

**Comments Template on EIOPA-XX-16-XXX  
Discussion Paper on Potential harmonisation of recovery and resolution  
frameworks for insurers**

**Deadline  
28.02.2017  
23:59 CET**

Name of company:	Institute and Faculty of Actuaries	
Disclosure of comments:	<p>EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential.</p> <p>Please indicate if your comments should be treated as confidential, by deleting the word Public in the column to the right and by inserting the word Confidential.</p>	Public/Confidential
<p>Please follow the instructions for filling in the template:</p> <ul style="list-style-type: none"> <li>⇒ <u>Do not change the numbering</u> in column "Reference"; if you change numbering, your comment cannot be processed by our IT tool.</li> <li>⇒ Leave the last column <u>empty</u>.</li> <li>⇒ Please fill in your comment in the relevant row. If you have <u>no comment</u> on a paragraph or a cell, keep the row <u>empty</u>.</li> <li>⇒ Our IT tool does not allow processing of comments which do not refer to the specific numbers below.</li> </ul> <p><b>Please send the completed template, in Word Format, to <a href="mailto:CP-16-009@eiopa.europa.eu">CP-16-009@eiopa.europa.eu</a>, by 28 February 2017.</b></p> <p><b>Our IT tool does not allow processing of any other formats.</b></p> <p>The numbering of the questions correspond with the questions included in the Discussion Paper on Potential harmonisation of recovery and resolution frameworks for insurers.</p>		
<b>Reference</b>	<b>Comment</b>	
General comment	This response has been led by the Institute and Faculty of Actuaries cross-practice Recovery and Resolution working party, and was subsequently reviewed by our Life, General Insurance and Risk Management Practice Boards.	

**Comments Template on EIOPA-XX-16-XXX  
Discussion Paper on Potential harmonisation of recovery and resolution  
frameworks for insurers**

**Deadline  
28.02.2017  
23:59 CET**

Q1	No.	
Q2	<p>We would add four additional points:</p> <ul style="list-style-type: none"> <li>• In our view, paragraphs 114 to 118 should also recognise that the failure of cross-border business carried out on a services basis (i.e. no branch or subsidiary in the host country) can also have significant negative implications for the interests of policyholders and for financial stability in the host countries. The interests of these host countries, and of their Insurance Guarantee Schemes (IGSs) if appropriate, need to be recognised and reflected in the framework;</li> <li>• It is not clear to us why the regulator should have access to the group holding company's assets unless the holding company itself has also failed. It seems fairer and more transparent to rely on the holding company's existing contractual and legal obligations (which may need to be more formalised to cope with a resolution situation). If the proposal stems from the principle that the shareholders should be bailed-in if a company (in this case a subsidiary) fails then this could be made more explicit;</li> <li>• Insurers (in comparison to banks) typically have a structure where more capital is held locally in the entities, rather than centrally like a bank with branches. Therefore, insurers are partly protected by that structure which could be an argument that the harmonised framework is less necessary. Exceptions to this would be structures with branch networks, internal reinsurance, or models with significant ceded capital up to the corresponding group entity; and</li> <li>• We expect that a harmonised approach should focus around setting a common baseline across borders.</li> </ul>	

**Comments Template on EIOPA-XX-16-XXX  
Discussion Paper on Potential harmonisation of recovery and resolution  
frameworks for insurers**

