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:	German Insurance Association (GDV)	
Disclosure of comments:	EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential. Please indicate if your comments should be treated as confidential, by deleting the word Public in the column to the right and by inserting the word Confidential.	Public/Confidential
	Please follow the instructions for filling in the template: ⇨ Do **not** change the numbering in column "Reference"; if you change numbering, your comment cannot be processed by our IT tool. ⇨ Leave the last column empty. ⇨ Please fill in your comment in the relevant row. If you have no comment on a paragraph or a cell, keep the row empty. ⇨ Our IT tool does not allow processing of comments which do not refer to the specific numbers below. **Please send the completed template, in Word Format, to CP-16-009@eiopa.europa.eu, by 28 February 2017.** **Our IT tool does not allow processing of any other formats.** The numbering of the questions correspond with the questions included in the Discussion Paper on Potential harmonisation of recovery and resolution frameworks for insurers.	
Reference	**Comment**	
General comment		
Q1	The considerations set out in favour and against harmonisation are more or less exhaustive. However, the GDV believes that a biased emphasis is attributed on arguments in favour of harmonisation.	

	As EIOPA points out, there is no evidence that normal insolvency procedures would be unsuitable to deal with insurance failures. Quite the contrary, there is no precedence where a regular insolvency exercise has led to the destruction of values at the cost of policyholders or destabilized financial markets. EIOPA fails to illustrate a realistic and reasonable crisis scenario where existing procedures would be insufficiently equipped to deal with. Avoidance of fragmentation is not a justification in itself for suggesting additional regulation since certain differences –as admitted by EIOPA – do necessarily reflect market specifics in some member states. Just assuming that the absence of a harmonized recovery and resolution framework would lead to impediments and inefficiency in the resolution process is not a valid rationale for legal action. Achieving consistency in reinforcing national frameworks is not a compelling argument for harmonization, either. Member states are free to introduce stricter requirements on recovery and resolution for insurers domiciled in their jurisdiction if deemed necessary and appropriate. However, that does not mean that these frameworks set the benchmark for European requirements. There shouldn’t be a race to the most incisive requirements. In contrast, the GDV agrees that enhancement of cross-border cooperation and coordination may be something that is worth to explore. This could be adequately addressed by coordination agreements between the supervisors involved and would not require changes in the legal framework.	
Q2	EIOPA admits that the concepts of Solvency II and the FSB Key Attributes are somehow interlinked, but hasn’t engaged in a mapping exercise yet. However, the question whether or not a harmonized framework on recovery and resolution for insurers should be developed can only be answered if existing European regulation (e.g. the Solvency II-Directive) contains loopholes. As long as current requirements are not deeply analysed for potential shortcomings it is impossible to make a well informed decision on this issue. Therefore, and by reference to the ongoing IAIS-process to revise its standards in terms of recovery and resolution, the GDV believes that the EIOPA call for European harmonization is premature at this stage.	

Q3	The building blocks considered by EIOPA reflect different phases where crisis management measures are envisaged. However, it will be a challenge to clearly define criteria to identify the phases. For instance, which circumstances prior to a breach of capital requirements should justify early intervention? It is also unclear how to separate resolution from winding up and liquidation since both require non-viability of the insurer.	
Q4	No.	
Q5	The question of scope is closely linked to the rationale for a harmonized framework. The GDV continues to believe that both the intervention mechanisms and regular insolvency proceedings implemented in Solvency II ensure orderly recovery and resolution. The building block approach promoted by EIOPA refers to the FSB Key Attributes which are targeted to insurers being considered as systemically significant or critical. Arguing for a sector-wide application (e.g. all insurers subject to Solvency II) requires a more profound explanation. EIOPA states that the focus on the impact of a single insurer's failure is inadequate due to the broader economic significance of insurance. Whereas the overall significance of insurance for financial stability and the real economy is undisputed in macroeconomic terms, the building blocks of a harmonized recovery and resolution framework would be applied to single insurers. The GDV fails to see how a macroeconomic challenge can be effectively addressed by microeconomic tools.	
Q6	If the scope of a harmonized framework is indifferent to nature, scale and complexity of the risk profile of an insurer, proportionality considerations are paramount to adjust the impact of the building blocks on every insurer in accordance with their relevance for financial stability. In other words, the proportionality principle should be applied to make simplified solutions possible. Insurers with a simple risk profile should be granted more leeway and relief than insurers with a complex risk profile. EIOPA needs to be more concrete about how the proportionality principle should be enforced in	

