

Response to IAIS consultation on draft revisions to supervisory material related to the Holistic Framework

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ICP 12 (Exit from the Market and Resolution)

1. General comments on proposed changes to ICP 12 and related ComFrame standard

Insurance Europe supports the requirement for RRP plans where there is a clearly identified need determined by risk-based criteria and a public interest test. However, the IAIS's proposed new wording in ICP 12 and ICP 16 goes beyond this and unnecessarily increases expectations without sufficient rationale or justification. The proposed minimum market requirements for RRP, in particular, are contrary to a risk-based approach and should be deleted.

In the European Union, the co-legislators have provisionally agreed to implement minimum recovery and resolution requirements for insurers (IRRD). The currently agreed text sets the framework for recovery and resolution requirements. It fully reflects, and goes well beyond, the existing requirements in ICP 12 and ICP 16. As a minimum standard, Insurance Europe does not support any new and/or additional requirements under ICP 12 and ICP 16 which go beyond the requirements set out in the IRRD. Any additional requirements and specifications should remain at jurisdictional level to ensure the specifics of the local market are better reflected.

The obligation of resolution planning should rest with the resolution authority. Resolution authorities should not pass it on to (re)insurers, whether it be by explicitly requiring a (re)insurer to prepare for resolution in addition to any recovery planning, or implicitly by allowing a resolution authority to perform extensive data collection that would overburden the company. In addition, the preparation of the resolution plan should not be a one-way line of communication whereby the resolution authority requires information from the company. In return, the resolution authority should communicate the resolution strategy to the company.

Where resolution/recovery planning is included in the ICP and in ComFrame, then the articulation between solo and group becomes vital. To ensure the best possible outcome for policyholders and other creditors in times of crises, cooperation among authorities, in line with ICP 25 and co-operation agreements, should be promoted. Group plans meet that objective, whereas encouraging the multiplication of local plans perpetuates fragmentation.

A general principle should be followed whereby no recovery and resolution planning should be required when one exists at group level which considers major legal entities. If essential specificities of a major legal entity for one particular jurisdiction are not sufficiently reflected in the group plan, the local supervisors should be able to ask the group-wide supervisors to require a more granular coverage of those specificities. However, the local supervisors should not be entitled to require a specific local plan. The group-wide supervisor should be the sole gateway for discussing recovery and resolution.

2 *Question related to ICP 12.3 and ICP 16.15: The ICPs establish the minimum requirements for effective insurance supervision and are expected to be implemented and applied in a proportionate manner. Do you favour the proposed proportionate application of certain recovery and resolution planning requirements to all insurers? Please explain and provide details of how proportionality should apply and/or where such planning should be deemed necessary. The IAIS may consider this feedback in the final versions of the ICP guidance or in the supporting material (application papers).*

No, Insurance Europe opposes the proposed application of RRP requirements for all insurers. The requirement for all insurance companies to draw up a recovery and resolution plan is neither necessary from a risk perspective, nor is it proportionate to implement, as the effort involved is high even for small insurance companies.

As the ICP is a minimum standard, it should set out the minimum requirements. The proposal to include all insurers in the scope of RRP requirements is not consistent with minimum requirements.

In our view, the scope of RRP requirements should be fully risk-based and should be primarily focused on group-level requirements. In particular, there should be no subsidiary-level, pre-emptive recovery and resolution planning requirements, if a group plan exists.

In addition, for most insurers normal insolvency proceedings will be the preferred route and it would be disproportionate to establish a resolution plan for every insurer, if only because resolution authorities simply do not have the resources for this. On top of the application of risk-based criteria, only standalone solos or groups which are likely to pass a public interest test should be subject to resolution planning (i.e. resolution plans should only be required in the rare circumstances where normal insolvency proceedings, including the use of PPS, would not meet the objectives of resolution to the same extent).

3 *Question related to CF 12.4.a: Recovery plans are required for all IAIGs. Resolution plans are required to be in place, at a minimum, for any insurer assessed to be systemically important or critical if it fails (regardless of their status as an IAIG). Due to their nature, scale and complexity, arguably there could be a presumption that all IAIGs should be subject to the requirement to have a resolution plan in place (unless deemed unnecessary by the supervisor or resolution authority), even if not assessed as systemically important. Are you in favour or against the possible introduction of a requirement, or presumption, that resolution plans are also required to be in place for all IAIGs? Please explain your opinions.*

No, the determination of resolution planning for IAIGs should be based on risk-based criteria. There does not appear to be any value in making the presumption that all IAIGs would require a resolution plan in the ICP, particularly given it is a minimum standard.

In addition, as per the response to Q2, resolution planning should only be for any insurer assessed to be systemically important or critical if it fails, regardless of their status as an IAIG, which are likely to pass the public interest test.

