Comments Template on EIOPA-XX-16-XXX Discussion Paper on Potential harmonisation of recovery and resolution frameworks for insurers		Deadline 28.02.2017 23:59 CET
Name of company:	AMICE (Association of Mutual Insurers & Insurance Cooperatives in Europe)	
Disclosure of comments:	EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential. Please indicate if your comments should be treated as confidential, by deleting the word Public in the column to the right and by inserting the word Confidential.	Public/Confidential
	Please follow the instructions for filling in the template: ⇨ Do **not** change the numbering in column "Reference"; if you change numbering, your comment cannot be processed by our IT tool. ⇨ Leave the last column empty. ⇨ Please fill in your comment in the relevant row. If you have no comment on a paragraph or a cell, keep the row empty. ⇨ Our IT tool does not allow processing of comments which do not refer to the specific numbers below. **Please send the completed template, in Word Format, to CP-16-009@eiopa.europa.eu, by 28 February 2017.** **Our IT tool does not allow processing of any other formats.** The numbering of the questions correspond with the questions included in the Discussion Paper on Potential harmonisation of recovery and resolution frameworks for insurers.	
Reference	**Comment**	
General comment	AMICE welcomes the opportunity to engage with EIOPA on the issue to potential harmonisation of recovery and resolution frameworks for insurers in Europe. Following the extensive enhancements of the insurance regulation regime in recent years, policyholder protection is now at the heart of the regulatory infrastructure, in the shape of Solvency II. This new system	

of regulation protects through a system of two capital requirements which ensures the early detection of financial difficulties. The supervisory ladder of intervention in Solvency II allows for supervisory actions while there are still assets in the regulated entity to meet obligations to policyholders. Historically, insurers have proved resilient in times of challenge and required little in terms of government support; this is even less likely in the future due to the new environment under Solvency II in Europe.

Globally, requirements for recovery and resolution plans are coming into force for global systemically important insurers (G-SIIs), following similar requirements across the banking industry. The FSB has called on jurisdictions to put in place an ongoing recovery and resolution planning process to reduce the potential for failure and promote resolvability as part of the overall supervisory process. This request was required for all global systemically important financial institutions (G-SIFIs) and for any other firm assessed by national authorities as potentially having an impact on financial stability in the event of its failure.

Nevertheless, there is no rationale for a harmonised recovery and resolution framework within the EU for insurers:

- Insurers played very little part in the financial crisis and indeed proved their resilience during that period.

- Insurance failures are very rare and given the general lack of interconnectedness do not affect other insurers or the payment systems, contrary to the systemic impact of failure in the banking sector.

- The assumption that regulation which is suitable for banking must be also suitable for insurance is incorrect. Rules applied to insurance should fully reflect the important differences between the business models and risk profiles of the two industries, taking into account aspects such as long time horizon, illiquidity and contingent liabilities as unique characteristics of insurance, making it a distinctly different business model from that of banking. If a crisis does occur, insurers can typically be wound up in an orderly manner through run-off and/or portfolio transfers, in contrast to the situation with the banking sector. In fact, a rush to resolution for the insurance model can generate avoidable losses of policyholders, directly counterproductive to the will to protect them.

- AMICE specifically represents mutual insurers, which by definition have no external owners.

- Should an insurer fail, there is no evidence of a lack of substitutability of products that would justify the introduction of additional measures.

- Re/insurance firms which are not systemic and which do not threaten the financial stability should not be required to put in place ongoing recovery and resolution plans.

- National insolvency laws already provide sufficient safeguards as regards consumer protection through prudential rules, rules on winding-up and right of priority.

More specifically relating to Solvency II, re/insurers are bound by the prudential rules and the solvency requirements laid down in its framework. Solvency II already foresees requirements in terms of recovery and resolution and requires re/insurers to submit realistic recovery plans to their regulatory authority following breaches of the minimum and the solvency capital requirements.

According to Article 138(2) of Solvency II, the re/insurers concerned shall, within two months from the observation of non-compliance with the SCR to submit a realistic recovery plan for approval by the supervisory authority.

