



Brussels, 14th April 2022

**EACB comments on EBA Consultation Paper on draft Guidelines
on Transferability to complement the resolvability
assessment for transfer strategies (EBA/CP/2022/01)**

General comments

The EACB welcomes the opportunity to comment on the EBA draft guidelines on transferability to complement the resolvability assessment for transfer strategies (henceforth, transferability guidelines).

Considering the high granularity of these draft transferability guidelines, the EACB is of the opinion that they may be more appropriate to banks that have transfer tools as their preferred resolution strategy (PRS) and/or when the transfer perimeter includes critical functions. Accordingly, we consider that the requirements outlined in these draft transferability guidelines should be proportionate to the importance of the tool in the resolution strategy of the bank. While the EBA chose to offer discretion for banks under simplified obligations, the EACB suggests that the proportionality principle should be broadened to banks that have bail-in as their PRS. More specifically, neither transfer playbooks nor dry runs should be required in such cases.

The EACB members welcome the fact that the EBA encourages Resolution Authorities (RAs) to leverage on the recovery information available in recovery plans. As part of a proportional approach to these draft transferability guidelines, a balance should be found between the costs related to the operationalisation of transfers on the one hand and the benefits in terms of resolution objectives and reduced MREL requirements on the other hand. We believe that in cases when the use of transfer tools makes only a small contribution to the resolution strategy, the requirements should not go beyond what is already covered by the recovery planning work.

Additionally, we encourage the EBA to explicitly stress that the level of implementation of these transferability guidelines should be left to the discretion of RAs, especially when transfer tools are not the PRS. Indeed, it should be taken into account that most banks have been working on transferability with their respective RAs over the past few years. The scope of the transfer perimeter is defined as part of an iterative dialogue with the RAs, and the related deliverables are calibrated in accordance with the relevance of the transfer tool for resolution objectives. For instance, while transfer tools can complement the bail-in tool in the case of large banks, not all of them are relevant.

Please see below our answers to some of the specific questions on which this consultation paper seeks the feedback.

Q1 - Do you have comments on section 4.1 dealing with the specific considerations for each transfer tool?

We find that not all transfer tools are relevant and that the transferability guidelines should clearly state that their implementation will be left to the discretion of RAs. For instance, when bail-in is the PRS, the bridge institution tool should not be investigated. The EACB considers that the Asset Separation Tool (AST) would have only a minor contribution to the resolution objectives in the case of large banks with diversified business models, as the problematic portfolios to be transferred to an Asset Management Company (AMC) would not be sufficient to restore the viability of the bank.

The voice of 2.700 local and retail banks, 85 million members, 214 million customers in EU

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Further, when the Sale of Business (SoB) tool is the most relevant complement to the PRS, the definition of the transfer perimeter should be coherent with recovery options. However, it should be well noted that working under different resolution scenarios would be unrealistic given the large number of recovery options.

In this context we would also like to express our concern regarding the analysis of “potential perimeter shifts that could arise while the institution’s business is evolving, and the economic conditions are changing” as outlined in para. 25 in section 4.1.1, as we consider such work to be particularly disproportionate given the impossibility to predict the future path of the bank. As indicated by the EBA itself, it would make more sense to leverage on the potential pathways that stem from the recovery plan.

Q2 - Do you have comments on section 4.2 dealing with the assessment of interconnections?

It is important to note that the assessment of interconnections should leverage as much as possible on recovery planning work and should be complemented only upon request of the RA if needed.

Q3 - Do you have comments on section 4.3 dealing with the assessment of cross border aspects?

We firmly believe that the assessment of cross border aspects should be proportionate to the benefits in terms of resolution objectives. Notably, we question whether the proposed paragraph 51 of these transferability guidelines is proportionate. It is important to ensure that the transferability guidelines clearly state that it would be up to the RAs whether to request from a bank the analysis and information as specified in paragraph 51. The suggestions laid down by the EBA on the insertion of resolution-resilient clauses would generate complex and heavy negotiations for resolution benefits which would be hardly visible for many banks with a third-country business.

Q4 - Do you have comments on section 5.1 dealing with the sale preparation?

We welcome the fact that RAs should be able to take advantage of the information available to supervisors and in recovery plans.

At the same time, we would like to point out that in our view the internal segregation and the AST playbook should only be required on a case-by case basis; moreover, they should not be performed by banks for which asset separation would have a minor contribution to resolution objectives.

Q5 - Do you have comments on section 5.2 dealing with the arrangements to ensure a smooth separation?

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Q6 - Do you have comments on section 5.3 dealing with the execution of side processes?



We think that section 5.3 is more suited to the SoB tool and that this should be specified more clearly in the transferability guidelines.

As part of a proportional approach, banks should not be required to compile the execution of side processes in dedicated playbooks nor to perform dry runs when transfer tools are not the PRS.

Q7 - Do you have comments on section 5.4 dealing with the expected MIS capabilities?

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Q8 - Do you have additional comments?

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