Insurance Europe response to EIOPA IRRD consultation or Guidelines to specify further the criteria for the assessment of resolvability

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General comments

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

Insurance Europe welcomes the opportunity to provide feedback on the consultation on the guidelines on the assessment of resolvability.

Industry supports the availability of necessary data and information to supervisory authorities in a potential resolution scenario, including clear communication plans, and notes that this should be largely already available, primarily from the supervisory authority. Resolution is clearly subsidiary to insolvency, which is in line with industry expectations. Effective information sharing should be reciprocal, with resolution authorities providing clarity on the design, context, and key elements of the resolution plan. This supports undertakings in assessing and demonstrating its feasibility and credibility.

While the Guidelines are addressed to resolution authorities, **the proposals risk leading to extensive direct and indirect requirements on undertakings, increasing the administrative burden** for the industry, including, but not limited to:

- Being subject to multi-annual testing programs to verify resolvability (1.20)
- Preparation of a self-assessment report with an evaluation of its own resolvability (1.20)
- Development of one or several playbook(s) (1.20)
- Identification of barriers for implementation of resolution actions in a cross-border context (1.30)
- Provision of information to allow the detailed initial separability analysis (GL7)

The costs of this burden must be quantitatively analysed in the impact assessment. Previous estimations, e.g. in EIOPA's opinion on the solvency review from 2020, are not relevant as they did not consider

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the level of administrative burden required and so significantly underestimate the costs to undertakings. Without understanding the impact of regulations it is very difficult to successfully reduce their burden.
The detailed requirements in Guidelines 4 to 12 on the assessment of feasibility are extensive and go well beyond Solvency II. They imply significant changes to legal, contractual, and organisational structures—not only within groups but also involving third parties, Financial Market Infrastructures (FMI), and staff. These guidelines also require a wide range of evidence and documentation from undertakings. It would be helpful to clarify whether these are already covered by the resolution reporting templates, or whether they are entirely additional. Placing the responsibility for demonstrating the feasibility and credibility of the plan on insurers would create a significant burden, potentially affecting the competitiveness of the EU insurance market, while delivering benefits only in very unlikely scenarios.

Moreover, the adequacy of such far-reaching requirements should be reconsidered in light of the low probability of resolution under Solvency II's 99.5% Value at Risk (VaR) confidence level. Applying such requirements, which go beyond Solvency II, risks undermining the level playing field with insurers not subject to resolvability assessments.

This is in addition to **the expected reporting of data and assessments** for the establishment of preventive resolution plans and the potential operational impact of the creation of colleges of resolution. This large potential burden goes against the Commission's simplification agenda and the Savings and Investment Union (SIU) and the recitals of the Directive (EU) 2025/1 (e.g. (17)), where it is explicitly stated that unnecessary administrative burdens and costs on undertakings and authorities are to be avoided. For that reason, industry recommends that the guidelines be clarified to:

- Make clear throughout how these guidelines should be proportionally applied.
- State clearly that these guidelines**, especially guidelines 4–12, should not be applied for those undertakings/groups where normal insolvency proceedings are expected to be used** for winding-up instead of the resolution tools.
- Experience with the BRRD shows that assessments risk becoming tick-the-box exercises. To avoid unnecessary red tape, National Resolution Authorities (NRAs) should have the flexibility to decide which guidelines are relevant for specific insurers and groups. Applying all guidelines by default (i.e. "should, at a minimum, consider") will result in a robotic checklist, contradicting the principles-based approach of Solvency II and the Insurance Recovery and Resolution Directive (IRRD) (notably the self-assessment report). It should, therefore, be changed in guidelines 4 -12 to that "…resolution authorities could consider…".
- Demonstrate how requirements for "ensuring an appropriate amount of eligible liabilities" interact with Solvency II capital requirements. There is a concern this could lead to resolution authorities imposing a requirement like Minimum Requirement for Own Funds and Eligible Liabilities (MREL) on insurance companies.

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.

For bank-insurance groups, which are already subject to Bank Recovery and Resolution Directive (BRRD), the introduction of IRRD will make recovery and resolution planning for insurance entities more granular. These groups will integrate IRRD planning into their BRRD framework. Therefore, **IRRD planning should apply only to the highest insurance entity in the group**, not to holdings above that level, which are already covered by BRRD. To avoid double reporting and planning, EIOPA is reminded of the European Commission's goal to reduce reporting burdens by 25%. In this context, avoiding duplication is essential.

Q3a. *Do you have comments on Subsection 'Introduction'?*

The definitions in point 1.4 should be aligned with the corresponding definitions in other RTS/GL. For example, the definition of 'alternative resolution strategy' differs from the definition in the proposed GL on measures to remove impediments to resolvability.

Q3b. *Do you have comments on Guideline 1 – General principles for the assessment of resolvability?*

Para 1.5: The stated "ongoing cooperation and dialogue" goes beyond Article 12 (1) IRRD, according to which "cooperate as much as necessary" is the requirement. "Ongoing cooperation and dialogue" provide an incentive to outsource the activities to be carried out by the resolution authority to the affected insurers. It is suggested to change this to "*cooperation as much as necessary* ***after using all the information already available to the authorities (including Solvency II reporting and the pre-emptive recovery plans)***".

Para 1.6: The authority should not be required to always identify multiple alternative strategies as one alternative strategy could be enough. With the current wording, there may be an obligation for insurance companies to prepare for several different strategies, which are not necessary.

