

# Failures and near misses in insurance

Overview of recovery and resolution actions and cross-border issues

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## EXECUTIVE SUMMARY

This is the second report on insurance failures and near misses by the European Insurance and Occupational Pensions Authority (EIOPA). It aims at enhancing supervisory knowledge on the prevention and management of insurance failures, based on the information contained in the EIOPA database, which comprises a sample of 219 affected insurance undertakings in 31 European countries,<sup>1</sup> dating back from 1999 to 2020.

The present paper strives to provide a better understanding of the kind of actions that are taken by insurers and NCAs when the companies are entering into two specific stages of the crisis management flow:

- i. The recovery phase (going-concern basis). This covers measures taken before the breach of the capital requirements (more specifically known as preventive measures) and measures taken after the breach of the capital requirements.
- ii. The resolution phase (gone-concern basis). This phase refers to actions that taken by the authorities in charge of the resolution and/or liquidation process.

A number of additional issues such as potential policyholders' loss, external funding and cross-border aspects featuring insurers' failures and near misses are also studied here.

EIOPA commenced in 2014 to create a dynamic database of insurance failures and near misses. The objective was to gather relevant information from national competent authorities (NCAs) on relevant cases of insurance failures and near misses occurred in the European Economic Area (EEA),<sup>2</sup> by means of gathering valuable information on the causes and early identification of insurance failures or near misses, as well as gauging their impact and the supervisory actions taken.

The first part of the current report is devoted to an analysis of the referred recovery and resolution actions adopted. Overall, the main findings suggest that the most common measures taken by the insurers and/or requested by the NCAs before and during the recovery phase, as documented in the EIOPA database, were:

- i. Presenting a recovery plan to restore compliance with the requirements; or (seldom) activating the existing pre-emptive recovery plan.
- ii. Requesting cash injections by shareholders or the parent company.

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<sup>1</sup> It includes the EU-27 Member States, plus Norway, Iceland and Liechtenstein from the EEA. The United Kingdom cases, which were reported to EIOPA prior the Brexit, are also included in this report.

<sup>2</sup> Where applicable throughout the report, EU also stands for EEA.

- iii. Require the reinforcement of internal governance arrangement and risk management.
- iv. Require commitment and/or actions from shareholders to support the company.
- v. Request additional provisioning (i.e. building up a higher level of technical provisions).

With regard to the resolution phase, the most common measures used by the NCAs were the following:

- i. Discontinue the writing of new business and continue administering the existing contractual policy obligations for in-force business (run-off),
- ii. Liquidation (i.e. the closure and orderly liquidation of the whole or part of a failing company),
- iii. Sale of all or part of the insurers' business to a private purchaser.

Policyholders in cases of insurance failures have not been immune to losses. Indeed, in the EIOPA's database, the policyholders in resolution suffered a loss of some kind in 30% of the cases.

Regarding the external funding (public funds or funds received by an Insurance Guarantee Scheme), the available evidence indicates that in 33% of the failures external injections were used. When this was the case, the amount of external funds required to be injected or allotted to the insurer, was equal or higher than 20% of the total assets of such insurer in 47% of the cases.

Concerning the second part of the report, the analysis revolves around inspecting the most common issues arising on the resolution or liquidation of cross border insurance failures. The continued increase of cross-border activity in insurance stresses the importance of a harmonised approach in protecting policyholders, especially considering the degree of internationalisation in the insurance sector. The need to have in place an adequate system of policyholder protection appears clear in the event of cross-border insurance failures.

The available evidence show that the most common cross-border issue identified by the NCAs, in the cases of cross-border insurance failures, is related to the current fragmentation in the landscape of the national IGSs in the EU. EIOPA has long argued that achieving a minimum degree of harmonisation in the field of IGSs is essential to provide a minimum level of protection to policyholders against the effects of an insurance failure.

Furthermore, due to the lack of harmonisation in the field of IGSs, there may be cases where an IGS is not able to neither cover nor compensate the losses of policyholders residing outside its own jurisdiction. Depending on their place of residence and the geographical coverage, policyholders could be treated differently, which is an undesirable situation from the perspective of policyholder protection and internal market.

As documented in the second part of the report, there have not been many cross-border insurance failures reported yet (such as those insurers operating from abroad via freedom to provide services, FoS or freedom of establishment, FoE). However, the losses suffered by the policyholders in these

cases seem to occur more often than in the cases of domestic insurance failures. As a way to solve this it appears even more decisive now to have in the EU a recovery and resolution framework in place, as well as a minimum harmonised network of IGs.

## 1. INTRODUCTION AND SAMPLE DATA

The establishment of a dynamic database of insurance failures and near misses, first undertaken by EIOPA in 2014, supported several objectives. First, the financial crisis in 2008 put a considerable amount of insurers under severe stress. The fact that the financial crisis was not exclusive to banking institutions was apparent not only from the collapse of American International Group (AIG) in the United States, but also seemed evident after looking at the information gathered in the EIOPA database of insurance failures and near misses, for 31 European countries.

In the previous report,<sup>3</sup> EIOPA provided insights and a better understanding of the leading causes of failures and near misses in insurance, by assessing the sample data of the dynamic EIOPA database.

The aggregate results of the previous report showed that, whereas the majority of non-life undertakings in the database are certainly of small size and have a small market share, life undertakings are more evenly distributed across sizes (based on total assets), being larger on average than their non-life counterparts. Similarly, the previous report showed that the 2008 financial crisis was the period in which the largest amount of failures and near misses occurred, particularly in the case of life and composite undertakings.

As regards the two most common general causes of failure and near miss reported in the EIOPA database, those were linked to underlying internal risks of the insurer, namely: (i) The risk that management or staff lack the necessary skills experience or professional qualities; and (ii) The risk of inadequate or failed systems of corporate governance and overall control.

The EIOPA database currently comprises a sample of data amounting to 219 cases of failures and near misses dated after the year 1999, reported at solo level, regardless of whether they refer to stand-alone insurers or to insurers belonging to a group.<sup>4</sup> For each case, the database includes quantitative and qualitative information on the causes of event, the early identification signals, the supervisory measures taken and additional information on the cross-border characteristics and issues identified.

The initial EIOPA data gathering exercise was carried out in 2014 and was based on the following premises. At first, NCAs were invited to report the five most “economically significant” cases involving recovery and resolution of (re)insurers that had taken place at national level in the past ten to fifteen years. The cases should also be reported at solo level, regardless of whether they

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<sup>3</sup> See EIOPA (2018a).

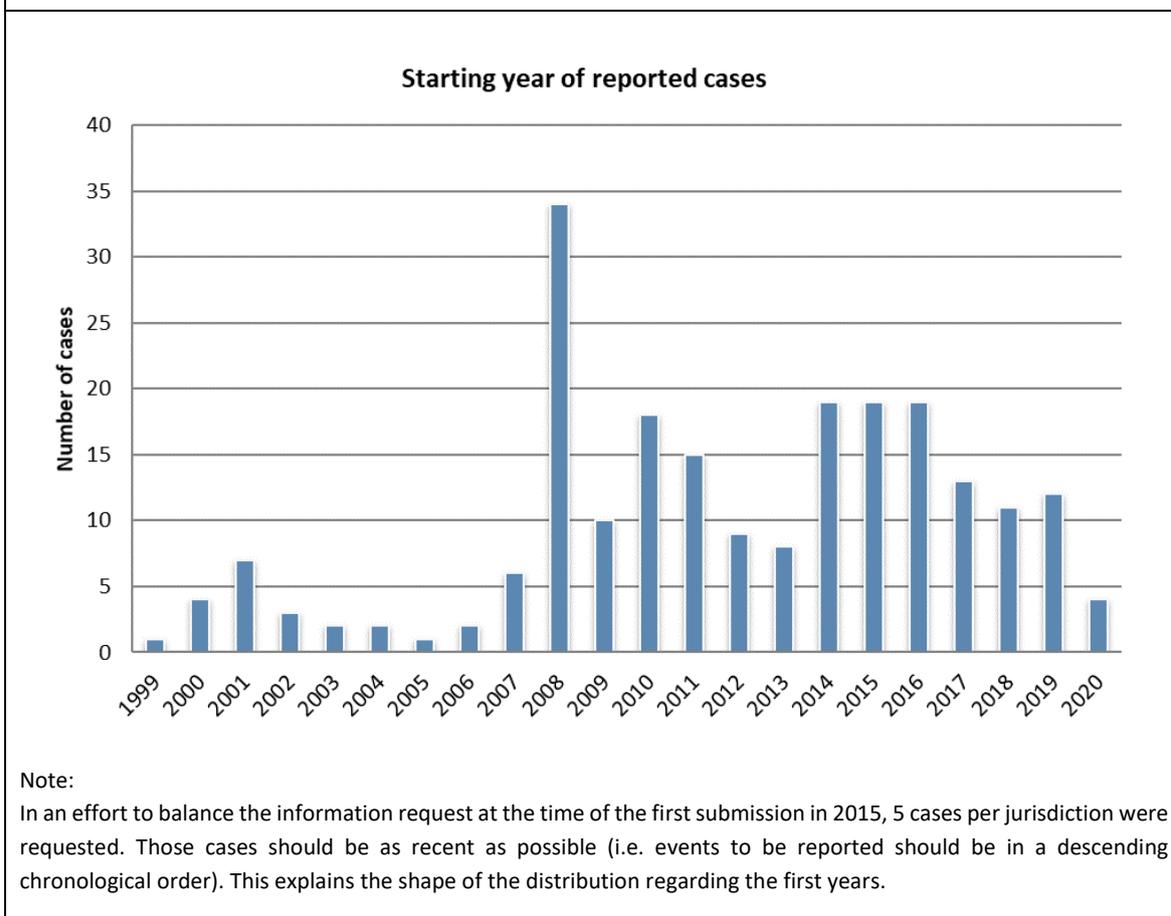
<sup>4</sup> At the time of the first report, the number of cases amounted to 180.

referred to stand-alone insurers or to insurers belonging to a group. Subsequently, after the initial data gathering exercise, an update was decided to be conducted on an annual basis to expand the database. Since only this broad guidance was given, the decision on which cases should be reported was essentially left to the NSA. The information was provided on a best-effort basis. After receiving the information, EIOPA staff carries out an in-depth quality check on a case-by-case basis.

To date, the EIOPA database of insurance failures and near misses constitutes the most comprehensive sample of failures and near misses of (re)insurers in Europe, containing 219 cases, which date from 1999 to 2020, of 31 EU countries.

**Figure 1: Distribution per starting year of the cases of failure and near miss**

All cases in the sample, 1999 - 2020



Portrayed in Figure 1 are the reported cases of failures and near misses in the EU contained in the EIOPA database, which as mentioned is a total of 219 cases from the past 20 years.<sup>5</sup> It should be noted, as can be seen in the picture above, that most of the insurance failures and near misses presented in this report occurred before Solvency II was introduced. Notwithstanding overall market performance, the capital levels and the quality of risk management systems of insurers have improved since the introduction of Solvency II.

