

FINAL REPORT

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on the Regulatory Technical Standards
specifying methodologies and principles on the
valuation of liabilities arising from derivatives

EIOPA-BoS-26-271
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eiopa

European Insurance and
Occupational Pensions Authority

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1. EXECUTIVE SUMMARY

INTRODUCTION

On 9 December 2025, EIOPA launched a public consultation on draft regulatory technical standards (RTS) specifying methodologies and principles on the valuation of liabilities arising from derivatives.

This final report includes EIOPA's proposal for the draft RTS, explains the approach that EIOPA has taken in relation to this proposal, and presents the impact assessment and a feedback statement on the public consultation.

CONTENT

Directive (EU) 2025/1 entrusts resolution authorities with the write-down or conversion power in relation to liabilities of an undertaking under resolution, including liabilities arising from derivative contracts. Article 40 of Directive (EU) 2025/1 lays down the conditions to be complied with by resolution authorities when writing down or converting liabilities.

In this context, resolution authorities must determine the value of derivative liabilities as part of the general valuation of assets and liabilities carried out pursuant to Article 23 of Directive (EU) 2025/1 following as well the methodologies and principles specified by a RTS developed by EIOPA. This is the purpose of this draft RTS, developed in line with paragraph 4 of Article 40 which provides the mandate to EIOPA to develop draft RTS specifying the methodologies and principles laid down in paragraph 3 of Article 40 of Directive (EU) 2025/1.

The draft RTS aims to strike the right balance between the need to provide resolution authorities with tools to carry out a swift and objective valuation of derivative liabilities while avoiding discrepancies with the insolvency counterfactual that could lead to breach the non-creditor worse-off principle.

PUBLIC CONSULTATION

EIOPA conducted a public consultation on the draft RTS between 9 December 2025 and 20 March 2026. A stakeholder event was held on 6 March 2026 to discuss the consultation paper. Following the publication of the consultation paper, two stakeholders provided feedback on the consultation paper. Based on the stakeholder feedback, the drafting of the RTS was refined. However, these revisions have not lead to a change in the general approach set out in the consultation paper.

NEXT STEPS

EIOPA shall, by 29 July 2027, submit these draft RTS to the Commission, in accordance with Article 40(4) of Directive (EU) 2025/1, and Articles 10 to 14 of Regulation (EU) No 1094/2010 (EIOPA Regulation).

2. BACKGROUND AND ANALYSIS

2.1. Introduction and mandate

EIOPA's approach in drafting these RTS aims to ensure a level playing field across financial sectors in respect of the methodologies and principles on the valuation of liabilities arising from derivatives, while having regard to any specificities for the resolution of (re)insurance undertakings.

The consultation proposal was developed in line with EIOPA's views for better regulation and supervision¹, thereby enhancing supervisory convergence through simpler, more efficient frameworks.

The resolution framework laid down in Directive (EU) 2025/1² entrusts the resolution authority with a set of tools and powers to intervene swiftly and at a sufficiently early stage in a non-viable insurance or reinsurance undertaking, in order to ensure continuity of the undertaking's critical functions, while minimising the impact of its potential failure on the economy and the financial system.

The write-down or conversion tool defined by the Directive (EU) 2025/1 ensures that losses arising from the insurance or reinsurance undertaking's failure are borne first by shareholders, followed by the claims of general creditors as per their ranking in the hierarchy.

Concretely, Article 40 of Directive (EU) 2025/1 sets forth requirements regarding the write-down or conversion of derivative contracts, especially with respect to the determination of the value of the liability at the point of intervention. Article 40 of Directive (EU) 2025/1 provides that resolution authorities may write-down or convert derivative contracts only 'upon or after closing-out the derivatives'. Where a derivative contract is subject to a netting agreement, Article 40 requires the liability to be determined on a net basis, in accordance with the terms of the agreement.

Insurance and reinsurance undertakings perform derivative transactions with a relatively small number of counterparties, which are mainly banks. Such transactions involve a clearing house which acts as an intermediary between the buyers and the sellers, ensuring a smooth and secure processing of derivative transactions.

Until recently insurance and reinsurance undertakings were often clients of clearing members without holding an account with a central counter party (CCP). Clearing houses have in the meantime evolved their access models to allow insurance or reinsurance undertakings to become direct members of CCPs under the so-called 'sponsored model', meaning that insurance and reinsurance undertakings can hold an account with a CCP.

As a specificity of the insurance industry, life insurance contracts with profit participation may account gains on derivative positions as future discretionary benefits. Those benefits may be caused by an

¹ [Bolder, Simpler, Faster: EIOPA's views for better regulation and supervision](#)

² Directive (EU) 2025/1 of the European Parliament and of the Council of 27 November 2024 establishing a framework for the recovery and resolution of insurance and reinsurance undertakings and amending Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132 and Regulations (EU) No 1094/2010, (EU) No 648/2012, (EU) No 806/2014 and (EU) 2017/1129.

expected gain from derivatives that are not linked to the insurance contracts themselves, but are simply part of an insurer-wide mandatory profit sharing mechanism. In any case, it means that a part of the technical provisions may be linked to the expected future value of derivatives contracts. In that case, the financial consequences from the closing-out or writing down and converting of the derivatives may not be immediately apparent through the simple valuation of the derivatives itself but should be calculated through the change in own funds stemming from all changes in the valuation of assets and liabilities arising from the closeout of derivatives.

