

**Guidelines for institutions and resolution authorities to complement the
resolvability assessment for transfer strategies**

(EBA/GL/2022/11)

These Guidelines issued by the European Banking Authority (EBA) are addressed 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 and to resolution authorities as defined in point (2) (v) of Article 4 of Regulation (EU) No 1093/2010.

These Guidelines, that have been developed on the EBA's own initiative, specify the specific actions that institutions and resolution authorities should take to improve resolvability of institutions, groups and resolution groups when a transfer tool (sale of business, bridge institution or assets separation tool) is part of the preferred resolution strategy, although the Guidelines may be applied, at the discretion of the resolution authority, when transfer tools are also envisaged as a variant strategy.

To ensure proportionality, these Guidelines do not apply to institutions which are subject to simplified obligations for resolution planning neither to institutions whose resolution plan provides for a liquidation strategy, for which the extent of their possible application is left to the discretion of the resolution authorities.

These Guidelines, which complement the EBA resolvability Guidelines (EBA/GL/2022/01), aim at assessing the feasibility and credibility of transfer strategies and encompass requirements relating to the identification of the business lines, portfolios, etc, that should be transferred in resolution (transfer perimeter) and the conditions that will facilitate said transfer. Since the transfer perimeter is the central scenario of the expected application of a transfer tool, the essential point is for institutions to be able to analyse the legal and operational interconnections that may hinder the separability and to develop their capabilities to adapt their organisation, governance and MIS.

These Guidelines have been developed by the EBA in accordance with article 16 of Regulation (EU) No 1093/2010. The EBA published the English version of these

Guidelines on 22 September 2022 and the Spanish version was released on 9 January 2023, entering into force from 1 January 2024 on.

Banco de España, in its role of preventive resolution authority of the less significant credit institutions, adopted these Guidelines as their own on 3 March 2023.

These Guidelines will not apply to specialised lending institutions or to the Instituto de Crédito Oficial.

EBA/GL/2022/11

27 September 2022

Final Report

Guidelines for institutions and resolution authorities to
complement the resolvability assessment for transfer strategies
(Transferability guidelines)

Contents

| | |
|--|-----------|
| 1. Executive Summary | 3 |
| 2. Background and rationale | 5 |
| 3. Guidelines | 8 |
| 1. Compliance and reporting obligations | 10 |
| 2. Subject matter, scope and definitions | 11 |
| 3. Implementation | 12 |
| 4. Definition of the transfer perimeter | 13 |
| 5. Operational transfer | 22 |
| 6. Accompanying documents | 32 |

1. 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 “EBA resolvability guidelines”) 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 EBA resolvability guidelines set out guidance to improve resolvability in the areas of operational continuity in resolution, access to financial market infrastructures (FMIs), funding and liquidity in resolution, bail-in execution, business reorganisation, and communication.

In order to complement the EBA resolvability guidelines 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 of Directive 2014/59/EU (“SoB”)
- Bridge institution tool under Article 40 of Directive 2014/59/EU (“BI”)
- Asset separation tool under Article 42 of Directive 2014/59/EU (“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.

2. 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 EBA 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 European Commission 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 the methodology set by the resolution authorities for the institutions to define the transfer perimeter (section 4) and to the operational implementation of the transfer (section 5).
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. Typically, as an example of a link between resolution objective and transfer perimeter, if the resolution objective is the continuity of deposits as a critical function, the transfer perimeter would consist in the assets allowing the transferred deposits to constitute an appropriate balance sheet.
6. 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. The transfer perimeter is the central scenario of the expected application of a transfer tool. The essential point

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 Directive 2014/59/EU.

is for institutions to be able to analyse the legal and operational interconnections that may exist and to develop their capabilities to adapt their organisation, governance and MIS.

7. Directive 2014/59/EU³ 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 of Directive 2014/59/EU, 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 of Directive 2014/59/EU, 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.
8. 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.
9. Resolvability is to be assessed based on the available information (including under Article 11 of Directive 2014/59/EU) 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.
10. Proportionality as defined in the resolvability guidelines and under Article 1(1) Directive 2014/59/EU is fully applicable to these transferability guidelines, as are all the assumptions and definitions laid down in the resolvability guidelines, unless indicated otherwise in these guidelines. Accordingly, the following is included in the guidelines:
 - i. The guidelines do not apply to institutions subject to simplified obligations, but resolution authorities may decide to apply these guidelines in whole or in part to them for resolution planning;
 - ii. The guidelines do not apply to institutions earmarked for liquidation, but resolution authorities may decide to apply these guidelines in whole or in part to them, unless considered otherwise by the relevant authorities;
 - iii. Discretion is left to authorities with regard to the extent of application of the guidelines in cases where the transfer tool is only part of the variant strategy”.
11. Consistently with the EBA resolvability guidelines, 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.

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).

Ultimately, institutions should participate in the resolution planning under Article 11 Directive 2014/59/EU.

