

EBA/CP/2022/01

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Consultation Paper

Guidelines on transferability to complement the resolvability
assessment for transfer strategies

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1. Responding to this consultation

The EBA invites comments on all proposals put forward in this paper and in particular on the specific questions summarised in section 7.

Comments are most helpful if they:

- respond to the question stated;
- indicate the specific point to which a comment relates;
- contain a clear rationale;
- provide evidence to support the views expressed/ rationale proposed; and
- describe any alternative regulatory choices the EBA should consider.

Submission of responses

To submit your comments, click on the 'send your comments' button on the consultation page by 15.04.2022. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

Publication of responses

Please clearly indicate in the consultation form if you wish your comments to be disclosed or to be treated as confidential. A confidential response may be requested from us in accordance with the EBA's rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the EBA's Board of Appeal and the European Ombudsman.

Data protection

The protection of individuals with regard to the processing of personal data by the EBA is based on Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018. Further information on data protection can be found under the Legal notice section of the EBA website.

2. Executive Summary

The resolvability assessment process is a key element of resolution planning in that it ensures that the preferred resolution strategy can be effectively implemented and the EBA/GL/2022/01 (hereafter “resolvability guidelines” or “RGL”) strive for more convergence in the implementation of existing international standards on resolvability and take stock of the best practices so far developed by EU resolution authorities on resolvability topics. The RGL set out guidance to improve resolvability in the areas of operational continuity in resolution, access to FMIs, funding and liquidity in resolution, bail-in execution, business reorganisation, and communication.

In order to complement the RGL as regards resolution tools other than bail-in, these guidelines on transferability (“transferability guidelines”) aim at assessing the feasibility and credibility of transfer strategies and encompass requirements relating to the implementation of transfer tools when considered as the preferred or variant strategies for institutions. These guidelines deal with the transfer perimeter definition, separability and operational transfer of this perimeter.

These guidelines, complementing the EBA resolvability guidelines in order to cover more precisely separability in the context of the application of transfer tools, should be read together with them. Transferability is defined as the requirement covering all the elements that will facilitate the transfer of an entity, a business line or a portfolio of assets, rights and/or liabilities (“transfer perimeter”) to an acquirer (public or private company), a bridge institution (“BI”), or an asset management company (“AMC”).

The scope of these guidelines cover the following resolution tools:

- Sale of business tool under article 38 BRRD (“SoB”)
- Bridge institution tool under article 40 BRRD (“BI”)
- Asset separation tool under article 42 BRRD (“AST”)

The design and definition of bridge institutions and asset management companies are not covered in these guidelines.

These guidelines are addressed to both institutions and resolution authorities, though they cover transferability under resolvability assessments of institutions, groups or resolutions groups.

These guidelines are divided into two chapters: (i) the identification of the entity, business line or portfolio that should be transferred in resolution (transfer perimeter) and (ii) the conditions that will facilitate said transfer.

The guidelines tackle first the definition and identification of the transfer perimeter based on the objectives of the transfer strategy, the degree of separability within the institution, and the obstacles to transferability of some elements. Then, the guidelines deal with the operational transfer by considering the preparation of the sale transaction, the arrangements to ensure a clean separation of the transfer perimeter from the rest of the institution, and the processes that should be in place to handle the transfer and its impacts. Finally, the guidelines consider management information systems (“MIS”) aspects.

These guidelines are published for consultation for a period of three months, and a public hearing will be organised.

Next steps

Following the consultation, the aim is to publish the final guidelines by 30 September 2022. The institutions and resolution authorities in scope of these guidelines should comply in full by 1 January 2024, in line with the deadline laid down in the RGL.

3. Background and rationale

1. The transferability guidelines fall under article 16 of Regulation (EU) No 1093/2010 and are conceived to complement the EBA/GL/2022/01 (the resolvability guidelines), published on 12 January 2022, in setting resolvability guidance, in particular, on transferability, with regards to transfer tools, which was one of the outstanding topics around resolvability to be finalised as agreed by ResCo on 8-9 July 2020 and as such included in the roadmap presented to ResCo in November 2020.
2. The concept of transferability is more adequate to capture the arrangements necessary to ensure a proper planning for transfer strategies. Indeed, transferability is relevant for both share deals and strategies that do not require a high level of separability as well as for asset deals that will require a higher level of separability. Transferability is specific to transfer tools whereas separability is a concept that applies also to the choice of resolution approach (Single Point of Entry -SPE- or Multiple Point of Entry -MPE-), which comes before the choice of resolution tool.
3. The transferability guidelines are based on international policies and standards amongst which the EC AMC blueprint and ESRB reports. The transferability guidelines leveraged on existing EBA guidelines, mainly, EBA resolvability guidelines, but also EBA Guidelines on asset separation tool¹ and EBA guidelines on diagnostic exercise².
4. The transferability guidelines encompass guidance relating to (i) the methodology set by the resolution authorities for the institutions to define the transfer perimeter (section i) and to (ii) the operational implementation of the transfer (section ii).
5. Section 4, dedicated to transfer perimeter definition, distinguishes a first layer of the transfer perimeter, built around the resolution objectives, the legal obligations and the tools' purposes, from a second layer that consists of the elements that cannot be separated from the first layer. Transfer obstacles, whether legal or not, should be identified and the transfer perimeter adjusted accordingly, and a section is specifically dedicated to cross-border obstacles. Ultimately, the transfer perimeter should be defined in relative terms to adjust to the evolution of the institution and in units to cater for different combinations addressing different scenarios.

¹ EBA/GL/2015/05, on the determination of when the liquidation of assets or liabilities under normal insolvency proceedings could have an adverse effect on one or more financial markets under Article 42(14) of Directive 2014/59/EU.

² EBA/GL/2014/09, on the types of tests, reviews or exercises that may lead to support measures under Article 32(4)(d)(iii) of the Bank Recovery and Resolution Directive.

6. Directive 2014/59/EU³ (hereinafter “BRRD”) is less comprehensive regarding transfer tools than regarding bail-in, in the sense there is no equivalent of article 44 of that Directive (definition of bail-inable liabilities) for transfer tools in order to identify transferable assets, rights and liabilities. Nonetheless, this fact should not entail to lower resolvability expectations under articles 15 and 16 BRRD, and section C of the annex to that Directive, for transfer tools than for bail-in. The expectations regarding the resolution plan content under articles 10 and 12 BRRD, as well as the resolution principles and objectives referred to respectively in articles 34 and 31 of the same Directive should be rigorously the same regardless of the resolution tools considered. Therefore, the level of preparedness from a resolvability perspective for transfer tools should be equivalent to the level of preparedness for bail-in.
7. The section 5, dealing with operational transfer, sets expectations regarding the sale process preparation, the arrangements to separate the transfer perimeter from the rest of the institution, the planning of processes supporting the aforementioned elements and the MIS necessary to support both resolution planning and resolution execution in the context of transfer tools.
8. Resolvability is to be assessed based on the available information (including under article 11 BRRD) and scenario considered. The conditions of resolution and the valuation input cannot be known in advance, yet resolution authorities should not wait for resolution to prepare for it. Although the setting-up of bridge banks and asset management vehicles are out of scope, resolvability cannot be credibly confirmed without having these processes in place.
9. Proportionality as defined in the RGL and under article 1.1 BRRD is fully applicable to these transferability guidelines, as are all the assumptions and definitions laid down in the RGL, unless indicated otherwise in these guidelines.
10. Consistently with the RGL, the transferability guidelines are addressed to resolution authorities and also to institutions. Resolution planning is dependent on cooperation and dialogue between the institution, the resolution authority and, where relevant, third parties. Ultimately, institutions should participate in the resolution planning under article 11 BRRD.
11. Akin to EBA resolvability guidelines, the date of application foreseen is 1 January 2024 to provide enough time for resolution authorities and institutions to adapt their processes to the guidance contained in these guidelines. Therefore, institutions and resolution authorities should incorporate the requirements, guidance and contents of these guidelines in their internal procedures in order to ensure they will be able to comply in full with the guidelines by no later than 1 January 2024. In particular, it is expected they already start to take into consideration these guidelines when reviewing the assessment of the resolvability of institutions, groups and resolution groups.

