Comments Template on EIOPA-CP-16-009 Discussion Paper on Potential harmonisation of recovery and resolution frameworks for insurers		**Deadline 28.02.2017 23:59 CET**
Name of company:	Swiss Re	
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
	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	Swiss Re appreciates EIOPA's initative for harmonisation of recovery and resolution frameworks and the opportunity to comment on the proposals. The implementation of a framework for recovery and resolution (based on the FSB Key Attributes) follows the experience in the financial crisis during which government and regulatory officials were faced with the situation of the sudden failure of systemically connected financial institutions.	

	Therefore we support an approach proportionate to the level of risk posed by (re)insurers to policyholders and, if applicable, the financial system. The former should also take into account the sophistication of the (re)insurers clients. The latter should only be the case when a (re)insurer is designated as Globally-Systemically Important. Reinsurers should be resolved according to their resolution strategy, which must seek preservation of diversification. A point-of-entry at holding company approach is a necessary prerequisite for diversification preservation, and there must therefore be adequate mechanisms in place to ensure cooperation of resolution authorities up to and during resolution. Unilateral decisions almost never provide the best conditions for orderly resolutions, and should be avoided. An effective cooperation between authorities will also lead to more integrated and coordinated supervision of (re)insurance groups, which is a prerequisite for preserving international diversification and ensuring contract certainty for reinsurance clients. Regarding early intervention and recovery (building block 2) we strongly believe that responsibility for recovery measures should rest with the re/insurer rather than the supervisor. A further intervention level would not be in the best interest of policyholders. the supervisor should instead ensure that an insurer has in place appropriate recovery plans, and should monitor the execution of the recovery plan in the event of a breach of recovery indicators.	
Q1	In addition to the listed arguments in favour of a harmonized recovery and resolution framework, we would add that harmonization is a prerequisite for preserving international diversification and thus ensuring contract certainty, in particular for business which is of a cross-border nature, such as reinsurance. When recovery and resolution requirements are implemented in parallel in various jurisdictions, lack of harmonization results in fragmented regimes, potentially leading to lack of cooperation among local resolution authorities leading up to and during resolution. This would undermine the credibility of a diversification-preserving resolution strategy. See also the Financial Stability Board guideance "Developing Effective Resolution Strategies and Plans for Systemically Important Insurers" from 6 June, 2016.	
Q2	See the response to Question 1 above.	
Q3	Regarding building block 2, Early Intervention, Swiss Re believes that responsibility for recovery measures should rest with the re/insurer rather than the supervisor. This would be	

	the logical consequence of the fact that the re/insurer owns the recovery plan. Introduction of early intervention would otherwise by definition create a new intervention level and, hence, an extra level of solvency requirement. We believe that the supervisor should instead ensure that an insurer has in place appropriate recovery plans, and should monitor the execution of the recovery plan in the event of a breach of recovery indicators.	
Q4	In our view, no further building blocks are needed.	
Q5	Paragraph 116 of the paper implies that an EU framework could lead to more burdensome requirements for branches. Any recovery and resolution requirements for branches should be within the supervisory remit of the home supervisory authority (i.e. the legal entity to which the branch belongs) and should not create new supervisory responsibilities for host supervisory authorities of the branch. Otherwise this would create significant extra burden of coordination beween home and host supervisors which in most cases is not proportionate to the associated risks. This is consistent with the specific home/ host rules in Solvency II for branches within the EEA. For recovery and resolution purposes, where the supervisory system of a third country has been deemed equivalent to Solvency II, the principle of reliance on the home supervisory authority should extend to branches of third country re/insurers.	
Q6	We consider this approach appropriate.	
Q7	We agree that insurers' policyholder protection and, in cases where the insurer is a Globally Systemically Important Insurer, the stability of the financial system may be enhanced through insurers' adoption of pre-emtive recovery plans, under the condition that these plans do not create undue burden for insurers and national authorities.	
Q8	Recovery and resolution planning for non-systemic firms must focus on policyholder protection only, while for systemic firms, it must also focus on financial stability. Obligations should be proportionate to the level of risk posed by (re)insurers to policyholders and, if applicable, the financial system. The former should also take into account the sophistication of the (re)insurers clients. The latter should only be the case when a (re)insurer is designated as Globally-Systemically Important. For (re)insurers with simpler structures, recovery and resolution planning may be incorporated into the ORSA.	
Q9	See our response to Question 8 above.	
Q10	The recovery plans may include the following information: • a list of recovery indicators for entering into recovery	