**Deadline  
28.02.2017  
23:59 CET**

Q3	We agree with the proposed building blocks.	
Q4	No.	
Q5	<p>Smaller insurers conducting cross-border business on a branch or services basis may need to be in scope from a policyholder protection or financial stability perspective (or both). Even though it may be a low priority for the home regulator, the failure of a small insurer that does business outside its home country may have a bigger impact in its host countries, and will have the added complexity of being cross-border. Consequently, we believe smaller insurers should be included in scope by the home authority, either from the outset or at least if requested by a host country.</p> <p>For insurers that do not conduct cross-border business, we believe they should be in scope if they could be difficult to resolve due to size, complexity or where it would be challenging to pass their business to another insurer.</p> <p>In addition, prioritising insurers by type would be a sensible approach; for example, in terms of weak balance sheet, niche, as well as complexity and cross-border.</p> <p>Firms excluded from Solvency II requirements on size grounds could certainly be excluded. However, separate consideration may be needed for non-Directive firms which are excluded on grounds of government backing rather than size.</p>	
Q6	<p>Consideration around proportionality should focus on potential benefits of recovery and resolution plans. Direct benefits, preparedness for crisis and tangential benefits could be considered.</p> <p>We believe it is important to balance the likelihood of a resolution situation against the actual</p>	

**Comments Template on EIOPA-XX-16-XXX  
Discussion Paper on Potential harmonisation of recovery and resolution  
frameworks for insurers**

**Deadline  
28.02.2017  
23:59 CET**

	cost of taking remediation actions and/or the impact on business-as-usual activities. For example, prohibiting shared-service centres entirely could reduce the viability of a business because the increased costs make the business less competitive.	
Q7	Yes. In our view, pre-emptive recovery planning is essential, and goes hand-in-hand with resolution plans, because failure is a continuum, and because the financial, operational and business circumstances of a recovery situation can be quite different from the cliff-edge consequences of complete failure. It should also be borne in mind that recovery plans can be relevant to resolution planning because resolution could revert to recovery, especially where an IGS intervenes and the situation evolves in a favourable way.	
Q8	It seems sensible for all insurers to do some form of recovery planning, with more detail being required for more thinly-capitalised insurers, or those with more volatile portfolios who can breach their SCR more easily. Recovery and resolution plans should be a core element of the risk toolkit and apply to all insurers.	
Q9	In general we support application of proportionality rather than exemption as we believe it is sensible for all companies to consider recovery options they could take, should their strategy not evolve as planned.	
Q10	<p>The recovery options should include an assessment of the circumstances in which they may or not be usable and whether this depends on external factors. For example, to what extent is there a commitment from a group entity or a third party to provide funds?; under what circumstances might the commitment not be honoured?; and how might that be correlated to the urgency of the insurer's need for support?.</p> <p>Recovery plans should address operational and data issues as well as financial ones.</p> <p>Consequently, the key elements that we would typically expect to be covered in a recovery plan are:</p>	

**Comments Template on EIOPA-XX-16-XXX  
Discussion Paper on Potential harmonisation of recovery and resolution  
frameworks for insurers**

**Deadline  
28.02.2017  
23:59 CET**

	<ol style="list-style-type: none"> <li>1. The identification of two to four principal scenarios, including idiosyncratic and sector-wide or market-wide stress situations that could create significant capital or liquidity shortfalls;</li> <li>2. Detailed quantitative and qualitative description of the scenarios;</li> <li>3. A description of the principal recovery options that are likely to have a material impact on the firm in at least one of the scenarios considered, including an assessment of each option in detail;</li> <li>4. Valuation and impact analysis (capital, liquidity, franchise);</li> <li>5. Speed and timing of actions;</li> <li>6. Suitability and feasibility in each recovery scenario;</li> <li>7. Operational aspects and responsibilities, including dependencies on outside suppliers;</li> <li>8. Principal impediments and constraints;</li> <li>9. Internal and external risks and issues;</li> <li>10. Credibility and necessary preparations;</li> <li>11. Triggers for different stages of escalation and the governance process that results from these; and</li> <li>12. Maintenance of the recovery plan, including the process by which the recovery plan is refreshed and aligned to the changing shape of the business, including sign-off by the governing body.</li> </ol>	
Q11	<p>Yes, pre-emptive resolution planning is essential. As for Question 10 above, pre-emptive resolution plans and recovery plans are both needed to cover the failure continuum. If the resolution requires restructuring, there will also need to be pre-emptive resolution planning ahead of this.</p> <p>It is useful for an insurer to go through some form of resolution planning as it can identify the areas which could be a problem in a crisis and in doing so can actually make resolution more remote. As outlined in the answer to Question 6, for some companies getting too detailed in resolution planning might not be the best use of capital resources for what might be a very remote event.</p>	

