WORKSHOP ON THE RECENTLY PUBLISHED CONSULTATION PAPERS ON DRAFT GUIDELINES AND RTS COVERING VARIOUS VALUATION TOPICS AND LEGAL ISSUES

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European Insurance and
Occupational Pensions Authority

AGENDA

1. Practical information on participating in the meeting
2. Introductory remarks
3. CP on Guidelines to specify how information should be provided in summary or collective form for the purposes of Article 66(2), point (b), of Directive (EU) 2025/1
4. CP on draft RTS on contractual recognition of resolution stay powers
5. CP on draft RTS on the independence of valuers
6. CP on draft RTS on the valuation of liabilities from derivatives

1. PRACTICAL INFORMATION ON PARTICIPATING IN THE MEETING

- The presentation will go instrument by instrument
- Each instrument will be followed by a dedicated Q&A session to allow for audience engagement and discussion
- Questions can be submitted in written form using the **Q&A button** in the upper right corner of the MS Teams meeting screen:
  - Please identify yourself before asking a question with your **full name + organisation**
  - The moderator will open the floor for comments/questions after speakers have provided their presentation
  - Please provide only comments/questions which are inside the scope of the event

2. INTRODUCTORY REMARKS

- Consultation papers published on 9 December 2025
- Stakeholder workshops are organised to:
  - Collect preliminary views on the instruments
  - Provide an explanation to any unclarities at this stage
  - Support the preparation of stakeholders’ contributions to the consultations
- Stakeholders are invited to provide written comments by 20 March 2026, 23.59 CET
- Please use the link to EUSurvey to respond to the consultations

3. CP ON GUIDELINES TO SPECIFY HOW INFORMATION SHOULD BE PROVIDED IN SUMMARY OR COLLECTIVE FORM

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3. GUIDELINES ON HOW INFORMATION SHOULD BE PROVIDED IN SUMMARY OR COLLECTIVE FORM

- **Mandate:**

Article 66 paragraph 2, point (b) of the IRRD: *„Without prejudice to the generality of the requirements under paragraph 1, Member States shall ensure that the persons referred to in paragraph 1 are prohibited from disclosing confidential information received during the course of their professional activities, or received from a supervisory authority or resolution authority in connection with that authority's functions, to any person or authority, **unless in the following situations**:*

…***b) the disclosure is made in summary or collective form in such a way that individual entities referred to in Article 1(1), points (a) to (e), cannot be identified; "***

- **Objective:**

These GLs specify the "rules":

- How/in which format the information can be provided
- Factors to be considered so that the information in summary or collective form is disclosed in anonymised form

3. GUIDELINES ON HOW INFORMATION SHOULD BE PROVIDED IN SUMMARY OR COLLECTIVE FORM

- **How/in which format the information can be provided:** a brief statement or on an aggregate basis, in anonymised form
- **Factors to be considered so that the information is disclosed in anonymised form:**
  - Number of entities: Disclosure to be avoided if the confidential information relates to **less than 3 individual entities** ….unless specific patterns and the context of disclosure do not create a risk of those individual entities being identified.
  - Specific patterns: AVOID references to specific characteristics, distinctive features, names or to numerical, qualitative or other distinctive data, scope and geographical position etc. which could allow the identification of the individual entities
  - Context of disclosure: AVOID when a set of circumstances creates a risk of the individual entities being identified e.g. means of disclosure, number and the characteristics of the addressees, timing of the disclosure.
- **Addresses:** supervisory authorities and resolution authorities as competent authorities and financial institutions, insofar these are mentioned under Article 66(1) of Directive (EU) 2025/1.

3. GUIDELINES ON HOW INFORMATION SHOULD BE PROVIDED IN SUMMARY OR COLLECTIVE FORM

- The Guidelines appropriately clarify Article 66(2) of the IRRD, providing legal certainty. Industry supports the objective of preventing entity identification.
- The Guidelines go beyond Level 1 by introducing anonymisation thresholds and disclosure conditions. Flexibility is essential given the diversity of disclosure contexts.
- If thresholds are introduced, we would suggest they should be higher, perhaps five companies rather than three.