The definitions of what is understood as an insurance failure and what is a near miss are provided in the previous report by EIOPA (2018a). To avoid a full repetition, the present introduction will provide a summarized definition only.

In the context of the EIOPA database, a *near miss* is defined as a case where an insurer faced specific financial difficulties (for example, when the solvency capital requirements were breached or likely to be breached) and the supervisor needed to intervene or to place the insurer under some form of special measure. This also implies that after the period of severe distress, the insurer recovered and can be found to be still in operation under its original form. In the absence of supervisory intervention, however, the insurer would not have survived in its current form. Lastly, the recovery measures should neither have involved the use of external funding (either by means of public money or by resorting to an IGS), nor should it have resulted in policyholders' losses of any kind.

Concerning *failures*, for the purposes of the EIOPA database, these are recorded from the moment when the insurer is found to be no longer viable or likely to be no longer viable, and thus had no reasonable prospect of becoming viable. Failure is thus triggered by "non-viability". The failed insurer ceases to operate in its current form. Shareholders generally lose some or all of their rights and cannot oppose to the measures taken by the authority in charge of resolution, which has formally taken over the control from the supervisory authority. The processes of winding-up/liquidation are also included. Last but not least, if the company was placed in resolution and managed to return to the market in some form, it is still considered a failure if such resolution measures involved the use of public money or resulted in policyholders' losses of any kind.

As we can see in Figure 1, the past decades have not been exempt from failures, even after the introduction of the Solvency II Directive. As mentioned, the introduction of Solvency II – a risk-based prudential regime – and an environment of mostly positive market returns, has contributed to the prevention of failures, but it is not a zero-failure regime.

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<sup>5</sup> It must be brought to the attention of the reader that this chart does not portray all the (near) failures that have occurred in the EU during this period. As mentioned, not all insurance failures that have occurred in each year might have been reported to EIOPA (due to delays in the reporting, the fact that there is a maximum number of 5 cases to be reported, as well as due to the database containing only "economically significant cases").

Due to this fact, and eventually since failures and near misses continue to happen, EIOPA has been supporting the stance that a European minimum harmonised recovery and resolution framework for (re)insurance undertakings should be established. The idea is not avoiding any kind of failure, which can be considered intrinsic to market economies, but instead reducing the likelihood of failures and minimising the impact in case they finally take place. Similarly, and in order to minimize harm to policyholders as it will be later described in Chapters 2 and 3, EIOPA has advocated for a minimum degree of harmonisation in the EU with respect to the national Insurance Guarantee Schemes.

The EIOPA initiative on a potential recovery and resolution framework in insurance is summarised in Annex 1.

The aim of the present report is to analyse the different measures and actions implemented by the insurers, which were triggered during the recovery period, as well as the resolution measures adopted by NCAs in the cases in which the recovery measures did not work.

This analysis will also take stock of two additional central issues concerning resolution and liquidation. First, there will be an examination of the usage of external funding, i.e. public money and/or guarantee schemes funds. Not in vain, one of the purposes of a recovery and resolution framework is to curtail the use of public funds, as stated in Annex 1. Secondly, during the resolution and liquidation, potential losses to the policyholders can occur. This report also studies if such policyholders losses occurred in Europe, noting that they can have a critical impact on the policyholders, as documented in the literature (for example, the case of HIH Insurance in Australia, which is also touched upon later).

Finally, the impact of the cross-border failures within the EU, and cross-border issues and problems associated with them, are also assessed. Although the number of cross-border failures reported yet is small, the data suggest that policyholders' loss may appear more often in cross-border failures than in purely domestic ones.

## 2. ASSESSING RECOVERY AND RESOLUTION ACTIONS

### 2.1. A RECOVERY AND RESOLUTION FRAMEWORK FOR THE EU

At the global level, the G20 and the Financial Stability Board (FSB) have been developing an agenda for stabilising the financial system and the world economy more broadly, initially focusing on the banking sector as banks were at the epicenter of the past financial crisis. In November 2011, the leaders of the G20 endorsed the recommendations issued by the FSB for a more effective resolution regime to deal with failing financial institutions: “Key Attributes of Effective Resolution Regimes for Financial Institutions” (hereafter, referred to as the “Key Attributes”).

At EU level, the legislators adopted the Bank Recovery and Resolution Directive (BRRD) in 2014 in response to the banking failures and unprecedented level of public intervention. The BRRD introduced a harmonised framework with common European rules for the recovery and resolution of troubled credit institutions and investment firms in the EU.

The focus, however, was soon extended to financial institutions other than banks. At the global level, the FSB supplemented the Key Attributes by including guidance on how the core principles for an effective resolution regime should be applied to the insurance sector. The International Association of Insurance Supervision (IAIS) revised the Insurance Core Principles at the aim to improve the recovery and resolution measures available to national authorities.

In 2017 and 2018, the European Systemic Risk Board (ESRB) published two reports in which it argued that a harmonised recovery and resolution framework is also essential in insurance.<sup>6</sup>

Finally, EIOPA has been proactively contributing to the discussions on the need for a harmonised recovery and resolution framework in insurance. The EIOPA Opinion (2017 & 2020) called for the establishment of a harmonised and effective framework for the recovery and resolution of (re)insurance undertakings in the EU. As shown, there are substantial differences between national recovery and resolution frameworks, in terms of legal framework, powers and tools available to national authorities, conditions under which these powers can be exercised and objectives pursued when resolving undertakings. EIOPA was of the view that the absence of an effective harmonised

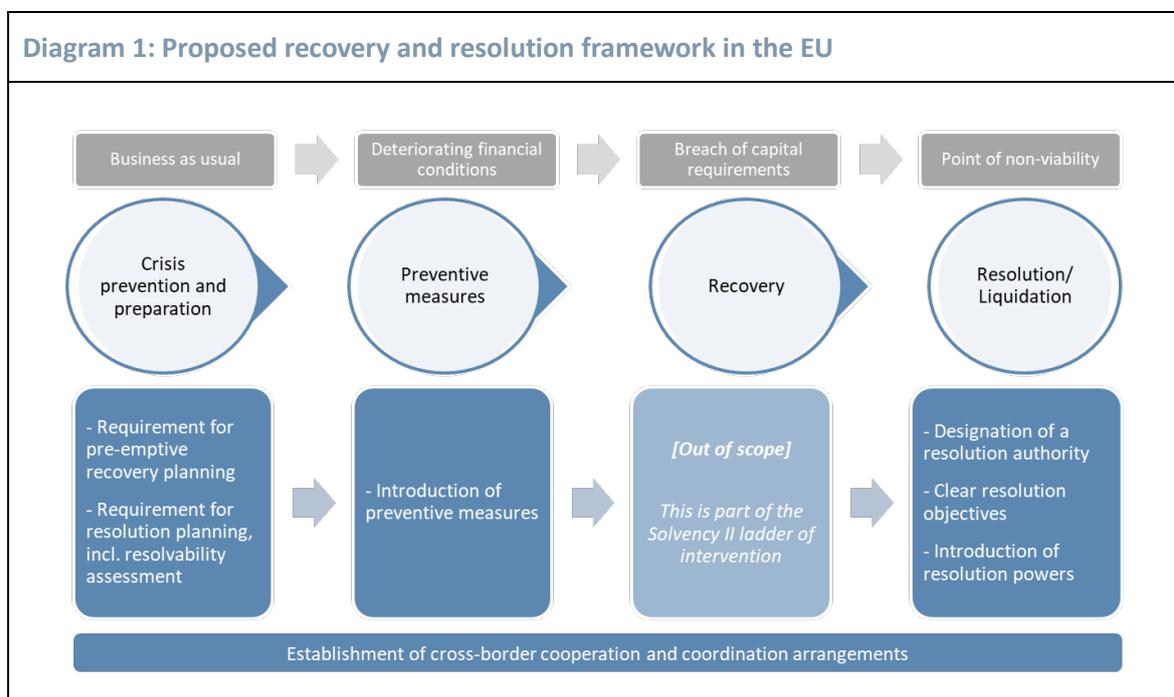
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<sup>6</sup> There it is stated that “given the importance of the insurance sector, a comprehensive regulatory framework is needed to help ensure that the sector can fulfil its essential role, even during times of crisis. Such a framework consists of a number of elements that complement each other: microprudential regulation and supervision [...], recovery and resolution regimes [...], and macroprudential policy [...]” (ESRB (2018)).

recovery and resolution framework could have similarly caused impediments to the orderly resolution of failing (re)insurance undertakings. Furthermore, the ESRB argued that the current fragmented landscape could pose a risk for the financial stability and advocated the implementation of a harmonised recovery and resolution framework in insurance for macroprudential reasons. In fact, the ESRB is of the view that “a more harmonised approach towards recovery and resolution across the EU would help manage the failure of a large cross-border insurer or the simultaneous failure of multiple insurers in an orderly fashion.” It was thus agreed that greater EU financial integration and interconnections between institutions needed to be matched by a common framework of intervention powers and rules.

The EIOPA Opinion (2017) also showed that most of the existing national frameworks do not contain these core elements. In fact, in most Member States the measures available to national authorities are usually limited to normal insolvency procedures. Consequently, the identification of gaps and shortcomings has led to initiatives to reinforce the national frameworks in some Member States. The emergence of national initiatives poses a risk for an increasing fragmentation of national frameworks in the EU, whereby the differences between Member States, especially with those lagging to reinforce their frameworks in line with the FSB Key Attributes, will grow. This might have further implications for the effective resolution of cross-border insurance groups.

**Diagram 1: Proposed recovery and resolution framework in the EU**



This was further emphasized in the EIOPA Opinion on the 2020 Review of Solvency II, published in December 2020, which among others developed a proposal on minimum harmonised and comprehensive recovery and resolution framework for (re)insurers to deliver increased policyholder protection and financial stability in the EU (see Annex 1).

## 2.2. RECOVERY PHASE

The aim of this section is twofold. First, to describe the recovery phase, which includes the recovery measures that can be applied before or after the breach of the capital requirements when the financial situation is deteriorating. Secondly, to analyse the different measures and actions implemented by the insurers, as documented in the EIOPA database.

Hence, for the sake of this report, the concept of recovery measures encompasses preventive measures and recovery actions, and would correspond to the middle part of the Diagram 1 pictured above.

### 2.2.1 DEFINITION OF RECOVERY MEASURES

The Solvency II Directive provides the rules on what to do when insurance undertakings are facing difficulties or an irregular situation. In particular:

- Article 136 requires that undertakings have procedures in place to identify deteriorating financial conditions and immediately notify the NSA when such deterioration occurs;
- Article 138 prescribes the actions to be taken when undertakings are non-compliant with the Solvency Capital Requirement (SCR).
- Article 139 prescribes the actions to be taken when undertakings are non-compliant with the Minimum Capital Requirement (MCR).
- Notwithstanding Articles 138 and 139, Article 141 grants NCAs the power to take all measures necessary to safeguard the interests of policyholders where the solvency position of undertakings continues to deteriorate.
- Article 144 grants NCAs the power to withdraw the authorisation of undertakings in certain circumstances.