³ Directive 2014/59/EU of the European Parliament and of the Council, of 15 May 2014, establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173 12.6.2014, p. 190).

4. Draft Guidelines

EBA/GL-REC/20XX/XX

DD Month YYYY

Draft Guidelines

Guidelines on transferability to complement the resolvability assessment for transfer strategies

1. Compliance and reporting obligations

Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010⁴. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities and financial institutions must make every effort to comply with the guidelines.
2. Guidelines set the EBA view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. Authorities as defined in Article 4(2) of Regulation (EU) No 1093/2010 to whom guidelines apply should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at institutions.

Reporting requirements

3. According to Article 16(3) of Regulation (EU) No 1093/2010, authorities must notify the EBA as to whether they comply or intend to comply with these guidelines, or otherwise with reasons for non-compliance, by **[2 months after publication of translation of the guidelines]**. In the absence of any notification by this deadline, authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website to compliance@eba.europa.eu with the reference 'EBA/GL/202x/xx'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to EBA.
4. Notifications will be published on the EBA website, in line with Article 16(3).

⁴ 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).

2. Subject matter, scope and definitions

Subject matter

5. These guidelines specify the actions that institutions⁵ and resolution authorities should take to improve resolvability of institutions, groups or resolution groups in the context of the resolvability assessment as per Articles 15 and 16 of Directive 2014/59/EU (BRRD) specifically when the transfer tools are foreseen in the resolution strategy.

Scope of application

6. Akin to the EBA guidelines for institution and resolution authorities on improving resolvability (“EBA resolvability guidelines”)⁶, which these guidelines aim at complementing, these guidelines apply in relation to increasing the resolvability of institutions, groups and resolution groups and to, therefore, enhance and facilitate the work of resolution authorities as per the requirements established in Articles 15 and 16 of Directive 2014/59/EU and in Commission Delegated Regulation (EU) 2016/1075.
7. These guidelines do not apply to institutions which are subject to simplified obligations for resolution planning in accordance with Article 4 of Directive 2014/59/EU, but resolution authorities may apply these guidelines as appropriate in whole or in part to these institutions.
8. These guidelines do not apply to institutions whose resolution plan provides that they are to be wound up in an orderly manner in accordance with the applicable national law, although resolution authorities may apply these guidelines as appropriate in whole or in part to these institutions. In the case of a change of strategy, in particular from liquidation to resolution then then the guidelines should apply, in full, as quickly as possible and no later than 3 years as from the date of the approval of the resolution plan including the new resolution strategy.
9. For institutions that are not part of a group subject to consolidated supervision pursuant to Articles 111 and 112 of Directive 2013/36/EU⁷, these guidelines apply at the individual level.
10. For institutions that are part of a group subject to consolidated supervision pursuant to Articles 111 and 112 of Directive 2013/36/EU, these guidelines apply at the level both of the resolution entities and of its subsidiaries (“resolution group level”).

⁵ Art. 2(1), point 23, of Directive 2014/59/EU of the European Parliament and of the Council, of 15 May 2014, establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173 12.6.2014, p. 190) (hereinafter, indistinctly, “Directive 2014/59/EU” or “BRRD”).

⁶ EBA guidelines for institutions and resolution authorities on improving resolvability (EBA/GL/2022/01).

⁷ Directive 2013/36/EU of the European Parliament and of the Council, of 26 June 2013, on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176 27.6.2013, p. 338).



11. Resolution authorities should make sure guidance addressed to institutions under these guidelines are applied in an appropriate and proportionate way and that the burden entailed by the support of institutions in the transfer perimeter identification and in the preparation for the operational transfer is limited, to the extent possible, to the objectives defined in these guidelines.

Addressees

12. These guidelines are addressed to resolution authorities as defined in point (2) (v) (“resolution authorities”) of Article 4 of Regulation (EU) No 1093/2010 and to financial institutions that are entities within the scope of Directive 2014/59/EU as defined in point (1) of Article 4 of Regulation No 1093/2010 (“institutions”).

Definitions

13. Unless otherwise specified, terms used and defined in Directive 2014/59/EU have the same meaning in the guidelines.

3. Implementation

Date of application

14. Akin to EBA resolvability guidelines, these guidelines apply from **1 January 2024**.

4. Definition of the transfer perimeter

15. Although the methodology for the definition of the entity or entities, business lines or portfolios of assets, rights and/or liabilities to be transferred (“transfer perimeter”) remains resolution authorities’ responsibility, institutions should be able to implement this definition, identifying impediments and proposing potential enhancements aiming at improving the credibility and feasibility of the transfer strategy or tool⁸ as described in the resolution plan. Institutions should be able to identify and isolate upon request the components of the transfer perimeter as defined by and under the guidance of resolution authorities in line with article 11 BRRD, test the applicability of the transfer perimeter under different scenarios as communicated by the resolution authorities in accordance with articles 10.3., 10.7., point (j), and 12.3 BRRD.
16. Resolution authorities, while setting the methodology for the definition of the transfer perimeter in resolution plans, in accordance with Articles 10.1, 10.7., point (j), and 12.3, point (b), BRRD, should consider:
 - a. the tools’ purposes (as per the resolution strategy defined for the institution)⁹ and the activities of institutions. Ultimately, the core transfer perimeter should be composed by assets, rights and/or liabilities that are essential or critical to be transferred to comply with the resolution objectives, the regulatory obligations (including protected liabilities under art. 44 BRRD or obligations under art. 73 BRRD) and the tool purposes (“first layer of the transfer perimeter”) and its determination should correspond with a list of criteria further refined in section 4.1. below;
 - b. the interconnections within the institution. Subject to the previous subparagraph (a), the interconnections that cannot be removed without time-consuming and costly efforts or due to legal restrictions (including those regarding the safeguards stipulated in arts. 76-80 BRRD) should be integrated into the transfer perimeter (second layer of the transfer perimeter) in line with section 4.2. below.
17. Institutions should flag to resolution authorities transferability impediments while applying the transfer perimeter definition to their assets, rights and/or liabilities. The assessment of the transfer impediments should give a special attention to cross-border issues in line with section 4.3.
18. While setting the methodology for the definition of the transfer perimeter and with the aim to develop a resolution strategy that best achieves the resolution objectives, resolution

⁸ “Transfer strategies or tools” refers to sale of business (either via share deal or assets deal), bridge institution (also called closed bail-in) and assets separation tool.

⁹ The transfer tools have different purposes. For example, the asset separation tool serves the purpose of transferring assets, rights and/or liabilities that hinder the viability of an institution subject to resolution or a bridge institution (art. 42 BRRD), whereas the bridge institution tool and the sale of business tool will aim at transferring a combination of assets (prominently performing assets), rights and liabilities worthy to be continued.

authorities should consider the possibility to divide the perimeter into different units in order to prepare for different scenarios, cater for a combination of transfer tools, allow different successive transfers and combinations under the same resolution tool or to multiple recipients, which may be needed.