12. 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. Guidelines

EBA/GL/2022/11

26 September 2022

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. Competent 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, competent 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 09.03.2023. In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website with the reference 'EBA/GL/2022/11'. 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

1. These guidelines specify, having regard to Article 10 (5) and 11 (1) of Directive (EU) 2014/59⁵ the actions that institutions and resolution authorities should take to improve resolvability of institutions including entities referred to in Article 1(1) (“institutions”), groups or resolution groups in the context of the resolvability assessment as per Articles 15 and 16 of that Directive, specifically when the transfer tools are foreseen in the resolution strategy.
2. These guidelines should be read together with Guidelines 2022/1 of 13 January 2022 on improving resolvability for institutions and resolution authorities under Articles 15 and 16 Directive 2014/59/EU (“EBA Resolvability guidelines”).

Scope of application

3. These guidelines apply where a transfer tool is part of the preferred resolution strategy. However, resolution authorities may decide to apply resolution tool-specific parts of these guidelines (e.g. transfer strategies) to institutions whose planned preferred resolution strategy does not rely on these tools, such as only including transfer tools as variant strategy, as referred to in Article 22, 1st subparagraph, point 2(e), of Commission Delegated Regulation (EU) 2016/1075⁶.
4. 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.
5. In the case of a change of resolution strategy, in particular by new inclusion of a transfer tool in the preferred resolution strategy, then these 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.
6. Resolution authorities may decide to apply these guidelines in whole or in part to institutions subject to simplified obligations for resolution planning or to institutions whose resolution plan

⁵ 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).

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. 1–71).

provides that they are to be wound up in an orderly manner in accordance with the applicable national law.

7. 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.
8. 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 to the whole resolution group, i.e. the resolution entities and its subsidiaries.

Addressees

9. 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

- Unless otherwise specified, terms used and defined in Directive 2014/59/EU and the EBA Resolvability Guidelines have the same meaning in the guidelines.
- “Transfer strategies or tools”, for the purpose of these guidelines, refer to sale of business (either via share deal or assets deal), under Article 38 of Directive 2014/59/EU (“SoB”), bridge institution (also called closed bail-in), under Article 40 of Directive 2014/59/EU (“BI”), and assets separation tool, under Article 42 of Directive 2014/59/EU (“AST”).

3. Implementation

Date of application

These guidelines apply from **1 January 2024**.

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).

4. Definition of the transfer perimeter

10. Resolution authorities should specify methodology for the definition of the entity or entities, business lines or portfolios of assets, rights and/or liabilities to be transferred (“transfer perimeter”), as it remains resolution authorities’ responsibility at the point of resolution.
11. In the resolution planning phase, institutions should be able to propose a transfer perimeter, as defined in paragraph 10. To this effect, institutions should identify any impediments and propose potential enhancements, and should be able to propose alternative transfer perimeter or amendments to it, aiming at improving the credibility and feasibility of the transfer strategy or tool, as described in the resolution plan.
12. Institutions should be able, upon request from the resolution authority:
 - a) to identify and isolate the components of the transfer perimeter, as defined by and under the guidance of resolution authorities in line with Article 11 of Directive 2014/59/EU; and
 - b) to 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 of Directive 2014/59/EU.
13. 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), of Directive 2014/59/EU, should consider:
 - a. the tools’ purposes (as per the resolution strategy defined for the institution) 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 Article 44 of Directive 2014/59/EU or obligations under Article 73 of Directive 2014/59/EU) 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 Article 76 to Article 80 of Directive 2014/59/EU) should be integrated into the transfer perimeter (“second layer of the transfer perimeter”) in line with section 4.2 below.
14. Institutions should flag to resolution authorities transferability impediments while applying the transfer perimeter definition to their assets, rights and/or liabilities and propose potential mitigants and solutions. Institutions should work to reduce these impediments over time. The

assessment of the transfer impediments should give a special attention to cross-border issues in line with section 4.3.

15. 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 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)

16. 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 deals⁸ and consider the least intrusive transaction that achieves best the resolution objectives in compliance with paragraphs 10 to 15.
17. 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. Institutions 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.
18. 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.
19. In line with paragraph 11 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. Institutions 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 (Article 101(1),

⁸ A share deal consists in a transfer (as defined Article 63(1), point (c), of in point (c) of Directive 2014/59/EU) of instruments of ownership (as defined in Article 2(1), point (61), Directive 2014/59/EU) to a recipient (as defined in Article 2(1), point (80), Directive 2014/59/EU), while an asset deal is a transfer (as defined Article 63(1), point d, of Directive 2014/59/EU) of assets, rights and/or liabilities to a recipient (as defined in Article 2(1), point (80), of Directive 2014/59/EU).

point (a), of Directive 2014/59/EU) 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 21.

20. 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 regards to competition and strategic considerations. Institutions should then communicate the outcome of this analysis to the resolution authorities.
21. Resolution authorities should leverage on the exercise described in paragraphs 18 and 25 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) of Directive 2014/59/EU, 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.
22. 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 13.a, 19 and 20 above, of these guidelines, should be considered.

