Comments Template on EIOPA-CP-16-009 Discussion Paper on Potential harmonisation of recovery and resolution frameworks for insurers		**Deadline 28.02.2017 23:59 CET**
Name of company:	Allianz SE	
Disclosure of comments:	EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential.	Public
	Please send the completed template, in Word Format, to CP-16-009@eiopa.europa.eu, by 28 February 2017.	
Reference	**Comment**	
General comment	Allianz SE, the parent undertaking of Allianz Group, welcomes the opportunity to comment on EIOPA's thorough and comprehensive work. We would first of all like to thank EIOPA for the valuable work carried out, in particular with respect to the gap analysis regarding resolution powers. In commenting, we would like to **share our experience and insights from our activities on recovery and resolution planning**. Allianz has been designated as G-SII since 2013. We would like to point out two fundamental differences between insurers and banks, and between Solvency II and banking regulation. These fundamental differences have considerable impact on the appropriate design and calibration of, in particular, any resolution framework for insurers. First, while it can be debated whether insurers are at all systemically important, individually or collectively, there is broad agreement that **insurers are fundamentally less systemically important than banks**. This holds true irrespectively of whether insurers' systemic importance is zero or positive. As just three examples, insurers have stable financing, do not need deposit guarantees, and do not suffer "bank runs". Much of the recovery and (in particular) resolution framework is aimed at reducing the risk of systemic disruption, and less systemically important banks are therefore subject to less onerous requirements. This must obviously hold true also for insurers, which are in general not deemed (as) systemic. Second, a key part of the recovery framework for banks is explicitly (as in the case of recovery indicators) or implicitly (as is arguably, at least partly, the case e.g. with the early intervention	

framework) aimed at offsetting the fact that bank capital ratios are inherently "lagging indicators" of financial health. This is partly due to accounting, notably with respect to loan provisioning. With Solvency II the opposite is true for insurers. The marking-to-market of insurers' market value balance sheets means that solvency positions for insurers will at all times reflect expectations of future potential losses. Moreover, market valuations also reflect liquidity and market psychological factors, which tend to amplify market reactions, but which also tend to reverse over time. Mark-to-market losses will typically overstate ultimate cash losses. All this shows that **Solvency II is more conservative and forward-looking in itself**, and less additional conservatism or foresight is needed and justified.

As noted, both of these fundamental differences have clear implications as regards the appropriate design and calibration of the insurance recovery and resolution framework. For insurers with long-term business models this means that intervention mechanisms based on Solvency II ratios can be unwise and counter-productive. This is especially the case for automatic mandatory interventions (as in write-down and mandatory coupon suspension of own funds qualifying debt instruments, currently at 100% of the SCR), but also as regards the availability of supervisory powers. As is proposed in this document, differentiated interventional levels should be considered. Certain powers should only be available at a later stage (close to an MCR – but not an SCR – breach).

In general, we propose that EIOPA differentiates to a greater extent between the phases of a crisis, and in so doing takes into account the existing Solvency II framework. These phases can be identified, in sequential order, as contingency, recovery, SCR breach, early intervention[1], MCR breach, point of no viability and resolution. The **available powers must be proportionate to the phase of the crisis**. However it must also take into account that **any given Solvency II ratio is already prospective, and that any cash losses normally occur later, if at all.** We appreciate that the EIOPA survey identified gaps in powers, but

1 We note that EIOPA defines early intervention in para. 55 as intervention before an SCR breach. However, we believe that early intervention should only occur between SCR and MCR breach, see our answers to Q18 et seq.

	these must then be assigned to the adequate situation. In this context, the existing Art. 141 of the Solvency II Directive[2] should be replaced by powers specific to the different phases of an insurer's crisis.	
Q1	We share EIOPA's view that both recovery and resolution planning are important in order to both better equip insurers and their national supervisory authorities (NSAs) with insights and tools on how to prevent or mitigate a potential crisis, and to make these mechanisms more transparent and subject to due process. We fully support, as a general statement, EIOPA in requiring **each insurance group to be subject to recovery and resolution requirements**; we propose some deviations to this in our detailed answers to the individual questions. However, as noted in the introduction, it is crucial that the fundamental characteristics of the insurance sector are recognised, including the lower, or non-existent, systemic risks and the "leading indicator" nature of insurers' Solvency II positions. As systemic importance and the need to introduce forward-looking risk measures underpin the rationale for the Bank Recovery and Resolution Directive (BRRD[3]), including bail-in, it follows that there is no reason to transpose the BRRD into an insurance-specific but otherwise equivalent regime. On the contrary, several of the BRRD's measures have limited rationale in an insurance setting, and some could even have counterproductive implications. An entirely separate, and much simpler, regime is required for the insurance sector. Recognising the fundamental differences between insurance and banking and the more limited rationale or need for any recovery and resolution regime for the insurance sector, we would like to question whether any further harmonization of supervisory intervention powers, let alone the introduction of new ones, is necessary, and whether this should be in the form of a separate "recovery and resolution framework" or incorporated into Solvency II. **We strongly favour the latter**.	

