



EBA/GL/2015/04

20 May 2015

Final Draft Guidelines

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

Contents

1. Executive summary	3
2. Background and rationale	4
4. Accompanying documents	9
4.1 Cost-benefit analysis/impact assessment	9
4.2 Views of the Banking Stakeholder Group (BSG)	14
4.3 Feedback on the public consultation	15

1. Executive summary

Article 39(4) of Directive 2014/59/EU mandates the EBA to specify the factual circumstances amounting to a material threat to financial stability arising from or aggravated by the failure or likely failure of an institution under resolution and the elements where compliance with requirements to market the institution as set out in Article 39(1) of Directive 2014/59/EU would be likely to undermine the effectiveness of the sale of business tool in addressing that threat or achieving the resolution objective of avoiding significant adverse effects on financial stability.

To foster convergent practices among resolution authorities, these guidelines give guidance on these circumstances, and elements to be considered in their assessment. When assessing the impact on all market participants, which includes institutions and financial markets, including infrastructure providers as well as non-financial customers, resolution authorities should in particular consider circumstances that are relevant for the risk that marketing the institution under resolution may result in aggravating uncertainty and a loss of market confidence.

For each of the marketing requirements set out in Article 39(1), the guidelines identify elements where compliance could undermine the effectiveness of the sale of business tool. Potential conflicts between the marketing requirements and the resolution objective can, for example, arise where there is the risk that full compliance may cause additional uncertainty and a loss of market confidence or where certain potential purchasers may be more likely to ensure financial stability than others, and in general with respect to the legal and organisational feasibility, the practicability and the timely implementation of the sale.

2. Background and rationale

Directive 2014/59/EU establishes a framework of tools for the orderly resolution of failing institutions. Prior to the existence of resolution frameworks in Member States, the sale of an ailing bank has often been a way of avoiding a negative impact on financial markets and financial stability. The creation of a special resolution tool and the potential combination with other resolution tools has facilitated the application and implementation of a sale of an institution or parts of its business on the initiative of the resolution authority without the consent of shareholders.

Article 39 of the directive requires resolution authorities, when applying the sale of business tool, to make arrangements for the marketing of the institution in an open, transparent and non-discriminatory process with a view to fair competition and the general principles of the single market, while aiming to maximise, as far as possible, the sale price. However, the directive recognises that for reasons of urgency a process complying with all requirements may be impossible.

These guidelines aim to give guidance on these reasons of urgency that justify modifications to the standard sales process by specifying circumstances that amount to a material threat to financial stability arising from or aggravated by the failure or likely failure of the institution under resolution. As every financial crisis has very specific causes and challenges, the guidelines specify a non-exhaustive list of circumstances, and elements to be considered in the assessment of these circumstances. In general, resolution authorities should consider the impact on all market participants, which include institutions and financial markets including infrastructure providers and non-financial customers. Resolution authorities should in particular consider, but not limit themselves to, circumstances that are relevant for the risk that marketing the institution under resolution may result in aggravating uncertainty and a loss of market confidence, such as dysfunctional interbank lending and funding markets.

In the second part, the guidelines specify for each of the requirements specified in Article 39(1) the elements where compliance could undermine the effectiveness of the sale of business tool in addressing the threat to financial stability mentioned in the previous paragraph or achieving the resolution objective to avoid significant adverse effects on financial stability. Again, the list of elements is non-exhaustive to enable resolution authorities to decide on a case-by-case basis while giving sufficient guidance to achieve an appropriate level of convergence. Potential conflicts between the marketing requirements on the one hand, and the effectiveness of the tool and the resolution objective on the other hand, can arise, for example, where there is the risk that they may cause additional uncertainty and a loss of market confidence or where certain potential purchasers may be more likely to ensure financial stability than others. More generally speaking, these conflicts should be assessed with respect to the legal and organisational feasibility, the practicability and the timely implementation of the sale.

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

Status of these guidelines

This document contains guidelines issued pursuant to Article 16 of 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 ('the EBA Regulation'). In accordance with Article 16(3) of the EBA Regulation, competent authorities and financial institutions must make every effort to comply with the guidelines.

Guidelines set out the EBA's view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. The EBA therefore expects all competent authorities and financial institutions to whom guidelines are addressed to comply with guidelines. Competent authorities to whom guidelines apply should comply by incorporating them into their supervisory practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at institutions.

