IRSG

INSURANCE AND REINSURANCE STAKEHOLDER GROUP

Advice on a package of 6 IRRD related consultations
(EIOPA-BoS-25-097)
(EIOPA-BoS-25-099)
(EIOPA-BoS-25-101)
(EIOPA-BoS-25-100)
(EIOPA-BoS-25-102)
(EIOPA-BoS-25-103)

IRSG-25-15

TABLE OF CONTENTS

IRSG SUMMARY

The Insurance and Reinsurance Stakeholder Group (IRSG) welcomes the opportunity to provide feedback on EIOPA's draft Regulatory Technical Standards (RTS) and Guidelines related to the Insurance Recovery and Resolution Directive (IRRD). The IRSG supports the overarching goal of establishing a harmonised framework for managing distress and crisis in the European insurance sector. However, it raises several concerns and recommendations to ensure the framework is proportionate, efficient, and aligned with existing regulatory structures, particularly Solvency II. It also stresses the importance of respecting the specificities of reinsurance and allowing national discretion under the IRRD's minimum harmonization approach. By this advice, the IRSG believes that these RTS's and guidelines can be much better finalized so that the IRRD framework can be implemented to serve the best interests of policyholders, insurers and financial stability in general.

General Observations

- **Solvency II as the Cornerstone:** Solvency II should remain the primary framework for crisis prevention. Any additional requirements under the IRRD must be justified with clear added value and must not duplicate existing obligations. As, many IRRD proposals overlap with Solvency II reporting, any new reporting requirements should be introduced only where necessary and not already covered under Solvency II.
- **Clarity and Consistency in Definitions and Criteria:** There needs to be clear definitions (e.g., "relevant services," "critical functions," "undue complexity") and alignment across documents to avoid confusion and inconsistent application by authorities.
- **Respect for Reinsurance Specificities:** Reinsurance's inherently cross-border and diversified nature should not be misinterpreted as a risk factor. Reinsurance should also not be labelled as a critical function, and more tailored treatment should take place through the documents.
- **Concerns Over Resolvability Assessments:** Overly theoretical and vague resolvability assessments could lead to unjustified structural changes, harming efficiency and innovation. They advocate for a focus on material impediments only.
- **Safeguarding Innovation and Business Flexibility:** Measures that could stifle product development or force suboptimal business models should be avoided. Resolution tools should not override sound business strategies or conflict with other regulatory obligations. For example, recognition of the mutual legal form is essential — where capital is provided by policyholders, often employees — as mutual insurers are accountable solely to their policyholders, not to external shareholders.

- **The IRRD is a minimum harmonisation directive:** Member States should have the freedom to implement national measures where necessary to accommodate the specific characteristics of their local markets. Therefore, the ITS and Guidelines should remain proportional to the scope and nature of the IRRD.

Key Thematic Concerns Across the Six Consultation Papers

1. Proposal for RTS on the Content of (Group) Pre-emptive Recovery Plans

The IRSG argues that pre-emptive recovery plans should minimize administrative burden and leverage existing Solvency II reports. Group-level plans should generally suffice for subsidiaries unless there is a clear reason otherwise. The IRSG criticizes the assumption that recovery frameworks inherently reduce failure risk, stating that poorly designed frameworks could actually increase risk. It also challenges the idea that insurers need to react as quickly as banks in crises, noting that insurance failures typically unfold more slowly. The group calls for clearer definitions, especially around terms like "significantly deteriorated financial position," and insists that indicators and remedial actions be proportionate and tailored to group-specific risks.

2. Proposal for RTS on Criteria for Pre-emptive Recovery Planning Requirements and Market Share Calculations

The IRSG calls for more clarity on how market coverage levels are calculated and updated. It argues that diversification—especially in reinsurance—should not be treated as a risk factor. The group opposes requiring subsidiaries of groups with existing recovery plans to create separate plans, citing unnecessary duplication. It also recommends that exposure to intra-financial assets be assessed based on credit quality and risk mitigation, not gross exposure. The IRSG stresses that size alone is not a good risk indicator and that cross-border activity should not be misinterpreted as inherently risky.

3. Proposal for RTS on the Content of Resolution Plans and Group Resolution Plans

The IRSG emphasizes that resolution plans should avoid duplicating information already available through Solvency II reports. It argues that the definition of "relevant services" should be aligned with business continuity management and that "reinsurance services" should not be included as relevant services. The group also calls for clearer distinctions between EEA and non-EEA entities in group resolution strategies and urges a more principles-based approach rather than overly detailed requirements.

4. Proposal for Guidelines on Criteria for the Identification of Critical Functions

The IRSG warns that the current draft guidelines cast too wide a net, potentially classifying nearly all insurance activities as critical functions. It suggests that resolution authorities should primarily rely on insurers' own assessments and make changes when necessary. Also, reinsurance should not be treated as a critical function unless clearly justified. The group stresses that cross-border

business within the EU should not be seen as an additional risk and that the guidelines should avoid rewriting established frameworks like the FSB guidelines. It also recommends removing the extensive list of potential critical functions, which it sees as unhelpfully broad.

5. Proposal for Guidelines on the Assessment of Resolvability

The IRSG expresses deep concern that the resolvability assessment framework is overly theoretical and could lead to disproportionate interventions. It argues that complexity, cross-border operations, and intra-group arrangements should not automatically be seen as impediments to resolvability. The group warns that vague criteria like "undue complexity" could lead to arbitrary decisions and discourage strategic business decisions such as mergers or innovation. It calls for a more proportionate, risk-based approach that respects existing prudential supervision and avoids turning the assessment into a checklist exercise.

6. Proposal for Guidelines on Measures to Remove Impediments to Resolvability

The IRSG urges EIOPA to keep these guidelines high level and avoid prescriptive mandates that could hinder business efficiency. It warns that some proposed powers—such as requiring changes to reinsurance strategies or legal structures—could undermine Solvency II, disrupt business models, and reduce policyholder returns. The group stresses that such measures should only be used in exceptional cases and must be justified with a clear cost-benefit analysis. It also highlights the need for clarity on what constitutes a "substantive impediment" and calls for safeguards to prevent resolution authorities from overstepping their mandates.

Final Remarks

The IRSG asks EIOPA to ensure that the IRRD framework:

- Enhances proportionality and avoids unnecessary burdens.
- Respects the economic rationale behind group structures and business models.
- Maintains coherence with Solvency II and avoids regulatory fragmentation.
- Provides clarity and predictability to insurers, especially regarding the criteria for intervention and the definition of key terms.
- Sets clearly defined criteria for the exercise of pre-resolution intervention powers by authorities.

The IRSG reiterates its commitment to constructive dialogue and supports a resolution framework that strengthens the resilience of the insurance sector without compromising its competitiveness or operational efficiency

1. PROPOSAL FOR RTS ON THE CONTENT OF (GROUP) PRE-EMPTIVE RECOVERY PLANS

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

Yes.

Overall, the IRSG finds that it is crucial that the IRRD minimizes administrative burdens for both the industry and National Competent Authorities (NCAs). Following the Commission's simplification agenda to reduce operational and reporting burdens on firms, existing reports already produced and available to NCAs, should be referenced whenever possible to avoid duplicative reporting to supervisors. The framework should be tailored specifically to the insurance sector, acknowledging its distinct characteristics compared to other financial sectors. Some group insurers already have – and maintain a (group) pre-emptive recovery plan. Their multiple subsidiaries within the same country are currently not required to develop individual plans. Requiring separate recovery plans for these subsidiaries would introduce additional operational burdens and costs, despite the existence of a comprehensive group-level plan at the parent company level. It should remain group insurers' prerogative to either produce separate recovery plans or enhance the group-level recovery plan to address NCA's request. Given the extensive nature of the proposed pre-emptive recovery plan, which should indeed be simplified while allowing NCAs to request additional information on a case-by-case basis, it would be preferable for the first plans to be prepared after a reasonable delay.