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3. GUIDELINES ON HOW INFORMATION SHOULD BE PROVIDED IN SUMMARY OR COLLECTIVE FORM

- Q&A

4. CP ON DRAFT RTS ON CONTRACTUAL RECOGNITION OF RESOLUTION STAY POWERS

4. CP ON DRAFT RTS ON STAY POWERS

- **Mandate:**

Article 52 IRRD:

“1.Member States shall require entities referred to in Article 1(1), points (a) to (e), to include in any financial contract which they enter into and which is governed by third-country law, terms by which the parties recognise that the financial contract may be subject to the exercise of powers by the resolution authority to suspend or restrict rights and obligations under Articles 49, 50, and 51, and recognise that they are bound by the requirements of Article 48. […]

5. EIOPA shall develop draft regulatory technical standards to specify the contents of the contractual terms referred to in paragraph 1, taking into account the different business models of the entities referred to therein.”

- **Objective:**

  - Support the cross-border enforceability of temporary restrictions or stays on the exercise of early termination rights under financial contracts governed by the law of a third-country jurisdiction.

4. CP ON DRAFT RTS ON STAY POWERS

EIOPA's approach while developing the draft RTS:

- **Aims to ensure**: Level playing field across financial sectors for the recognition of stay powers in resolution, while having regard to any specificities for the resolution of (re)insurance entities.
- **Follows**: A proportionate approach by not overly prescribing the terms and only including minimum requirements.

For the sake of this draft Regulation, financial contracts:

- Article 2(78) IRRD: 'financial contracts' means financial contracts as defined in Article 2(1), point (100), of Directive 2014/59/EU (BRRD).
- Article 2(100) BRRD: 'financial contracts' includes the following contracts and agreements […] *securities contracts, commodities contracts, futures and forwards contracts, swap agreements, inter-bank borrowing agreements where the term of the borrowing is three months or less, master agreements for any of these contracts or agreements.*

4. CP ON DRAFT RTS ON STAY POWERS – FURTHER CONSIDERATIONS

Stay powers beyond financial contracts

- Article 52 IRRD refers exclusively to financial contracts, and not to insurance or reinsurance contracts.
- In addition, Article 52 IRRD refers exclusively to the stay powers to suspend certain obligations for payment or delivery pursuant to any contract that the (re)insurance undertakings is a party to (Article 49 IRRD), to restrict the enforcement of security interests (Article 50 IRRD) and to temporarily suspend termination rights (Article 51 IRRD).
- For this reason, stay powers related to redemption rights for life insurance contracts and to (re)insurance contracts under Articles 53 and 51 IRRD are **not in the scope** of the draft RTS.

Insurance business models

- Mandate requires EIOPA to take into account the different business models of the (re)insurance undertakings.
- EIOPA's understanding is that if an undertaking enters into a certain type of financial contracts, the form or content of that contract will not vary in accordance with the type of (re)insurance business model (e.g., whether the (re)insurer conducts life or non-life business or specialises in certain lines of business).
- Hence, the draft RTS does not differentiate the content of the contractual recognition clauses for different business models.

4. CP ON DRAFT RTS ON STAY POWERS – CONTENT OF CONTRACTUAL TERMS

- **Main elements**:
  - the acknowledgement and acceptance by the parties that the contract may be subject to the exercise of powers by a resolution authority to suspend or restrict rights and obligations arising from such a contract under Articles 49, 50 and 51 IRRD and that the requirements of Article 48 IRRD will apply.
  - a description of or a reference to the powers of the resolution authority as set out in Articles 49, 50 and 51 IRRD, and a description of or a reference to the requirements of Article 48 IRRD.
  - the acknowledgement and acceptance by the parties that they are bound by the effect of an application of the following powers:
    (1) the suspension of any payment or delivery obligation in accordance with Article 49 IRRD;
    (2) the restriction of enforcement of any security interest in accordance with Article 50 IRRD,
    (3) the temporary suspension of any termination right under the contract in accordance with Article 51 IRRD.
  - the acknowledgement and acceptance by the parties that are bound by the requirements of Article 48 IRRD.
  - the acknowledgement and acceptance by the parties that the contractual terms are exhaustive on the matters described therein to the exclusion of any other agreements, arrangements or understandings between the counterparties.