Reporting requirements

Pursuant to Article 16(3) of the EBA Regulation, competent authorities must notify the EBA as to whether they comply or intend to comply with these guidelines, or otherwise provide reasons for non-compliance, by dd.mm.yyyy. In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form provided in Section 5 to compliance@eba.europa.eu with the reference 'EBA/GL/2015/04'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities.

Notifications will be published on the EBA website, in line with Article 16(3).

Title I - Subject matter, scope and definitions

1. The guidelines specify the factual circumstances amounting to a material threat to financial stability arising from or aggravated by the failure or likely failure of an institution under resolution within the meaning of point (a) of Article 39(4) of Directive 2014/59/EU and the elements where compliance with requirements to market the institution as specified in Article 39(1) of Directive 2014/59/EU would be likely to undermine the effectiveness of the sale of business tool in addressing that threat or achieving the resolution objective specified in point (b) of Article 31(2) of Directive 2014/59/EU.
2. The guidelines apply to resolution authorities.

Title II - Circumstances amounting to a material threat to financial stability

3. When assessing whether there is a material threat to financial stability arising from or aggravated by the failure or likely failure of the institution under resolution in the context of the requirement to market the institution relating to the application of the sale of business tool, resolution authorities should consider the impact on other institutions and financial markets including infrastructure providers and non-financial institution customers. Resolution authorities should in particular consider, but not limit themselves to, factual circumstances that are relevant for the risk that marketing the institution under resolution may result in aggravating uncertainty and a loss of market confidence. These circumstances should include at least any of the following:
 - (a) the risk of a systemic crisis, as evident from the number, size or significance of institutions that are at risk of meeting the conditions for early intervention or the resolution conditions or at risk of undergoing an insolvency procedure, or as evident from public financial support to institutions or extraordinary liquidity facilities provided by central banks;
 - (b) the risk of a discontinuance of critical functions or a significant increase in prices for the provision of these functions as evident from changes in market conditions for these functions or their availability, or the expectation of counterparties and other market participants in this respect;
 - (c) the withdrawal of short-term funding or deposits;
 - (d) decreases in share prices of institutions or in prices of assets held by institutions, in particular where they can have an impact on the capital situation of institutions;
 - (e) a reduction in short or medium-term funding available to institutions;

- (f) an impairment to the functioning of the interbank funding market, as particularly apparent from an increase in margin requirements and a decrease in collateral available to institutions;
 - (g) increases in prices for credit default insurance or a decrease in ratings of institutions or other market participants that are relevant with respect to the financial situation of institutions.
4. Resolution authorities should assess the likelihood of an imminent impairment to any of these elements which could affect institutions other than the institution under resolution that are relevant with respect to the financial stability of one or more Member States based on their relevance as individuals and collectively, as appropriate.

Title III - Elements relating to the effectiveness of the sale of business tool and to financial stability

5. When assessing whether compliance with the requirements specified in Article 39(1) of Directive 2014/59/EU would be likely to undermine the effectiveness of the sale of business tool or achieving the resolution objective of avoiding significant adverse effects on financial stability, resolution authorities should consider at least the following elements:
- (a) With regard to the requirement of transparency stipulated in point (a) of Article 39(2) of Directive 2014/59/EU, the risk that marketing to a wider circle of potential purchasers and that the disclosure of risks and valuations or the identification of critical and non-critical functions in respect of the institution under resolution may result in additional uncertainty and in a loss of market confidence. In particular, preparations for the marketing process should not increase the risk that the institution may enter resolution.
 - (b) With regard to the principle of non-discrimination established by point (b) of Article 39(2) of Directive 2014/59/EU, the fact that certain potential purchasers may be more likely to ensure financial stability, in particular due to factors such as their financial or market position, their structure and business model, which may facilitate the business integration and the legal and organisational feasibility or may have positive effects on the time required for the implementation of the resolution action and the expectation that critical functions can be continued. Resolution authorities should take into account the needs and expectations of counterparties, infrastructure providers, depositors and liquidity providers and those of the wider market.
 - (c) Resolution authorities should ensure that arrangements to ascertain that parties involved in the marketing process are free from conflicts of interest as stipulated by point (c) of Article 39(2) of Directive 2014/59/EU do not impede the practicability and the timely implementation of the resolution action. Resolution authorities should take into account that, given the limited number of service providers, advisers and potential purchasers in the market, a certain risk of conflicts of interests may be inherent to the sales process.

