

EBA/CP /2024/17

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19 July 2024

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# Consultation Paper

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Handbook Chapter on Independent Valuers for resolution

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# 1. Responding to this consultation

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The EBA invites comments on all proposals put forward in this paper and in particular on the specific questions summarised in “5.2 Overview of questions for consultation”.

Comments are most helpful if they:

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

## Submission of responses

To submit your comments, click on the ‘send your comments’ button on the consultation page by 19.09.2024. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

## Publication of responses

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

## Data protection

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

## 2. Executive Summary

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The EBA is tasked, pursuant to article 8(1)(ab) of Regulation 1093/2010<sup>1</sup> of the European Parliament and the Council, with developing and maintaining “an up-to-date Union resolution handbook on the resolution of financial institutions in the Union which is to set out best practices and high-quality methodologies and processes for resolution, taking into account the work of the Single Resolution Board, and changing business practices and business models and the size of financial institutions and of markets”. This Resolution Handbook Chapter (‘Handbook’) provides best practices and high-quality methodologies and processes for the selection and appointment of independent valuers for resolution purposes in accordance with article 36 and 74 of Directive 2014/59/EU of the European Parliament and the Council<sup>2</sup>.

The EBA has already issued Regulatory Technical Standards on independent valuers under article 36(14) of Directive 2014/59/EU<sup>3</sup> determining the circumstances under which a person is to be considered independent from any public authority, including the resolution authority, and the relevant entity and can therefore act as an independent valuer.

In line with those Regulatory Technical Standards<sup>4</sup>, the Handbook identifies best practices for the three elements of independence that the resolution authority (RA) should assess for the valuer: i) the RA should ensure that the valuer possesses the necessary qualifications, experience, ability, knowledge and resources; ii) that the valuer is legally separated from the relevant public authority and the relevant entity; and iii) that the valuer has no material common or conflicting interest with the relevant public authority or the relevant entity.

The Handbook is structured in a chronological order, covering actions before, during and after the appointment of the independent valuer. The Handbook covers the preparatory arrangements, such as market research, framework contracts and internal procedures. The Handbook then moves to the appointment process, with specific parts for the assessment of the valuer’s independence and the application of safeguards. The Handbook ends with considerations at and after

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<sup>1</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331 15.12.2010, p. 12) ELI: <http://data.europa.eu/eli/reg/2010/1093/2021-06-26>.

<sup>2</sup> 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). ELI: <http://data.europa.eu/eli/dir/2014/59/2024-01-09>

<sup>3</sup> EBA/RTS/2015/07

<sup>4</sup> Based on which 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), was adopted.

valuation contract signature, such as the maintenance of policies and procedures to identify and manage conflicts of interest.

The Handbook provides examples of situations and safeguards that may affect the materiality of a common or conflicting interest. It gives examples of past or current provision of services, personal and financial relationships, or investments that may pose a threat to the valuer's independence, and suggests possible safeguards such as termination, disconnection, restriction or additional review.

The Handbook addresses some other considerations on independent valuers for resolution purposes, such as cases where appointing the same valuer to perform different valuations before or after resolution might be considered as a best practice. Other aspects that the RA should consider when procuring valuation services, such as the timing, the scope, the format and the language of the valuation, are addressed as well.

## Next steps

The draft Handbook is published for a 2-month consultation period. The responses received during the consultation period will be taken into account when finalising the Handbook. The intention is, depending on the feedback received, to publish the final report and version of the Handbook before 2024 end.

### 3. Background and rationale

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As announced in the 2023 EBA Work Plan<sup>5</sup>, the EBA focused on critical elements of the secondary legislation that may need to be reviewed based on the collected practical experience. In this scrutiny, in discussions with the resolution authorities (RA), the RTS on independent valuers emerged as a main product for consideration.

The RAs indicated that more practical guidance, sharing of best practices and examples for specific situations of appointing an independent valuer would be helpful in this regard.

This need emerged also in the context of the European Resolution Examination Programme (EREP) covering the 2023<sup>6</sup> period. Specifically, the EBA asked RAs if they believe there would be potential issues in contracting valuation services at short notice while assessing requirements of Article 36 Directive 2014/59/EU<sup>7</sup> and the Commission Delegated Regulation (EU) 2016/1075. Almost all the RAs that answered to this question (22) identified potential issues in this respect, such as: short time available and lack of guidance for assessing conflict of interest/independence, challenges stemming from the potential need to comply with procurement law in short time frame, small number of suitable valuation service providers in the national market, the suitability or availability of pre-selected valuers changes when entering resolution.

To address these issues, developing a Handbook Chapter on Independent Valuers was considered necessary. The purpose of the Handbook is to provide specific best practices, examples and high-quality methodologies and processes to ensure the independence of the potential valuers in the appointing process.

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<sup>5</sup>[https://www.eba.europa.eu/sites/default/files/document\\_library/Publications/Reports/2022/1039834/2023%20EBA%20Work%20Programme.pdf](https://www.eba.europa.eu/sites/default/files/document_library/Publications/Reports/2022/1039834/2023%20EBA%20Work%20Programme.pdf)

<sup>6</sup> EBA Report on resolution convergence - EREP 2024

<sup>7</sup> Valuation for the purposes of resolution

## 4. Draft Handbook on Independent Valuers for resolution

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# 1. Introduction

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## 1.1 Legal background

- 1 Directive 2014/59/EU of the European Parliament and of the Council<sup>8</sup>, establishing a framework for recovery and resolution of credit institutions and investment firms, provides a comprehensive set of powers for resolution authorities (RAs) to intervene in failing or likely to fail institutions. Articles 36 and 74 of that Directive require independent valuations to be carried out to inform resolution decisions. The Directive relies on valuations conducted by a natural or legal person meeting certain conditions, including a requirement of independence.
- 2 Articles 8(1)(ab) and 29(2) of the Regulation (EU) No 1093/2010 of the European Parliament and the Council<sup>9</sup> provide for the development of a Union resolution handbook as a convergence tool to promote common supervisory (including resolution) approaches and practices. The EBA is tasked under the Article 8(1)(ab) of that Regulation to “develop and maintain an up-to-date Union resolution handbook on the resolution of financial institutions in the Union which is to set out best practices and high-quality methodologies and processes for resolution, taking into account the work of the Single Resolution Board and changing business practices and business models and the size of financial institutions and of markets”. Further, in Article 29(2) second subparagraph of that Regulation, it is indicated that “The Authority shall also develop and maintain an up-to-date Union resolution handbook on the resolution of financial institutions in the Union, which duly takes into account the nature, scale and complexity of risks, business practices, business models and the size of financial institutions and of markets.”
- 3 The Directive 2014/59/EU, in its Article 36(1), requires RAs to ensure a fair, prudent and realistic valuation of the assets and liabilities of the failing institution before taking a resolution action or exercising the power to write down or convert relevant capital instruments and eligible liabilities. Such a valuation is to be carried out by a person independent from any ‘relevant public authority’ as defined in Article 37 (3) of Commission Delegated Regulation 2016/1075, and the institution or entity concerned. The same requirement is set in Article 20 of Regulation (EU) 806/2014 of the European Parliament and the Council<sup>10</sup>.

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<sup>8</sup> 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). ELI: <http://data.europa.eu/eli/dir/2014/59/2024-01-09>

<sup>9</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331 15.12.2010, p. 12) ELI: <http://data.europa.eu/eli/reg/2010/1093/2021-06-26>

<sup>10</sup> Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of

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- 4 The EBA developed the Regulatory Technical Standards on independent valuers under Article 36(14) of Directive 2014/59/EU<sup>11</sup>, to specify the circumstances in which a person is independent from both the resolution authority and the failing institution, based on which Commission Delegated Regulation (EU) 2016/1075<sup>12</sup> was adopted. The Delegated Regulation sets forth general criteria to be used to determine, on a case-by-case basis, whether a valuer complies with the legal requirement of independence as required under Article 36(1) of Directive 2014/59/EU.
- 5 While the EBA Handbook does not take the form of legally binding acts or is not to restrict judgement-led supervision, as stated in recital 7 of Regulation (EU) No 1022/2013 (which included particular provisions on the EBA Handbook in the EBA founding Regulation (EU) No 1093/2010), RAs should in principle use it to identify best practices and high-quality methodologies and processes, unless otherwise justified by a case-by-case supervisory judgement. The use of the Handbook should be considered as a significant element in the assessment of the convergence of supervisory and resolution practices and for the peer review under Regulation (EU) 1093/2010.
- 6 This chapter of the resolution Handbook is addressed to resolution authorities and to other authorities - that are competent authorities as defined in Article 4 (2) of Regulation (EU) 1093/2010 which have been allocated any tasks within the selection and appointment of the independent valuer for the purposes of conducting the valuation referred to in Article 36(1) or Article 74(1) of Directive 2014/59/EU in the terms provided in the Commission Delegated Regulation 1075/2016. (referred to in this Handbook collectively as 'Resolution authorities' or 'RAs'). The guidance provided in the handbook is without prejudice to any mandatory Union law, in particular, to provisions of Union public procurement and competition law applicable.
- 7 The EBA has also published a Chapter of the Resolution Handbook on valuation for purposes of resolution<sup>13</sup>. That document sets out best practices and methodologies on the practical steps of the valuation process, on the specific valuation criteria applicable to the various resolution tools and the content of the valuation report. The content of Chapter 8.1.1<sup>14</sup> of that Handbook pertaining to independence of valuers is replaced by this Chapter.

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a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ L 225 30.7.2014, p. 1) ELI: <http://data.europa.eu/eli/reg/2014/806/2024-05-13>

<sup>11</sup> [EBA/RTS/2015/07](#)

<sup>12</sup> 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).

<sup>13</sup> [EBA Handbook on valuation for purposes of resolution, 22 February 2019](#)

<sup>14</sup> Subchapter 8.1.1, pages 72 to 74

## 1.2 Handbook objectives and structure

- 8 The EBA has developed this Handbook Chapter on the selection of an independent valuer ('Handbook') with a view to improve the quality of the process of selecting independent valuers and to facilitate its implementation by RAs. The objective of the current Handbook is to enhance convergence and to share best practices and high-quality processes or methodologies in relation to the processes of appointing an independent valuer as set in the Delegated Regulation (EU) 2016/1075.
- 9 The Handbook provides high-quality methodologies for assessing the independence of the valuer. In addition, the Handbook provides examples on the application of these methodologies under some scenarios. Lastly, the Handbook identifies some types of safeguards or measures which could be set in place to mitigate the effects of the potential conflict of interest or circumstances hampering the independence of the valuer.
- 10 Each determination of a valuer's independence is to be performed on a case-by-case basis, considering the urgency of the situation and the particularities of the scenarios.
- 11 The Handbook is structured in a chronological order, covering **actions before, during and after the appointment of the independent valuer** (Figure 1). Each temporal sequence is covered in a dedicated chapter. Additional specific dedicated chapters cover the actual assessment of independence and the application of safeguards. The assessment of independence and the application of safeguards can occur at any of the three chronological stages and vary in depth depending on the availability of information.

