

## ANNEX: Simplification and burden reduction while developing a new framework: the case of IRRD

EIOPA fully supports the European Commission's objective of simplifying EU-regulation and significantly reducing the administrative burden on businesses. At the same time, the IRRD mandates the EIOPA to develop a series of guidelines and technical standards, of which most will have an impact on undertakings and national competent authorities (NCAs). In order to strike a balance between the objective of burden reduction and the need to develop sound instruments, EIOPA has made an effort to keep the burden on both NCAs and undertakings, where possible, to a minimum. A full list of examples of burden reduction or simplification of regulation for each instrument can be seen in the table below.

Furthermore, where possible, the approach adopted draws on existing regulatory practices, enabling undertakings to leverage their existing experience and expertise in financial regulation, and promoting a level playing field across the financial sector. Generally, EIOPA has sought to minimize the new information and level of details to be collected by fostering the use of existing information and avoiding unnecessary requests.

### Examples of burden reduction or simplification of regulation in the instrument currently under development

Preliminary remark: the examples are classified according to whether the simplification and burden reduction affects undertakings **(a)** and/or authorities **(b)**

Instrument	Burden reduction and simplification of regulation
<p><b>Guidelines</b> to specify further:</p> <p>a) In cooperation with ESRB, the range of scenarios of severe macroeconomic and financial stress</p> <p>b) The qualitative and quantitative indicators contained in the pre-emptive recovery plans</p>	<p><u>Scenarios:</u></p> <ul style="list-style-type: none"> <li>- <b>Non-inclusion of “reputation” as a dimension against which the impact of scenarios is measured<sup>a,b</sup></b>: The impact of scenarios is assessed at a minimum on solvency position, liquidity and profitability and where relevant, on the operational capability of the undertaking. “Reputation” was not included as a dimension, as the assessment of reputational impact presents important challenges for insurance undertakings and scenarios, given it is strictly qualitative and not included in the SCR calculation.</li> <li>- <b>Scenario design<sup>a,b</sup></b>: A provision included in the GLs allows ORSA scenarios to be used as a starting point, adapted for pre-emptive recovery planning purposes where needed. Additionally, existing tools and analyses could be used when defining the range of scenarios provided that the selected scenarios meet the conditions set out in the Guidelines.</li> </ul> <p><u>Indicators:</u></p> <ul style="list-style-type: none"> <li>- <b>Additional criteria of qualitative and quantitative indicators<sup>a,b</sup></b>: Indicators specified in the Guidelines only relate to the criteria already provided by the IRRD although the list is</li> </ul>

	<p>open and other categories of criteria could have been included or added.</p> <ul style="list-style-type: none"> <li>- <b>Minimum list of indicators</b><sup>a,b</sup>: Instead of prescribing a minimum list of indicators in the GLs, examples of what possible indicators could be are provided which are relevant to the nature of business of the undertakings. Furthermore, undertakings are given the flexibility to not include or more indicator categories set out in the GLs.</li> <li>- <b>Indicator selection</b><sup>a,b</sup>: A provision included in the GLs allows existing tools and analysis used for risk management purpose to be considered when selecting indicators.</li> </ul>
<p><b>Guidelines</b> on how information should be provided in summary or collective form for the purpose of confidentiality requirements</p>	<ul style="list-style-type: none"> <li>- <b>Consistency with established regulatory approaches</b><sup>b</sup>: Where possible, the approach adopted draws on existing regulatory practices, making sure that the insurance specific features are properly reflected, as far as relevant and applicable. The approach adopted enables resolution authorities to consider local market specificities and leverage their existing experience and expertise in financial regulation, thus promoting a level playing field across the financial sector.</li> </ul>
<p><b>Guidelines</b> specifying further details on the criteria for application of simplified obligations</p>	<ul style="list-style-type: none"> <li>- <b>Weighting of the criteria and categorisation of undertakings</b><sup>b</sup>: The approach followed did not assign weighting to the criteria used for the assessment to determine whether simplified obligations can apply to certain insurers. In a similar manner, categorisation of undertakings is not foreseen in the Guidelines. Weighting of the criteria and categorization of undertakings could complicate the assessment process as these might not be proportionate to the specific situation in all Member States, thus resulting in an excessive use of resources and increased administrative burden in the assessment process.</li> <li>- <b>Guidance on likelihood of simplified obligations for each criterion after listing the elements to be considered</b><sup>b</sup>: The eligibility of simplified obligations is assessed based on the specification of criteria to be used and the elements to be considered. The Guidelines provide a direction as to what kind of characteristics of undertakings can lead to a positive or negative outcome, decreasing potential unclarity on how to interpret the elements listed and therefore decreasing the additional effort required to interpret the elements if guidance would not have been provided.</li> <li>- <b>Common criteria and elements under the RTS on scope of pre-emptive recovery planning</b><sup>b</sup>: Some criteria and in particular certain elements that authorities should consider under this Guideline, coincide with those that are to be assessed to determine the scope of pre-emptive recovery planning. A provision included in the GLs allows for these criteria/elements to be approached from the same perspective and both assessments to be performed in the same process.”</li> <li>- <b>Assessment process to determine that simplified obligations cannot apply</b><sup>b</sup>: In order to apply simplified</li> </ul>