	practice. Leaving full discretion without guidance to the NSAs is likely to end up in the same fragmented regulatory landscape and exposing insurers to uneven requirements.	
Q7	Contingency planning in crisis situations is already part of Solvency II. Furthermore, insurers are required to file recovery plans with the consent of the supervisor if the solvency capital requirement is breached. Preemptive recovery planning requires considerable resources and constitutes a massive burden for insurers. Exercising the proportionality principle with regard to the individual hazard of the company or group is therefore essential. The individual risk should arise substantially from annual Own Risk and Solvency Assessment (ORSA). ORSA contain a strong forward-looking perspective, including forecasts and compliance with the capital requirements and the overall solvency needs (Article 45 (1) b) Solvency II-Directive and EIOPA-BoS-14/259 EN – Guideline 10). Therefore possible SCR breaks are detected in advanced (before occurrence). Companies could take measures early enough. ORSA shall be an integral part of the business strategy (Article 45 (4) Solvency II-Directive and EIOPA-BoS-14/259 EN – Guideline 10). Companies are obliged to reconsider the ORSA results in the strategy. Additionally, specific stress tests are part of the ORSA process (EIOPA-BoS-14/259 EN – Guideline 4). So there is an awareness regarding extreme scenarios. Furthermore EIOPA's clarification is important that proportionality may lead to a situation where some insurers are subject to simplified or no obligations at all.	
Q8	The planning of recovery and resolution is extensive work and could be very burdensome for SME's. Therefore, simplified obligations or even exemption must apply to insurers with a simple risk profile and whose failure or subsequent winding up is unlikely to have a material impact on the financial markets or other insurers.	

	In addition, the solvency ratio of the insurer should be taken into account. If capital buffers above the SCR are sufficient, recovery plans should be less exhaustive or even deemed unnecessary.	
Q9	There should be a possibility for national supervisory authorities to exclude insurers that are less complex and not prone to create material risks for financial stability and the real economy. The exercise of their discretion should be subject to guidelines to ensure uniform application.	
Q10	Since there is a myriad of scenarios for a deterioration of the financial position which are impossible to anticipate in advance, the plan should strictly focus on measures and arrangements to restore the insurer's viability and own funds under distressed conditions. It should be the general rule that a group prepares recovery and resolution plans for the group as a whole. Individual recovery and resolution plans should be required only under exceptional circumstances. Given the sensitivity of the information contained in them, confidential information in the recovery and resolution plans should be subject to strict confidentiality provisions.	
Q11	In terms of scope and purpose, there must be a clear distinction between recovery plans and resolution plans. Both planning requirements should only apply to insurers whose failure could significantly impede financial stability (consideration of results from ORSA, stress tests etc.). Given the long term nature of the insurance business and the continuum of actions that can be taken to address a failing insurer, resolution plans should exclusively address the remote situation that the insurer eventually ends up at the point of non-viability in order to prevent overlap or even contradiction with recovery plans and measures. In addition, authorities need to be aware of the risk of overreliance on resolution plans which may obstruct the clear view on the causes for a crisis and the adequate measures to cope with them.	

	The GDV believes that group recovery/resolution plans should be considered sufficient and replace the need for recovery/resolution plans on a solo basis. If individual plans are requested under exceptional circumstances, there should be a close collaboration with the group supervisor in order to avoid unnecessary duplications. Supervisors should collect information required to draft resolution plans from sources already available to the extent possible (e.g. ORSA). Mandatory updates should only occur if there are material changes in the risk profile or business strategy of the company. Besides, the results from the preemptive recovery planning should be additionally considered. In general: if the recovery planning is realistic, a resolution planning is less necessary.	
Q12	Insurers with a simple risk profile and that are less significant should be exempted or be able to apply simplified solutions.	
Q13	There should be –subject to guidelines determined to prevent arbitrary decisions– a possibility for national supervisory authorities to exclude insurers that have a low risk exposure.	
Q14	Given that resolution planning implies that the insurer is non-viable, the plan should focus on whether the insurer/group is orderly resolvable. Therefore, the content should predominantly address the organizational structure, specifics of the business model and liquidity resources.	
Q15	Yes. Apart from that, the separate purpose of resolvability assessments, particularly in relation to resolution plans is not obvious to us. We understand that such an assessment is a necessary element of developing or verifying resolution plans.	
Q16	This power should be considered with restraint. Requiring the removal of impediments means that the competent authorities interfere with the legal structure of the insurer. This would be a massive intervention that is only justified under exceptional circumstances. It is also important that there are safeguards surrounding the use of such power to provide appropriate checks and balances, and a mechanism by which an insurer can challenge and seek impartial review of the proposed use of this power. The decision to impose any such	