2 2009/138/EC
3 Directive 2014/59/EU.

	The supervision of insurance and reinsurance undertakings in the EU under the Solvency II framework includes reorganization measures and winding-up proceedings. Before creating an additional "framework" or adding any new "building blocks" to the existing Solvency II framework, a **mapping exercise** between the Solvency II concepts of "reorganisation" and "winding-up" on the one hand, and the FSB concepts of "early intervention powers", "recovery" and "resolution" should be carried out. Creating a separate "framework" may lead to overlapping intervention powers with unclear and inconsistent conditions and intervention triggers which should be avoided. Only by **integrating any further recovery or resolution measures into the Solvency II framework**, namely into the system of financial supervision, can consistent regulation and due process be ensured. Solvency II has brought about considerable improvements by integrating all prudential requirements into one directive or framework; this achievement shouldn't be diluted. That being said, the rationale for further harmonizing supervisory intervention powers, including any early intervention powers (if these are necessary), and reorganization resp. resolution tools, must be analysed in consideration of the intended objectives, being (i) adequate protection of policyholders and (ii) protection of public funds. Harmonizing recovery and resolution tools and/or reorganization tools would contribute to the aforementioned goals, in that it creates a level playing field among NSAs which facilitates exchange between NSAs on coordinated actions, especially in relation to insurance groups that are active in several member states. Notwithstanding this, the primary obligation of each NSA is on the protection of their respective local policyholders. Where an insurance group is subject to supervision by various NSAs, there is an inherent conflict of interest when it comes to deciding on priorities. Therefore, harmonization of recovery and resolution and/or reorganisation tools must be supplemented by the development of appropriate coordination procedures among the NSAs, led by the Group Supervisor. Finally, development and harmonization of reorganisation tools can only take place within the framework set by EU law and national constitutional law; this includes respect of the principle	

	of proportionality, the scope of EU competencies as well as the principle of subsidiarity. For example, measures for the compulsory maintenance of functions that are perceived as necessary to avoid harm to financial stability must comply with fundamental constitutional principles, in particular with respect to fundamental property rights.	
Q2	We share EIOPA's view that both recovery and resolution **planning** are important to better equip insurance groups and their supervisors with insights and tools on how to prevent or mitigate a potential crisis. With regard to **resolution**, we share EIOPA's view that only a **minimum harmonization** approach is feasible. This holds true with respect to resolution planning as well as resolution powers which should be regulated in line with the minimum harmonization approach to reorganization measures set forth in Art. 269 et seq. Solvency II Directive. Given the more limited (if any) systemic importance of insurers, and the complications of achieving more extensive harmonisation, a minimum harmonization approach is likely to be most rational. However, we believe that **as regards recovery planning maximum harmonisation is more appropriate**, but such maximum harmonisation should be applied to a simpler framework compared to the recovery planning framework under the BRRD. Recovery planning is to be seen as an element of proper risk management and ORSA, which makes sense regardless of whether an insurer is "systemically important" or not. The reason this makes sense is that all policyholders must be entitled to similar levels of protection – not only policyholders in large institutions. Further, policyholders should not be excessively dependent on NSAs for their protection. Consequently, harmonised minimum rules about what steps insurers must take themselves in order to avoid or manage crises are required. The fundamental need for recovery plans should consequently not be dependent on any	