4.1 Specific considerations for each transfer tool

4.1.1 Sale of Business (SoB)

19. If a resolution strategy includes the SoB tool, resolution authorities should evaluate, as part of the resolution planning, the execution risk of asset and share deals¹⁰ and consider the least intrusive transaction that achieves best the resolution objectives in compliance with paragraphs 15 to 18.
20. For share deals, institutions should analyse how the transfer perimeter attracts market interest given the aim to maximise, as far as possible, the sale price for the transfer perimeter, considering recovery planning work, comparable transactions, valuation references or market trends. They should then communicate the outcome of this analysis to the resolution authorities, in order for them to factor it in their transferability assessment in the context of resolution planning. This assessment should consider, when available, the activities, business model, financial performances, client relationships, distribution channels and geographic breakdown of the transfer perimeter.
21. For asset deals, institutions should analyse the extent to which the transfer perimeter attracts market interest, by considering additional items that would make the perimeter more appealing to the purchaser, including cash, other liquid assets and performing loans. They should then communicate the outcome of this analysis to the resolution authorities, in order for them to factor it in their transferability assessment in the context of resolution planning.
22. In line with paragraph 15 of these guidelines, institutions should help identifying available opportunities to improve the transfer perimeter definition with the aim of facilitating the implementation of the transfer. In particular, institutions should consider whether the transfer perimeter could be simplified in order to reduce the execution risks in resolution. They should also consider options to be applied to the transfer perimeter definition in order to maximize the success of the transfer such as guarantees on a portfolio of assets (art. 101.1(a) BRRD) or “carve-outs” of certain unwanted assets, rights and/or liabilities that are not needed for the continuity of critical functions and/or core business lines, leveraging on the identification of transfer perimeter units as per paragraph 18.
23. Institutions should also analyse the market capacity to absorb the transfer perimeter, assessing the existence of third-party investors with sufficient funds, in case of credit institutions with excess capital and/or sufficient market access, previous integration experience and fit with

¹⁰ A share deal consists in a transfer (as defined in point (c) of article 63.1 BRRD) of instruments of ownership (as defined in article 2.1(61) BRRD) to a recipient (as defined in article 2.1(80) BRRD), while an asset deal is a transfer (as defined in point (d) of article 63.1 BRRD) of assets, rights and/or liabilities to a recipient (as defined in article 2.1(80) BRRD).



regards to competition and strategic considerations. They should then communicate the outcome of this analysis to the resolution authorities.

24. Resolution authorities should leverage on the exercise described in paragraphs 21 and 23 of the guidelines above to consider the possibility of different potential acquirers for different parts of the transfer perimeter according to the markets concerned, their absorption capacity or the geography of the activities, in order to maximise the chances of success of the transfer strategy and support resolvability. Where necessary, in line with article 39.1 BRRD, resolution authorities should consider the division of the transfer perimeter into units in order to better tailor the resolution strategy to the unforeseeable conditions of resolution and the different possible scenarios to be tested.
25. To the extent possible and in order to further enhance resolvability, institutions should analyse the potential perimeter shifts that could arise while the institution's business is evolving and the economic conditions are changing, and communicate the outcome of this analysis to the resolution authorities. Structural changes and predictable impacts should be considered as much as possible. As a minimum, the impact of recovery options on the assets, rights and/or liabilities eligible to the core (first layer) transfer perimeter based on paragraphs 16.a, 22 and 23 above, of these guidelines, should be considered.

4.1.2 Bridge Institution (BI)

26. Resolution authorities should consider the objectives and the exit strategy of the BI, given the scenario considered, when setting the methodology for the definition of the perimeter to be transferred to a BI, subject to paragraphs 15 and 16 of these guidelines. In particular, the core (first layer) transfer perimeter may be defined differently if the BI is set up to further implement the required separation within the institution, or to collect assets, rights and liabilities from different institutions subject to resolution in accordance with article 40.1 BRRD, or if the BI is to be sold as a whole or in pieces in line with article 41.2 BRRD.
27. Institutions should support resolution authorities by testing the applicability (under paragraph 18 of these guidelines) of the transfer perimeter definition, supporting the execution risk assessment, advising on potential enhancement of the transfer perimeter and assessing the market appetite and capacity to absorb the transfer perimeter. This contributes to having resolution authorities maximising the marketability of the BI and support the choice of this resolution tool in resolution plans.
28. Institutions should assess the risk profile of the transfer perimeter eligible assets, rights and liabilities and support resolution authorities' evaluation of their compatibility with the viability of the BI, which is meant to continue the provision of critical functions. Ultimately, the risk profile (including credit risks, market risks or operational risks) of the transfer perimeter should not jeopardise the viability of the BI before it is subject to the sale process¹¹.

¹¹ Depending on the resolution strategy and the BI exit strategy, the risk profile of the transfer perimeter might also dissuade potential buyers in cases, such as if the risk profile entails high levels of capital.



29. Should the BI be designed to support only one institution, the institution should support the resolution authority when assessing the capital and liquidity position calibration of the transfer perimeter, ensuring that the value of the liabilities, in line with Art. 40.3 of the BRRD, does not exceed the value of the assets, and the resolution authority should assess the impact of the transfer perimeter on the capital and liquidity positions of the BI¹². Similarly, in order to ensure a balanced liquidity position of the BI, the maturity profile of the assets should be in line with the maturity of the liabilities (ideally shorter) and specific attention should be given to the total interest rate weighting on the liabilities as compared to the total interest rate stemming from the assets.
30. In order to further enhance resolvability, institutions should support resolution authorities to assess the potential perimeter shifts as laid down in paragraph 25 of these guidelines likely to affect the transfer perimeter as defined in paragraphs 16.a and 26-29 of these guidelines.
31. Resolution authorities should consider the conditions under which transfers back to the institution would be necessary and/or advantageous with regards to the resolution strategy. This consideration should apply at the level of the transfer perimeter unit.
32. Resolution authorities should consider whether it is feasible to operate a share deal under the exercise of BI.

4.1.3 Asset Separation Tool (AST)

33. Institutions, based on the information communicated by resolution authorities¹³, should flag to authorities the assets, rights and/or liabilities that meet the conditions of article 42.5 BRRD and the principles laid down in EBA guidelines on the asset separation tool¹⁴ in order to examine to which extent the AST can be applied as per article 12.3(b) BRRD.
34. Institutions, based on the guidance from resolution authorities, should identify items to be included in the transfer perimeter so that they fit with the assets management company's (AMC) characteristics as defined by resolution authorities. In this vein, in accordance with Art. 42.5(c) BRRD, resolution authorities should assess whether the transfer is necessary to maximise liquidation proceeds, therefore the AMC business model and exit strategy should not be disregarded. In particular, resolution authorities should ensure that:
 - the transfer perimeter is in line with the AMC business model, if already set up, or consider the business model of an AMC to be set up. AMCs can be designed to be single-asset focused or specialised in a geographical area;

¹² The strategy to capitalize the BI would have an effect on the transfer perimeter as a greater difference between the value of the assets and the value of the liabilities would support the capital position of the BI

¹³ The transfer perimeter to be transferred under article 42 BRRD can be transferred to one AMC, to several AMCs or be a combination with units from other institutions (as already happened in systemic scenarios) in the AMC.

¹⁴ EBA guidelines on the determination of when the liquidation of assets or liabilities under normal insolvency proceedings could have an adverse effect on one or more financial markets under Article 42(14) of Directive 2014/59/EU (EBA/GL/2015/05).