- (d) When assessing whether advantages to potential purchasers are unfair within the meaning of point (d) of Directive 2014/59/EU, resolution authorities should take into account that the resolution objectives and the need for rapid action may justify incentivising purchasers or limiting their risk, in particular in the context of the use of the financing arrangements for these purposes as mentioned in Article 101(1) of Directive 2014/59/EU.
- (e) When aiming to maximise the sale price as required by point (f) of Directive 2014/59/EU, resolution authorities should take into account the need for rapid action, which may be in conflict with prolonged price negotiations or bidding processes, and the resolution objectives, in particular the continuance of critical functions, which may be in conflict with maximising the sale price for certain business areas. In addition, resolution authorities should take into account that certain potential purchasers may be more likely to ensure financial stability, in particular due to factors such as their financial or market position, their structure and business model.
6. When the resolution authority assesses the need to effect a rapid resolution action in accordance with point (e) of Directive 2014/59/EU, it should pay particular regard to the continuance of critical functions, the confidence of depositors and the public, the functioning of infrastructures and the trading times in relevant markets.

Title IV - Final provisions and implementation

These guidelines shall apply from 1 August 2015.

These guidelines should be reviewed by 31 July 2017.

4. Accompanying documents

4.1 Cost-benefit analysis/impact assessment

Introduction

Article 39(4) of Directive 2014/59/EU requires the EBA to develop guidelines that specify the factual circumstances amounting to a material threat and the elements relating to the effectiveness of the sale of business tool that the resolution authorities should account for when:

- there is a material threat to financial stability arising from or aggravated by the failure of likely failure of the institution under resolution; and
- the compliance with the requirements¹ would be likely to undermine the effectiveness of the sale of business tool in addressing the threat or achieving the resolution objective.

As per Article 16(2) of the EBA Regulation (Regulation (EU) No 1093/2010 of the European Parliament and of the Council), any guidelines developed by the EBA shall be accompanied by an impact assessment annex which analyses 'the potential related costs and benefits'. This annex shall provide the reader with an overview of the findings with regard to the problem identification, the options identified to rectify the problem and the potential impact of these options.

This document presents the impact assessment with cost-benefit analysis of the provisions included in the guidelines. Given the nature of the guidelines, the impact assessment is high-level and qualitative in nature.

Problem definition and the baseline scenario

The current EU regulatory framework is in the process of building a resolution mechanism whereby Member States aim to achieve an orderly winding-up of the institutions under resolution by preventing potential adverse effects of the resolution process. Directive 2014/59/EU acknowledges the possibility of adverse effects during the process and provides Member States leeway as to when they should otherwise carry out the process in line with the standard procedures.

Directive 2014/59/EU states that resolution authorities in Member States should account for potential extraordinary circumstances and waive certain standard procedures applicable to the sale of business tool when i) the circumstances can amount to a material threat to financial

¹ These are the requirements under Article 31(2) of Directive 2014/59/EU referring to the resolution objectives.

stability and jeopardise the effectiveness of the sale of business tool, and ii) the procedures are in conflict with the effectiveness of the tool. The provisions in Directive 2014/59/EU are formulated in generic terms and they do not specify: i) the circumstances that can amount to a material threat to financial stability, and ii) the nature and consequences of conflicts between the requirements to ensure a transparent sales process and the effectiveness of the sale of business tool.

The core problem that the guidelines aim to address is the lack of a harmonised approach when the resolution authorities interpret these elements for assessment. A lack of consistency and potential variations in the interpretation of these elements may lead to:

- Asymmetric information between resolution authorities. This is important in particular when the institution in question has a large cross-border dimension. To handle cross-border cases, resolution authorities may need to work in cooperation. Asymmetric information between resolution authorities and a lack of information can represent an obstacle for effective and smooth cooperation and delay the orderly resolution process.
- Spill-over effect of adverse consequences. Financial stability in several jurisdictions can be affected by a lack of timely implementation of resolution action on the part of a third jurisdiction that has a different approach.
- A lack of a level playing field for institutions in the EU, i.e. different treatment of various entities belonging to the same cross-border groups due to different supervisory/resolution practices.
- (Ex-ante) different signals to the market players, i.e. the agents such as counterparties, infrastructure providers, depositors, liquidity providers and the wider market players may have different expectations of the regulatory process. Different expectations may also turn into uncertainty when there is a cross-border dimension since the same agent may receive different signals from different resolution authorities.

