Presidency non-paper regarding the Insurance Recovery and Resolution proposed Directive (IRRD)

Introductory comments

This non paper covers topics related to the scope of pre-emptive recovery and resolution planning, proportionality, conditions to "failing or likely to fail" determination and conditions to enter into resolution introduced by the European Commission's proposal establishing a framework for the recovery and resolution of insurance and reinsurance undertakings.

In order to streamline the discussions, this non paper aims at distinguishing points which at first do not appear to require material adjustments, and those which seem to require further in-depth discussions.

Points B are considered as "structuring" provisions. The Presidency suggests, if convenient to the Member States, to focus discussions on these points.

Points A are considered as potentially "non-blocking" elements. Member States are invited to share **written comments** on these points after the working party. In order to streamline the discussions, **the Presidency schedules no oral debates on these points, unless a Member State asks for it**.

Part B: Structuring amendments for discussion

B.I. Articles 5 and 9 : Scope of pre-emptive recovery and resolution planning

The scope of the recovery and resolution framework is defined in Article 1 of the IRRD proposal and follows the perimeter set out in the Solvency II framework. Within this perimeter, and in accordance with the proportionality principle, only a subset of undertakings would be subject to pre-emptive recovery and resolution planning.

Pre-emptive recovery and resolution planning requirements are aimed at fostering awareness and preparedness of undertakings and authorities in order to favor timely remedial actions when needed.

The scope of undertakings subject to this pre-emptive framework is defined according to an objectives-based approach, supervisory and resolution authorities being requested to reach a minimum share of their domestic market, while keeping discretion for selecting the undertakings in scope.

Article 5 of the Commission's proposal states that national supervisory authorities shall ensure that at least 80% of the Member State's life and non-life and reinsurance market respectively shall be subject to pre-emptive recovery planning. Undertakings shall be selected by the supervisory authority on the basis of their size, business model, risk profile, interconnectedness, substitutability and, in particular, cross-border activity.

Article 9 states that national resolution authorities shall ensure that at least 70% of the Member State's life and non-life and reinsurance market respectively shall be subject to resolution planning. Undertakings shall be selected by the resolution authority on the basis of their size, business model, risk profile, interconnectedness, substitutability, the likely impact of the failure on policy holders, and in particular cross-border activity of the insurance or reinsurance undertaking and the existence of critical functions.

Under the Commission's proposal, the insurance market has been divided into three categories to take into account the specificities of each and the different impact of the failures of these three activities. The non-life market share is based on gross written premiums and the life market share is based on gross technical provisions. There are no specific provisions concerning the methodology for computing reinsurance market shares. EIOPA shall issue guidelines to further specify methods to be used when determining the aforementioned market shares.

The reliance on market shares retained in the proposal is generally in line with the methodology proposed by EIOPA in its background analysis (§ 12.64 et seq.). According to a preliminary analysis from the Commission, with the assistance of EIOPA, that was circulated to MS, a threshold of 80% of the national market share would cover 412 entities (groups or solos) across the EU (of which 46 were counted twice due to overlaps), accounting for less than 10% of the authorized domestic undertakings in the EU. Similarly, a threshold of 70% of the national market share would cover 300 entities (of which 28 were counted twice due to overlaps), accounting to 6% of the authorized domestic undertakings in the EU.

Several Member States expressed some objections as regards the selection methodology based on a minimum market coverage rate, considering that the excessively high target would result in the selection of small, non-systemic entities. Some of them advocate for a "*risk-based approach*" that would focus on undertakings posing a systemic risk in the event of a failure. During the 2020 EGBPI meeting, several MS were in favour of a multi-criteria approach and flexibility for authorities to best adjust the scope of entities covered (to add entities considered more risky at national level or, conversely, to exclude entities that would be less risky).

A number of risk factors are already listed in Articles 5(2) and 9(2) in order to guide the competent authorities' selection of undertakings that would be subject to planning. They are based on a list of harmonized criteria proposed by EIOPA in its background analysis and which is included in Annex 1 of this note for illustrative purposes.