2.2. Approach

2.2.1. Valuation methodologies

Article 40 of Directive (EU) 2025/1 sets out the procedure for the write-down or conversion of derivative contracts. When the conditions for resolution have been met, resolution authorities are empowered to closeout and write-down or convert derivatives, and to determine a valuation of the derivative liability at the moment of the exercise of the resolution power. As required under Article 40 of Directive (EU) 2025/1, these draft RTS provide a methodology to be followed by resolution authorities in order to conclude the valuation of derivative contracts upon closeout. The methodology set forth in these draft RTS determine the closeout amount based on the principle of ‘replacement cost’. In general, replacement cost represents the actual or hypothetical cost which the non-defaulting counterparty would incur in order to replace the terminated contract, after taking into account any collateral posted or received. The principle of replacement cost as a determinant for the closeout valuation aims at achieving an outcome similar overall to valuations which are performed under contracts upon closeout. Consequently, the replacement cost approach will also minimise the risk of depriving counterparties of no-creditor-worse-off protection, as the approach to valuing the outstanding liability would be aligned with common market practice in insolvency proceedings.

To maintain consistency with standard netting agreements and the treatment of derivatives in insolvency, these draft RTS provide that resolution authorities shall notify the counterparty of the termination and closeout of the derivative contract, and give counterparties the possibility to provide evidence of commercially reasonable replacement trades within a set deadline. The counterparty is not obliged to enter into replacement trades, but if it does, and provides evidence of commercially reasonable replacement trades within the deadline, the valuer will endorse the trades as the price for the closed-out contract. If, in contrast, the counterparty does not provide evidence of commercially reasonable replacement trades within the deadline, resolution authorities will be authorised to construct their final, non-provisional closeout valuation on the basis of mid-prices and bid-offer spreads.

2.2.1.1. Articulation of these draft RTS with the valuation of assets and liabilities under Article 23, Article 24 and Article 25 of Directive (EU) 2025/1

Articles 23, 24, 25 and 40 of Directive (EU) 2025/1 provide a valuation process that is compatible with the swiftness inherent in the resolution process, allowing for a valuation on the basis of prudential assumptions and objective elements.

As provided under Article 40(2) of Directive (EU) 2025/1, the valuation of derivative liabilities should be made as part of the valuation of assets and liabilities carried out pursuant to Article 23 of Directive (EU) 2025/1, and specifically form part of a valuation for the purpose of informing the extent of the write-down or conversion of eligible liabilities. The methodologies contained in these draft RTS will ensure that, when employing the write-down or conversion tool, losses under derivative contracts are fully recognised at the moment the resolution tools are applied, in accordance with Article 23(3)(b) of Directive (EU) 2025/1.

Under Article 25(1) of Directive (EU) 2025/1, valuations may be conducted on a provisional basis where it is not possible to fulfil all of the requirements laid down in Article 24(2). Under the Directive (EU) 2025/1 a provisional valuation is also a valid basis for resolution actions. The draft RTS reflect this possibility in Article 8(2).

2.2.1.2. Treatment of CCP-cleared derivatives

Insofar as centrally cleared derivatives would not be exempted from write-down or conversion, these draft RTS balance, on one hand the interests of the resolution authority in conducting a write-down or conversion process of derivatives in line with the Directive (EU) 2025/1 provisions and within a reasonable timescale, against, on the other hand, the specificities of centrally cleared derivatives and the protection accorded to CCPs. When derivative contracts between a clearing member and a CCP are closed-out, for instance when the clearing member defaults, the CCP will seek to re-hedge its open positions and replace the trades it had with another – solvent – clearing member, thereby avoiding open positions and an ‘unbalanced book’. The resolution authority will notify its decision to closeout the contract and agree with the CCP and its competent authority on a deadline by which the CCP should provide its replacement costs, taking into account the CCP’s default procedures and the resolution timeline. That deadline may be extended by common agreement of the resolution authority, CCP and CCP’s competent authority.

In the exceptional case of the CCP not providing its replacement costs by the agreed deadline or where there is evidence that the CCP did not follow its default procedures, the resolution authority will be able to apply the statutory methodology otherwise applicable to non-centrally cleared derivatives, after consulting the CCP’s competent authority. Any valuation not based on the CCP’s default procedures would only serve resolution purposes. CCPs will still be expected to run their default procedures according to their contractual and rulebook obligations.

When the resolution authority performs a provisional valuation, justified under the conditions of Article 25 of Directive (EU) 2025/1, CCPs will also have the possibility to provide the valuer with estimates of the expected outcome of their default procedure and, if the resolution authority decides to wait, with the outcome of their default procedure. In case the resolution authority concludes the valuation not based on the CCP default procedure, any divergence between the two values will then be dealt with in the context of the nocreditor-worse-off valuation under Article 56 of Directive (EU) 2025/1 or subsequent legal proceedings.

2.2.2. Destruction in value

Resolution authorities are required under the Directive (EU) 2025/1 to seek to minimise the cost of resolution to avoid unnecessary destruction of value and to avoid significant adverse effects on the financial system.

In line with Article 40(3)(c) of Directive (EU) 2025/1, these draft RTS set out the approach to be followed by resolution authorities when making a comparison between, on one hand, the destruction in value that would arise from the closeout and write-down or conversion of derivatives and, on the other hand, the amount of losses that would be borne by those derivatives in a write-down or conversion.

Under the draft RTS, resolution authorities, on a case-by-case basis, will assess the potential destruction in value which would arise from the closeout and write-down or conversion of derivatives. On the basis of this and other factors, resolution authorities will determine any liability exemptions that might follow as a consequence.

In order to compare the destruction in value that would arise from the closeout and write-down or conversion of derivative contracts with the amount of losses that would be borne by derivatives in a write-down or conversion, resolution authorities should compare (a) the amount of losses that would be borne by the derivative contracts in a write-down or conversion as part of the valuation under Article 23 taken into account the pro quota share of derivatives within equally ranking liabilities and all applicable exemptions that would reduce the loss-absorption capacity of the liability, and (b) an assessment of the amount of the costs, expenses or other loss in value that would be incurred as a result of the closeout of the derivative contracts.