- especially in the case of an AMC that is expected to absorb portfolios and activities from different institutions, there is coherence between the transfer perimeter and the disposal strategy ensuring the maximisation of the liquidation proceeds, avoiding the destruction of value and triggering scale effects;
 - the transfer perimeter allows, as much as possible, the AMC to reach a critical size in order to benefit from economies of scale. Ideally, the critical size should remain within the proportions of the market in which it operates¹⁵;
 - the transfer perimeter puts the AMC in a position to recover a long-term value greater than the market value at the valuation date in line with paragraph 35 of these guidelines, which means that portfolios with negative long-term prospects should be considered carefully.
35. Resolution authorities should set a methodology for the institutions to structure the transfer perimeter destined to the AMC under the AST in such a way that the long-term value of the perimeter is above its market value, in order to avoid the destruction of value, minimise the cost of resolution and protect public funds (article 31.2 BRRD). The long-term value can be estimated based on the current market value for performing portfolios. However, the issue arises for impaired or non-performing portfolios, in which cases the authorities should assess the perspectives of improvement for the concerned portfolios and markets derived from available market analyses, leverage on the supervisors' assessment and assess potential combinations with performing assets (combination of different units as per paragraph 18 of these guidelines) to positively impact the overall profile of the transfer perimeter.
36. In order to further enhance resolvability, institutions should support resolution authorities to assess the potential perimeter shifts as laid down in paragraph 25 of these guidelines susceptible to affect the transfer perimeter.
37. Resolution authorities should consider the conditions under which transfers back to the institution would be necessary and/or advantageous with regards to the resolution strategy. Said consideration should apply at the level of the transfer perimeter unit.

4.2 Assessment of interconnections

38. In order to support the requirement referred to in paragraphs 99-101 of the EBA resolvability guidelines and to ensure the continuity of the transfer perimeter once separated from the rest of the group as per paragraph 16.b of these guidelines, institutions should be able to explain to resolution authorities the background analysis supporting the identification of the information covered by paragraphs 15, 16 and 44 of the EBA resolvability guidelines and supporting the resolution planning. In particular, subject to proportionality, institutions should be able to:

¹⁵ A too large AMC may lead to higher costs for the public authorities holding the ownership instruments of said AMC.



- break down core business lines and critical functions into functional processes¹⁶ and map them to organizational units as relevant;
- assess the role of organizational units and the services they provide;
- identify the corresponding elements, such as assets, liabilities, staff, resources, systems and applications, involved in the organisational units as relevant.

39. Institutions should highlight to resolution authorities potential issues in separating elements of the organisational units from the core (first layer) transfer perimeter components (separability conflicts), either because they cannot be easily substituted, because they might entail additional and disproportionate risks, or because their separation would be suboptimal with regards to the resolution objectives. The potential separability conflict identification process should consider the elements laid down in paragraphs 40 to 47 of these guidelines and should leverage as much as possible on recovery planning work. The outcome is expected to feed into the transfer perimeter definition in the resolution plan and the feasibility assessment of the resolution strategy.

Financial Interconnections

40. In line with paragraph 100 of the resolvability guidelines, institutions should provide resolution authorities with the identification of the connections safeguarded by Art. 76-80 BRRD.

41. In order to (i) avoid unnecessary financial disturbances and to ensure reliability of financial services provided by the transfer perimeter or (ii) limit the funding instabilities of the activities to be continued (including under the AST for the legacy entity), the core transfer perimeter should, when possible and subject to paragraph 44 of these guidelines, be transferred with the connected financial obligations and protections. Therefore, in the resolution planning, institutions with transfer strategies included in their resolution plans should:

- identify financial linkages between off- and on balance sheet exposures and liabilities and, in particular, guarantees (including, where relevant, references to: scope¹⁷; duration; early termination rights; change of control or cross-default clauses; or applicable law) given and received distinguishing external guarantees and intra-group guarantees. Intragroup guarantees¹⁸ should be particularly assessed in order to evaluate whether they should be transferred or cancelled without causing unwanted havoc;
- identify existing hedges not already captured by the safeguards referred to above;

¹⁶ Functional processes can be defined as the day-to-day activities supporting the business lines.

¹⁷ Such as, for instance, letters of comfort.

¹⁸ Intragroup guarantees, in the context of these guidelines, are to be broadly understood as loss transfer mechanisms.

- identify the organizational units that are responsible for the provision of funding and their contractual interlinkages with other units, taking into account cash in- and outflows and counterbalancing capacity;
- develop, when necessary, arrangements ensuring the maintenance of existing agreements in and post resolution, the continuity of back-to-back transactions of the separated units, the access to currencies by the separated units¹⁹.

Legal Interconnections

42. In order to support resolution authorities, institutions should identify legal interconnections between the core transfer perimeter and the rest of the institution including, but not limited to:

- a. At inter-entity level: (i) cross-entity ownership instruments; (ii) tax linkages; (iii) obligations towards the other cooperative members when relevant; (iv) legal relationship between the entities and any solidarity mechanisms or institutional protection schemes (IPS); (v) relevant contracts with exclusion clauses, such as, joint venture or other partnerships, for instance, with insurance companies.
- b. At the level of organisational units: legal interconnections due to existing service obligations under service level agreements or not, employee contracts and collective agreement²⁰, and contractual provisions attached to each unit's assets and liabilities.

43. Institutions should identify potential separability conflicts related to the aforementioned elements and deliver to resolution authorities all the needed information in order to clarify the following elements:

- (i) the potential consequences of the transfer perimeter definition on the institution's ownership structure and on the acquirer independence²¹;
- (ii) whether the second layer of the transfer perimeter could be structured in a way that it does not lead to unnecessary losses due to tax reasons;
- (iii) whether cooperative arrangements should be continued and could benefit the transfer perimeter;

¹⁹ The Group separability assessment will have identified the financial interdependencies between organisational units and in particular the financial obligations of one to another, the funding movements within the Group, and the currency sourcing.

²⁰ Pursuant to article 5(1) of Transfers of Undertakings Directive 2001/23/EC (TUPE) and article 34(4) BRRD, the automaticity of the transfer of employee contracts might not apply under a transfer using any of the bridge institution, sale of business, or asset separation tools.

²¹ The transfer of ownership instruments to external parties could potentially have negative impact on either the institution in resolution (e.g. by changing the ownership structure in a suboptimal way) or on the acquirer (e.g. by maintaining a link and potentially transferring additional losses between the institution subject to resolution – legacy entity – and the acquirer).

(iv) whether the membership in IPS, association or similar solidarity arrangements can still be continued for the transfer perimeter and the potential related obligations attached to the transfer perimeter, also assessing, where applicable, whether waivers for the IPS/association (such as those foreseen under articles 113 (7) and 49(3) CRR) are continued or terminated in resolution and what the implications would be;

(v) whether and to what extent potential litigation risks (including litigation risks stemming from the resolution action itself under the guidance of resolution authorities) weigh on the transfer perimeter.

44. Resolution authorities should assess to what extent powers under article 64.1 BRRD to amend or cancel contracts could be used in order to better define the second layer of the transfer perimeter and remove unnecessary interconnections.

Operational Interconnections²²

45. Additionally to mapping full-time equivalents (FTEs) to the transfer perimeter components (see paragraph 38 of these guidelines), institutions should provide information about the expertise required for the performance of the activities included in the transfer perimeter. Ultimately, it is the understanding of the expertise that will feed into the assessment of staff substitutability and the mitigation of separability conflicts.

Business Interconnections

46. Institutions should identify business interconnections, such as any cross-organisational unit link wherein a business line is operated through multiple organisational units or whose revenue is driven by the activities exercised by different organisational units, including synergies or cross-activity customers.