4.1.2 Bridge Institution (BI)

23. 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 10 to 13 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) of Directive 2014/59/EU, or if the BI is to be sold as a whole or in pieces in line with article 41(2) of Directive 2014/59/EU.
24. Institutions should support resolution authorities by testing the applicability (under paragraph 12(b) and 15 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.

25. 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 process.
26. 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 Article 40(3) of Directive 2014/59/EU, does not exceed the value of the assets transferred from the institution under resolution or provided by other sources, and the resolution authority should assess the impact of the transfer perimeter on the capital and liquidity positions of the BI. 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 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.
27. In order to further enhance resolvability, institutions should support resolution authorities to assess the potential perimeter shifts similarly to the principles laid down in paragraph 22 of these guidelines likely to affect the transfer perimeter as defined in paragraphs 13.a and 23 to 26 of these guidelines.
28. 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.
29. 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)

30. Institutions, based on the information communicated by resolution authorities, should flag to authorities the assets, rights and/or liabilities that meet the conditions of Article 42(5) of Directive 2014/59/EU and the principles laid down in EBA guidelines on the asset separation tool⁹ in order to examine to which extent the AST can be applied as per Article 12(3), point (b), of Directive 2014/59/EU.
31. 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 Article 42(5), point (c), of Directive 2014/59/EU, resolution authorities should assess whether the transfer is necessary to maximise liquidation proceeds, therefore the AMC business model

⁹ 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).

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;
 - 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 operates;
 - 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 32 of these guidelines, which means that portfolios with negative long-term prospects should be considered carefully.
32. Resolution authorities should set out 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) of Directive 2014/59/EU). 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 15 of these guidelines) to positively impact the overall profile of the transfer perimeter.
33. In order to further enhance resolvability, institutions should support resolution authorities to assess the potential perimeter shifts as laid down in paragraph 22 of these guidelines susceptible to affect the transfer perimeter.
34. 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

35. In order to support the requirement referred to in paragraphs 99 to 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 13.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:

- break down core business lines and critical functions into functional processes¹⁰ 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.

36. 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 37 to 49 of these guidelines and should leverage as much as possible on recovery planning work. The outcome should feed into the transfer perimeter definition in the resolution plan and the feasibility assessment of the resolution strategy. Depending on the extent of the interconnections and on the variety of resolution scenarios, the assessment of interconnections may be staged over time.

Financial Interconnections

37. In line with paragraph 100 of the resolvability guidelines, institutions should provide resolution authorities with the identification of the connections safeguarded by Articles 76 to 80 of Directive 2014/59/EU.

38. 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 41 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: scope¹¹; 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 guarantees¹² should be particularly assessed in order to evaluate whether they should be transferred or cancelled without causing unwanted havoc;

¹⁰ Functional processes can be defined as the day-to-day activities supporting the business lines.

¹¹ Such as, for instance, letters of comfort.

¹² Intragroup guarantees, in the context of these guidelines, are to be broadly understood as loss transfer mechanisms.

- identify existing hedges not already captured by the safeguards referred to above;
- 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 units.

Legal Interconnections

39. 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 agreement¹³, and contractual provisions attached to each unit's assets and liabilities.

40. 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 independence;
- (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;
- (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

¹³ Pursuant to article 5(1) of Transfers of Undertakings Directive 2001/23/EC (TUPE) and Article 34(4) of Directive 2014/59/EU, 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.

foreseen under Articles 113(7) and 49(3) of Regulation (EU) No 575/2013) 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.

41. Resolution authorities should assess to what extent powers under Article 64(1) of Directive 2014/59/EU 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 Interconnections

42. Additionally to mapping full-time equivalents (FTEs) to the transfer perimeter components (see paragraph 35 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

43. 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.

44. 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

45. 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.

46. 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.

47. In order to comply with Article 67 of Directive 2014/59/EU and article 30 Commission Delegated Regulation (EU) 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.

48. In order to support resolution authorities in their assessment under the previous paragraph, institutions, based on the legal characteristics of the elements of the transfer perimeter, 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), point (a), of Directive 2014/59/EU);
- 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), point (a), of Directive 2014/59/EU);
- 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.

49. 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

50. 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 section 4 and, in this vein:
- a. Resolution authorities should develop a sale process (section 5.1.1) to support the SoB, and investigate additional preparatory measures (section 5.1.2) 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 5.2).
 - 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 5.3).
51. 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 of Directive 2014/59/EU and a bridge institution as per Article 41 of Directive 2014/59/EU, within an adequate timeline.

5.1 Sale preparation

5.1.1 Preparation of the sale process

52. 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 50.a in a way as transparent as possible.
53. 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.