The list of measures currently available to NCAs may vary and ranges from powers aimed at restoring capital adequacy, powers affecting the management and governance, powers affecting the business and organisation and powers affecting the shareholders. This is reflected in the EIOPA database, which allowed NCAs to report to EIOPA the list of measures taken (before or in the recovery phase) by insurers facing distress, with the aim to restore the financial position of the insurer.

Certainly, whenever the insurer operates in a manner that is likely to affect its ability to protect policyholders' interests or pose a threat to financial stability, the supervisor should act more

urgently in requiring recovery measures. In particular, the supervisor should have available a range of measures broad enough to address insurers of all sizes and complexities.<sup>7</sup>

### 2.2.2 ANALYSIS OF MEASURES TAKEN BEFORE AND DURING THE RECOVERY PHASE

As depicted in Figure 2, some of the most common measures that have been taken or implemented before and during the recovery phase, as documented in the EIOPA database, are:

- i. Presenting a recovery plan to restore compliance with the requirements; or (seldom) activating the existing pre-emptive recovery plan.
- ii. Requesting cash injections by shareholders or the parent company.
- iii. Require the reinforcement of internal governance arrangement and risk management.
- iv. Require commitment and/or actions from shareholders to support the company.

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<sup>7</sup> A comprehensive list of recovery measures currently used by the NCAs is presented below:

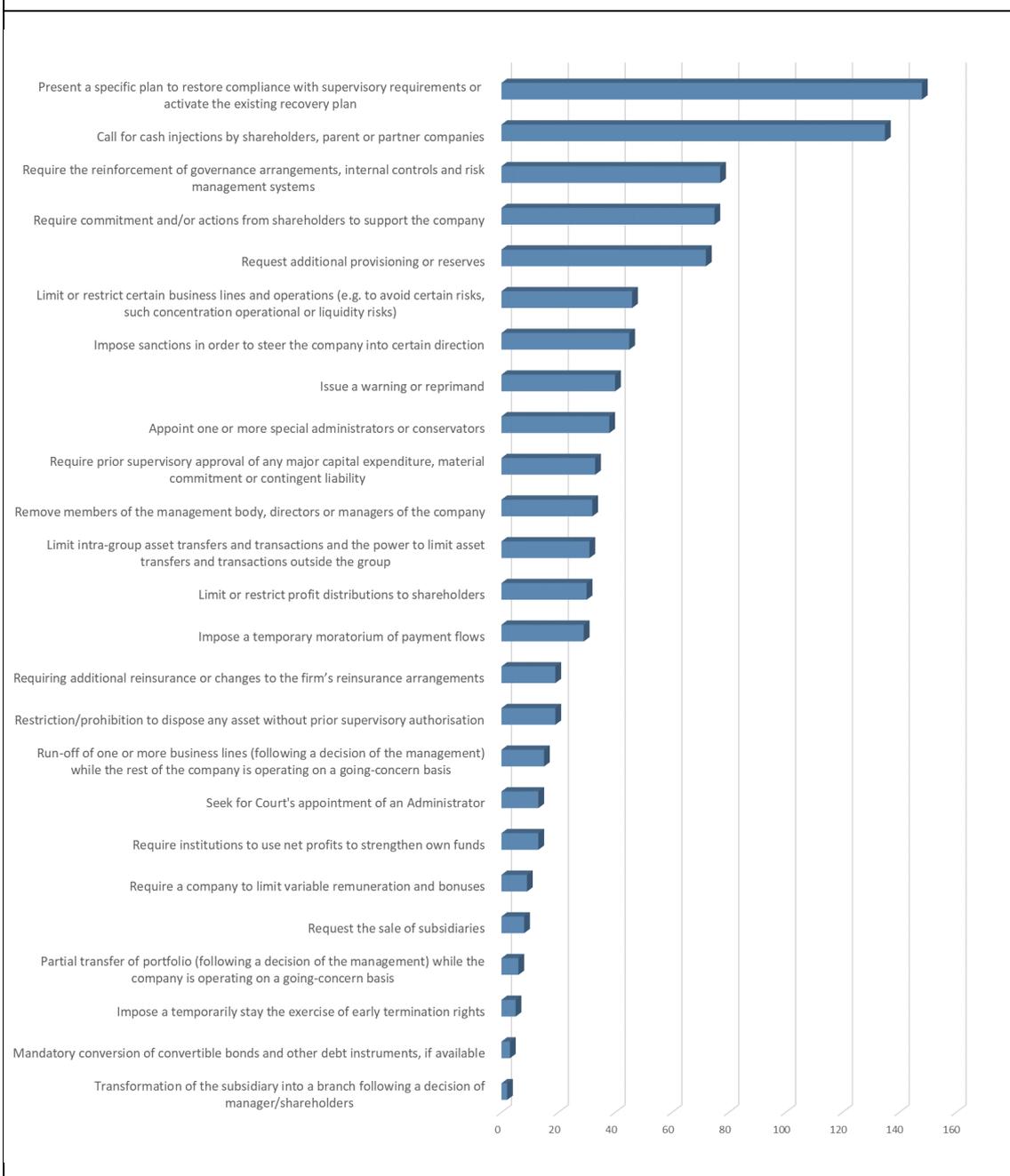
- prohibiting the insurer from issuing new policies or new types of product;
- requiring the insurer to alter its sales practices or other business practices;
- withholding approval for new business activities or acquisitions;
- restricting the transfer of assets;
- prohibiting the insurer from continuing a business relationship with an intermediary or an outsourced provider, or requiring the terms of such a relationship to be varied;
- restricting the ownership of subsidiaries; and
- restricting activities of a subsidiary where, in its opinion, such activities jeopardise the financial situation of the insurer;
- directions to reinforce the insurer's financial position, such as:
  - requiring measures that reduce or mitigate risks (for example, restricting exposures, through either hard or soft limits, to individual counterparties, sectors, or asset classes);
  - requiring an increase in capital;
  - restricting or suspending dividend or other payments to shareholders; and
  - restricting purchase of the insurer's own shares; and
- requiring the reinforcement of governance arrangements, internal controls or the risk management system;
- requiring the insurer to prepare a report describing actions it intends to undertake to address specific activities the supervisor has identified, through macroprudential surveillance, as potentially posing a threat to financial stability;
- facilitating the transfer of obligations under the policies from a failing insurer to another insurer that accepts this transfer;
- suspending the licence of an insurer; and
- barring individuals acting in key roles from such roles in future;
- temporarily delaying or suspending, in whole or in part, the payments of the redemption values on insurance liabilities or payments of advances on contracts;
- lowering the maximum rate of guarantees for new business or introducing additional reserving requirements; or
- incentivising the use of a system-wide lending facility, when available, for market-wide liquidity issues extending to insurers.

- v. Request additional provisioning (i.e. building up a higher level of technical provisions).

Overall, the most common measure reported in the EIOPA database is developing a realistic recovery plan to implement timely recovery measures, for eventual approval by the supervisor.

**Figure 2: Most common preventive and recovery measures taken**

EU insurers, 1999 - 2020



This measure indeed appears to be closely linked to Article 138(1) of Solvency II, which requires insurers to immediately inform the supervisory authority as soon as they observe that the SCR is no longer complied with, or where there is a risk of non-compliance in the following three months. Thus, within two months from the observation of non-compliance with the SCR the insurer shall submit a realistic recovery plan for approval by the supervisory authority.

As regards any potential relevant differences in the use of recovery measures, depending on the outcome of the case (i.e. failure vs. near miss), the differences do not seem to be very substantial compared to the aggregate results presented above.

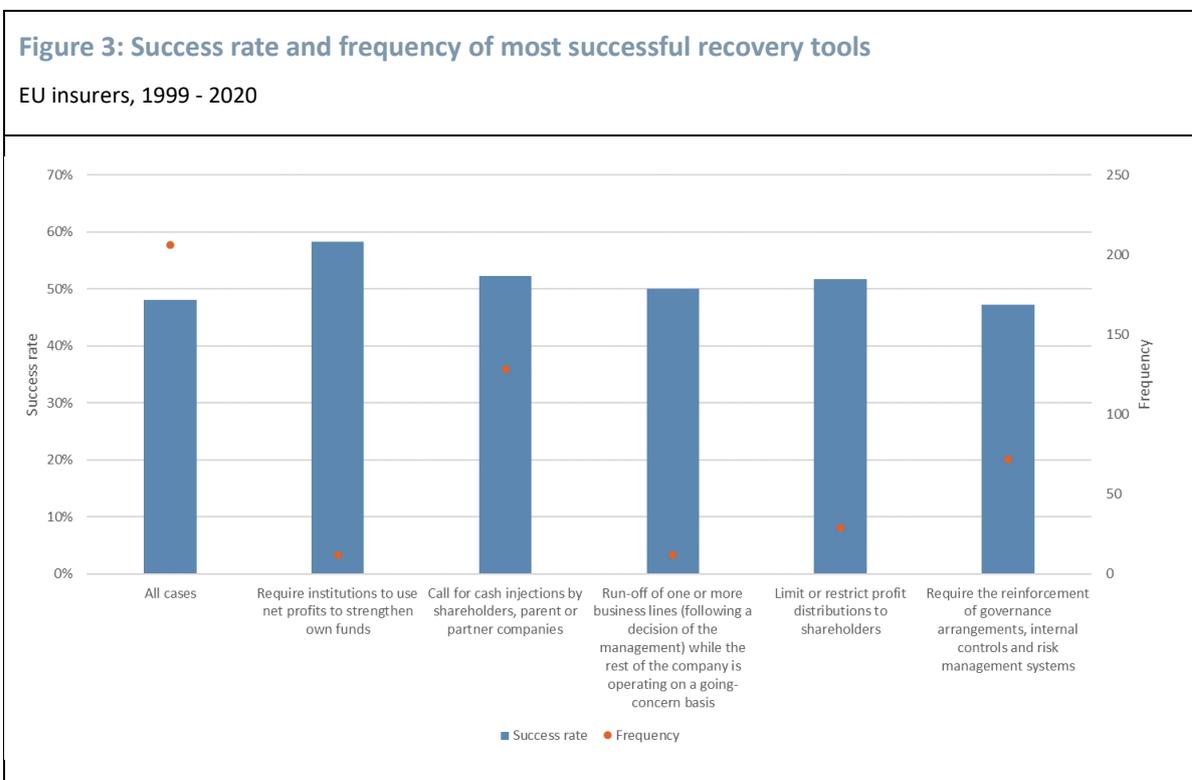
Nevertheless, the breakdown is provided below, comparing the Top 5 measures used in the case of insurers that ended up failing, and insurers that managed to recover in the end:

**Table 1: Top 5 preventive and recovery measures used**

	<b>Near misses</b>	<b>Failures</b>
<b>1</b>	Call for cash injections by shareholders, parent or partner companies	Present a specific plan to restore compliance with supervisory requirements or activate the existing recovery plan
<b>2</b>	Present a specific plan to restore compliance with supervisory requirements or activate the existing recovery plan	Call for cash injections by shareholders, parent or partner companies
<b>3</b>	Require the reinforcement of governance arrangements, internal controls and risk management systems	Request additional provisioning or reserves
<b>4</b>	Require commitment and/or actions from shareholders to support the company	Require commitment and/or actions from shareholders to support the company
<b>5</b>	Request additional provisioning or reserves	Require the reinforcement of governance arrangements, internal controls and risk management systems

Furthermore, it can be interesting to see which recovery measures seem more efficient in preventing failure, i.e. measures that are used relatively more often in the near misses reported than in the resolution cases (leaving out those cases which are still ongoing). It should be noted, however, that the relative success of a measure could also be a result of the situation in which the measures are used. For example, some measures may be used primarily in the easier cases, while

others only in the most severe cases. The measures which most often led to a recovery are shown below, along with their “success rate”<sup>8</sup> (blue bars) and frequency of use<sup>9</sup> (red dots):



### 2.3. RESOLUTION PHASE

The transition from the recovery phase to the resolution phase<sup>10</sup> is linked to the breach of resolution triggers. Nevertheless, at present, there is no framework establishing an automatic transition, nor “hard triggers” for entering into the phase that concerns the resolution or liquidation of insurance companies.

