-type: none"> • In a mark to model approach the model itself can be the cause of valuation uncertainty. • The valuation of goodwill and intangibles is related to CGUs and therefore has to be identified properly. • The valuer should pay particular attention to reviewing assets held at fair value given that there can be uncertainty and significant estimation in determining such values, especially when there are unobservable inputs. 	<p>The RTS on independent valuers require the valuer to have a sufficient level of knowledge and experience with regard to valuation and accounting topics. Therefore, the valuer should be able to decide on the key areas on which to focus. However, by introducing the list of areas that are likely to be subject to significant valuation uncertainty in Article 8 of the RTS, we want to provide further guidance for the valuer.</p> <p>As a matter of course, this list cannot be exhaustive, as the areas of uncertainty occur individually with regard to different valuation situations and objects.</p> <p>Further clarity needs to be added that those areas are meant to refer to the uncertainty of the institution’s aggregated value.</p>	<p>Further specification under Article 8 emphasising that the uncertainty shall have a significant impact on the overall valuation.</p> <p>New item (f) added listing ‘items including pension assets and liabilities and deferred tax items, as appropriate’</p>

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	<ul style="list-style-type: none"> • Other judgemental valuation areas such as other provisions (e.g. onerous leases), pensions and taxation should be included in the list. • Tangible assets and deferred tax assets and pensions should be included in the list. • Actions of counterparties (e.g. redemption, conversion or termination) are often an element of uncertainty. <p>One respondent argues that the list is misleading. There are always areas of uncertainty that the valuer has to face and those areas occur individually with regard to different valuation situations and objects. Instead of producing such a list, the RTS should require the valuer to explicitly explain the valuation methodologies, assumptions and uncertainties in a valuation report.</p> <p>Some respondents argued that concentrating on valuation areas that are significant in terms of value volumes instead of uncertainty would improve the outcome of the valuations conducted within a limited time period and would be in line with the generally accepted valuation standards.</p>		
<p>Question 4: Should the buffer always be greater than zero? If yes, how should the buffer be determined?</p>	<p>In general, respondents are concerned about the outcome of the valuation being too conservative ('over-prudence'). In particular, the interaction between setting a range of values pursuant to Article 3(3) of the RTS on the one hand and a buffer pursuant to Articles 9 and 14 on the other hand is seen as problematic.</p> <p>Respondents largely agreed with the possibility of</p>	<p>The BRRD requires that a provisional valuation shall include a buffer for additional losses with appropriate justification pursuant to Article 36(9). Given that Valuation 2 is required to be 'fair, prudent and realistic', the buffer is relevant for that valuation.</p> <p>The calculation of such a buffer should be closely linked to the purpose of the valuation; in particular,</p>	<p>Recital (15) links the buffer to Valuation 2.</p> <p>Article 9 relating to the buffer in Valuation 1 has been deleted.</p>

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	<p>setting a buffer equal to zero, as provided for in the RTS.</p> <p>Only one respondent argues that the BRRD requires a buffer for additional losses and, therefore, that it must be always greater than zero.</p> <p>Some respondents want to include further guidance and general principles on the circumstances that would lead to a buffer in the RTS. In addition, the RTS should require the valuer to explicitly explain the drivers that necessitate the value of the buffer in a valuation report.</p>	<p>the buffer should be based on a prudent assessment of additional losses of uncertain amount and timing.</p> <p>All decisions and assumptions that lead to the calculation of such buffer shall be explained and justified.</p>	<p>Article 13 on the buffer requires that ‘In order to avoid double counting of uncertainty, the assumptions supporting the calculation of the buffer shall be adequately explained and justified by the valuer’.</p>
<p>Question 5: Do you agree that a valuation of post-conversion equity is necessary to inform decision on the terms of write-down or conversion?</p>	<p>Respondents absolutely agreed with the necessity to value post-conversion equity in order to inform the terms of the write-down or conversion.</p> <p>One respondent asks how the NCWO and the pari passu principles are considered if the determination of conversion rates is informed only by equity valuations.</p>	<p>In Valuation 2, the independent valuer has to value different resolution strategies/actions in order to inform the decision about which strategy is the best to achieve resolution objectives. In terms of informing the decision on conversion rates, that implies an interaction between resolution actions that implicitly consider NCWO and the pari passu principles and equity valuations that eventually inform the decision on the value of conversion rates.</p>	<p>No changes for this reason.</p>
<p>Question 6: Do you agree with the definition of equity value for this purpose in Article 2(i)? If not, what changes should be made to the definition? Should the definition be more closely</p>	<p>According to much of the feedback received, the difference between equity and franchise value is not clear and should be defined in more detail.</p> <p>As described before, many respondents want to leave the decision over which valuation methodology to use to the discretion of the independent valuer. In general terms, applicable standard approaches for valuing</p>	<p>The RTS continue to define equity value as a market-based measure, which is to be assessed using generally accepted valuation methodologies.</p> <p>The distinction between equity value and franchise value needs to be described in more detail: while equity value is assumed to be valued at a market value approach, franchise value should include assumptions concerning future reinvestments and</p>	<p>No changes for this reason.</p>

