

**COMMISSION DELEGATED REGULATION (EU) 2018/345****of 14 November 2017****supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria relating to the methodology for assessing the value of assets and liabilities of institutions or entities****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 on establishing a framework for the recovery and resolution of credit institutions and investment firms <sup>(1)</sup>, and in particular Article 36(15) thereof,

Whereas:

- (1) In a resolution scenario it is important to distinguish between, on the one hand, an initial valuation assessing whether the conditions for the write-down and conversion of capital instruments or the condition for resolution have been met, and, on the other hand, a subsequent valuation forming the basis for the decision to apply one or more resolution tools. In relation to the initial valuation, it is appropriate to ensure that when determining whether the conditions for resolution or for the write-down or conversion of capital instruments are met, a fair and realistic valuation of the entity's assets and liabilities is conducted. For purposes of the subsequent valuation informing the decision on the resolution actions, it is important to ensure that the valuation of the assets and liabilities of the entity, which determines the choice of the resolution action and the extent of any potential write-down or conversion of capital instruments at the point of non-viability, is based on fair, prudent and realistic assumptions.
- (2) To ensure that that valuation is fair, prudent and realistic, it is important that it estimates the impact of events prior to any resolution action or prior to the exercise of the power to write-down or convert capital instruments at the point of non-viability, as well as of different actions that might be taken by the resolution authority.
- (3) The valuer should have access to any sources of relevant information and expertise, such as the internal records, systems, and models of the institution. The ability of internal capabilities and systems to support resolution valuations should be assessed by the resolution authority as part of the resolvability assessment pursuant to Article 15 of Directive 2014/59/EU. The valuer should as well be allowed to enter into arrangements for specialist advice or expertise. Availability of specialist advice or expertise might be relevant, for instance, for preparing an estimate of the difference in treatment pursuant to Article 36(8) of Directive 2014/59/EU. The resolution authority should therefore be satisfied that the valuer has access to either a list of all claims including contingent claims held against the entity and classified according to their rights and priority under normal insolvency proceedings, or to adequate legal expertise for the preparation of such list.
- (4) The determination of whether an entity is failing or likely to fail may be carried out either by the competent authority or by the resolution authority in accordance with the conditions set out in Article 32(1)(a) of Directive 2014/59/EU. For purposes of determining whether an institution is failing or likely to fail, the competent authority should consider the valuation provided for in Chapter II of this Regulation, where already available and should take into account the guidelines issued by the European Banking Authority (EBA) pursuant to Article 32(6) of Directive 2014/59/EU which aim at promoting convergence of practices in relation to the determination of such resolution condition.
- (5) Valuations for the purposes of informing the determination by the competent or the resolution authority whether the conditions for resolution or for write-down or conversion of capital instruments are met should be consistent with the applicable accounting and prudential regulatory framework. The valuer, however, should be able to depart from assumptions made by the entity's management under which the financial statements are

<sup>(1)</sup> OJ L 173, 12.6.2014, p. 190.

prepared to the extent such departure is consistent with the applicable accounting and prudential regulatory framework. When departing from those assumptions, the valuation should be supported by the best available information and be consistent with existing supervisory guidance or other generally recognised sources of interpretation of accounting standards, so as to provide a fair and realistic representation of the entity's financial position.