As stated by EIOPA in its Opinion (2020), the triggers should allow for sufficient judgment by the resolution authorities, avoiding automatic resolution triggers. Thus, the resolution authorities

<sup>8</sup> From the cases where the outcome is known, the percentage of cases that ended in a near miss.

<sup>9</sup> Measures that were used in less than 5 cases were filtered out.

<sup>10</sup> The FSB Key Attributes Assessment Methodology for the Insurance Sector defines the resolution as “the exercise of one or more resolution powers by a resolution authority over an insurer that meets the conditions for entry into resolution with the aim of achieving the statutory objectives of resolution set out in KA 2.3. The exercise of resolution powers may occur with or without private sector involvement. The exercise of resolution powers also covers the conduct of insolvency proceedings for example, to wind down parts of an insurer in resolution.

should use their experience and expert judgment to assess whether the conditions for entry into resolution are met and to initiate the resolution process. In doing so, resolution authorities should also assess whether normal insolvency proceedings might be a more adequate solution than a resolution process.

Also in accordance with the international framework on resolution,<sup>11</sup> EIOPA proposed in its Opinion the following set of resolution triggers:

- a) The undertaking is no longer viable or likely to be no longer viable and has no reasonable prospect of becoming so;
- b) Possible recovery measures have been exhausted – either tried and failed or ruled out as implausible to return the undertaking to viability – or cannot be implemented in a timely manner;
- c) A resolution action is necessary in the public interest.

For an orderly resolution of failing undertakings, it is essential that resolution authorities have a broad set of resolution measures at their disposal. Broadly in line with what was proposed by EIOPA in the Opinion on the Review of Solvency II, the following resolution measures are considered in this report:

- Withdraw the authorisation granted to an insurance undertaking and put all or part of the insurance business contracts into run-off (i.e. requirement to fulfil existing contractual policy obligations for in-force business);
- Sell or transfer the shares of the undertaking in resolution to a third party;
- Sell or transfer all or part of the assets and liabilities of the undertaking under resolution to a solvent undertaking or a third party (including a bridge institution or management vehicle);
- Create and operate a bridge institution to which the assets and liabilities of the undertaking in resolution is transferred;
- Restructure, limit or write down liabilities, including (re)insurance liabilities, and allocate losses to shareholders, creditors and policyholders;
- Closure and orderly liquidation of the whole or part of a failing company;
- Prohibit the payment and allow the recovery of variable remuneration to administrative, management, or supervisory body, Senior Management, key persons in control functions and major risk-taking staff, including clawback of variable remuneration;
- Override any restrictions to the (partial) transfer of the assets and liabilities of the undertaking in resolution under applicable law (e.g. requirements for approval by

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<sup>11</sup> See for example, FSB Key Attributes, or IAIS ICP 12.

shareholders, policyholders' consent for transfer of insurance contracts or consent of the reinsurance undertaking for transfer of reinsurance);

- Temporarily restrict or suspend policyholders' rights to surrender their insurance contracts;
- Stay rights of reinsurers to terminate or not reinstate coverage relating to periods after the commencement of resolution of their contractual counterparties;
- Stay the early termination rights associated with derivatives and securities lending transactions;
- Impose a moratorium with a suspension of payments to unsecured creditors and a stay on creditor actions to attach assets or otherwise collect money or property from the undertaking in resolution;
- Ensure continuity of essential services (e.g. IT) and functions by requiring other entities in the same group to continue to provide essential services to the undertaking in resolution, any successor or an acquiring entity;
- Take control of and manage the undertaking in resolution, or appoint an administrator to do so.

The exercise of the resolution powers is subject to adequate safeguards.<sup>12</sup> In addition, when the recourse to a resolution power affects the policyholders' rights (is the case of the power to restructure, limit or write down insurance liabilities and allocate losses to policyholders), additional safeguards need to be taken into account.

### 2.3.1 ANALYSIS OF RESOLUTION ACTIONS TAKEN

This section analyses the different measures taken by authorities during the resolution process. This analysis will include information on external funding of the resolution processes and potential policyholders' losses, and will be combined with the consideration of cross-border issues that arose in the process.

The sample data offers insights into which measures and actions were taken by the NCAs when the undertakings entered into resolution or liquidation.

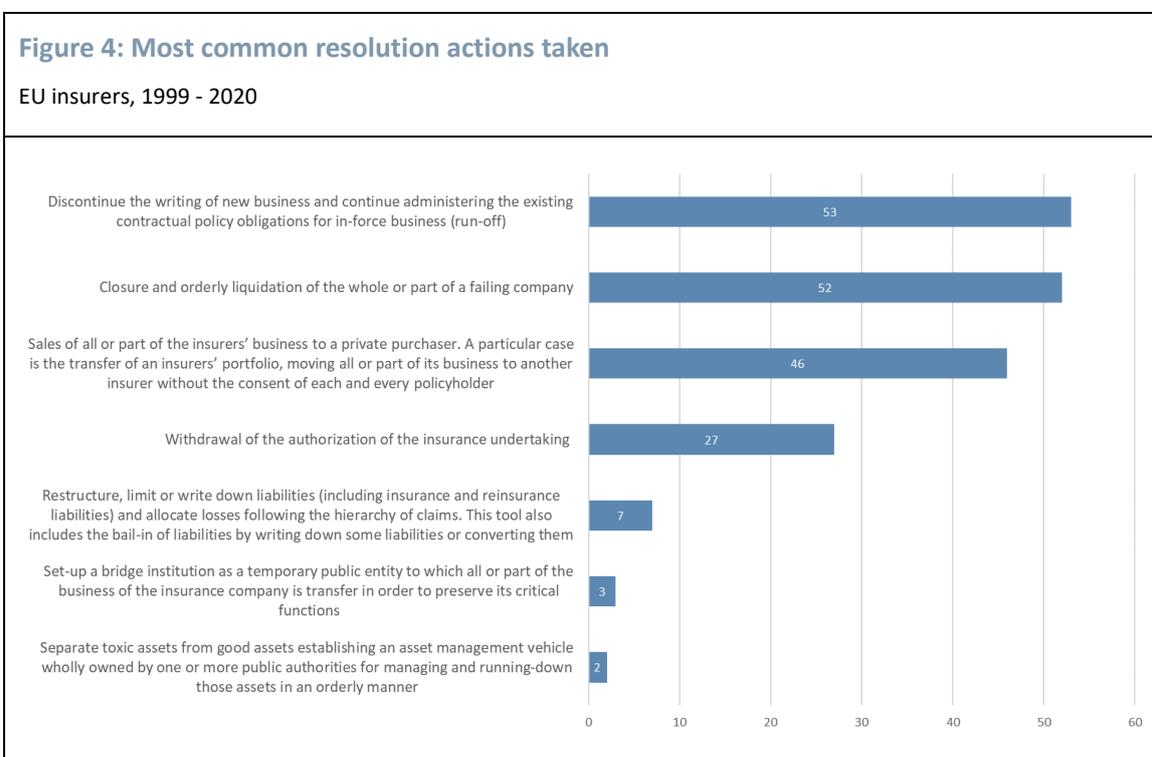
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<sup>12</sup> Namely:

- a) Resolution powers should be exercised in a way that respects the hierarchy of claims, while providing the flexibility to depart from the general principle of equal (*pari passu*) treatment of creditors of the same class;
- b) Creditors, including policyholders, should not incur a loss greater than they would have incurred in a winding-up under normal insolvency proceedings (the "no creditor worse off than in liquidation" (NCWOL) principle). The NCWOL safeguard ensures that creditors, including policyholders, receive in resolution at a minimum what they would have received in a liquidation of the undertaking under normal insolvency procedures.

As portrayed below in Figure 4, the most common resolution measures reported in the EIOPA database<sup>13</sup> with specific regard to the cases of insurance failures (i.e., excluding near misses and cases where the outcome is not yet known), were the following:

- i. Discontinue the writing of new business and continue administering the existing contractual policy obligations for in-force business (run-off);
- ii. Liquidation (i.e. the closure and orderly liquidation of the whole or part of a failing company);
- iii. Sale of all or part of the insurers’ business to a private purchaser (a particular case being the transfer of an insurers’ portfolio, moving all or part of its business to another insurer without the consent of each and every policyholder).



The most frequently used measures taking into consideration only the insurance failures (and thus ignoring near misses, as per the EIOPA sample data) are shown below. It should be mentioned that the database can differentiate between cases that ended up as a failure (i.e. in resolution and wind-up or run-off) vs. cases of partial resolution (still a failure, but after having taken resolution measures, those companies managed to “return to the market”, although in a different form):

<sup>13</sup> The resolution actions analysed are not all the ones proposed by EIOPA in the Opinion on Solvency II Review, but only the ones most commonly used by the NCAs.

**Table 2: Top 4 resolution measures used depending on the outcome (resolution and wind-up vs. resolution but returned to the market (partial recovery))**

	<b>Resolution and wind-up or run-off</b>	<b>Resolution but returned to the market (partial resolution)</b>
1	Closure and orderly liquidation of the whole or part of a failing company	Sales of all or part of the insurers' business to a private purchaser. A particular case is the transfer of an insurers' portfolio.
2	Discontinue the writing of new business and continue administering the existing contractual policy obligations (run-off)	Discontinue the writing of new business and continue administering the existing contractual policy obligations (run-off)
3	Sales of all or part of the insurers' business to a private purchaser. A particular case is the transfer of an insurers' portfolio.	Separate toxic assets from good assets establishing an asset management vehicle for managing and running-down those assets in an orderly manner
4	Withdrawal of the authorization of the insurance undertaking	Restructure, limit or write down liabilities (including insurance and reinsurance liabilities) and allocate losses following the hierarchy of claims

In cases of partial resolution/return to the market, by definition, there is no withdrawal of authorisation of the insurer, nor a closure or orderly liquidation of the insurer (at least in full). In cases of partial resolution/return to the market, the most common resolution measure adopted was the sale of all or part of the insurers' business to a private purchaser (a particular case is the transfer of an insurers' portfolio). Separating toxic assets from good assets establishing an asset management vehicle for managing and running-down those assets in an orderly manner were also reported quite commonly.