4 *Comments on proposed changes to ICP 12.3*

Insurance Europe supports the new wording which makes the resolution authority responsible for the preparation of the resolution planning, rather than each individual insurer.

5 *Comments on proposed changes to ICP guidance 12.3.1*

In light of the general comment to minimise the burden on firms, the last sentence should include a reference to the proportionality principle and specify that in return the company is informed of the resolution strategy, "The supervisor and/or resolution authority should involve the insurer, as appropriate and in a proportionate manner, and communicate to the insurer the main elements of the resolution strategy contained in the resolution plan".

In addition, the authorities should primarily use information that is already available to them as part of the regular reporting system of the insurance companies.

6 *Comments on proposed changes to ICP guidance 12.3.2*

As this section relates to the preparation for resolution, the language around the resolution options being considered should be clearer, *"The options used **being considered in resolution planning** may vary based on the insurer's activities,....."*

7 *Comments on proposed changes to ICP guidance 12.3.3*

Insurance Europe proposes to delete 12.3.3 or to revert to the previous wording: "prepare contingency plans" instead of "takes steps to mitigate the risk".

Resolution authorities should be very cautious about requiring companies to take action to mitigate potential risks in a hypothetical scenario which could cause actual harm to the company's operations, business, customers and investors relationships, etc.

In addition, the wording on specific risks to each insurer is vague and is duplicative of other requirements in the ICP (e.g. data requirements are included in 12.4.6).

14 *Comments on proposed changes to ICP 12.4*

In light of the general comment on public interest, it is suggested to modify the first indent as follows, *"has a process to regularly assess for which insurers having a resolution plan is necessary, based on **an assessment of the public interest of resolution in case of failure**, as well as established criteria that consider the nature, scale and complexity of the insurer;"*

In light of the general comment on the responsibility of the resolution authority to draw the plan, on public interest and the articulation between solo and group, it is suggested to modify the second indent as follows, *"~~requires draws, at a minimum,~~ resolution plans for any insurer(s) assessed to be systemically important or critical and **for which resolution is likely to be in the public interest** if it fails, **unless a group plan already exists;**"*

In light of the general comment on the responsibility of the resolution authority to draw the plan, it suggested to modify the third indent as follows, *"~~ensures that such resolution plans are in place, which are regularly reviewed and where necessary updated, and resolvability assessments are regularly undertaken~~ **undertake resolvability assessments and performs review and, where necessary, update the resolution plans every three years or more regularly after a major event affecting the insurers concerned.**"*

In light of the general comment on the two-way communication line, suggestion to add the following, *"**communicates to the insurers a reasoned justification of the necessity to draw a resolution plan.**"*

15 *Comments on proposed changes to ICP guidance 12.4.1*

Insurance Europe oppose wording that introduces a requirement for a minimum market share and propose to delete it. No justification for this proposal is provided. Furthermore, it is in contradiction to the approach outlined in 12.4 (i.e. to assess the requirement for resolution plans using risk-based criteria).

Requiring resolution plans from (large) proportions of each market will create unnecessary burdens for resolution authorities and insurers without commensurate benefits.

In addition:

- The assessment leading to resolution planning should be thorough, objective, and balance the benefits and costs for all stakeholders. Therefore, the first sentence should be revised as follows, "*When deciding for which insurers a resolution plan is necessary, the criteria should ~~consider~~ **balance** at least the following factors ~~such as~~*"
- Some criteria are too open-ended and could lead to inconsistent assessments. Please specify in particular, "*the insurer's interconnectedness **with the financial sector; and/or***" and "*the insurer's impact of failure **on the financial system.***"
- In light of point 14, Insurance Europe proposes to add the following paragraph,: "***The relevant authorities should only consider drawing a resolution plan when it is likely that resolution action would be in the public interest in the event of failure of the insurer concerned. Resolution action are likely to be in the public interest where winding up under normal insolvency proceedings would not meet the resolution objectives to the same extent.***"
- In light of point 14, Insurance Europe proposes to also add the following paragraph , "***The supervisor and/or resolution authority communicate the assessment of each factor used in the decision to draw a resolution plan as well as how they have been weighed to arrive to such decision.***"

18 *Comments on proposed changes to ICP guidance 12.4.4*

The text should explicitly state that an insurer is considered critical if its failure has a huge impact on both. By design, any potential impact on the real economy would be intermediated by an impact on the financial system, "if their failure is likely to have a significant impact on the financial system and ~~for~~ the real economy"

20 *Comments on proposed changes to ICP guidance 12.4.6*

This requirement is duplicative as it is already required in the new wording in 12.4 (third bullet point) and should therefore be deleted.

