

## **FMA Guidelines 2024/2 – Provision of data for resolution purposes**

Minimum requirements for provision of data for resolution purposes

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## 1. Background and purpose

In its role as resolution authority under Title II, Chapter B of the Liechtenstein Act of 4 November 2016 on the Recovery and Resolution of Banks and Investment Firms (SAG; *Sanierungs- und Abwicklungsgesetz – SAG*), the FMA is obliged to assess and ensure the resolvability of banks and other specified entities. In doing so, the resolution authority assesses, among other things, whether the resolution strategies documented in the resolution plan are feasible and whether there are potential impediments to resolution (Article 23(1)(c) in conjunction with Articles 26 to 31 of Commission Delegated Regulation (EU) 2016/1075<sup>1</sup>).

A key condition for the resolvability of an entity is the effective establishment of an internal management information system (MIS). The minimum requirements for the MIS can be found in the EBA resolution guidelines (EBA/GL/2022/01).<sup>2</sup> In particular, MIS shall be capable at all times, including in crisis or resolution situations, of providing the resolution authority with the information necessary for the effective resolution of the entity and/or a group entity in a standardised, rapid, high-quality, ad hoc manner (Article 29(1) of Commission Delegated Regulation (EU) 2016/1075 in conjunction with Annex 3 No. 9 SAG).

An effective MIS ensures consistency of the available information with other internal and external reporting (accounting, reporting system, disclosure) as well as compliance with other statutory information requirements, e.g. service catalogues and the maintenance of a list in accordance with the minimum requirements set out in the Annex to Commission Delegated Regulation (EU) 2016/1712 (information on financial contracts).

An MIS is presumed to be effective, for example, only if the entity maintains sufficient technical and human resources and implements appropriate internal procedures that are fully documented and regularly reviewed. This also includes procedures for the activation and operation of a virtual data room (VDR), internal entity valuation models for immediate revaluation, as well as a specific regulation or manual on information provision. The internal procedures must also be able to assess the (projected) direct and indirect costs of the resolution strategies (additional advisory and tax costs, labour- and social law consequences), including the (counterfactual) liquidation perspective (insolvency costs). An MIS takes account of internal and external dependencies (e.g. outsourcing arrangements) but must remain sufficiently flexible in order to obtain further necessary data within a reasonable period of time, e.g. level 2 data of key subsidiaries.

The information to be provided includes, at a minimum, the data required for the valuations under Article 46(a) (Article 45(1)), Article 46(b) to (g) and Article 93 SAG (valuation 1, 2 and 3), the implementation of the bail-in instrument (Article 55 et seqq. SAG, including the preparation of a reorganisation plan) and/or transfer strategies (Article 50 et seqq. SAG, including the updating of transfer perimeter). The information should be structured in such a way that individual clients and groups of clients can be viewed as a whole or filtered, while on the other hand making it possible to trace compliance with creditor protection provisions in accordance with Article 92 et seqq. SAG.

The MIS shall ensure that data are provided according to a two-step model. Level 1 includes, in particular, the provision of information based on standard reports already available and other key documents of the entity. Level 1 also includes, where necessary, all data that as a result of statutory obligations are to be monitored on a daily basis and/or are to be transmitted to the supervisory authority (e.g. own funds and

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<sup>1</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 1-71.

<sup>2</sup> EBA, Guidelines on improving resolvability for institutions and resolution authorities (EBA/GL/2022/01).

liquidity positions [Article 414-415 CRR<sup>3</sup>] and to the deposit guarantee scheme (SCV files). Level 2, on the other hand, requires the implementation of a specified data point model focusing on the *EBA Data Dictionary* and *EBA Valuation Handbook*.<sup>4</sup>

Entities should implement the MIS in a way that can be specifically tested as part of internal bank test runs, simulation exercises and dry-runs, e.g. by means of simple and/or repeated deliveries of the requested information. In the case of mandatory development of transfer perimeters, the resolution authority expects test runs to be carried out at the bank at least annually, with corresponding documentation.

Likewise, by improving the MIS, entities continuously work to ensure that the processes required for this are coordinated and merged so that the transmitted data are coherent and consistent. If significant changes occur at the institution in the generation, processing, storage or provision of data, in particular regarding methodological or system breaks, reclassifications and/or integration gaps, these will be documented in writing by the entity.

These Guidelines explain the types of valuation for resolution purposes (section 3) and also set out the supervisory expectations for the minimum information to be provided by the resolution entities (section 4). The entity's capacities in this regard also demonstrate the effectiveness and quality of the underlying MIS. Other statutory minimum requirements remain unaffected by the Guidelines (e.g. Article 7a(2)(d) Banking Act, Article 414 CRR).