	<p>obligations to certain undertakings and groups, supervisory and resolution authorities should assess all the assessment criteria. However, if for one of the criteria it is evident that simplified obligations cannot apply, no further assessment should necessarily be performed against the other criteria.</p>
<p><b>RTS on independence of valuers</b></p>	<ul style="list-style-type: none"> <li>- <b>To ensure the independence of a candidate valuer in the context of resolution EIOPA follows a principle-based approach to setting out the key criteria for independence<sup>b</sup>:</b> Market practice suggests that finding an (independent) valuer may not be straightforward (e.g. due to size of the market, availability). Having in mind specificities of insurance resolution (e.g., long-term obligations, technical valuation of liabilities that match investments) the draft RTS adopts a principle-based approach, which enables the appointing authority to exercise its judgment in the case at hand and take into account Member State specificities.</li> <li>- <b>Valuers are only required to not have been involved in a statutory audit<sup>b</sup>:</b> As finding an independent valuer might already be challenging, it seems justified to require only that the valuer shall not have completed a statutory audit of the relevant entity the year preceding the date on which that candidate's eligibility to act as valuer is assessed. Contrary to what ESMA RTS have established as requirement i.e., setting three years instead of one year preceding the date on which that candidate's eligibility is assessed, EIOPA's approach is consistent with the EBA one.</li> <li>- <b>Consistency with established regulatory approaches<sup>a</sup>:</b> Where possible, the approach adopted aligns with existing regulatory practices (e.g. CCP and/or banks). In comparison with the CCP Regulation, the RTS however does not require keeping and regularly reviewing an upfront list of potential independent valuers, considering the additional burden and the fact that the valuer will be chosen having in mind the specificities of the resolution.</li> </ul>
<p><b>RTS on contents of the contractual term on recognition of resolution stay powers</b></p>	<ul style="list-style-type: none"> <li>- <b>To ensure recognition of a resolution authority's stay powers<sup>2</sup>, EIOPA follows a principle-based approach to specifying the contractual terms for financial contracts governed by the law of a third country<sup>a</sup>:</b> the draft RTS refrains from specifying in detail the contractual terms, which would unduly limit the application cases and potentially lead to inefficient and ineffective application of the contractual terms and potentially to legal disputes.</li> <li>- <b>Consistency with established (EU and international) regulatory approaches<sup>a</sup>:</b> Where possible, the approach adopted aligns with existing regulatory practices (e.g. CCP and/or banks), enabling undertakings to leverage their existing experience and expertise in financial regulation, and promoting</li> </ul>

<sup>2</sup> Under IRRD, a stay power is the exercise of power of the resolution authority to suspend or restrict rights and obligations of contractual parties (e.g. to temporarily suspend termination rights to a contract), in order to ensure an efficient resolution.

	<p>a level playing field across the financial sectors<sup>b</sup>: This ensures a proportionate and consistent approach for financial conglomerates, and an established approach in dealings with third countries.</p>
<p><b>RTS</b>, in consultation with ESMA, specifying methodologies and principles on the valuation of liabilities arising from derivatives</p>	<p>- <b>Consistency with established regulatory approaches and cross-sectoral alignment</b><sup>b</sup>: The structure and content of this RTS is aligned with the approach adopted across the financial sector, in line with the existing regulatory practices. In view of the efficient functioning of financial markets, counterparties in derivative transactions shall be treated similarly, regardless of whether they have exposure to a credit institution or an insurance or reinsurance undertaking in resolution. However, where necessary, this RTS is adjusted to the context of insurance resolution, including particularities of the insurance business and references to the specific elements pursuant to Article 23 and Article 35 of the IRRD.</p>