In order to align the principles for comparison of the losses borne by derivative contracts in write-down or conversion and the destruction in value from the closeout in derivatives, with the specificities of the insurance industry as described under the sub-chapter 1.1. above, any variation in value in the Solvency II technical provisions incurred due to the closing-out of derivative contracts should be also considered, given that such variations would change the broader economic loss of value caused by the closeout of the derivatives contracts.

3. DRAFT REGULATORY TECHNICAL STANDARDS



EUROPEAN COMMISSION

Brussels, xx.xx.xx
C(20..) yyy final

COMMISSION DELEGATED REGULATION (EU) No .../...

of XXX

supplementing Directive (EU) 2025/1 of the European Parliament and of the Council with regard to regulatory technical standards specifying methodologies and principles on the valuation of liabilities arising from derivatives

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive (EU) 2025/1 of the European Parliament and of the Council of 27 November 2024 establishing a framework for the recovery and resolution of insurance and reinsurance undertakings and amending Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132, and Regulations (EU) No 1094/2010, (EU) No 648/2012, (EU) No 806/2014 and (EU) 2017/1129³, and in particular Article 40(4), third subparagraph, thereof,

Whereas:

- (1) Pursuant to Article 40 of Directive (EU) 2025/1, the value of derivative contracts is determined by the resolution authority or independent valuer as part of the valuation process carried out under Article 23 of that Directive. With respect to derivative liabilities, the valuation process should aim to determine a prompt and *ex ante* valuation for write-down or conversion purposes, and at the same time allow the resolution authority adequate flexibility for *ex post* adjustment of claim amounts.
- (2) The closeout of derivative contracts may crystallise additional losses that are not reflected in the going-concern valuation. If the losses incurred or expected to be incurred from the closeout of derivatives exceed the share of the corresponding liabilities that would be effectively available for write-down or conversion, the excess loss may increase the burden of write-down or conversion for other creditors of the insurance or reinsurance undertaking under resolution. Any exercise of the write-down or conversion power in relation to such liabilities should be subject to the exclusions set out in Article 35(5) of Directive (EU) 2025/1 and to the discretionary exclusions laid down in Article 35(8) of that Directive.
- (3) The assessment of whether to apply the write-down or conversion tool to a liability arising from a derivative contract or to exclude this liability from application of the write-down or conversion tool pursuant to Article 35(5) or 35(8) of Directive (EU) 2025/1 should be made prior to the decision to closeout the derivative contract.
- (4) In applying the valuation methodology, the resolution authority should be able to rely on various sources of data, including data sources provided by the insurance or reinsurance undertaking under resolution, counterparties or third parties. It is nevertheless appropriate to set out principles on the types of data that have to be taken into consideration in the course of the valuation in order to ensure an objective determination of value.
- (5) Following the trigger event, the resolution authority should agree with the central counterparty ('CCP') and its competent authority on a deadline by which the early termination amount has to be determined, taking into account both the constraints of the CCP and those of the resolution authority.
- (6) The early termination amount should be endorsed by the valuer. Where the CCP fails to determine the early termination amount within the agreed deadline or does not apply its default procedures,

³ OJ L, 2025/1, 8.1.2025

the resolution authority should have the possibility to rely on its own estimates to determine the early termination amount. The resolution authority should also be able to apply a provisional determination based on its own estimates where such action is justified by the urgency of the resolution process and provided it updates its valuation upon completion of the CCP default procedure at the expiry of the deadline. The resolution authority should be able to consider information provided by the CCP after the deadline in the *ex post* definitive valuation, if available at that time, and in any event when performing the valuation of difference in treatment pursuant to Article 56 of Directive 2025/1. This Regulation should be without prejudice to the default management procedures run by CCPs in accordance with Regulation (EU) No 648/2012.

- (7) The point in time for the valuation of derivative contracts should reflect the valuation principle which takes into account the actual or the hypothetical replacement costs incurred by counterparties. In order for the valuation to be as accurate as possible, the valuation should be carried out on the closeout date or, if that would not be commercially reasonable, the first day and time on which a market price is available for the underlying asset. In those cases where the early termination amount is determined by a CCP or is determined at the price of replacement trades, the reference point in time should be that of the CCP determination or that of the replacement trades.
- (8) This Regulation is based on the draft regulatory technical standards submitted by the European Insurance and Occupational Pensions Authority to the Commission.
- (9) The European Insurance and Occupational Pensions Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, has consulted the European Securities and Markets Authority, has analysed the potential related costs and benefits and requested the advice of the Insurance and Reinsurance Stakeholder Group established by Article 37 of Regulation (EU) No 1094/2010.
- (10) In order to ensure alignment with the application of Directive (EU) 2025/1, this Regulation should apply from 30 January 2027.

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (1) ‘netting set’ means a group of contracts subject to a netting arrangement as defined in Article 2(76) of Directive (EU) 2025/1;
- (2) ‘central counterparty’, or ‘CCP’, means a CCP as defined in Article 2(1) of Regulation (EU) No 648/2012, to the extent that it is either:
 - (a) established in the Union and authorised in accordance with the procedure set out in Articles 14 to 21 of Regulation (EU) No 648/2012;
 - (b) established in a third country and recognised in accordance with the procedure set out in Article 25 of Regulation (EU) No 648/2012;

- (3) ‘clearing member’ means a clearing member as defined in Article 2(14) of Regulation (EU) No 648/2012;
- (4) ‘closeout date’ means the day and time of the closeout specified in the communication by the resolution authority of the decision to closeout;
- (5) ‘replacement trade’ means a transaction entered into on or after the closeout date of a derivative contract to re-establish, on a net risk exposure basis, any hedge or related trading position that has been terminated on equivalent economic terms as the closed-out transaction;
- (6) ‘commercially reasonable replacement trade’ means a replacement trade entered into on a netted risk exposure basis, on terms consistent with common market practice and by making reasonable efforts to obtain best value for money.