47. Resolution authorities should consider the methodology for the definition of the transfer perimeter in light of business interconnections, so that (i) the perimeter to be transferred to the AMC does not affect negatively the franchise of the business (including critical functions and core business lines) remaining with the institution subject to resolution meant to be continued, (ii) or alternatively that leaving units with the institution subject to resolution is not detrimental to the franchise of the business (including critical functions and core business lines) transferred to potential acquirer(s) or the BI.

4.3 Assessment of cross border aspects

48. Institutions should inform resolution authorities about the governing law and national specificities of assets, items, business and entities falling in the transfer perimeter upon request.

²² Under the resolvability guidelines, institutions should already demonstrate that they are able to identify all relevant services, resources, and personnel, necessary for the continuity of the core transfer perimeter..



49. Institutions should flag items, falling in the transfer perimeter or upon request, that are only transferrable within the same Member State and identify potential workarounds.
50. In order to comply with article 67 BRRD and article 30 Commission delegated regulation 2016/1075, resolution authorities should discuss during the resolution planning phase with third country authorities the possibility to exercise transfer powers over items governed by the third country law. Based on the outcome of the discussion, the resolution authority will have to assess whether the following options are doable:
- (i) The third country authority will recognize the resolution authority's transfer powers;
 - (ii) The third country authority will not recognize the resolution authority's transfer powers, but will not object a transfer validated by the entity subject to resolution;
 - (iii) The transfer will only be possible after considerable cost and time in resolution.
51. In order to support resolution authorities in their assessment under the previous paragraph, institutions should analyse, and inform resolution authorities about, the feasibility/credibility of:
- a confirmatory agreement signed by the institution subject to resolution recognizing the transfer to the acquirer (either the buyer, the bridge institution or the asset management company) attesting the transfer in the terms and conditions settled by the resolution authority (in line with article 67.1(a) BRRD);
 - resolution-resilient clauses in the contracts to recognise and inform the counterparty that the contract may be subject to the exercise of resolution powers (in line with article 67.1(a) BRRD);
 - the transfer of the items governed by third country law to an ad hoc entity (such as a special purpose vehicle) under the domestic governing law and to have the entity ownership instruments transferred as part of the transfer perimeter.
52. Institutions should bring to the authorities' attention any case of third country law imposing to said institutions to support its subsidiary, under which third country items will have to be included in the transfer perimeter.

5. Operational transfer

53. Defining the transfer perimeter is only one step of the implementation of the transfer tool. Preparing for the operational transfer should be a key element of the resolvability assessment for transfer strategies. In this regard, resolution authorities and institutions should have arrangements in place in order to prepare for the sale of the transfer perimeter as defined in chapter 4 and, in this vein:
- a. Resolution authorities should develop a sale process (section 4.1.1) to support the SoB, and investigate additional preparatory measures (section 4.1.2) to support the execution of the transfer tools.
 - b. Both institutions and resolution authorities should develop capabilities to solve separability conflicts identified under section 4.2 and to implement the transfer in a timely manner (section 4.2).
 - c. Institutions should establish processes to handle the operational consequences of the transfer and should demonstrate to resolution authorities how reliable these processes are (section 4.3).
54. When AST and BI are the resolution tools foreseen in the resolution strategy, resolution authorities should have processes in place in order to respectively set up an AMC as per article 42 BRRD and a bridge institution as per article 41 BRRD, within an adequate timeline.

5.1 Sale preparation

5.1.1 Preparation of the sale process

55. Resolution authorities should lay down in the resolution plans or in any supporting documentation how they can smoothly execute the sale process referred to in paragraph 53.a in a way as transparent as possible.
56. In order to ensure the feasibility/credibility of the SoB as a resolution tool, the resolution authority should, with the support of institutions, pre-define a list of criteria that potential acquirers may be expected to meet based on the features of the transfer perimeter and given the existing market players' characteristics as well as external factors (such as regulatory considerations regarding market concentration, need for licenses and authorization; and any market entry barriers). Resolution authorities should be able to leverage on the information available to supervisors and in recovery plans.
57. Although the sale strategy will depend on the definition of the transfer perimeter (institution- and situation-specific), resolution authorities should develop a sale process taking into consideration at least the following elements:



- The timeline of the sale process: a timetable with milestones and deliverables;
 - The definition of operational sub-processes with a clear allocation of tasks amongst the different teams and experts covering the resolution authorities, institutions, competent authorities and all relevant actors in line with paragraphs 59 and 60;
 - The composition and roles of teams and bodies;
 - The documentation supporting the sale framework and marketing process (including, but not limited to term sheets; NDA and other legal documents; templates available to bidders; bid assessment sheets; criteria list; procurement documents and mandates for external consultants; and templates for media communication);
 - Confidential communication channel(s), communication plan(s) and information, data and reports.
58. While defining a timeline in line with article 10.7(d)(j) BRRD, resolution authorities should consider the different milestones relevant to transfers and in particular the resolution planning reference date²³, the valuation date²⁴, the resolution date²⁵ and the transfer date(s).
59. Resolution authorities should identify the approvals or consents that would not fall under the exemptions referred to in article 63(2) BRRD and ensure that the sale process addresses them. Those may include the approval from the European Commission regarding the concentration of a European dimension in line with the EU Merger Control rules (EUMR)²⁶. Resolution authorities should consider interactions with the market authorities and any other authorities expected to intervene in the sale process. Said interactions with other authorities should occur timely and should not render the sale timeline inappropriate with regards to resolvability.
60. For cross border groups, cross border transfer perimeter or for cross border transactions, resolution authorities should discuss as relevant their sale framework with other resolution authorities and competent authorities in order to agree on the allocation of tasks, the information exchange and the timeline, to update the sale framework on a regular basis and to ensure the existence of confidential communication lines. Discussions may be held for instance in resolution colleges where they exist, or in Crisis Management Groups (CMGs) where they exist (for G-SIIs), or else, on an ad hoc and less formal basis.
61. Resolution authorities should ensure that their sale process is applicable under at least two scenarios: the sale ensuing a marketing process under article 39 BRRD (which may be qualified as 'Strategic SoB') and the sale without marketing process as provided by article 39.3 BRRD (which may be qualified as 'Accelerated SoB').

²³ In accordance with Article 5 Commission implementing regulation 2018/1624.

²⁴ As reflected in the EBA handbook on valuation for purposes of resolution (EBA valuation handbook).

²⁵ As defined under Article 1(j) Commission delegated regulation 2018/345.

²⁶ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 024 , 29/01/2004 P. 0001 - 0022).