	confirmation of the insurer's "systemicness". We therefore believe it should form part of the wider risk management and ORSA framework as per Art. 44, 45 Solvency II Directive and Art. 259 et seq. Solvency II Regulation[4], but **only at Group level**. As noted, recovery planning serves a somewhat different purpose in insurance, given that financial risks are already "anticipated" in insurers' capital ratios, e.g. as a consequence of the market value balance sheet, and insurers are not, or, compared to banks, less, systemic. Both of these factors favour relatively simpler rules. Beyond simplification, risk diversification within insurance groups is itself a strong argument for a group approach to crisis management (see also our reply to Q7). The named risk management and ORSA requirements follow a maximum harmonization approach; we don't see a need to deviate from this concept regarding recovery planning.	
Q3	Allianz views the concept as generally positive, although we do not consider all "blocks" as equally sensible and some are already achieved through Solvency II. Allianz considers EIOPA's proposals to be broadly exhaustive. However, the proposed building blocks should be aligned with the concepts of the Solvency II Directive, notably Art. 136 et seq. and Art. 267 et seq. Early intervention (main building block 2) must be proportionate in consideration of the potential risk on one hand and the constitutionally guarantees (property guarantee; freedom of enterprise) on the other hand. It follows from this, and in particular the forward-looking perspective of Solvency II and the concept and high level of the SCR (relative to the MCR), that early intervention is to be tied to the MCR rather than the SCR (see also our reply to Q25 et seq. on trigger levels).	
Q4	See Q3	
Q5	The scope for recovery and resolution measures needs to be **differentiated**: • Pre-emptive recovery planning (**building block 1**): Since we believe that recovery	

[4] 575/2013

	planning is to be viewed as part of the ORSA, the scope should, in principle, extend to **all insurers and reinsurers** in scope of Solvency II. However – as further laid out under Q7 – for an insurance group, the **group recovery plan** as part of the group ORSA must be sufficient and replace separate recovery plans at solo level, without allowing for exceptions as suggested by EIOPA. • Pre-emptive resolution planning, resolvability assessment (**building blocks 2 and 3**) as well as cooperation and coordination (**building block 11**) should only apply to **insurance groups that are active in more than one member state**. • Early intervention powers, reorganization and resolution powers (**building blocks 4 through 10**): Since we believe that early intervention powers as well as resolution powers have to be integrated into the Solvency II concept of financial supervision, reorganization and winding-up measures, the scope of any such powers would have to be **all insurers and reinsurers** in the scope of Solvency II. We strongly disagree with the ordering of the "building blocks" – **early intervention should protect against "deeper" breaches of the MCR, but not the SCR**.	
Q6	We believe that the building blocks except for 2, 3 and 11 should apply to each insurer and group, and their nature, scale and complexity should only be relevant for the exercise of powers by the NSAs; see above our answer to Q5. **Only the scope of building blocks 2, 3 and 11**, which refer to resolution planning and cooperation, **should be subject to the proportionality principle** such that they only apply to insurance groups that are active in more than one member state. Furthermore, other relevant – and indeed at least as important – factors that should be taken into account are fundamental property rights and the preservation of entrepreneurial freedom. These principles must be obeyed with at all levels.	
Q7	We fully **agree** with EIOPA's view that in principle **each insurance group should have a pre-emptive recovery plan**. Neither the need to have one, nor its content (in particular	

	scenarios and recovery options), depends on whether an insurer is "systemically important" or not: all policyholders deserve at least a minimum level of protection, which should not differ based on the insurer's jurisdiction or size, and no policyholder should be excessively dependent on supervisory intervention for their protection. Based on our own experience as designated G-SII, we strongly believe that the **planning must only be required at group level** (and at solo level for insurers which are not part of a group). Unlike EIOPA, we don't think that NSAs should have the power (not even in exceptional cases) to require solo recovery planning if a group recovery plan is in place. In our view, the main content of the recovery plan is not the scenarios, which are insurer-specific. These may give a good indication on the impact of risks which are not modelled as "1 in 200 years" risks. However, in reality a crisis would never be like the scenarios in the plan. Hence, excessive focus on predetermined scenarios could have unwanted consequences by reducing the focus on unexpected and unpredictable scenarios. The actual value of the recovery plan is rather the presentation, analysis and assessment of the available recovery options, and their feasibility in a stressed environment. Such measures comprise de-risking, liquidity and most of all capital measures. Realistically in a group context, each of these measures requires coordination and cooperation within the group. Therefore, the relevant and meaningful exercise is the planning at the level of the group. Group recovery plans may cover major entities of the group individually to some extent, though.	
Q8	As explained earlier, we see recovery planning as a part of proper risk management and ORSA at group level; hence it should have the same scope of application, subject to the group recovery plan replacing solo recovery plans. Proportionality is partly "automatic" as organisationally/strategically simpler undertakings naturally have simpler plans.	
Q9	See Q8	
Q10	In order to be meaningful, but not too burdensome, we deem the following content to be reasonable:	