Among these criteria, size could be considered as an important factor when assessing the risk that an insurance undertaking could represent for the real economy or financial stability. Without being exhaustive, the size could be measured in terms of insurance policies subscribed, total assets, technical provisions, gross written premiums, as well as number of policyholders. The identification of critical functions performed by the insurance undertaking could also be a specific factor highlighting the risk that the entity is likely to raise in case of resolution. Another material factor could be the existence of cross-border activities. In this respect, the approach retained by the International Association of Insurance Supervisors (IAIS) in order to identify the riskiest insurers at international level takes into account the share of premiums collected outside the home jurisdiction in relation to total premiums as well as the number of jurisdictions where the insurer operates. The IAIS considers in this regard cross border activity as an important criterion to be taken into account in determining whether an entity should be included in the scope. Risk could also be analysed in relation to the size of the MS' economy (for example, total assets over the GDP of the MS) or MS' insurance market (for example, in terms of national market shares). In any case, according to the IAIS Insurance Core Principles, internationally active insurance groups (IAIGs) are required to establish and maintain preventive recovery plans and other insurers as necessary.

Finally, and in order to add flexibility for national frameworks, some MS have suggested to include in addition to the previous elements the possibility for resolution authorities to add to the perimeter an undertaking that would not in principle fall within IRRD or that would be excluded from planning in the case of low risk profile undertakings but that would be deemed to be of specific risk to the MS.

Some Member States acknowledged however that setting minimum harmonized requirements through a minimum coverage threshold would be necessary to ensure comparable treatment of similar undertakings and a level playing field across the Member States. In the proposal, the minimum threshold chosen to achieve this objective is expressed as a percentage of national market shares. Several alternative options could also be envisaged to address this concern. As an example, a minimum number of undertakings (largest, specifically important at the local level, extent of cross-border activities …) subject to planning could be applied in every MS. This backstop could complement the risk-based approach.

Questions for Member States

1. **What approach would you consider best for determining which undertakings should be subject to pre-emptive recovery and resolution planning in each MS? What parameters should be used in your opinion? In particular, which criteria do you consider to be the most relevant?**
   - **Option 1:** the methodology proposed should remain unchanged with
     - *Option 1a:* considering life insurance, non-life insurance and reinsurance as three separate markets
     - *Option 1b:* considering life (re)insurance and non-life (re)insurance as two separate markets
     - *Option 1c:* considering only one market with no breakdown.
   - **Option 2:** Same as Option 1, but with a lower national market shares target
   - **Option 3:** all undertakings subject to Solvency II should be subject to pre-emptive recovery and resolution planning.
   - **Option 4:** a multi-criteria approach should be used (parameters to be specified) in combination to or in replacement of the national market shares target (for example a 50% market share threshold + any (re)insurer with critical function or cross border activities + a minimum number of the largest undertakings in each Member State.)
   - **Option 5 :** any other suggestions from MS
2. **If the minimum threshold expressed in market shares were to be removed, do you have any proposal for one or several alternative thresholds that would ensure a minimum degree of preparedness and level playing field across MS?**
3. **What are your views on having different perimeters for pre-emptive recovery and resolution planning?**

B.II. Proportionality

Proportionality consists in adjusting the scope and content of requirements to the nature, scale and complexity of an undertaking. The Commission's proposal contains a number of provisions that are intended to comply with the principle of proportionality and to avoid excessive administrative burden and costs on authorities and undertakings.

Proportionality is mainly addressed in the Commission's proposal through i) the definition of the subset of undertakings that would fall under the preventive regime and ii) the power granted to national authorities to implement a simplified set of obligations for some undertakings within this subset, after taking into account a list of criteria.

1) Scope of resolution planning

The Commission's proposal defines a reduced scope of undertakings that are subject to recovery and resolution planning. The criteria listed in articles 5(2) and 9(2) for including undertakings in the pre-emptive planning scope refer to the size, complexity and risk profile of an undertaking and mirror with some differences the underlying criteria for simplified regime eligibility that are listed in Article 4(1) (see below).

In addition, under the Commission's proposal, "low risk profile undertakings" in accordance with articles 29a and 29b of Solvency II are excluded from planning requirements.

2) The simplified regime

The IRRD proposal provides for a simplified framework for recovery and resolution planning. The simplified regime framework allows for application of simplified obligations with respect to the content and details of pre-emptive recovery as well as resolution plans, the date and frequency of the update of the pre-emptive and resolution plans, the content and level of detail of the information required from the undertaking and the level of detail for the assessment of resolvability.