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<p>linked to the net asset value determined on the basis of the remainder of Valuation 2 adjusted for goodwill/‘badwill’ and, if so, how should that adjustment be estimated?</p>	<p>equity are based on cost, market or income.</p> <p>Respondents foresee that a valuer may face significant operational problems. Some of these issues are summarised in the following:</p> <ul style="list-style-type: none"> • The reference to an assessed market price is in line with existing valuation standards but could be problematic in a resolution situation if there is no (comparable) market for newly issued shares or if the assessed market price varies wildly because of market uncertainty or illiquidity. • There is a risk of manipulating the assessed market price by creditors who sell a small amount of their new shares at a low price in order to claim NCWO compensations. • The treatment of goodwill/badwill has to be approached in accordance with the standard valuation approach followed. Equity value can exceed NAV because of goodwill (among other things) but goodwill is the residual amount when NAV is deducted from equity value. One cannot compute equity value by adding goodwill to NAV. <p>One respondent argued that ‘badwill’ is not an internationally defined term and should therefore not be mentioned in the RTS.</p>	<p>financing arrangements.</p>	
<p>Questions 7 and 8: As an alternative, should the use of information that</p>	<p>Comments received show that the use of hindsight information is a controversial topic on which opinions vary depending on the point of view. People who are</p>	<p>In order to enable the valuer to rely on the available information at the date of resolution as a valid basis for conducting the valuation, the RTS should limit</p>	<p>Recital (3) clarifies that ‘Information obtained after the</p>

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<p>becomes available after the resolution date be more restricted and, in particular, permitted only if it refers to facts and circumstances existing at the resolution date that could reasonably have been known at that date?</p> <p>Should the use of information available after the resolution date be further limited, for example by requiring that such information is used only if it results in a significant change in the values of the entity's assets or liabilities?</p>	<p>responsible for conducting valuations tend to limit the use of hindsight information, as they can rely on the available information at the date of resolution as a valid basis for conducting the valuation. People affected by resolution actions insist on a fair treatment based on all available information regardless of its date.</p> <p>Some respondents refer to existing standards (e.g. for annual financial statements), according to which information is permitted only if it refers to facts and circumstances existing at the resolution date that could reasonably have been known at that date. Significant items that concern conditions that did not exist at the resolution date could be referenced as a disclosure if needed.</p> <p>One respondent argues that as a matter of course only significant changes in value must be considered.</p> <p>If the use of hindsight information is to be further limited to significant changes in value, a definition of what 'significant' means should be included in the RTS.</p>	<p>the necessity to use hindsight information. This has been introduced by referring to all information that is pertinent to the valuation date and could also have been reasonably known.</p> <p>As a matter of course, valuers will – at least to a large extent – focus only on significant changes in value when they consider using hindsight information. Therefore, we are of the opinion that this does not need to be clarified in the RTS.</p>	<p>resolution decision date should only be used where it could reasonably have been known at that date'.</p>
<p>Question 9: Should these technical standards provide further detail on the characteristics of appropriate discount rates?</p>	<p>The majority of respondents finds further clarity on the composition of appropriate discount rates useful(e.g. those factors that should be incorporated). There is a broad understanding that applicable discount rates derive from the risk-free interest rate(s) and that they vary, for example, in accordance with the valuation object (whole institution or parts/entities) or the cash flow's inherent risks (risk premia).</p> <p>Some respondents argue that specifying the requirements for discount rates any further carries the</p>	<p>The RTS on independent valuers require the valuer to have a sufficient level of knowledge and experience with regard to valuation and accounting topics. Therefore, the two RTS on valuation for resolution purposes leave the choice of appropriate discount rates to a large extent to the discretion of the valuer.</p> <p>However, the RTS should ensure that applicable discount rates derive from the risk-free interest rate(s) and that they consider the risk profile – in</p>	<p>Amendment to Article 11(6) of the RTS: risk profile should be included as a factor that needs to be considered when calculating appropriate discount rates.</p>