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

Yes.

We believe that the paper asserts that a comprehensive recovery and resolution framework reduces the likelihood of failure. This is not substantiated and unproven. If the framework is inappropriately implemented, placing barriers in the way of tried and tested ways of managing insurance risks (e.g. diversification) and if it places inappropriate burdens on insurance companies putting EU companies at a significant competitive disadvantage, it increases the risk of failure. The statement that can only be correct up to a point. Solvency II must be recognised as the ultimate EU framework for crisis prevention of insurance companies. The marginal benefit in crisis prevention of additional regulatory burden beyond Solvency II must be very carefully scrutinised. Also, while crisis prevention and preparation is likely to be more efficient and less costly than crisis management for an individual firm that fails, this will not be the case at industry level if the measures are disproportionately implemented.

EIOPA states that “problems can appear suddenly and require swift and decisive actions”. It should be noted that the general assumption that there is only a very short timeframe for insurers and NSAs to react adequately to a critical situation involving a potential failure of an insurer is not adequate. Unlike banks, insurers do not fail “over the weekend” leaving insurers and their supervisors enough time to react effectively and efficiently to a crisis over a much longer time scale. This should be considered when setting recovery and resolution requirements for insurers.

Q3. Do you have comments on the Recitals?

Yes.

Recital 1 refers to a summary of the preventive recovery plan in an international language. Market practice recommends including a summary of the key elements of the Plan in both languages i.e. “Language of AMSB members” and” International/English”. The RTS should allow that the (group) recovery plan is prepared and submitted in the main language used for communication within the Group.

In Recital 2, It should be better clarified how the pre-emptive recovery plan in Directive (EU) 2025/1 relates to the recovery plan in Solvency II i.e. suggesting that the IRRD pre-emptive recovery plan should replace the SII recovery plan for relevant undertakings or groups. Having two different recovery plans is unreasonable.

Q4. Do you have comments on the following articles?

Article 1 - Definitions

Yes.

We would like to point out that the term “significantly” when describing the deterioration of the financial position is not clear enough and leaves room for interpretation, which should be avoided. Its relationship to Article 4 (2) which requires to set an indicator “…relating to the capital position which as a minimum shall contain any breach of the SCR…” should be defined.

Article 2 - Summary of the key elements of the pre-emptive recovery plan or group pre-emptive recovery plan

Yes.

We would like to note that the summary is intended to serve as a playbook or handbook, providing quick and practical guidance on the actions to be taken in a Recovery scenario.

Article 3 - Description of the insurance or reinsurance undertaking or the group

Yes.

Most of the information required under this article is available in SFCR, or RSR reports, QRTs and the ORSA report. While this is mentioned in recital 1, it should be explicitly mentioned in the article that undertakings or groups can refer to these documents to cover the requirements under this article to avoid unnecessary duplication.

In 1(b) the mapping of core business lines and critical functions should be to EEA insurance and reinsurance undertakings as those undertakings are subject to requirements under the IRRD. This requirement should not be extended to entities which are outside the EEA as those entities are not subject to the IRRD other than through the group requirements in the IRRD. The details of these entities will be captured in the group considerations as appropriate.

In 1(c) information on intra-group transactions and inter-connectedness is already captured in detail in Solvency 2 reporting templates, 36.01 (IGT Equity-type transactions, debt and asset transfer), 36.02 (derivatives), 36.03 (off balance sheet and contingent liabilities), 36.04 (IGT insurance and reinsurance), 36.05 (P&L, including intra-group outsourcing or cost sharing). In 1(d), information from Solvency 2 reporting already includes extensive details on external transactions.

The Art. 3(a),(b) are requesting detailed descriptions of critical functions, which goes beyond the requirement of Art. 5(6) IRRD, where critical functions are not mentioned as mandatory content of the (group) recovery plan. In particular, critical functions are determined by the resolution authority rather than the insurance undertaking/group.

Article 4 - Framework of indicators

Yes.

Article 4 mentions the need to define indicators at both parent company and subsidiary level. Local entity indicators should not be considered in a group recovery plan for the purposes of the implementation of the group recovery plan, unless there is a clearly established link between

entry of the local entity and group into recovery. Even if a local entity recovery indicator is breached for a material group entity, this would not necessarily result in a group entering recovery. The recovery indicators of the group must be specific to the circumstances of the group – the individual entity perspective is reflected in this consideration to the extent that the entity's circumstances impact the group. Otherwise, EEA insurance and reinsurance undertaking indicators should only be included in group recovery plans where those undertakings are covered by the group recovery plan.

The wording in (1)a should be updated to state "The group pre-emptive recovery plan shall contain indicators that identify the triggers at the level of the ultimate parent undertaking for the group and at the level of the individual subsidiary EEA insurance and reinsurance undertakings where included in the group recovery plan. Otherwise subsidiary indicators should be included where those indicators are relevant for group recovery".

The assessment of whether remedial actions are credible/feasible/effective needs to be proportionate in light of the information available in the pre-recovery situation. In 3.c.iii the wording in bold should be added "an overview of the valuation assumptions and all other assumptions made for the purpose of the assessments in points (i) and (ii) if different".

Finally, Since EIOPA is expected to issue guidelines on indicators and scenarios according to Article 5.11 of Directive (EU) 2025/1, this should be reflected in the RTS. To avoid any potential conflicts or overlaps with these guidelines, we recommend that Article 4 be simplified and made less prescriptive.

Article 5 - Description of how the pre-emptive recovery plan or group pre-emptive recovery plan has been drawn-up, how it will be updated and how it will be applied

Yes.

In point 1a(iii) the mentioning of external auditors should be omitted (as not mentioned in the Directive 2025/1).

To minimize administrative burdens, it should not be necessary to update the recovery plan if there have been no significant changes in the company's risk profile.

Article 6 - Range of remedial actions

Yes.

Art. 5(6e) IRRD does not set out a description of the credibility, impact on solvency, liquidity, capital composition and operations, outcome of the assessment of feasibility and effectiveness of the removal actions as mandatory elements to be covered in the recovery plan (RTS Art. 6 (3)c). We would like to emphasize the need to reduce the RTS to minimum requirements in order to keep the true purpose of the pre-emptive recovery plan and to avoid turning recovery planning into a tick-the-box exercise by requiring exhaustive and detailed analysis and assessment of hypothetical scenarios. Any assumptions on future developments, potential (market) reactions, stakeholder behaviour, systemic consequences, availability of seller, valuation parameters (and resulting "achievable" value) etc. and are necessarily uncertain, so that it should suffice to outline strategic approaches in the recovery plan rather than hypothetical operational details.

Article 7 - Communication strategy

No.

Article 8 - Past breach of the Solvency Capital Requirement

Yes.

NCAs will already be aware of any recovery plan submitted in the past in accordance with Article 138(2) of the Solvency II Directive. It is therefore fully sufficient to state the fact that such a recovery plan has been filed with the NCA.

Q5. Annex I: Impact assessment - Q5. Do you have comments on the policy issue??

No.

Q6. Do you have any other comments on the consultation paper?

No.

2. PROPOSAL FOR RTS ON CRITERIA FOR PRE-EMPTIVE RECOVERY PLANNING REQUIREMENTS AND METHODS TO BE USED WHEN DETERMINING THE MARKET SHARES

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

Yes.

The IRSG is of the opinion that the RTS should clearly reflect that NSAs shall take subsidiaries of a group that has a recovery plan into account when the market coverage level is calculated. This should be amended in e.g. Art 10.2 and 3 as well as in Recital 3. 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.

We also find that 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 Art 6. The IRSG does not view diversification, notably in a reinsurance context, as increasing risk and recommends rewording these Articles to remove this implication. In addition, the IRSG recommends the addition of a recital acknowledging the specificities of reinsurance in a cross-border context.