54. 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 56 and 57;
 - 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.
55. While defining a timeline in line with Article 10(7), points (d) and (j), of Directive 2014/59/EU, resolution authorities should consider the different milestones relevant to transfers and in particular the resolution planning reference date¹⁴, the valuation date¹⁵, the resolution date¹⁶ and the transfer date(s).
56. Resolution authorities should identify the approvals or consents that would not fall under the exemptions referred to in Article 63(2) of Directive 2014/59/EU 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 Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (EU Merger Control rules -EUMR-)¹⁷. 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.
57. 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

¹⁴ In accordance with Article 5 Commission Implementing Regulation (EU) 2018/1624 of 23 October 2018 laying down implementing technical standards with regard to procedures and standard forms and templates for the provision of information for the purposes of resolution plans for credit institutions and investment firms pursuant to Directive 2014/59/EU of the European Parliament and of the Council, and repealing Commission Implementing Regulation (EU) 2016/1066 (OJ L 277, 7.11.2018, p. 1–6).

¹⁵ As reflected in the EBA handbook on valuation for purposes of resolution (EBA valuation handbook).

¹⁶ As defined under Article 1(j) Commission delegated regulation 2018/345.

¹⁷ 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).

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.

58. Resolution authorities should ensure that their sale process is applicable under at least two scenarios: the sale ensuing a marketing process under Article 39 of Directive 2014/59/EU (which may be qualified as 'Strategic SoB') and the sale without marketing process as provided by Article 39(3) of Directive 2014/59/EU (which may be qualified as 'Accelerated SoB').
59. 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 tool¹⁸.
60. 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 19 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 implications¹⁹.
61. 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 19 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.
62. 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

¹⁸ 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).

¹⁹ In line with EBA Final Q&A2015_2339.

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

63. The resolvability assessment as referred to in section C in the Annex of Directive 2014/59/EU 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 Directive 2014/59/EU), 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 Directive 2014/59/EU), and the compatibility of this structure with the chosen resolution tool(s) (point (21) of the Section C in the Annex of Directive 2014/59/EU). 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 of Directive 2014/59/EU, promote the separation of portfolios by:
- a. Requesting institutions to have playbooks (see para. 75) laying down how they could segregate distressed assets²⁰ 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 of Directive 2014/59/EU could support the separation of distressed assets from the rest of the group.
64. 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 measures²¹ 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;

²⁰ Distressed assets are to be understood, for these guidelines, as impaired or under-performing assets as mentioned in recital 59 of Directive 2014/59/EU.

²¹ EBA Guidelines on the types of tests, reviews or exercises that may lead to support measures under Article 32(4), point (d)(iii) of the Bank Recovery and Resolution Directive (EBA/GL/2014/09).

- 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.
65. When relevant, institutions should also demonstrate their capabilities to create legal entities in line with paragraph 48 of these guidelines.

5.2 Arrangements to ensure a smooth separation

5.2.1 Legal aspects

66. In line with Article 67(1), point (a), of Directive 2014/59/EU, 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 powers²².
67. Institutions should assess to what extent contractual features could be amended in order to avoid notification and approvals not already exempted under Directive 2014/59/EU.
68. 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

69. 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 Directive 2014/59/EU.

²² 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 Directive 2014/59/EU.

70. 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 tool and to ensure swift separation and resolvability.

5.2.3 Operational aspects

71. 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), point (d), of Directive 2014/59/EU might not be enough to maintain all the service accesses. Therefore, institutions should inform resolution authorities on the possibility to include tripartite access clauses in the contract with a service provider.

72. *[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.

73. *[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) Directive 2014/59/EU) or in the case of the AMC, FMI access can be limited. 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 BIC, 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

74. 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 for the institution

75. Institutions should 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-up and the description of the relevant MIS commanding the processes 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.
76. *[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.
77. 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. Such balance sheets are not requested to be updated permanently in the pre-resolution phase, but institutions should demonstrate they are rapidly able to provide the resolution authorities with post-resolution balance sheets corresponding to the transfer perimeter identified by the resolution authorities with the assistance of the institutions.
78. *[Legal review]* Institutions should perform a legal review of the contracts mapped to the transfer perimeter and supporting the assessment referred to in paragraph 40. 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 of Directive 2014/59/EU 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 34.3 of these guidelines);
 - The existing litigations and the contractual provisions that could give rise to litigations in or after resolution.
79. *[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).
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80. *[Identification of tax implications]* The institution should identify and estimate all the tax implications of the transfer and inform accordingly the resolution authority. Share or asset transfer may give rise to taxation issues.
81. *[Service continuity]* Institutions should include in their transfer playbooks transition plans laying down, amongst other arrangements, processes in order to produce transitional service 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.
82. *[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 for the authority

83. 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 of Directive 2014/59/EU;
 - 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 obligations.

5.4 MIS capabilities

84. 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 of Directive 2014/59/EU.
85. In accordance with the principle of proportionality and to support the processes referred to in paragraph 75 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

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

- 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 Directive 2014/59/EU 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.

87. 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 Directive 2014/59/EU.

88. 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 measures²³.

Data to assess interconnections

89. Institutions, in line with section 4.2 of these guidelines, should also be able to identify:

- Interconnections safeguarded by Articles 76 to 80 of Directive 2014/59/EU – including: mapping of netting and offset agreements and mapping of secured liabilities and corresponding collaterals.
- Interconnections, which are not explicitly safeguarded by Directive 2014/59/EU – 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.

