Insurance Europe response to EIOPA IRRD consultation on Guidelines on the removal of impediments to 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 to remove impediments to resolvability. In the industry's view, **the draft guidelines are detailed, broad in scope, and could be interpreted as** giving resolution authorities considerable powers to intervene pre-emptively across various aspects of an insurer's business – ranging from product design to lines of business, reinsurance strategy, legal structures, intra-group structures, etc.

Against this background, the industry **urges EIOPA to keep these guidelines pursuant to Article 15 Insurance Recovery and Resolution Directive (IRRD) as generic as possible**. Details and circumstances will depend on the preferred resolution action, the nature of the impediment, if any, and it is difficult to determine in advance how measures would need to be applied in specific circumstances.

Industry welcomes the introduction that establishes **the principles of proportionality, cost/benefit and considerations given to limiting business disruption**. However, the language of those Introductory remarks could be strengthened. It should be made clearer **with a separate Guideline that Alternative Measures should be exceptional and as ultima ratio,** particularly given the low likelihood of resolution being necessary and hence imposed measures having a potential positive impact, while negative consequences of imposed measures (e.g. a required restructuring or forced sale of illiquid assets) have an immediate and certain negative impact on the financial situation of the undertaking or group as well as the customer value of products (e.g. through lower profit participation rates). Therefore, alternative measures can only be justified by the removal of real, demonstrable impediments to national resolution.

The adequacy of the imposed measures should be assessed in light of the very low likelihood of resolution, given the 99.5% Value at Risk (VaR) confidence level under Solvency II. The Guidelines may require far-reaching changes to the legal and organisational structures and may restrict business activities, extending even to third parties, reinsurers, and employees—not just intra-group entities. These requirements go beyond Solvency II

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and risk undermining the level playing field with insurers not subject to resolvability assessments or obligations to remove impediments. The broad scope of the alternative measures and powers available to resolution authorities further reinforces this concern. The assessment should primarily be part of the supervisory review and feedback process around the Own Risk and Solvency Assessment (ORSA). In addition, given **the exceptional nature of measures to remove impediments,** industry proposes the words 'could consider' rather than 'should consider' be used throughout the guidelines to better reflect this.

It is important to highlight that **timing constraints for insurance companies differ significantly from those in the banking sector**. Groups with Bank Recovery and Resolution Directive (BRRD) experience note that its requirements can be extremely burdensome — for example, some banks must simulate a full sale, including policyholder data transfer, within 24 hours to ensure continuity of banking services.
In contrast, **insurance does not require the same urgency**. While it is important coverage, delays of a few days in processing claims or transferring policies are unlikely to have an immediate impact on policyholders' lives. This distinction is explicitly acknowledged in **preamble 14 of the IRRD**, which states:
"The timescale of a resolution in an insurance and reinsurance context is different from a resolution in a banking context... Insurance and reinsurance resolution authorities... often have the benefit of having more time to find the proper solutions that are most beneficial for policyholders."

Therefore, **insurance companies and groups should not be required to establish specific BRRD-style reporting processes for resolution planning**. Instead, they should be permitted to **re-use existing business-as-usual processes** as much as possible. Additional data tracking requirements comparable to those under BRRD are not appropriate or necessary under the IRRD.

Measures should not make it harder for groups to create synergies by e.g. shared support functions. Unnecessary risks should be avoided but **resolution planning should not unduly constrain business opportunities or hinder the creation of operational synergies through intra-group arrangements**. In particular, intra-group financial and operational arrangements serve to generate capability, cost and customer service efficiencies in business as usual. Removing them ex-ante could greatly deteriorate an undertaking's competitiveness and ability to serve its customers effectively.

Industry would welcome further clarity on **circumstances where EIOPA would consider that an undertaking has insufficient loss-absorbency** to execute the preferred resolution strategy. If an insurer meets Solvency II capital requirements at solo and group level, the eligible own funds should be sufficient to absorb all relevant losses. The basis for an assessment of loss absorbing capacity by the resolution authority beyond that carried of the Solvency II supervisory authority is unclear and could lead to resolution authorities imposing a requirement like Minimum Requirement for Own Funds and Eligible Liabilities (MREL) on insurance companies.

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.

The Guideline 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 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.

Guidelines

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

Some parts of the guidance appear to duplicate or overlook existing Solvency II requirements. For example, Guideline 8 asks the resolution authority to consider the circumstances that could require a (re)insurer to change its reinsurance strategy. However, the elements listed here are also covered by Solvency II e.g. the strength of the reinsurer, the wording of the reinsurance agreement, and the nature of business reinsured. Therefore a (re)insurer which is compliant with Solvency II should also satisfy the guidance here. Where EIOPA considers that existing solvency requirements may not be sufficient, **it would be helpful for the guidance to clearly indicate where it intends to go beyond the existing Solvency II and provide the rationale for doing so**.