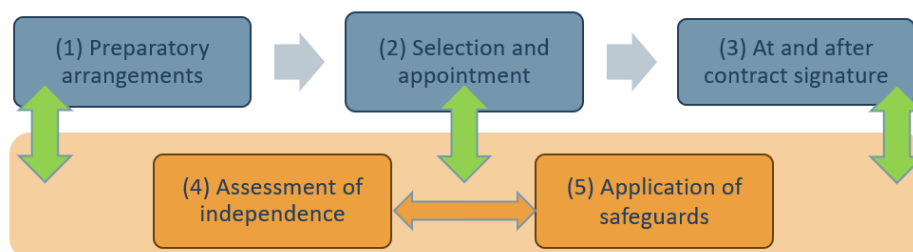


Figure 1: General overview of the steps process in selecting an independent valuer

- 12 As a high-quality process, the appointment procedure for an independent valuer should be straightforward and flexible enough to enable resolution authorities to select an independent valuer in a very short timeframe and as a matter of urgency. Therefore, as a best practice, resolution authorities should enhance preparation of such appointment procedure ahead of resolution in order to speed up the process in case of actual implementation.
- 13 As a high-quality process, the appointment of an independent valuer should be divided into two-steps:

- i. First, the RA should establish **preparatory arrangements** such as **market research** to identify potential valuers and to potentially establish **framework contracts** with identified valuers. The purpose of this first step is to **front load** as much as possible **the actions that need to be carried during the assessment of independence** (qualifications and structural separation, identification of statutory auditor, etc.).
- ii. The second step consists in **the actual selection** of an independent valuer **when a crisis arises**. In this second step, possibly in an urgent manner, the RA should carry out the remaining of the assessment actions, including integrating new pieces of information (such as the details of the actual target institution).

### 1.3 Considerations and limitations

- 14 Article 37(1) of Delegated Regulation (EU) 2016/1075 refers to the ‘appointing authority’ as the authority responsible for selecting and appointing the independent valuer for the purpose of conducting the valuations referred to in Articles 36(1) or Article 74(1) of Directive 2014/59/EU. RAs should as a best practice be aware of their relevant applicable procurement and procedural rules and requirements as much in advance as possible of commencing any process to obtain valuation services, also considering the relevant EU and national public procurement applicable rules.
- 15 The appointment of the independent valuer is an indispensable step to ensure that a definitive<sup>15</sup> fair, prudent and realistic valuation of the assets and liabilities of the relevant entity can be performed to support a resolution action. RAs may be bound by different national legal provisions which could lead to different appointment processes or to situations where not all aspects of the procurement process and practices identified in this Handbook are relevant or may be followed.
- 16 The best practices and high-quality methodologies and process compiled in this Handbook are not intended to be an exhaustive list. Furthermore, neither using them nor not using them should necessarily lead to an automatic conclusion on the existence or not of a conflict of interest or lack of independence of the relevant valuer. The latter would very much depend on the context, scenarios and case-by-case supervisory judgement or assessment, taking into consideration the applicable procurement rules, the idiosyncrasy of the crisis and the urgency.
- 17 Delegated Regulation (EU) 2016/1075 indicates, in its Article 38, that both a legal or a natural person may be appointed as a valuer. The Handbook has put the focus on legal persons. However, the same principles, process and examples should apply to natural persons assessed to be appointed as valuers.

## 2. Preparatory arrangements

- 18 Preparatory arrangements or measures relate to all processes and activities the RA can conduct before resolution, when there is no indication that an institution is failing or likely to fail, related to the potential appointment of a valuer. The benefits of the preparatory actions are to reduce the time of performing the assessment at the moment of appointment, to increase the pool of potential suitable valuers and to reduce the potential legal risks of the appointment.
- 19 Preparatory measures - in relation to the valuer's appointment in resolution - can be divided in three categories: (i) **internal preparation**, (ii) **market research and list of suitable valuers**, and (iii) **external preparation (framework contracts** – Section 2.3 of this Handbook). All three are interconnected and actions from one category may interact with actions from the other categories. This chapter identifies the actions that could be performed under each category and the desired outcome.

### 1.1 RA's internal preparation

- 20 Procuring services from external providers, such as valuation services, is likely to require a well-documented process in most jurisdictions. As a best practice, the RAs procedure should be aware and prepared in advance on such process. The internal RA's preparation would therefore **define internal procedures or processes** to be set to assess the valuer's independence and to operationalise the appointment.
- 21 In practice, the procedure would specify **how the assessment will be conducted and allocate roles and responsibilities within the RAs**. RAs in practice could prepare **documents** of the **operational steps** to select an independent valuer, including:
- A chronology and a description of operational procedures and tasks;
  - An identification and a description of the input and outputs of the different process steps; and
  - A description of roles and responsibilities.
- 22 In addition, depending on the specific circumstances, the RA could (1) identify the other relevant public authorities (as required by Article 40 of Delegated Regulation (EU) 2016/1075, for structural separation) and (2) inform these other relevant authorities that, in case of a crisis, when a valuer will have to be appointed, they may be asked to provide information relevant for assessing the structural separation. Conversely, the RA could simply identify that the relevant public authorities do not participate or have any structural ties with any valuation company. Given the potential urgency of appointing a valuer, the RA may solicit the valuer, through the self-assessment, to confirm the legal separation from the relevant public authorities and the RA may also confirm it with the relevant public authorities without prejudice to

the possibility of verifying the information in parallel or afterwards (see section 4.1 for further details).

- 23 Those operational documents would become particularly important in cases where the RA envisages the involvement of non-experts in appointment procedures (e.g., staff from the resolution teams or competent authorities dealing with the resolution case).
- 24 In case that RAs' appointment procedures envisage the appointment of **evaluation committees** to select the winning bid, RAs should also have in place an **up-to-date list of suitable potential candidates** to be appointed as members of those evaluation committees.
- 25 As a best practice, the RA should **develop standard templates** for use in the preparation as well as in the selection appointment phase. The templates should cover both RA's internal purposes as well as external interactions. Annex 1 provides a list of templates that RAs should consider developing for use in the independence assessment process. Practical experience from authorities indicates that RAs would benefit from preparing in non-crisis scenarios all the necessary documentation templates to launch the tender to select an independent valuer. The **preparation of documentation templates in advance** appears therefore key to ensure a timely appointment of an independent valuer.
- 26 Among the possible templates to be developed in advance, the RAs could develop templates indicating the **minimum pieces of information it expects the valuer to provide in the valuer's self-assessment**. The valuer's self-assessment represents in fact an efficient and comprehensive way to obtain information directly from the valuer regarding the conflict of interest.
- 27 As a best practice, RAs should use their own developed templates for candidate firms' declaration of independence (self-assessment), always with full respect to the national and EU applicable General Data Protection legal framework. While such templates could be customised for a specific case to deal with the specific requirements of a crisis, as a best practice, the RAs indicate that, in general, the following elements are required to provide a disclosure of any conflicts of interest, potential biases, or limitations that may affect the independence or objectivity of the valuation, including the following elements:
  - ✓ The nature and extent of any relationship or interest that the valuer or any other contributor has with the relevant entity, the relevant authorities, including the appoint authority, or any other party involved in the valuation.
  - ✓ The steps taken to identify, disclose, and manage any actual or potential conflicts of interest that may compromise the integrity or credibility of the valuation.
  - ✓ The safeguards applied to ensure that the valuation is conducted with due care, diligence, and professionalism, and that the valuer's judgment is not influenced by any external pressure or incentive.
  - ✓ A statement of compliance with the relevant standards, guidelines, and codes of conduct for valuation practice.
- 28 The self-assessment could also include the following elements:

- A description of the procedures of Col identification implemented by the valuer;
  - An assessment of remunerations from the perspective of independence to the RA and relevant authorities;
  - The procedures in place to continually monitor for the identification of Col during the performance of the valuation service.
- 29 In more detail, in addition to the above pieces of information, as a best practice, RAs should require the pieces of information in the valuer's self-assessment that are further detailed in Annex 2. Annex 2 proposes some elements that could be required to be included in the self-assessment, such as the nature of relation of the valuer with the target institution, adherence to codes of conduct and safeguards envisaged to be put in place.
- 30 When assessing the information provided by the valuers and processing the personal data included therein, RAs should comply with the relevant provisions of Regulation (EU) 2016/679<sup>16</sup> (GDPR) or Regulation (EU) 2018/1725<sup>17</sup> (EU GDPR). Furthermore, in pursuance of data protection principles, such personal data should be kept by the RA for no longer than it is necessary to the performance of its tasks.
- 31 As part of the preparatory arrangements, the RA could **identify** for each institution or group who is **the statutory auditor**. As a best practice, this information should be updated regularly, with each iteration of the resolution plan. This information would allow for an early assessment of the existence of the material conflict of interest described in Article 41(5) of Delegated Regulation (EU) 2016/1075 (absolute exclusion for the statutory auditor).
- 32 Consideration the fact that the valuer may deny offering full information in the assessment process to the RA due to **confidentiality obligations** of legal or contractual nature, the RA should, as another best practice:
- i) Identify applicable legal provisions that would not allow the valuer to disclose information regarding its interaction with the target institution;
  - ii) Identify possible exceptions to these barriers to information disclosure;
  - iii) Discuss in advance with the valuer and/or the institution the possibility, considering the applicable legal framework, of obtaining a prior authorisation of the institution and/or person/s concerned to share in the future information with the RA as regards the information to be disclosed only for the purpose of the assessment of the independence of the valuer. This action is important in case the RA would prefer to have the option to conduct the valuation without informing the target institution.

<sup>16</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119 4.5.2016, p. 1) ELI: <http://data.europa.eu/eli/reg/2016/679/2016-05-04>

<sup>17</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39). ELI: <http://data.europa.eu/eli/reg/2018/1725/oj>

- 33 To enhance effectiveness of their preparatory arrangements, RAs should as a best practice, regularly **test their internal procedures** related to the appointing of independent valuers. This might include the coordination among staff, units and external stakeholders, the documentation templates and performing dry runs or tabletop simulations of the processes.

