

**Comments Template on EIOPA-XX-16-XXX
Discussion Paper on Potential harmonisation of recovery and resolution
frameworks for insurers**

**Deadline
28.02.2017
23:59 CET**

Name of company:	Luxembourg insurance and reinsurance association (ACA) www.aca.lu	
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Reference	Comment	
General comment	The Luxembourg insurance and reinsurance association (ACA) would like to underline the three following principles when considering potential harmonisation of resolution and recovery frameworks:	
	1. Proportionality principle : the proportionality principle with regard to recovery and resolution	

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- should be more precisely defined than it is currently in the discussion paper.
2. A principle of consistency with already existing legislations (local as well as European legislation).
 3. Clear definition of the role of the national supervisory authorities (NSAs).
1. As far as proportionality is concerned, ACA supports the potential harmonisation of recovery and resolution frameworks for insurers, only if this harmonisation is limited to insurers presenting a local systemic risk as defined by NSAs based on predefined criteria.
- With regards to non-systemic insurance companies, recovery and resolution frameworks, as they stem from Solvency II Directive, have proven to be efficient so far and no argument is speaking for changing or reinforcing these frameworks.
- In any event, minimum harmonisation should exclude from its scope:
- any insurance company which overall yearly premiums are under a certain threshold, and ;
 - reinsurance captives.
2. As far as already existing regulations are concerned, ACA wants to emphasise the fact that European legislation, Solvency II Directive, already offers a very solid protection of policyholders and market stability: as mentioned above, recovery proceedings are already set out in this Directive. More generally, Solvency II core pillars have all been developed to avoid failures and to protect policyholders and market stability. Therefore, adding another layer of regulation does not seem reasonable.
- Harmonisation should take fully into account these already existing frameworks and requirements so to avoid unnecessary administrative burden on insurers and legal complexification due to duplication of regulations.
3. The role of supervisory authorities should be central and clearly defined regarding local recovery and

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	<p>resolution planning as well as regarding transborder cooperation and coordination between supervisors. Even though ACA is convinced that thresholds, in line with those already existing in Solvency II, should be clearly identified to avoid uncertainty, room for pragmatism based on the frameworks' objectives should also be possible so supervisors can adapt their actions to the actual situations faced by companies. More generally, we believe that cooperation and coordination between the different supervisory authorities is key when considering recovery and resolution frameworks.</p> <p>Finally, ACA would like to draw the attention of EIOPA on Luxembourg local regulation which is especially protective of policyholders' rights. Indeed, article 10 of the Directive of 19 March 2001 on the reorganisation and winding-up of insurance undertakings offered two possibilities for Member States regarding the treatment of insurance claims:</p> <p>(a) insurance claims shall, with respect to assets representing the technical provisions, take absolute precedence over any other claim on the insurance undertaking;</p> <p>(b) insurance claims shall, with respect to the whole of the insurance undertaking's assets, take precedence over any other claim on the insurance undertaking (with possible exception of i.a. claims relating to employee's contract or by public bodies for taxes)</p> <p>Luxembourg was one of the few Member States to choose the first option, offering an absolute precedence to insurance claims in case of resolution proceedings. This precedence is known as insurance policyholders' "super privilege". Protection of policyholders is key for the Luxembourg insurance sector. This is why ACA wants to underline that harmonization at the European level of recovery and resolution procedures should not create any impediment to this super privilege on which many of Luxembourg insurance policyholders have been relying on.</p>	
Q1	ACA is surprised to notice that EIOPA's arguments only mention one source of systemic risk (vulnerability to a double hit scenario), whereas the ESRB report mentions four other sources of such a risk:	

