

To: Solvency II WG, International Affairs & Reinsurance WG  
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Subject: Summary of EIOPA's Technical Seminar on recovery and resolution in (re-) insurance

## Comments

The secretariat provides the following summary of EIOPA's "Technical seminar on recovery and resolution in (re-) insurance". The summary contains the main views of each participant regarding the topics presented or discussed. The seminar had three main sections:

- Introduction by EIOPA
- Various presentations on the following topics
  - Similarities and differences between IRRD and BRRD,
  - EC's stylised case study, main procedural steps leading up to FOLF declaration,
  - The Polish experience in setting up resolution authority,
  - The French experience in the implementation of recovery resolution plans,
  - The role of the Insurance Guarantee fund.
- Two panels to discuss proportionality and resolution funding arrangements.

## Summary

### **EIOPA's introduction, Petra Hielkema (EIOPA)**

- EIOPA fully supports the EC's proposal of minimum harmonization. Failures continue to happen, the insolvency process is not always suitable for insurance, national legislators are developing their own recovery and resolution frameworks and supervisors may make mistaken decisions during the resolution process.
- EIOPA has recently published two papers responding to various questions ([here](#)) and comparing BRRD and IRRD ([here](#)).
- The IRRD key elements are a minimum harmonised level (national flexibility), cooperation and coordination, two separated roles (recovery and resolution), and the resolution authority figure (Existing national authorities can take on this role within a dedicated team).
- EIOPA has one temporary task (draw up of RTS and guidelines) and a permanent one (ensure consistency of resolution).

### **Similarities and differences between IRRD and BRRD, Jean Hilgers (National bank of Belgium)**

- The insurance sector requires a recovery and resolution framework. The following reasons support its implementation:
  - Protection of insurance critical functions in case of failure (car, house, health, professional compensation insurance),
  - Substitutability is not always possible for all insurance contracts

- The insurance sector's interconnection with other financial players. Moreover, a fire sale of investment assets would affect the financial market.
- The industry needed public support in the past (eg. Aegon and IAG).
- The EC's IRRD proposal contains differences from the BRRD in terms of resolution tools and the treatment of policyholders.
- The IRRD proposal should further develop topics as Insurance Guarantee Scheme (IGS), resolution funding, and conglomerates

### **EC's stylised case study, main procedural steps leading up to FOLF declaration, Marie Donnay (EC Fisma)**

- The EC's described the six different stages in the financial position deterioration of an undertaking.
  - Stage 1 (SCR > 100%)->Stage 2 (breach of SCR)-> Stage 3 (deterioration of the financial position)-> Stage 4 (further deterioration)-> Stage 5 (Increased likelihood of MCR breach)-> Stage 6 (High probability of MCR breach).
- Followed by the different actions taken by a National Supervisory Authority (NSA) and a National Resolution Authority (NRA) in each stage. The EC presents a hypothetical example where a parent undertaking (A) fails with a subsidiary (B) in another country.
  - **Stage 1 and 2** (a breach in SCR). The undertaking prepares a recovery plan due to Art 138 of S2 (based on the IRRD pre-emptive recovery plan). The supervisor must approve this (reducing risk profile and other measures to restore financial position). New article 141 will provide harmonized tools to the NSA (suspension of bonuses, dividends...), and the NSA will inform the RSA of the measures taken (art 61 IRRD).
  - **Stage 3 to 5** (SCR continues deterioration without breaching MCR). RSA will start to find a potential purchaser interested, start an independent valuation to check the resolution conditions, and prepare a group resolution plan (including a Public interest assessment). Exchange of information between the NSA and the RSA, a joint decision on group resolution scheme, and preparation of FOLF determination.
  - **Stage 6** (high likelihood of MCR breach). Need to an early determination of FOLF and the other resolution conditions. Shareholders are write-down, and relevant policies are carved out. Company B is sold, and the remaining company A goes to a solvent run-off. Need for a joint decision of resolution colleges.

### **Panel discussion proportionality**

#### **Daria Ringwelska (Polish financial supervisory authority)**

- Proportionality should be risk-based to adjust regulatory requirements to undertakings considering national features.
- Proportionality benefits all undertakings (not only small ones) and the supervisor's authority.
  - It reduces costs for undertakings (so they can focus on adequate governance arrangements or product development) and
  - It improves the quality of supervision (supervision tailored to the undertaking). There is a tiny border between simplification and proportionality.

#### **Ana Teresa Moutinho (EIOPA)**

- Proportionality should have in mind the goals of the IRRD directive. Objectives of the IRRD and the SII are different; therefore, the application of proportionality should also differ.
- Proportionality is not only present in article 4 of the IRRD proposal (simplification). The proportionality measures apply through the minimum percentages, the definition of critical function, the core business lines, and the toll box.

