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:	Ministry of Finance of the Netherlands	
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Reference	**Comment**	
General comment	We very much welcome the work done by EIOPA in this regard and generally share the conclusions reached in the discussion paper. There is a clear case for further harmonization of recovery and resolution frameworks for insurers in order to prevent any disorderly failure of a (cross-border) insurer. At the minimum a framework should provide for a regime governing cross-border coordination, information sharing and mutual recognition of resolution measures in the case of a failure of an insurance	

	undertaking. At the same time characteristics of the insurance market and existing protection measures differ across member states. Therefore different approaches to failing insurances undertakings may be taken. Therefor harmonization should accommodate a principle based and flexible framework for failing insurance undertakings in order to take into account the various differences in characteristics of insurance markets.	
Q1	No; see the answer to Q2	
Q2	Yes; at present Title IV of Solvency II provides for mutual recognition of winding-up actions, as does Directive 2001/17/EC of the European Parliament and of the Council of 19 March 2001 on the reorganisation and winding-up of insurance undertakings. Yet, because reorganisation and winding-up actions differ across member states mutual recognition is complex and thus may hinder effective resolution of insurers active in multiple member states. Further harmonisation of R&R frameworks will simplify the existing mutual recognition and application of resolution (reorganisation and winding-up) measures.	
Q3	They are logical and sensible building blocks for an R&R framework.	
Q4	No	
Q5	The Dutch legislative proposal for an R&R framework (herein Dutch proposal) incorporates all insurance undertakings (life/non-life/reinsurance) including insurers that are excluded from the scope of Solvency II with the exception of very small insurers (no liability over €12.500). Furthermore it extends the scope to group holding companies and group members providing essential services to the insurer. However, small (non-SII) insurers are exempted from the obligation to draft a recovery plan.	
Q6	All measures incorporated in an R&R framework should be excercised in a proportionate manner but with due regard to the importance of effective resolution.	
Q7	Yes	

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Q8	All obligations should be effected in a proportionate manner. However it is difficult to formulate ex ante objective criteria for simplified obligations. Arguably it is better to leave some discretion to NRAs to demand less extensive recovery plans if the business of the insurer allows for it. Furthermore a simpler insurer will *a fortiori* have less difficulty in drafting a recovery plan than a complex insurance group.	
Q9	The Dutch proposal exempts solely non-SII insurers from the development of a recovery plan.	
Q10	A pre-emptive recovery plan should show the measures taken by the insurer after the breach of the SCR. This should be done at group level as well as on insurance level.	
Q11	Yes. Although the scope for resolution planning may arguably be narrower than the scope for recovery planning. It may be possible to determine in advance the likelihood of an insurer 'passing' the public interest test for resolution. This means it will be possible to designate insurers that are unlikely to be put in resolution as they are almost certain to be wind-down using regular insolvency proceedings. They may, for the time being, at the discretion of the NRA be exempted from resolution planning.	
Q12	The likelihood of passing the 'public interest test' and as such the need for resolution in order to fulfil resolution goals or negate negative effects of normal insolvency proceedings.	
Q13	In regard to resolution planning the concept of simplified obligations as such seems unfit as resolution alway implies application of extraordinary measures; if simplified obligations suffice the question rises why the insurer cannot be resolved using regular insolvency proceedings. Nonetheless in insurance, in contrast to the banking sector, there is often more time for the resolution authority to take the measures needed. There is no "bank run" involved. This means that in comparison with banking in some cases a resolution plan may be simpler. At the moment that an insurer or certain insurers of an insurance group are in resolution, there is often still time to those simpler measures.	
Q14	see response to Q10	
Q15	Yes, but see answer to question 16.	
Q16	Yes; Impediments may be operational (IT, Staff); financial (intra-group liabilities or guarantees) or structural (reduce complexity and the interconnectedness in the group structure)	

Q17	See the response to Q13; the simplifications could be related to the feature that the resolution authority has a large timeframe for resolution than in the banking sector.	
Q18	Early intervention is in effect a *going concern* supervisory framework; especially if it is to be applied in advance of or at the same moment as the SII intervention powers. Therefor it is unclear whether it should be part of an R&R framework or an addition to Solvency II supervision. For the R&R framework, however, the requirement of information sharing of early intervention measures is important.	
Q19	The use of supervisory judgement and discretion can accommodate different circumstances, however legal certainty should not be forgotten. Especially early intervention measures with high impact for the insurance company should not be purely based on supervisory judgement.	
Q20	Yes, the measure "require an insurer to call for cash injections by shareholders, parent or partner companies" does not mean that the shareholders, parent or partner companies are required to inject cash. A statutory obligation to heed such a call at present does not exit in the Netherlands. As a result this is a relatively soft measure and therefore less effective than the other measures.	
Q21	The limitation of profit distributions should be set at ultimate parent level as well as on the insurance legal entity levels.	
Q22	Yes	
Q23	The wording financial stability should be reworded in social unrest. The insurance business is consumer business. The failure of an insurance company without effective resolution may result by consumers in social unrest, a lack of trust in insurance companies in general and the economy as a whole.	
Q24	They should not be ranked. Potential conflicts of interest between policy holder protection and a financial stability are not expected. Measures taken for safeguarding the financial stability e.g. the continuation of the portfolio of insurance contracts will also be of best interest of the policy holders. In the rare case that a conflict of interest exist it should be resolved on a case by case and common sense approach.	
Q25	As the proposal is clearly inspired by BRRD the questionrises whether or not it is more clear to use 'failing or likely to fail' as opposed to the 'point of non-viability' as in BRRD. The PONV has	

	a different meaning and does not imply resolution but rather Write-down-of-capital-instruments without resolution.	
Q26	Yes	
Q27	f.e. the (mandatory) withdrawal of the licence; and the need for State Aid.	
Q28	These are the essential powers.	
Q29	Powers to assume control (either directly or indirectly) over the failed institution seem to be missing as are powers regarding group members who are not themselves insurers (f.e. a holding). The power to modify agreements the failed insurer has entered into can be a usefull and effective tool. Second bulletpoint: „(including a bridge institution *or management vehicle)*".	
Q30	No	
Q31	At present it is difficult to allocate losses to shareholders and creditors other than through insolvency proceedings. This means that if there is a public interest in preventing insolvency losses cannot be directly attributed to shareholders and creditors of the failing firm, this makes effective and 'fair' resolution difficult. It is possible that as a consequence of these powers the compensation for shareholders and creditors (other than policyholders) will rise slightly.	
Q32	No	
Q33	Compared to resolution liquidation of a insurance portfolio will almost certainly result in losses for policyholders even if their insurance claims can be almost wholly satisfied as they will need to purchase a replacement insurance contract. Therefore continuation of the insurance portfolio in resolution (f.e. through a transfer to a competitor or bridge institution) will in many cases be the prefered solution for the policy holder, even taking into account a potential bail-in (assuming the application of the NCWO safeguard).	
Q34	Specific safeguards regarding linked assets and liabilities and special agreements f.e. financial collateral arrangements are needed in order to increase legal certainty with regard to these legally complex arrangements.	
Q35	Yes	
Q36	In essence similarly as SII supervisory colleges. So cooperation arrangements should provide for a mandatory resolution college in case of insurers active in multiple member states, a	

	group-coordinating NRA and a conflict mediation function.	
Q37	Cross-border recognition of resolution powers; a holistic view to group resolution, i.e. measures preventing ring-fencing in case of a failing or likely to fail insurer. As NCWO depends on diverging national insolvency rules this may create additional complexity which need consideration.	
Q38	Depending on equivalence of a resolution framework third countries can be involved.	