**Comments Template on EIOPA-XX-16-XXX  
Discussion Paper on Potential harmonisation of recovery and resolution  
frameworks for insurers**

**Deadline  
28.02.2017  
23:59 CET**

For some companies removing 'barriers to resolution' might make the business less viable (e.g. through increasing costs) or remove a key part of the business strategy. However, that does not mean that consideration of resolution is not a useful exercise, as the gains from resolution planning could outweigh its impact on the business. There may well be different options available which might not completely optimise a particular strategy but which may make resolution a lot easier.

In our view there are some fundamental differences between recovery (which entails rejuvenating a business to become viable) and resolution which often means running off a failed business model. Hence we believe this could lead to differences in scope for recovery and resolution planning.

Q12

There is potentially an argument that applicability of requirements and obligations for pre-emptive resolution plans should be the same as for recovery plans because company failure is a continuum. However, for many companies the prospect of resolution may be considered to be remote, the costs of resolution planning disproportionate and the impact of failure on the overall financial system not significant (and also many National Competent Authorities (NCAs) do not have a 'zero-tolerance of failure').

In light of this, possible reasons for waiving the resolution planning requirement could be that:

- The company is small so failure could be handled easily with few impacted policyholders (who may well be covered by a compensation scheme);
- The portfolio of business is not complex or niche, so could either be run-off easily or could be easily transferred to another insurer; and
- The firm is well-capitalized so that the probability of failure is seen to be remote, and even if the 'black swan' event were to occur, or the probability of failure was miscalculated, the impact on the financial system would not be significant.

**Comments Template on EIOPA-XX-16-XXX  
Discussion Paper on Potential harmonisation of recovery and resolution  
frameworks for insurers**

**Deadline  
28.02.2017  
23:59 CET**

	We would add though that this needs to be qualified for insurers conducting cross-border business on a branch or services basis. Please see our response to Question 5.	
Q13	Please see our response to Question 12.	
Q14	<p>We assume this question should refer to resolution rather than recovery plans.</p> <p>We believe resolution plans should address operational and data issues as well as financial ones.</p> <p>The key elements that we would typically expect to be covered in a resolution plan are:</p> <ul style="list-style-type: none"> <li>a. Company/Group background and structure - this section would normally include, for example: <ul style="list-style-type: none"> <li>i. General overview and history of the company;</li> <li>ii. Company structure, subsidiaries (home country and overseas) and activities within the subsidiaries;</li> <li>iii. Corporate overview, legal entities and structure;</li> <li>iv. Information on inter-connectedness and reparability of entities, from a financial, legal and operational perspective;</li> <li>v. Extent of major reinsurance arrangements, counterparty risks, intra-group loans, guarantees etc.;</li> <li>vi. Level of new business;</li> <li>vii. Main methods of distribution - key advisors;</li> <li>viii. Operational matters (including joint ventures etc.); and</li> <li>ix. Major financial and operational risks and uncertainties.</li> </ul> </li> </ul>	

**Comments Template on EIOPA-XX-16-XXX  
Discussion Paper on Potential harmonisation of recovery and resolution  
frameworks for insurers**

**Deadline  
28.02.2017  
23:59 CET**

- b. Product types and volumes;
- c. Principal systems and processes, including:
  - i. IT systems, processes and controls;
  - ii. Investment management arrangements;
  - iii. Outsourcing arrangements;
  - iv. Internal and external audit recommendations;
  - v. Resolution governance;
  - vi. Triggers, thresholds, impacts;
  - vii. Early warning indicators / triggers; and
  - viii. Triggers for escalation, triggering formal adoption of resolution plan and options.
- d. Operational considerations:
  - i. Internal financial/structural/operational dependencies;
  - ii. Reliance on third party service providers, independent or within Group;
  - iii. Availability and co-operation of management and key staff; and
  - iv. Business model considerations e.g. for bancassurers, potentially bringing together multiple (bank and insurer) resolution plans.
- e. The plan would also likely consider:
  - i. Potential contagion stemming from reinsurance;
  - ii. Responsibilities in default, including cross-border transfers of portfolios and where protection responsibility lies if the receiving insurer subsequently fails; and
  - iii. There is a need to clarify the roles and responsibilities of any insolvency practitioner, any policyholder protection scheme, management, regulator,