According to Article 139(2) of Solvency II the re/insurers concerned shall, within one month from the observation of non-compliance with the MCR, submit, for approval by the supervisory authority, a short-term realistic finance scheme to restore, within three months of that observation, the eligible basic own funds, at least to the level of the MCR or to reduce its risk profile to ensure compliance with the MCR.

According to Article 141 of Solvency II the supervisory authorities shall have, within their supervisory powers in deteriorating financial conditions, the power to take all measures necessary to safeguard the interests of policyholders in the case of insurance contracts, or the obligations arising out of reinsurance contracts, where the solvency position of the undertaking continues to deteriorate.

• Administrative burden: The proposal will add to the administrative burden on insurance and reinsurance firms and supervisory authorities by requesting firms to develop and maintain pre-emptive recovery plans for firms which comply with the capital requirements.

Where entities fall outside the Solvency II regime due to their extremely low ranking under proportionality (which encompasses nature, scale and complexity), it would be disproportionate to apply a harmonised recovery and resolution regime.

Furthermore, the results of the survey on existing recovery and resolution frameworks conducted by EIOPA in February 2016 are unlikely to be indicative and accurate as they are based on experience pre-dating the implementation of Solvency II, since the survey was

	undertaken within two months of Solvency II being implemented. We propose EIOPA follows the next steps: Step 1 Prior to any other activity, EIOPA shall examine whether preventive elements in Solvency II are fully implemented and applied across all Member States. In particular, there are many similarities between what undertakings are required to do as part of the ORSA and what is proposed for the purpose of a recovery and resolution framework. The ORSA requires reverse stress testing (Art 45) which discloses on a regular basis which measures the individual insurer is required to take in times of financial distress. Functionally this represents a form of a regular recovery plan. Step 2 A mapping exercise between Solvency II and the FSB Key Attributes to assess similarities and differences should be carried out in order to find out whether preventive measures under Solvency II are sufficient. The lack of such a mapping exercise underlines the strong impression that banking rules shall be simply copied across without taking into consideration the insurance acquis. Step 3 In case EIOPA should reach the conclusion after steps 1 and 2 that further measures are needed, these should be introduced exclusively under Solvency II in order to avoid any	

	inconsistencies that may result from an isolated initiative. Portfolio transfers and run-offs are the best suited resolution tools for the long-term business model of insurance. In addition, a ban on withdrawals and surrenders by the supervisor could reduce the lapse risk. However, as these early intervention tools could cause policyholder and shareholder detriment, they should be exclusively reserved for the situations of a sustainable financial distress, i.e. after a sufficient observation period. There is no equivalent in insurance to a bank run, so resolution does not need to take place overnight. To conclude, we do not believe it is necessary to introduce an additional regime since Solvency II already provides a sufficiently robust prudential framework with policyholder protection at its core.	
Q1	There is no demonstrable evidence that Member States' existing insolvency procedures are unable to direct to and manage insurance failures. With the added protections now in place through the implementation of Solvency II, no specific mechanism for recovery and resolution need be applied. In evidence of this, paragraph 104 states that the analysis regarding a potential recovery and resolution framework had to be made on a conceptual level since the evidence for failures in the insurance sector are fewer than in the banking sector. *Mutual insurance companies* The EU Bank Recovery and Resolution Directive (BRRD) seems to forbid Member States from financially supporting failing institutions by means other than those given in BRRD. BRRD gives the authorities the power to control the failing undertaking further to making its own assessment as to whether the undertaking is failing or not. Furthermore, it is not only the failing undertaking which suffers the effects but in fact an entire group and to some extent its	