## 1.2 Market research & lists of suitable valuers

- 34 Market research of valuers is an important preparatory arrangement and should have as an outcome **a list of suitable valuers** that the RA could potentially contact when needed. The set-up of a list of suitable and eligible valuers should optimise the time required for the appointment of the valuer and better manage the possible time constraints.
- 35 As a best practice, RAs should broaden their research also to **valuers from outside of their MS** (e.g. EU wide) to expand their list of possible available and suitable valuers.
- 36 A high-quality process for performing market research and establishing a list of suitable valuers should comprise the following steps:
- i. RAs should, as best practice, **identify potential valuers** that could be called to express their interest to a tender process.
  - ii. For each potential valuer, the RAs, as best practice, should identify **several contact persons**. Such contacts should be **checked to remain active frequently**, preferably on annual basis.
  - iii. The RA, as best practice, should perform **regular market updates** to understand if new valuers would be suitable to be added to the list.
  - iv. The RAs, as best practice, should consider engaging with other RAs for **sharing contact details of valuation companies** between themselves.
- 37 Annex 3 provides a list of data points and information that could be used in setting up the lists of suitable valuers.
- 38 When preparing the list of suitable valuers, the RAs should, as best practice, focus on and ensure compliance, to the extent possible, with Articles 39 and 40 of the Delegated Regulation (EU) 2016/1075. These articles require that the valuer possesses (i) the qualifications, experience, ability, knowledge and resources and (ii) is structurally separated from the RA and any other relevant authority.
- 39 In this vein, an advanced step to having lists of suitable valuers is the performance of some basic, high level **preliminary suitability assessments** of the identified valuers to be included in the list. An assessment at this early stage, while be based on a more limited set of information, it would simplify and accelerate the work required under the actual selection and appointment process in a crisis scenario. At this stage, the RA could at least perform an assessment on the available information with regards to:
- **Identification of statutory auditors per institutions**, including the current, prospective and the previous, if any;

- **Identification of strong relationships** with the entities or relevant public authorities, such as, where relevant, common shareholders or management, high financial ties, etc.
- 40 The RAs could engage in discussions with the identified valuers as additional preparatory work. This activity would be a continuation of the market research presented earlier. In non-crisis scenarios, regular interactions with the valuers may be helpful in order to improve valuers' understanding of the appointment process and documents expected to be submitted.
  - 41 As a best practice, the RAs should discuss with the valuers what are the expected reactions' time to provide information in response to the RAs invitation to a tender. Such information should cover expected delays, if any, for weekends or bank holidays, the possibility to ensure fast response times for certain elements (e.g., 24 hours for CVs of the manager of the team and senior roles in the allocated team).
  - 42 Where the RA engages in contact with the valuers, the RA could ask the valuers if they would or could provide their offers as one of the parties in a **joint venture** or employ **sub-contractors**. The number of potential valuers could increase by considering ex-ante joint ventures of valuers or structures that would include sub-contractors. The joint-venture or subcontracting would form, in principle, a response to the RA tender in order to address specific areas such as geographic presence, specialised areas of competence or simply to ensure sufficient capacity given the size of the institution and required time to delivery. Valuers might offer to the RA their view on what resources would be need for different institutions or entities sizes and how these might be set-up via joint ventures or subcontractors.
  - 43 As a best practice, RAs should obtain details on the past, current, as well as the prospective auditor (either statutory or voluntarily appointed), during the resolution planning cycle, including any ongoing involvement of institutions in current restructuring work. Information of the current statutory auditor for the institution could be included in the resolution plans and be updated with every update of the resolution plan.
  - 44 The Delegated Regulation (EU) 2016/1075 requires the RAs to consider as an element of independence the necessary qualifications, experience, ability and knowledge in all matters considered relevant by the appointing authority. Therefore, as a best practice, the RAs should aim to complement the list of names of suitable valuers with this information using public sources. Moreover, the RAs could rank the valuers based on those elements and could set certain thresholds of institutions/group's size where smaller valuers would likely not to be suitable.
  - 45 To expedite the independence assessment processes, the RAs should, as a best practice, publish or at least make available to the valuers the templates it intends to use, specific expectations of information the RA is looking to receive, tentative timeline and the appointment process (or parts of it), including how the various aspects of the independence will be assessed and based on what information.



- 46 As a complementary best practice, the RA should determine a specific information package to be exchanged with the supervisory competent authority (CA). The CAs might have information of what services are provided by different valuers to each of the institutions. The RA and the CA, as best practice and respecting any confidentiality and data protection legal frameworks, should establish what information could be shared when the RA considers appointing an independent valuer, so that the CA shares relevant information that will be used by the RA in its assessment.

### 1.3 External preparation (Framework contracts)

- 47 In some cases, without prejudice to the EU and national public procurement law, the external preparation can be taken a step further by **establishing framework contracts** with identified valuers. While generally framework contracts are an important preparatory arrangement, there could be some constraints to use them by some RAs, or specific national frameworks may not provide the same speedy arrangements. For instance, there might be jurisdictions where the independent valuer is appointed by administrative act, so certain RA stated that there is no contractual relationship between the independent valuer and the RA. In some other cases, certain RA stated that the public procurement rules do not apply for the appointment of the independent valuer since the payment of the valuation services are borne by the institution itself, but not by the RAs.
- 48 When preparing framework contracts, the RAs should, as best practice, focus as much as possible on Articles 39 and 40 of Delegated Regulation (EU) 2016/1075, which shall be complied at the moment of the appointment. In assessing potential valuers for framework contracts, RAs should request from the valuers the relevant information to address these points.
- 49 When the RAs enter into framework contracts with valuers, as a best practice, it would be beneficial to specify in such agreements the following aspects:
- the precise procedure under which the contracting authority may order services from the independent valuer;
  - the provisions that apply to any specific engagement which the resolution authority and the independent valuer may conclude under the framework contract; and
  - the obligations of the parties during and after the duration of the contract (e.g. confidentiality or information-sharing between the parties).
- 50 As a best practice, framework contracts should, without prejudice to the applicable public procurement and competition laws, cover various aspects, such as the principal contact details of the potential valuer, previous related experience, or economic conditions.

- 51 To further reduce the appointing time, the RAs should prepare an advanced draft or template of the valuation engagement or contract or the main requirements and obligations to be signed by the potential selected valuer. This allows the participating valuers to evaluate the full set of contractual terms that will apply to the specific engagements already at the time they are considering their participation to the framework contract. Alternatively, provided there is a ranking of potential valuers established within the framework contract, appointing authorities might be able to make a direct offer to one potential valuer (if allowed by the relevant EU and national procurement law). To this extent, the valuation engagements or contracts should be prepared, as templates, in the preparatory phase.
- 52 Where framework contracts are used, and hence there is a prior relationship between the RA and the potential valuers, the RAs should make clear the situations of exclusion from the tender procedure. The RAs' framework contract should detail the situation(s) when the RA will not be able to contact a valuer to participate in the tender procedure, even if they would have signed the framework contract.
- 53 Resolution authorities may consider negotiating framework contracts with a sizeable number of valuers. This approach should decrease the likelihood of situations in which the RA's choice of an independent valuer becomes too limited and no valuer subject to the framework agreement fulfils the independence criteria. As a best practice, framework contracts should be reviewed regularly and in line with applicable EU and national procurement requirements.
- 54 Where contacts are established with the valuers, regardless of whether framework contracts are in place or not, the RA should, as a best practice, run tests to check if the processes and procedures of contacting valuers are operational and if the contact details from the valuers are up-to-date. Further, such tests should use mock documents based on real templates and requests to familiarise the valuers with potential requests and identify any gaps in understanding or expectations between the valuers and the RA at this planning phase. Some RAs, at this preparatory stage, consider it is very important to instruct the valuers about the specifics of valuation in resolution and the key elements required in the valuation report as well as the RAs' expectations that are necessary to implement resolution measures. As a best practice, this instruction should be performed in the preparatory phase, outside of the actual appointment process, in order to save time in the delivery of the valuation.

### 3. The appointment process

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- 55 Pursuant to article 36 (1) of Directive 2014/59/EU, the valuer shall<sup>18</sup> be appointed before taking resolution action or the exercise of the powers of article 59 of that Regulation. At this moment, the institution is known, so the specific qualifications and independence can be concretely assessed against the target bank.
- 56 Depending on the specific circumstances of a case, without prejudice to the applicable EU and national procurement and competition rules, the RA may launch a tender procedure with several firms regardless of whether having in place or not a framework contract. This step may be needed for several reasons, such as, for example, a new tender procedure may be needed regardless of the framework contract if none of the independent valuers selected under the framework contract are available or all of them are conflicted with the institution in resolution or with one of the relevant public authorities or there is no framework contract in place as the existing one just expired.
- 57 At this early stage of the process, as a best practice and without prejudice to competition and procurement law, the RAs should follow one of the following two options, as appropriate:
- Option 1: invite all valuers from the predefined list or within the framework contracts (or even publicly advertising the tender process, if that would not be estimated to pose a threat to financial stability); or
  - Option 2: invite only those valuers that the RA considers unlikely to be in conflict of interest.
- 58 At this step, knowing the target institution and its specificities, the RA can perform additional checks based on the available information, before inviting valuers to the tender process. Therefore, the independence assessment under 'Option 2' (i.e., the RA invites only valuers considered non-conflicted) should be based on a limited set of information (such as statutory auditor, separation from the relevant entity and public authority). In the subsequent steps, the independence assessment should be performed based on additional information for invited firms. For example, the RA might not invite the statutory auditor as it has been identified in the preparation / planning phase. The RA might have other information that would indicate certain valuers are not independent from the target institutions or the relevant public authorities and would not invite those to the tender process.
- 59 In practice, without prejudice to the applicable procurement and competition law, it is possible that an RA might invite only one or two valuer firms, as the framework contracts may have pre-defined a ranking of suitable and eligible valuers.
- 60 After the invitation of the valuers to the tender, the following strategies are identified as high-quality methodologies for the conduct of the assessment:

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<sup>18</sup> There are some exemptions allowing for provisional valuations to be made by the resolution authorities as per Article 36(2) of Directive 2014/59/EU.