	requirement must take due account of the effect on the soundness and stability of ongoing business. It should also be noted that the power to remove impediments to resolvability is of little relevance in an insurance context, given the timeframe over which insurer resolutions can take place.	
Q17	We do not see the rationale for separate resolvability assessments as they constitute an integral part of resolution plans.	
Q18	As EIOPA points out, Solvency II already enables supervisors to step in when there is an imminent risk that capital requirements are breached. Further anticipating regulatory intervention is hardly justifiable in terms of proportionality and would undermine a cornerstone of the Solvency II crisis management. Besides early intervention could negatively impact the reputation and value of an insurer in a manner that could deepen the crisis. EIOPA should clearly state what are the situations that justify early interventions and why the ladder of intervention provided by Solvency II would not suffice to deal with them. The provided examples (e.g. fall in solvency ratio, downgrade of credit rating) are not appropriate. As already shown, the solvency ratio can be extremely volatile due to market conditions.	
Q19	The triggers for early intervention must be clearly defined. However, it is hardly possible to determine the trigger for early intervention due to a “notable” deterioration in certain (external) financial or non-financial indicators which give considerable leeway to different interpretations. The triggers should be aligned with the Solvency II supervisory ladder of intervention.	
Q20	Given that the insurer is still in line with capital requirements, the exercise of powers must be limited by proportionality considerations. Especially there is no need for an intervention power to call partner or parent companies of a group for cash injections. Such an intervention power would not be in line with the principles of corporate and group law in Germany.	
Q21	Early intervention powers should focus on measures like shorter reporting periods and a higher frequency of meetings between the management board and the authority (“additional man cover”). The powers listed in the paper are going far beyond that.	

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Q22	We support that Member States should be given flexibility when appointing the resolution authority. It could make sense to allocate additional powers and responsibilities to the NSAs in order to avoid conflicts of interest between different regulatory bodies.	
Q23	Solvency II identifies policyholder protection as the main objective of supervision and calls on supervisory authorities to duly consider the potential impact of their decisions on the stability of the financial systems concerned in the European Union. It may be envisaged to clarify that the public interest of financial stability is an equivalent objective of supervision and may possibly outweigh policyholder protection in a resolution situation under exceptional circumstances. The "continuity of functions whose disruption could harm the financial stability/or real economy" requires further clarification.	
Q24	See Q 23).	
Q25	Defining the trigger for entry into resolution is a paramount issue for getting resolution conditions integrated in Solvency II. The concept of non-viability seems to be reasonable, but is likely to compete with the trigger for entering into insolvency proceedings. The public interest test raises the general question how resolution and insolvency proceedings should be separated.	
Q26	Linking non-viability to the (impending) breach of the MCR raise the question of consistency with Article 139 of the Solvency II Directive. The condition should refer to an irrecoverable breach of the MCR / no realistic recovery scheme. The likelihood of undue payments to creditors or policyholders could relate to liquidity problems, which do not automatically suggest a situation of non-viability. Besides in Germany imminent insolvency could already be a case for insolvency proceedings.	
Q27	It may be considerable to locate non-viability to the situation when the insurer fails to present a credible finance scheme according to Article 139 of the Solvency II Directive.	
Q28	The majority of powers are already available to supervisors. It is more important that the use of powers is proportionate, e.g. intervenes only to the extent necessary to meet the resolution objectives.	

Q29	Run-offs and portfolio transfers are sufficient to deal with the large majority of insurance failures. Therefore these should be the most preferred tools and authorities should clearly explain when using more intrusive tools why run-off or portfolio transfers are not sufficient to meet the objectives of resolution.	
Q30	It needs to be recognized that insurers do not rely on this form of recapitalization to a considerable extent. The insurance business model is funded by premiums collected in advance and not exposed to debts and leverage. Therefore, the amount of increased loss absorbency generated by bail-in would be negligible and disproportionate to the interference with creditor's rights.	
Q31	See Q 30).	
Q32	Everything should be done by policymakers (through applicable law) and supervisors to avoid being in a situation where policyholders share some of the losses. The bail-in should be considered only as a measure of last resort.	
Q33	See Q 30).	
Q34	We fully support the no creditor worse-off and pari passu safeguards and believe that any departures from these general principles should require a substantive explanation from the supervisor.	
Q35	Cooperation and coordination between relevant supervisors and resolution authorities within the EEA and third countries (when applicable) should be mandatory. Unilateral decisions should be explicitly discouraged, as they would not ensure the best conditions for orderly resolutions.	
Q36	Cooperation arrangements between supervisory and resolution authorities, within the insurance sector and also between the insurance sector and other financial sectors, should be clearly defined. The cooperation arrangements should be led and organised by the group supervisor.	
Q37	In considering the exchange of information between supervisors on a cross border basis, it is important that there are clear confidentiality agreements in place.	
Q38	If there are material entities within the group subject to third country supervision, these should be included within any cooperation and coordination arrangements.	