

## Insurance Europe response to EIOPA IRRD consultation on RTSs on criteria for pre-emptive recovery planning requirements and methods to be used when determining the market shares

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### General comments

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

Insurance Europe welcomes the opportunity to provide comments to the consultation on Regulatory Technical Standards (RTS) on methods and criteria to determine the market share. **Industry supports having a clear definition and methodology for presenting the size of an undertaking.** It is also **positive that supervisory authorities are encouraged to use Own Risk and Solvency Assessment (ORSA) data to assess the risk profile and impacts on solvency margins.** As far as possible, reference should be made to existing reports to avoid duplicative reporting to supervisors.

The **RTS should clearly reflect that National Supervisory Authorities (NSAs) shall take subsidiaries/branches of a group that has a recovery plan into account** when the market coverage level is calculated. This should be amended in e.g. Article 10(2) and (3) as well as in Recital 3.

Against the backdrop of efforts at European level to reduce bureaucracy and cut reporting requirements by 25% as stated by the European Commission, the industry would welcome a statement from EIOPA that the minimum market coverage of 60% is sufficient to meet the objectives of the Insurance Recovery and Resolution Directive (IRRD) and that national supervisors should only require additional companies in exceptional cases.

The calculation method for market coverage levels, as outlined in the RTS and IRRD, remains unclear. When calculating the market share of at least 60%, **subsidiaries based in a different Member State covered by group pre-emptive recovery plans shall be considered** in the market coverage of the different Member State.

It would be **useful to clarify how often the market coverage level will be updated** to determine the scope of insurance undertakings under pre-emptive recovery planning.

Articles 4 and 7 imply that diversification could be risky (e.g. having higher numbers of counterparties or operating in multiple countries). This contradicts the concentration risk assessment in Article 6. **Industry does not view diversification as increasing risk and recommends rewording** these Articles to remove this implication. In addition, Insurance Europe recommends the addition of a recital acknowledging the specificities of reinsurance in a cross-border context.

The **impact assessment contains no quantitative cost assessment**. Without understanding the impact of regulations, it is very difficult to successfully reduce their burden, in line with the Commission's simplification agenda to reduce operational and reporting burdens on firms. In addition, **the impact assessment should also tabulate the least number of undertakings/groups to fulfil the requirement** of market coverage of 60 % for each Member State (MS) with the chosen method and other possible methods to calculate the market coverage to enable comparisons to be made.

In general, **the RTS should refer to "parents" rather than "ultimate parents"** as entities that are not subject to the Solvency II (SII) framework as stated in the Level 1 text should not be in scope of Level 2 and 3.

### Draft Technical Standards – Recitals

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

Recital 2: Insurance Europe recommends increasing certainty around use of the "total assets" metric by removing the words "for example".

Recital 3 should clarify that when an NSA does not subject a subsidiary to recovery planning because it takes into account the group recovery plan drawn up by the ultimate parent undertaking in a third country, as regulated in Article 7(8) IRRD, the subsidiary should count towards the market coverage target. Article 5(2), 3<sup>rd</sup> subparagraph IRRD does not make a distinction between European Union (EU) and third country group plans. Recital 3 should further clarify that in the calculation of the market share of at least 60%, **subsidiaries based in a different Member State covered by group pre-emptive recovery plans** shall be regularly considered in the market coverage of the different Member State.

Please refer to comments to Q4g. Insurance Europe recommends adding the following recital to acknowledge the specificities of the reinsurance business model based on the diversification of cross-border geographies and business lines:

*"When assessing the implications of cross-border activities for reinsurance undertakings, national competent authorities should give due consideration to the fact that the reinsurance business model is inherently cross-border. The diversification of risks achieved through such cross-border operations is a fundamental component of the reinsurance value proposition, enhancing both its efficiency and resilience. In this context, the relative importance of the cross-border activity criterion for reinsurance undertakings should not be overstated or misunderstood as an indicator of heightened risk."*

### Draft Technical Standards – Articles

For Articles 1-4 and 7-8, the criterion is defined in relative terms e.g. 'larger', 'fewer', 'riskier', 'high' (presumably against the respective Member State insurer market as the peer group) resulting in a lack of harmonisation across the EU.

**Q4a.** *Do you have comments on Article 1 - Size criterion?*

The IRRD aims to minimise the impact of a failing re/insurer for the European Economic Area (EEA) policyholders, economy, financial system and public finances. Accordingly, the size criterion should be scoped to include the Gross Written Premiums (GWP) and technical provisions related to activities pursued within the EEA. This clarification is requested to avoid overstating the EEA impact of international re/insurer whose technical provisions or GWP include a large share of non-EEA activities.