Article 2

Comparison between the destruction in value that would arise from the closeout and the amount of losses that would be borne by derivatives in a write-down or conversion

1. For the purpose of Article 40(3)(c) of Directive (EU) 2025/1, the resolution authority shall compare the following:
 - (a) the amount of losses that would be borne by the derivative contracts in a write-down or conversion, obtained by multiplying:
 - (i) the share, within all equally ranked liabilities, of liabilities arising from the derivative contracts determined as part of the valuation under Article 23 of Directive (EU) 2025/1 and not falling within the exclusions from write-down or conversion pursuant to Article 35(5) of that Directive; by
 - (ii) the total losses expected to be borne by all liabilities ranking equally to derivatives, including the derivative liabilities stemming from the closeout;
 - (b) the destruction in value based on an assessment of the amount of the costs, expenses, or other loss in value that is expected to be incurred as a result of the closeout of the derivative contracts, and obtained by calculating the sum of the following elements:
 - (i) the risk of an increased counterparty closeout claim arising from re-hedging costs expected to be incurred by the counterparty, by taking into account the bid-offer, mid-to-bid or mid-to-offer spreads in line with Article 6(2)(b);
 - (ii) the cost expected to be incurred by the undertaking under resolution in establishing any comparable derivative trades considered necessary in order to re-establish a hedge for any open exposure or in order to maintain an acceptable risk profile in line with the resolution strategy. The establishment of a comparable derivative trade may be achieved by taking into consideration initial margin requirements and prevailing bid-offer spreads;
 - (iii) a variation in own funds calculated as per Directive 2009/138/EC, stemming from any changes in the valuation of assets and liabilities arising from the closeout of derivatives;
 - (iv) any precautionary buffer against possible adverse implications from closeout, such as errors and disputes in respect of transactions or collateral exchange.

2. The comparison under paragraph 1 shall be made before a decision to closeout is taken, as part of the valuation to inform decisions about resolution actions required under Article 23 of Directive (EU) 2025/1.

Article 3

Communication of the decision to closeout

1. Prior to exercising the write-down and conversion powers in relation to liabilities arising from derivative contracts, the resolution authority shall communicate the decision to closeout contracts pursuant to Article 42(1), point (m), of Directive (EU) 2025/1 to the counterparties to those contracts.
2. The decision to closeout shall take effect immediately, or at a later closeout date and time as specified in the communication.
3. In the decision referred to in paragraph 1, the resolution authority shall specify a date and time, taking account of the requirements in Article 8(1), point (c), by which counterparties may provide evidence to the resolution authority of commercially reasonable replacement trades for the purpose of determining the closeout amount pursuant to Article 6(1). The counterparty shall also provide to the resolution authority a summary of any commercially reasonable replacement trades.
4. The resolution authority may change the date and time by which counterparties may provide evidence of commercially reasonable replacement trades where such change is consistent with Article 8(1), point (c). Any decision to change the date and time by which counterparties may provide evidence of commercially reasonable replacement trades shall be communicated to the counterparty.
5. In the decision referred to in paragraph 1, the resolution authority may specify the criteria it intends to apply when assessing whether replacement trades are commercially reasonable.
6. This Article shall not apply to the closeout and valuation of centrally cleared derivative contracts entered into between the undertaking under resolution, acting as a clearing member, and a CCP.

Article 4

Role of netting agreement

For contracts subject to a netting agreement, the valuer shall determine, in accordance with Articles 2, 5, 6, and 7, a single amount which the undertaking under resolution has the legal right to receive or the legal obligation to pay as a result of the closeout of all the derivative contracts in the netting set, as defined in the netting agreement.

Article 5

Valuation principle for early termination amount

1. The valuer shall determine the value of liabilities arising from derivative contracts as an early termination amount calculated as the sum of the following amounts:
 - (a) unpaid amounts, collateral or other amounts due from the undertaking under resolution to the counterparty, less unpaid amounts, collateral and other amounts due from the counterparty to the undertaking under resolution on the closeout date; and

- (b) a closeout amount covering the amount of losses or costs incurred by derivative counterparties, or gains realised by them, by replacing or obtaining the economic equivalent of material terms of the terminated contracts and the option rights of the parties in respect of those contracts.
2. For purposes of paragraph 1, unpaid amounts means, in respect of closed-out derivative contracts, the sum of the following:
- (a) amounts that became payable on or prior to the closeout date and which remain unpaid on that date;
 - (b) an amount equal to the fair market value of the asset which was required to be delivered for each obligation of the derivative contracts which was required to be settled by delivery on or prior to the closeout date and which has not been settled as at the closeout date;
 - (c) amounts in respect of interest or compensation accrued during the period from the date on which relevant payment or delivery obligations fell due through to the closeout date.