Para 1.9 recommends that the resolution authority should consider reinsurance aspects, notably the reinsurance strategy and its impact on the preferred resolution strategy or strategies, and legal and economic aspects of the reinsurance contracts in place. However, reinsurance is not included among the resolvability dimensions of the Annex of the IRRD, and is a sound and essential risk mitigation tool. It should not be assumed to pose a barrier to resolvability by default. The guidelines should clarify that reinsurance should only be considered where there is a concrete and material link to a specific impediment to resolution, as per Article 15 of the Directive.

Q3c. *Do you have comments on Guideline 2 – Assessment of the credibility and feasibility of winding-up under normal insolvency proceedings?*

Winding-up under normal insolvency proceedings is presented as a potential preferred resolution strategy, as a result of the resolvability assessment. The assessment of whether winding up under normal insolvency proceedings would be feasible and credible should be considered before subjecting a group to preventive resolution planning**. It is not proportionate to apply resolution planning to a group for which winding-up under normal insolvency proceedings is the optimal solution.** To comply with the IRRD, resolution plans should be drafted only for groups for which the use of resolution tools is the preferred option.

Industry supports that insurance guarantee schemes should be included in the consideration of the need for public funds in accordance with Guideline 2 Para 1.12. In addition, operational aspects such as the transfer of information should also play a role regarding insurance guarantee schemes.

Industry supports that the requirements for the assessment of resolvability (Guidelines 7 to 13) are clearly based on the dimensions of resolvability in accordance with the Annex of Directive (EU) 2025/1, but note these are in some cases overly detailed.

Q3d. *Do you have comments on Guideline 3 – Identification of a preferred resolution strategy?*

GL 3 recommends considering "the enforceability of resolution tools that would be applied, in particular in third countries". However, it should be noted that the **IRRD is an EU framework** and that similar resolution frameworks may not exist in 3rd countries and the wording of this guideline should be amended to reflect this.

Q3e. *Do you have comments on Guideline 4 – Assessment of the feasibility and credibility of a resolution strategy?*

Para 1.20: While industry notes that the items suggested are optional for resolution authorities to consider, **these are potentially very onerous and could pass a significant part of the assessment of resolvability to undertakings**. This contradicts recitals of the Directive (EU) 2025/1 (e.g. (17)), where it is explicitly stated that unnecessary administrative burdens and costs on undertakings and authorities are to be avoided. In particular, self-assessments and playbooks can be burdensome to prepare and maintain, and multi-annual test programs may place considerable workloads on undertakings. If such items are to be introduced (which is not supported), a convergent approach should be imposed across Member States, to ensure a level playing field.

So far, it remains unclear what self-assessment reports, handbooks, and playbooks are expected to contain. These delivery items are undefined, and their link to the "effective implementation of the resolution tools listed in Article 26(3)" is not well explained. Under Article 12(1) IRRD, cooperation is required "as much as necessary," and the current requirements appear to go beyond this. It should be clarified that these delivery items must be limited to what is strictly necessary under Article 12(1) IRRD, and that the resolution authority must demonstrate such necessity in line with the Directive.

Q3f. *Do you have comments on Guideline 5 – Assessment of feasibility: operational continuity?*

It is important to note in this guideline that not all groups provide critical functions.

Para 1.22**: Industry would welcome greater clarity around what is meant by "clear parameters against which the performance of these services' provision can be monitored**", noting that insurance companies should not be required to create new parameters that go beyond SLAs.

Q3h. *Do you have comments on Guideline 7 – Assessment of feasibility: separability?*

It is important to note in this guideline that not all groups provide critical functions. The analysis on the market capacity to absorb the transfer perimeter(s) and the identification of specific counterparties would overlap with the substitutability analysis already performed for the purpose of the identification of critical functions. It is therefore suggested that this requirement be removed. Additionally, assessing potential buyers relies on synergy considerations, which supervisors are better placed to evaluate through market-wide surveys to gauge the interest of market participants in acquiring competitors' business.

Q3i. *Do you have comments on Guideline 8 – Assessment of feasibility: loss absorption and recapitalisation capacity?*

Industry would **welcome further clarity on how requirements for "ensuring an appropriate amount of eligible liabilities" interact with Solvency II capital requirements**. There is a concern this will lead to Resolution Authorities (RAs) practically imposing an MREL-requirement on insurance companies.

Industry **proposes that references made to short time periods are removed from the Guidelines** as these are less applicable to the long-term nature of insurance liabilities. Specifically, in Para 1.31, removal of the words "at short notice" and in Para 1.33b removing the reference to "overnight".

Q3j. *Do you have comments on Guideline 9 – Assessment of feasibility: liquidity and funding in resolution?*

Safeguarding access to critical financial counterparties that provide liquidity is already burdensome; estimating the liquidity needs linked to the resolution plan adds further complexity, as these needs will inherently depend on the specific resolution scenario.

Q3l. *Do you have comments on Guideline 11 – Assessment of feasibility: communication?*

Para 1.39: Industry proposes that the **reference to "local language" be amended to "should be disclosed in a language customary in the sphere of international finance".** This would remove a potentially burdensome requirement to translate into multiple local languages.

Information on the crisis management communication strategy is already expected in the Pre-emptive Recovery Plan. For resolution purposes, it is important that any additional requirements focus solely on specific communication elements unique to the resolution plan, ensuring added value rather than duplicating existing obligations.

Q3m. *Do you have comments on Guideline 12 – Assessment of feasibility: governance?*

Para 1.40: Industry notes that **requirements that endanger the independence of internal audit should not be imposed and proposes that this paragraph be amended** to clarify that internal audit decides independently on any reviews performed.