Therefore, Insurance Europe recommends including in paragraph 1: *"The amount of gross technical provisions and gross written premiums, as the case may be, shall be determined in relation to the activity pursued in the Member State in which the insurance or reinsurance undertaking is established."*

**Q4c.** *Do you have comments on Article 3 - Risk profile criterion?*

Industry further notes that the **assessment of the risk profile in accordance with Article 3(2) refers primarily to the Solvency Capital Requirement (SCR) assessment, while Article 3(3) refers to the ORSA**. This means that far-reaching interpretations are possible for authorities, and industry would recommend that this wording is modified.

**Q4d.** *Do you have comments on Article 4 - Interconnectedness criterion?*

Article 4(3) implies that diversification could be considered risky, e.g. through having a high number of counterparties. This contradicts the concentration risk assessment in Article 6. **Industry does not view diversification as increasing risk and recommends rewording** this Article to remove this implication.

The RTS refers to insurance undertakings interconnectedness within a Group. However, **the financial strength of the parent company** is not mentioned as a criterion to assess the risk of the intra-group exposure. This should be considered, for example in Article 4.

**Q4e.** *Do you have comments on Article 5 - Substitutability criterion?*

There is an inconsistency between Article 5(1), which refers to products or policies, while Article 5(4) refers to activities.

Article 5(3) does not provide a clear safeguard against small and non-complex undertakings being subject to pre-emptive recovery planning requirements.

**Q4g.** *Do you have comments on Article 7 - v criterion?*

Article 7(1) should be amended to remove the words **"as well as by the subsidiary undertaking"** noting that the freedom of establishment and the freedom to provide services are considered as cross-border business for the purpose of this RTS. This means that business written by subsidiaries of an insurance group is not cross-border business.

The reference to significant cross-border business, as defined in Article 152aa of the Solvency II Directive, is often inappropriate, as it may result in a large number of undertakings being classified as such. This is because the threshold of EUR 15 million of Gross Written Premium (GWP) is applied in absolute terms, which is not

significant for larger companies. It would be helpful to clarify that the proportion of cross-border business relative to total premiums should also be considered. Moreover, cross-border activities can help avoid market concentration and, in some cases, may even reduce risk.

Article 7(2) implies that diversification could be considered risky, e.g. through having business in multiple countries. This contradicts the concentration risk assessment in Article 6. **Industry does not view diversification as increasing risk and recommends rewording** this Article to remove this implication.

The RTS should acknowledge the specificities of the reinsurance business model based on the diversification of cross-border geographies and business lines. Insurance Europe recommends adding the following comments:

*"When assessing the implications of cross-border activities for reinsurance undertakings, national competent authorities should give due consideration to the fact that the reinsurance business model is inherently cross-border. The diversification of risks achieved through such cross-border operations is a fundamental component of the reinsurance value proposition, enhancing both its efficiency and resilience. In this context, the relative importance of the cross-border activity criterion for reinsurance undertakings should not be overstated or misunderstood as an indicator of heightened risk."*

**Q4h.** Do you have comments on Article 8 - Combination of criteria?

Article 8(1) should be changed to "laid down in Article 2 to Article 7", rather than referring to Article 8.

Industry recommends introducing **safeguards against an NSA being excessively conservative** in their assessments. Under the proposed text it is conceivable that an NSA puts all undertakings in scope for recovery planning, based on several of the above criteria.

In light of this, and against the backdrop of efforts at European level to reduce bureaucracy and cut reporting requirements by 25% as stated by the European Commission, the industry supports the inclusion of a statement in Article 8 (or elsewhere) that it must also be taken into account whether the minimum market coverage of 60% is already ensured. National supervisors should only require additional insurance companies in exceptional cases.

**Q4j.** Do you have comments on Article 10 - Accounting for the market share of the subsidiary of a group based in a different Member State?

It should be clearly stated in Article 10 that when calculating the market share of at least 60%, subsidiaries covered by group pre-emptive recovery plans **shall** be taken into account in the specific market of the Member State.

**Q4k.** Do you have comments on Article 11 - Considerations regarding insurance undertakings pursuing both life and non-life activities?

This article should be amended to make clear that **subsidiaries shall be accounted for when the market share is calculated**.

Insurance Europe is the European insurance and reinsurance federation. Through its 39 member bodies — the national insurance associations — it represents insurance and reinsurance undertakings that account for around 95% of total European premium income.