

**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:	MACIF Group	
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 analysis and the position of Insurance Europe as developed in its draft response is mostly shared by MACIF, especially regarding the following points:	
	<ul style="list-style-type: none"> • Solvency II already provides sufficient safeguards as regards policyholder protection through a system of two capital requirements which ensures the early detection of financial difficulties in an insurer. The 	

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	<p>supervisory ladder of intervention in Solvency II allows for supervisory actions while an insurance company still has assets to meet its obligations to policyholders. The possibility for a firm's management and/or supervisory authority to take measures at an early stage and the fact that the resolution of an insurer can generally be carried out in an orderly manner has meant that, in the past, insurers have rarely needed to benefit from government support and are, in our view, even less likely to do so in the future. Finally, Solvency II also includes provisions for the winding-up of insurers and national insolvency laws complement these.</p> <ul style="list-style-type: none"> • The traditional insurance business has proven extremely resilient to business cycle fluctuations in the past, as evidenced by the fact that insurers played very little part in the recent financial crisis and weathered the crisis quite well. Very limited government support was necessary, as EIOPA notes. • Insurance failures are rare and - given the general lack of interconnectedness between insurers and lack of transmission channels to allow contagion - do not affect other insurers or the broader financial system. Should an insurer fail, there is also no convincing evidence of a lack of substitutability of products that would justify the introduction of additional measures. • The unique characteristics of the insurance business model (long time horizon, illiquidity and contingency of liabilities) stand in clear contrast to those of banks; resolution regimes should closely reflect that. The key difference between a bank's resolution and an insurer's resolution is that the latter can occur over an extended period of time. There is no need to rush into resolution, particularly because this could generate avoidable losses for policyholders. 	
Q1	<p>As mentioned in EIOPA's analysis and conclusion, at this stage, it is not demonstrated that in all Member States normal insolvency procedures would be unsuitable to deal with insurance failures, and it has not been demonstrated that in all Member States existing powers and tools have been inadequate.</p> <p>Given the absence of compelling evidence that would support changing existing frameworks, it would be prudent to defer action at a European level in order to allow for the consideration of IAIS' work on recovery and resolution.</p> <p>It should also be pointed out that a draft legislation on the same subject is under development by the French Treasury. Indeed, the law n° 2016-1691 of 9 December 2016 has authorised the French government to take measures within 12 months in order notably to:</p> <ul style="list-style-type: none"> - Appoint the French supervisor as the resolution authority for the insurance sector and determine the 	

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	<p>appropriate governance;</p> <ul style="list-style-type: none"> - Allow the French supervisor to require, if necessary, from insurers to set up pre-emptive recovery plans or to draw up by itself pre-emptive resolution plans; - Define the conditions for entry into resolution and specify the legal consequences; - Allow the French supervisor to establish, in the context of a resolution framework, a bridge institution or a liability management structure to which all or part of the undertakings and assets of the concerned insurers can be transferred; - Adapt, in the context of a resolution framework, the conditions under which the French supervisor can make use of the different measures already provided by the French monetary code. <p>As a principle, a harmonised framework on recovery and resolution for insurers should be developed only if existing European regulation like Solvency II is shown to be deficient. If deficiencies are revealed, any new framework should focus on necessary supplements and be fully compatible with Solvency II.</p> <p>It should be highlighted that Solvency II already includes certain requirements in terms of recovery: recovery plan in case of non-compliance with the SCR, finance scheme in case of non-compliance with the MCR and supervisory powers in deteriorating financial conditions. Requiring recovery plans when an insurer's SCR has not been breached would needlessly increase insurers' compliance burden.</p> <p>As pointed out by EIOPA, very few insurers received public support during the financial crisis. In an insurance context, resolution mechanisms are most often based on run-off and portfolio transfer mechanisms and the needs for public support are much lower than in the banking sector.</p>	
Q2		
Q3	<p>The building blocks considered by EIOPA reflect different phases in which crisis management measures are envisaged. Clear criteria to identify these phases are necessary for harmonisation and the measures taken should be adequate to the stage of the crisis. It is also unclear how to separate resolution from winding up and liquidation since both require the non-viability of the insurer.</p> <p>The Discussion Paper states that in some situations early intervention may be needed before the breach of regulatory capital requirements in order to avoid the escalation of financial problems but does not present any further justification of this. The situations that would justify early intervention should clearly be stated. It should also be explained why the ladder of intervention provided by Solvency II would not be sufficient to deal</p>	