The Exposure to intra-financial assets, i.e. assets issued by financial institutions and held by undertakings, e.g., debt securities, equity or derivatives or even bank deposits, should not be assessed based on the gross exposures, but rather reflecting the credit quality of issuers, collateralization mechanisms or other risk mitigation techniques in place.

Finally, the calculation method for market coverage levels - as outlined in the RTS and IRRD - remains unclear. In particular, some group insurers that already maintain a (group) pre-emptive recovery plan have multiple subsidiaries within the same country that are currently not required to develop individual plans. Requiring separate recovery plans for these subsidiaries would introduce additional operational burdens and costs, despite the existence of a comprehensive group-level plan at the parent company level. It should remain group insurers' prerogative to either produce separate recovery plans or enhance the group-level recovery plan to address NCA's request.

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

No.

Q3. Do you have comments on the Recitals?

Yes.

Regarding recital 2, the IRSG recommends giving certainty with respect to the use of the "total assets" metric and therefore to remove "for example".

Please refer to comments to Q4. the IRSG 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.*"

Q4. Do you have comments on the following articles?

Article 1 - Size criterion

Yes.

The IRRD aims to minimize the impact of a failing re/insurer for the EEA policyholders, economy, financial system and public finances. Accordingly, the size criterion should be scoped to include the GWP and technical provisions related to activities pursued in the Member State of incorporation of the insurance or reinsurance undertaking. 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, the IRSG recommends including in paragraph 1 the following sentence: "*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.*"

In general, it should be noted that pure size of an insurer is not a good criterion in an insurance context, as larger portfolios provide better diversification than smaller ones. The same applies to the cross-border criterion.

Article 2 - Business model criterion

No.

Article 3 - Risk profile criterion

No.

Article 4 - Interconnectedness criterion

Yes.

Exposure to intra-financial assets, i.e. assets issued by financial institutions and held by undertakings, e.g., debt securities, equity or derivatives or even bank deposits, should not be assessed based on the gross exposures, but rather reflecting the credit quality of issuers, collateralization mechanisms or other risk mitigation techniques in place.

Article 5 - Substitutability criterion

No.

Article 6 - Importance for the economy of the Member State criterion

No.

Article 7 - Cross-border activities criterion

Yes.

Art 7.2 implies that diversification could be considered risky, e.g. through having business in multiple countries. This contradicts the concentration risk assessment in Art 6. The IRSG does not view diversification, notably in a reinsurance context, 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. The IRSG recommends adding the following recital:

"*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.*"

Article 8 - Combination of criteria

No.

Article 9 - Operational considerations for the calculation of the market coverage level

No.

Article 10 - Accounting for the market share of the subsidiary of a group based in a different

No.

Article 11 - Considerations regarding insurance undertakings pursuing both life and non-life

No.

Q5 Annex I: Impact assessment - Do you have comments on the policy issues??

No.

Q6. Do you have any other comments on the consultation paper?

No.

3. PROPOSAL FOR RTS ON THE CONTENT OF RESOLUTION PLANS AND GROUP RESOLUTION PLANS

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

Yes.

The IRSG emphasizes that resolution plans should avoid duplicating information already available through Solvency II reports. It argues that the definition of “relevant services” should be aligned with business continuity management and that “reinsurance services” should not be included as relevant services. The group also calls for clearer distinctions between EEA and non-EEA entities in group resolution strategies and urges a more principles-based approach rather than overly detailed requirements.

Also, it should be possible for insurance groups to provide information requested by the resolution authority regarding resolution planning in the language used of communication within the insurance group.

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

No.

Q3. Do you have comments on the Recitals?

No.

Q4. Do you have comments on the following articles?

Article 1 - Definitions

Yes.

It is important to ensure appropriate definitions, consistent with the regulation, in the ITS.

The definition of “relevant services” should be more precisely aligned with the scope of business continuity management. One possible approach is to interpret “relevant services” as those provided by “essential service providers,” as defined in Article 2(86) of the IRRD. This would ensure consistency with the directive’s terminology and intent.

Accordingly, the reference to “reinsurance services” should be removed. The term does not have a basis in either the IRRD or Solvency II and does not correspond to the types of services envisioned under “operational continuity” in the IRRD Annex. That Annex refers to tangible operational enablers such as IT services, premises and facilities management, and human resources—concrete elements necessary to keep the undertaking functioning.

Article 2 - Information to be included in resolution plans

Yes.

Information that is already available to competent authorities, e.g., in the undertakings annual ORSA report or the undertakings (group) pre-emptive recovery plan should not be listed. Any repetition of already available information should be avoided, and authorities should collect that information from existing reports.

Article 3 - Information to be included in group resolution plans

Yes.

On group resolution plans, given that the legal and operational implications of the IRRD vary for EEA insurance and reinsurance undertakings to which the IRRD applies, and related third-country legal entities, whose winding-up is governed by local regulations, it is important that the RTS provides clarity on the type of entities referred to in article 3.

Specifically, article 3(1)(a)(ii) should be revised to state: “information about all EEA insurance or reinsurance undertaking(s) and, where relevant, their branches operating under the freedom of establishment in the single market, (…)”.

Article 3(1)(b) should be revised to state: “a description of the group resolution strategy or strategies considered in the plan, including the identification of the EEA insurance or reinsurance undertaking(s) to which resolution tools or resolution powers may be applied.”

The proposed minimum requirements are too detailed in view of the fact that most are based on assumptions that are unlikely to occur in that exact way in a crisis situation. Rather, Articles 2 and 3 should set overall principles. Resolution authorities should be enabled to request additional information where necessary using a proportionate and risk-based approach.

Q5. Annex I: Impact assessment - Do you have comments on the policy issue??

No.

Q6. Do you have any other comments on the consultation paper?

No.

4. PROPOSAL FOR GUIDELINES ON CRITERIA FOR THE IDENTIFICATION OF CRITICAL FUNCTIONS

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

Yes.

We find that the identification of critical functions is an element of great significance in the IRRD framework, as it should provide the criteria by which Authorities design the measures to guarantee the continuity of fundamental services and activities during times of financial distress.

In this perspective, we want to underline that the IRRD framework foresees the identification of insurance companies' critical functions in two different circumstances. First, insurance undertakings should include in their pre-emptive recovery plan the identification of their critical functions (which is not a mandatory element of the recovery plan according to Art. 5(6) IRRD), as clarified by Art. 3 of EIOPA's draft *RTS on the content of pre-emptive recovery plans*; secondly, Resolution Authorities should identify the critical functions of those undertakings for which they prepare resolution plans, pursuant to Art. 9(2) of the IRRD.

In order to enhance the consistency of the IRRD framework, we invite EIOPA to revise the draft Guidelines to include provisions requiring Resolution Authorities to primarily rely on the assessment of critical functions made by the undertaking in its pre-emptive recovery plan. We believe that the adoption of this approach would not affect the general soundness of the framework, since pre-emptive recovery plans are revised both by Supervisory and Resolution Authorities pursuant to Art. 6(1)(2) of the IRRD. This circumstance indirectly guarantees the validity of the assessment made by the undertaking. We would like to mention that this approach was originally formulated by EBA in its "*Technical advice on the delegated acts on critical functions and core business lines*" addressed to the European Commission in the context of the BRRD.

If this proposal were adopted by EIOPA, Resolution Authorities would proceed in making a "new" identification (i.e., different from the one made by the undertaking) only if they recognized material deficiencies in the undertaking's assessment. This method would reduce the risk of inconsistent evaluations and would also streamline the process for Resolution Authorities.

We believe that cross-border business within the EU should not, in itself, be seen as an additional risk. Such a view would oppose the very aim of the Internal Market. Therefore, any mention of cross-border activities should only refer to operations outside the EEA or to cases where the business is mainly carried out in Member States other than the undertaking's Home Member State.

