
Abstract

The European Insurance and Occupational Pensions Authority (EIOPA) issued on 2 December 2016 a discussion paper on “potential harmonisation of recovery and resolution frameworks for insurers”.

The aim of this document is to focus on key aspects of the discussion paper on which EIOPA is seeking feedback from insurers.

After a brief introduction, the sections “Rationale for harmonisation” and “Possible building blocks of a harmonised recovery and resolution framework” provide the reader with a short overview of these aspects.

Following the consultation process (for which the deadline was 28 February 2017), EIOPA may decide to publish an Opinion addressed to the EU institutions on this topic.

Introduction

EIOPA is currently developing its view on the harmonisation of national recovery and resolution frameworks for insurers in the EU.

As a result of its 2016 survey of 30 National Supervisory Authorities (NSAs), it reached the conclusion that minimum harmonisation of recovery and resolution frameworks is needed.

In its discussion paper, EIOPA is specifically seeking feedback on arguments in favor of and against the framework, as well as feedback on its proposal for what the “building blocks of recovery and resolution” could look like.

In the two next sections, we cover the key aspects on which EIOPA is seeking feedback from insurers.

Rationale for harmonisation

From the aforementioned survey, the following points stand out:

- *“The lack of pre-emptive recovery and resolution planning was often mentioned by NSAs”.*
- *“A case study illustrates the experiences of a NSA which indicated that it would have been better prepared for, and, hence, have been better able to deal with the stated crisis*

situation in a more efficient manner, if recovery and resolution plans were developed in a pre-emptive manner”.

- *“Most existing frameworks do not contain all the core elements set out in the ‘Key Attributes of Effective Resolution Regimes for Financial Institutions’ which the Financial Stability Board considers to be necessary for an effective resolution regime”.*
- *“The degree of cross-border activities in the insurance sector is relatively higher than in the banking sector”.*

Arguments in favor of harmonization

Based on its analysis, EIOPA identifies the following arguments in favor of a harmonised framework. It would:

- Enhance cross-border cooperation and coordination of competent authorities;
- Ensure that a minimum set of resolution powers are available to all competent authorities (to avoid regulatory arbitrage);
- Allow consistent implementation of the recovery and resolution framework across all member states, that is as comprehensive as the resolution regime prescribed by the Financial Stability Board (FSB) in its Key Attributes; and
- Help to minimise the reliance on public support in times of crisis, and at the same time encourage market discipline and limit moral hazard, by providing effective recovery and resolution measures, including a clear set of resolution objectives.

Arguments against harmonisation

On the other hand, EIOPA identifies the following arguments against harmonization:

- It has not been demonstrated that normal insolvency procedures would be unsuitable to deal with insurance failures across Member States.
- There is no strong evidence for existing powers being ineffective in Member States.
- National frameworks reflect national specificities in a better way.
- It would create administrative burdens and costs for insurers and national authorities.

Conclusion on the rationale for harmonization

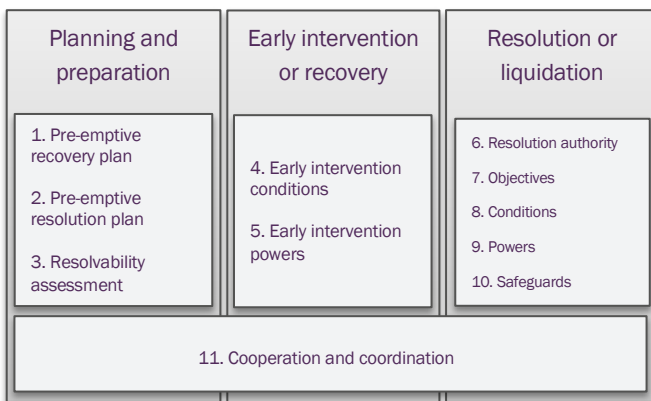
According to EIOPA, a **minimum harmonised** framework can be put in place that limits the effects of the identified drawbacks and benefits from the favorable points. This framework would be:

- Sufficiently flexible to allow competent authorities to introduce additional measures and powers (as long as these are compatible with the objectives and principles set out at EU level); and

- Proportionate to the nature, scale and complexity of the situation and/or insurer to limit administrative burdens and costs.