As regards the resolution measures more commonly adopted, taking into consideration the type of insurer (whether it is a life insurer, or a non-life insurer), the breakdown is portrayed below. The differences do not appear to be very significant.

**Table 3: Top 5 resolution measures used (life insurers vs. non-life insurers)**

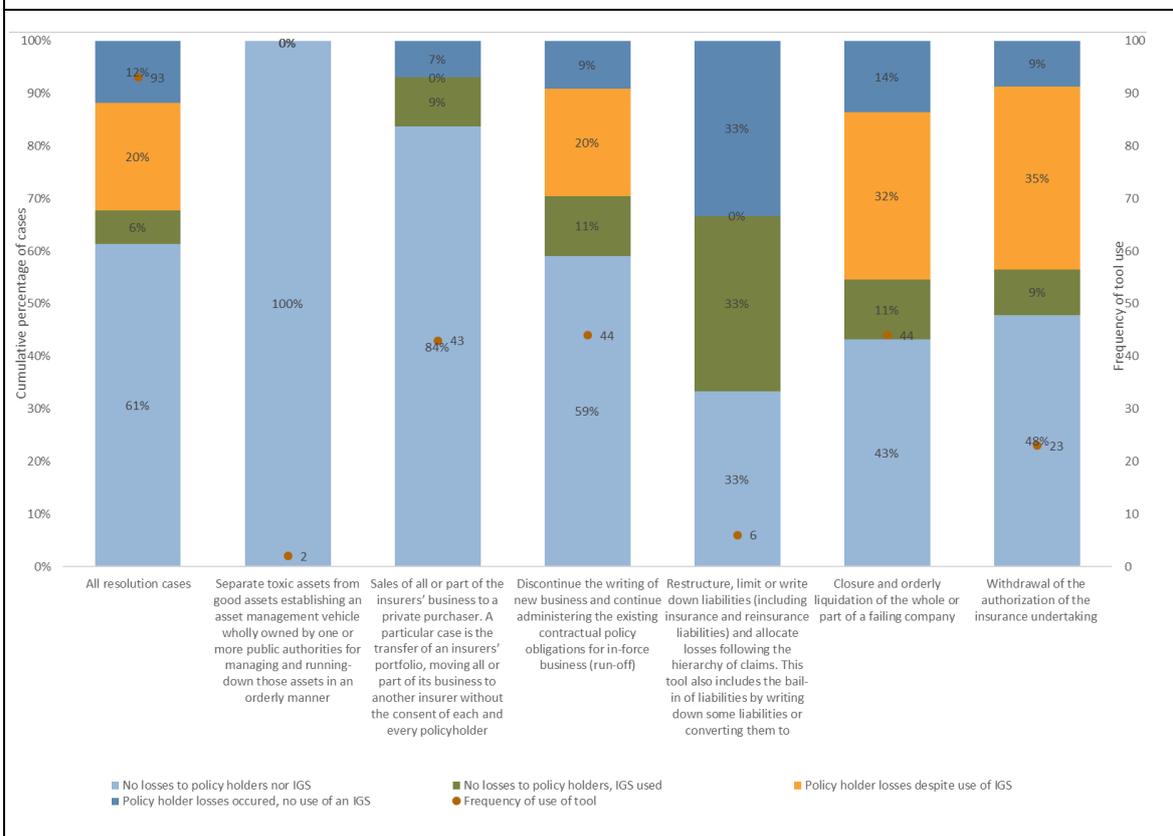
	<b>Life insurers</b>	<b>Non-life insurers</b>
1	Sales of all or part of the insurers' business to a private purchaser. A particular case is the transfer of an insurers' portfolio.	Closure and orderly liquidation of the whole or part of a failing company

2	Discontinue the writing of new business and continue administering the existing contractual policy obligations (run-off)	Discontinue the writing of new business and continue administering the existing contractual policy obligations (run-off)
3	Closure and orderly liquidation of the whole or part of a failing company	Sales of all or part of the insurers' business to a private purchaser. A particular case is the transfer of an insurers' portfolio.
4	Restructure, limit or write down liabilities (including insurance and reinsurance liabilities) and allocate losses following the hierarchy of claims	Withdrawal of the authorization of the insurance undertaking
5	Withdrawal of the authorization of the insurance undertaking	Restructure, limit or write down liabilities (including insurance and reinsurance liabilities) and allocate losses following the hierarchy of claims

Moreover, it could also be interesting to analyse if the use of certain resolution tools are less successful or more likely to lead to policyholder losses and/or to the intervention of an IGS. However, this analysis of resolution measures needs to be taken with caution. Indeed, some resolution measures may only be implemented in the most difficult of the cases of failure and would therefore be associated with policyholder losses, even if they have prevented much larger losses.

**Figure 5: Occurrence of policyholder losses and IGS intervention per resolution tool**

EU insurers, 1999 - 2020



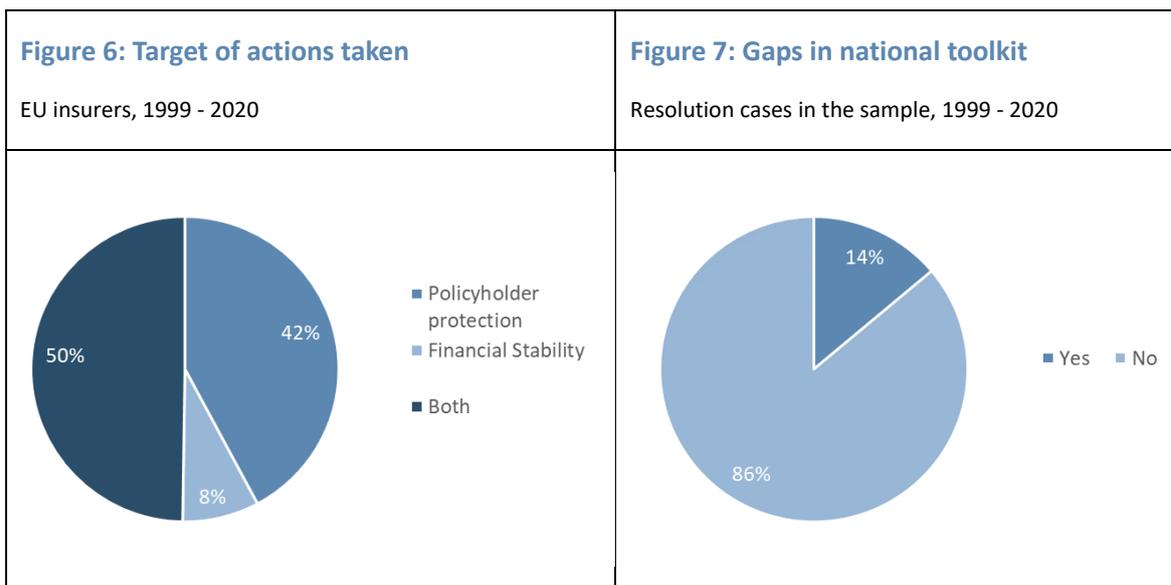
The figure above shows the occurrence of policyholder losses, along with the use of an IGS and the frequency of the use of the resolution tools.<sup>14</sup> The closure and orderly liquidation is a ‘last resort’ measure, which may explain why policyholder losses tend to occur more often with the use of that particular tool. The withdrawal of the authorization is also associated with more policyholder losses, which may be because this is often combined with a closure and orderly liquidation (more than one tool may be used in each case).

Concerning the target of actions taken by the NCAs before and during the recovery phase, as well as during the resolution phase, as pictured in Figure 6, the main aim of the authorities was generally focused on the protection of policyholders.

Figure 7 shows that in 14% of the resolution cases, the NCAs identified important gaps in their national toolkit. Among others, the gaps or deficiencies mentioned were the following:

<sup>14</sup> Cases where either the occurrence of policyholder loss or the use of an IGS was not (yet) known were excluded.

- Lack of resolution framework or legal basis (e.g. insufficient powers, difficult application of portfolio transfer).
- Lack of IGS and/or funding issues.
- Other supervisory issues related to qualified holdings, intragroup transactions, dividend distributions, etc.



### 2.3.2 USE OF EXTERNAL FUNDS

As mentioned previously, one of the main objectives of a recovery and resolution framework is to minimise the use of taxpayers’ money (e.g. bailouts). This objective was particularly apparent in the case of the banking sector, where during the 2008 financial crisis several bailouts of banks were conducted by governments around the globe. This was, however, not exclusive of banks.

As mentioned in the previous report (EIOPA 2018a), the case of the collapse of the American International Group (AIG), in 2008, provided a reminder that insurers are not impervious and invulnerable to losses. Indeed, in the case of AIG the rescue package totaled up to \$150 billion.

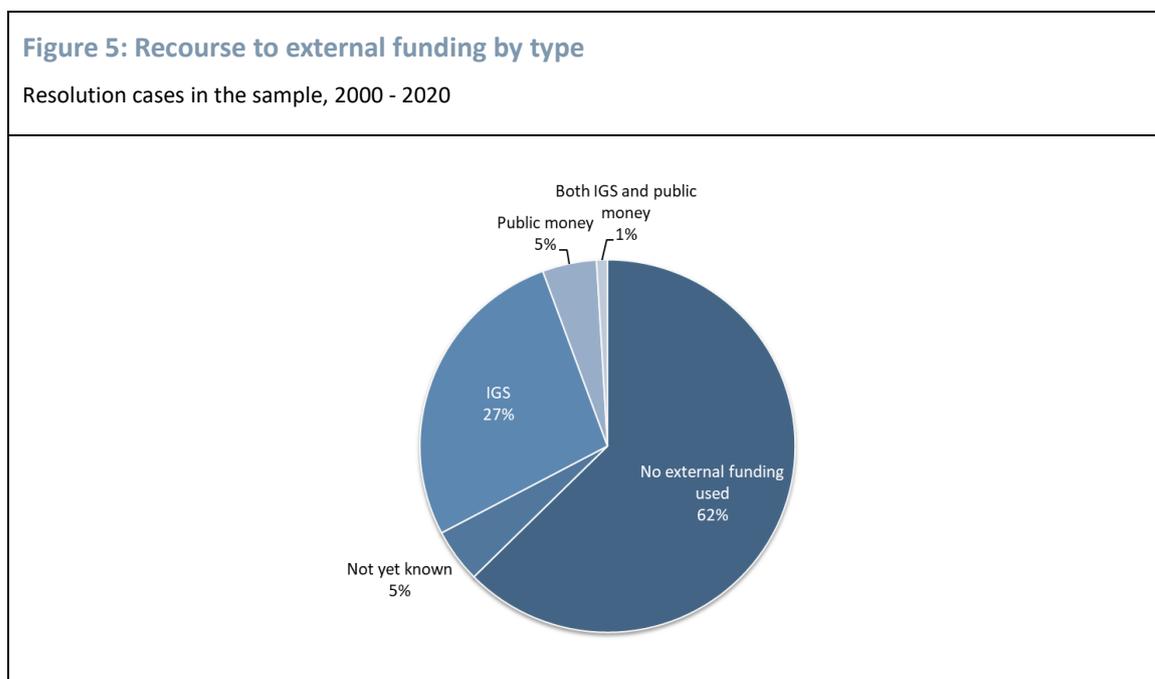
Other bailouts of insurers (although of a more modest amount) were also conducted in Europe during that period, among others, in Belgium and the Netherlands.