We also find that the recommendation to consider all functions provided to a third party implies that very few of an insurer's activities will be excluded from the scope of potential critical functions. The Guidelines should relate more closely to the text of Art. 2 (25) of the Directive. It is not clear in the Guideline that all the criteria stated in the Directive's definition must be met in order for a function to be considered critical.

The starting point of assessing critical functions should not be that every (re)insurance activity is a critical function. The explanatory text presents a "non-exhaustive list of potential functions", intended to "*serve as a reference for resolution authorities when deciding whether an insurance or reinsurance undertaking provides a critical function*". This list comprises almost every (re)insurance activities and therefore serves limited purpose and should be removed from the Guideline. For instance, this list includes, as far as reinsurance is concerned, *"(3) Lines of business and products related to Reinsurance, such as: Facultative or treaty reinsurance / Financial (re)insurance (Insurance of settlements between counterparties)"*. Facultative or Treaty reinsurance are types of reinsurance, not products or lines of business.

In addition, the IRSG recommends adding the following paragraph to acknowledge the specificities of the reinsurance business model based on the diversification of cross-border geographies and business lines: "*When assessing whether a reinsurance undertaking carries critical functions, the national competent authorities should give due consideration to the fact that reinsurance is a business-to-business activity between highly skilled reinsurance professionals, including reinsurance brokers. Consequently, the reinsurance activity has no direct implications for retail policyholders. Furthermore, 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 cross-border activity of reinsurance undertakings should not be misunderstood as an indicator of heightened risk.*"

Finally, the guidelines do not clearly specify how the identification criteria for deeming a function as critical should be harmonized, especially considering that some group insurers have already developed appropriate methodologies in accordance with the FSB guidelines over the past ten years. Without further clarification, the proposed harmonization could potentially conflict with these existing methodologies, which have been refined and embedded into internal processes. It would be helpful if the NSAs acknowledged this possibility and provided a framework for aligning or integrating such pre-existing approaches.

Q2. Do you have comments on the Section 'Consultation paper overview and next steps'?

No.

Q3. Do you have comments on the following sections?

Guideline 1 – Scope of potential critical functions

Yes.

We find that this guideline covers an extensive set of activities to be deemed critical. In particular, the resolution authority's need to consider "all functions provided to a third party". This implies that very few of an insurer's activities will be excluded from the scope of potential critical functions. This approach seems to be at odds with the underlying principles of the Directive which is to address failure situations, which requires to develop a more specific and tailored approach in the identification of critical functions, to avoid identifying the entirety of an insurer's activities as critical functions. The Guidelines should relate more closely to the text of Art. 2 (25) of the Directive. It should be made clear in the Guideline that all the criteria stated in the Directive's definition must be met in order for a function to be considered critical. Resolution authorities should focus on the impact that a discontinuation of the function and inability to replace it would cause and if the function "*cannot be substituted easily within a reasonable timeframe, or at a reasonable cost for policy holders*".

Paragraph 1.3: The FSB 2023 paper Identification of Critical Functions of Insurers" does not identify reinsurance as a critical function for insurers. Section 3.2.6 of this paper specifies that none of the case studies evaluated assessed reinsurance as a critical function. Paragraph 1.3 should be reworded accordingly.

Paragraph 1.13 of Guideline 1 rewrites the FSB list of the types of economic function of insurance, including a reference to reinsurance, each time there is a reference to insurance (eg, "*Insurance / reinsurance coverage as a precondition for individuals to go about their daily lives; Insurance / reinsurance payments that are vital to individuals' financial security"*). Reinsurance is a BtB activity which does not provide direct coverage to individual customers. Applying criteria designed for primary insurers may overstate the criticality of certain reinsurance functions. Therefore, the wording of the FSB's Practices paper should be respected in § 1.13. This also applies to the activities of investing and asset management, as they are easily substitutable as already acknowledged in the 2015 FSB paper.

Para 1.13: investments should not be included as a potentially critical function, as well as non-insurance-specific activities such as the pooling of risks. The critical functions of insurance undertakings should be limited to the insurance functions they fulfil. In addition, industry does not support the classification of reinsurance as a non-insurance function in this guideline.

We also suggest EIOPA to add a “Paragraph 1.13-a” to this Guideline, which states that Resolution Authorities should take as main source for the identification of an undertaking’s critical functions the assessment performed by the undertaking itself in its latest pre-emptive recovery plan.

We believe that Resolution Authorities should use this as basis and then make possibly needed changes to better reflect the market-wide or more macro prudential view to assess substitutability. Resolution Authorities should proceed in formulating their own identification of critical functions only if they deem the undertaking’s assessment materially incomplete (i.e., when it ignores the existence of some critical functions). As stated in Q1, we believe that such an approach would avoid unduly inconsistencies between the two identifications of critical functions envisaged by the IRRD.

Guideline 2 – Geographical Level

Yes.

An assessment of substitutability (and impact) at regional level should not only consider alternative supply from that same region, but also from other EU member states.

Guideline 3 - Consideration of an insurance guarantee scheme, measures under normal insolvency proceedings, and use of public funds in the identification of critical functions

Yes.

#1.17 (a) and (b) disallow the consideration of existing and applicable measures under normal insolvency proceedings as well as existing insurance Guarantee Schemes in the assessment of critical functions. This potentially contradicts national legal requirements and operational processes that might be used in a resolution case and should be removed from the proposal.

Guideline 4 - Inability to provide the function

Yes.

Using the assumption that activities and operations cease completely and that the services are no longer provided as per #1.18 will in many cases significantly overstate the impact assessment, for example regarding selling investments or terminating derivative agreements. In our view, the “partial cease” approach mentioned in #1.19 corresponds much closer to reality and should thus

be used as the primary approach. In case the “complete stop” approach is applied resolution authorities should explain the rationale for it and why the “partial stop” approach could not be considered.

Guideline 5 - Transmission channels

No.

Guideline 6 - Factors to consider for the assessment whether a significant impact on the real economy or the financial system is likely

No.

Guideline 7 - Impact resulting from effects on the social welfare of a large number of policy holders and from the systemic disruption in the provision of insurance services

Yes.

Guideline 7 should establish criteria on how to interpret and assess the “impact on the social welfare” and on how to determine what constitutes “a large number of policyholders”. The current proposal leaves this open and unclear, especially since the insurance and pension systems still differ to a certain extent in the European capital market.

For example, in some European regions — as some of the Nordic countries — mutual insurance undertakings, with collective capital accumulated over generations, negotiated through social dialogue by the social partners on the labor market, play a unique role in the social economy and so, the welfare systems. This has important implications.

First, mutual insurers are active financial actors and help ensure access to affordable non-life insurance for vulnerable groups, without raising costs for other policyholders or risking the product’s viability. Without them, it is unclear who would meet this need in the present social welfare system.

Secondly, impacts and imbalances might occur in great parts of the pension system. For example, the Swedish pension system consists of multiple parts balancing each other. The system relies on a supportive legal framework, mutual trust and capacities of the social partners to negotiate and enter collective agreements. And on sustainable products, for example mutuals who offer

traditional life insurance with collective management — built on intergenerational solidarity and collective capital (the employees' capital).

As said, it's unclear on how to assess all this, but it's crucial that EIOPA takes regional aspects into consideration and how elements are related to both labor market and the social welfare systems in certain capital markets. Significant impacts can for certain disturb the mutual balance and lead to unforeseen risks for the real economy – and the financial stability.

Guideline 8 - Loss of general confidence in the provision of insurance services

Yes.

When assessing whether there is a loss of general confidence in the provision of insurance services we believe that such an assessment cannot be made without taking into consideration the existence of an Insurance Guarantee Scheme.

Guideline 9 - Approach to reasonable time and reasonable cost

No.

Guideline 10 - Further elements of the substitutability within a reasonable time and at a reasonable cost

No.