62. The resolution authority should be prepared to perform, as soon as possible and no later than the declaration of fail or likely to fail (FOLTF), the assessment of the marketing process feasibility in line with EBA guidelines on the effectiveness of the sale of business tool ²⁷.
63. The sale process should provide for a smooth execution over the resolution weekend of an Accelerated SoB. To do so, the resolution authority should be able to update (by, for instance, the performance of market monitoring activities; existing access to up-to-date relevant market data or existing processes to require expert assistance in the matter), in line with the market conditions and the transfer perimeter at the date of FOLTF, the list of criteria for potential acquirers to meet and pre-defined list of potential acquirers based on paragraph 23 of these guidelines. The resolution authority should assess as early as possible the potential implications of an Accelerated SoB with regards to State-Aid rules and ensure an execution of the accelerated sale that minimises these implications²⁸.
64. For a Strategic SoB, resolution authorities should be able to update the list of criteria for potential acquirers to meet based on section 4.1. and paragraph 23 of these guidelines. The sale process should provide for a smooth execution of a strategic SoB ensuring an open, transparent and non-discriminatory marketing process (marketing requirements), aiming at maximising the price of the sale and identifying any potential conflicts of interest. Said criteria should include a variety of indicators relating to the financial, legal and operational strength of the potential acquirers which should be in relation to the transfer perimeter and not designed to advantage the potential purchasers identified ex-ante. The resolution authority may request plans laying down the integration process of the transfer perimeter by the potential purchaser and highlighting the required capabilities.
65. Resolution authorities should prepare for the request of external assistance (including consultants, legal advisers or auditors) within the sale process or for the delegation of the marketing process. The responsibility falling to the resolution authority should not be delegated, and the resolution authority should have established a process to select and appoint external consultants based on pre-defined criteria under a defined mandate, control them and review their input, ensure absence of conflict of interest and respect of confidentiality. The mandate should clearly define, amongst others, the objectives and deliverables, the expected expertise and resources, the timeline or the fees.

5.1.2 Internal segregation

66. The resolvability assessment as referred to in section C in the annex of the BRRD is to be built on the assessment of the institution's legal and corporate structures (point (2) of said Section C in the Annex of BRRD), the complexity of this structure and the difficulty in aligning business lines to group entities (point (16) of the Section C in the Annex of BRRD), and the compatibility of this structure with the chosen resolution tool(s) (point (21) of the Section C in the Annex

²⁷ EBA Guidelines on factual circumstances amounting to a material threat to financial stability and on the elements related to the effectiveness of the sale of business tool under Article 39(4) of Directive 2014/59/EU (EBA/GL/2015/04)..

²⁸ In line with EBA Final Q&A2015_2339.



BRRD). Therefore, resolution authorities should consider how to best prepare for the AST given that many of the transfer perimeter components might not be within one legal entity or one business line, and should, when necessary and without prejudice to powers under article 17 BRRD, promote the separation of portfolios by:

- a. Requesting to institutions to have playbooks laying down how they could segregate distressed assets²⁹ in one business line or one legal entity when the AST is considered in the resolution strategy and when portfolios eligible to the AST are scattered around the group;
- b. Assessing how recovery options under point (14) of Section A in the Annex of BRRD could support the separation of distressed assets from the rest of the group.

67. When requested to demonstrate how they can segregate distressed assets, institutions should highlight how their actions will:

- Facilitate any diagnostic exercise as referred to in EBA guidelines on tests, reviews or exercises that may lead to support measures³⁰ as most of the distressed assets would be centralised in one dedicated business unit;
- Allow a proper identification of contractual barriers, legal requirements attached to the distressed assets and other sorts of transfer impediments;
- Provide for an easier valuation of the distressed assets (and consequently of the non-distressed business lines supporting the choice of the complementary resolution tool);
- Create a high level of expertise within the business unit for dealing with distressed assets;
- Lead to the development of a dedicated data set covering the collateral and right issues related to the distressed assets;
- Highlight the specific services required for these items and start implementing the arrangements to manage them;
- Lead to segregate the needed resources (including financial or staff) which could then be more easily transferred at the point of resolution, notably with help of servicing arrangements.

68. When relevant, institutions should also demonstrate their capabilities to create legal entities in line with paragraph 51 of these guidelines.

²⁹ Distressed assets are to be understood, for these guidelines, as impaired or under-performing assets as mentioned in recital 59 BRRD.

³⁰ EBA Guidelines on the types of tests, reviews or exercises that may lead to support measures under Article 32(4)(d)(iii) of the Bank Recovery and Resolution Directive (EBA/GL/2014/09).

5.2 Arrangements to ensure a smooth separation

5.2.1 Legal aspects

69. In line with article 67.1(a) BRRD, institutions should assess, when applicable, the extent to which the law of an EU Member State effectively applies to a contract ruled by third-country law and the effective application of resolution powers³¹.
70. Institutions should assess to what extent contractual features could be amended in order to avoid notification and approvals not already exempted under BRRD.
71. Institutions should support resolution authorities in identifying any change in the article of associations or of the legal form entailed by the transfer of the defined transfer perimeter, since an entity might not be transferrable under its current legal form to an acquirer with a different legal form or there might be conflicting provisions in the article of associations. The resolution plan should lay down the process and required actions to address these issues timely.

5.2.2 Financial aspects

72. When the continuity of the transfer perimeter necessitates access to currencies or continuity of back-to-back transactions as highlighted by assessment mentioned in paragraph 69 of EBA resolvability guidelines, institutions should ensure that arrangements are in place to ensure this continuity, in accordance with the resolution authority's expectations. For instance, correspondent banking agreements could be drafted beforehand in order to ensure that the transfer perimeter continues, when necessary, to be serviced in the needed currencies. Existing agreements should also be transferrable under BRRD.
73. Institutions should support the resolution authorities to identify the role of the solidarity mechanisms (institutions with a central body) or any existing IPS in the implementation of the transfer tool³² and to ensure swift separation and resolvability.

5.2.3 Operational aspects

74. In the case of a partial transfer either to different acquirers (such as an AMC and a BI) or to an acquirer but without winding down the institution subject to resolution (when, for instance, combining bail-in and AST), the power ruled by article 64.1(d) might not be enough to maintain

³¹ Third-country contracts underpinning the legal transfer of relevant assets, rights and/or liabilities are already expected to explicitly provide for the resolution-resilient features and to recognise and inform the counterparty that the contract may be subject to the exercise of resolution powers to suspend or restrict rights or obligations ("stay powers") under BRRD.

³² The transfer perimeter might entail rights for the acquirer opposable to the IPS or solidarity mechanism of the institution subject to resolution, or the other way round, which could be mitigated by the use of article 64 BRRD. In addition, the IPS or solidarity mechanism might support in some way the transfer operation under existing financial arrangements for example.



all the service accesses. Therefore, institutions should inform resolution authorities on the possibility to include tripartite access³³ clauses in the contract with a service provider.

75. *[Shared Service Company]* Resolution authorities should assess whether the current service delivery model impacts the separability of the transfer perimeter and consider enforcing arrangements laid down in paragraph 34 of the EBA resolvability guidelines.

76. *[FMI contingency plans]* In addition to the guidance referred to in section 4.1.2 (and particularly paragraph 50) of the EBA resolvability guidelines, institutions should:

- Assess how the required FMIs accesses will be transferred to the entity whose purpose is the maintenance of the critical function/core business line continuity and/or how indirect access can be established. Should the institution subject to resolution become a wind-down entity (after the application of the transfer tool in accordance with article 37.6 BRRD) or in the case of the AMC, FMI access can be limited³⁴. Therefore, indirect access via the continuing entity should be granted and arrangements should be taken for this purpose, including the continuing entity should retain the BIC³⁵, connectivity and communication services of the institution under resolution.
- Assess the existing transition mechanisms, expedited FMI access application processes, or possibilities to grant power of attorney in order to maintain FMI access continuity for the transfer perimeter.
- Upon request from resolution authorities, assess the impact of the transfer on the services provided by the institution to FMIs and/or other parties.

5.3 Execution of side processes

77. The sale of the transfer perimeter will require additional actions in addition to the preparation of the sale process and/or will trigger side effects, that should be managed and prepared for in order to ensure a smooth transfer by both the institution and the resolution authority.