²³ EBA/GL/2014/09.

- 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

90. 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.
91. 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 to ensure operational continuity

92. 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 81 of these guidelines²⁴.

Other MIS capabilities

93. 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.

²⁴ As well as with point (11) of the Section C in the Annex of of Directive 2014/59/EU.

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, as legislative and policy products were issued to remove impediments to resolvability. In particular, Guidelines on measures to reduce or remove impediments to resolvability²⁵ provide further details on the measures to remove impediments specified in Article 17(5) of Directive 2014/59/EU. Simultaneously, the RTS on the content on resolution plans and the assessment of resolvability²⁶ was issued to fulfil the mandate of Article 15 of Directive 2014/59/EU.

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

²⁵ <https://eba.europa.eu/regulation-and-policy/recovery-and-resolution/guidelines-on-measures-to-reduce-or-remove-impediments-to-resolvability>

²⁶ <https://eba.europa.eu/regulation-and-policy/recovery-and-resolution/regulatory-technical-standards-on-resolution-planning>

level playing field among/for institutions across the EU by setting out a harmonised and consistent approach to resolvability.

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 by member states. Article 15 of Directive 2014/59/EU 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 Directive 2014/59/EU 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 Directive 2014/59/EU, 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 Directive 2014/59/EU 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 Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013²⁷.

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 Directive 2014/59/EU 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.

²⁷ Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012 (OJ L 150, 7.6.2019, p. 1).

6.2 Feedback on the public consultation

The EBA publicly consulted on the draft proposal contained in this paper. The consultation period lasted for three months and ended on 15 April 2022. Only one response from a banking association was received, and is 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.

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

Summary of key issues and the EBA's response

The consultation consisted of eight questions covering the different sections of the guidelines and the feedback is summarised hereafter.

Regarding the purpose of the Guidelines with respect to the already existing framework, the respondent commented that there is need to ensure full alignment with existing implementing local rules on separability and transfer tools. On this topic, the EBA reminds that the transferability guidelines leverage on the existing international policies and standards, and that consistency with existing EU implementation policies is also ensured by the fact that the guidelines have been developed with the EU resolution authorities. It remains however the responsibility of individual authorities and institutions to comply with EBA guidelines.

The respondent suggested that the assessment of cross-border aspects within EU should be limited to high level principles, and that all the work related to the recognition of the resolution authority's transfer powers should essentially be supported and coordinated by the resolution authorities themselves and not by the institutions. The EBA clarified that all decision relating to the execution of the strategy remains with the resolution authority but they were clear that authorities should leverage institutions' knowledge of the transfer perimeter identified by the resolution authorities. The EBA stressed this point further by adding that institutions' input would be "based on the legal characteristics of the elements of the transfer perimeter".

Some comments were repeated across various sections:

- The respondent asked for the approach on separability to leverage on what has been already implemented in the context of recovery plan without further description/analysis of the transfer strategies presented therein. On this, the EBA reminds that the recovery plan applies in a going-concern situation, whereas resolution tools apply in a gone-concern situation and need a specific preparation. Typically, in resolution, the perimeter for a transfer might be limited to whatever good assets are left to match the deposit book with the rest of the balance sheet being left in insolvency – this requires specific preparation work, not foreseen in the recovery plan. In any case the Guidelines require that where

applicable, the institution leverage on recovery planning work. In addition, the transferability guidelines acknowledge that an important part of the work on separability is already performed by institutions as part of recovery planning, which is mentioned in each of the tool-specific sections. The EBA clarified in §11 that institutions should be able to propose an alternative transfer perimeter or amendments to it.

- The respondent questioned the need to define potential transfer perimeters in the planning phase. To address these comments, the EBA clarified in the Background and Rationale that the essential point was for the institutions to demonstrate their capabilities to adapt their organisation, governance and MIS, and added that the assessment of interconnections may be staged over time.
- The respondent called for greater proportionality to be introduced in the guidelines, in particular on the need for a transfer playbook. The EBA took this comment on board by increasing the flexibility left to resolution authorities as to the level of application of the guidelines in the case where a transfer tool is only considered as part of the variant strategy.

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

General comments

| <u>Comments</u> | <u>Summary of responses received</u> | <u>EBA analysis</u> | <u>Amendment proposal</u> |
|---|---|---|--|
| <p>Consideration on the purpose of the Guidelines with respect to the already existing framework</p> | <p>One respondent commented that there is need to ensure full alignment between local applicable rules and EBA Guidelines on transferability to avoid inconsistencies with regards to resolvability assessment for transfer strategies.</p> <p>In the opinion of the same respondent, the approach on separability should also leverage on what has been already implemented in the context of recovery plan without further description/analysis of the transfer strategies presented therein.</p> | <p>- The transferability guidelines leverage on the existing international policies and standards. Consistency with existing EU implementation policies is also ensured by the fact that the guidelines have been developed with the EU resolution authorities.</p> <p>- The transferability guidelines are conscious of the fact that an important part of the work on separability is already performed by institutions as part of recovery planning. For example in paragraph 36 of the guidelines it is highlighted that the potential separability conflict identification process should leverage as much as possible on the work done in the context of recovery planning. Various parts of the guidelines further emphasise this link explicitly referring to using the work on recovery planning on some aspects where particularly beneficial for institutions and resolution authorities.</p> <p>- Institutions' contribution to the resolution authorities' transferability assessment largely consists in ongoing exchanges with them all along the resolution planning cycle.</p> | <p>The EBA clarified in §16 that institutions should be able to propose an alternative transfer perimeter or amendments to it.</p> |
| <p>Scope of the Guidelines</p> | <p>One respondent finds it irrelevant to define in advance perimeters (of assets that would become non-performing) to be considered for resolution. This respondent</p> | <p>see amendment proposal</p> | <p>- Added in Background and Rationale, §6: "The transfer perimeter is the central scenario of the expected application of a transfer tool. The essential point is for institutions to be able to</p> |