Article 6

Determination of the closeout amount

1. Where a counterparty has provided evidence of commercially reasonable replacement trades within the deadline set out in Article 3(3), the valuer shall determine the closeout amount at the prices of those replacement trades.
2. Where a counterparty has not provided evidence of any replacement trades within the deadline set out in Article 3(3), where the valuer concludes that the communicated replacement trades were not concluded on commercially reasonable terms, or where Articles 7(7) or 8(2) apply, the valuer shall determine the closeout amount on the basis of the following:
 - (a) the mid-market end-of-day prices in line with the business-as-usual processes within the undertaking under resolution at the date determined pursuant to Article 8;
 - (b) the mid-to-bid spread or mid-to-offer spread, depending on the direction of the netted risk position;
 - (c) adjustments to the prices and spreads mentioned in points (a) and (b) where necessary to reflect the liquidity of the market for the underlying risks or instruments and the size of the exposure relative to market depth, as well as possible model risk.
3. With regard to intra-group liabilities, the valuer may establish the value at mid-market end-of-day prices as referred to in paragraph 2(a), without regard to paragraph 2, point (b), and 2, point (c), where the resolution strategy would imply re-hedging the terminated transactions via another intra-group derivative transaction or group of transactions.
4. For determining a value of the closeout amount pursuant to paragraph 2, the valuer shall consider a full range of available and reliable data sources and may rely on observable market data or theoretical prices generated by valuation models aimed at estimating values, including the following sources of data:
 - (a) data provided by third parties, such as observable market data or valuation parameters data and quotes from market-makers or, where a contract is centrally cleared, values or estimates obtained from CCPs;

- (b) for standardised products, valuations generated by the valuer's own systems;
 - (c) data available within the undertaking under resolution, such as valuations performed pursuant to Article 75 of Directive 2009/138/EC, including the documented policies, procedures and processes performed and used to ensure an independent review and verification of the information, data, and assumptions which are used in those valuations pursuant to Article 267 of Commission Delegated Regulation (EU) 2015/35;
 - (d) data provided by counterparties other than evidence of replacement trades communicated pursuant to Article 3(3), including data on current or previous valuation disputes with regard to similar or related transactions and quotes;
 - (e) any other relevant data.
5. For the purpose of paragraph 2, point (b), the resolution authority may instruct the undertaking under resolution to perform an updated independent review and verification of the information, data and assumptions pursuant to paragraph 4, point (c), as at the reference point in time determined pursuant to Article 8, using end-of-day information available on the closeout date.
 6. This Article shall not apply to the determination of a closeout amount for cleared derivative contracts entered into between an undertaking under resolution and a CCP, except in the exceptional circumstances set out in Article 7(7).

Article 7

Valuation of cleared derivative contracts entered into between an undertaking under resolution and a CCP

1. The valuer shall establish the value of liabilities arising from derivative contracts entered between an undertaking under resolution acting as a clearing member and a CCP, based on the valuation principle specified in Article 5. The early termination amount shall be determined by the CCP, within the deadline specified in paragraph 5, in accordance with the CCP default procedures, after deducting the collateral provided by the undertaking under resolution including initial margin, variation margin and contributions of the undertaking under resolution to the default fund of the CCP.
2. The resolution authority shall communicate to the CCP and the CCP's competent authority its decision to closeout the derivative contracts pursuant to Article 42(1), point (m), of Directive (EU) 2025/1. The decision to closeout shall take effect immediately, or on the date and time specified in the communication.
3. The resolution authority shall instruct the CCP to provide its valuation of the early termination amount for all the derivative contracts in the relevant netting set, in accordance with the CCP default procedure.
4. The CCP shall provide the resolution authority with the CCP default procedure documents and shall report the default management steps undertaken.
5. The resolution authority shall, in agreement with the CCP and the CCP's competent authority, set the deadline by which the CCP must provide the valuation of the early termination amount. For that purpose, the resolution authority, the CCP and the CCP's competent authority shall take both of the following into account:

- (a) the default procedure, as established by the CCP governance rules in compliance with Article 48 of Regulation (EU) No 648/2012;
 - (b) the resolution timeline.
6. The resolution authority may change the deadline set under paragraph 5 upon agreement with the CCP and the CCP's competent authority.
7. By derogation to paragraph 1, the resolution authority may decide to apply the methodology laid down in Article 6, after consulting the CCP's competent authority, in either of the following cases:
- (a) the CCP does not provide the valuation of the early termination amount within the deadline set by the resolution authority pursuant to paragraph 5; or
 - (b) the CCP's valuation of the early termination amount is not in line with the CCP default procedures set out in Article 48 of Regulation (EU) No 648/2012.

Article 8

Point in time for establishing the value of derivative liabilities and early determination

1. The valuer shall determine the value of derivative liabilities at the following point in time:
 - (a) where the valuer determines the early termination amount at the prices of replacement trades pursuant to Article 6(1), the day and time of the conclusion of the replacement trades;
 - (b) where the valuer determines the early termination amount in accordance with the CCP default procedures pursuant to Article 7(1), the day and time when the early termination amount has been determined by the CCP;
 - (c) in all other cases, the closeout date or, where that would not be commercially reasonable, the day and time at which a market price is available for the underlying asset.
2. The valuer may, as part of a provisional valuation carried out pursuant to Article 25(1) of Directive (EU) 2025/1, determine the value of liabilities arising from derivatives earlier than at the point in time determined pursuant to paragraph 1. Such early determination shall be made on the basis of estimates, relying on the principles laid down in Article 5 and Article 6(2) to (5), and on data available at the time of the determination.
3. Where the valuer carries out an early determination pursuant to paragraph 2, the resolution authority may at any time request the valuer to update the provisional valuation to take into account relevant observable market developments or evidence of commercially reasonable replacement trades concluded at the point in time determined pursuant to paragraph 1. These developments or evidence, where available by the date and time specified pursuant to Article 3(2), shall be taken into account in the definitive valuation carried out pursuant to Article 25(1) and Article 25(2) of Directive (EU) 2025/1.
4. Where the valuer carries out an early determination pursuant to paragraph 2 in relation to derivative contracts entered into between an undertaking under resolution acting as a clearing member and a CCP, the valuer shall take due account of any estimate of expected closeout costs provided by the CCP.
5. Where the CCP provides a valuation of the early termination amount in accordance with the CCP default procedures by the deadline set pursuant to Article 7(5) and (6), that valuation shall be taken

into account in the definitive valuation carried out pursuant to Article 25(1) and Article 25(2) of Directive (EU) 2025/1.