- Executive summary
- Main changes to previous year
- Strategic analysis of the group, including assessment of resolvability
- Early warning indicators
- Key recovery options
- (Generic) stress scenarios
- Impact of scenarios on recovery options
- Communication concept
- Follow-up actions.

Most importantly, we would like to raise our **reservations regarding the value of the scenario analysis**. Insurers calculate their SCR based on certain calibrated scenarios. Furthermore, they calculate scenarios as designed by EIOPA, and calculate even further scenarios for risk management purposes. Our experience has shown that it is not meaningful to add further scenarios – there are enough pre-determined scenarios already. Insurance groups should be allowed to assess generic scenarios rather than exactly calculated scenarios which are never going to occur as designed anyway. It is more appropriate to have one, or several, generic scenario(s) to test the plan, i.e. the feasibility of the recovery options. A crisis will not occur as it was designed or planned for in the recovery plan. Defining exact scenarios ex ante may have unwanted consequences, including the risk of excessively focusing on pre-defined scenarios and thereby potentially reducing insurers' and NSA's preparedness to deal with unexpected scenarios. In our view, scenario planning is more useful as a form of benchmark against which to gauge the effectiveness and "recovery value" of the recovery options and the recovery plan as such.

Finally, it should be noted that recovery planning must not restrict management's ability – and indeed responsibility – to decide in concrete stress situations on individual recovery measures on the basis of business judgment taking into account all circumstances and considering all available options. In other words, management must be able to deviate from any planned

	actions even in cases where the actual crisis mirrors a crisis as outlined by the plan.	
Q11	Pre-emptive resolution planning should only apply to **insurance groups that are active in more than one member state**. Resolution plans are drawn up by the relevant supervisory authorities. As shown in the examples given by EIOPA, coordination and cooperation between the NSAs with respect to the exercise of resolution powers over insurers that form part of a group in more than one member state is important. All other cases can be handled by the NSA at national level and there is no need for alignment between NSAs, nor for any harmonization within the EU. With a thus limited scope, there would be no need to create a "light" regime for smaller insurers.	
Q12	See Q11	
Q13	See Q11	

Q14	We understand the question to ask for the content of pre-emptive *resolution* plans.
	On this, we believe that the NSAs responsible for resolution planning should have:
	• An overview of:
	  ○ the business and legal structure of the group
	  ○ the internal interconnectedness of the group, in particular which internal service providers are necessary for the relevant insurers to continue their business
	• Agreements on:
	  ○ the operational handling of resolution cases
	  ○ the exercise of reorganization/resolution measures, namely where they reduce policyholder rights, taking into account the economic relevance of entities, their need for funding, and their contribution to the resolution situation.
	The above is to be understood against the background that there is no general legal obligation to re-capitalize subsidiaries, except in cases of pre-existing contractual guarantees or contractual loss assumption.	

Q15	Yes, we agree.	

Q16	NSAs should **not** have the power to require the removal of significant impediments to resolvability. General supervisory powers, including reorganization measures, sufficiently ensure the objectives of supervision, whereas the **entrepreneurial freedom** should not be unduly restricted. This holds particularly true for insurers as they are – at most – of limited systemic relevance compared to banks, and as the existing indicators (SCR and MCR breach) are already forward-looking with respect to potential future (cash) losses. In any case, if such powers were to be introduced anyway, the conditions for their exercise would have to be set very high (i.e. justification on the basis of a probable resolution scenario and definite impediments to resolution) and subject to effective and fast legal remedies ("fast-track" administrative law proceedings and temporary court orders). Otherwise compliance with all explicit Solvency II requirements, e.g. coverage of the SCR, would no longer protect insurers from supervisory intervention, causing **legal uncertainty** or security and unduly restricting entrepreneurial freedom.	
Q17		
Q18	With respect to Q18 – 21, we refer to early intervention as defined in para. 55 of the EIOPA paper, i.e. **intervention before an SCR breach**. As pointed out above, a recovery and resolution "framework" should rather be **part of the Solvency II framework**, and should always be subject to the principle of proportionality. This is strictly necessary to align any new powers with existing one to create a consistent framework. Rather than introducing new early intervention powers, we propose to **improve the existing early intervention powers**. Art. 141 of the Solvency II Directive already stipulates a powerful, apparently unlimited, early intervention right: regardless of any SCR/MCR breach, NSAs have the "power to take all measures necessary to safeguard the interests of policy holders in the case of insurance contracts, or the obligations arising out of reinsurance contracts". While we agree that no NSA should be required to "stand on the side-line" and watch an	