| <u>Comments</u> | <u>Summary of responses received</u> | <u>EBA analysis</u> | <u>Amendment proposal</u> |
|------------------------|--|---|--|
| | suggests that EBA focus its requirements on the ability and capacity of banks to dispose of certain assets / entities / businesses, toxic or not, in the event of a crisis rather than on very prescriptive and granular requests in terms of operational processes. | | analyse the legal and operational interconnections that may exist and to develop their capabilities to adapt their organisation, governance and MIS.” - Added in §36: "Depending on the extent of the interconnections and on the variety of resolution scenarios, the assessment of interconnections may be staged over time. " |
| Proportionality | One respondent suggested that the usefulness of transfer playbook should be assessed on a case-by-case basis and on request of the authorities rather than being provided for each bank according to the standard provided for by the guidelines. Further, a certain degree of proportionality should be envisaged in cases where transfer strategy is not considered to be a primary resolution strategy. | The GLs specify that proportionality is widely applied to the transferability guidelines unless indicated otherwise. Also in paragraph 11 the GLs state that resolution authorities should apply in an appropriate and proportionate way the burden for institutions in the transfer perimeter identification and in the preparation for the operational transfer. In addition the guidelines specify under the subject matter of the guidelines that the actions envisaged in the guidelines to improve resolvability are specifically applicable when the transfer tools are foreseen in the resolution strategy. But additional clarity is provided in the background and rationale. | Added in the background and rationale, §10: i. “The guidelines do not apply to institutions subject to simplified obligations, but resolution authorities may decide to apply these guidelines in whole or in part to institutions subject to simplified obligations for resolution planning; ii. The guidelines do not apply to institution earmarked for liquidation but resolution authorities may decide to apply these guidelines in whole or in part to institutions subject to liquidation banks; iii. The guidelines will apply when transfer strategies are included as preferred resolution strategy, while for when they are only as variant strategies, resolution authorities may apply the whole or part of these guidelines.” |

| <u>Comments</u> | <u>Summary of responses received</u> | <u>EBA analysis</u> | <u>Amendment proposal</u> |
|-----------------|--------------------------------------|---------------------|---|
| | | | <p>Added in Scope of application §3: “These guidelines apply where a transfer tool is part of the preferred resolution strategy. However, resolution authorities may decide to apply resolution tool-specific parts of these guidelines (e.g. transfer strategies) to institutions whose planned preferred resolution strategy does not rely on these tools, such as only including transfer tools as variant strategy, as referred to in Article 22, 1st subparagraph, point 2(e), of Commission Delegated Regulation (EU) 2016/1075.”</p> |

Question 1: Do you have comments on section 4.1 dealing with the specific considerations for each transfer tool?

| <u>Comments</u> | <u>Summary of responses received</u> | <u>EBA analysis</u> | <u>Amendment</u> |
|---------------------------|--|---|---|
| Transfer perimeter | One respondent argued that the preparation requirements should be tailored to the size and business model of each bank. The guidelines should therefore be adapted according to the type of strategy, the type of institution and the structure of the bank/banking group. | See points on proportionality and scope of the guidelines as addressed above. | <p>Added in the background and rationale, §10:</p> <ul style="list-style-type: none"> i. “The guidelines do not apply to institutions subject to simplified obligations, but resolution authorities may decide to apply these guidelines in whole or in part to institutions subject to simplified obligations for resolution planning; ii. The guidelines do not apply to institution earmarked for liquidation but resolution authorities may decide to apply these guidelines in whole or in part to institutions subject to liquidation banks; |

The guidelines will apply when transfer strategies are included as preferred resolution strategy, while for when they are only as variant strategies, resolution authorities may apply the whole or part of these guidelines.”

Added in Scope of application §3:

“These guidelines apply where a transfer tool is part of the preferred resolution strategy. However, resolution authorities may decide to apply resolution tool-specific parts of these guidelines (e.g. transfer strategies) to institutions whose planned preferred resolution strategy does not rely on these tools, such as only including transfer tools as variant strategy, as referred to in Article 22, 1st subparagraph, point 2(e), of Commission Delegated Regulation (EU) 2016/1075.”