Indeed, in the EIOPA database, there is relevant information on the reporting period encompassing the years 2000 to 2020, with regard to the amount of external funds that were used (or not used) for the documented cases of insurance failures.

It deserves to be mentioned that for the purposes of this report, external funding shall be understood as the use of IGS funds (i.e. resorting to the insurance guarantee scheme) and/or public money, during resolution and/or liquidation phases. Indeed, the IGSs generally involve contributions by other undertakings or policyholders; accordingly, they are also considered for the purposes of this database as a source of external funding, though different from the one stated as “public money”, which is in turn a direct rescue package or bailout.

Therefore, as regards the frequency of occurrence of such scenario, i.e., the insurer fails and the jurisdiction involved needs to resort to external funding, this appeared to occur in 1 out of 3 of the cases (33% of the resolution cases contained in the EIOPA database).

The exact breakdown can be seen below, which also provides an analysis of the different sources of external funding used (either emanating from an IGS or resolution fund, or from public money):



Regarding IGS funds (stemming from any type of insurance guarantee schemes), they happened to be the most common form of external funding used. Indeed, they were resorted to in 28% of the resolution cases contained in the EIOPA database.

The use of external funding as a percentage of the total assets of the company is portrayed in Figure 9 across buckets.<sup>15</sup> There it can be seen that the most common injection of funds into the company

<sup>15</sup> There are 6 different buckets that can be created, split by increments of 20%, as follows:

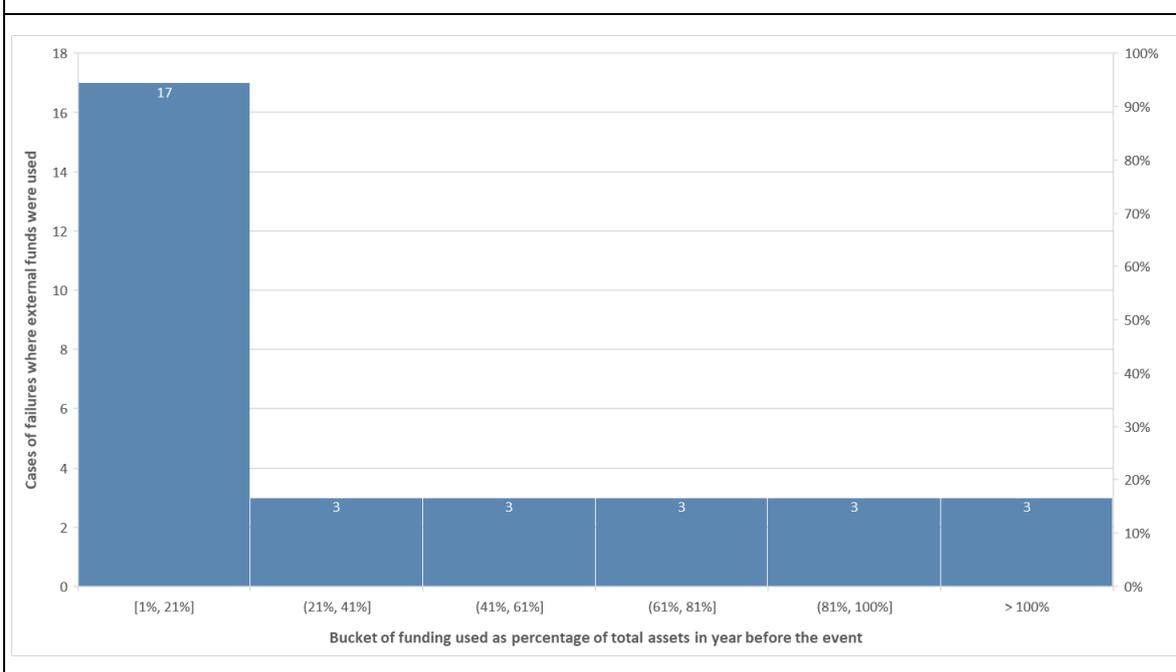
- 1) 1% to 20% (i.e. the ratio of the external funds injected over total assets of the company, was not higher than 20%)

represented around 1% to 20% of the total assets of the insurer. This occurred, in 17 cases of failure, or 53% of the total failures where external funding was needed.

However, for the remaining cases of failure where external funding was needed (15, or the 47%), scenarios materialized whereby injections of funds were needed, representing more than 20% of the total assets of the company; and in some cases going up to 100% and beyond.

**Figure 6: External funding as a percentage of total assets, distributed across buckets of funding**

Resolution cases in which external funding was used, 2000 - 2019



This suggests that in a potential crisis scenario, whereby the failure of a very large insurer occurs, and in the absence of any fully-fledged recovery and resolution framework, the amounts of funds (be it from an IGS, resolution fund or public money) needed to recapitalise or partially resolve a large troubled insurer could be very significant. A real example of this contingency was provided at the time of the 2008 crisis, with the collapse of AIG in the United States. As a matter of fact, the

- 2) 21% to 40% (i.e. the ratio of the external funds injected over total assets of the company, was not lower than 20%, nor higher than 40%, etc.)
- 3) 41% to 60%
- 4) 61% to 80%
- 5) 81% to 100%
- 6) More than 100% (i.e. the external funds injected represented more than 100% of the total assets of the company)

\$150 billion rescue package of AIG represented around 15-20% of the total consolidated assets of the group, coincidentally similar to what has been mentioned above.

### 2.3.3 POLICYHOLDERS' LOSSES IN RESOLUTION

Once an insurer fails, it is key to minimize the losses that policyholders may have to borne. In many cases, it is possible to avoid such losses, particularly if continuation of the policies can be ensured during resolution (e.g. via portfolio transfer or run-off), so that the insurance policies can still be paid to the policyholders even after the insurer has failed.

However, it is not always the case that policyholders are immune to losses in resolution. This is seen in the EIOPA database (as it will be portrayed below), but has also been previously documented in the literature. A prominent example is the failure of the HIH Insurance group in Australia in 2001, which at the time was the second largest insurer in that jurisdiction. The failure of the insurance group had many consequences, such as the dramatic losses (estimated to be around A\$5.3 billion), leading ultimately to a thorough post-mortem enquiry documented in the HIH Royal Commission Report (2003). In the Volume 1 of the Report, it is stated that the failure of HIH in Australia was a “far reaching calamity”, which “reverberated throughout the community, with consequences of the most serious kind” as well as harm to individuals due to losses sustained by policyholders and/or ultimate lack of coverage. Furthermore, “individual cases of personal hardship emerged almost immediately after the collapse and continue to emerge”, mostly due to losses borne by policyholders.

Nevertheless, the concept of policyholder loss in the present report should be furthered explained. While the concept of policyholder loss is relatively straightforward, the bigger challenge relies in quantifying exactly the loss. There are several reasons:

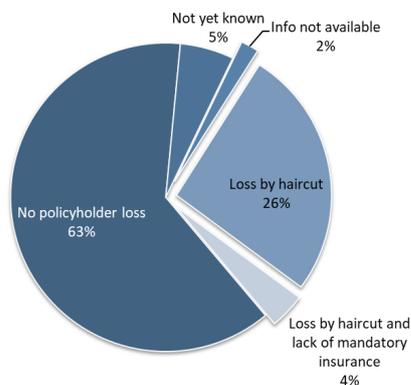
- In many cases, the potential loss cannot be known until the end of the liquidation process, and thus it is a broad estimation.
- Sometimes, the amount of the loss cannot be quantified as it may be a change in some parameters of the insurance policy (e.g. reducing the guaranteed rate, increase in the future premiums), and thus there is no quantifiable loss yet to be reported.
- There is also a need to distinguish the gross loss vs net loss (e.g. after IGS compensation).

Having pondered such considerations and difficulties (documented in EIOPA database), the present report can empirically confirm that EU policyholders were not always immune to losses in resolution.

Actually, as it can be seen below, the policyholders suffered a loss of some kind in 30% of the resolution cases contained in the database. The policyholder loss is reported here, generally, net after compensation by the IGS; and it usually took place by means of a haircut.

**Figure 7: Types of policyholders loss**

Resolution cases in the sample, 2000 - 2020



The existence of policyholder losses act as a reminder of the importance of safeguarding policyholder protection, which should be the main objective of insurance supervision (Art.27 of Solvency II Directive), and thus minimizing the policyholders' losses in cases of failure. The reasoning behind is that such policyholders losses, in the end, could ultimately affect the public confidence in the insurance market.

### 3. ASSESSING ISSUES OF CROSS-BORDER FAILURES

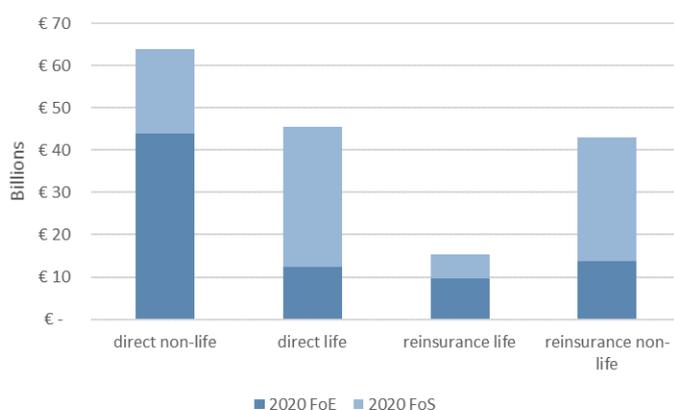
#### 3.1 INTRODUCTORY REMARKS AND LEGAL BASIS

The insurance business is characterized by a high degree of cross-border activity, and hence the appropriateness of a harmonised approach to consumer protection in order to avoid a situation where some of the policyholders of a failed cross-border insurance group are protected by a national IGS, whilst others are not due to their residence or IGS features.

Such high degree of cross-border activity in the EU is foreseen and was taken into account when developing the Solvency II Directive, which plays a role in regulating the cross-border activities. Various articles set up the legal framework for cross-border activities. The following articles should, among others, be referred to: Article 18 (Conditions for authorisation), Article 23 (Scheme of operations), Article 25 (Refusal of authorisation), Article 145 (Conditions for branch establishment), Article 147 (Prior notification to the home Member State), Article 148 (Notification by the home Member State), Article 153 (Language), but also the new Articles 152a (Notification) and 152b (Collaboration platforms) under the new ‘Section 2a Notification and collaboration platforms’ of the Directive.

As regards the actual figures, in the EEA, EUR 92 billion gross written premiums (GWP) were reported via freedom to provide services (FoS) and EUR 80.1 billion via freedom of establishment (FoE) (see below).