Under Article 4, this simplified regime would apply to insurance undertakings that do not have a significant negative impact on financial markets, other undertakings, policy holders, funding conditions or on the wider economy in case of failure and subsequent winding up under national insolvency proceedings. Such simplified regime aims at (i) avoiding unnecessary burden on both supervisory and resolution authorities and on undertakings for which the failure would not significantly impact the economy and (ii) ensuring that all undertakings are identified and assessed to provide for the most appropriate solution in case of failure.

The proposal leaves to the supervisory and the resolution authorities to assess the risk-based eligibility criteria on an undertaking-specific basis. In accordance with article 4(1), supervisory and resolution authorities would apply simplified regimes on some undertakings based *inter alia* on the impact the failure of the undertaking could have and taking into account the following criteria: (i) the nature of the business, (ii) the shareholding structure, (iii) the legal form, (iv) the risk profile, (v) the size and legal status, (vi) the interconnectedness to other undertakings or to the financial system, (vii) the scope and complexity of the activities. These risk-based criteria leave flexibility to authorities to decide which undertakings should benefit from the simplified regime. On the contrary, some Member States expressed a different point of view and would prefer applying specific criteria in function of the type of insurers.

Article 4(2) gives a mandate to EIOPA to issue guidelines to specify the eligibility criteria listed in paragraph 1. Considering that the list of criteria is included in level 1, the role of EIOPA would be limited to providing national supervision and resolution authorities with more details on the list of criteria and the way to assess them, thus promoting convergence of the practices of authorities.

Questions for Member States

4. **Do you consider that the list of eligibility criteria provided in Art. 4(1) is comprehensive or would you add any other criteria?**
    - **Option 1:** the list is comprehensive.
    - **Option 2:** some criteria are missing from the level 1 text. Please specify.
    - **Option 3:** eligibility to the simplified regime should be defined differently. Please specify.
5. **Do you consider that EIOPA guidelines are the appropriate level to specify further the eligibility criteria and to ensure minimum convergence between the Member States when implementing the simplified regime or would you prefer giving EIOPA a mandate for a RTS?**
    - **Option 1:** EIOPA guidelines are sufficient to ensure convergence.
    - **Option 2:** EIOPA RTS would be more adequate to ensure minimum convergence.

B.III. Article 19(3): conditions to "failing or likely to fail" determination

The starting point of the resolution procedure is the determination of a situation of "*failing or likely to fail*" (FOLF). Such determination can be made by the supervisory authority, after consultation of the resolution authority, or by the resolution authority, after consultation of the supervisory authority.

Article 19(3) describes the alternative conditions under which the FOLF decision is taken. It is noteworthy that the conditions under which the FOLF decision can be made encompass a number of prospective components. Indeed, condition (a) states that the undertaking "is in breach **or likely** to be in breach" of the MCR; condition (b) states that "there are objectives elements to support that the undertaking will **in the near future**" fail in its obligation; and condition (c) states that "there are objectives elements to support the determination that the undertaking, **will in the near future**" be unable to pay its debts. These prospective elements provide authorities with a possibility to anticipate the FOLF determination before an actual failure occurs, bearing in mind that an early FOLF would probably facilitate the execution of resolution, in particular ease the transfer of portfolios (with a positive net asset value), and ensure a better outcome for policy holders.

Some Member States have argued that the FOLF conditions should be defined more precisely in order to provide for a more legally robust and predictable framework. This could be done through the introduction of stricter criteria, such as quantitative thresholds, or by making (some of) the conditions cumulative rather than alternative. This approach would likely lead to a later FOLF determination, in a situation where the failing undertaking's financial situation is more deteriorated. In that case, the implementation of resolution tools such as the sale of business could prove more complex (buyers may be scarce) and could require more creditors, including policyholders, to be written down.