Added in Background and Rationale, §5:

“As an example of link between resolution objective and transfer perimeter, if the resolution objective is the continuity of deposits as a critical function, the transfer perimeter should consist in the assets allowing the transferred deposits to constitute an appropriate balance sheet.”

Added in Background and Rationale, §6:

“The transfer perimeter is the central scenario of the expected application of a transfer tool. The essential point is for institutions to be able to analyse the legal and operational interconnections that may exist and to develop their capabilities to adapt their organisation, governance and MIS.”

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| AST | One respondent argued that for large institutions with diversified portfolios and low rates of non-performing portfolios, the ex-ante flagging of assets, rights and/or liabilities that would meet in resolution the conditions of article 42.5 BRRD and the principles laid down in EBA guidelines on the asset separation tool is | See points on proportionality and scope of the guidelines as addressed above. |
|-----|--|---|

very difficult to realize. This respondent also claimed that setting “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 market value, in order to avoid the destruction of value” (§33) seems very theoretical and unrealistic.

Question 2: Do you have comments on section 4.2 dealing with the assessment of interconnections?

| <u>Comments</u> | <u>Summary of responses received</u> | <u>EBA analysis</u> | <u>Amendment</u> |
|--|--|--|--|
| Granularity of the interconnectedness | One respondent suggested that the expected granularity of the interconnectedness analysis envisaged in the guidelines would be overly complicated given the very high number of potential transfer perimeters. | Institutions are not supposed to imagine all the possible transfer perimeters. As stated in para. 15, "Although the methodology for the definition of the (...) transfer perimeter remains resolution authorities' responsibility, institutions should be able to propose a transfer perimeter on the basis of this definition, identifying impediments and proposing potential enhancements". | <p>Added:</p> <p>- in Background and Rationale, §6: “The transfer perimeter is the central scenario of the expected application of a transfer tool. The essential point is for institutions to be able to analyse the legal and operational interconnections that may exist and to develop their capabilities to adapt their organisation, governance and MIS.”</p> <p>- in §36: "Depending on the extent of the interconnections and on the variety of resolution scenarios, the assessment of interconnections may be staged over time. "</p> |

Question 3: Do you have comments on section 4.3 dealing with the assessment of cross border aspects?

| <u>Comments</u> | <u>Summary of responses received</u> | <u>EBA analysis</u> | <u>Amendment</u> |
|--|---|--|--|
| Proportionality on the assessment of cross border aspects | One respondent suggested that the assessment of cross-border aspects within EU should be limited to high level principles on the basis of Level 1 texts. Further, all the work related to the recognition of the resolution authority's transfer powers should essentially be supported and coordinated by the resolution authorities themselves and not by the institutions. | <p>§52 of the guidelines states that the institutions' analysis is requested to support resolution authorities in their assessment; this is justified by the fact that the institutions have the knowledge about the contracts related to the transfer perimeter identified by the resolution authorities.</p> <p>See §61: "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."</p> | Amended §52: "In order to support resolution authorities in their assessment under the previous paragraph, institutions, based on the legal characteristics of the elements of the transfer perimeter , should analyse, and inform resolution authorities about, the feasibility/credibility " |

Question 4: Do you have comments on section 5.1 dealing with the sale preparation?

| <u>Comments</u> | <u>Summary of responses received</u> | <u>EBA analysis</u> | <u>Amendment</u> |
|--|--|---|---|
| <p>Proportionality of the internal segregation requirements</p> | <p>One respondent suggested that the requirements relating to the internal segregation of distressed assets (e.g. playbook) would constitute a heavy workload which should not be provided for all institutions but rather on a case-by-case assessment by Resolution Authorities.</p> | <p>Para. 66 of the draft guidelines state that resolution authorities "should, when necessary (...) promote the separation of portfolios by requesting to institutions to have playbooks laying down how they could segregate distressed assets". This is therefore a case-by-case request.</p> | <p>Proposed addition in the background and rationale, §10:</p> <ul style="list-style-type: none"> i. "The guidelines do not apply to institutions subject to simplified obligations, but resolution authorities may decide to apply these guidelines in whole or in part to institutions subject to simplified obligations for resolution planning; ii. The guidelines do not apply to institution earmarked for liquidation but resolution authorities may decide to apply these guidelines in whole or in part to institutions subject to liquidation banks; iii. The guidelines will apply when transfer strategies are included as preferred resolution strategy, while for when they are only as variant strategies, resolution authorities may apply the whole or part of these guidelines." <p>Added in Scope of application §3: "These guidelines apply where a transfer tool is part of the preferred resolution strategy. However, resolution authorities may decide to apply resolution tool-specific parts of these guidelines (e.g. transfer strategies) to institutions whose planned preferred resolution strategy does not rely on these tools, such as only including transfer tools as variant strategy, as</p> |

referred to in Article 22, 1st subparagraph, point 2(e), of Commission Delegated Regulation (EU) 2016/1075.”