- (6) It is appropriate to have rules that ensure that valuations for the purposes of informing the choice and design of resolution actions or the extent of write-down and conversion of capital instruments at point of non-viability are fair, prudent and realistic, to ensure that all losses are fully recognised at the moment the resolution tools are applied or the power to write-down or convert relevant capital instruments is exercised. The choice of the most appropriate measurement basis (the hold value or the disposal value) should be made for the particular resolution actions being considered by the resolution authority.
- (7) It is appropriate that valuations for the purposes of informing the choice and design of resolution actions or the extent of the write-down and conversion of capital instruments at the point of non-viability assess the economic value and not the accounting value. Those valuations should consider the present value of cash flows that the entity can reasonably expect, even where this requires departing from accounting or prudential valuation frameworks.
- (8) Valuations for the purposes of informing the choice and the design of resolution actions should reflect that cash flows may arise from continuing to hold the assets, yet should take into account the potential effects of the resolution on future cash flows and fair, prudent and realistic assumptions as to rates of default and severity of losses. Furthermore, to determine the post-conversion equity value of shares, the valuer should be able to take into account reasonable expectations for franchise value.
- (9) Alternatively, where the entity lacks the ability to hold the assets or their disposal is considered necessary or appropriate to achieve the resolution objectives, the valuation should reflect that those cash flows may arise from the disposal of assets, liabilities or business lines, assessed over a defined disposal period.
- (10) The disposal value should generally be understood as equivalent to the observable market price that could be obtained on the market for a particular asset or group of assets and may reflect a discount that is appropriate in view of the amount of assets being transferred. However, the valuer should be able where appropriate having regard to the actions to be taken under the resolution scheme, to determine the disposal value by applying a reduction to such observable market price for a potential accelerated sale discount. Where the assets do not have a liquid market, the disposal value should be determined by reference to the observable prices on markets where similar assets are traded or to model calculations using observable market parameters with discounts for illiquidity reflected as appropriate. Where the sale of business or the use of the bridge institution tool are contemplated, reasonable expectations for franchise value may be taken into account when determining the disposal value.
- (11) For purposes of ensuring consistency between the calculation, required by Article 36(8) of Directive 2014/59/EU, of the estimate of the treatment that shareholders and each class of creditors would have been expected to receive had the institution or entity been wound-up under normal insolvency proceedings, and the valuation following resolution pursuant to Article 74 of that Directive, it is important that the valuer use the criteria set out for that valuation when appropriate.
- (12) A provisional valuation pursuant to Article 36(9) of Directive 2014/59/EU forming the basis of the decision on the taking of the appropriate resolution action should include a buffer aimed at approximating the amount of additional losses. That buffer should be based on a fair, prudent, and realistic assessment of those additional losses. The decisions and assumptions supporting the calculation of the buffer should be adequately explained and justified in the valuation report.
- (13) For the valuation referred to in points (a) and (c) of Article 36(15) of Directive 2014/59/EU, the valuer should explain and justify key assumptions, uncertainties, and the sensitivity of the valuation to such key assumptions and uncertainties. Significant differences between assumptions used in the valuation and those underlying accounting or regulatory information, where known to the valuer, should be included in the valuation report. In that report the valuer should also record any additional related information which in the valuer's opinion would assist the resolution authority.

- (14) The criteria laid down in this Regulation should be exclusively set out for conducting the valuations under Article 36 of Directive 2014/59/EU. They should not replace or amend accounting principles and standards or the prudential regulatory framework that apply to entities in contexts other than resolution. It should however be possible to use the information resulting from the valuation to identify potential misapplications by the entity of accounting standards or of the prudential regulatory framework, or to determine changes in the entity's accounting policies or in the assumptions or judgements driving the measurement of assets and liabilities. Those circumstances, for instance, should be taken into account for the preparation of the updated balance sheet pursuant to Article 36(6) of Directive 2014/59/EU. For that purpose the valuer should provide an adequate explanation of the differences between the existing and the updated balance sheets.
- (15) This Regulation is based on the draft regulatory technical standards submitted by the EBA to the Commission.
- (16) EBA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council <sup>(1)</sup>,

HAS ADOPTED THIS REGULATION:

#### CHAPTER I

#### GENERAL PROVISIONS

#### Article 1

#### Definitions

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

- (a) 'valuation' means either the assessment of an entity's assets and liabilities conducted by a valuer pursuant to Article 36(1) of Directive 2014/59/EU, or the provisional valuation conducted by the resolution authority or the valuer, as the case may be, pursuant respectively to paragraphs (2) and (9) of Article 36 of that Directive.
- (b) 'valuer' means either the independent valuer within the meaning of Article 38 of Commission Delegated Regulation (EU) 2016/1075 <sup>(2)</sup> or the resolution authority when conducting a provisional valuation pursuant to paragraphs (2) and (9) of Article 36 of Directive 2014/59/EU.
- (c) 'entity' means an institution or an entity as referred to in points (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU.
- (d) 'fair value' means the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the valuation date, as defined in the relevant accounting framework.
- (e) 'hold value' means the present value, discounted at an appropriate rate, of cash flows that the entity can reasonably expect under fair, prudent and realistic assumptions from retaining particular assets and liabilities, considering factors affecting customer or counterparty behaviour or other valuation parameters in the context of resolution.
- (f) 'disposal value' means the measurement basis referred to in Article 12(5).

<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).

<sup>(2)</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).

- (g) 'franchise value' means the net present value of cash flows that can reasonably be expected to result from the maintenance and renewal of assets and liabilities or businesses and includes the impact of any business opportunities, as relevant, including those stemming from the different resolution actions that are assessed by the valuer. Franchise value may be higher or lower than the value arising from the contractual terms and conditions of assets and liabilities existing at the valuation date.
- (h) 'equity value' means an estimated market price, for transferred or issued shares, that results from the application of generally accepted valuation methodologies. Depending on the nature of the assets or business, equity value may comprise franchise value.
- (i) 'measurement basis' means the approach for determining the monetary amounts at which assets or liabilities are presented by the valuer.
- (j) 'resolution date' means the date on which the decision to resolve an entity is adopted, pursuant to Article 82 of Directive 2014/59/EU.

#### Article 2

##### General criteria

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

When calculating the estimates pursuant to points (a) and (b) of the first subparagraph, the valuer may apply the criteria set out in Article 4 of Commission Delegated Regulation (EU) 2018/344 of 14 November 2017 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria relating to the methodologies for valuation of difference in treatment in resolution as appropriate.

6. Where appropriate and feasible, taking into account timing and credibility of the valuation, the resolution authority may request several valuations. In that case, the resolution authority shall establish the criteria to determine how these valuations shall be used for the purposes set out in Article 36 of Directive 2014/59/EU.

#### Article 3

##### Valuation date

The valuation date shall be one of the following dates:

- (a) the reference date as determined by the valuer on the basis of the date as close as possible before the expected date of a decision by the resolution authority to put the entity in resolution or to exercise the power to write-down or to convert capital instruments;

- (b) where an *ex post* definitive valuation required by Article 36(10) of Directive 2014/59/EU is conducted, the resolution date;
- (c) in relation to liabilities arising from derivative contracts, the point in time determined pursuant to Article 8 of Commission Delegated Regulation (EU) 2016/1401 <sup>(1)</sup>.

#### Article 4

##### Sources of information

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

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

#### Article 5

##### Impact of group arrangements

1. Where the entity forms part of a group, the valuer shall take into account the impact that existing contractual intra-group support arrangements can have on the value of the assets and liabilities where, on the basis of the circumstances, it is probable that those arrangements will be put into effect.
2. The valuer shall only take into account the impact of other formal or informal arrangements within the group where, on the basis of the circumstances, it is probable that those arrangements shall remain in place in the context of a group's stressed financial condition or in resolution.
3. The valuer shall determine whether the resources of an entity within the group are available to meet losses of other group entities.

#### Article 6

##### Valuation report

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

- (a) except as provided in Article 36(9) of Directive 2014/59/EU, the information referred to in points (a) to (c) of Article 36(6) of that Directive;
- (b) except as provided in Article 36(9) of Directive 2014/59/EU, the information referred to in Article 36(8) of Directive 2014/59/EU;

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<sup>(1)</sup> Commission Delegated Regulation (EU) 2016/1401 of 23 May 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms with regard to regulatory technical standards for methodologies and principles on the valuation of liabilities arising from derivatives (OJ L 228, 23.8.2016, p. 7).