Guideline 11 - Factors to consider when assessing the substitutability of a function within a reasonable time and at a reasonable cost

Yes.

Regarding 1.29 (b) it should be sufficient for the substitute counterparty to have a similar credit quality as the insurance undertaking. Otherwise, small differences in credit quality will lead to the exclusion of potential substitute counterparties which could provide the function. In case such small differences in credit quality would lead to significantly higher cost for the provision of the

function this would be identified in the required cost assessment. Thus, we believe that potential substitute counterparties should not be excluded due to small differences in credit quality pre-maturely even before a cost assessment is even made.

Guideline 12 - Treatment of significant cross-border activities

No.

Guideline 13 - Group aspects in the identification of critical functions

No.

Q4. Do you have comments on the section 'Compliance and reporting rules'?

No.

Q5. Annex I: Impact Assessment - Q5. Do you have comments on the policy issue??

No.

Q6. Do you have any other comments on the consultation paper?

No.

5. PROPOSAL FOR GUIDELINES TO SPECIFY FURTHER THE MATTERS AND CRITERIA FOR THE ASSESSMENT OF THE RESOLVABILITY OF UNDERTAKINGS OR GROUPS

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

Yes.

The IRSG is of the opinion that within the IRRD, the resolvability assessment represents one of the most delicate aspects of the regulatory framework, since it is a key element of the resolution plan that could lead to significant interventions on the structure or business of insurance undertakings even in the absence of financial distress.

While we acknowledge the importance of having a framework that allows Authorities to intervene timely during financial distress, it must be noted that the resolvability assessment is being done in a business-as-usual situation (going concern), and not by considering the effective implication of financial distress or prudential weakness. If not designed adequately, it may lead to disproportionate interventions of the Authorities in the business of undertakings, potentially impairing the efficiency of insurance companies by forcing them to undertake costly and disruptive structural changes to comply with what is, ultimately, a theoretical evaluation. For this reason, we believe that placing too much emphasis on the resolvability assessment within the resolution framework could lead to significant distortions, especially if – as currently outlined by the IRRD and by these Guidelines – the assessment is conceived as a purely hypothetical exercise, detached from any actual risks faced by undertakings.

Furthermore, we believe that the criteria underpinning the Authorities' assessment should be carefully reconsidered. As a matter of fact, the most relevant risk of the resolvability framework stems from the aspects upon which Resolution Authorities may arbitrarily consider undertakings and groups as non-resolvable. Namely, both the IRRD and these Guidelines assume certain fundamental features of undertakings to be elements that *per se* represent impediments to resolvability: among them, the most relevant example are a complex group structure, cross-border operations and intra-group arrangements. We want to highlight the fact that such elements cannot be merely regarded as possible threats to resolution; on the contrary, their presence is often an indicator of efficiency, as they are means through which entities optimize capital, manage risk and

achieve value-adding synergies, in compliance with existing prudential regulations (e.g., Solvency II). The absence of these latter considerations from the draft Guidelines increases the risk of reductive and detrimental evaluations by Resolution Authorities.

Aside from these general remarks, we want to emphasize that the approach adopted by EIOPA in drafting these Guidelines risks generating confusion rather than providing clarity on the application of the IRRD. Indeed, EIOPA has decided to follow a "*fundamental approach*" in giving substance to the criteria for the resolvability assessment included in the Annex to the IRRD, as stated in the Impact Assessment of this Consultation Paper. This choice makes it difficult to identify which concrete aspects of an undertaking structure or business may be seen as an obstacle to the implementation of the resolution plan, since in many cases EIOPA has not further specified the criteria included in the Annex to the IRRD by listing tangible elements for the assessment. Furthermore, many parts of the proposed text are rather vague, since they refer to concepts or notions that are not well-defined in any part of the Guidelines (e.g., "*sources of undue complexity*", "*closely interrelated activities*").

The ambiguity generated by the proposed framework leaves much room for arbitrary evaluations by Resolution Authorities, and it also impairs the efficiency of the insurance industry in perspective. Indeed, the absence of a clear framework for the resolvability assessment could discourage undertakings and groups from taking important strategic decisions (e.g., pursuing mergers, entering new markets, adopting innovative business models), amid fears that such actions could add complexity to their structure and trigger the application of pre-emptive measures by Resolution Authorities. This dynamic could slow down the consolidation process of the European financial industry, evoked by the Draghi report, in which insurance companies could play an important role. Consolidation is essential for enhancing the long-term stability of the financial markets and the competitiveness of financial institutions. It enables them to achieve economies of scale and to make the substantial investments needed to tackle current challenges, navigate future uncertainties, and maintain financial stability.

While the Guidelines are addressed to resolution authorities, the proposals risk leading to extensive direct and indirect requirements on undertakings which could have a disproportionate impact on the industry. This goes against the Commission's simplification agenda and the Savings and Investment Union (SIU) plans.

The costs of this burden must be quantitatively assessed 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 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.

As a final remark, we recall that European insurance companies currently maintain SCR ratios well above the 100% threshold, as noted by EIOPA in its *Financial Stability Report* published in

December 2024. In light of the relative stability of the insurance sector, we believe that the IRRD framework should be calibrated accordingly, and that the introduction of additional requirements or burdens should be limited to exceptional cases, where duly justified.

We would also invite EIOPA to revise the draft Guidelines to:

1) Enhance proportionality, so that the focus of the resolvability assessment is just on the most material impediments and the actions to remove impediments are taken only in exceptional cases. For instance, Submitting groups to all these new requirements does not appear proportionate in the case where a winding-up under normal insolvency proceedings appears as the best option to respond to the failure of a groups.

2) Take adequately into account the business and economic factors that are behind the complexity of undertakings and groups and that are the means through which entities create value for the stakeholders.

3) Emphasize the fact that the resolvability assessment is a contingency exercise, which should neither overlap nor invalidate the day-to-day prudential supervision (i.e., situations that are permitted under Solvency II should not be punished under the IRRD).

4) Further clarity is required on how requirements for "e*nsuring an appropriate amount of eligible liabilities*" interact coherently with Solvency II capital requirements. There is a concern this could lead to resolution authorities imposing an MREL-like requirement on insurance companies.

5) The GL should refer to "parents" rather than "ultimate parents" as entities that are not subject to the SII framework as stated in the Level 1 text should not be in scope of Level 2 and 3.

6) The description of the assessment of the resolvability dimensions in the consultation list a number of tasks for the undertakings which added together will represent a very significant burden (e.g. 1.30 "*resolution authorities and group-level resolution authorities should, at a minimum, consider whether insurance or reinsurance undertakings or groups: – properly identify any barriers for the implementation of resolution actions in a cross-border context*"). This lists highlights, in addition to the preventive recovery planning burden, the initial detailed separability analysis of critical functions and core business lines (cf GL7), and the expected reporting of data and assessments specific to resolution activities (e.g. for the establishment of preventive resolution plans by resolution authorities and the assessment of resolvability) and the potential operational charge linked to the creation of colleges of resolution, the significant burden that preventive resolution will create, in addition to existing supervisory activities, without any safeguard to ensure that these activities are justified and proportionate to the goals of preventive resolution.

7) Authorities have freedom around how to assess and weight the different criteria, but there is a risk the Guidelines will be used as a check list of very detailed criteria (i.e. a 'tick-box exercise').

Q2. Do you have comments on the Section 'Consultation paper overview and next steps'?

No.

Q3. Do you have comments on the following sections??

Guideline 1 – General principles for the assessment of resolvability

Yes.

Resolution Authorities should not be required to identify alternative resolution strategies in addition to the preferred resolution strategy. This seems unnecessary and the required workload unjustified considering the extreme unlikely case and uncertainty that such alternative resolution strategies would have to be applied.

Guideline 2 – Assessment of the credibility and feasibility of winding-up under normal insolvency proceedings

No.