4. RTS ON CONTRACTUAL RECOGNITION OF RESOLUTION STAY POWERS

- The RTS provide important clarification on contractual recognition of resolution stay powers under Article 52 IRRD. As correctly observed by EIOPA, this Article "refers exclusively to financial contracts as defined above, and not to insurance or reinsurance contracts".
- We agree that no insurance specific requirements need to be addressed compared with Commission Delegated Regulation (EU) 2021/1340.
- The proposed entry into force timeline may be challenging given contract renegotiation cycles. Transitional arrangements or grandfathering would improve feasibility. A phased approach is recommended.

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4. CP ON DRAFT RTS ON STAY POWERS

- Q&A

5. CP ON DRAFT RTS ON INDEPENDENCE OF VALUERS

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- **Mandate:**

Based on Article 24(6)(a) IRRD, EIOPA shall develop draft regulatory technical standards to specify the circumstances in which a person is deemed to be independent from both the resolution authority and the entity referred to in Article 1(1), points (a) to (e) [for performing valuation for the purposes of resolution].

- **Objective:**

  - Ensuring the independence of the valuer can support the efficient resolution of the entity under resolution and limit legal disputes.
  - An appropriate regulatory framework on criteria for assessing the independence of the valuer provides clarity to the prospective valuer, as well as for the appointing authority on the terms of the appointment. The objective of this RTS is to ensure legal certainty, secure a level playing field in the market and confidence in the quality of valuation in the resolution process.

5. CP ON DRAFT RTS ON INDEPENDENCE OF VALUERS

EIOPA's approach while developing the draft RTS:

- **Aims to ensure**: Level playing field across financial sectors for the independence of valuers for resolution purposes, while having regard to any specificities for the resolution of (re)insurance entities.
- **Follows**: A proportionate approach, which secures cross-sectoral consistency. In this context, the draft RTS: (i) requires the valuer to have necessary qualifications, experience, ability and knowledge', without further specifying the details of these, (ii) does not require the NRAs to establish an upfront list of potential valuers.

5. CP ON DRAFT RTS ON INDEPENDENCE OF VALUERS – MAIN ELEMENTS

- The draft RTS set conditions, **all of which** should be met so as the valuer is considered independent:

  (a) the valuer possesses the qualifications, experience, ability, knowledge and resources set under Article 3.

  (b) the valuer is separate from the relevant public authorities and the relevant entity as per Article 4.

  (c) the valuer has no material common or conflicting interest within the meaning of Article 5.

- The draft RTS requires that the valuer should possess the necessary qualifications, experience, ability and knowledge in all matters considered relevant by the appointing authority.
- The draft RTS provides requirements that the valuer should meet for being considered structurally, legally and operationally separated from any relevant public authority and the relevant entity.
- The valuer shall not have an actual or potential material interest in common or in conflict with any relevant public authority and the relevant entity.
  - The draft RTS provide details on what is considered material interest, and the parties and matters that are considered as relevant (minimum list);
  - The draft RTS requires for the valuer to not have completed a statutory audit or SFCR audit of the relevant entity the year preceding the date on which that person's eligibility to act as independent valuer is assessed.

5. RTS ON INDEPENDENCE OF VALUERS

- The RTS correctly recognises the need for independence while ensuring timely appointment of valuers. Market capacity constraints should remain a key consideration.
- Cumulative independence conditions are conceptually sound, but their combined application may be restrictive in smaller markets. A holistic assessment is preferable to a checklist approach.
- The conflict-of-interest framework is consistent with other resolution regimes. A one-year audit look-back period for statutory audit and audit of the SFCR strikes a reasonable balance.
- Given time constraints around valuation in resolution, it may be necessary for the valuer to rely on the entity's valuation methodologies, at least in part.