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	<p>inherent risk of over-prescription. An experienced valuer should instead rely on generally accepted standards for the calculation of discount rates.</p>	<p>addition to factors such as timing of cash flows, financing costs, the entity’s post-resolution financial position and its market context, which have already been included in the RTS text. This clarification concerning the calculation of appropriate discount rates should be incorporated in both RTS.</p>	
<p>Question 10: Are there any changes that you would suggest to the methodology for determining the actual treatment of shareholders and creditors in resolution? In particular, should the methodology for valuing equity be further specified and, if so, what should be included in that specification (whether additional detail on the current approach, or a different approach, linked for example to net asset values adjusted for goodwill/badwill)?</p>	<p>In general, the feedback on the valuation methodologies received can be divided into two basic opinions:</p> <ul style="list-style-type: none"> • On the one hand, the majority of respondents argue that the valuation methodologies to be used are relatively standard for an experienced valuer and do not need to be described in further detail in the RTS, as there are generally accepted valuation standards in place in every Member State. This also caters for the fact that every resolution is different and a valuation expert should have the ability to choose the best methodology given the individual circumstances. • On the other hand, a minority of respondents would like to have a precise description of the valuation methodologies to be used for different resolution/insolvency situations in order to establish similar treatment in all Member States (level playing field). <p>Concerning the determination of the best valuation methodology, some respondents are in favour of using market prices to value equity or debt instruments except in cases in which there is proven evidence of market disruptions, as net asset value approaches</p>	<p>The RTS on independent valuers require the valuer to have a sufficient level of knowledge and experience with regard to valuation and accounting topics. Therefore, the two RTS on valuation for resolution purposes should leave the choice of the valuation methodology to be used to the discretion of the valuer. However, in order to cater for the similar treatment of shareholders and creditors in all Member States, the RTS establish a framework for the valuers’ decisions on the best valuation approach to use. According to the RTS, the treatment of shareholders and creditors can be measured properly with an economic or market value approach.</p> <p>Independent valuers shall base their valuations on any relevant information pertinent to the valuation date. The RTS expect valuers to ask for assistance when they need to rely on input that they cannot provide on their own, notwithstanding the provisions laid down in the RTS on independent valuers. Those preparatory works may include, for example, that lawyers cater for a realistic insolvency scenario given the national insolvency law or that</p>	<p>No changes for this reason.</p>

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	<p>adjusted for goodwill or badwill are unlikely to be sufficiently robust.</p> <p>The feedback received by valuation associations and experts emphasises the role of valuers. The RTS should make clear that a valuation of future or hypothetical situations must naturally be based on a vast number of assumptions that a valuer cannot set. As preparatory work, lawyers must cater for a realistic insolvency scenario given the national insolvency law, whereas resolution authorities have to provide the valuer with detailed resolution strategies/actions. In particular for an equity valuation, a detailed business plan must be available as a basis on which the valuation can be conducted (see also ‘The (limited) role of valuers’ in ‘general comments’).</p>	<p>resolution authorities provide for detailed resolution strategies/actions.</p>	
<p>Question 11: Should the valuer be required to accompany the comparison envisaged in Article 7 of this Regulation with additional relevant disclosures? If so, what should those be (e.g. documentation of any differences between the valuation of actual treatment and the market price that would be observed for those same</p>	<p>The majority of respondents favour detailed explanations and justifications regarding the main conclusions reached in the difference in treatment valuations. In particular, all relevant assumptions, methodologies and choices that lead to the outcome of those valuations should be disclosed in a valuation report.</p>	<p>In order to cater for the valid concern that the outcome of the difference in treatment valuation is not comprehensible because it needs to be based on a large number of assumptions, the valuer shall document all relevant assumptions, valuation methodologies and choices used during the valuation process in a valuation report. This needs to be clarified in the RTS text.</p> <p>Whether the documentation will be disclosed in public after all resolution actions have been conducted so that every shareholder/creditor has the chance to evaluate the valuation process that led to her or his actual treatment in resolution is not</p>	<p>Amendment to Article 6 of the RTS on difference in treatment.</p>

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claims were they traded in an active market)?		within the scope of the RTS.	