Guideline 3 – Identification of a preferred resolution strategy

Yes.

Rather than a minimum requirement (a)-(h) should be optional elements for resolution authorities when selecting the preferred resolution strategy using a proportionate and risk-based approach.

Guideline 4 – Assessment of the feasibility and credibility of a resolution strategy

Yes.

The self-assessment report proposed in Guideline 4 Para 1.20 could require substantial work and costs. The IRSG suggests that the criteria in Guidelines 4–12 should only be examples of what authorities could consider, and not minimum requirements.

Paragraph 1.20 does not explain under what circumstances Resolution Authorities could require undertakings to develop "*additional tools*" or to introduce "*measures*" to improve their resolvability. Without any further clarification, this provision could prove to be discretionary and too burdensome for the targeted undertaking.

This Guideline should focus on providing clarity on how Authorities determine whether an undertaking is resolvable. Instead, this Paragraph risks creating confusion, since the intervention powers of Resolution Authorities to address the obstacles to resolvability are already established under Art. 15 of the IRRD. We believe that no further burdens should be placed on undertakings, especially once they have been considered resolvable.

For these reasons, we suggest eliminating Paragraph 1.20. Another option could be to rephrase it so that additional tools and other measures to improve resolvability listed in this point are just *recommended* to a company considered resolvable, rather than *required*.

In particular, continuous self-assessment reports of resolvability by (re)insurance undertakings as well as maintenance of playbooks is very onerous on the insurance industry, given that it is very unlikely they will ever be used, the hypothetical nature of the exercise and the fact that resolution tools are exercised by the authority, not the company. Consequently, resolution process related expertise should be built more effectively and efficiently within the authority, not in all (re)insurers administrative overhead.

Guideline 5 – Assessment of feasibility: operational continuity

Yes.

The proposal sets very detailed and burdensome requirements to be established (e.g., contract databases, contract clauses, service mapping etc.) by the undertaking already in the normal course of business for the remote and unlikely case of a resolution. The proposed list should therefore not constitute minimum requirements but serve as options for Resolution Authorities for a proportionate and risk-based approach.

Guideline 6 – Assessment of feasibility: access to financial markets infrastructures (FMIs)

Yes.

The requirements in guideline 6 to implement Annex 2 of the IRRD seem excessive especially with regard to the idea of asking undertakings to anticipate actions that all FMIs and FMI

intermediaries the undertaking has relationships with would be likely to take (second subparagraph), could take (third subparagraph) and even to assess the impact of likely actions identified (last subparagraph). In essence, undertakings are asked to predict the future. Therefore, rather than minimum requirements these should be elements to be considered by authorities in a proportionate risk-based approach in relation to key FMIs and FMI intermediaries.

Guideline 7 – Assessment of feasibility: separability

Yes.

Guideline 7 is linked to Point 3(a) of the Annex to the IRRD, which requires Authorities to make sure that undertakings are capable of recognizing and removing any sources of "*undue complexity in their structure and information systems*" that could impair the separability of critical functions and business lines.

This Guideline was expected to detail what circumstances constitute a source of undue complexity. Instead, Paragraph 1.26 leaves this notion unspecified. Even if we are aware that each undertaking may present specific sources of complexity, we believe that EIOPA should rephrase this Paragraph by listing at least the concrete circumstances it holds as most hampering with respect to the separability of functions. The generic formulation proposed by EIOPA risks generating a great amount of uncertainty, that could be avoided by giving a definition of "*complex structure and information systems*". Anyway, as stated in Q1, the complexity of an undertaking should never be regarded as a negative factor *per se*. On the contrary, Authorities should distinguish between those elements of complexity that are necessary to reach positive spillovers (e.g., efficiency, economies of scale, innovation) and those that are not.

As a last consideration, the Guideline generically formulates the areas that companies should consider when performing the separability analysis (Paragraph 1.26, first list, points *a – f*). In particular, it is unclear what EIOPA means with "*closely interrelated activities* (…) *which could be separated from the rest of the group without undue delay and disproportionately high cost*" (point *a*). Economic activities within a group are often interrelated under many aspects (e.g., by sharing related ancillary services): EIOPA should clearly point out when it considers that linkages among activities represent an obstacle to the implementation of the resolution plan, otherwise the scope of this provision remains opaque and potentially detrimental: the break-down of integrated functions (e.g., IT, risk management) and the simplification of legal entities could in fact reduce economies of scale and increase operational costs.

Guideline 8 – Assessment of feasibility: loss absorption and recapitalisation capacity

Yes.

Guideline 8 is linked to Point 4(a) of the Annex to the IRRD, which requires Authorities to evaluate the extent to which undertakings have loss-absorption and recapitalization capacity.

As in the case of Guideline 7, we expected Guideline 8 to provide further details on the circumstances under which Authorities determine whether a specific undertaking has enough capacity to absorb losses and recapitalize. Instead, Paragraph 1.28 essentially repeats what already stated at a general level in the Annex to the IRRD, and the notions of "*sufficient loss absorption*" and of "*appropriate amount and characteristics of the eligible liabilities*" remain generic.

We are aware that, in contrast to the BRRD, the IRRD does not foresee MREL requirements. However, we believe that EIOPA should rephrase Paragraph 1.28 by listing more precisely the circumstances or concrete elements that Authorities take into account for this evaluation (e.g., the existence and/or the amount of specific types of liabilities), thereby giving substance to this criterion and reducing uncertainty.

Guideline 9 – Assessment of feasibility: liquidity and funding in resolution

Yes.

The terms "overnight" (in 1.33 (b)) and "at short-notice" (in 1.34) should be deleted as it does not reflect the nature of the insurance business or the long-term insurance liabilities.

From the way the proposed guideline is written it appears as if it was based on the underlying assumption that undertakings and groups have a centralized liquidity facility in place. Unlike in banks, liquidity and liquidity risk is managed at the level where it is taken, i.e. at the level of significant portfolios. Insurers and groups therefore already in their normal course of business have the capabilities to perform a liquidity analysis at material entities as required in 1.34. Against this background 1.32 to 1.35 should be substantially shortened and rewritten in a proportionate manner.

Guideline 10 – Assessment of feasibility: information systems and data requirements

Yes.

Guideline 11 – Assessment of feasibility: communication

Yes.

This list should represent options rather than minimum requirements.

Guideline 12 – Assessment of feasibility: governance

Yes.

We believe these requirements to be disproportionate against the backdrop of a remote case of resolution and will entail substantial administrative burden for all insurers in scope.

Guideline 13 – Assessment of credibility of a resolution strategy and its impact

No.

Q4. Do you have comments on the section 'Compliance and reporting rules'?

No.

Q5. Annex I: Impact Assessment - Do you have comments on the policy issues?

No.

Q6. Do you have any other comments?

No.

6. PROPOSAL FOR GUIDELINES ON FURTHER DETAILS ON THE MEASURES TO REMOVE IMPEDIMENTS TO RESOLVABILITY AND THE CIRCUMSTANCES IN WHICH EACH MEASURE MAY BE APPLIED

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

Yes.

The IRSG invites EIOPA to keep these guidelines as generic as possible, pursuant to Article 15b). Indeed, the guidelines tend to be very detailed and far-reaching. Measures should not make it harder for groups to create synergies by e.g. shared support functions. Business opportunities should not be denied for the sake of resolution. Authorities should note the low likelihood of resolution being necessary and only override company decisions where there are strong justifications. Such assessments should primarily be part of the supervisory review and feedback process around the ORSA.

Further clarity on circumstances where EIOPA would consider that an undertaking has insufficient loss-absorbency to execute the preferred resolution strategy would be welcome. The examples used suggest that mechanisms should exist to allow for loss-absorption beyond the NCWO-level, which does not seem appropriate. It suggests 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. However, 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 an MREL-like requirement on insurance companies.