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	<ol style="list-style-type: none"> 1. Non Traditional and non-insurance (NTNI) activities 2. Procyclicality in asset allocation 3. Procyclicality in the pricing and writing of insurance 4. Lack of substitutes in vital lines of insurance business <p>However, ACA believes that recovery and resolution framework should be limited to insurers presenting a local systemic risk as identified by the local supervisory authority. ESRB based framework would not be proportionate for local small scale insurers which might be part of a insurance group considered as systemic with regards to the ESRB report.</p>	
Q2		
Q3	<p>ACA generally agrees with the different steps identified by EIOPA.</p> <p>ACA also believes that building block 11 (cooperation and coordination) should prevail on others.</p>	
Q4	<p>As mentioned above, ACA agrees with the general layout offered by the building blocks identified by EIOPA.</p>	
Q5	<p>The scope of the recovery and resolution framework as it is presented in EIOPA's document would encompass any type of insurance company.</p> <p>ACA believes that this scope is far too large, even though it might be subject to proportionality principle. Indeed, normal insolvency procedures, as set out in Solvency II Directive, have proven sufficient in the past to deal with the few insurance failures that have occurred, as EIOPA recognises.</p> <p>Furthermore, what is meant by "proportionality" should be more clearly defined.</p>	
Q6	<p>Proportionality principle commands to develop a harmonised framework only for insurers whose failure might involve a local systemic risk. Already existing insolvency proceedings might indeed not be</p>	

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	<p>appropriate for these types of insurers as far as policyholder protection and market stability are concerned.</p> <p>Companies presenting a local systemic risk, should be identified by the local NSAs on the basis of existing tools and well-defined criteria.</p>	
Q7	<p>ACA considers that harmonisation of the recovery and resolution frameworks would only make sense for companies which failure might present a threat to the local financial stability - as far as the criteria to consider a company as systemic are clearly defined. Other insurers should be out of the scope.</p> <p>In any event, reinsurance captives, including those part of a group of companies, as well as companies under a certain threshold should be out of the scope.</p>	
Q8	<p>Non-systemic insurers should be out of scope of any recovery plan obligation (see detailed answer to question 6).</p>	
Q9	<p>Non-systemic insurers should be out of scope of any recovery plan obligation (see detailed answer to question 6).</p>	
Q10	<p>ACA would suggest following the below principles regarding recovery plan requirement:</p> <ul style="list-style-type: none"> - A recovery plan at group level should be sufficient and should automatically satisfy requests for setting up plans at solo level for subsidiaries, as recovery measures concern the whole group (e.g. intra-group capital injections). A myriad of recovery plans at solo level would not only be confusing but would unduly increase the regulatory burden without bringing any added value. - The plan should be set up to include only the most important subsidiaries and businesses which make up a substantial part of the group's total assets and operating profits. A broader scope would not yield any new recovery options. - The scenarios serve primarily as a basis for the identification of key recovery measures and as a 	

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	<p>recoverability test. The modeled crisis scenarios should be restricted to a few meaningful ones and an idiosyncratic one. Authorities should keep in mind that the number of large scale recovery options is limited, so using a larger number of tests would not help identify more recovery options.</p> <p>Supervisory authorities should be involved in the drafting of such preemptive plans. Preemptive recovery plans should be developed by the companies with the support of the supervisory authorities.</p>	
Q11	Pre-emptive resolution planning, just as pre-emptive recovery planning, should only be limited to systemic insurance companies. (See detailed answer to question 6)	
Q12	Pre-emptive resolution planning, just as pre-emptive recovery planning, should only be limited to systemic insurance companies. (See detailed answer to question 6)	
Q13	Pre-emptive resolution planning, just as pre-emptive recovery planning, should only be limited to systemic insurance companies. (See detailed answer to question 6)	
Q14	The content of pre-emptive recovery plan should be mainly based on information which is already made available to insurers and NSAs through the already existing framework based on Solvency II.	
Q15	ACA agrees that resolution authorities should only have to assess the resolvability of insurers for which a resolution plan is drafted, meaning systemic insurance companies.	
Q16	<p>As ACA understands, the resolvability assessment would be done during times of “normal supervision” (as shown on the diagram page 43), before any problems have even been identified.</p> <p>Therefore, ACA is of the view that, as long as the company is still viable, resolvability should only be limited to an assessment by the local authority based on the already existing tools such as the ORSA report or on-site inspections.</p> <p>ACA does not support any intervention in the business and organisation of the companies before it has</p>	