Currently, none of the Member States has developed a framework to tackle these potential adverse effects of non-coordinated resolution and insolvency frameworks applicable to institutions. The baseline scenario therefore assumes that the starting point for all Member States to comply with the framework suggested in the draft guidelines is the same.

Objectives

The objective of the guidelines is to promote convergence of supervisory and resolution practices regarding the interpretation of the circumstances amounting to a material threat to financial stability, the elements relating to the effectiveness of the sale of business tool and to financial stability, and the criteria to assess the potential adverse effects of the standard liquidation of assets and liabilities on the financial markets. [Table 1](#) presents the objectives of the draft guidelines.

Table 1: Operational, specific and general objectives of the guidelines

Operational objectives	Specific objectives	General objectives
Equip competent authorities and resolution authorities with more effective, precise and accurate tools (e.g. criteria and circumstances) for handling effective resolution.	Improve the regulatory system to achieve optimal resolution practices.	Reduce the probability of systemic banking crises and mitigate threats to financial stability.
Harmonise practices in relation to resolution actions across Member States.	Improve cross-jurisdictional cooperation in relation to the resolution of cross-border institutions.	Promote the effective and efficient functioning of the internal market.

Technical options for factual circumstances amounting to a material threat to financial stability and for the elements related to the effectiveness of the sale of business tool

This section presents the major technical options discussed during the preparation of the draft guidelines and presents qualitatively the potential costs and benefits associated with the preferred options.

a. Technical options related to the scope of ‘material threat’

Option 1a: The concept of ‘material threat’ is defined in a way corresponding to the public interest test provided for in Article 32(1)(c) and 32(5) of Directive 2014/59/EU (while making additional and more detailed specifications with a view to the focus on financial stability and the objective to ensure convergent practices).

Option 1b: The concept of ‘material threat’ is defined to set a higher threshold of risk for financial stability compared to the public interest test provided for in Article 32(1c) and 32(5) of Directive 2014/59/EU.

The assessment of the options considers whether the term ‘material threat’ should be defined corresponding to the public interest test or should set criteria higher than the public interest test, i.e. circumstances that may represent a more severe threat to the resolution objectives than required in Article 32(1)(c) and 32(5) of Directive 2014/59/EU. Precisely, Article 32(1)(c) and 32(5) of Directive 2014/59/EU state that a resolution action is necessary in the public interest (32(1)(c)) and a resolution action shall be treated as in the public interest if it is necessary for the achievement of and is proportionate to one or more of the resolution objectives referred to in Article 31 of Directive 2014/59/EU, and winding up the institution under normal insolvency proceedings would not meet those resolution objectives to the same extent (32(5)). Option 1a does not identify the risk level beyond the limits of Article 32(1)(c) and 32(5).

Option 1b suggests that the definition and the criteria that the resolution authorities should assess to apply an exemption in the standard resolution proceedings should apply under tighter conditions than Article 32(1)(c) and 32(5). For the material threat, the option assumes a risk level

higher than for the significant adverse effects under the public interest test (Article 32(1)(c) and 32(5)). In other words, the option ensures that only a material threat that generates a risk level higher than the risk required for the standard conditions for entering into resolution can justify the exceptions to standard rules.

Option 1a is the preferred option because the context of the two conditions of Article 39(4)(a) and (b) implies that they should focus on the resolution objective of financial stability, whereas there is no evidence that they require a higher risk level. It is reasonable to argue that defining a risk level beyond the objectives of Directive 2014/59/EU would be in conflict with the objective of Article 39 of ensuring the effectiveness of the sale of business tool. Therefore, at this stage there is no discernible added value for providing a definition of material threat beyond Article 32(1)(c) and 32(5) of Directive 2014/59/EU.

However, within Option 1a the definition of material threat is reflected in the draft guidelines with a focus on financial stability, and therefore is consistent with and complements the rest of the EBA mandate specified in Article 39(3b).

Since the draft guidelines address resolution authorities only, the costs, if any, that the draft guidelines might generate will fall on the resolution authorities only. The costs related to the incorporation of the criteria into national practice are expected to be negligible because the guidelines do not imply additional operational and administrative costs beyond the transposition of the Level 1 text.

During the implementation of the process, the resolution authorities have a short period of time (e.g. one to seven days) to carry out the procedures. It is not possible to quantify the costs associated with this intervention since it largely depends on the magnitude and the conditions of that particular case. In any event, again there are no apparent additional costs beyond those required by the Level 1 text.