Given the exceptional nature of measures to remove impediments, a tailored approach is appropriate. The IRSG suggests using the words ‘could consider’ rather than ‘should consider’ throughout the guidelines to better reflect this.

The guidance seems to proceed largely on the basis that Solvency II does not exist. For example, guideline 8 asks the resolution authority to consider the circumstances that could require a (re)insurance 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 believes that this is not the case, then it should make explicit in the guidance where it intends to go beyond the existing Solvency II regulation and why the existing Solvency II regulation is not sufficient.

Measures must not only be proportionate but also risk based having regard to the above considerations. 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 where the risk of resolution is very small.

Concerning the power to require the insurance or reinsurance undertaking to limit its maximum individual and aggregate exposures, this guideline risks, if not implemented proportionately, undermining the fundamental principle of diversification of risk within insurance and 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 Member States' economy, and internal market for a potential gain in a hypothetical resolution scenario.

We believe, that within the IRRD, the resolvability assessment represents one of the most delicate aspects of the regulatory framework, since it is a key element of the resolution plan which could lead to significant interventions on the structure or business of insurance undertakings even in the absence of financial distress.

For a comprehensive analysis of the general comments on the resolvability framework, we refer to the IRSG's response to EIOPA's "*draft Guidelines to further specify the matters and criteria for the assessment of the resolvability of undertakings or groups*". In this context, we wish to resume three general comments made in that document. In particular:

- General concerns on the resolvability framework: While we acknowledge the general need of having a framework that allows Authorities to timely intervene during financial distress, it must be noted that the resolvability assessment provided by EIOPA is run on a going concern, and not by considering the effective implication of a financial distress or prudential weakness. If not designed adequately, it may lead to disproportionate interventions by the Authorities in the business of companies and may represent a major impairment to the efficiency of the insurance companies, by forcing them to undertake costly and disruptive structural changes to comply with what is solely a theoretical evaluation.

- Concerns on resolvability framework criteria: The current approach risks arbitrarily classifying undertakings as non-resolvable based on structural features such as group complexity, cross-border operations, or intra-group arrangements. These features, often essential for risk management and capital efficiency, should not be automatically viewed as impediments to resolvability without proper consideration of their economic rationale and compliance with existing prudential rules like Solvency II.

- Lack of clarity in the guidelines: The approach adopted by EIOPA lacks sufficient granularity, providing vague criteria without specifying concrete situations. This creates uncertainty for undertakings in understanding what aspects of their structure or operations might be considered obstacles to resolution, due to undefined terms like "*sources of undue complexity*" or "*closely interrelated activities*."

With regard to this Consultation Paper, our concern is particularly placed on the overall ambiguity of the circumstances depicted by EIOPA under which the Resolution Authorities could impose the alternative measures envisaged under Art. 15 of the IRRD. In our view, EIOPA has described overly general situations, using expressions such as "*too complicated operational structure*" (Guideline 2), or "*financial or operational interdependencies*" (Guideline 3); such wording, if not further clarified by EIOPA, risks granting disproportionate discretionary preemptive powers to Authorities.

Such an ambiguity is further exacerbated from the fact that the IRRD lacks a definition of what constitutes a "*substantive impediment*" to resolvability. We are aware that EIOPA cannot elaborate a definition without a clear mandate to do so. However, we believe that EIOPA could at least rephrase the Introduction to the draft Guidelines in order to provide additional guidance on how Authorities concretely judge the relevance of any impediments to resolvability. This revision would reinforce the application of proportionality and materiality throughout the Guidelines.

It is important to frame these concerns in the broader context of the sector's capitalization. As EIOPA noted in its December 2024 *Financial Stability Report*, European insurance companies have on average SCR ratios well above the 100% threshold. In light of this widespread capital adequacy, we believe that preemptive interventions under the IRRD should be kept to a minimum and only applied in exceptional cases, where duly justified.

For the reasons presented above, we invite EIOPA to revise the draft Guidelines to:

1) Enhance proportionality, so that the focus of the resolvability assessment is just on the most material impediments and the measures to remove impediments are taken only in exceptional cases.

2) Take adequately into account the business and economic factors that are behind the complexity of undertakings and groups and that are the means through which entities create value for the stakeholders.

3) Emphasize the fact that the resolvability assessment is a contingency exercise, which should neither overlap nor invalidate the day-to-day prudential supervision (i.e., situations that are permitted under Solvency II should not be disrupted by the IRRD).

4) Set limits for the exercise of restructuring powers by resolution authorities. Such powers may restrict the entrepreneurial freedom of the undertakings and its management. Thus, if NCA are not already empowered to interfere with respect to those matters as part of their regulatory supervision of the solvent undertaking or group, their power to restrict such entrepreneurial freedom as part

of a pre-emptive resolution planning must remain within very strict limits. Such limits are not visible in the draft guidelines.

5) Consider potential negative effects of restructurings for current policyholder returns. For example investment returns may suffer from forced sales of illiquid assets or in general from forced adjustments to the Strategic Asset Allocation, resulting in lower investment returns for policyholders in the normal course of business.

Finally, we have identified some general, but rather technical issues EIOPA should look at:

- What if removing an impediment creates another impediment? Should the assessment of removing impediments be holistic to make sure the actions meet the desired outcome? In many times group financial agreements are 'optimized' in the sense that changing them cause other issues. Usually, insurers justify business decisions relating to financial agreements against different risk measures and scenarios and then when in place, they are tested in the ORSA process and reported out in different ways.
- 'Reduce complexity' phrase used very vaguely and often, there should be some objective ways to define this. From supervisors' perspective the situation in a group might seem 'complex' but this might be consequence of many things, some of which can be very justified.
- Resolvability vs. other regulatory needs and requirements. For instance, in guideline 5, on requiring divesting or restructuring existing assets, can create an issue relating to other regulatory needs the insurer needs to comply with. Should the insurer it sale assets solely from resolvability needs if this causes material change to its solvency levels, if some of these assets are linked to unit linked savings products sold, if these assets are ring fenced or linked to long term equity criteria (e.g. private equity) or in a center of insurers ALM strategy to meet its long term commitments and liability duration? Can resolution authority require actions over these needs? If this matter is not defined and just be solved by supervisors' case-by-case, it creates an arbitrary and unpredictable outcome from insurers perspective.
- There is no timelines for different actions mentioned in the guidelines. Some of the actions might require a lot of work and preparation from the insurer in question, this should be somehow mentioned, clarified and allowed.

Q2. Do you have comments on the Section 'Consultation paper overview and next steps'?

No.

Q3. Do you have comments on the following sections?

Guideline 1 – Alternative resolution strategies

Yes.

Paragraph 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 which is not more than one resolution action. Therefore, the IRSG suggests 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.

Paragraph 1.5 should be appropriately amended to reflect that changes to the business structure, which impact business as usual activities, should only be implemented in exceptional circumstances with strong justification.

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

Yes.

In Paragraph 1.13, point b, EIOPA envisages the possibility for Resolution Authorities to revise any intra-group financing agreements when their presence causes "*a too complicated operational structure of the group*". However, it does not clear up what concrete circumstances make the operational structure of a group *too complicated*.

The same comment applies for Paragraph 1.15, where EIOPA states that this alternative measure can be imposed if "*legal entities from the group are not able to be operationally independent*". Since virtually in every group there are operational interdependences, we expected this Guideline to clarify what circumstances concretely constitute an impediment to the resolvability.

We suggest EIOPA revise the draft of this Guideline to include specific circumstances that help identify the concrete situations Authorities could judge as impediments to resolvability. By doing so, we underline that the revised Guideline should not automatically consider intra-group financing arrangements as an impediment to resolvability. In light of the importance of intra-group financing agreements in achieving capital optimization and cost efficiencies within groups, we retain that the power of revising such agreements should only be considered as a last-resort measure.