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	<p>been declared to be under resolution proceedings.</p> <p>In case of specific and alarming issues detected, the NSAs might:</p> <ul style="list-style-type: none"> - ask insurers to give more guarantees by modifying their pre-emptive recovery and resolution plans, or - make general recommendations based on their observations, these recommendations being without any coercive effects. <p>In any event, it should not be a basis for NSAs to have any sort of intervention power over the business of insurers.</p>	
Q17	<p>As already mentioned above (Question 6), ACA does not support the harmonization of the recovery and resolvability frameworks for companies other than those considered as presenting a local systemic risk stability - as far as the criteria to consider a company as systemic are clearly defined. All other companies should simply be out of scope.</p> <p>In any event, it should be made clear that reinsurance captives, including those part of a group of companies, should be out of scope of such a framework as well.</p>	
Q18	See answer to question 21.	
Q19	See answer to question 21.	
Q20	See answer to question 21.	
Q21	<p>As ACA understands, the early intervention powers would be available before the company is considered as no longer viable.</p> <p>ACA is of the view that, as long as the company is still viable, the local authority can use tools and powers</p>	

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	<p>stemming from Solvency II requirements. ACA agrees that “powers aimed at restoring compliance, capital adequacy and soundness” are therefore acceptable.</p> <p>However, ACA does not support any intervention in the business and organisation of a company before it has been declared to be under resolution proceedings.</p> <p>Therefore, measures affecting management and governance, as well as measures affecting business and organisation are going one step too far as they allow NSAs to interfere within the business of a company which is still viable. ACA is especially concerned with the possibility for NSAs to require the removal of members of the management body, directors or managers of the insurers.</p>	
Q22	ACA agrees that Member States could consider the designation of an independent administrative resolution authority for the resolution of insurers.	
Q23	ACA agrees with the objectives of resolution.	
Q24	ACA considers that, in the context of a resolution framework, consumer protection always needs to be the primary objective. The objective of financial stability should only be linked to resolution in cases where insurers might have systemic impact. This is not because financial stability is less important than consumer protection, but because the risks to financial stability posed by insurers are very limited	
Q25	<p>The FSB Key attributes indeed consider that non-viability should be the trigger for entry into resolution.</p> <p>ACA agrees with this condition, as well as with the condition that recovery measures have all failed.</p> <p>However, the “public interest test”- which is not part of the conditions set out in the FSB Key attributes- seems extremely vague. This test is likely to give far too much discretionary power to NSAs.</p> <p>ACA recommends that the threshold represented by Minimum Capital Requirement (MCR) remains the</p>	

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	main point of reference when determining whether or not a company has to undergo resolution proceedings.	
Q26		
Q27		
Q28	<p>ACA agrees with the powers listed as they tend to protect policyholders.</p> <p>The terms should however be amended so these powers will not weaken the super privilege offered to Luxembourg life insurance policyholders:</p> <p>ACA recommends however the terms be amended so these powers do not weaken the the protection of life insurance policyholders:</p> <p>“Restructure, limit or write down liabilities, including insurance and reinsurance liabilities, and allocate losses to creditors and policyholders who are not policyholders, where applicable and in a manner consistent with the statutory creditors hierarchy and jurisdiction’s legal framework”.</p>	
Q29		
Q30		
Q31		
Q32	See answer to question 33.	
Q33	<p>ACA strongly advocates for avoiding any legislation weakening policyholders’ protection in case of resolution, unless strong financial stability concerns arise.</p> <p>Bailing-in policyholders will go against the already existing protective framework in Luxembourg on which</p>	

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	insurance policyholders are relying.	
Q34		
Q35	ACA agrees there is a need to have cooperation and coordination arrangements in place for cross-border insurance groups.	
Q36		
Q37		
Q38		