Other Member States have argued that additional conditions could be relevant when considering whether an undertaking should be declared failing or likely to fail, in order to give more flexibility to national authorities for anticipating FOLF determination if needed. In particular, the Commission's proposal does not envisage the case where, after the implementation of recovery options, the undertaking would still fail to meet its Solvency Capital Requirement (SCR). It is noteworthy that the Commission's proposal in article 5(9) provides for the obligation for the undertaking to take remedial actions in the recovery phase in case certain indicators listed therein, including an SCR breach, are met. This is without prejudice to the powers provided to supervisors under the revised Article 141 of Solvency II in case of non-compliance with SCR laid down in Article 138 of Solvency II. In order to ensure the continuum between recovery and resolution, this situation could be added as a FOLF condition.

Finally, under the Commission's proposal, an undertaking shall be failing or likely to fail if extraordinary public support is required (Article 19(3)(d). This provision is consistent with the resolution objective of protection of public funds by minimizing reliance on extraordinary public financial support. During previous working parties, some Member States argued that this condition should be complemented with an exception similar to the one provided for in the BRRD and CCP R&R frameworks[1]. Under these two frameworks, an exception has been introduced to allow for precautionary public interventions ahead of any FOLF determination under strict conditions (in particular, the precautionary measures shall be confined to solvent institutions, approved under the Union State aid framework, be of a precautionary and temporary nature, be proportionate to remedy the consequences of a serious disturbance and not be used to offset losses that the institution has incurred or is likely to incur in the near future).

Questions for Member States

6. **Do you consider that conditions (a), (b) and (c) listed under article 19(3) to determine that an undertaking is FOLF strike a good balance between precision and flexibility or should these conditions be more strictly defined? Would you see merit in adding other FOLF conditions?**
   - **Option 1:** there is no need to add other FOLF conditions and the text should remain unchanged
   - **Option 2:** conditions strike a good balance between precision and flexibility but there would be merit in adding another FOLF condition (please specify);
   - **Option 3:** conditions (a), (b) and (c) are not precise/strict enough but there is *no* need to add other FOLF conditions. Please specify (e.g: wording unclear, thresholds should be used, etc.)
   - **Option 4:** conditions (a), (b) and (c) are not precise/strict enough and *there is* a need to add another FOLF condition. Please specify.

7. **Do you consider that condition (d) in article 19(3) should be complemented to cater for an exception?**
   - **Option 1:** no need to define condition (d) more precisely
   - **Option 2:** yes, there is merit to define condition (d) more precisely
     - Option 2a: by adding a list of cases derived from BRRD and CCP R&R where extraordinary public financial support would not automatically trigger a resolution procedure could be an adequate solution
     - Option 2b: other way to bring precision to condition (d). Please specify.

[1] Respectively Article 32(4)(d)) and Article 22(4))

B.IV. Conditions to enter into resolution versus conditions to enter into national insolvency proceedings (Articles 19 and 21)

According to the Commission's proposal, after an undertaking has been determined as failing or likely to fail, the resolution authority decides whether the failing undertaking meets the conditions for a resolution procedure.

In accordance with article 19(1), three cumulative conditions must be met for an undertaking to enter into a resolution procedure: (a) the undertaking is declared failing or likely to fail, (b) there is no private measures or supervisory action available and (c) a resolution action is in the public interest.

As a comparison, in accordance with article 21, an undertaking should be wound up in accordance with normal insolvency proceedings if (a) an undertaking is declared failing or likely to fail, (b) there is no private measures or supervisory action available and (c) where a resolution action would not be in the public interest[2]. The requirement in point (b) for the resolution authority to satisfy itself that there is no "reasonable prospect of any alternative private sector measures or *supervisory action* [preventing] the failure within a reasonable timeframe" (emphasis added) is particularly important to ensure coherence with the Solvency II intervention ladder. Resolution should be expected only in absence of any remaining viable supervisory action that could restore the financial position of the undertaking.

When comparing the two lists of conditions leading to the decision to put an undertaking under resolution or normal insolvency proceedings, the key factor is the outcome of the public interest test as defined by article 19(4). This article states that a resolution action shall be in the public interest where (i) such action is necessary for the achievement of, and is proportionate to, one or more resolution objectives and (ii) the winding up of the failing undertaking under normal insolvency proceedings would not meet those objectives to the same extent. In practice, the public interest test is a comparison between the outcome of a normal insolvency proceeding and the outcome of a resolution procedure in relation to the resolution objectives defined in article 18.