Article 9

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 30 January 2027.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

[For the Commission

The

President]

[For the Commission

On behalf of the President]

[Position]

ANNEX 1: IMPACT ASSESSMENT

OBJECTIVES

In accordance with Article 29 of the EIOPA Regulation, EIOPA carries out, where relevant, analyses of costs and benefits during the policy development process. The analysis of costs and benefits is undertaken according to an impact assessment methodology.

The starting point for this impact assessment is that existing provisions following from the level 1 text are already in place and that the other provisions included in this consultation paper will be implemented as proposed. As a result, this assessment only considers the additional impact of each specific policy issue under discussion.

Market participants enter into derivative transactions with among others insurance companies and banks as counterparties. For these market participants it is important to know how they will be treated in relation to derivative transactions with insurance companies and banks if these entities are subject to resolution actions. From the perspective of these market participants similar rules are preferable. At the same time, it is important, in particular from the perspective of resolution authorities that insurance specificities are sufficiently reflected. This impact assessment covers the options whether to follow the approach of EBA as closely as possible, and to only include insurance specificities to the extent necessary, or to develop a completely new approach which might even better ensure that all insurance specificities are reflected.

The impact assessment is high-level and based on a qualitative assessment performed by EIOPA.

In drafting this RTS, EIOPA sticks to the general objectives of Directive (EU) 2025/1, as agreed by the legislators.

These general objectives are to enable the authorities to:

- Enhance preparation, coordination and cooperation.
- Proper functioning of the internal market and ensuring level-playing field.

In view of the specific purpose of these Guidelines, the following more specific objectives were identified:

- Ensuring a level playing field through common minimum harmonization rules.
- Improving transparency and better comparability.
- Enhanced cooperation and coordination between competent authorities.

POLICY ISSUES

Policy Issue A: whether to follow the approach of EBA considering the insurance specificities or to develop a completely new approach

The main question which needs to be addressed by the draft RTS is how to specify methodologies and principles on the valuation of liabilities arising from derivatives in the most efficient and effective way, given the similar mandates and subject matter of the RTS as well as the limited impact of the insurance specificities considering the scope of the draft RTS.

The approach which needs to be taken in the draft RTS is to achieve the right balance between contributing to the efficient functioning of financial markets, that is, counterparties in derivative transactions shall be treated similarly, regardless of whether they have an exposure to a credit institution or an insurance or reinsurance undertaking in resolution and appropriately considering particularities of the insurance business.

POLICY OPTIONS

Policy Issue A: Whether to follow the approach of EBA taking into account the insurance specificities or to develop a completely new approach

Policy option A.1: Develop a new RTS, with its own structure and terminology

This option would entail developing a process with the following steps:

- (1) Perform an analysis of the usage of derivatives by the insurance industry within the Union;
- (2) Identify the problem(s), prepare an overview of the findings regarding the problem(s) to be dealt with as well as the solutions proposed;
- (3) Based on the above, define the objectives of the RTS;
- (4) Define specific subject areas and related policy options;
- (5) Determine the potential impact of these options and select the most effective and efficient one.

Policy option A.2: To follow the approach taken by EBA considering the insurance specificities

This approach considers following the EBA approach given the identical mandates of EBA and EIOPA as well as identical or similar prescriptive rules and requirements for specifying methodologies and principles for valuation of liabilities arising from derivatives, including similar power to resolution authorities to closeout and terminate financial contracts and derivatives. This option would consider, if and when necessary, any relevant insurance specificities.

IMPACT OF THE POLICY OPTIONS

In assessing the impact of the policy options, special attention is devoted to the potential areas or functions where the costs could arise as a result of the different policy options. A more detailed estimation of the (monetary) costs would depend on several variables, such as the company-specific process and procedures, the size and nature of the entity and the applicable resolution framework at national level, including the potential contribution to financing arrangements

Policy Issue A: Whether to follow the approach of EBA taking into account the insurance specificities or to develop a completely new approach

Policy option A.1: Develop a new RTS, with its own structure and terminology		
Costs	Policyholders	No direct impact on policyholder is expected in this case however, any additional administrative cost or otherwise additional resources (e.g. time, additional headcount) incurred by resolution authorities an/or industry, might ultimately impact the cost of the insurance service, including the insurance premium.
	Industry	Additional administrative costs for counterparties in derivative transactions may be incurred due to the need to develop separate processes etc. to accommodate various regulations in banking and insurance. Developing and implementing additional processes may entail quite substantial costs, as depending on the complexity of such processes, dedicated external expertise would need to be employed. Furthermore, if additional or different valuation would be required, in terms of complexity, additional data/information to be collected, external expertise required to be engaged, etc.), this may result in substantial additional operational costs for the entity under resolution and/or the industry, depending on the applicable financing arrangement.
	Resolution authorities	Time-consuming and costly processes may need to be implemented in order to apply various requirements to treat derivatives in a resolution scenario. In case the resolution authority performs valuations, this would include any additional costs incurred in case additional or different valuations would be required, in terms of complexity of the processes, engagement of external expertise etc.) This is especially relevant for integrated authorities (banking and insurance) which would also need to define and implement processes to ensure accurate and timely alignment of the sectoral rules and regulations, keeping them up to date whenever there is a change in any given sector. As a result, the regulatory burden would increase, as well as the overall running costs for the resolution