Figure 8: Cross-border insurance business (EUR bln) at year-end 2020



Source: EIOPA Annual Solo

In terms of the number of insurers engaging in cross-border business, in total, 891 insurance companies carried out cross-border business in 2020, with a total of 168 billion Euro written premiums, operating on average in 9 countries.

For these reasons, it can be useful to analyse what is happening in the event of failures and near misses of insurers operating cross-border.

Could it be the case that failures of insurers operating cross-border through FoS or FoE involved more policyholder losses than the purely domestic cases (i.e. contained in a single jurisdiction)? And are there identified issues that could have occurred more frequent for these cross-border cases?

In the next pages, it is shown that even though the sample size is still relatively small, there seem to be more policyholder losses in case of cross-border failures. This appears to confirm EIOPA's position in its Article 242 Report (2018b),<sup>16</sup> where it was mentioned that the tools developed by EIOPA to strengthen the supervision of cross-border issues contributed to a substantial progress in the convergence of practices of the NCAs, but that significant challenges remained. In particular, EIOPA considered that there was a fragmented landscape, with diverging national legislations and approaches with respect to recovery and resolution as well as IGSs. As a result, "different powers may not guarantee an equivalent level of protection of policyholders and beneficiaries of the same group involving undertakings in different Member States".

### 3.2 DESCRIPTION OF THE CROSS-BORDER ISSUES CONSIDERED

A number of cross-border issues occurring in cases of cross-border failures and near misses (in terms of difficulties in communication between jurisdictions, lack of information sharing, legal restrictions, etc.) are considered in the EIOPA database, as reported by the NCAs. Cross-border cases, in this specific section, are defined as cases where the entity itself writes business in another state through FoE or FoS and/or any other issue that can arise in the relation between the parent company and a subsidiary located in another EU country.

Before proceeding directly to the analysis of such cross-border issues, it may be useful to describe some of them for introductory purposes. It is also worth mentioning that some of these cross-border issues are discussed in the EIOPA Opinion on Solvency II Review (2020).

A non-exhaustive description and background for some of the most common cross-border issues reported by NCAs is provided below:

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<sup>16</sup> EIOPA submitted to the European Commission a Report on Group Supervision and Capital Management of (Re)Insurance undertakings and specific topics related to freedom to provide services (FoS) and freedom of establishment (FoE) (Article 242 Report).

- Lack of harmonisation of IGSs / Interplay of national IGSs. As mentioned previously, the current fragmented landscape as regards IGSs in the EU can pose problems in the cases of failure of insurers operating cross-border. Indeed, EIOPA has long argued that achieving a minimum degree of harmonisation in the field of IGSs is essential to provide a minimum level of protection to policyholders against the effects of an insurance failure.
- Restrictions in mobility of capital between the parent company and the subsidiary. Transferability of assets' issues can occur where a group has subsidiaries in different countries. Some are triggered by the complexity of the exercise, which requires the group and solo supervisor to have a deep legal knowledge about the nature of own funds which is especially the case for large groups. Some NCAs noted that there is a challenge for group supervisors assessing any restrictions to transferability of assets, in particular when looking at instruments like guarantees (ancillary own funds). Another challenge is triggered by the number of variables to be considered in the assessment of the availability of own funds and how to ensure consistency in the assessment. For instance, a reasonable justification of the 9 months criterion<sup>17</sup>. Specific national reserves, which prevent the transferability of the corresponding own funds, are noted by NCAs as another challenge. It is the view of at least one NCA that assessing restrictions on the reconciliation reserve (consisting of the contributions of assets and liabilities of solo undertaking) could be of supervisory interest, especially in a winding-up event.
- Lack of information-sharing between jurisdictions during the event. These issues can also occur during the event leading to failure or near miss, particularly in the absence of colleges of supervisors or cooperation platforms.

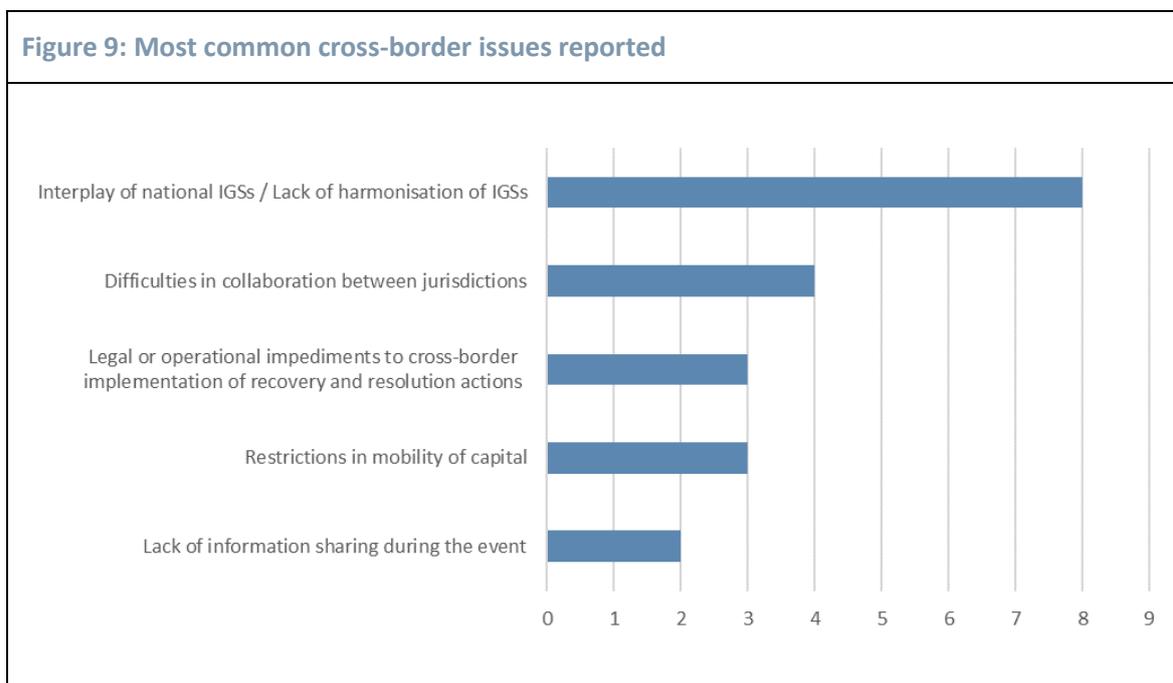
### 3.3 ANALYSIS OF CROSS-BORDER ISSUES REPORTED BY NSAS

The most common cross-border issues reported in the EIOPA database, as regards cross-border insurance failures, are portrayed in the graph below. It needs to be mentioned that not all cases of failure documented in the EIOPA database resulted in cross-border issues, since many of these cases concerned small insurers operating within a single jurisdiction. Out of 43 identified cross-border cases, 14 reported one or more cross-border issues.

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<sup>17</sup> Article 330(1)(c) of the Delegated Regulation.

Figure 9: Most common cross-border issues reported



The most common cross-border issue reported in the EIOPA database as regards cross-border insurance failures was the divergent interplay of national Insurance Guarantee Schemes (IGSs) together with their lack of harmonisation. Restrictions in the mobility of capital across entities or jurisdictions, difficulties in the collaboration between authorities and jurisdictions and impediments to the implementation of recovery and resolution measures, also feature at the top.

In fact, such lack of harmonisation and divergences has already been stressed by EIOPA for several years. From 2018 on, a series of discussion papers aiming at achieving a minimum degree of harmonisation in the field of IGSs were published. The main reason for this was to provide a minimum level of protection to policyholders against the effects of an insurance failure, also in line with what was reported in the “White Paper on Insurance Guarantee Schemes”, published by the European Commission in 2010. There it was developed that the lack of harmonised IGS arrangements in the EU hindered effective and equal consumer protection, hampering the functioning of the internal insurance market.

The protection of policyholder will depend on whether an IGS is in place and on the geographical coverage, which can follow two principles.<sup>18</sup>

- Home country principle: the domestic IGS covers policies issued by domestic insurers both at national level and abroad via FoS or FoE (outward). The extent of the protection from the domestic IGS (the IGS of the country where the failing insurer was headquartered), to

<sup>18</sup> See chapter 13 of EIOPA’s proposal on the Review of Solvency II. Annex 2 summarizes the elements of EIOPA’s proposal on the minimum harmonisation of the national insurance guarantee schemes, published in 2020.

policies issued abroad via FoS or FoE (outward) by that domestic failing insurer, will depend on the operationalisation of the Home country principle.

- Host country principle: the domestic IGS covers policies issued by domestic insurers at national level and does not cover those sold in a cross border context via FoS or FoE (outward). It also normally covers those policies issued via FoS or FoE of incoming insurers from other Member States (inward), in the same conditions as it would cover those policies if they were issued by domestic insurers.

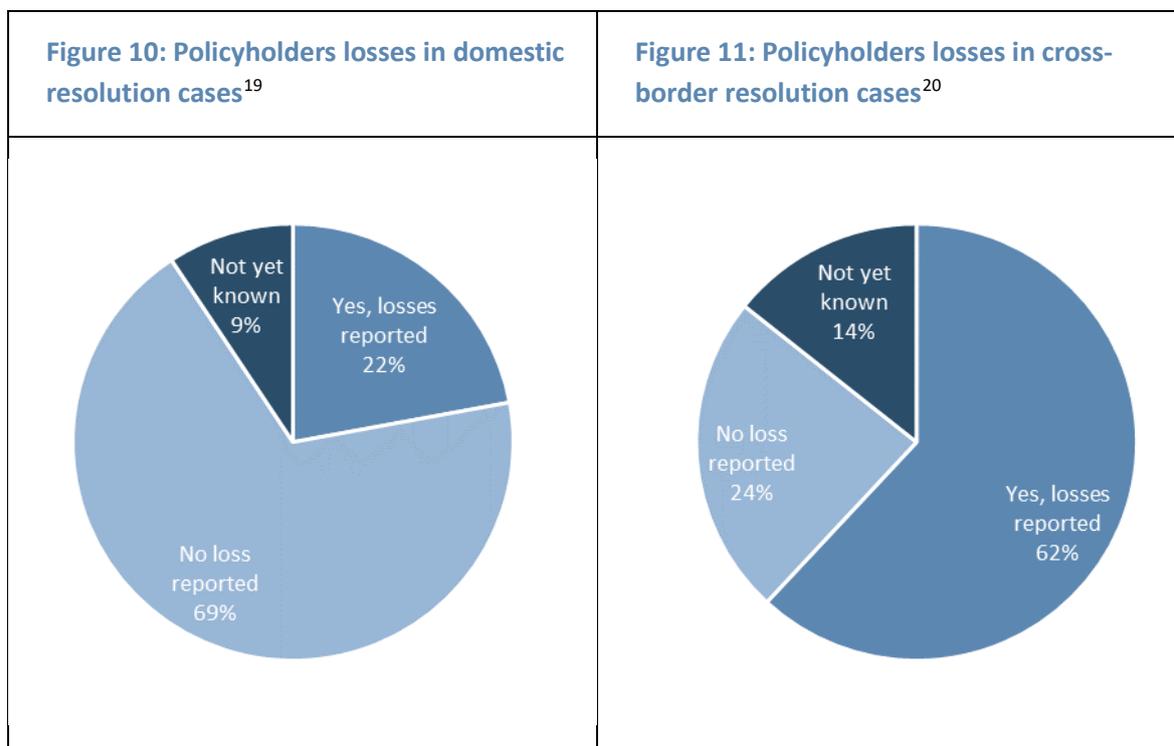
In summary, as shown in EIOPA Opinion (2020), policyholders in the EU do not currently have a similar level of IGS protection (if any), even if they are underwriters of the same insurance policies. Depending on the country where the insurer is headquartered, policyholders could be treated differently, which is an undesirable situation from the perspective of policyholder protection and confidence in the internal market.