## **2. Scope of application**

These Guidelines apply to entities that are classified as a “resolution entity” in the resolution plan (Article 3(1)(5a) SAG).

## **3. Valuation for resolution purposes**

Directive 2014/59/EU and the SAG recognise three types of valuation for resolution purposes. Valuations 1 and 2 are carried out prior to a resolution action. Valuation 3 takes place after implementation of resolution actions. Due to the routine urgency of resolution decisions, valuation 1 and 2 (but not valuation 3) may be carried out as part of a “provisional valuation” (Article 45(2) in conjunction with Article 48(2) SAG). A provisional valuation must include a discount for additional losses and provide appropriate reasons for them (Article 48(1) SAG). If a resolution action is taken on the basis of a provisional valuation, the “ex-post definitive valuation must be carried out as soon as possible” (Article 48(3) and (4) SAG). The definitive valuation may take place simultaneously with valuation 3, but must be separate from it in terms of content (Article 48(3) SAG).

### **3.1 Valuation date**

The valuation date to be used is defined in Article 3 of Commission Delegated Regulation (EU) 2018/345.<sup>5</sup> For valuations carried out prior to resolution, the valuer is to choose a date as close as possible to the expected resolution date. For valuations carried out after the resolution date (Article 1(j) of Commission Delegated Regulation (EU) 2018/345), the valuer chooses the actual resolution date. For the valuation of liabilities

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<sup>3</sup> Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, OJ L 176, 27.6.2013, p. 1-337.

<sup>4</sup> See EBA website at <https://www.eba.europa.eu/regulation-and-policy/recovery-resolution-and-dgs>.

<sup>5</sup> 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, OJ L 67, 9.3.2018, p 8-17.

under derivative contracts, the valuer chooses the date pursuant to Article 8 of Commission Delegated Regulation (EU) 2016/1401.<sup>6</sup>

### 3.2 Valuation 1

Valuation 1 (Article 46(a) SAG, Chapter II of Commission Delegated Regulation (EU) 2018/345) serves as a basis for determining whether the requirements for resolution or write-down and/or conversion of relevant capital instruments (WDCCI) are met. In particular, it is necessary to determine the viability of the entity, in particular whether the entity is considered to be “failing or likely to fail” (FOLTF) in accordance with Article 39 SAG. The assessment requires, in particular, the entity’s current balance sheet and income statement, as well as current supervisory data on an individual and group basis (in particular regarding own funds and liquidity).

### 3.3 Valuation 2

Valuation 2 (Article 46(b) to (g) SAG, Chapter III of Commission Delegated Regulation (EU) No. 2018/345) is primarily aimed at facilitating the decision on the choice and structure of the resolution strategy (e.g. on the amount of a potential write-down and/or conversion of capital instruments). It is based on fair, cautious and realistic assumptions, and it assesses, in particular, different scenarios for taking various resolution actions. In contrast to valuation 1, valuation 2 is based on economic values, not pure accounting values (see Recital 7 of Commission Delegated Regulation (EU) 2018/345). Details concerning measurement bases, e.g. setting of disposal values, can be found in Chapter III of Commission Delegated Regulation (EU) 2018/345.

In the case of a WDCCI or bail-in instrument, the valuation also contributes to the determination of the net asset value (see Art. 63 SAG).<sup>7</sup> It is intended to provide the basis for an informed decision on the scope of the deletion or dilution of securities and on the extent of the write-down and/or conversion of the relevant capital instruments, as well as an estimate of the post-conversion equity value of new shares (so-called “PCEV”; see Art. 46(d) and (g) SAG in conjunction with Article 10(5) of Commission Delegated Regulation (EU) 2018/345). The valuation also constitutes a key information basis for an informed decision on the assets, rights or liabilities to be transferred as well as for consideration and the performance of an arm’s length comparison (e.g. where a wind-down company is used; see Article 46(e) and (f)).

### 3.4 Valuation 3

Valuation 3 (Article 93 SAG; Commission Delegated Regulation (EU) 2018/344<sup>8</sup>) must in any case be carried out by an independent valuer. It serves to assess whether the shareholders and creditors would have been treated better if regular insolvency proceedings had been initiated for the entity under resolution. The valuation is thus carried out in observance of national insolvency law, including special financial market regulations (e.g. on the order of priority in insolvency). Among other things, the valuer must establish an inventory of all identifiable and contingent assets owned by the entity, and a list of all claims and contingent claims against the entity must be made available to the valuer (Article 2 of Commission Delegated Regulation [EU] 2018/344). The valuation requires comprehensive information at individual item level. Article 3 of Commission Delegated Regulation (EU) 2018/344 establishes the necessary three steps of the valuation for implementing valuation 3 (comparison of insolvency vs resolution).