Industry proposes that the Introduction explicitly refer to the Directive's starting point (Recital 14) which states that **there is much more time in the insurance sector – compared to the banking sector – to find appropriate solutions** in case of failure of an undertaking.

Para 1.4c): This paragraph **introduces the concept of an 'alternative resolution strategy', which goes beyond the requirements set out in Article 13(2)a) and Article 14(3)a)** of Directive (EU) 2025/1. This requires the selection of a preferred resolution action, not more than one resolution action. Therefore, industry **request that this be deleted**. If this is maintained, it should be clear that the requirements in the Directive with respect to resolvability and the removal of substantial impediments can only be applied to the selected resolution action.

Para 1.5: should be amended to emphasise that changes to the business structure, which impact business as usual activities, **should only be implemented in exceptional circumstances with strong justification and as ultima ratio**. Industry suggests that this is **captured in a separate Guideline** to emphasise the importance of the point. The below wording is suggested:

"*It is essential to apply the alternative measures in a proportionate manner and as ultima ratio, trying to minimise,* ***limiting****, to the* ***maximum*** *extent possible, the interference with the insurance or reinsurance undertakings' or group's legal structure and financial or operational strategy.* ***Any such measures require detailed impact assessments clearly demonstrating how the expected benefits to resolvability outweigh any negative impacts, on ongoing operations, policyholder protection, financial stability, or the undertaking's broader economic role. Notwithstanding the right to appeal referred to in Article 15(7) of the IRRD, such assessments should be shared with the undertaking or group to provide an opportunity for appropriate engagement before measures are finalised."***

Para 1.7: **A company which does not meet the criteria for entry into resolution should not have to address impediments to winding up as part of the IRRD framework**. Para 1.7 should be amended as set out below:

The alternative measures may be applied if they are suitable, necessary and proportionate to address or remove the substantive impediments to the effective implementation of a preferred resolution strategy (and alternative resolution strategy, if applicable).

The decision to address impediments to wind-up for entities expected to undergo insolvency proceedings appears to go beyond what is strictly necessary and may exceed the mandate given by the Commission. Further clarification on the rationale and relevance of introducing this requirement is needed.

Para 1.10: Industry proposes that this **paragraph should clearly state that measures must not only be proportionate but also risk based, noting the points made above regarding interactions with Solvency II**. Removing impediments to resolvability can potentially be a heavy operational burden with capital impacts, and it would not be proportionate to do so for healthy companies with solid solvency buffers for whom the risk of resolution is very remote.

Q3b. *Do you have comments on Guideline 1 – Alternative resolution strategies?*

Industry suggests that the title **'Alternative resolution strategies' should be changed to 'Alternative measures'**. The measures referred to in Article 15(5) are not intended to be alternative resolution strategies, but alternative measures to remove substantial impediments to the preferred resolution action.

Q3c. *Do you have comments on Guideline 2 – Details and circumstances with respect to the power to require the insurance or reinsurance undertaking to revise any intra-group financing agreements or review the absence thereof, or draw up service agreements, whether intragroup or with third parties?*

Para 1.13a) and c): The **examples used appear to imply that mechanisms should exist to allow for loss-absorption beyond the NCWO-level. Industry does not consider this appropriate**. Such an approach could be interpreted that there might be circumstances in which more loss-absorption should be available within a group than Solvency II capital requirements prescribe, and that group entities could be exposed to more losses than their potential exposure existing prior to entry into resolution. This would raise concerns about consistency with existing prudential standards and the principle of limited liability within groups.

Para 1.13b) and d): **The examples given are of a rather generic nature and lack sufficient clarity to be operationally helpful as part of the guidelines**. In particular, it is unclear how to distinguish between complexities in the operational structures and structures not allowing loss absorption in accordance with general principles governing resolution as a going concern and in resolution. It also seems to be theoretical that insurance undertakings should install "a too complicated operational structure" of the group. There is also no definition of what is too complicated, considering that many operational structures are chosen based on regulatory, tax, liability, labour and other legal considerations, among others.

Para 1.14: While Article 15(5)(a) of the Directive allows resolution authorities to require service level agreements (SLAs), the drafting upfront of SLAs for all potential resolution scenarios may not be meaningful or proportionate, given the wide variety of circumstances in which resolution might occur. Industry suggests that this paragraph be modified to reflect that SLAs, where required, should be tailored, risk-based, and proportionate to the specific resolution strategy, and that a flexible approach is needed.

Q3d. *Do you have comments on Guideline 3 – Details and circumstances with respect to the power to require the insurance or reinsurance undertaking to limit its maximum individual and aggregate exposures?*

This guideline could risk undermining **the fundamental principle of diversification of risk in insurance** if not implemented proportionately. Limiting exposures without clear justification may reduce **the capacity of undertakings to accept risks**. In so doing it has the potential to damage the economic effectiveness of the (re)insurance undertaking and its contribution to the wider economy and internal market for a potential gain in a hypothetical resolution scenario. In particular, the guideline should include a requirement for the resolution authority to assess the potential economic costs for the group of such an action. Please also refer to the comments in the introduction section.