	insurer fail, the existing early intervention powers already raise serious legal concerns. Rather than introducing additional early intervention powers, the existing ones must be specified, both with regard to its conditions and its scope, to provide for a **sufficient level of legal certainty**. This means restricting the availability of more "interventional" powers until a point in time which is closer to the point of resolution (i.e. above the MCR), in line with early intervention in the BRRD. In any event, the current wording in Solvency II is too vague and legally inadequate. In particular regarding conditions, we disagree that there should be financial criteria or indicators which positively trigger early intervention – however negative triggers may be required, meaning supervisors cannot use certain (more interventional) powers unless certain conditions are fulfilled. In any event, there is **no justification for any supervisory intervention if the SCR has not been breached**. In case the NSA disagrees with the SCR calculation, capital add-ons are available. Hence, there is no gap in the existing framework to close. Any early intervention powers in line with the EIOPA description would marginalize the SCR calculation and cause a considerable discrepancy relative to the BRRD concept. Therefore, such intervention powers must be tied closer to the MCR. A more harmonised, tiered application of supervisory powers is required to overcome fragmented national landscapes, which the EIOPA survey has revealed. *Recovery* actions are to protect against an SCR breach, while early intervention must only occur at a much later stage, to protect against *resolution after recovery actions have failed*. The recovery plan is the primary regulatory crisis management tool, and other regulatory powers or intervention mechanisms must not compromise it.	
Q19	As outlined in our reply to Q18, early intervention conditions must respect the **Solvency II system of financial supervision**, in order not to marginalize the supervisory ladder of intervention at solo level and create legal uncertainty. Equally, the Solvency II powers should also be reconsidered, in line with the above. Given the nature of Solvency II we cannot think of any suitable conditions, based purely on Solvency II ratios, which adequately reflect an	

	insurer's solvency in line with appropriate recovery and resolution planning and execution. If any such conditions were to be introduced, they would need to be clear and subject to effective legal control. It is worthwhile to reflect on BRRD intervention points for early intervention in this context. The BRRD suggests that early intervention triggers could be set at 1.5%-points above the minimum requirement (as mentioned as a possible level in the Directive and further elaborated by EBA guidelines). In other words, early intervention under the BRRD is contemplated to occur at some margin above the level where the bank's licence would be expected to be revoked. While it is aimed to be available to supervisors while the bank remains under "going concern" (albeit under extreme stress), it is only available close to resolution and, more or less explicitly, after the recovery plan has failed. The equivalent level under Solvency II would be at some distance above the MCR, but well after the SCR has been breached. As discussed earlier, there is no reason for a larger distance between early intervention and the MCR in insurance than the distance between early intervention and the minimum requirement in banking – if anything, quite the opposite, given that solvency ratios are already inherently forward-looking with respect to any cash losses. The banking threshold of 1.5%-points above the minimum requirement represents 15% of an assumed minimum requirement of 10% (8% plus an assumed pillar 2 requirement, excluding any pillar 2 guidance amount, of 2%). It is not straight-forward to "translate" such metrics to Solvency II. As a simplification, if the MCR was e.g. at 45% of the SCR, the trigger for early intervention could be at 55-60% of the SCR. Given the more limited eligibility of Tier 2 and Tier 3 capital relative to the MCR, some adjustments may be required. It is rational that certain powers be available at breach of the SCR – as an example, restricting capital expenditure – but these would not be early intervention powers. Notably the power to require recapitalisation or restructure policyholder commitments, as an example, should only be a "close to last resort", close to the MCR, as is the case (conceptually) under the BRRD. The trigger level(s) should in any event be considered further. The lower systemic nature of insurers and the forward-looking, leading-indicator, nature of Solvency II capital ratios are both arguments for lower, not higher, intervention thresholds. Insurers must be capable of	