- Strategy 1– sequential assessment. Under this approach, the RA performs the independence assessment first (i.e. only a Col assessment and not a full assessment) and subsequently the assessment of the other contractual elements of the bid / tender procedure (to include all elements of the independence assessment as required under Delegated Regulation (EU) 2016/1075). In this scenario, only valuers not in conflict of interest are asked to provide information related to the other elements of the tender procedure (such as qualifications and expertise, price, delivery time or geographical reach).
  - Strategy 2 – holistic assessment. Under this approach the RA requests the information for the assessment of the independence jointly with all the other elements of the tender process.
- 61 The result of the two strategies is the same, but there are advantages and disadvantages for both:
- In the approach under Strategy 1, the elimination of the valuers is sequential. When a firm is found not to be independent, it will not be part of the next step. This would limit the number of valuers that are to be assessed for the other components of the bidding procedure. This process requires several iterations of dialogue with the valuers.
  - The early elimination of candidates in conflict may facilitate and expedite the subsequent documentary checks, especially in jurisdictions where the process is constrained by the public procurement rules, regarding the bids submitted.
  - The approach under Strategy 2, while envisaging only one round of data collection from the valuers, requires the RA to process all the information for all candidate valuers. On the positive side, if the RA has the resources it can process in parallel the various offers on all aspects, obtaining at the same time a list of valuers not conflicted and a ranking in terms of the other components of the tender process.
- 62 Regardless of the strategy chosen, when time permits, the RA should, as best practice, inform the valuers found to be conflicted with the conclusion of the RAs assessment. The valuer concerned may clarify the situation, provide additional information or propose safeguards. This best practice ensures that the pool of potential valuers is not unduly restricted. Entering into such dialogue does not prevent the RA from stopping the dialogue at any point and is not a mandatory action for the RA considering the additional resources requirements and the potential time constraints to finalise the appointment.
- 63 As part of the tendering process, RAs should, as a best practice, provide a tender document outlining the information as per below Information Box 1. RAs should ask valuers to respond with a bid document outlining details of the intended team, relevant experience in the context of the information provided and requirements of the RA, and the economic terms of the assignment.

### Information Box 1

The RA, should consider providing the following information to the valuer in order decrease the time for an answer from the valuer, subject to the RA's assessment on how the provision of specific pieces of information may jeopardize the effectiveness of the valuation or the resolution action:

- **Background:** overview of institution's size, operations, geographical presence, financial condition, including factors requiring the valuation, and resolution reasons.
- **Scope of Work:** detailed description of assets, liabilities, and financial instruments to be valued, and any special additional requirements.
- **Technical Requirements:** RA's expectation for valuer's expertise in financial valuation methodologies, regulatory frameworks, and experience in similar resolution cases.
- **Submission Instructions:** formats, deadlines, and contact information for tender document submission.
- **Evaluation Criteria:** technical expertise, experience, methodology, conflict-of-interest compliance, fees, etc.
- **Conflict of Interest Disclosure:** guidance on identifying, disclosing, and managing conflicts of interest.
- **Access to Information:** data, documents, and information access, restrictions, and confidentiality requirements.
- **Terms and Conditions:** additional terms governing the tender process, such as confidentiality agreements or liability limitations.

- 64 Irrespective of the approach chosen, RAs should, as a best practice, ask from all candidate valuers to **provide a self-assessment regarding the conflict of interests**. RAs should have in place procedures to review those self-assessments provided by candidate valuers. Further details of this are outlined in Chapter 4.
- 65 As part of the tendering process, RA's will typically ask the valuers to provide a bid containing **details on intended team structure, relevant and up-to-date experience, and the economic terms of the assignment**. Provided their independence is confirmed, RAs should apply a decision mechanism to assess and compare incoming bids.
- 66 RAs will then, based on their assessment, select the preferred provider and finalise the valuation engagement or contract for services. The independence of the valuer should be guaranteed also during the execution of the valuation services.
- 67 Resolution authorities should make internal arrangements regarding the relevant timing of when to commence a specific procurement for valuation services. This should reflect the inevitable time lags between procuring an independent valuer and obtaining any meaningful valuation results to support the resolution actions.

## 4. Assessment of valuer's independence

- 68 When an institution is in stress and may end up in a failing or likely to fail (FOLTF) situation, the RA may already activate internal crisis management procedures, including the process for the selection of the independent valuer. As mentioned in Section 4.1, the timely start of those selection procedures may prove crucial to ensure the timely delivery of the valuation report. RAs should consider, as a best practice, to have ready a process and a timeline that can be triggered where needed. On the other hand, the selection procedure should not start too late, considering that the results of the valuation are required<sup>19</sup> in the decision-making process leading to the resolution decision.
- 69 At the selection stage, the RA will have to carry out an assessment ensuring the independence of the selected candidate. According to Article 38 of Delegated Regulation (EU) 2016/1075, legal or natural persons can be appointed as a valuer. Such natural or legal persons will have to be deemed independent from both any relevant public authority<sup>20</sup> and the relevant entity<sup>21</sup>. To determine such independence, the RA will have to establish whether the selected candidates meet all three *elements of independence* listed in subparagraphs 1 to 3 of the said Article 38. These elements are:
- i. That the valuer possesses the qualifications, experience, ability, knowledge and resources required;
  - ii. That the valuer is legally separated from the relevant public authorities and the relevant entity; and
  - iii. That the valuer has no material common or conflicting interest with the relevant public authority or the relevant entity.

### 1.1 Assessing the elements of independence

- 70 In following the requirements of Delegated Regulation (EU) 2016/1075 for the assessment of the independence of the valuers, the RAs could use the following high-quality methodology as presented in Figure 2 below. The methodology [Figure 2](#) requires the RA to consider the following aspects in a holistic manner: the legal separation of the valuer from both the relevant public authority and the relevant entity; the valuer's qualifications, experience, ability, knowledge and resources; and the existence of a material actual or potential interest in common or in conflict.

<sup>19</sup> Considering that a provisional valuation is possible (Article 36(9) and (10) and (12) of Directive 2014/59/EU).

<sup>20</sup> See definition of 'relevant public authority' in Article 37(3) of Delegated Regulation (EU) 2016/1075.

<sup>21</sup> See definition of 'relevant entity' in Article 37(2) of Delegated Regulation (EU) 2016/1075.

Methodology of the Assessment of Independence

*The Resolution Authority (not necessarily in this order)...*

1. *Establishes the legal separation of the valuer from both the relevant public authority and the relevant entity*
2. *Determines the qualifications, experience, ability, knowledge and resources required*
3. *Assesses the existence of a material actual or potential interest in common or in conflict:*
  - a. *Establishes the existence of an interest in common or in conflict*
  - b. *Assesses the materiality of the interest in common or in conflict, where materiality (M) is the result of evaluating the perceived influence (i) over the valuer's judgement account taken of the perceived effects of mitigating measures, such as safeguards (s)*

$$M = i - s$$

*Figure 2: Methodology of the Assessment of Independence following the RTS on independent valuers*

- 71 As regards the **structural separation of the valuer** from any relevant public authority, including the RA, and the relevant entity, as required by Article 40 of Delegated Regulation (EU) 2016/1075, the independent valuer should not be employed or contracted (natural person) or not belong to the same group of companies (legal persons). These requirements are rather objective and should, as best practice, be checked as early as possible, and they are likely to be satisfied, preferably at an initial stage of the process, such as, for instance, as part of the process of market research or leading to the award of the framework contracts, in jurisdictions where such contracts are concluded.
- 72 After having confirmed structural separation in respect of the specific crisis situation of the relevant entity, RAs may move to a next step, based on the information from the bids received from the valuers. This step consists in assessing that **the proposed team possesses the necessary skills and resources**, and that the valuer can carry out the specific valuation effectively without undue reliance on any relevant public authority or the relevant entity (first subparagraph of Article 38 of Delegated Regulation (EU) 2016/1075).
- 73 As regards the required skills, Article 39(1) of Delegated Regulation (EU) 2016/1075 stipulates that the valuer should possess the **necessary qualifications, experience, ability and knowledge in all matters considered relevant by the appointing authority**. Accordingly, it is for the RA to consider and assess which skills will be needed to effectively carry out a specific valuation independently. RAs may determine these requirements depending on the specific situations in accordance with the principle of judgment-led supervision and communicate them to the candidates. For example, specific knowledge of national insolvency law can be determined only when the failing or likely to fail institution is known.

- 74 In proving the qualifications, experience, ability, knowledge and resources, the valuer may submit the following elements:
- certifications, licenses, and professional accreditations held by key personnel and the team involved in the specific project.
  - description of the experience working in the financial advisory sector: duration and nature of the projects.
  - evidence of successful outcomes achieved for clients, including testimonials, case studies, and performance metrics where available and disclosable.
  - insight into firm's resources and infrastructure, including access to specialised tools, information providers, and technology platforms.
- 75 In case of joint ventures or any kind of consortium of valuers and/or subcontracting, RAs should, as a best practice, assess the aforementioned requirements for each valuer separately. **All valuers part of the joint venture or subcontracted should undergo the independence assessment.**
- 76 In addition, the RA should, as a best practice, inform the valuers invited to the tender if they are allowed to freely extend the invitation, or, on the contrary, if such extension is prohibited, taking into account that the confidentiality of crisis proceedings may be compromised, generate leaks and even pose a risk to financial stability in case of such an extension of the invitation.
- 77 At an initial stage, during market research, or at the stage of awarding a framework contract, for instance, RAs may consider setting general skills requirements only. However, the specific actual needs are likely to become far more detailed when a crisis arises and factors such as size of the relevant entity, jurisdictions concerned, and type of business models and portfolios affected materialise. The same considerations can be made on the appropriate level of resources that, in accordance with Article 39(2) of Delegated Regulation (EU) 2016/1075, the valuer shall hold or have access to.
- 78 Consequently, the RA may need to add further details at the time of the tender process or when finalising the case-specific request for services (depending on the approach used) to allow the potential valuers to prepare their detailed offers for valuation services on time. The case-specific request for services may be needed whether the framework contracts are used or not.

### Best practice

The RA should apply a transparent and objective scoring mechanism, in compatibility with the time needed in the specific case.

In cases of extreme urgency, without prejudice to the applicable public and competition procurement law, it cannot be excluded that the service will be awarded on the basis of a single criterion (e.g. the lowest price, experience or resources, time needed for delivery, etc., assuming that all other requirements are fulfilled). For such cases, a best practice for RAs should be to establish in



the preparatory measures the considerations for the size, experience and qualifications of the working group, the timeline, for the banks in its remit.

The scoring mechanism may, for instance, include the following criteria: the valuer's experience and qualifications, the quality and clarity of the methodology and approach, the feasibility and adequacy of the timeline and resources, the reasonableness and competitiveness of the fees, and the valuer's references. The RA should assign weights to each criterion based on its importance and score each offer accordingly. The RA should also document the scoring process and the rationale for the valuer or valuers' final selection.