A wider group of agents is expected to benefit from the policy intervention. In terms of the benefits, a more precise and harmonised regulatory framework is expected to tackle the identified problems and ensure the effectiveness of the resolution. Resolution authorities are expected to benefit from symmetric information and more effective and efficient cooperation across jurisdictions. This then decreases the probability of systemic risk and bank failure-related risk to the public.

b. Technical options related to the circumstances and elements

Option 2a: Exhaustive list of circumstances for the assessment of the material threat to financial stability, and of the elements related to the effectiveness of the sale business tool.

Option 2b: Non-exhaustive/indicative list of circumstances for the assessment of the material threat to financial stability, and of the elements related to the effectiveness of the sale business tool.

The assessment discusses whether the draft guidelines should include an exhaustive (Option 2a) or an indicative (Option 2b) list of circumstances and elements for the assessment of the material threat to financial stability and to the effectiveness of the sale business tool.

The preferred option in this assessment is Option 2b, for two reasons:

- There are great variations across cases that the resolution authorities will potentially handle. These variations arise from the nature, scale and intensity of the crisis and the affected markets, and the characteristics particular to the institution, e.g. size, interconnectedness, business model.
- An exhaustive list is very static and may incur higher opportunity and administrative costs: i) in a case of urgency, there may be other relevant criteria that the resolution authorities need to look at that are not included in the exhaustive list, and ii) as further experience reveals other circumstances the regulatory framework needs to be updated on a regular basis.

Option 2a provides a static and inflexible framework for the resolution authorities to rely on in the case of a resolution.

The draft guidelines suggest an indicative set of circumstances that are relevant for the risk that marketing the institution under resolution may result in aggravating uncertainty and a loss in market confidence. These circumstances reflect the specific market situation and permit authorities to take into account the importance of the institution in terms of its size, market share and impact on the rest of the banking sector, i.e. on lending and market price.

Similarly, the draft guidelines introduce a set of minimum elements for the resolution authorities to assess whether the implementation of the sale of business tool under the full set of standard rules of the market economy as stated under Article 39 (e.g. fairness, competitiveness and transparency) jeopardises the resolution objectives and whether exemptions should be applied. The list of elements accounts for potential scenarios where the required procedures may aggravate the crisis situation and threaten financial stability.

Option 2a is expected to be more expensive for both the resolution authorities (higher administrative cost) and the public/tax payers (higher opportunity cost and higher risk). Costs associated with the implementation of Option 2b are not expected to go beyond the work that the resolution authorities need to carry out under the Level 1 text.

In terms of benefits, a more precise and harmonised regulatory framework is expected to tackle the identified problems. Resolution authorities are expected to benefit from symmetric information and more effective and efficient cooperation across jurisdictions. This then decreases the probability of the systemic risk and bank failure-related risk to the public.

4.2 Views of the Banking Stakeholder Group (BSG)

The BSG supported the overarching objective of the guidelines, which is to establish a framework on the use and application of the resolution tools, and expressed the expectation that they will provide for the convergence of supervisory and resolution practice in the implementation of these tools by ensuring consistent and high regulatory standards in this area and a level playing field across the EU. The BSG pointed out that it is fundamental to consider the impact of the guidelines on other institutions and financial markets, including infrastructure providers and non-financial institution customers, and also the circumstances that are relevant for the risk that marketing the institution under resolution presents in terms of aggravating uncertainty and a loss of market confidence that could disturb financial stability.

The BSG also agreed with the guidelines that it is necessary to look for an optimal balance between competitive, transparent and 'fair' market conditions and the increased efficiency (lower value and terms) of the sale and considered the guidelines to be sufficiently comprehensive and detailed, and the BSG does not have any particular concerns about the conflicts between marketing requirements and the sale of business tool.

The BSG welcomed common and harmonised indicators are established among the different Member States to guarantee a level playing field in the application of the sale of business tool. Nevertheless, it pointed out that each sale of business tool is different and should be allowed some leeway, in particular with respect to the circumstances that determine prices and market conditions.

The BSG also approved of elements that enable authorities to choose the best buyer and to use the resolution financing arrangement to facilitate the sale of a business, which could limit the tail risk and generate value for the tax payers.

4.3 Feedback on the public consultation

The EBA publicly consulted on the draft proposal contained in this paper.

The consultation period lasted for three months and ended on 22 December 2014. Three responses were received, of which one was published on the EBA website.