Specific aspects relevant to the transfer execution at the hand of the institution

78. Institutions are expected to develop internal processes and preparatory measures in order to make the transfer execution credible and feasible. Said processes should encompass governance arrangements including a clear indication of responsibilities, reporting lines and roles of committees, as well as the definition of procedural and validation steps, the communication set-up³⁶ and the description of the relevant MIS commanding the processes

³³ Tripartite access would allow a third party to partake in the contractual service relationship without excluding or replacing any of the other parties.

³⁴ Certain CCPs could limit the scope of operations to be performed by a wind-down entity.

³⁵ As there can only be one BIC per institution.

³⁶ The EBA resolvability guidelines widely cover the need for institutions to develop communication processes to address both internal and external communication.



and the additional information needed from third parties. Said processes should be compiled in dedicated playbooks upon request of resolution authorities and subject to dry-runs to ensure that the processes are operational. The elements laid down hereafter should be integrated into the list of processes to be covered.

79. *[Balance sheet adjustment]* The transfer will be combined with the application of write down and conversion of capital instruments (WDCCI) and might be combined with bail-in. The SoB requires the business to be marketable. Institutions should develop procedures to implement accounting adjustments and namely to recognise the losses in a timely fashion before the transfer in order not to pass them to the continuing entity.
80. Should institutions subject to resolution be continued, they should be able to support the production of a post-resolution balance sheet accounting for the de-recognition of the transfer perimeter and for its proceeds in the pre-agreed accounting standards.
81. *[Legal review]* Institutions should perform a legal review of the contracts mapped to the transfer perimeter and supporting the assessment referred to in paragraph 43. A legal review of the contracts should highlight:
- Contract clauses posing challenges to the transfer that the resolution authority might or not be able to amend under article 64 BRRD and that legally impose an obligation (including specific communication to clients or authorities; approval; or registration requirements) in case of transfer or in order to be transferred;
 - Existing multiple pledges (when a client pledged the same collateral for different contracts);
 - Applicable specific national regulation such as covered bond regulation, which could impose certain conditions for the transfer (see section 4.3 of these guidelines);
 - The existing litigations and the contractual provisions that could give rise to litigations in or after resolution.
82. *[Transfer perimeter implementation]* Institutions should develop a process in order to implement the transfer perimeter definition methodology defined by the resolution authority, identify and implement its administrative and legal obligations (such as, for instance, registration).
83. *[Identification of tax implications]* The institution should identify and estimate all the tax implications of the transfer³⁷ and inform accordingly the resolution authority. Share or asset transfer may give rise to taxation issues.
84. *[Service continuity]* Institutions should include in their transfer playbooks transition plans laying down, amongst other arrangements, processes in order to produce transitional service

³⁷ Some national regimes treat resolution proceedings and/or transfer of assets, rights and/or liabilities as tax neutral.



agreements (TSAs) or service-level agreements (SLAs) upon request as per paragraph 22 of the EBA resolvability guidelines, to implement FMI service continuity arrangements and the transition arrangements to be applied to the legacy entity in line with resolution authorities' expectations.

85. *[Business plan]* Institutions should draw up and submit business plans or the likes if required by resolution authorities in a timely fashion. In a case of SoB share deal, the marketing of the transfer perimeter is likely to necessitate a business plan in addition to a wide range of data. The expectations as regards the content of said business plan should be defined with the resolution authority.

Specific aspects relevant to the transfer execution at the hand of the authority

86. Resolution authorities should define processes in order to implement the transfer smoothly in resolution and particularly:
- the modalities and decision-making process to use powers under articles 63 and 64 BRRD;
 - the performance of adjustments on the transfer perimeter, especially following the final valuation report, to ensure possible transfers back to the institution in resolution;
 - any other country specific obligations³⁸.

5.4 Expected MIS capabilities

87. Institutions should be able to submit timely and accurate information to resolution authorities so that they can make informed decisions before, during, and after resolution. Institutions should have adequate Management Information Systems (MIS) and technological infrastructures in order to timely implement the resolution strategy in line with article 11 BRRD.
88. In accordance with the principle of proportionality and to support the processes referred to in paragraph 78 of these guidelines, institutions should be able, upon request of resolution authorities, to provide granular information regarding the transfer perimeter components and to update the required data for the transfer; the time difference between the cut-off date of the information and the resolution date should be as small as possible. The level of granularity should enable to value the transferred items separately from the remaining items and to allow the resolution authority to decide on the specifics of the separation and the transfer and to identify transfer items in accordance with what is needed for the national implementing act.

Information to identify the core transfer perimeter

89. Institutions should support the identification of the transfer perimeter with information on the level of individual items (liabilities, assets and rights), including:

³⁸ Including the recording of collateral, properties and potentially intangible assets to national public registries potentially entailed in the case of BI.

- Mapping of critical functions and core business lines to each item;
 - Classification of items (such as type of assets/liability; counterparty information, and type of collateral);
 - Asset quality and risk indicators (such as PL/NPL classification, RWA and collateral information, high quality liquid asset);
 - Legal aspects (including governing law and recognition of BRRD transfer powers and any potential contractual impediment to transferability of the relevant instrument);
 - Accounting information (such as carrying amount, off-balance sheet amount and amount of loan loss provision), when relevant.
90. Resolution authorities should develop expectations in terms of data regarding the transfer and the transfer tools considered to complement the previous paragraph in accordance with the proportionality principle promoted by BRRD.
91. In the case of the AST, institutions should develop capabilities to perform a diagnostic exercise as defined by the resolution authority in line with the principles laid down in EBA guidelines on tests, reviews or exercises that may lead to support measures³⁹.

Data to assess interconnections

92. Institutions, in line with section 4.2 of these guidelines, should also be able to identify:
- Interconnections safeguarded by BRRD (Art. 76-80) – including: mapping of netting and offset agreements and mapping of secured liabilities and corresponding collaterals.
 - Interconnections, which are not explicitly safeguarded by BRRD – such as, for instance: mapping of facilities to contract IDs to identify items under the same contract and links between different legal entities such as a letter of comfort.
 - Economic and business connections – such as, for instance: information on hedge and customer relationships; or
 - Litigation risks.

Specific guidance regarding the sale of business tool

93. In transfer playbooks, institutions should explain how they can swiftly set up a virtual data room containing sufficient information to conduct a buyer due diligence of the transfer perimeter and meet the expectations of the resolution authority's sale process.

³⁹ EBA/GL/2014/09.



94. Institutions are to develop arrangements supporting the production of business plans, which also potentially need to be split between a plan for the transfer portfolio and one for the portfolio remaining in the legacy institution.

MIS requirements to ensure operational continuity

95. Institutions should demonstrate how the separation, supporting the operational execution of the transfer, can be swiftly implemented in the bank's systems, providing MIS capabilities continuity for the legacy entity as well as the receiving entity (such as, for instance, separation of accounting entries) when foreseen by the resolution strategy and in line with paragraph 84 of these guidelines⁴⁰.

Other MIS capabilities

96. MIS should be flexible enough to allow for adjustments to the transferred perimeter post resolution (re-transfers). For instance, such adjustments would need to be seamlessly reflected in the management accounts.

⁴⁰ As well as with point (11) of the Section C in the Annex of BRRD

6. Accompanying documents

6.1 Draft cost-benefit analysis / impact assessment

A. Problem identification

Banks' resolvability has improved since the entry into force of Directive 2014/59/EU (BRRD I), as legislative and policy products were issued to remove impediments to resolvability. In particular, Guidelines on measures to reduce or remove impediments to resolvability⁴¹ provide further details on the measures to remove impediments specified in Article 17(5) of BRRD I. Simultaneously, the RTS on the content on resolution plans and the assessment of resolvability⁴² was issued to fulfil the mandate of Article 15 of BRRD I.