	absorbing mark-to-market volatility: such volatility is often expectations- and liquidity-driven and reversible, and cash losses are typically much lower and in any event normally arise much later. It is important to avoid excessive, strictly defined (hard-coded) restrictions and interventions at any point and especially in situations where insurers are already under stress and must rather be focused on raising capital and executing the best available crisis management or crisis avoidance measures (whether formal recovery options or otherwise).	
Q20	We disagree with a number of the listed powers, as they would intervene with the supervisory ladder of intervention. Powers aiming at strengthening the financial situation can and must only be triggered by financial difficulties, as evidenced by at least an SCR breach. Other listed powers, on the other hand, are in our view already available as part of regular supervision. • Require an insurer to call for cash injections by shareholders, parent or partner companies: Not adequate; no legal requirement for a shareholder to provide an injection, and no need for early intervention if the SCR hasn't been breached. Would be appropriate pre-MCR breach. • Require additional provisioning or reserves from an insurer: Yes, NSAs must be able to intervene in case of under-reserving • Require an insurer to get prior supervisory ap-proval for any substantial capital expenditure, material (financial) commitment or contingent liability: No need for early intervention if the SCR hasn't been breached. Could be appropriate as a supervisory power after the SCR is breached. • Require an insurer to use net profits to strengthen own funds: No need for early intervention if the SCR hasn't been breached. Could be appropriate as a supervisory power after the SCR is breached. • Limit or restrict profit distributions to shareholders: No need for early intervention if the SCR hasn't been breached or is likely to be. Could be ap-propriate as a supervisory power after the SCR is breached. • Require the reinforcement of governance arrangements, internal controls and risk management systems:	

	Yes, NSAs must be able to intervene; they can impose capital add-ons • Require the removal of members of the management body, directors or managers of the insurer: Yes, NSAs must be able to intervene • Require an insurer to limit variable remuneration and bonuses: No need for early intervention if the SCR hasn't been breached. But if the SCR has been breached, this is a suitable power • Limit or restrict certain business lines and operations (e.g. to avoid certain risks, such as concentration, operational or liquidity risks): Agreed, if such risks are not quantified in the the SCR. • Require the insurer to limit intra-group asset transfers and transactions and to limit asset transfers and transactions outside the group: Agreed, if such risks are not quantified in the the SCR • Require additional reinsurance or changes to an insurer's reinsurance arrangements: Agreed, if such risks are not quantified in the the SCR • Restrict/prohibit the disposal of any asset without prior supervisory authorization: No need for early intervention if the SCR hasn't been breached (cf. Art. 138 Solvency II Directive)	
Q21	See Q20	
Q22	The "competent authority" as defined in Art. 268 (1) lit. a) of the Solvency II Directive (i.e. the **NSA**) **must be competent for the resolution of insurers**. Any additional authority exercising "resolution powers" would risk to compete or interfere with the (reorganization and winding-up) powers conferred to the "competent authority". The introduction of resolution authorities for banks has already been a challenge and heightened issues with respect to the availability of competent staff etc. The availability of staff with the requisite skill-set is even more limited in insurance, making the resource issue even more of a challenge for the insurance industry. It is clear that, to the extent resolution authorities will be required to be	

	established, the alternative cost, both for NSAs and for insurance undertakings, could be great.	
Q23	**We agree – with the exception of the objectives "financial stability" and "stability of real economy"** – we oppose to the concept of (material) systemic risk in insurance. Nevertheless, to avoid any confusion, we believe that the building blocks are justified by the objectives "policyholder protection" and "protection of public funds", see our general comments.	
Q24	See Q23	
Q25	Supervision has to be consistent. It must also be rational and appropriate. Given the nature of Solvency II, the "point of non-viability" (PONV) must be determined in the context of both the existing **Solvency II financial supervision framework** and against local GAAP insolvency. Hence the starting points for the PONV, and any "failing or likely to fail"-assessment, should be (i) the MCR, and (ii) the GAAP balance sheet as regulated by insolvency law. Above this level, given the forward-looking and conservative nature of Solvency II, no harm to policyholders should be expected. However, a breach of the MCR should never trigger resolution in isolation. Resolution authorities should still assess the nature of any MCR breach and whether it may be mitigated and/or reversed, especially in the presence of market-distorting factors, and they should consider local GAAP as well as MVBS positions. Automatic resolution triggers are never a good idea and must be avoided, and all available and relevant information should be considered in any resolution decision. With these conditions, the MCR may be an appropriate *indicator* of where resolution *may* occur, i.e. a necessary (but insufficient) condition. However, a further necessary condition needs to be that without taking any countermeasures, local GAAP insolvency is to be expected.	
Q26	See Q25	
Q27	See Q25	
Q28	The powers seem appropriate and consistent with certain powers already available to NSAs and the FSB criteria.	