	counterparties. The question that needs to be asked before considering this in the insurance sector is the question of proportionality, notably in terms of risk to the stability of financial markets. Following a long tradition, individuals all over Europe have organised insurance entities. In a mutual the owners (shareholders in a PLC) are the same people as the customers. Very often a mutual company is owned by thousands if not millions of customers. A mutual entity has therefore the customer's interest as the prime and only purpose within its activities. Mutuals are consequently not inclined to take excessive risk in order to provide a ROI for external shareholders and tend to aim towards long-term investments; mutuals could in fact be regarded as a form of insurance for the insurance market's stability, and provide a diversity of structure within the market. It would be highly disproportionate to reprimand the millions of customers with a framework which indisputably would demand heavy administrative burden, put their property at risk, and designed for entities with fundamentally different structure and limitations. An example of the latter is the discussed power to bail-in shareholders, creditors or policyholders (page 58 EIOPA's discussion paper). This power is comparable to the demand for MREL in Article 45 of the BRRD. It is not relevant to apply a demand for eligible liabilities on mutual insurance undertakings. It lies within the structure of a mutual undertaking that the capital needed is provided by the customers which also means shareholders. A demand from the legislator in any sense to prepare a bail-in through (external) liabilities is therefore not at all applicable to mutuals. Thus the legal structure of a mutual undertaking in itself provides a level of protection which renders a proposed resolution and recovery framework obsolete. Paragraph 105 – Box 1: The concepts of "recovery" and "resolution" states that "although the	

	concepts of Solvency II and the FSB Key Attributes are somehow interlinked, a mapping exercise to assess similarities and differences has not yet been carried out." We strongly encourage EIOPA to carry out this mapping exercise in order to ascertain whether preventive measures under Solvency II are sufficient. The lack of such a mapping exercise underlines the strong impression that banking rules shall be simply copied across without taking into consideration the insurance legislation (acquis). In addition, work being carried out by the IAIS on recovery and resolution should be considered before separate action is undertaken in Europe.	
Q2	Our argument against developing a new framework for recovery and resolution remains that Solvency II already provides sufficient protections within a maximum harmonisation regime.	
Q3	The main reason for the introduction of the two capital requirements (MCR and SCR) was to establish an early warning mechanism which will allow more time for supervisory intervention. This therefore negates the requirement for the proposed building blocks for recovery and resolution.	
Q4	The introduction of a two tier capital requirement (i.e. MCR and SCR) in Solvency II was designed to provide supervisors with a so-called "supervisory ladder of intervention". When an insurer's own funds fall below the SCR, firms are required to take action with the aim of restoring the insurer's finances back to the level of the SCR as soon as possible. This therefore negates the requirement for additional building blocks for recovery and resolution.	
Q5	Solvency II already provides sufficient protections within a maximum harmonisation regime and therefore the scope of a recovery and resolution framework is irrelevant. Where entities fall outside the Solvency II regime due to their extremely low ranking under proportionality (which encompasses nature, scale and complexity), it would be disproportionate to apply a harmonised recovery and resolution regime.	
Q6	Solvency II already provides sufficient protections within a maximum harmonisation regime	

	and therefore the specific applicability for each sub-building block is irrelevant.	
Q7	Solvency II already provides sufficient protections within a maximum harmonisation regime and therefore the need for pre-emptive recovery planning is irrelevant.	
Q8	Solvency II already provides sufficient protections within a maximum harmonisation regime and therefore the scope of a recovery and resolution framework is irrelevant.	
Q9	Solvency II already provides sufficient protections within a maximum harmonisation regime and therefore the scope of a recovery and resolution framework is irrelevant. Where insurance entities are not within the scope of Solvency II because of their size, this clearly indicates that under the proportionality principle, they do not present any substantive risk and therefore should not be subject to a recovery and resolution mechanism beyond that already in place in their Member State. However, the exemption of insurers from the Solvency II regime is not equally applied across the EU. Insurers which do not present a risk to the financial system due to their size, complexity and/or nature should be exempt from all but minimum requirements in all Member States.	
Q10	Solvency II already provides sufficient protections within a maximum harmonisation regime and therefore the scope of a recovery and resolution framework is irrelevant.	
Q11	Solvency II already provides sufficient protections within a maximum harmonisation regime and therefore the need for pre-emptive planning within a recovery and resolution framework is irrelevant.	
Q12	Solvency II already provides sufficient protections within a maximum harmonisation regime and therefore the requirement for a recovery and resolution framework is irrelevant.	
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