**Comments Template on EIOPA-XX-16-XXX  
Discussion Paper on Potential harmonisation of recovery and resolution  
frameworks for insurers**

**Deadline  
28.02.2017  
23:59 CET**

	etc.	
Q15	<p>Yes, provided the scope is sufficiently wide and includes cross-border insurers on request of host countries.</p> <p>It is possible that a resolution authority has information about the systemic importance or inter-connectivity of an insurer that means it may want to assess the resolvability of an insurer which does not currently have a plan (or a plan which is sufficiently developed for the resolution authority's needs).</p>	
Q16	<p>Yes, resolution authorities should have power to require removal of impediments to resolvability. The removal of impediments should be discussed between the resolution authority and the insurer since, as discussed in answer to Question 11, the 'impediment' may be core to the strategy or viability of the insurer. There may be alternative approaches which make resolution easier but do not entirely remove the impediment.</p> <p>It is important to have an early dialogue to determine the risks and mitigation factors. Therefore if an impediment arises the insurer is given options before the authority uses their powers. An insurer may want to undertake its own resolvability assessment in order to prepare for this dialogue.</p> <p>Potential impediments include:</p> <ol style="list-style-type: none"> <li>1. Complex structures or contractual relationships;</li> <li>2. Constitutional issues and conflicts;</li> <li>3. Records and data issues, including security;</li> <li>4. Human resources and expertise;</li> <li>5. Third party services;</li> <li>6. Contractual penalties, forfeitures or liabilities arising on insolvency;</li> </ol>	

**Comments Template on EIOPA-XX-16-XXX  
Discussion Paper on Potential harmonisation of recovery and resolution  
frameworks for insurers**

**Deadline  
28.02.2017  
23:59 CET**

	<p>7. Potentially excessive benefits or uncertain liabilities to policyholders; 8. Asset security; and 9. Size, e.g. due to funding requirements or concentrated risk.</p>	
Q17	<p>Simplified obligations could be considered in the absence of material impediments and under the circumstance we outlined in our answer to Question 12 above.</p> <p>A proportional approach could be adopted with the scope determined by materiality and strategy.</p>	
Q18	<p>Yes, early intervention powers should be part of the framework.</p> <p>Clearly it makes sense for there to be intervention of some form as early as possible, which may start with 'soft intervention' as regulators enter a dialogue with the insurer's management, becoming increasingly interventionist as the position worsens. Clear indicators should be set to understand the intervention levels.</p> <p>We believe it is important that there is an explicit framework for intervention powers so that all parties are aware of what might happen under particular situations.</p> <p>The resolution framework also needs to take into account the general insolvency rules for companies in a particular country, and in particular how insolvency practitioners might work with the resolution authority and any IGS.</p>	
Q19	<p>It makes sense for National Supervisory Authorities (NSAs) to have powers which can be flexible enough to balance the degree of intervention with the seriousness of the situation. For example, an NSA may well take a different approach to a macro-economic crisis than to an idiosyncratic problem with one insurer.</p>	

**Comments Template on EIOPA-XX-16-XXX  
Discussion Paper on Potential harmonisation of recovery and resolution  
frameworks for insurers**