	• an assessment of potential scenarios that may lead to recovery • a list of recovery options and an assessment of their effectiveness • a description of responsibilities for recovery planning, its integration into corporate risk and governance and a communication plan The plan should focus on the most important subsidiaries and businesses. The plan may include recovery options, but these should be commensurate to the crisis scenarios they are seeking to address. The plan may further include the use of recovery scenarios, but these scenarios serve primarily as a basis for the identification of key recovery measures and as a recoverability test. Scenarios should therefore be restricted to the most meaningful ones with a focus on relevance over quantity. We strongly support the use of a group recovery plan as a means of satisfying requests for setting up national plans for subsidiaries. Recovery measures should be executed at the group level. The use of local recovery plans would unduly increase the regulatory burden while also destroying value and introducing potential conflicts between envisaged recovery measures on a group level vs. local level.	
Q11	We agree that (re)insurers' policyholder protection and, in some cases, the stability of the financial system may be enhanced through the adoption of pre-emtive resolution plans. We believe that responsibility for development of resolution plans should rest with the resolution authority, given the objectives of resolution plans as outlined in paragraph 214. However, we disagree with the statement in paragraph 175 that the development of group resolution plans should not prohibit the possibility to develop resolution plans for individual insurance entities. EIOPA should minimize impedimets to the overall group supervisor being responsible for group resolution. We also agree with the statement in paragraph 180 that the scope for resolution planning should be narrower than the scope for recovery planning, since resolution plans are much less likely to be needed and, in our view, for all but the most complex (re)insurers, the marginal benefit brought by execution of a resolution plan versus a traditional insolvency is minimal.	
Q12	The expectations of supervisors with respect to the existence of and thoroughness of resolution plans should be directly proportional to their assessment of the total level of risk borne by the institution's policyholders.	

	Comments Template on EIOPA-CP-16-009 Discussion Paper on Potential harmonisation of recovery and resolution frameworks for insurers	Deadline 28.02.2017 23:59 CET
Q13	See our response to Question 12 above.	
Q14	Pre-emtive resolution plans should at least provide the resolution strategy. We refer to the FSB in its guidance on resolution planning for systemically important insurers (6 June 2016). Further content should be added proportional to the supervisor's assessment of the level of risk posed by (re)insurers to policyholders and, if applicable, the financial system. See also our response to Question 16 below.	
Q15	Swiss Re agrees that resolution authorities should only have to assess the resolvability of insurers for which a resolution plan is drafted.	
Q16	In general this measure is extreme and unnecessary in the insurance context as duly noted by the FSB in its guidance on resolution planning for systemically important insurers (6 June 2016), §2.1.2: "Authorities may therefore need to require firms to make appropriate and proportionate changes to legal and business structures where necessary to address such obstacles and improve their resolvability (KA 10.5). The decision to impose any such requirement should take due account of the effect on the soundness and stability of ongoing business." Therefore, if at all applicable to insurance, the power should be restricted to the G-SII context.	
Q17	See our response to Question 14 above.	
Q18	Swiss Re believes that responsibility for recovery measures should rest with the (re)insurer rather than the supervisor. Introduction of early intervention would otherwise by definition create a new intervention level and, hence, an extra level of solvency requirement. We believe that the supervisor should instead ensure that a (re)insurer has in place appropriate recovery plans, and should monitor the execution of the recovery plan in the event of a breach of recovery indicators.	
Q19	See our response to Question 18 above.	
Q20	The proposed intervention powers are indeed viable recovery options. However, the decision to exercise these options should be made by the management body of the (re)insurer, as long as the (re)insurer is not in breach of the Solvency II intervention levels. See our response to Question 18 above.	
Q21	The (re)insurer should be able to develop further recovery options at its discretion. However, we are concerned about the broad application of early intervention powers by the supervisor. See our response to Question 18 above.	

Q22	Yes, the designation should be explicit to avoid confusion or potential conflict among various authorities.	
Q23	Swiss Re generally agrees with the proposed objectives of resolution. Protection of policyholders should be the primary objective for (re)insurance companies, since the insurance industry only poses limited risks to financial stability. This should also take into account the sophistication of the (re)insurers clients.	
Q24	See our response to Question 23 above.	
Q25	Swiss Re agrees with the conditions for entry into resolution as they are established by the FSB Key Attributes and now proposed by EIOPA.	
Q26	We emphasize the importance of determining that all possible recovery measures have been exhausted - either tried and failed, or ruled out as implausible - as a criteria for determing non-viability. Given the longer timeframe afforded to insurers in recovery and resolution (as opposed to banks), it is to the advantage of policyholders to exhaust all potential recovery options before concluding that an insurer has crossed the point of non-viability and commencing resolution.	
Q27	In the Solvency II context, we agree that the MCR should be used as the primary quantitative criteria. In some cases, we agree that the point of viability may be crossed when there is a strong likelihood that policyholders or creditors will not receive payments as they fall due. However, in either case, there should also be near certainty that that all possible recovery measures have been exhausted - either tried and failed, or ruled out as implausible. See our response to Question 26 above.	
Q28	We do not support the notion of a "broad range of powers". The resolution powers need to be well-defined and targeted, and flexibility needs to be framed. With regards to the resolution powers listed in Table 4, we have the following feedback: *Restructure, limit or write down liabilities, including insurance and reinsurance liabilities, and allocate losses to creditors and policyholders, where applicable and in a manner consistent with statutory creditor hierarchy and jurisdiction's legal framework:* We must distinguish between reducing the value of insurance contracts, and restructuring of insurance contracts. In reinsurance, the relevant valuation for	