	However, when it comes to **bail-in**, several points should be considered: • Bail-in in banking is partly aimed at compensating for losses which are likely but which (due to the lagged recognition of credit losses, resulting from a lack of mark-to-market) are not recognised against capital at the point of resolution. This is less, or not at all, a relevant consideration for insurers. • Further, banks are often deemed systemic and at least some of their activities are meant to be sustained during resolution and recapitalised afterwards. This is also not the case for insurers; arguably even insurers which are classified as systemic can be largely or fully wound down or merged into competitors through portfolio transfers. • Insurers have limited amounts of debt: primary insurers are often prohibited from issuing any, and where it is allowed, it is statutorily subordinated to policyholders. Further, it is a fundamental strength of insurers' business models that they do not depend on market funding. Such strengths should not be negated by any bail-in rules. Notably, there must be no minimum requirements for bail-in debt. • Only reinsurers (or holding companies) may have senior debt outstanding which is not statutorily subordinated to policyholders. The question whether these, relatively few, entities are systemic enough to warrant the introduction of a bail-in regime must be answered positively for the proposed regulation to be justified. • Furthermore, unlike the situation in banking, debt instruments that qualify as Tier 1 or Tier 2 capital do not need to be bailed-in, as (i) cash flows on those instruments are mandatorily cancelled or deferred when the SCR is breached, and (ii) any bail-in would not considerably (if at all) improve the financial situation (including the Solvency II ratio) of the undertaking.	
Q29	See Q28	
Q30	See Q28	
Q31	As indicated above, the benefits of bail-in powers in insurance are few, if any. As regards bail-in of senior debt there is no clear need for it, even where senior debt exists, and it would only	

	have an effect in entities where senior debt is in existence. Consequently there would be no "level playing field". Any introduction of minimum requirements for bail-in debt would risk destabilising the insurance business model and would needlessly introduce new risks relating to market refinancing and market sensitivity, which are not present today. As also noted, there is no benefit in, or rationale for, bail-in powers relating to subordinated debt – unlike in banking no payments even on Tier 2 debt would ever be made until and when the SCR is fully restored. As regards shareholders, equity raisings are arguably among the most important and effective recovery options for most insurers and a bail-in of shareholders would make such recovery options substantially more difficult. In insurance, the limited benefit of bail-in of shareholders is outweighed by the risks it would generate with respect to insurers' recoverability.	
Q32	See Q32	
Q33	NSAs already have powers to restructure, including to write-down, policyholders. The point at which this is possible is not necessarily the point of resolution – it could be after. This is however as it should be – since one of the specific objectives of resolution is to protect policyholders, and it is important that the resolution powers do not in themselves compromise the resolution objectives. It is fully in line with the FSB criteria that restructuring of policyholder claims is only available when other resolution powers have failed. Consequently there is no need to apply any broader bail-in powers, in addition to such restructuring powers, as regards policyholders. The term bail-in should *not* be applied to policyholders as it could raise needless concerns in the markets and it is also not required under the FSB criteria.	
Q34	Yes, as explained in the comments above – the least onerous measures must be chosen, restructuring of policyholder liabilities should only occur when other resolution measures fail.	
Q35	Yes, but within the Solvency II framework.	
Q36	These arrangements must first of all **respect the powers conferred on the Group Supervisor** by the Solvency II framework. As per Art. 231 Solvency II Directive,	

	disagreements between NSAs should be settled by EIOPA (Art. 19 EIOPA regulation). In order to be efficient, the participation of NSAs must clearly depend on "their" insurers' relevance for the insurance group. Third country NSAs should be involved. However, we believe this to be a longsome process and propose to start with EU NSAs first.	
Q37	See Q36	
Q38	See Q36	