**Deadline  
28.02.2017  
23:59 CET**

	The approach the NSAs should take should have a stepped escalation process.	
Q20	The powers listed are quite granular. It may be that some powers could be more high level such as requiring a plan to restore the capital resources, for example.	
Q21	Early intervention powers could also include measures to: <ul style="list-style-type: none"> <li>• reduce risks from asset management;</li> <li>• restrain discretionary policyholder benefits; and</li> <li>• require public disclosure.</li> </ul>	
Q22	<p>The creation of a separate resolution authority would generate another layer of regulation in an industry that experiences relatively few failures. One problem is that paragraph 211 requires ensuring the resolution authority has 'adequate expertise and resources' which is difficult when it is not known what expertise and resources are required, or when.</p> <p>However, recovery and resolution is not a binary choice; there is a continuum, insurers can move backwards and forwards across the continuum, and a resolution situation may well result in recovery (especially with IGS assistance). Hence, it could potentially lead to duplication of resources for resolution and oversight of recovery, and it could cause an increase in the number of costly resolutions as opposed to successful recoveries. Ultimately, the scope for regulatory forbearance is governed by Solvency II. This suggests a recovery and resolution authority within the NSA in combination with the IGS.</p>	
Q23	<p>Yes – we agree with the four objectives of resolution. We think that a clear focus should be on the continuity of cover for policyholders, with timely payment of claims where possible.</p> <p>In addition to the continuity of cover for policyholders and timely payment of claims, there should be a focus on maintaining operational continuity for claim payments, via ensuring</p>	

**Comments Template on EIOPA-XX-16-XXX  
Discussion Paper on Potential harmonisation of recovery and resolution  
frameworks for insurers**

**Deadline  
28.02.2017  
23:59 CET**

	<p>sufficient working capital to support shared services and payments processes.</p> <p>Although the paper explicitly excludes discussion of IGSs and their potential harmonisation, a national IGS is already a significant influence on the outcome of recovery and resolution in some countries. Thus, particularly whilst IGSs have not been harmonised, the impact of a national IGS should be excluded from assessment against the recovery and resolution objectives for the protection of policyholders across different countries. In other words, in a cross-border context, recovery and resolution authorities should not take advantage of the existence or scope of IGSs in seeking to meet resolution objectives.</p>	
Q24	<p>In our view, the protection of policyholders and financial stability are the two key objectives but we expect it is likely that in most circumstances insurance resolution would not have financial stability implications.</p> <p>Given the long-term and/or uncertain nature of the liabilities of many insurance portfolios, liquidity problems and capital requirements can mean that temporary support may be needed from public funds; such funds may be needed in the longer term, so the objectives may conflict with each other.</p> <p>Ranking of the objectives should be a judgement call in the circumstances of the case, subject to the safeguards (set out in section 4.6.6) being adequate.</p>	
Q25	<p>Yes, these seem reasonable.</p>	
Q26	<p>Yes, although in some circumstances there may be significant uncertainty as to the insurer's viability, e.g. due to lack of data, so there may be situations where such situations might be considered to be sufficient to trigger resolution.</p>	
Q27	<p>As mentioned in our response to Question 26, situations such as frozen systems and lost data</p>	

**Comments Template on EIOPA-XX-16-XXX  
Discussion Paper on Potential harmonisation of recovery and resolution  
frameworks for insurers**

**Deadline  
28.02.2017  
23:59 CET**

	as a result of a cyber-attack could cause an insurer to be 'non-viable'.	
Q28		
Q29		
Q30		
Q31		
Q32		
Q33		
Q34	We believe that safeguards in respect of partial transactions (as mentioned in paragraph 233) are essential to ensure that both the transferred block and the remaining block are treated fairly.	
Q35	<p>Yes, we believe that cross-border cooperation and coordination are essential.</p> <p>National IGSs are already a significant influence on the outcome of recovery and resolution situations in some countries and their inclusion in both domestic and cross-border cooperation preparations and crisis groups should be mandatory.</p> <p>Arrangements to ensure that each host country has access to ongoing information on its exposure to insurers in other states should be mandatory. This would enable hosts to identify and assess the risks and impacts of any potential failures and to inform their priorities.</p>	
Q36		
Q37		
Q38		