A best practice is to use a pre-defined and transparent scoring mechanism. This ensures that the RA selects the most suitable and reliable valuer, while avoiding bias or arbitrariness. By publishing the scoring criteria and weights in advance, the RA can also increase the transparency and accountability of the tender process and foster fair competition among the potential valuers.

Depending on the specific elements of the actual crisis, the RA should be able to adjust the criteria used (including new ones, altering or removing predefined ones) as well as reconsider the weights for each criterion. **In cases of extreme urgency, the RA should have the flexibility to be able to consider only one criterion** (such as price or time to delivery).

- 79 The third part of the assessment concerns the absence of a potential or actual material interest in common or in conflict in accordance with subparagraph 3 of Article 38 of Delegated Regulation 2016/1075. This is dealt with in the next section. As noted above, some RAs may start with this assessment and invite only valuer(s) that are not in conflict to submit details for their qualification and bids on the contracts.

## 1.2 Potential or actual material interest in common or in conflict

- 80 The elements to be considered in this part of the assessment are laid down in Article 41 of the Delegated Regulation (EU) 2016/1075. In order to adequately address those elements in a structured manner, a two-step process is proposed in this Handbook. The objective is to conclude on the existence or absence of a potential or actual material interest in common or in conflict or the impossibility to ensure that a valuer is independent (as required by Article 36(1) of Directive 2014/59/EU).
- 81 The assessment of the actual or potential material interest in common or in conflict with any relevant public authority or the relevant entity should identify and address any threats to independence such as self-review, self-interest, advocacy, familiarity, trust or intimidation.
- 82 As a high-quality process, the RAs should, at first, identify situations that may reveal the existence of a common or conflicting interest of the valuer with any relevant public authority or the relevant entity. Article 41 of Delegated Regulation (EU) 2016/1075 lists a number of parties (paragraph 3) and matters (paragraph 4) that should *at least* be considered *relevant* for

the finding of whether an interest in common or in conflict exists. The wording of those two paragraphs (by referring *at least* to certain parties and matters) suggests that the RAs may also assess the relevance of other parties or matters not expressly mentioned in these two subparagraphs if appropriate. Chapter 4.3 of this Handbook elaborates on such parties and situations.

- 83 Next, if such common or conflicting interest is established, RAs should assess its materiality, i.e., **whether it could influence, or be reasonably perceived to influence, the independent valuer's judgement in carrying out the valuation** (as per Art 41(2) Delegated Regulation 2016/1075). In assessing materiality, RAs should, as high-quality methodology, consider and/or factor any safeguards or measures set in place to mitigate the effects of the possible influence on the interest in common or in conflict on the valuer's judgement. Recital 39 of Delegated Regulation 2016/1075 indicates that safeguards should be considered in the assessment of materiality. **Therefore, the analysis of safeguards should be deemed a part of the assessment of materiality.** This means that any conclusion on the materiality of any conflict should be drawn after considering such safeguards. Chapter 5 of this Handbook elaborates on the assessment of safeguards.
- 84 As a best practice, the materiality assessment should be carried out on a case-by-case basis: the number of elements that could be considered in the assessment is potentially very large. As a best practice, RAs should consider to only assess as *material* those interests that are built upon links, relationships or circumstances, which are proven and/or tangible and which present a *significant* amount, degree, intensity or severity, therefore raising doubts on the lack of independence of the valuer. In different words, these circumstances would raise doubts on the impartiality of the judgement of the valuer, which could be compromised to an extent that the objectiveness of the valuation would be at risk.<sup>22</sup>
- 85 If at the end of this assessment and having carried out all enquires deemed necessary, the RA concludes that the candidate presents a potential or actual material interest in conflict or in common or the independency of the valuer cannot be ensured (as required by Article 36(1) of Directive 2014/59/EU), the candidate valuer should not be appointed as the valuer.

### 1.3 Identifying situations in which a material Col may arise

- 86 The identification of a potential or actual conflict of interest, on the one hand, and the assessment of materiality, on the other hand, are two separate exercises.
- 87 Article 41(4) of Delegated Regulation 2016/1075 lists three circumstances in which a situation of actual or potential material interest in common or in conflict with the relevant public authority or the relevant authority might arise, namely:

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<sup>22</sup> The standard of independence to be met by the valuer (and by the Resolution Authority carrying out the assessment) is uncertain although an interesting reference could be paragraphs 97 to 101 of the ECJ judgement in T-304/20, Molina Fernández vs SRB, where the Court seems to require the standards of impartiality expected from public authorities.

- The provision by the independent valuer of services to the relevant entity or to the persons referred to in Article 41(3) of that Regulation and, in particular, the link between those services and the elements relevant for the valuation;
  - Personal and financial relationships between the independent valuer and the relevant entity and the persons referred to in Article 41(3) of that Regulation;
  - Investments or other material financial interests of the independent valuer.
- 88 In order to perform an assessment of conflict of interest, RAs should, as a best practice, request the firms participating in the tender to provide extensive information on current or past services provided to the relevant entities or to other parties as referred to in Article 41(3) of Delegated Regulation 2016/1075 and information on personal and financial ties.
- 89 Article 41(1) of Delegated Regulation 2016/1075 states a general prohibition that ‘the independent valuer shall not have an actual or potential material interest in common or in conflict with any relevant public authority or the relevant entity’. Therefore, even if a situation does not fall under those described in subparagraphs 3 to 5 of the same Article, this does not necessarily mean a Col could not exist in accordance with the general prohibition in Article 41(1) of the said Regulation, which should, of course, be assessed by the RA.

### 1.3.1 Past provision of services that call for exclusion

- 90 As per Article 41(5) of Delegated Regulation 2016/1075, the circumstance that results in an **automatic exclusion** for the provision of independent valuer services is **the statutory auditor** when, the firm or valuer, in the year preceding the date on which the firm’s eligibility to act as independent valuer is assessed, has completed a statutory audit of the relevant entity. That provision includes two relevant reference dates, namely:
- The date on which the firm’s eligibility to act as independent valuer is assessed: as a best practice, RAs should take as a reference point the date at which the RA confirms that the firm is independent.
  - The completion date of the statutory audit: RA should, as a best practice, consider the date of the signing of the report by the auditor.
- 91 For the situations mentioned in Article 41(4) of Delegated Regulation 2016/1075 and any other situation that may amount to a potential or actual interest in common or in conflict, the RA should, as a best practice, complete an assessment on a case-by-case basis and determine if the identified conflict and potential safeguards that are proposed to be put in place are sufficient or call for an exclusion of the provision of services or not.
- 92 As a best practice, the RA should ensure in a continuous basis the independence selected valuer, as it might become conflicted after its appointment.
- 93 The information on the current statutory auditor is publicly available through national trade registers or other national registries. Such information is also available on the relevant institution’s webpages or other communications and could be captured, as a best practice, in the

resolution plan. However, the information on previous statutory auditor, who acted during the year preceding the valuer's assessment, may not remain in the publicly available records of national trade registers or other national registries after the appointment of the new auditor but could still be available from the institutions and via the resolution planning activities. Therefore, as a best practice, RA should request such information from institutions, CAs or previous resolution plans.

- 94 The information on a firm appointed to be the next statutory auditor of an institution may not be publicly available. The next statutory auditor has already been selected and informed before the beginning of the audit period. If this audit firm wishes to participate in a tender process to be appointed independent valuer, the RA can expect that such conflicting roles will then be reviewed in the firm's self-assessment. The RAs may require such information from the relevant entity when updating the resolution plan or during the tender process through the valuers' self-assessment.

### **1.3.2 Past or current provision of services with potential Col**

- 95 This chapter provides a non-exclusive list of examples of processes to assess the materiality of a potential Col. The examples are built on samples of conditions where the valuer would, in principle and subject to assessment of other circumstances of the relevant scenario, meet a sufficient or acceptable level of independence. The examples set how those services could be assessed as posing or not a material Col, by analysing the particular link between those services and the elements relevant for the valuation, as laid down by Article 41(4)(a) of Delegated Regulation 2016/1075. The chapter also analyses services entailing potential Col from the perspective of the addressee of the service, namely:
- The relevant entity;
  - Senior management and the members of the management body of the relevant entity;
  - The legal or natural persons who control or have a qualifying holding in the relevant entity;
  - The creditors identified by the appointing authority to be significant on the basis of the information available;
  - Each group entity;
  - Relevant public authorities.
- 96 With the exception of statutory audit, where a past provision of services exists, the RA should assess the materiality and relevant safeguards that can be put in place on a case-by-case basis to determine if an exclusion from the tender procedure is warranted. The fact that a firm had provided services to the relevant entity or to the persons referred to in Article 41(3) of Delegated Regulation (EU) 2016/1075 in the past should not necessarily imply the disqualification of the firm concerned. However, recital 40 of that Regulation indicates that with regard to audit (other than the ones covered by the exclusion of Article 41(5)) or valuation ser-

vices provided to the entity concerned years immediately preceding the date on which independence is to be assessed, these should also be assumed to present a material interest in common or in conflict unless it is demonstrated to the satisfaction of the appointing authority, that this is not the case having regard to all relevant circumstances, including any structural separation or other arrangements in place.

- 97 As a best practice, RAs should conduct its assessment based on the elements of the specific situation and seek the necessary information to conclude its assessment well grounded. During crisis situations, the time might be limited. Therefore, the RAs should define in advance what pieces of information and general areas of assessment would amount to a satisfactory assessment but always considering that circumstances of the crisis could lead to a change in approach. Where obtaining information to the full satisfaction of the RA is not possible, as a best practice, the firm under review should not be deemed independent.
- 98 For any kind of service being performed at the time of the assessment of CoI or having it performed in the past, as a high-quality methodology, three main elements should be considered:
- (1) if there is a link between the services provided by the valuer and the elements relevant for the valuation, i.e., the assessment of an entity's assets and liabilities;
  - (2) the risks associated with the identified links, as presented in Article 41(4)(d) of Delegated Regulation 2016/1075 (i.e., threats to independence such as self-review, self-interest, advocacy, familiarity, trust or intimidation);
  - (3) to what extent those services could influence the valuer's judgments in carrying out the valuation and therefore establish that there was an actual or potential material interest in common or in conflict with the relevant entity within the meaning of Article 41(2) of that Regulation. If the link between the services provided and valuation is strong enough it could be perceived as an actual conflict of interest.
- 99 The assessment of CoI has however also other relevant dimensions than the direct link between the services in question and elements related to valuation. The nature and scope of those services as well as the elapsed time between the provision of services and the appointment of the valuer should also be included in the overall assessment. The RAs, in general, should consider at least the following elements as driving principles of the independence assessment:
- **Scope of the services:** previous services encompassing a valuation of assets and/or liabilities of the relevant entity or other types of advisory services that could have a perceived impact on the value of the balance sheet (and/or profit and loss) items. Those services should be evaluated in connection to the resolution entity. Services provided to the buyer in case of a sale of business which are not linked to the relevant valuation of the entity in resolution might not be perceived as a material CoI provided that adequate safeguards have been implemented.