Possible building blocks of a harmonised recovery and resolution framework

EIOPA presents its framework composed of 11 sub-building blocks as follows:



EIOPA provides two key general proposals:

- The scope should capture all insurers in the EU (i.e., not only Global Systemically Important Insurers (G-SIIs)). Member States are given the flexibility to exclude insurers that are not in scope of Solvency II (SII).
- The principle of proportionality must apply for each sub-building block separately.

For each sub-building block, what we deem the EIOPA key proposals and considerations are covered in the next section.

Planning and preparation

1. Pre-emptive recovery plan

- Develop and maintain recovery plans in a pre-emptive manner (as opposed to waiting for a breach of the Solvency Capital Requirement (SCR)).
- Content of the pre-emptive recovery plans must be in line with the FSB Key Attributes.
- Other requirements under SII can be used as input for the recovery plan (e.g., Own Risk and Solvency Assessment (ORSA), term capital management plan and contingency and emergency plans).

2. Pre-emptive resolution plan

- Pre-emptive resolution plans are the responsibility of national authorities.

3. Resolvability assessment

- Evaluate the feasibility of resolution strategies and their credibility in light of the likely impact of the firm's failure on the financial system and the overall economy.
- Resolution authorities should have the power to require removal of the obstacles to possible resolution actions.

Early intervention or recovery

4. Early intervention conditions

- Conditions for early intervention should allow for a sufficient degree of supervisory discretion. (EIOPA argues that quantitative criteria should therefore be avoided.)
- Early intervention should be triggered before the breach of the SCR, when the financial situation starts to deteriorate and is expected to deteriorate even further if no actions are taken.

5. Early intervention powers

- A minimum set of powers should be granted to NSAs.
- NSAs should have discretion over which power(s) to apply.
- Powers considered are listed in the discussion paper (page 53).

Resolution or liquidation

6. Resolution authority

- An independent resolution authority should be designed.

7. Objectives

- The framework should include objectives such as protection of policyholders, financial stability, continuity of critical functions (for the real economy), and protection of public funds.
- EIOPA is considering ranking these objectives.

8. Conditions

- An insurer should be put into resolution if it is no longer viable or likely to be no longer viable, and has no reasonable prospect of becoming so.
- Conditions for entry into resolution should be determined/harmonised.

9. Powers

- There should be a minimum set of powers to resolve insurers. The set of powers should not be exhaustive or exclusive.

10. Safeguards

- **No Creditor Worse Off (NCWO) principle:** creditors should not incur a loss greater than they would have incurred in a normal insolvency procedure.
- **Flexible pari passu principle:** differential treatment between creditors in the same class could be possible, provided that it is in the interest of the public and complies with the NCWO principle.

Cooperation and coordination

11. Cooperation and coordination

- Arrangements that encompass objectives and processes should be established between EU Member States.
- When dealing with cross-border failures, interests of Member States should be balanced appropriately.

Conclusion

EIOPA is seeking stakeholders' opinions on all the aspects mentioned in this paper. Namely, it is seeking insurers' views on what should be the conditions to apply the principle of proportionality (i.e., simplified obligations or waiver) for each sub-building block. It is also expecting insurers' views on the approach towards early intervention conditions (i.e., what should these conditions be) or what should be the objectives of resolution.

With regards to the powers granted to NSAs, EIOPA would like insurers' views on what could be the potential implications or side effects of the power to bail in shareholders, creditors or policyholders.

Finally, EIOPA is asking the opinion of insurers on how cooperation and coordination arrangements should be organised to allow for an efficient decision-making process and what the issues to be considered are for effective and efficient arrangements.

Stakeholders were invited to provide comments using the EIOPA template by 28 February 2017.

How Can We Help?

Our consultants have already assisted a number of clients in recovery plan preparation under the Bank Recovery and Resolution Directive. In addition, our consultants from the insurance practice have extensive experience and expertise in risk management and risk reporting under Solvency II.

As a result, we are uniquely positioned to support your company in participating in the EIOPA consultation initiative and to assist you in upcoming developments.

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