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5. CP ON DRAFT RTS ON INDEPEDENCE OF VALUERS

- Q&A

6. RTS SPECIFYING METHODOLOGIES AND PRINCIPLES ON THE VALUATION OF LIABILITIES ARISING FROM DERIVATIVES

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- **Mandate:**

Article 40(4) IRRD: *EIOPA, after consulting ESMA, shall develop draft regulatory technical standards specifying the methodologies and principles laid down in paragraph 3 on the valuation of liabilities arising from derivatives. In relation to derivative transactions that are subject to a netting agreement, EIOPA shall take into account the methodology for closeout set out in the netting agreement.*

- **Objective:**

In comparison with other types of liabilities that may be subject to write-down and conversion (WDC), derivative transactions, which may be complex and bespoke, present challenges in respect of valuation. These draft RTS aim to address these challenges by specifying three elements of the valuation:

- the methodology for determining the value of liabilities under derivative contracts;
- the principles for establishing the point in time at which such value should be established; and
- the methodology for comparing the destruction of value as a result of the close-out of derivatives with the amount of losses borne by those derivatives in the WDC situation.

6. RTS SPECIFYING METHODOLOGIES AND PRINCIPLES ON THE VALUATION OF LIABILITIES ARISING FROM DERIVATIVES

- **Approach:**

- In view of the efficient functioning of financial markets, counterparties in derivative transactions should be treated similarly, regardless of whether they have an exposure to a credit institution or an insurance or reinsurance undertaking in resolution. From the perspective of these market participants, similar rules are preferable.

- At the same time, from the perspective of resolution authorities, it is important that the insurance specificities are sufficiently reflected.

6. RTS SPECIFYING METHODOLOGIES AND PRINCIPLES ON THE VALUATION OF LIABILITIES ARISING FROM DERIVATIVES

- **Key elements of the draft RTS:**

  - **Destruction in value:**

- Resolution authorities should make efforts to avoid any unnecessary destruction in value in relation to the relevant derivatives transaction
- Article 2 of the RTS provides a safeguard, by requiring that resolution authorities shall (prior to making a decision that results in close-out of the applicable transaction(s)) make a comparison between (a) the amount of losses that would be borne by derivatives contracts in a WDC scenario and (b) the destruction in value based on an assessment of the costs, expenses or other impairment of value that is expected to be incurred as a result of the close-out of the derivatives contracts.

  - **Closeout and netting:**

- The IRRD provides that write-down and conversion powers apply only upon or after relevant derivatives have been closed-out. In addition, where derivative transactions are subject to a netting agreement, the liability arising from such transactions must be determined on a net basis, in accordance with the terms of the underlying netting agreement.
- Article 3 of the RTS sets the rules for communicating the decision to closeout while Article 4 specifies the role of the netting agreement.

6. RTS SPECIFYING METHODOLOGIES AND PRINCIPLES ON THE VALUATION OF LIABILITIES ARISING FROM DERIVATIVES

- **Point in time for establishing derivatives liabilities:**

- Article 5 of the draft RTS provides a valuation principle intended to be aligned with common market practice that recognises replacement costs in an early termination event, whilst giving certainty to the resolution authority on the methodology to be followed.
- Article 6 specify the rules for the resolution authorities to calculate the closeout amount, under the assumption that mi-market prices are available.

- **Centrally cleared transactions:**

- Article 7 specifies the rules to be followed in case of derivative trades that are centrally cleared.
- The CCP will assume responsibility for determining the early termination amount in accordance with its standard default procedures. CCPs are required under EMIR to have default procedures in place which will typically include compulsory efforts to transfer the cleared trades to another clearing member and, failing that, an attempt by the CCP to auction off the defaulted trades to non-defaulting clearing members. The auction price will represent a cost or gain for the CCP and should reflect such transaction’s replacement cost.

6. RTS SPECIFYING METHODOLOGIES AND PRINCIPLES ON THE VALUATION OF LIABILITIES ARISING FROM DERIVATIVES

- The RTS provides important operational clarity on Article 40 IRRD and broadly supports consistency with banking resolution regimes.
- Industry supports the objective of minimizing value destruction while ensuring fair loss allocation is supported.
- Flexibility to re-establish hedges on a net risk exposure basis is essential for undertakings whose hedging strategies rely on dynamic risk management rather than contract by contract replication. We suggest clarifying this is intended to grant counterparties sufficient flexibility to re-establish economically equivalent hedges, even where market conditions require the use of alternative instruments.

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6. RTS SPECIFYING METHODOLOGIES AND PRINCIPLES ON THE VALUATION OF LIABILITIES ARISING FROM DERIVATIVES

- Q&A

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