- Relevance:** RAs should determine whether the services have or could have a relevant (material) impact on the valuation of the assets or liabilities of the relevant entity or on the decision on the application of resolutions tools or on the decision to compensate shareholders and/or creditors. Past services linked to assets and liabilities or business having no material value as regards the relevant valuation to be carried out of the target entity might not constitute a conflict of interest.
- Time dimension:** the difference between the time of the provision of the services and valuation engagement date. Services linked to assets and liabilities or business that are no longer part of the relevant entity might not be deemed as posing a material risk of conflict of interest. In general, the longer the time period between when the services were provided and the time of the valuation, the less likely that such past services would amount to a material conflict of interest. This can be enhanced further by new valuation opinions or audits services having been performed since the original provision of services.

100 The below table provides a non-exhaustive list of examples where past or current provision of services that might give rise to a conflict of interest and elaborates as to whether these could, as a best practice, be automatically excluded or considered in more detail, including non-exhaustive suggestions on how mitigants could be considered in the RA’s assessment, without prejudice of any other circumstance not foreseen in the table below which, in accordance with Delegated Regulation (EU) 2016/1075, would imply the existence of a Col.

Past or current services being offered	Potential impact on the outcome of resolution authorities’ assessment
<p>1 Valuations of assets and liabilities in the context of price purchase allocation (IFRS 3), public disclosures (IFRS 7), impairment tests (IAS 36).</p>	<p>If the assets and liabilities subject to previous valuation still remain on the balance sheet of the relevant entity, the RA should consider to what extent they constitute a significant portion of the relevant entity's balance sheet and/or to what extent they could have an impact on the valuation outcome.</p> <p>The RA should also consider the distance in time when those services were performed. In general, without any other links to indicate an increase in materiality or circumstance implying an actual and current existence of the Col in accordance with Delegated Regulation (EU) 2016/1075, services provided more than 3 years ago per se could be considered as not</p>

	<p>amounting to a material threat to the independence. For services performed within the last 3 years, the RA should consider more in depth the nature and potential importance of the service and the provision of safeguards that could be put in place.</p> <p>If the previous service were of limited scope, requesting a quality assurance analysis/review by a different advisor/valuer just on those aspects covered by the previous service should be considered.</p>
<p><b>3</b> <b>Advisory services in areas with likely low material impact on an institution's failing or likely to fail or on the outcomes of the valuation.</b></p>	<p>Unlikely to be deemed as posing a material conflict of interest.</p> <p>The RA should check, in any case, that such services are not linked to the triggers of the bank's failure (e.g. IT failures that resulted in wrong booking of values).</p>
<p><b>4</b> <b>Tax matters relevant to the business operations of the relevant entity, with identified tax risks for last 5 years</b></p>	<p>If the advice was limited to tax issues, which are irrelevant and immaterial for the valuation at stake, requesting a quality assurance analysis/review by a different advisor/valuer just on those tax aspects, it is unlikely to be deemed as posing a material conflict of interest and the RA could establish that adequate safeguards could be put in place to address any remaining concerns, such as a different team performing the valuation, to an extent to deem the valuer as independent.</p>
<p><b>5</b> <i>The assistance with regard to developing in the planning phase of operational playbooks for the implementation of the resolution strategy (being it the write down and conversion power and/or the bail-in or other transfer tools).</i></p>	<p>The RA should consider when the provision of such services occurred. As a best practice, a provision of these services more than two years apart, should not per se and automatically amount to a material threat to independence. For less than two years, the RA should identify the possible risks that could be posed to the current valuation and consider adequate safeguards (such as team separation).</p>

**6 Valuation services provided to the subsidiaries of the relevant entity.**

The final decision will depend on whether the subsidiary is within the scope of the resolution action or write down and conversion of capital instruments and eligible liabilities and its materiality in terms of portion of the relevant entity's balance sheet and/or the impacted perimeter.

The RA should assess the potential risks and potential influence of the valuation outcome and if sufficient safeguards could be put in place, so the valuation is not impacted.

**7 Provision of support to competent authorities with regards to asset quality reviews, stress testing, simulation exercises, etc.**

The RA should consider if there is sufficient time between the time those services were provided and the valuation engagement date, as a first factor to determine the independence.

If the time distance alone is not considered sufficient (e.g. less than 2 years), the RA should assess the materiality of these provision of services and the safeguards that the valuer can put in place (e.g., different team, ringfenced by Chinese walls).

**A bank is failing in Member State (MS) A. The RA from MS A decides that valuation company  $\alpha$ , located in MS A, had provided services that would amount to a material conflict of interest. The RA is thus considering including in the tender process a valuer that is part of the same group as  $\alpha$ , but is located in a different MS (i.e. same franchise, but from a different country).**

In this case, the RA should, as a best practice, need to assess, in addition to the structural separation and ethical rules put in place by this valuation group, the possibility that the group would be considering its franchise value, as an interference to its objectivity, and the implications for its perceived independence.



#### **4.1.1 Investments, personal and financial relationships or other material financial interests between the valuer and the relevant entity**

101 Within the process of assessments of Col, the valuers should provide the RAs with information about personal and financial ties with the relevant entity that could be perceived as material Col. Below is a non-exhaustive list of elements that can be considered in the assessment by the RAs:

- The valuer is a creditor of the relevant entity or has taken out leasing services from the relevant entity;
- The relevant entity is an important profit contributor for the firm;
- The firm holds significant investments in assets managed by the relevant entity; and
- Transaction related services provided by a potential valuer might be connected with the financing operations of the relevant entity.

## 5. Safeguards

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### 5.1 Existing references to safeguards

102 As a best practice, RAs should conduct the assessment of the material common or conflict of interest holistically, by taking into account relevant circumstances and safeguards.

103 Article 41(4)(d) of Delegated Regulation (EU) 2016/1075 identifies as relevant some minimum safeguards in relation to legal persons, such as ‘any structural separation or other arrangements that shall be put in place to address any threats to independence’.

104 In the same vein, Delegated Regulation (EU) 2016/1075 introduces the concept of safeguards by specifying in the recital 39 that ‘if the significance of those threats to independence compared to the **safeguards** applied is such that the person’s independence is compromised, the company or partnership should not be the independent valuer’.

105 Safeguards should be understood to be those measures that could be put in place and would decrease the materiality of actual or perceived risk of a common or conflict of interest. The application of safeguards in a level and manner acceptable for the RA would lead to the conclusion that there is no material interest in common or in conflict.

106 Recital 39 of Regulation (EU) 2016/1075 gives further indications of such safeguards for the materiality assessment of interests in common or in conflict for past provision of services, other than statutory audit or valuation services, having regard **to all relevant circumstances, including any structural separation or other arrangements in place**. This might be seen as a benchmark of what safeguards could consist of.

107 Safeguards could apply in, for instance:

- a situation that generates a potentially material Col (e.g. through past provision of services) which is by virtue of a safeguard attenuated until the existence of an interest is rendered acceptable in the view of the appointing authority.
- a situation where no material Col has been identified for past or current provision of services, but safeguards may be required as pre-emptive, forward-looking measures, targeting future engagement of the valuer in relation with the relevant entity. This aspect is particularly important when the timeline for the commencement or completion of the valuation is not clear and could cover a medium term (1 -2 year) time period.

### 5.2 Practical application of safeguards

108 As already highlighted in this Handbook, in accordance with Article 36(1) of Directive 2014/59/EU, the RAs shall ensure that the appointed valuer is independent. Thus, they

should assess materiality of a common or conflict of interest when appointing an independent valuer. The RA should, as a best practice, base its decision on the information provided by the valuer, notably the self-assessment of the valuer where this is requested by the RA, and any other information the RA may hold or obtain from other sources, such as from other relevant public or competent authorities. The valuer may propose any safeguards that are deemed useful in its self-assessment or at a later stage, if a dialogue is possible between the RA and the candidate valuer. Whenever a compromise of the valuer's independence cannot be reasonably excluded, despite the provision of safeguarding measures, the candidate should not be appointed as independent valuer.

109 As a best practice, the RAs should consider the use of certain potential safeguards that could be incorporated into the assessment of materiality of any common or conflicting interest. The measures could include, without prejudice to the existing, relevant applicable legal framework, which should be respected:

- **Termination** – this measure envisages the termination of a current or future provision of services or relationship by the proposed valuer with the relevant entity. Termination may not be easy or feasible to be put in place considering that contracts with clients, or even the relevant applicable law, may envisage specific terms and conditions governing the termination of services, including notice periods, termination clauses, and potential penalties. However, as a best practice, it would be useful to assess the feasibility to implement the relevant safeguards in advance, before resolution action or power is to be exercised. Moreover, without an adequate transition there may be impacts on business operations and potential reputational damage.
- **Disconnection / Separation** – this measure implies a separation, at different levels between the persons, teams or entities that provided a service in the past or that are still providing a service and those persons and teams or entities that would provide the valuation for resolution services. Under these measures, if effective, the provision of the service could still continue while ensuring separation or disconnection between the persons and teams involved. Delegated Regulation (EU) 2016/1075 indicates that the assessment of the materiality should take into account 'structural separation and other arrangements that may be put in place to differentiate between those staff members who may be involved in the valuation and other staff members. More details on disconnection / separation are in Annex 4.
- **Restrictions** – this measure is forward-looking and implies that the valuer will not be allowed to engage in the future provision of certain services. It should be implemented if the applicable legal frameworks allow for it, as there could be some constraints depending on the type of contract, relationship and/or restriction to be imposed. This, for instance, could be implemented through a specific contractual clause in the appointment phase of the valuer.
- **Additional reviewer** – the valuer may propose to engage a conflict / quality reviewing expert who ensures any safeguards in place or acts as an additional party to review / approve the results. This could mean in practice to engage an additional valuer

and perform joint work (comparable to a joint audit). This safeguard could be applied, for example:

- for services provided in the past in order to exclude the threat to self-review (i.e. the third party would review and certify the results of the work provided by the firm, so any current valuation performed by the firm would not be seen as re-viewing its own work);
- for valuation services currently requested. In this case, the additional reviewer would be covering small parts of the business where there are some doubts on independence. In this case, the reviewer would not be in a joint venture with the main valuer and would report directly to the RA.