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	with them.	
Q4		
Q5	Should a recovery and resolution framework be introduced, all insurers in the EU should be in scope subject to the proportionality principle. In applying proportionality, factors such as a firm's size, complexity, business type, as well as the interconnectedness of an insurer with the rest of the financial system and the insurer's potential impact on financial stability need to be considered, in order to avoid unnecessary burdensome for the concerned insurers.	
Q6	<p>All insurers in the EU should be in scope subject to the proportionality principle. In applying proportionality, factors such as a firm's size, complexity, business type, as well as the interconnectedness of an insurer with the rest of the financial system and the insurer's potential impact on financial stability need to be considered.</p> <p>In order to provide sufficient legal certainty, conditions, triggers and tools should be clearly defined in the legal framework, even if there has to be room for flexibility in the <i>application</i> of the rules in order to achieve the optimal outcome.</p>	
Q7	<p>EIOPA proposes a requirement for insurers to develop and maintain pre-emptive recovery plans even when the SCR is above 100%. This would go further than what is already foreseen by Solvency II, which requires the development of a recovery plan once an insurer breaches or is likely to breach in the short-term the SCR.</p> <p>The requirement for pre-emptive recovery plans could place a significant regulatory burden if applied in a disproportionate manner to all insurers irrespective of their financial position. The proportionality principle should be used to investigate whether the set-up of recovery plans is actually needed in all cases to ensure that certain firms, based on their size and complexity, do not devote unnecessary resources developing such plans.</p>	
Q8		
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Q10		
Q11	<p>In terms of purpose, there must be a clear distinction between recovery plans and resolution plans. Both planning requirements should be applied in a proportionate manner, with due consideration of the results from ORSA and stress tests.</p> <p>In order to avoid excessive burdens for insurers, resolution authorities should try to limit the information required from insurers (in the context of drafting the resolution plan) to what is essentially needed and cannot be gathered from other sources, such as secondary data and existing information from the ORSA, medium-term capital management plan, contingency and emergency plan and from reporting of intragroup transactions.</p> <p>In addition, insurance resolution does not have the same urgency as bank resolution, and tools such as portfolio transfer and run-off facilitate this longer term process. Authorities should therefore be in a position to adapt their approach and plans as the situation evolves.</p>	
Q12		
Q13		
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Q18	<p>As EIOPA points out, Solvency II (through the ladder of supervisory intervention) already enables supervisors to step in when there is an imminent risk that capital requirements are breached. Further anticipating regulatory intervention is hardly justifiable in terms of proportionality and would undermine a cornerstone of Solvency II crisis management. It would also add another layer of solvency requirements and thus introduce legal uncertainty in relation to the prudential framework for insurers. It should also be noted that early intervention could negatively impact the reputation/value of an insurer in a manner that could exacerbate its difficulties.</p> <p>The Discussion Paper states that in some situations early intervention may be needed before the breach of</p>	

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	regulatory capital requirements in order to avoid the escalation of financial problems but does not present any further justification of this. The existing ladder of intervention in Solvency II has been designed specifically to address this issue from a solvency perspective. Furthermore, the SCR and risk margin underlying the technical provisions are designed to provide a high level of policyholder protection. If the proposal is to provide for early intervention based on solvency over and above what is already in existence in Solvency II, the reasons for doing this in terms of the perceived limitations of Solvency II should be made clear. Therefore, EIOPA should clearly state which are the situations that would justify early intervention and also explain why the ladder of intervention provided by Solvency II would not suffice to deal with them.	
Q19	<p>EIOPA should clearly state which are the situations that would justify early intervention and also explain why the ladder of intervention provided by Solvency II would not suffice to deal with them.</p> <p>With respect to triggers for early intervention, Solvency II coverage as provided by the Directive is by far the most accurate determinant of an insurer's financial condition and of its ability to meet claims to policyholders. The only practical and effective option, without undermining the existing Solvency II framework, would be to align the conditions on the Solvency II supervisory ladder of intervention.</p>	
Q20		
Q21		
Q22		
Q23	In the context of a resolution framework, consumer (policyholder) protection should be the primary objective. Policyholder protection is also the very purpose of prudential rules and solvency requirements laid down in Solvency II. The SCR ensures a high level of protection for policyholders, and Solvency II already provides for the development of recovery plans long before there is a real risk that policyholders will not be protected in full.	
Q24		
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