By aligning the conditions for insolvency with the conditions for resolution, the key determinant being the public interest assessment, Article 21 aims to prevent the possibility for an undertaking already determined as FOLF to be in a situation where it would not meet the conditions for entering neither resolution nor liquidation. Indeed, for example, if the FOLF is declared early, the undertaking might not yet meet the conditions to enter into national insolvency proceedings, which are specific to each Member State's insolvency law. With this article, where the public interest test is negative, but the other conditions set out in article 19(1) a) and b) are met, a failing undertaking would necessarily also meet the conditions for national insolvency proceedings and would avoid situations where the supervisory or resolution authority is left without any possibility to apply resolution actions or national insolvency proceedings[3].

On the contrary, some Member States have expressed in previous working parties a different point of view considering that article 21 is unnecessary as national insolvency proceedings (including the conditions to enter into such proceedings) are dealt at national level and should be left to Member States' national discretion.

[2] The reference to the breach of the MCR is dealt with below.

[3] The Commission proposal in Solvency 2 includes an additional paragraph 4 in article 144 stating that in the event of withdrawal of authorisation, Member States shall ensure that insurance and reinsurance undertakings continue to be subject to the general rules and objectives of the insurance supervision, until any winding-up proceedings are opened.

Finally, several Member States have questioned in previous Working Parties the relevance of the reference to the obligation to meet the Minimum Capital Requirement in Article 21. This condition appears to be inconsistent with article 19, in which one of the conditions for an undertaking to be declared FOLF is the breach of MCR. As such, these Member States have asked for this reference to be deleted.

Questions for Member States

8. **Do you consider that the definition of the public interest assessment under article 19(4) is sufficiently clear and precise?**
    - **Option 1:** the definition of the public interest test is clear, no modification necessary.
    - **Option 2:** the definition is unclear or not sufficiently precise. Please provide drafting suggestions.
9. **Do you consider that article 21 is necessary to ensure that a failing undertaking with a negative public interest assessment would be put under normal insolvency proceedings?**
    - **Option 1:** yes, such article is necessary.
    - **Option 2:** no, conditions for opening national insolvency proceedings should be left to Member States' national discretion.
10. **Following the WP of 29 November and the intervention of several Member States, would you agree, in order to ensure consistency with article 19, to delete the reference to the MCR requirement in article 21?**

Part A: Potential "non-blocking" amendments for possible written comments

A.I. Article 1 : Subject matter and scope

Article 1 lists entities for which the Directive would apply. In a nutshell, this concerns all entities subject to the Solvency II Directive (direct life and non-life insurance undertakings which are established in the territory of a MS and reinsurance undertakings which conduct only reinsurance activities and which are established in the territory of a MS) as well as their related entities (parents, holding companies, branches, ...).

Article 1(2) provides that the Directive shall be applied in a proportionate manner, taking into account the nature of the business, the shareholding structure, its legal structure, the risk profile, the size, the legal status, its interconnectedness to other institutions or to the financial system more generally, as well as the scope and complexity of the entity's activities. Low risk profile undertakings are not subject to pre-emptive recovery or resolution planning but are not generally excluded from the IRRD scope. The scope of entities subject to the directive and which could therefore be placed in resolution or insolvency proceedings in case of failure is broader than the scope of entities subject to recovery and resolution planning obligations.

Questions for Member States

11. Do you agree with the scope as set out in the proposal, or do you consider that entities should be included or removed from this scope?

A.II. Financial conglomerates

'Financial conglomerates' or 'conglomerates' designate groups whose structure encompasses entities that conduce activities at individual / consolidated / aggregated level within the insurance sector and within the banking and investment sector4. Multiple types of conglomerates can be distinguished such as (i) the holding model conglomerates (i.e. a holding company owning interests in banking and insurance 'sister companies'); (ii) the bank-insurance model (i.e. the credit institution is the parent of the insurance undertaking); (iii) the insurance bank model (i.e. the insurance undertaking holds ownership of a credit institution). Conglomerates are not directly defined within the Article 2 of IRRD, however 'mixed parent financial holding company' – which means a parent undertaking that taken together with its subsidiaries constitutes a financial conglomerate – are defined at Art. 2(4). Powers to resolve undertakings apply thus also to mixed financial holding companies as referred to in Art. 1.(1) points (c) to (e).