110 Below some illustrative (non-exhaustive) examples of cases and their possible safeguards.

These are just examples, and any actual outcome of a suitability assessment should consider the particular circumstances at stake, so no automatic and general conclusion should be drawn from the cases described in the examples. In addition, any safeguard should be adopted in fully with full respect to the applicable legal framework, namely, the resolution, tax, competition and procurement frameworks, including, of course, respect to the proportionality principle. RAs should carry out then the corresponding proportionality assessment.

#### **Example – additional reviewer**

Valuer 1 has valued the entity in a merger two years ago. In the meantime, Valuer 2 (completely independent of Valuer 1) has audited all relevant assets and performed impairment tests e.g., on goodwill.

The RA could consider that Valuer 1 is independent for the purposes of Article 36 of Directive 2014/59/EU as regards those aspects reviewed by both valuers, if Valuer 2 confirmed the work and outcome of Valuer 1, as the original valuation has been reviewed and confirmed by an independent third party.

#### **Example - termination**

A potential valuer currently provides advisory services for personal wealth management and tax to the CEO of the failing or likely to fail entity. In submitting its bid, in response to the request to tender from the RA, the firm proposes to terminate the relationship with the CEO of the failing or likely to fail entity. In addition, the firm proposes that it can put in place a separation between the team that was providing advice to the CEO and the team that will be conducting the valuation, including measures to restrict information sharing between these two teams. This, unless other circumstances not considered in the example imply the existence of a potential or actual material CoI, could appear as satisfactory safeguards are put in place to avoid material conflict of interest.

### Example - termination

A potential valuer has provided consultancy services in the domains of IT and HR to the failing or likely to fail entity. The relevant entity has not yet fully paid the resulting invoices. The RA is satisfied that the specific services provided in the past by the firm to the entity would not amount to a material common or conflict of interest. However, the RA is still in doubt whether the outstanding receivables, which are under dispute, could create a material independence issue. In this case, the potential valuer could agree to waive the amounts due and release of any further obligation of compensation from the entity for these past services provided, removing any doubts of common or conflicting interest for the RA.

### Example - restriction

The RA appoints a valuer. The valuer was in discussions with the failing or likely to fail entity to perform a future audit but did not start any work related to this task. To clarify and impede potential material conflict of interest, the RA will restrict the possibility for the valuer to perform such future audit of the failing or likely to fail entity.

### Example - Safeguard assessment against materiality

The potential valuer has performed in the past a service of valuing an NPL portfolio of a value of less than 1% of the balance sheet of the entity failing or likely to fail and where the overall portfolio losses could not by its own put the entity in a difficult situation either direct or indirectly via contagion or impacting the market confidence. Without other aggravating elements, this situation could likely not be considered as a material common or conflict of interest. However, the fact that the candidate valuer would indicate the existence of ethics rules and the separation of the team that performed the NPL valuation exercise from the one that would perform the valuation, could facilitate the conclusion that there is no material conflict of interest.

If, however, a similar service had been provided regarding a portfolio of much higher importance relative to the balance sheet, a much more thorough application of safeguards would be required to arrive at a similar conclusion.

## 5.3 Proposing and imposing safeguards

111 During the self-assessment, possible safeguards to avoid material common or conflicting interests should be considered. When safeguards (or a combination of them) are proposed to

the RA, as a best practice, the RA should assess whether the safeguards can sufficiently mitigate the risks of perceived material interests. In doing so, the RA should consider holistically all relevant aspects of the case, and the intended purpose of the valuation.

- 112 If the RA is still in doubt, whether the proposed safeguards suffice, the RA should, as a best practice, discuss the matter openly with the candidate valuer with the purpose to review and resubmit before declaring them not sufficient. The lack of a re-submission by the candidate may result in the consideration that the significance of the relevant aspect of the common or conflict of interest cannot be overcome.
- 113 In certain circumstances, the RA may consider requiring, from the valuer some specific arrangements, subject to the legal framework, including the principle of proportionality. The valuer may agree and demonstrate how these would be put in place so that the RA can conclude whether the relevant proposed safeguards are deemed to effective or not to the satisfaction of the RA. In case the safeguards are not the proper ones in the opinion of the RA and the candidate refuses to implement them in accordance with the RA's proposed amendments, the RA would likely conclude that a material conflict of interest could not be excluded, so the valuer could not be assessed as independent, as required by Article 36(1) of Directive 2014/59/EU.

## 5.4 Final considerations on safeguards

- 114 Other **mitigating aspects** may exist and could be applied in a case-specific way. Any such mitigating aspects may be proposed by the candidates to remedy the situations of material Col and should be assessed on a case-by-case basis by the RA.

## 6. Considerations at and after contract signature

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115 The Delegated Regulation (EU) 2016/1075, in recital 41, based on EBA RTS, states that following appointment of the independent valuer it is essential that the independent valuer maintains policies and procedures in accordance with the applicable codes of ethics and professional standards to identify any actual or potential interest which the valuer considers may amount to a material interest in common or in conflict. The appointing authority should be notified immediately of any actual or potential interests identified and should consider whether these amount to a material interest in which case the independent valuer's appointment should be terminated and a new valuer appointed.

116 All these requirements announced in the mentioned recital, and applicable from the signing of the valuation contract, are included as a norm in Article 41(6) of Delegated Regulation (EU) 2016/1075, which shall be complied.

117 Therefore, RAs should be in a position to assess the valuer's independence at any point in time following the signature of the specific valuation contract. To promote the operationalisation of these provisions, the following best practices may be envisaged by the RA when assessing the specific valuation contract:

- The framework or the specific valuation engagements may include provisions creating an obligation for the valuer to inform the resolution authority, without delay, of any circumstances that may pose a conflict of interest and that come to the valuer's awareness during the course of the assignment.
- That the selected valuer should put in place (and maintain throughout the valuation) measures<sup>23</sup> to preserve its independency, as the following, among others:
  - Impose via the framework or the specific valuation engagement the obligation to maintain, in particular, policies and procedures to identify any actual or potential interest which may be considered to constitute a material interest;
  - That the valuer should be in a position to provide information related to the safeguards put in place and ethics codes used. Any safeguards put in place as well as details on the teams and staff involved should be made accessible to the RA upon its request. The possibility to make the information available to the RA should cover a period that the RA indicates after the project concludes.

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<sup>23</sup> These measures are in line with those envisaged in Article 41(6) of Delegated Regulation (EU) 2016/1075.

- 118 Article 39(3) of Delegated Regulation (EU) 2016/1075 prevents the independent valuer from seeking or taking instructions or guidance from any relevant public authority or the relevant entity or accepting financial or other advantages from any relevant public authority or the relevant entity.
- 119 RAs should, as a best practice, consider and assess that the forms of support -mentioned in Article 39(4)(a) of Delegated Regulation 2016/1075-, where needed, are proportionate and necessary for achieving the goals of the valuation, and that the payment of costs and remuneration are reasonable. As regards what instructions, guidance, premises or technical equipment or support might be considered necessary, it should be a reasonable best practice to assess 'necessary'/necessity of those exchanges between the RA and the valuer when aimed at ensuring:
- i. the purpose of the valuation as well as relevant resolution scenarios,
  - ii. the adequate level of clarity, quality, consistency of the valuer's deliverables,
  - iii. the observance of the national or EU legal framework; and
  - iv. the use of technical means necessary to gather the information in the possession of the RA that is necessary for the exercise of valuation, among other situations that could fall under Article 39(4)(a) of Delegated Regulation (EU) 2016/1075.
- 120 RAs may consider as a best practice requiring from candidates a safeguard regarding independence from relevant public authorities to be included in their applications. Such safeguard should be able to operate forward-looking, as this rule of conduct needs to continue to operate throughout the valuation process in order not to affect independence.
- 121 The valuers are expected to report information when their initial independence assessments changes during the course of the project. In such cases, safeguards and ethical rules could be used to an extent that independence would be maintained.
- 122 To this end, as a best practice, the RA should request the valuer to have in place a procedure ready to be implemented in case Col materialises in during the performance of the valuations. The procedure should include an acceptable timeframe for addressing the Col, if it should arise. At the end of the performance of this procedure, the RA should be in a position to determine whether it is possible to continue cooperation with the valuer or whether other measures should be taken.
- 123 As a best practice, the RA should have in place its own procedure to deal with potential Col arising during the performance valuation. This procedure should identify responsible persons, chain of information and decision, and information needed to take a decision if the RA can continue the project with the valuer, if additional safeguards are needed or if there should be a discontinuation of the valuation process.



## 7. Other considerations on independent valuers for resolution purposes

- 124 The EU framework does not preclude the independent valuer for the valuation before resolution to be the same as the independent valuer of the valuation after resolution, neither a single valuer to perform various valuations<sup>24</sup> (e.g., so-called valuations 1 and 2<sup>25</sup>). Furthermore, Article 36(10) of Directive 2014/59/EU explicitly states that the same independent valuer can perform the ex-post definitive valuation and the valuation referred to in Article 74 of that Directive (so-called valuation 3).
- 125 Against this background, a same valuer for more than one valuations (1, 2 or 3), as a best practice, should not be seen as automatically impinging upon such valuer's independence, including in cases where the first valuation performed or to be performed by such valuer is provisional<sup>26</sup>. Assigning multiple valuations to the same pre-selected independent valuer might be seen as best practice, in the absence of evidence that in this particular case the valuer's independence would be compromised by such multiple assignments, as it could help carrying out the required expedite valuation in an effective and efficient manner. Time and resources constraints, together with the lack of enough suitable valuers could jeopardize resolution execution, being in the public interest ensuring the smooth implementation of the relevant resolution action to protect the resolution objectives. It is recommended that valuers' assignments include revocation clauses to be activated by the resolution authorities when the latter consider that independence may be compromised by multiple assignments.
- 126 Appointing the same independent valuer to perform Valuation 1 and 2 could help in the event of urgent circumstances requiring fast valuations. In the same vein, the performance of Valuation 2 and 3 by the same valuer could shorten the timeline for the performance of Valuation 3 and avoid significant delays in taking the decision as to whether shareholders and creditors would have to be compensated. Integrating different valuations into one single framework or specific contracts could allow the independent valuer to get synergies from having unique access to banks' management and data, which are key to support a robust valuation.

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<sup>24</sup> EBA Q&A 2015\_2186 confirmed that the same valuer can prepare the provisional and ex-post definitive valuation.