The current guidelines implement the internationally issued standards by the Financial Stability Board on funding strategy elements, continuity of access to financial market infrastructures (FMI), operational continuity in resolution, bail-in execution, cross-border effectiveness and TLAC principles. These standards, jointly with current implemented practices within the EU, form the basis of these guidelines.

B. Policy objectives

The aim of the guidelines is the specification of the steps that both banks and resolution authorities should follow to improve **resolvability**. Moreover, the guidelines seek to strengthen the level playing field in the resolvability assessment of institutions made by resolution authorities and to increase certainty among institutions about their preparedness for such assessment. For **cross-border groups**, the harmonisation of practices will facilitate the monitoring of progress on resolvability in **resolution colleges**.

Currently, competent authorities and banks account for the applicable regulatory and policy background at both international and EU levels (e.g. FSB standards at international level and RTS on the assessment of resolvability at EU level). However, the guidelines go beyond the international standards issued by the FSB in some areas (e.g. operational continuity, access to FMIs, funding in resolution and bail-in execution, etc.). They leverage progress made so far by resolution authorities in the EU in specifying policies to improve resolvability. The guidelines add improvement to the level playing field among/for institutions across the EU by setting out a harmonised and consistent approach to resolvability.

⁴¹ <https://eba.europa.eu/regulation-and-policy/recovery-and-resolution/guidelines-on-measures-to-reduce-or-remove-impediments-to-resolvability>

⁴² <https://eba.europa.eu/regulation-and-policy/recovery-and-resolution/regulatory-technical-standards-on-resolution-planning>



Regarding groups, and in particular **cross-border groups**, the guidelines add improvements to the existing framework to ensure a harmonised approach to resolvability across the various jurisdictions where cross-border groups operate.

C. Baseline scenario

The baseline scenario across the EU would depend on the level of implementation of Directive 2014/59/EU (BRRD I) by member states. Article 15 of BRRD I already envisaged the assessment of resolvability of institutions made by resolution authorities, requiring them to examine the matters specified in Section C of the Annex. It mandated the EBA to issue RTS to specify the matters and criteria for the assessment of resolvability of institutions or groups. Therefore, the EBA RTS on resolution planning specify the criteria for a categorised assessment of a resolution strategy, i.e.: (i) structure and operations, (ii) financial resources, (iii) information, (iv) cross-border issues, (v) legal issues. Moreover, in order to ensure the effective removal of impediments to resolvability, Article 17 of BRRD I grants competent authorities specific powers.

D. Options considered

The guidelines aim at harmonising the steps that resolution authorities and banks should follow to increase resolvability. As there are precedents of this work at FSB and EU level (mainly derived from the transposition of Directive 2014/59/EU), the consideration of technical options was mainly focused on the extent of **leveraging on previous work** and the **scope** of the guidelines.

Other policy options are aligned with previous policy products and thus are not tackled in this impact assessment.

Approach

Option 1: Update RTS on the content of resolution plans and the assessment of resolvability

The RTS applies to **all resolution strategies** and specifies a **process approach to resolvability assessment**. The RTS is based on a **process approach** with the following phases: (i) assessment of feasibility and credibility of liquidation, (ii) selection of the preferred resolution strategy and variants, (iii) assessment of feasibility of the assessment and (iv) assessment of credibility of the selected strategy.

As the objective of the guidelines is mainly to facilitate the work of institutions in improving their resolvability by setting out what measures they should take themselves as opposed to further specifying how resolution authorities should assess resolvability, the option of updating the RTS would give less clarity.

Option 2: Develop separate guidelines based on international standards issued by the FSB and the specifications of the RTS



The RTS aimed at fulfilling the mandate of BRRD, while the guidelines aim at gathering in one document both practices at EU level, international standards and the specifications of the RTS. The development of a new set of guidelines gives room for **flexibility** to select the proper policy options to improve resolvability. For instance, regarding the scope (institutions subject to bail-in) or the proportionality elements introduced in the guidelines (i.e. discretion granted to competent authorities to assess the specific requirements to institutions that qualify for simplified obligations).

Option 2 is the preferred option.

Scope of application

Option 1: All banks within the scope of resolution

This approach would represent continuity of the applicable framework in the EU. The RTS on the content of resolution plans and assessment of resolvability envisaged a staged approach based on first assessing the feasibility of liquidation and, if not, another resolution strategy should be identified. However, rules are not applied differently based on the type of strategy.

Option 2: discretion for banks under simplified obligations

Beyond the fact that some of the requirements are specific to certain resolution tools and thus not applicable to some banks, the proposal is to ensure proportionality by not requiring the application of the guidelines in full but to leave discretion to resolution authorities to opt for the optimal level of application. This **scope** ensures the effectiveness of resolution of a significant coverage of the EU banking sector (in pp of assets) and introduces an element of **proportionality**, as smaller banks (subject to liquidation strategies), would be out of the scope of the guidelines.

Option 2 is the preferred option.

E. Cost-Benefit Analysis

The **impact** of implementing the guidelines, which will become applicable from 1 January 2024, depends on the level of transposition of and compliance with the requirements introduced by BRRD I with regard to the assessment of resolvability and the specific powers of resolution authorities to remove impediments to resolvability and, regarding institutions, to the level of preparedness to withstand the assessment of resolvability.

The expected **benefits** of the implementation of the guidelines are mainly related to an increased **credibility of the resolution process** and the end of 'too-big-to-fail' by ensuring enough loss-absorbing capacity instruments and by removing impediments to resolution. Moreover, compliance with the requirement of loss-absorbing capacity and the assessment of resolvability have been strengthened by the amendments introduced in BRRD II.



For **firms**, the benefits are mainly related to the clarity and harmonised approach to improving resolvability which will facilitate their own resolution planning and ensure a level playing field for banks and Member States.

In relation to the **costs of implementing** the guidelines, it is variable across **firms**. This is due to proportionality introduced (i.e. discretionary actions to be tackled by competent authorities for resolution strategies subject to simplified obligations). For small and non-complex institutions that are subject to simplified obligations or for which the strategy does not plan for the use of the bail-in tool, fewer costs are expected (with regard to cross-border issues and the bail-in execution, which are not applicable to them).

The magnitude of the costs also depends on the already implemented capabilities. Institutions have already made progress in removing impediments to resolvability. For those that made the best use of the five-year timeframe since BRRD came into force, these guidelines will represent a lesser additional cost as some of the impediments included in this version of the guidelines are already addressed by firms. For this reason, implementation costs for **firms are expected to be low**.

For **resolution authorities**, costs are expected to be low as most of the requirements applicable to institutions and/or resolution authorities are already being implemented.

In relation to **cross-border groups**, costs are expected to be manageable for **resolution colleges** as those institutions tend to be the most advanced in the resolution planning process. In addition, EU-wide guidelines should facilitate the work of colleges in setting out a harmonised approach to removing impediments across jurisdictions of the resolution college members and avoiding contradictory practices.

7. Overview of questions for consultation

Q1: Do you have comments on section 4.1 dealing with the specific considerations for each transfer tool?

Q2: Do you have comments on section 4.2 dealing with the assessment of interconnections?

Q3: Do you have comments on section 4.3 dealing with the assessment of cross border aspects?

Q4: Do you have comments on section 5.1 dealing with the sale preparation?

Q5: Do you have comments on section 5.2 dealing with the arrangements to ensure a smooth separation?

Q6: Do you have comments on section 5.3 dealing with the execution of side processes?

Q7: Do you have comments on section 5.4 dealing with the expected MIS capabilities?

Q8: Do you have additional comments?