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<sup>6</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 7-15.

<sup>7</sup> Note: If liabilities from derivative transactions are to be written down or converted, and if derivative transactions are subject to a netting agreement, the net value of these liabilities must also be determined (see Art. 66 SAG).

<sup>8</sup> 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, OJ L 67, 9.3.2018, p 3-7.

## 4. Provision of data for resolution purposes

### 4.1 General information

Entities must at all times be able to provide certain information within 24 hours (level 1) and the (potentially revalued) individual items of the data point model within 72 hours (level 2). The data are primarily provided by placing them in a VDR that is accessible to the FMA and the independent valuer. In addition, an appropriate communication procedure (e.g. encrypted e-mail channel) must be set up that enables both the subsequent delivery of information and the answering of questions within 12 hours. The entity should provide level 2 information in (at least) CSV format so that the FMA can import and process it immediately.

The entity must also be capable of providing relevant information to potential buyers for their acquisition decision. In all cases, entities shall ensure compliance with statutory provisions, in particular those under the GDPR.<sup>9</sup> In such a case, separation must also be assured through different access rights (user groups). If this is not possible, a separate VDR shall be maintained for potential buyers.

### 4.2 Minimum requirements for level 1

The information to be provided by the entity is listed in **Annex I**. The entity adheres to the structure made known in the Annex and maintains a data room index with which the status and completeness of the data can be verified.

### 4.3 Minimum requirements for level 2

To prepare and process the available information, entities must be capable of revaluing key items by the deadline for level 2 and, where necessary, identifying them as the transfer perimeter.<sup>10</sup> Entities deliver up-to-date daily values in level 2. Deviating from this, the values of the last monthly accounting statement may be used for assets for which there are no up-to-date daily values. However, the revaluation of these assets must be submitted at the latest for valuation 3.

The entity must be capable of providing the valuer upon request with an introduction and with comprehensive professional and technical support regarding the entity's internal valuation models.

The individual items to be provided at the level of the resolution entity are listed and explained in **Annex 2**. In the case of individuals, the data must be provided in anonymised form (client numbers instead of real names); the entity must keep a list of clients in CSV format available at all times (including the corresponding client identity verification, i.e. the official identification document).

The provision of data points is mandatory in all cases. However, the granularity of data provision differs in two classes:

1. **Requirement:** Mandatory compliance with the requirements set out in Annex 2 (e.g. *ISO 3166 AL-PHA-2 country codes*);
2. **Flexible:** The granularity of data provision is at the entity's discretion (in the case of appropriate delivery of definitions and explanations), unless the resolution authority requires more detailed information on a bilateral basis.

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<sup>9</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 (General Data Protection Regulation), OJ L 119, 4.5.2016, p. 1-88.

<sup>10</sup> *EBA*, Guidelines on transferability for transfer strategies (EBA/GL/2022/11).

The provision of special items concerning transfer perimeters (e.g. K\_56) is mandatory only for resolution entities with a transfer strategy, which requires the development of transfer perimeters.

Data at the level of the resolution group are not required by default, but the resolution authority may request them at any time.

## 5. Data protection

The FMA processes personal data exclusively in accordance with the general data processing principles of the General Data Protection Regulation (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) and applicable data protection law.

All information regarding the processing of personal data, including details about the purpose of processing, the data controller and the rights of data subjects can be found in the FMA Privacy Policy: <https://www.fma-li.li/de/fma/datenschutz/fma-information-zum-datenschutz.html>.

## 6. Final provisions

### 6.1 Entry into force

These Guidelines enter into force on 1 January 2025.

### 6.2 Transitional provisions

The level 1 requirements set out in Section 4.2 apply from 1 October 2025, unless these involve obligations arising from statutory requirements.

The level 2 requirements set out in Section 4.3 on the implementation of the data point model apply from 1 January 2027, unless these involve obligations arising from statutory requirements.

Entities that are first classified as resolution entities after 1 January 2025 implement the requirements as a resolution entity within two years of the determination.

## 7. Annex (information and data in accordance with level 1 and 2)

### 7.1 Annex 1: Information to be provided in accordance with level 1

### 7.2 Annex 2: Data to be provided in accordance with level 2 (*available only in German*)