These specific revisions would also benefit from a general clarification – that EIOPA could add in the *Introduction* to these Guidelines – on the method used by Authorities to distinguish between *substantive* and *non-substantive impediments*, as we anticipated in Q1.

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

Yes.

In Paragraph 1.18 EIOPA states that Authorities can apply this power when the exposures of an undertaking "*create financial or operational interdependencies, limiting the possibility to apply the preferred resolution strategy*". As for Guideline 2, the wording chosen by EIOPA does not provide clear guidance to determine which concrete interdependencies are deemed as obstacles to the resolvability. We therefore suggest clarifying this point.

However – as stated in Q1 – we invite EIOPA not to elaborate reductive or simplistic notion of *interdependencies* that could hinder the resolvability, and to take adequately into account the positive effects arising from such interconnections (e.g., capital optimization, economies of scale). The efficiencies achieved by undertakings on going concern should not be disrupted based on a hypothetical evaluation; instead, Authorities should consider this action as a measure of last resort, supporting such decision with concrete evidence.

Guideline 4 – Details and circumstances with respect to the power to impose specific or regular additional information requirements relevant for resolution purposes

No.

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

Yes.

Guideline 5 has the potential to significantly interfere with the SAA and investment process already during the normal course of business of a healthy organization. While this not only limits the entrepreneurial freedom of a healthy undertaking it has the potential to also have negative

effects on policyholders, for example via lower investment returns or losses from forced asset sales or the termination of derivative contracts. Any imposed measures to remove impediments should therefore require Resolution Authorities not only to assess the suitability, necessity and appropriateness of the relevant measure in a resolution scenario but also its impact on the healthy undertaking, its going concern business and its impact on policyholders. Further, measures interfering with the normal course of business should only be possible within strict limits. Such limits need to be included in the guidelines.

guideline 5: 1.23. This sentence seems problematic: '*If necessary for the effective implementation of a preferred resolution strategy in the context of a group, group-level resolution authorities should also consider requiring the parent undertaking to restructure liabilities when they identify that any legal, regulatory, accounting or tax requirements prohibit the parent undertaking from assuming losses of operating subsidiaries or, down-streaming resources (generated through the write-down or conversion at parent undertaking level) to such subsidiaries.*' We believe that other regulatory requirements should not be overruled by such decision and even wonder if this was possible? Usually insurers liabilities restructuring is regulated at least by national insurance company act, insurance policy act, and taxation rules. Also material consequences should follow to Solvency II and IFRS17 reporting.

Guideline 5: 1.27 should be rephrased or even deleted. It's obvious that services are not continued after resolution. Maybe this could be linked to the existing market, that the services could be bought from another provider… Also competition rules should be checked, the market needs to have enough separate service providers.

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

Yes.

Guideline 6 fails to specify the criteria for the Resolution Authorities decision to use these powers of imposing a limitation or cessation of insurers activities. The criteria should be included in the guideline.

In Paragraph 1.26 EIOPA states that Authorities can "*limit complex activities related to how business operations are provided to other entities*". From the wording chosen by EIOPA it is not clear what *complex activities* are (lines of business, internal operations, etc). In particular, it is unclear whether they fall under the definition of *relevant services* (i.e. the services necessary to guarantee the continuity of critical functions, as stated by Paragraph 1.4, point d), whose limitation is also treated in this Guideline (Paragraph 1.27).

We invite EIOPA to add a definition of *activities* which clarifies the meaning that this reference has in this Guideline. This revision could be included in the *Introduction* to these Guidelines. As for the other Guidelines commented, we suggest also adding to this Guideline 6 more specific circumstances that could help identify the complexity of these *activities*.

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

Yes.

In Paragraph 1.29 and 1.31 EIOPA states that Authorities can impose this measure if they consider specific products or business lines of an undertaking to be "*structured in a way that impairs the application of resolution tools*" or to be too complex to be fairly evaluated for a possible sale/transfer to third parties. However, this Guideline does not indicate what concrete features of a product/business line could bring Authorities to such a conclusion.

Any such measure should only be possible within strict limits and upon a clear cost benefit analysis based on transparent criteria and using a proportionate approach. The guideline lacks to introduce such limits and criteria. The proposal should be redrafted to address these shortcomings.

We believe that this Guideline needs to be reviewed as further clarity on this matter is of fundamental importance. Indeed, ambiguity on this pre-emptive measure could affect the ability (or the willingness) of undertakings to introduce new products into the market, amid fears they could be judged too complicated by the Authorities.

We stress that insurance undertakings – uniquely positioned as long-term institutional investors – should be at the forefront of the product innovation, in order to cover the protection needs of European citizens. As a consequence, regulation should avoid the risk of restricting the insurance industry's capacity to innovate, as this would significantly undermine the objectives of the Capital Markets Union.

As the insurance landscape evolves (e.g., through digitalization, new distribution channels) undertakings need flexibility to adapt their business models. Resolvability considerations should not become a straitjacket that prevents necessary evolution and innovation.

The relation to other existing regulations should be clarified to avoid confusions between supervisory authorities and the insurance group in question.

Guideline 8 – Details and circumstances with respect to the power to require the insurance or reinsurance undertaking to change the reinsurance strategy

Yes.

Some of the situations stated in the proposal (e.g., macroeconomic slowdown, low or deteriorating credibility of the current reinsurer, rating downgrade etc.) will be addressed via the undertakings risk management processes and therefore we do not see the need for them to specifically be included in the guideline. Recovery and resolution planning does not happen in isolation and Resolution Authorities should make use of already existing and available information.

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

Yes.

In Paragraph 1.35 EIOPA states that Authorities may apply this measure to an undertaking if they hold its legal or operational structure as "*being too complex or too interconnected (…) to be able to maintain the continuity of access to critical functions in resolution*" (Paragraph 1.35). Also here, EIOPA has not provided defined criteria upon which Authorities determine the complexity of an undertaking through these lenses. Furthermore, Paragraph 1.35 envisages as a possible case of application of this measure the "*situation in which local group operations are critically dependent on essential services as well as risk management or hedging services from other group entities*". So formulated, this circumstance could lead to a broad and unjustified application of this intrusive power.

As stated in Q1, we see the concrete risk that forcing undertakings to be compliant with this kind of resolvability assumptions may push them towards structures that are sub-optimal for their ongoing business operations, commercial strategy, or even long-term stability in a non-crisis scenario. Therefore, when evaluating the possibility of applying this alternative measure, Authorities should distinguish between those elements of structural complexity that are necessary to reach positive spillovers and those that are not.

As these fundamental considerations are missing in EIOPA's draft, we suggest revising the text of this Guideline so as to include these points and reaffirm proportionality, including a cost/benefit analysis for policyholders

Finally, it seems problematic on whether the guideline considers only actions to ensure continuance etc. of the operation of critical functions. This should be clarified. It seems important to keep the possibility to change the insurance groups business model as little as possible.

Guideline 10 – Details and circumstances with respect to the power to require the insurance or reinsurance undertaking or a parent undertaking to set up a parent insurance holding company in a Member State or a Union parent insurance holding company

Yes.

Setting up a holding company is not possible in some EU member states for mutual companies. This might need to be acknowledged somehow in the guidelines.

Guideline 11 – Details and circumstances with respect to the power to require that the mixed-activity insurance holding company sets up a separate insurance holding company to control the insurance or reinsurance undertaking, where necessary to facilitate the resolution of the insurance or reinsurance undertaking and to avoid that the application of resolution tools and the exercise of resolution powers has an adverse effect on the non-financial part of the group, where the insurance or reinsurance undertaking is the subsidiary undertaking of a mixed-activity insurance holding company

No.

Q4. Do you have comments on the section 'Compliance and reporting rules'?

No.

Q5. Annex I: Impact Assessment - Do you have comments on the policy issue?

No.

Q6. Do you have any other comments ?

No.