Q3e. *Do you have comments on Guideline 4 – Details and circumstances with respect to the power to impose specific or regular additional information requirements relevant for resolution purposes?*

It is essential that authorities ensure that all information already available to the supervisory or resolution authority is used before imposing additional data requests or reporting requirements on companies. The guideline should be amended as follows:

*Resolution authorities should consider imposing additional information requirements**, where this information is not already available to the supervisory or resolution authority in some form**, when the insurance or reinsurance undertaking is not able to provide up-to-date information required within the timeframe necessary under the preferred resolution strategy.*

Q3f. *Do you have comments on Guideline 5 – Details and circumstances with respect to the power to require the insurance or reinsurance undertaking to divest specific assets or to restructure liabilities?*

Para 1.21: Existing liquidity stress tests should be accepted by the resolution authority.

The second sentence could apply to all asset classes, except government bonds, given that resolution is likely to occur during period of extreme market stress. Insurers manage their asset portfolios in the interest of policyholders, sometimes aiming to secure an illiquidity premium for their benefit. A sub-optimal asset allocation imposed by the supervisor could undermine these objectives and potentially harm policyholder interests.
Para 1.22: The industry strongly supports that the resolution authority should consider the impact of divestments on profit participation of policyholders. However, it should also consider the economic impact of such a divestment on the insurance undertaking, in both the short and long term.

Para 1.23: **Further clarity would be welcomed on the circumstances in which EIOPA considers that an insurance undertaking or insurance group has insufficient loss-absorbency to execute the preferred resolution strategy**. If an insurer is adequately capitalised and meets Solvency II requirements, both at solo and group level, the eligible own funds should be sufficient to absorb all relevant losses. The Solvency II supervisory authority has responsibility to assess if sufficient loss absorbency is available and the basis for an additional assessment of loss absorbing capacity by the resolution authority is unclear.

Para 1.24: The issues raised in this paragraph are primarily of a supervisory nature. **Industry does not necessarily see the size of derivatives portfolios (used for hedging purposes) as complexity**, as these derivatives are generally used as a risk management tool in a going concern and any concerns would already be addressed by the supervisory authority.

Q3g. *Do you have comments on Guideline 6 – Details and circumstances with respect to the power to require the insurance or reinsurance undertaking to limit or cease specific existing or proposed activities?*

This guideline may risk limiting the ability of (re)insurance undertakings to support the real economy if not applied with due proportionality. In particular, if executed it would even bring forward the situation it aims to prevent. Please refer to the introductory comments.

Q3h. *Do you have comments on Guideline 7 – Details and circumstances with respect to the power to restrict or prevent the development of new or existing business lines or sale of new or existing products?*

This guideline may risk limiting the ability of (re)insurance undertakings to support the real economy if not applied with due proportionality. Please refer to the introductory comments

Para 1.29: This puts additional uncertainty on new product development, to the detriment of customers.

Q3i. *Do you have comments on Guideline 8 – Details and circumstances with respect to the power to require the insurance or reinsurance undertaking to change the reinsurance strategy?*

There is **significant overlap here with Solvency II requirements** (e.g. financial strength of the reinsurance counterparty). This section should be shortened to address points specific to resolution (if any) not already covered by Solvency II.

Para 1.33: **Industry suggests amending 'negatively affects' to 'poses a substantial impediment to'** for greater clarity that a significant impact is required. Many of the triggering events identified for implementing the measure are linked to scenarios that could occur in a moderately stressed environment. The list could be reconsidered to ensure the option is reserved for more severe and impactful situations.

Q3j. *Do you have comments on Guideline 9 – Details and circumstances with respect to the power to require changes to legal or operational structures of the insurance or reinsurance undertaking or any group entity, either directly or indirectly under its control, so as to reduce complexity to ensure that critical functions may be legally and operationally separated from other functions through the application of the resolution tools?*

Industry does not believe this power should include the ability to restructure group entities geographically or by business unit in the case of, inter alia, centralised risk management, liquidity management or other key financial functions of the group, noting that Directive (EU) 2025/1 Article 15(5)h) refers to legal and operational separation of critical functions. Some level of complexity should be accepted in case of resolution planning for EU entities belonging to a third country group, for which a resolution plan is in place at group level, outside the EU. The presence of such a set-up should never be cause for restructuring requirements.

The Guideline also sets very ambitious targets with regards to staff retention or Financial Market Infrastructure (FMI) access. For example, the assurance of availability of key staff to substitute the top management requested in point is not realistic from a practical perspective. It is not possible to prevent staff from leaving if they should choose to do so.