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

## CHAPTER II

### CRITERIA FOR THE VALUATION FOR THE PURPOSE OF ARTICLE 36(4)(a)

#### *Article 7*

#### **General principles**

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

#### *Article 8*

#### **Areas requiring particular attention in the valuation**

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

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

*Article 9***Factors affecting the valuation**

1. The valuer shall take into account general factors that may affect the key assumptions on which the values of assets and liabilities in the areas referred to in Article 8 are based, including the following factors:

- (a) the economic and industry circumstances affecting the entity, including relevant market developments;
- (b) the entity's business model and changes in its strategy;
- (c) the entity's asset selection criteria, including loan underwriting policies;
- (d) circumstances and practices that are likely to lead to payment shocks;
- (e) circumstances affecting the parameters used to determine risk weighted assets for the calculation of minimum capital requirements;
- (f) the impact of the entity's financial structure on the capacity of the entity to retain assets for the expected holding period and the entity's ability to generate predictable cash flows;
- (g) general or entity-specific liquidity or funding concerns.

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

## CHAPTER III

**CRITERIA FOR THE VALUATION FOR THE PURPOSE OF ARTICLE 36(4)(b), (c), (d), (e), (f), (g) AND OF ARTICLE 36(9), SECOND SUBPARAGRAPH***Article 10***General principles**

1. The valuer shall assess the impact on the valuation of each resolution action that the resolution authority may adopt to inform the decisions referred to in points (b) to (g) of Article 36(4) of Directive 2014/59/EU. Without prejudice to the valuer's independence, the resolution authority may consult with the valuer in order to identify the range of resolution actions being considered by that authority, including actions contained in the resolution plan or, if different, any proposed resolution scheme.

2. To ensure a fair, prudent and realistic valuation, the valuer shall, where appropriate and in consultation with the resolution authority, present separate valuations that reflect the impact of a sufficiently diverse range of resolution actions.

3. The valuer shall ensure that when the resolution tools are applied or when the power to write-down or convert relevant capital instruments is exercised, any losses on the assets of the entity are fully recognised under scenarios that are relevant to the ranges of resolution actions being considered.

4. Where the values of the valuation diverge significantly from the values presented by the entity in the financial statements, the valuer shall use the assumptions of that valuation, to inform the adjustments to the assumptions and to the accounting policies necessary for the preparation of the updated balance sheet required under Article 36(6) of Directive 2014/59/EU, in a way consistent with the applicable accounting framework. As regards losses identified by the valuer which cannot be recognised in the updated balance sheet, the valuer shall specify the amount, describe the reasons underlying the determination of the losses and the likelihood and time horizon of their occurrence.

5. Where capital instruments or other liabilities are converted to equity, a valuation shall provide an estimate of the post-conversion equity value of new shares transferred or issued as consideration to holders of converted capital instruments or other creditors. That estimate shall form the basis for the determination of the conversion rate or rates pursuant to Article 50 of Directive 2014/59/EU.

*Article 11***Selection of the measurement basis**

1. In selecting the most appropriate measurement basis or bases, the valuer shall take into account the range of resolution actions to be examined according to Article 10(1).
2. The valuer shall determine the cash flows that the entity can expect on the basis of fair, prudent and realistic assumptions from existing assets and liabilities following adoption of the examined resolution action or actions, discounted at an appropriate rate as determined in accordance with paragraph 6.
3. Cash flows shall be determined at the appropriate level of aggregation, ranging from individual assets and liabilities to portfolios or businesses, with due consideration to differences in the risk profiles.
4. Where the resolution actions referred to in Article 10(1) require that assets and liabilities are to be retained by an entity that continues to be a going concern institution, the valuer shall use the hold value as the appropriate measurement basis. The hold value may, if considered fair, prudent and realistic, anticipate a normalisation of market conditions.

The hold value shall not be used as the measurement basis where assets are transferred to an asset management vehicle pursuant to Article 42 of Directive 2014/59/EU or to a bridge institution pursuant to Article 40 of that Directive, or where a sale of business tool pursuant to Article 38 of Directive 2014/59/EU is used.