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

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

Summary of key issues and the EBA's response

One respondent raised concerns about the option to incentivise or to limit their risk as mentioned in paragraph 5(d) of the draft guidelines. While the respondent agreed that it is necessary to look for an optimal balance between competitive, transparent and 'fair' market conditions and the increased efficiency of the sale of business, it considered that allowing the use of the resolution fund to facilitate the sale of a business could generate several doubts about bank competition, as healthy entities would essentially be subsidising that business for the benefit of the acquiring bank.

Additionally, the respondent doubted whether allowing the use of resolution funds (e.g. guarantees that limit risks) to make the sale of the business more attractive and quick could impair the minimum requirement of eligible liabilities (MREL).

EBA response:

The option to use the financing arrangements to guarantee assets or liabilities, to provide loans or to make contributions with respect to the purchaser in the context of the sale of business tools is explicitly provided for in Article 101 of Directive 2014/59/EU. The provision of guarantees to purchasers is explicitly mentioned in Recital (103). Any such use would, however, be subject to the Union state aid rules and to any further constraints in the Directive such as Article 44(3) to (8). The MREL is a legal obligation of any institution, the amount of which is to be determined by the resolution authority in accordance with Article 45. Against this backdrop, mentioning the option of incentivising purchasers seems legitimate, and the EBA does not agree with the concerns raised.

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

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Responses to questions in Consultation Paper EBA/CP/2014/24			
<p>Question 1</p> <p>Should the elements listed above be further specified by any qualitative or quantitative indicators, in particular with respect to the development of prices or market conditions as factors evidencing a material threat to financial stability, to ensure convergent practices?</p> <p>Are there further relevant elements which should be included?</p>	<p>Given the complexities and differences between entities and markets, one respondent was of the view that the list of elements as stated in the Consultation Paper will provide sufficient guidance when making the assessment. Any further qualitative and quantitative indicators may potentially further complicate the situation. The respondent further pointed out that any such assessment would best be made in close consultation with the crisis management group (CMG) and the entity involved. While it could be said to be implied in (a) in the list of elements, it may be worth explicitly mentioning that the public opinion of any deployment of the resolution tool should be considered as any adverse public reaction may further exacerbate the stress on the system.</p>	<p>As mentioned by the respondent, the issue of reactions of the public to the marketing of an institution is considered in paragraph 5(a). Mentioning the public opinion would be too unspecific.</p>	<p>No amendment.</p>
<p>Question 2</p> <p>Are there further potential conflicts between the marketing requirement and the effectiveness of the sale of business tool?</p>	<p>One respondent stated that it did not foresee further potential conflicts but pointed out that timeliness and confidentiality could play a key role in the effectiveness of the resolution tool so resolution authorities should give particular consideration to these two factors when making this assessment.</p>	<p>Timeliness of resolution action and confidentiality are reflected throughout the guidelines.</p>	<p>No amendment.</p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
<p>Question 3 How could the exercise of judgment by resolution authorities be constrained to ensure convergence in practices in assessing these conflicts?</p>	<p>One respondent expressed the view that the current guidelines are sufficient to ensure consistency in considerations amongst different regulators. Given the complexities involved in a potential resolution scenario, in the view of the respondent further binding requirements are not required but rather swift discussions and agreement within the CMG, taking into consideration prior and relevant resolution situations (if any) will be sufficient to ensure the required level of consistency.</p>	<p>The arrangements for resolution colleges in the directive are made with a view to swift decision-making while establishing appropriate safeguards for the public interests concerned. In the view of the EBA, the guidelines are in line with the balance established in the directive and support swift decision-making by setting harmonised rules.</p>	<p>No amendment.</p>

5. Confirmation of compliance with guidelines and recommendations

Date:

Member/EEA State:

Competent authority

Guidelines/recommendations:

Name:

Position:

Telephone number:

E-mail address:

I am authorised to confirm compliance with the guidelines/recommendations on behalf of my competent authority: Yes

The competent authority complies or intends to comply with the guidelines and recommendations: Yes No Partial compliance

My competent authority does not, and does not intend to, comply with the guidelines and recommendations for the following reasons²:

Details of the partial compliance and reasoning:

Please send this notification to compliance@eba.europa.eu³

² In cases of partial compliance, please include the extent of compliance and of non-compliance and provide the reasons for non-compliance for the respective subject matter areas.

³ Please note that other methods of communication of this confirmation of compliance, such as communication to a different e-mail address from the above, or by e-mail that does not contain the required form, shall not be accepted as valid.