<sup>25</sup> Refer to the EBA HANDBOOK ON VALUATION FOR PURPOSES OF RESOLUTION for details on the so-called valuations 1, 2 and 3 and, in particular, to see their definitions and considerations - <https://www.eba.europa.eu/publications-and-media/press-releases/eba-publishes-handbook-valuation-purposes-resolution>

<sup>26</sup> Regarding this situation, the judicial cases n. cases with numbers of case: T- 330/20<sup>26</sup>, 340/20<sup>26</sup> and T-302/20<sup>26</sup>, T-303/20<sup>26</sup> and T-307/20<sup>26</sup> might be useful references, always considering that the case-law or jurisprudence could vary from time to time and might relate to particular cases with their specificities.

# Annex 1 – list of templates that could be used by RAs

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## a. Framework contract templates

- Reference template providing information on firm's qualifications, experience, ability, knowledge and resources – in format preferred by the RA;
- Price template providing the maximum hourly prices for experts' seniority to be used by the firm for all engagements under the framework contract;
- Template for any subcontractors to be used;
- Details on information security requirements required and applied by the RA (when applicable);
- Template for framework contract;
- Template for security contract (when applicable);
- Template for non-disclosure agreement;
- Template for valuation contract to be applied and finalised at the time of the tender process;
- Description of the use of personal data by the RA (to comply with the data protection rules, when applicable);
- Possible general contract terms to be applied (when applicable);
- Possible translations, if the RA wishes internationally operating services providers to attend.

## b. Documents generally expected to be provided by candidate valuation companies in cases where framework contracts are used

- Completed offer form to respond the RAs request for services;
- Completed reference document;
- Completed price document;
- Completed subcontractor document (when applicable);
- Completed ESPD documents for offeror and all subcontractor (EU templates required to be filled in when public authority is obtaining services);
- Approval to contract templates attached to the RAs request for services.

## c. Other potential templates for preparing the tender process for specific valuation services (the actual valuation engagement or contract) could include:

- Draft RAs description for services (to be finalised at the time of tender process with the case specific facts and required scope of works);
- Finalised template of the non-disclosure agreements;
- Finalised template of the valuation engagement or contract;
- Template to provide engagement specific prices per experts seniority (including info on the scoring mechanism to be applied by the RA);
- Template to provide information on the offered project team and expert's individual qualifications, experience and skills (in form instructed by the RA and including info on the scoring mechanism to be applied by the RA);

- Template to provide any other project specific information, project plan or other detail, which the RA wishes to include for the tender process (including info on the scoring mechanism to be applied by the RA).
- d. Documents generally provided by candidate valuers for the tender process**
- Offer document;
  - Completed contract specific price document;
  - Completed contract specific information on the project team to be used;
  - Completed contract specific other information (when applicable and required by the RA);
  - Relevant documents for any new subcontractor to be named for the project team;
  - Approval to the finalised contract templates.
- e. Templates covering the RA's decision on the procurement**
- The outcome/result of comparison of the received offers;
  - The decision on the appointment;
  - The decision on the refusal based on the existence of Col;
  - The instructions for complaint process (based on national administrative laws).

## Annex 2 – list of information to assess by RA in valuer’s self-assessment report

### A. Declarations

- **Declaration of Interest**, whereby the valuer confirms that:
  - it is not aware of any Col or potential Col, whether absolute or potential, which might be relevant to the performance of its functions or obligations under the stipulated agreement.
  - it will avoid any conflicts of interest or potential conflicts of interest throughout the duration of the stipulated agreements, as well for a future period after its termination, on all new engagements;
  - it will immediately inform the RA of any conflicts of interest and/or potential Col that may be identified during the engagement period and undertakes to agree with the RA on an appropriate course of action to mitigate any such conflicts;
  - in the event that a Col or potential Col is identified and the parties fail to agree on the appropriate course of action, the RA reserves the right to terminate the stipulated agreement with immediate effect upon written notice to the valuer.
  
- **Declaration of Confidentiality** whereby the valuer would:
  - confirm that it may not disclose to third parties the contents of the stipulated agreement, in whole or in part, without the prior written consent of the RA.
  - ensure that any confidential information and/or documents which come into possession of the valuer, whether verbally or in writing, in connection with the stipulated agreement shall be used solely and exclusively for the purpose of carrying out the functions and other obligations in terms of the stipulated agreements and shall be treated in the strictest confidence; confirm that upon termination of the stipulated agreement, the valuer shall, delete or return to the RA all confidential information, and delete existing copies of such confidential information unless otherwise provided by law.
  
- **Declaration on subcontracting or joint-venture**
  - The valuer should indicate the extent to which it will rely on subcontracting or if it will make use of a joint venture. In these cases, each company subcontracted or part of the joint venture should be named and identified. The process of conflict of interest should be run for each of those firms.
  
- A declaration of communication of any situation that could arise in a conflict of interest or in a possible conflict of interest.
- A declaration of non-executing any act in order to obtain any benefit related to the specific project or any act that may harm the specific project.
- A declaration of non-accepting any advantage of any of the stakeholders involved in the project in case the advantage is against the good practice of the market.
- A declaration of knowledge that NRA has the right of reviewing the above declarations and of the consequences of a possible misinformation.

**B. Direct or indirect financial or personal interest in any credit institution authorised by the RA**

- If a role is held in a credit institution or other relevant entity subject to Directive 2014/59/EU, then the following information is required:
  - Name;
  - the role held within that credit institution;
  - a brief description of the work performed in the role;
  - the dates during which the role was held;
- If there is an ownership interest, then the following information is required:
  - the nature and amount of the interest owned;
  - the duration for which the interest has been held;
  - any other relevant information.

**C. Previous or current activity regarding the relevant institution**

- Any previous or current services provided to the target institution and the link with the elements relevant for a valuation, including inter alia the scope of the services and the elapsed time since the provision of the services.

**D. Compliance with relevant legal provisions on independence**

- Delegated Regulation (EU) 2016/1075.

**E. Professional experience**

- References;
- A list of projects carried out in the last three years;
- whether the valuer has been involved in a legal dispute, both personally and professionally, that could have an adverse impact on the valuer's impartiality;
- CVs of the team to be deployed (usually senior partner coordinating the delivery of the valuation and senior team members, within 24 hours, while the rest of the team CVs are to be provided at a later stage).

**F. Valuer's transparency report****G. Insurance**

- Proper insurance to compensate potential damages in case of a lawsuit

**H. IT capabilities**

- Declaration of an appropriate IT infrastructure to carry out the valuation

## Annex 3 – information and data points in list of valuers

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When the RA will set-up and maintain list of valuers, the information contained on those lists could be covering the following aspects and data points, always with full respect to the national and EU applicable General Data Protection legal framework and the obligations therein:

### A. Natural person

#### 1. Valuer contact information

- Name
- Role
- Email
- Phone
- Office Address
- Registration number and date of registration

#### 2. Company information (if the natural person holds a direct or indirect participation in a company)

- Company name
- Registration number

#### 3. Expertise and experience

- Reference projects, including information on when the projects occurred
- Qualification or certification the valuer has obtained

### B. Company / legal person

#### 1. Company information

- Company name
- Registration number
  - date of registration
- Residence (registered office)
- Geographical presence
- Principal activities and additional activities as defined in its statutes
- the name and residence of each of its members (shareholders) with direct or indirect shareholdings

#### 2. Local branch of a foreign company

- Geographical presence
- Company information of the
- Registration number of the foreign company (parent company);

#### 3. Contact information

- Partners in charge of the valuation services
- Senior executive

- Auditor
  - Other contact person
    - o Role
  - Email
  - Phone
  - Office Address
4. **Qualification** or certification, portfolio valuer has obtained
5. **Expertise and experience**
- Information on expertise required to execute the services of an independent valuer and be party to the NRA's framework agreement
  - reference projects (for certain period, e.g. past 3 years)
    - o time (when did the projects occur)
    - o framework agreement (which framework contract was concluded)
6. **Direct or indirect participation in another legal entity**
- Company name
  - VAT
  - residence (registered office)
7. **Direct or indirect shareholders**
- Company name
  - Residence (registered office)

## Annex 4 – Examples of disconnection / separation practices

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The Annex provides some examples of several practices which could be considered or explored as best practices to address conflicts of interest through separation or disconnection, without prejudice to any assessment of independence or lack of it, which would need to be determined after a case-by-case test.

- **Personal Interest Declaration:** one of the practices is that all staff involved in the project keeps up to date and declare any personal interest or conflict that may affect the valuation, such as previous work, financial interest, or family ties with the target.
- **Information barriers:** another practice is to use information barriers to restrict access to confidential information and prevent leakage. This includes using code names, secure folders, private rooms, and clean desks policy.
- **Separate teams:** a further practice is to separate the teams that provide different services or work on different aspects of the valuation. This can involve physical separation, independent review, ring-fencing memo, or conflict management plan.
- **Independent valuation company:** a final practice is to establish an independent valuation company that is legally and economically separate from the rest of the audit or advisory services. This company must have its own resources, partners, and income sources, and must report to the national resolution authority.



## 5. Accompanying documents

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### 5.1 Draft cost-benefit analysis / impact assessment

Under the EBA Regulation, the Authority is not required to conduct open public consultations or analyse the related potential costs and benefits for Handbooks.

Still, in the development of this Handbook, to ensure that all available information is gathered in the preparation phase, the EBA has organised a roundtable with valuers. In addition, the EBA is opening the draft version of this Handbook for public consultation for a period of 2 months. The decision to have a shorter period for the public consultation is made on the basis that the previous roundtable with valuers gave them the opportunity to express their views.

The cost-benefit analysis is not necessary for Handbooks under the EBA Regulation. Considering that the Handbook is addressed only to resolution authorities and that the Handbook is proposing a non-exhaustive set of alternative best practices, examples and high-quality methodologies identified in the practice of the RAs, it was concluded that the cost benefit analysis is not required for this specific Handbook.

### 5.2 Overview of questions for consultation

1. Do you have suggestions to improving the RAs' preparatory arrangements?
2. Do you have comments on the appointment process that could enhance process?
3. Do you have suggestions to improve the assessment of independence as presented in this draft Handbook and taking into account the provisions of the RTS?
4. Do you find the examples provided in this Handbook to be meaningful (i.e. they have a high frequency of occurrence in reality)? In these examples, do you find the proposed RA's assessment to be clear and satisfactorily explained?
5. Do you find the safeguards proposed satisfactory? Are you aware of other safeguards that could be used in this process? Please detail how you would put such safeguards in place and how they would counter the instances of conflict of interest.
6. Do you have any other comments in relation to the draft Handbook and how it addresses the elements of independence as provided in the EBA RTS?