		authorities, potentially affecting, with a cascading effect, the industry as well as, ultimately, the policyholders.
	Other	Other stakeholders (e.g. creditors etc.) may be affected by the costs referred above, however, this might be less relevant than for the other stakeholders referred in this Policy Option.
Benefits	Policyholders	There is no anticipated direct benefit for the policyholders .
	Industry	There is no anticipated direct benefit for the industry .
	Resolution authorities	Developing a specific RTS might be easier to apply in case of an insurer's failure, as there is no need for additional resources (time, staff with a high level of expertise) and processes to handle specific insurance matters. Therefore, resolution authorities can ensure that e any specific insurance related aspect is duly considered.
	Other	There is no anticipated direct benefit for other stakeholders

Policy option A.2: To follow the approach taken by EBA considering the insurance specificities		
Costs	Policyholders	No direct impact on policyholder is expected in this case
	Industry	No direct impact on the industry is expected in this case.
	Resolution authorities	No direct impact expected.
	Other	No direct impact expected.
Benefits	Policyholders	As less burden is put on the resolution authorities in terms of costs, need for additional resources (time, staff) etc., more streamlined and efficient processes could be put in place which ultimately would positively benefit policyholders as no additional resolution costs would be generated
	Industry	This Policy Option would ensure ythat there is consistency with the approach taken for a derivative counterparty (e.g. a bank). Furthermore, this option would ensure transparency and comparability with similar situations e.g. with valuations of liabilities from derivatives in a resolution situation in the banking sector, as counterparties in derivative transactions will be treated similarly, regardless of whether they have exposure to a credit institution or an insurance or reinsurance undertaking in resolution.
	Resolution authorities	Consistent approach, processes and tools would ensure clear and transparent communication with other competent authoritiesand counterparties in derivative transactions etc.

		Such consistency would further ensure that the valuation processes can run without additional need of resources, data or special expertise. In addition, in case of integrated authorities, the resources already existing in the banking sector can be deployed in an efficient and timely manner for the insurance cases. In this context, no additional costs are expected to be incurred.
	Other	The consistency in approach, processes and tools would ensure a higher predictability for counterparties and other stakeholders involved or affected by this regulation. No additional costs are to be incurred by any other stakeholder (e.g. creditors etc.)

COMPARISON OF POLICY OPTIONS

Policy Issue A: Whether to follow the approach of EBA taking into account the insurance specificities or to develop a completely new approach

EFFECTIVENESS			
	Ensuring a level playing field through common minimum harmonization rules	Improving transparency and better comparability	Enhanced cooperation and coordination between competent authorities
Policy option A.1	+	0	0
Policy option A.2	+	++	+

EFFICIENCY			
	Ensuring a level playing field through common minimum harmonization rules	Improving transparency and better comparability	Enhanced cooperation and coordination between competent authorities
Policy option A.1	-	0	0
Policy option A.2	+	++	++

The potential additional costs for the industry in case a completely new RTS would be developed, with its own structure and terminology, could be substantial, depending on the complexity of the new processes, the need to involve dedicated external expertise, especially in case additional or different valuations would need to be performed., Furthermore, additional administrative costs might be incurred

by the counterparties in derivative transactions, as they might need to develop separate processes to accommodate various and/or inconsistent regulations in banking and insurance.

Resolution authorities would need to develop and implement time-consuming and costly processes in order to accommodate various requirements to treat derivatives in a resolution scenario. For integrated authorities (banking and insurance) the inefficiency implied by separate sets of rules, processes and procedures would be even more costly. Alongside with the increased overall running costs, the regulatory burden would increase, all these potentially affecting, with a cascading effect, the industry as well as, ultimately, the policyholders. Preferred option

Based on the qualitative assessment of EIOPA, policy option A.1 would indicate that while there might be an advantage of following an extensive process for developing an EIOPA RTS with its own structure and terminology, this might imply that counterparties in derivative transactions might be faced with additional and potentially significantly high operational costs to understand how they might be treated differently in resolution when entering into transactions with either banks or insurance companies.. Policy option A.2 mitigates this risk and might increase transparency and convergence among various stakeholders, as it might ensure that counterparties in derivative transactions are treated similarly, regardless of whether they have an exposure to a credit institution or an insurance or reinsurance undertaking in resolution.

Based on the impact assessment, **it was decided to follow policy option A. 2, namely, to develop the RTS on specifying methodologies and principles for the valuation of liabilities arising from derivatives, following the approach taken by the EBA**, duly considering any specificity of the insurance business as the case may be.

ANNEX 2: FEEDBACK STATEMENT

This feedback statement sets out a high-level summary of the comments received during the public consultation, and EIOPA's assessment of them. The full list of non-confidential comments provided can be found on EIOPA's website.

In line with Article 40, paragraph 4 of Directive (EU) 2025/1 which mandates EIOPA to develop these draft regulatory technical standards specifying the methodologies and principles of the valuation of liabilities arising from derivatives, after consulting ESMA, EIOPA engaged constructively with ESMA, throughout the developing phase of these draft RTS, and invited ESMA to formally express their comments in writing, within the public consultation. EIOPA received ESMA's comments alongside with other two stakeholders representing insurance industry associations and federations.

As part of the consultation EIOPA held a workshop with stakeholders to discuss the draft RTS on 6 March 2026.

EIOPA would like to express its appreciation for the feedback of the stakeholders during the preparation of the draft RTS.