### **Francesco Mauro (EBA)**

- Proportionality in banks contains two pillars:
  - A harmonized definition and eligibility criteria (including assessment).
  - There is no limitation of the national proportionality articulation; therefore, Member States decide the appropriate application of proportional measures.
- There are some positive and negative aspects of the bank experience:
  - Positive: general positive trend in using proportional measures, the key to clearly identifying eligibility criteria in level 1.
  - Negative: there are significant differences in the application of simplification measures among Member States. In EBA's view, there is not always a justification behind these substantial differences.
- The recommendation is to include minimum elements when the simplification is applied and select criteria to follow to use further simplification measures.

### **Establishment of the resolution authority Polish's experience, Dagmara Wieczorek (BGS Poland)**

- Poland introduced the NRA within the Bank guarantee fund for the following reasons:
  - There is only one authority for the whole financial market in Poland.
  - The NRA has practical experience in resolution.
  - No duplication of administration and infrastructure; there is only a dedicated department for insurance with three units (analytical, policy, and actuarial).

### **Resolution planning in France, Carine Henry (ACPR)**

- The French recovery and resolution framework's scope is based on assets over 50 billion or critical functions. The scope for pre-emptive and resolution is the same. There are 16 entities under the scope in France covering 90% of the market (14 entities due to threshold, 2 entities due to critical functions).
- The proportionality principle is applied through the existence of critical functions.
- Resolution plans contain a detailed description of the group, the impact of FOLF in the group and the financial market, mapping and separability analysis of critical functions, description of resolution strategies (depending on scenarios), communication in resolution, and resolvability analysis.
- France has identified six critical functions (unit-linked, Motor vehicle, Medical Liability, Construction, Agricultural insurance, and Credit Insurance). The methodology assesses the impact of breach of protection, inability to comply with commitments, and the substitutability factor.
- ACPR faces key challenges such as selecting the optimal tool to use in each scenario, understanding the interconnectedness and consequences of failures, coordination of IRRD and BRRD in the case of conglomerates, and good practices in exchanging information between authorities and undertakings.

### **Panel discussion on resolution financing**

#### **Leonard Flink (Resolution department at Dutch National bank)**

- There are three main costs of resolution:
  - The Netherlands' operational cost of resolution (RSA, planning...) is covered by the annual budget funded by industry levies (proportional to technical provisions).
  - The cost of resolution (independent valuation, legal M&A advice, bridge institution, NCWO safeguard).
  - The cost to pay out benefits to policyholders (PH).
- The Netherlands has a resolution funding ex-post funded. Ex-post funding could imply procyclical behaviour, but ex-ante funding is not efficient.
- The Resolution funds do not absorb losses or re-capitalize the insurers. This cost should come from the balance sheet of the insurer.

**Alex Hart(US Department of Treasury Federal Insurance Office)**

- Insurance liability should be written-down only after equity and other liabilities that rank lower than them have absorbed losses.
- The goal of the write-down is to reduce the value of the liabilities to restore viability or allow other resolution options (run-out or portfolio transfer). National authorities should consider insurance liability write-down as one last resort tool.
- One of the IRRD goals is to minimise public aid in case of failure. But it should not eliminate public funding as they can be helpful in some minimal scenarios (importance of critical function or substitutability).

**Olav Jones (Insurance Europe)**

- Resolution funding: The ongoing supervisory costs should consider the ongoing resolution expenses. Shareholders primarily and policyholders ultimately should cover the cost of resolution measures. NCWO principle is valid for banking but maybe does not be suitable for insurers (shareholders from healthy companies compensating the shareholders from the failing undertaking). A cost/benefit analysis should be done to achieve the preferred solution.
- Differences between banks and insurance have been detailed before:
  - Insurance has a more stable balance sheet,
  - Insurance has high levels of liquidity,
  - Insurance is less interconnected,
  - Insurance timing for failure allows other measures,
- We have to consider that insurance is not a zero-failure regime, and we have to agree on the adequate level of risk supported by policyholders, taxpayers, etcetera.

**Role of insurance guarantee schemes.**

**Alister Campbell (FIGS)**

- The rationale for an IGS is based on the institutionalization of default risk, the role of all industry participants in overall industry health, consumer confidence, a safety net to respond as a last resort in the worst scenarios, and a component of a supervisor framework.
- The bank regulation cannot be directly extrapolated to the insurance industry. The insurance sector is less systemic, provides more time in case of failure, and the demand for cash in a failure is not comparable with banks (depositors withdraw their money, and policyholders do not rush to suffer a claim). Therefore there is no need to have significant funds in case of failure.
- There is no perfect solution for IGS; each jurisdiction should consider its features. There are arguments against IGS implementation, such as failures are rare, the regulators confident in their capacity to manage these situations, potential costs for the industry and potential Moral hazards.

**Javier Bonhome (Consortio de compensación de seguros, Spanish IGS)**

- The Spanish IGS covers insurance companies with headquarters in Spain. It covers P&C (Property and Casualty) and Life insurance. It applies a flat rate for all contracts covering risk in Spain (0.15%). It has a fund of 2.406 million € (September 2022). It provides unlimited coverage.
- IGS is the liquidator for insurance in Spain and has two resolution tools (portfolio transfer and liquidation). The Spanish IGS has handled 306 failures since 1984 (mostly non-life and social welfare mutuality).