Question 5: Do you have comments on section 5.2 dealing with the arrangements to ensure a smooth separation?

| Comments | Summary of responses received | EBA analysis | Amendment |
|--|---|--|------------------|
| Preparation of a transfer | One respondent argued that the preparation of a transfer should be limited to the options enclosed in the recovery plan. | The recovery plan applies in a going-concern situation, whereas resolution tools apply in a gone-concern situation and need a specific preparation. In any case the guidelines require that where applicable, the institution leverages on recovery planning work. | No change |
| Maintenance of service continuity | One respondent suggested that the requirements on the level of expected preparation for the maintenance of service continuity should be adapted to the profile of the institutions. | See point on proportionality and resolution strategy as addressed above. | No change |

Question 6: Do you have comments on section 5.3 dealing with the execution of side processes?

| <u>Comments</u> | <u>Summary of responses received</u> | <u>EBA analysis</u> | <u>Amendment</u> |
|--------------------------------|---|---|---|
| Governance arrangements | <p>One respondent suggested that governance arrangements in resolution, including for the implementation of the resolution strategy, should be clarified by the Resolution Authorities themselves. The preparation of a transfer should be therefore limited to the options enclosed in the recovery plan of each institutions.</p> <p>Besides, in the opinion of the respondent, given the potentially high number of resolution scenarios there could be as consequence a relevant number of perimeters for large institutions, thus making unnecessary the exercise of providing advance post-resolution balance sheets accounting for the de-recognition of the transfer perimeter.</p> | <p>The recovery plan applies in a going-concern situation, whereas resolution tools apply in a gone-concern situation and need a specific preparation - typically, a going-concern perimeter will not foresee leaving some element of the balance sheet in insolvency.</p> <p>Regarding the number of possible resolution scenarios, the institutions are only expected to demonstrate they are rapidly able to provide the resolution authorities with post-resolution balance sheets corresponding to the transfer perimeter identified by the resolution authorities with the assistance of the institutions. However, it is clear that the transfer perimeter is the central scenario of the expected application of a transfer tool. The essential point is for institutions to be able to analyse the legal and operational interconnections that may exist and to develop their capacity "to support the production of a post-resolution balance sheet accounting for the de-recognition of the transfer perimeter" (para. 80). The focus is the agility of the banks to provide the necessary output.</p> | <p>The EBA clarified in §16 that institutions should be able to propose an alternative transfer perimeter or amendments to it.</p> <p>Added in §81: "Such balance sheets are not requested to be updated permanently in the pre-resolution phase, but institutions are only expected to demonstrate they are rapidly able to provide the resolution authorities with post-resolution balance sheets corresponding to the transfer perimeter identified by the resolution authorities with the assistance of the institutions. "</p> |

Question 7: Do you have comments on section 5.4 dealing with the expected MIS capabilities?

| <u>Comments</u> | <u>Summary of responses received</u> | <u>EBA analysis</u> | <u>Amendment</u> |
|-----------------|--------------------------------------|---------------------|------------------|
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|-------------------------|---|--|-----------|
| MIS availability | <p>One respondent suggested that the need for playbook should be assessed on a case-by-case basis. No Virtual Data Room should be required in advance either as it could very quickly become obsolete and maintaining one up-to-date would be extremely costly, inefficient, and disproportionate. In case of an entity sale, it should also be noted that the entity in question has its own MIS and has all relevant information.</p> | <p>Institutions are not supposed to set up virtual data rooms in advance, but they "should explain how they can swiftly set up a virtual data room" (para. 93). The important element is the institution's agility in its capacity to provide RAs with data.</p> | No change |
|-------------------------|---|--|-----------|

Question 8: Do you have any additional comments?

| <u>Comments</u> | <u>Summary of responses received</u> | <u>EBA analysis</u> | <u>Amendment</u> |
|---------------------------------|---|---|------------------|
| Perimeter identification | <p>One respondent suggested that the perimeter identification could be disproportionately burdensome and very often useless considering that it will be dependent on the scenarios / circumstances under which a bank enters into resolution. As consequence, recovery options will quite often have been implemented before the entry into resolution and may have impacted the identified perimeter. Therefore, all the relevant perimeters identified for a potential transfer in a resolution context are likely to be covered by options identified for Recovery purpose</p> | <p>For SoB, the topic of recovery options is already mentioned in §26. In general, and in particular for the other tools, the resolution scenario will be based on market assumptions and even cover parts of the portfolio not necessarily listed in the recovery options. The EBA notes that the number of possible perimeter decreases with the size of the resolution group/entity.</p> | No change |
| Cost–Benefit Analysis | <p>One respondent argued that the cost-benefit assessment should be carefully performed given the hypothetical nature of the transfer perimeter, the uncertainties as regards the circumstances under which the transfer would occur, and the high risk that due diligence performed such in advance may be useless if a resolution situation were to occur.</p> | <p>Costs for both RAs and institutions depend on the number of envisaged transfer perimeters (both first layer and second layer). However, the preparation for a possible transfer is part of the normal preparation for the use of a transfer tool, akin to the bail in playbooks which have been prepared for a long time.</p> | No change |