A minimum degree of harmonisation would also facilitate cooperation and coordination between national IGSs, as well as fostering supervisory convergence. Arrangements for cooperation and coordination between national IGSs is particularly relevant in case of cross-border failures. Cross-border cooperation and coordination contributes to removing obstacles to the effective and efficient process of providing IGS protection to policyholders.

A case study of Romania, documented in EIOPA's Opinion (2020), highlighted some of the issues that some jurisdictions might face in cross-border failures and underlined the need for cross-border cooperation and coordination. In August 2015, the Romanian NCA withdrew the license of a Romanian insurance group and requested the initiation of a winding-up procedure. The insurer had cross-border activities via branches in three Member States. In total approximately 1.8 million, mainly Romanian, policyholders were affected. The Romanian IGS faced several challenges hindering the payment of compensations to policyholders in this particular Member State. These included challenges relating to the compensation sharing, language of the documentation and banking transfer costs.

All in all, EIOPA assessed in the present report whether the policyholder losses happened to occur more frequently in the cases of cross-border failures. It is important to note that the number of cross-border insurance failures reported yet is small (21). Still, with the available data, it seems that policyholder losses may occur more often in cross-border resolution cases than in purely domestic ones.

Given that policyholder losses in cross-border insurance failures are already a substantial problem *per se* (due to the lack of a harmonised network of IGSs), the issue could be aggravated if the policyholder losses in the cases of failures cross-border occur more often, compared to domestic failures.



As recommended by EIOPA in its Opinion on the Review of Solvency II (2020), achieving a minimum degree of harmonisation would also imply cooperation and coordination between national IGs, as well as fostering supervisory convergence, and thus contributing to remove very relevant obstacles in order to achieve effective and equal protection to policyholders. Cross-border cooperation and coordination arrangements between national IGs, including arrangements for the exchange of information, are essential to ensure the swift pay-out to policyholders. These arrangements would contribute to achieving greater policyholder protection.

<sup>19</sup> A subset comprising 86 cases.

<sup>20</sup> A subset comprising 21 cross-border cases.

## 4. CONCLUSIONS

This is the second report based on the available evidence collected by EIOPA in its database on insurance failures and near misses. In this report, EIOPA has analysed the measures taken by NSAs during the recovery and resolution phases.

To sum up, the most common measures taken by the insurers and/or requested by the NCAs before and during the recovery phase were:

- i. Presenting a recovery plan to restore compliance with the requirements; or (seldom) activating the existing pre-emptive recovery plan.
- ii. Requesting cash injections by shareholders or the parent company.
- iii. Require the reinforcement of internal governance arrangement and risk management.
- iv. Require commitment and/or actions from shareholders to support the company.
- v. Request additional provisioning (i.e. building up a higher level of technical provisions).

With regard to the resolution phase, the most common measures used by the NCAs were the following:

- i. Discontinue the writing of new business and continue administering the existing contractual policy obligations for in-force business (run-off),
- ii. Liquidation (i.e. the closure and orderly liquidation of the whole or part of a failing company),
- iii. Sale of all or part of the insurers' business to a private purchaser.

Additionally, the report explores the policyholder losses, the external funding received and potential cross-border issues during the resolution process. The main conclusions are:

- Policyholders' loss. Policyholders in resolution suffered a loss of some kind in 30% of the cases, which proves that they are not immune to losses.
- External funding. There was a need for external injections in 33% of the failures. This has taken place in a majority of cases through the intervention of an IGS, but in some cases, also public funds were compromised.
- Cross-border issues. The report points out that the most common cross-border issue identified by NSAs is the current fragmentation in the landscape of the national IGSs in the EU.

The conclusions reached in this report appear to support EIOPA's views on the need for EU a recovery and resolution framework, as well as a minimum harmonised network of IGSs.

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## ANNEX 1 – SUMMARY OF EIOPA’S PROPOSAL ON RECOVERY AND RESOLUTION INCLUDED IN THE OPINION ON THE 2020 REVIEW OF SOLVENCY II<sup>21</sup>

The harmonised recovery and resolution principles in the EU should be applied in a proportionate way, in order to contribute to adequately protecting policyholders as well as maintaining financial stability.

### Pre-emptive recovery planning

Solvency II should be supplemented with a requirement for undertakings to develop and maintain recovery plans in a pre-emptive manner. This requirement should capture a very significant share of each national market in the EU and supervisory authorities should decide on the undertakings subject to the requirement on the basis of harmonised criteria. Moreover, in accordance with the proportionality principle, EIOPA advises to introduce simplified obligations for eligible undertakings.

### Preventive measures

Solvency II rules on the recovery of (re)insurance undertakings should be further developed with the introduction of a set of preventive measures for supervisors. The use of the measures should be based on reasonable justification, on an assessment of the risk and following the principle of proportionality.

### Resolution Authority

Member States should have in place an officially designated administrative resolution authority or authorities for the resolution of (re)insurance undertakings.

### Resolution objectives

EIOPA advises to clearly set out in the legal framework the following objectives for resolution without an ex-ante predefined ranking:

- To protect policyholders, beneficiaries and claimants;
- To maintain financial stability;
- To ensure the continuity of functions of undertakings whose disruption could harm the financial stability and/or real economy;

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<sup>21</sup> See [https://www.eiopa.europa.eu/browse/solvency-ii/2020-review-of-solvency-ii\\_en](https://www.eiopa.europa.eu/browse/solvency-ii/2020-review-of-solvency-ii_en).

- To protect public funds.

#### Pre-emptive resolution planning

Resolution authorities should be required to develop and maintain resolution plans and conduct resolvability assessments in a pre-emptive manner for undertakings. The requirement should capture a significant share of each national market in the EU. EIOPA believes that the scope for resolution planning would be smaller than that for pre-emptive recovery planning.

#### Resolution powers

EIOPA is of the view that national resolution authorities should be equipped with a broad set of resolution powers. Among them, the common resolution powers should include the power to create and operate a bridge institution to which the assets and liabilities of the undertaking in resolution is transferred, the power to temporarily restrict or suspend policyholders' rights to surrender their insurance contracts, the power to restructure, limit or write down liabilities. The exercise of the resolution powers should be subject to adequate safeguards.

#### Cross-border cooperation and coordination

Cross-border cooperation and coordination arrangements between national resolution authorities for crisis situations should be established. These arrangements could be based on currently existing ones, taking into account the materiality and proportionality principle. This should also include arrangements for the safe and secure exchange of information between jurisdictions.

#### Triggers

Adequate triggers for the use of preventive measures should be introduced at the EU level. These triggers should be judgment-based and allow for sufficient supervisory discretion to assess the situation and decide on the need for preventive measures.

The non-compliance with the SCR, as defined in the Solvency II Directive, is an appropriate trigger for entry into recovery. The Solvency II framework should however be supplemented with the introduction of preventive measures.

The triggers for resolution should include:

- a. The undertaking is no longer viable or likely to be no longer viable and has no reasonable prospect of becoming so;
- b. Possible recovery measures have been exhausted – either tried and failed or ruled out as implausible to return the undertaking to viability – or cannot be implemented in a timely manner;
- c. A resolution action is necessary in the public interest.

## ANNEX 2 – SUMMARY OF EIOPA’S PROPOSAL ON IGS INCLUDED IN THE OPINION ON THE 2020 REVIEW OF SOLVENCY II<sup>22</sup>

EIOPA is of the view that every Member State should have a national IGS in place for the protection of policyholders in the event of insurance failures. The national IGSs should meet a minimum set of harmonised features and be adequately funded. The exact structure of the schemes should be left to the discretion of Member States.

### Role and functioning

An IGS should be set up as a mechanism with the primary aim to protect policyholders, which can be achieved by:

- i. paying compensation swiftly to policyholders and beneficiaries for their losses when an insurer becomes insolvent; and/or
- ii. ensuring the continuation of insurance policies (for instance, by funding or promoting a portfolio transfer or taking over and administrating the portfolio).

### Geographical coverage

The geographical coverage of national IGSs should be harmonised based on the home-country principle. EIOPA identified and assessed several ways for operationalising the home country approach and come up with different options, as well as their related pros and cons.

### Eligible policies

The national IGSs should cover specific life policies and specific non-life policies. More in particular:

- i. claims-related protection, where the failure of an insurer could lead to considerable financial or social hardship for policyholders and beneficiaries;
- ii. contract-related protection (such as, for instance, health, savings, and life insurance);

Member States should have the flexibility to identify the policies commercialized at national level, and could also extend coverage to other lines of business relevant in their jurisdiction.

### Eligible claimants

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<sup>22</sup> See [https://www.eiopa.europa.eu/browse/solvency-ii/2020-review-of-solvency-ii\\_en](https://www.eiopa.europa.eu/browse/solvency-ii/2020-review-of-solvency-ii_en).

The national IGSs should cover natural persons and micro-sized legal entities (i.e. policyholders and beneficiaries). Where the policyholder is a company not covered by the schemes (i.e. SME and large-size), its related beneficiaries or third parties should still have the right to claim for compensation to the IGS (e.g. accident at work, airplane crash).

#### Coverage level

A minimum harmonised coverage level for claimants should be introduced. The coverage level should be set so that it does not leave policyholders and beneficiaries exposed to considerable financial or social hardship, while bearing in mind the cost of funding of IGSs. A deductible amount should also be defined. Member States could increase the level of coverage in their jurisdiction.

#### Funding

Member States should ensure that IGSs have in place adequate systems to determine their potential liabilities. IGSs should be funded on the basis of ex-ante contributions by insurers, possibly complemented by ex-post funding arrangements in case of capital shortfalls. However, there could be situations where a pure ex-post funding model could potentially work, subject to adequate safeguards.

#### Disclosure

EIOPA advises to establish requirements for the adequate, clear and comprehensive disclosure to consumers and policyholders about the existence of IGSs and the rules governing the entitlement to coverage under such schemes. Disclosure requirements should apply to both insurers and national IGSs.

#### Cross-border cooperation and coordination

EIOPA advises to establish cross-border cooperation and coordination arrangements between national IGSs, including arrangements for the exchange of information and dealing with compensation claims at national level on behalf of other IGSs.

#### Core principles and transitional phase

To ensure a certain degree of flexibility to the Member States, EIOPA advises that the complete implementation of the minimum set of harmonised features proposed in the Opinion should be preceded by a transitional phase.

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