

**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**

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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
<p>Please follow the instructions for filling in the template:</p> <ul style="list-style-type: none"> ⇒ <u>Do not change the numbering</u> in column "Reference"; if you change numbering, your comment cannot be processed by our IT tool. ⇒ Leave the last column <u>empty</u>. ⇒ Please fill in your comment in the relevant row. If you have <u>no comment</u> on a paragraph or a cell, keep the row <u>empty</u>. ⇒ Our IT tool does not allow processing of comments which do not refer to the specific numbers below. <p>Please send the completed template, in Word Format, to CP-16-009@eiopa.europa.eu, by 28 February 2017.</p> <p>Our IT tool does not allow processing of any other formats.</p> <p>The numbering of the questions correspond with the questions included in the Discussion Paper on Potential harmonisation of recovery and resolution frameworks for insurers.</p>		
Reference	Comment	
General comment	The EIOPA investigation of the the case for a harmonised resolution framework for insurers comes at a good time. The European Union has done considerable progress in achieving convergence with the FSB Key Attributes of effective recovery and resolution frameworks for	

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	<p>financial institutions (2014). However, the scope of the existing legal framework under the Bank Recovery and Resolution Directive is narrow compared to the scope of the FSB Key Attributes.* A harmonised recovery and resolution framework for insurers would ameliorate this divergence and it would be a decisive step in establishing a comprehensive system for the recovery and resolution of all systemically significant financial institutions in the EU.</p> <p>*See further, N. Coleman, A. Georgosouli, T. Rice, 'Measuring the implementation of the FSB Key Attributes of Effective Resolution Regimes for Financial Institutions in the European Union' (forthcoming, Spring 2017) International Finance Discussion Paper Series (US Federal Reserve Board; https://www.federalreserve.gov/econresdata/ifdp/2017/index.htm).</p>	
Q1	<p>The Discussion Paper identifies the following arguments for harmonisation: (a) Avoidance of fragmentation in the resolution frameworks applicable to insurers in the EU; (b) enhancement of cross-border cooperation and coordination; (c) consistency in reinforcing national frameworks; (d) fragile market environment and systemic risk; (e) further enhancement of the single market. To those arguments, I would add two more. The first one is the need to enhance legal certainty and predictability as, for example, with regards to the application of the No Creditor Worse-Off principle and of other safeguards. The second argument for harmonisation draws on the desirability of policy coherence and consistency in the application of the principle of proportionality. Policy coherence and consistency in the application of the principle of proportionality require inter alia taking steps to ensure that national insurance resolution authorities exercise discretion in a principled fashion and according to a clear set of criteria defined by law in advance.</p>	
Q2		
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Q6	The principle of proportionality should apply both to specific sub-building blocks taken	

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	<p>separately as well as to all sub-building blocks taken as a whole. National insurance resolution authorities should be allowed the discretion to take into account the size, complexity, interconnectedness and other features of the insurance firm in question. At the same time, however, they should be required by law to exercise their discretion on the basis of a set of criteria specified in advance, for otherwise it will be difficult to ensure consistency and transparency in Member State level decision making as, for instance, with regards to decisions to ex ante limit or exempt requirements imposed on insurers. The promotion of consistency and transparency may further require delegating EIOPA with the power to draft regulatory technical and implementing standards.</p>	
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Q16	<p>Resolution authorities should have the power to require the removal of significant impediments to the resolvability of a specific insurance firm. It is difficult to specify all types of potential impediments in advance, however, it is possible to provide a non-exhaustive list of (a) the circumstances under which an insurance firm is deemed to be resolvable, (b) measures that insurance resolution authorities can take in their attempt to address or remove an impediment to resolvability and (c) matters that insurance resolution authorities should take into account in assessing the resolvability of the insurer (single entity or a group) in question. Recovery and Resolution Plans should clearly reflect the correlation between the availability (or unavailability) of Insurance Guarantee Schemes and insolvency in the insurance sector and how this correlation affects the resolvability of the insurance firm.*</p>	

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	*See further, A. Georgosouli, 'The emerging special recovery and resolution framework of G-SIIs and its effectiveness' chapter 8 in A Georgosouli and M. Goldby, Systemic Risk and the Future of Insurance Regulation (INFORMA Law from Routledge – Lloyd's Insurance Law library; 2016) at 125- 149 at pages 145-146.	
Q17		
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Q22	<p>The designation of an administrative authority for the resolution of insurers would certainly be a step in the right direction. Member States should be encouraged to opt for a single resolution authority. Where this is not possible, the mandates, roles and responsibilities of multiple resolution authorities should be clearly stated in advance and coordinated accordingly. In addition to national insurance resolution authorities, in due course, it is also worth considering the case for an EU-level insurance resolution agency akin to the Single Resolution Board. An EU-level resolution agency for insurers is here recommended because the existing coordination mechanisms may not be enough to smooth out existing inter and cross jurisdictional misaligned incentives.*</p> <p>*See further, A. Georgosouli, 'Regulatory incentive realignment and the EU legal framework of bank resolution' (2016) 10(2) Brooklyn Journal of Corporate Financial and Commercial Law, 343-382 [http://brooklynworks.brooklaw.edu/bjcfcl/vol10/iss2/2/?utm_source=brooklynworks.brooklaw.edu%2Fbjcfcl%2Fvol10%2Fiss2%2F2&utm_medium=PDF&utm_campaign=PDFCoverPages]</p>	
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