[4] As per Directive 2002/87/EC article 3 : " *"financial conglomerate" shall mean a group which meets, subject to Article 2, the following conditions: (a) a regulated entity within the meaning of Article 1 is at the head of the group or at least one of the subsidiaries in the group is a regulated entity within the meaning of Article 1; (b) where there is a regulated entity within the meaning of Article 1 at the head of the group, it is either a parent undertaking of an entity in the financial sector, an entity which holds a participation in an entity in the financial sector, or an entity linked with an entity in the financial sector by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC; (c) where there is no regulated entity within the meaning of Article 1 at the head of the group, the group's activities mainly occur in the financial sector within the meaning of Article 3(1); (d) at least one of the entities in the group is within the insurance sector and at least one is within the banking or investment services sector; (e) the consolidated and/or aggregated activities of the entities in the group within the insurance sector and the consolidated and/or aggregated activities of the entities within the banking and investment services sector are both significant within the meaning of Article 3(2) or (3)*"

As laid out in the FSB's key attributes (August 2020), conglomerates do represent a key issue regarding insurance recovery and resolution for several reasons.

First, important financial groups seldom rely exclusively on banking and securities activities. They pursue diversification by adding insurance activities to their services. This diversification makes conglomerates important actors to take into account when building resolution frameworks as the failing of other parts of the group may indeed lead to the failing of the insurance activity. Given this importance, conglomerates are nonetheless only partially covered by the BRRD/SRMR framework depending on the model they rely on as mentioned above and on the regulatory status of the legal entities / activities.

Second, from an operational point of view, the financial interconnection between the insurance undertaking and the credit institution may add complexity to the resolvability of the financial conglomerate as loss-transfer mechanisms and loss absorption requirements do not apply to insurance entities. However it must be noted that certain provisions can in return limit the interest that financial conglomerates could have to keep financial interdependencies between banking entities and insurance undertakings[5].

From a juridical perspective it is finally important to highlight that conflicts between national frameworks, BRRD and IRRD could impede the efficiency of the resolution process. For instance, in the case of a holding model established in the Banking Union, if both credit institution and insurance undertaking are declared failing or likely to fail (FOLTF), the SRB would be declared intervention authority for the mixed financial holding company according to the BRRD, as national authorities would be according to IRRD. The conflict of competent authorities leads also to questions related to the differences of tools available in both frameworks, as certain tools that may be used by competent authorities within IRRD (e.g: WDCI for policyholders or solvent run-off) are not provided within BRRD for competent authorities.

The Commission indicated that conglomerates are indeed a key issue as regards resolution procedures and more specifically with respects to the articulation between the insurance resolution framework and the banking resolution framework. Even though this topic is relevant for IRRD, the Commission highlighted that is was necessary to preserve a stepwise approach that would build on the experience gathered with the operationalization of the IRRD and could address the needs of both frameworks and their articulation in a second stage. This approach could be considered more optimal from a legal certainty perspective as substantive amendments could be also necessary to tackle financial conglomerates in different legal texts such as the financial conglomerates directive (FICOD), BRRD or the single resolution mechanism regulation (SRMR).

Questions for Member States

12. Do you consider that targeted amendments could be beneficial to tackle the issue of conglomerates within IRRD? If yes, please specify.

[5] For instance the exclusion of subordinated debt between parent and subsidiary undertaking as in CRR2 (72(b)(2)) considerably limits the utility for parent credit institution to issue directly or indirectly MREL-eligible subordinated debt that would be held by insurance subsidiaries.

A.III. Proportionality

Information to be provided by Member States to EIOPA on the application of the simplified regime

Article 4(3) foresees that supervisory or resolution authorities would provide EIOPA, on an annual basis, with several information such as: (i) the number of undertakings under the general regime, (ii) the number of undertakings under the simplified regime, (iii) quantitative information on the application of the eligibility criteria and (iv) a description of the simplified obligations under the simplified regime as compared to the full obligations. According to Article 4(4), EIOPA shall disclose annually and for each Member State separately the information sent by supervisory or resolution authorities, complemented with an assessment of any divergence at national level regarding the application of the eligibility criteria.

