

Final - RTS on contractual recognition of resolution stay powers under Article 52 of the IRRD

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General Comments

Q1. *Do you have general comments on the consultation paper?*

- Insurance Europe welcomes the opportunity to engage in discussion and provide feedback on this draft RTS, both here in writing and via the series of webinars EIOPA has hosted. We look forward to continuing to support EIOPA's work as the implementation of the IRRD progresses, with the aim of ensuring the objectives of stronger policyholder protection and enhanced financial system stability are met in a proportionate and streamlined manner for supervisors, resolution authorities and (re)insurance undertakings.
- The RTS provides important clarification on contractual recognition of resolution stay powers under Article 52 IRRD. The proposal deliberately pursues cross sectoral consistency with the existing banking regime: EIOPA notes that the mandates under IRRD Article 52 and BRRD Article 71a are identical and that the RTS is drafted by reference to Commission Delegated Regulation (EU) 2021/1340, thereby supporting a level playing field and legal certainty for cross border groups (including bancassurance structures). This harmonisation is strongly supported.

Background and Analysis

Q2. *Do you have comments on the Background and Analysis section?*

- The Background identifies cross-border enforceability challenges. We agree with EIOPA’s conclusion that no insurance specific requirements need to be addressed compared with Commission Delegated Regulation (EU) 2021/1340, and that the RTS does not need to differentiate clause content by insurance business model because the relevant financial contracts are standardised by nature. However, the analysis underestimates operational and legal complexity for insurers. Negotiation leverage with third-country counterparties may be limited. A more pragmatic approach would be appropriate.
- On page 10/26, the consultation paper discusses “Stay powers related to redemption rights for life insurance contracts and stay powers related to reinsurance contracts in a potential third-country context”. As correctly observed by EIOPA, “Article 52 of the IRRD refers exclusively to financial contracts as defined above, and not to insurance or reinsurance contracts.”. This is sufficient to conclude the respective discussion. Therefore, the remaining discussion in this section goes clearly beyond the original task, namely “to develop draft regulatory technical standards (RTS) to specify the contents of the contractual terms of financial contracts referred to above, taking into account the different business models of the entities concerned”. Thus, the remaining text in this section should be dropped.

Draft Technical Standards – Recitals

Q3. *Do you have comments on the Recitals?*

- The Recitals appropriately clarify the objective of ensuring enforceability of stay powers. However, they imply a degree of standardisation that may not always be achievable. Greater emphasis on outcome-based compliance would be helpful. Legal diversity across jurisdictions should be acknowledged. For additional clarity and to avoid any interpretative spill over, we suggest that the recitals continue to emphasise (i) the cross sectoral alignment with the BRRD RTS approach, and (ii) the deliberate limitation of the RTS to ‘financial contracts’ only (excluding (re)insurance contracts and policyholder redemption rights). This would mirror the analysis section’s conclusion that no insurance specificities are addressed and would reinforce regulatory convergence.

Draft Technical Standards – Articles

Q4a. *Do you have comments on Article 1 - Contents of the contractual terms?*

- We support the content of Article 1 of the draft RTS as the requirements mirror the existing banking RTS approach. It may create friction in existing contractual frameworks. However, allowing functional equivalence would reduce burden and supervisory acceptance of alternative clauses is essential.
- We would encourage EIOPA/NCA’s to ensure in supervisory practice that functionally equivalent drafting (tailored to third country legal requirements) remains acceptable, provided it meets the mandatory minimum content and does not impair the effectiveness of resolution powers.

Q4b. *Do you have comments on Article 2 - Entry into force?*

- The proposed entry into force timeline may be challenging given contract renegotiation cycles. While market participants already have experience with comparable contractual recognition clauses in banking documentation, legacy contracts pose particular difficulties. Transitional arrangements or grandfathering would improve feasibility. A phased approach is recommended.

Annex I: Impact Assessment

Q5. *Do you have comments on Policy Issue A: level of prescription of the contractual terms?*

- We support EIOPA's chosen approach corresponding to Policy option A.3, i.e. specifying mandatory minimum content while allowing flexibility for entities to supplement the clause to reflect contract and jurisdiction specific needs. EIOPA's impact assessment explains that overly rigid wording may inadvertently undermine effectiveness where third country legal or national transposition specificities are not captured, whereas some flexibility better balances enforceability, legal certainty and practicability. We also note that this approach is consistent with Commission Delegated Regulation (EU) 2021/1340 (BRRD RTS), thereby furthering cross sectoral convergence and a level playing field.
- Recognition of equivalent contractual mechanisms would significantly reduce renegotiation costs. We expect the market to leverage existing sector templates and documentation standards (including clauses already used in bank financing and derivatives master agreements). The RTS' alignment with the BRRD RTS should enable re use of established drafting concepts and support scalable implementation. EIOPA/NCAs may further facilitate efficient implementation by publishing non-binding examples of "safe harbour" clauses and/or supervisory Q&A illustrating acceptable approaches to 'functional equivalence' across common third country jurisdictions, without undermining the minimum content standard. Clear supervisory guidance on acceptable alternatives would lower legal uncertainty.

Q6. *Are there any elements in the proposed RTS which could be modified to reduce the administrative burden or improve the (cost) efficiency of the requirements? If so, please provide a (monetary) assessment of the expected efficiency brought by the proposed change.*

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Any other comments

Q7. *Do you have any other comments?*

- Beyond the points above, we reiterate support for EIOPA's deliberate sector-neutral design choice: the RTS should remain confined to 'financial contracts' (as defined by reference to the BRRD) and should not introduce insurance-specific contractual recognition requirements for (re)insurance contracts. Maintaining close alignment with Commission Delegated Regulation (EU) 2021/1340 will promote regulatory convergence, reduce fragmentation, and provide legal certainty for cross-border groups operating across banking and insurance sectors.
- EIOPA is asked to provide further explanation regarding the stay powers for European solo undertakings and groups that are active in multiple member states and/or outside of the European economic area.

Most notably, it is unclear which resolution authority will be able to exercise the stay powers in for example the following cases:

- European groups with subsidiaries in different Member States;
 - Branches without segregation of assets active more than one member state or outside of the EEA such as Switzerland and the UK; and/or
 - International groups with parent companies and/or subsidiaries outside the EEA, for example Switzerland and the UK.
- How can insurance companies and groups address the stay powers if more than one resolution authority (including those outside of the EEA such as Switzerland and the UK) wants these powers? Who would have priority over the stay powers?)