	insolvency proceedings and the going-concern value are practically identical. As a result, restructuring (uneven intervention in individual reinsurance contract categories), cannot be carried out without violating the no-creditor-worse-off principle. Therefore, we oppose restructuring reinsurance contracts as a resolution power – any intervention must be limited to a uniform reduction of reinsurance claims. In addition, buyers of insurance purchase protection against financial losses that are incurred by the occurrence of the insured risk. Insured pay a premium to mitigate risk – investors take risk to earn a premium. Therefore insured are entitled to higher protection in resolution (and liquidation) than investors. *Stay the rights of reinsurers of a cedent insurer to terminate or not reinstate coverage on the sole ground of the cedent's entry in recovery or resolution:* We consider this resolution power appropriate, though we emphasize the importance of considering adequate safeguards. Reinsurers should not be made liable to pay for losses beyond those covered by contracts existing at the time of the loss. Any reinstatement of coverage must be carried out at market prices. In the absence of comparable market prices, the reinsurer should be able to use its existing pricing mechanisms.	
Q29		
Q30	We propose that the term "bail-in" should be used only in the context of a restructuring that includes policyholder liabilities. Restructuring of shareholder's funds does not make sense, since available capital should be used to absorb losses. If available capital is depleted, then restructuring of shareholder's funds is no longer an option. Restructuring of debts to creditors would make a very small contribution to the resolution of (re)insurers.	
Q31	See our response to Question 30 above.	
Q32	We must distinguish between reducing the value of insurance contracts, and restructuring of insurance contracts. In reinsurance, the relevant valuation for insolvency proceedings and the going-concern value are practically identical. As a result, restructuring (uneven intervention in individual reinsurance contract categories), cannot be carried out without violating the no-creditor-worse-off principle. Therefore, we oppose restructuring reinsurance contracts as a resolution power – any intervention must be limited to a uniform reduction of reinsurance claims. In addition, buyers of insurance purchase protection against financial losses that are	

	incurred by the occurrence of the insured risk. Insured pay a premium to mitigate risk – investors take risk to earn a premium. Therefore insured are entitled to higher protection in resolution (and liquidation) than investors.	
Q33	Restructuring of policyholder liabilities is a drastic measure that should be employed as a measure of last resort – Swiss Re strongly advocates the application of the *No Creditor Worse Off than in Liquidation* (NCWO) principle.	
Q34		
Q35	Swiss Re considers it to be of utmost importance that cooperation and coordination arrangements be put in place. Unilateral decisions almost never provide the best conditions for orderly resolutions, and should therefore be avoided. An effective cooperation between authorities will also lead to more integrated and coordinated supervision of (re)insurance groups, which is a prerequisite for preservinge international diversification and thus ensuring contract certainty for reinsurance clients.	
Q36	Cooperation arrangements between supervisory and resolution authorities, within the (re)insurance sector and also between the (re)insurance sector and other financial sectors, should be clearly defined. EIOPA should allow for sufficient flexibility in organizing cooperation agreements.	
Q37	Please note that, as stated in the FSB's guidance on resolution planning for systemically important insurers (6 June 2016): "where, as is the case for reinsurance, the business model is designed to benefit from diversification, it is likely that the resolution strategies for [reinsurers] will seek, as far as possible, to preserve or avoid unnecessary destruction of that diversification." Reinsurers should be resolved according to their resolution strategy, which must seek preservation of diversification. A point-of-entry at holding company approach is a necessary prerequisite for diversification preservation, and there must therefore be adequate mechanisms in place to ensure cooperation of resolution authorities up to and during resolution. Swiss Re advocates the use of Cooperation Agreements for this purpose. Lastly, any exchange of information by the insurer or reinsurer to the resolution authority, to the extent it is located outside, needs to be permitted. To the extent local laws prevent direct information sharing, this would need to be addressed.	
Q38	The effect of Article 260 ("equivalence") of the Solvency II Directive is reliance on the group supervision exercised by the third country supervisor. This should extend to pre-emptive	

	recovery and resolution planning for groups. Third country equivalence would be undermined if pre-emptive recovery and resolutions plans are required for groups at EU level (see paragraphs 168 and 175), for example through the creation of an EU sub-group. The stylised example (Box 3) on page 34 indicates that the inability for the NSA to intervene at the level of the holding company complicated the resolution process. EIOPA should minimize impedimets to the overall group supervisor being responsible for group resolution, in particular with regards to non-EU supervisors who have these powers in respect to holding companies.	