The information provided would allow EIOPA to have a broader perspective on the global European insurance sector (number of undertakings under the general regime, the simplified regime as well as quantitative information on the application of the eligibility criteria). It would also allow EIOPA to assess potential divergences in the implementation of the simplified regime.

13. Do you consider necessary to provide EIOPA with all the information listed in Article 4(3)?

- **Option 1:** Yes, all the information listed in article 4(3) is needed ;
- **Option 2:** No, not all the information listed in article 4(3) is needed, only some of them are needed (please specify);
- **Option 3:** no information should be shared with EIOPA.

14. What frequency would you consider adequate to provide information to EIOPA?

- **Option 1:** annually
- **Option 2:** information should be provided more than once but not annually. Please specify what frequency you would consider adequate.

Annex 1: List of harmonised criteria proposed by EIOPA in its background analysis (table 12.4)

Criteria	Assessment questions
Size	To assess the size, NSAs should consider the following aspects at a minimum: • What is the size of the undertaking measured in terms of number of individual policies, total assets, technical provisions (TP) and gross written premiums (GWP)? • What is the market share in terms of GWP or TPs (including TP or GWP attached to FoE and FoS business written from this jurisdiction)?
	Illustrative assessment: if the size of an undertaking is (relatively) large, the undertaking should be within the scope of the requirement.
Business model	To assess the business model, NSAs should consider the following aspects at a minimum: • Does the undertaking have a stable business model? • Does the undertaking have a sustainable business model, i.e. is the business model "future-proof"? • Which segments of markets does the undertaking target? • Which countries does the undertaking target? • Which customers does the undertaking target, i.e. does the undertaking target mainly consumers?
	Illustrative assessment: if the business model of an undertaking is complex and/or deemed to be unsustainable for future developments, the undertaking should be within the scope of the requirement.
Risk profile	To assess the risk profile, NSAs should consider the following aspects at a minimum: • What are the risk limits/risk appetite of the undertaking? • What is the investment profile of the undertaking? • What is the complexity of the products offered by the undertaking? • Does the undertaking offer a (wide) range of non- traditional types of insurance products? • Is there a high degree of volatility in earnings/capital? • What is the expected impact and potential risks for the financial system or the European, national or regional market if the undertaking fails?
	Illustrative assessment: if the risk profile of an undertaking is (relatively) high, the undertaking should be within the scope of the requirement.

Interconnectedness	To assess the interconnectedness, NSAs should consider the following aspects at a minimum: • Is the undertaking part of a financial conglomerate? • Does the undertaking have large exposures to a certain financial institution (undertaking or bank)? • Is the undertaking listed on the stock exchange market? • Does the undertaking have cross-border activities or a dominant market share in a country other than its home country? • Is the undertaking particularly active on financial markets, using derivative instruments and/or lending/borrowing securities (e.g. through repos)?
	Illustrative assessment: if the undertaking is highly interconnected with the financial markets, the undertaking should be within the scope of the requirement.
Cross-border activity	To assess the cross-border activity, NSAs should consider the following aspects at a minimum: • Does the undertaking have (material) cross-border activities via FoE or FoS (measured as GWPs)? • Does the undertaking have a dominant market share in a country other than its home country via subsidiaries? • Does the undertaking undertake cross-border activities in multiple countries? • Does the undertaking write businesses or have subsidiaries in countries outside Europe?
	Illustrative assessment: if the undertaking has (material) cross-border activities, the undertaking should be within the scope of the requirement.
Substitutability	To assess the substitutability, NSAs should consider the following aspects at a minimum: • Is there any noticeable concentration in the (national) insurance market? • Are there any barriers to entry for new providers in the (national) insurance market? • Is the undertaking active in a certain niche market? • Is the undertaking particularly active and important for a specific line of business; or are other players in the market offering similar or alternative products? • Does the undertaking have a relatively high or even a monopolistic market share in one market? • Does the undertaking have a special role in the operation of a relevant marketplace (e.g. the provision of expertise, capital or data, acting as lead undertaking, etc.)?
	Illustrative assessment: if the products offered by the undertaking are less substitutable, the undertaking should be within the scope of the requirement.