5. Where the resolution actions referred to in Article 10(1) envisage the sale of assets the expected cash flows shall correspond to the disposal values envisaged for the expected disposal horizon.
6. The discount rates shall be determined having regard to the timing of cash flows, risk profile, financing costs and market conditions as appropriate to the asset or liability being measured, the disposal strategy considered and the entity's post-resolution financial position.

*Article 12***Specific factors relating to the estimation and discounting of expected cash flows**

1. For the purpose of estimating cash flows, the valuer shall apply their expert judgement in determining key characteristics of the assets or liabilities being measured. The valuer shall also apply their expert judgement in determining how the continuation, potential renewal or refinancing, run-off or disposal of those assets or liabilities, as envisaged in the examined resolution action, affect those cash flows.
2. Where the resolution action envisages an entity holding an asset, maintaining a liability, or continuing a business, the valuer may take into account factors potentially affecting future cash flows, including the following:
  - (a) changes in assumptions or expectations, as compared to those prevailing as of the valuation date, consistent with long-term historical trends and a reasonable horizon consistent with the contemplated holding period of assets or for the recovery of the entity; or
  - (b) additional or alternative valuation bases or methodologies that are considered appropriate by the valuer and consistent with this Regulation, including in the context of assessing the post-conversion equity value of shares.
3. As regards groups of assets and liabilities or businesses envisaged to be run off, the valuer shall take into account workout costs and benefits.
4. Where an entity's situation prevents it from holding an asset or continuing a business, or where the sale is otherwise considered necessary by the resolution authority to achieve the resolution objectives, the expected cash flows shall be referenced to disposal values expected within a given disposal period.

5. The disposal value shall be determined by the valuer on the basis of the cash flows, net of disposal costs and net of the expected value of any guarantees given, that the entity can reasonably expect in the currently prevailing market conditions through an orderly sale or transfer of assets or liabilities. Where appropriate, having regard to the actions to be taken under the resolution scheme, the valuer may determine the disposal value by applying a reduction for a potential accelerated sale discount to the observable market price of that sale or transfer. To determine the disposal value of assets which do not have a liquid market, the valuer shall consider observable prices on markets where similar assets are traded or model calculations using observable market parameters, with discounts for illiquidity reflected as appropriate.

6. The valuer shall have regard to factors that might affect disposal values and disposal periods, including the following:

- (a) the disposal values and disposal periods observed in similar transactions, adequately adjusted to take into account differences in the business model and in the financial structure of the parties to those transactions;
- (b) advantages or disadvantages of a particular transaction that are specific to the parties involved or to a subset of market participants;
- (c) particular attributes of an asset or business that may only be relevant to a potential purchaser, or to a subset of market participants;
- (d) the likely impact of expected sales on the entity's franchise value.

7. When assessing the value of businesses for purposes of the use of the sale of business or of the bridge institution tool, the valuer may take into account reasonable expectations for franchise value. Such expectation for franchise value shall include that resulting from a renewal of assets, from a refinancing of an open portfolio, or from a continuation or resumption of business in the context of the resolution actions.

8. A valuer assessing that no realistic prospect for the disposal of an asset or business can reasonably be expected, shall not be required to determine the disposal value, but shall estimate the related cash flows on the basis of the relevant prospects for continuation or run-off. This provision shall not apply to the asset separation tool or to the sale of business tool.

9. For parts of a group of assets or of a business that are likely to be liquidated under ordinary insolvency procedures, the valuer may consider the disposal values and disposal periods observed in auctions involving assets of a similar nature and condition. The determination of expected cash flows shall take into account illiquidity, the absence of reliable inputs for the determination of disposal values, and the resulting need to rely on valuation methodologies based on unobservable inputs.

#### Article 13

##### **Methodology for calculating and including a buffer for additional losses**

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

#### Article 14

##### **Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

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This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 14 November 2017.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

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