ESMA'S RESPONSE TO THE CONSULTATION ON THE DRAFT RTS

ESMA's comments

ESMA expressed their support for the draft RTS and EIOPA's approach in developing it concluding that the RTS is consistent with the corresponding requirements applicable to CCPs, as set out in ESMA's draft RTS on Valuation and Independent Valuer⁴, as subsequently endorsed by the European Commission⁵. ESMA also notes that the procedure regarding the termination of derivative contracts between an undertaking under resolution and a CCP duly takes account of the way a CCP operates, in particular its default management arrangements, as it provides important operational clarity on Article 40 of Directive (EU) 2025/1 and provides consistency and cross-sectoral alignment with the banking resolution regime. Furthermore, ESMA supports the objective of minimising value destruction while ensuring fair loss allocation.

Assessment

EIOPA appreciates the positive feedback.

⁴ ESMA91-372-2066 Final Report on Draft RTS specifying the requirements for independent valuers, the methodology for assessing the value of the assets and liabilities of a CCP, the separation of the valuations, the buffer for additional losses to be included in provisional valuations and the methodology for carrying out the valuation for the purpose of the 'no creditor worse off' principle (Article 25(6) and 61(5) of CCPRRR)

⁵ OJ L 199, 9.8.2023, pp. 14–33.

CONSISTENCY WITH THE BANKING RESOLUTION REGIME

Stakeholders' comments

Stakeholders expressed their support for the draft RTS as it provides important operational clarity on Article 40 of Directive (EU) 2025/1 and provides consistency and cross-sectoral alignment with the banking resolution regime. Furthermore, the objective of minimising value destruction while ensuring fair loss allocation is also supported.

Assessment

EIOPA appreciates the positive feedback.

DEFINITION OF VALUER

Stakeholders' comments

Stakeholders suggested that the 'valuer' (or 'independent valuer') should be defined as this function is used in Articles 4-8, and an explicit definition is also used in the corresponding Art. 1(2) Delegated Regulation (EU) 2016/1401.

Assessment

In developing these draft RTS, EIOPA followed its mandate as defined by Article 40, paragraph 4. EIOPA believes that the Level 1 text as well as the draft Regulatory Technical Standards on the independence of valuers for resolution under Article 24(6), point (a), of Directive (EU) 2025/1, offer sufficient clarity as to what and/or who can qualify as a "valuer" or "independent valuer" and what conditions such a person needs to fulfill. Adding additional definitions would not bring more value to the current text. This is also in line with the rules and procedures set out by the European Commission in drafting Level 2 legislation.

DERIVATIVES USED FOR HEDGING PURPOSES

Stakeholders' comments

The stakeholders proposed additions of new recitals, specifying that for derivatives used for hedging, replacement trades may be concluded on an exposure based rather than contract by contract basis, ensuring that economically equivalent hedges can be re-established even where market conditions require alternative instruments. In addition, the destruction-in-value analysis should fully account for the economic burden of re-establishing the hedge. Furthermore, where replacement trades reflect prudent and commercially reasonable hedge re-establishment, their prices should be given priority over model-based valuations. For intra-group hedging arrangements, the simplified mid-market valuation should apply wherever the group resolution strategy foresees internal re-hedging.

Assessment

EIOPA acknowledges that the value of derivative contracts is linked to underlying instruments of which the value evolves over time and only crystallises at maturity or upon termination ('closeout'). EIOPA believes that Article 2, paragraph 1 (b) of the draft RTS appropriately covers the issues raised by the stakeholders. In this context, no changes have been applied to the recitals which are intended to provide context for the provisions set out in the draft RTS, while kept streamlined and strictly aligned with the provisions set out on the draft RTS.

REPLACEMENT TRADES VS MODEL-BASED PRICING

Stakeholders' comments

The stakeholders noted that Art. 6(1) appropriately differentiates between derivatives for which replacement trades exist and those valued on model-based prices, suggesting that the draft RTS explicitly states that, where replacement trades reflect prudent and commercially reasonable hedge re-establishment, such trades should be given priority over model-based valuations.

Assessment

EIOPA agrees with the priority of commercially-reasonable replacement trades, as it gives the possibility to the counterparty to send a notice of real market conditions and transactions. The valuer, after considering the validity of those replacement trades, should decide on final valuation either based on replacement trade prices or otherwise on market prices as described in Article 6 paragraph 2. The RTS has also to consider the case where the market is unable to set fair prices or the case where there is no market for such derivative.

ALLOWANCE FOR SUFFICIENT TIME AND FLEXIBILITY

Stakeholders' comments

The stakeholders supported the approach taken to develop the framework for the comparison between the destruction in value that would arise from the closeout and the amount of losses that would be borne by derivatives in a write-down or conversion, however, noting that this is operationally complex. The stakeholders propose explicitly recognizing and/or clarifying in the Recitals that resolution authorities should have sufficient time and flexibility to assess hedging costs, perform pre-closeout assessment, and allow for flexibility in deadlines for the counterparties to conclude and evidence commercially reasonable replacement trades in fast moving markets.

Assessment

EIOPA believes that the current text of the RTS allows for flexibility, specifically Recital (2) and Article 3, paragraph (4). The provisions of Article 3 paragraph 3 are applicable to counterparties that are not CCPs. In those cases, setting deadlines is desirable because there is no guarantee that such counterparties have implemented valuation procedures, in the way that CCPs must do.

The resolution authority, having in mind the particular characteristics of the counterparty, is the agency that must decide on deadlines. It is desirable that such decisions are aligned broadly with common market practice as established under ISDA Master Agreement which is also accommodating for adjustments made under the relevant market conditions / operational considerations.