Alternatively, in line with the need for proportionality and minimising the impact on all the insurers' stakeholders, it the following amendment is proposed, "*For the purpose of the resolution plan, the supervisor and/or resolution authority should, **where necessary and taking into account the proportionality principle:***

- require the insurer to submit necessary information for the development of the resolution plan **whilst avoiding to request any information already reported elsewhere ("report only once" principle)**; and
- ~~where necessary~~ **upon a reasoned justification by the relevant authority**, require the insurer to ~~take consider~~ prospective actions **contingency plans** to improve its resolvability."

21 *Comments on proposed changes to ICP guidance 12.4.9*

The wording should be changed to say that the insurer "should" and not "may" be given the opportunity to address barriers to effective resolution.

Insurance Europe does not support the new wording suggesting the supervisor can require the removal of barriers to resolution. The powers of resolution authorities are discussed in section 12.8, where they are better described.

23 *Comments on proposed changes to CF 12.4.a.1*

Insurance Europe considers that the following text CF12.4.a.3 will cause inconsistency between plans as noted by the IAIS itself and render the situation even more complex, “*Other involved supervisors and/or resolution authorities may deem it appropriate to have their own resolution plan for the IAIG’s insurance legal entity in their jurisdictions when, for instance*”.

The proposed changes to this ComFrame standard casts the net too wide. While resolution can be done at legal entity level if decided by the relevant jurisdictional authority, ComFrame should continue to be true to itself and maintain the cap of group supervision and preparation to resolution. In addition, it is business as usual that the parent entity provides the affiliated risk-carriers with parental guarantees that will be invoked by the failing entity’s (re)insured clients if their (re)insurance related claims are not paid, therefore reducing the likelihood of a public interest of resolution at affiliate level. Furthermore, new language in Cf.12.4.b requires the group plan to consider all material entities.

In light of this, Insurance Europe proposes to amend the text as follows, “*Other involved supervisors and/or resolution authorities may deem it appropriate to have their own resolution plan for the IAIG’s insurance legal entity in their jurisdictions when **for instance all of the following conditions are met:***

- **no plan exists at the level of the group-wide supervisor and/or resolution authority;** the insurance legal entity’s presence in the jurisdiction is large in scope and/or scale;
- the insurance legal entity **met substantially each of the criteria set out in Standard 12.4 and in particular the public interest test despite any potential group support guarantees.**
provides critical and/or nonsubstitutable insurance coverages; and/or
- ~~its resolution may impact that jurisdiction’s policyholders, financial stability and/or real economy.~~

Host jurisdiction resolution plans should be established in cooperation with the group-wide supervisor and/or resolution authority to ensure that the plan is as consistent as possible with the group-wide resolution plan for the IAIG”.

26 *Comments on proposed changes to ICP guidance 12.8.1*

It is not clear what the added value of the new wording in 12.8.1 is. This is background information which is covered in the previous and subsequent paragraphs (i.e. 12.8 and 12.8.2) and should be deleted to avoid confusion and for brevity.

ICP 16 (Enterprise Risk Management for Solvency Purposes)

47 *General comments on proposed changes to ICPs 16.6 and 16.9 and related ComFrame standards*

As noted in 16.16.1, the recovery plan is pre-emptive in nature, in other words it is not a prediction of what would happen during an actual distressed situation. Recovery plans provide an overview of potential recovery options and highlight their potential impact in a given recovery scenario. This list should not be seen as exhaustive and considering these measures as possible in a recovery situation neither commits insurers to implementing them should such a situation occur, nor prevent insurers from implementing them in another context.

49 *Comments on proposed changes to ICP guidance 16.6.11*

Considering the general comment, Insurance Europe requests to change the text as follows, “*A recovery plan identifies in advance options to restore the financial position and viability if the insurer comes under severe*

*stress The development of a recovery plan is pre-emptive in nature. It should take into account, for example, be developed during business as usual, in advance of any severe stress. **Recovery plans provide an overview of potential recovery options and highlights their potential impact in a given recovery scenario. This list should not be seen as exhaustive and considering these measures as possible in a recovery situation neither commits insurer to implementing them should such a situation occur, nor prevent insurers from implementing them in another context.***

58 *General comments on proposed changes to ICPs 16.15 and 16.16 and related ComFrame standards*

Insurance Europe does not support the changes to section 16.16 which significantly increase expectations on supervisors to require pre-emptive recovery planning from insurers. The existing wording is sufficient to set the scope of insurers which need to develop and it is not clear why the proposed changes are necessary.

If the wording is retained by the IAIS, it is vital that any requirement for subsidiary level plans can be satisfied via a group level plan (i.e. there should be no subsidiary-level, pre-emptive recovery and resolution planning requirements, if a group plan exists).

63 *Comments on proposed changes to ICP guidance 16.16.2*

Insurance Europe opposes wording that introduces a requirement for a minimum market share and propose to delete it.

No justification for this proposal is provided. Furthermore, it is in contradiction to the approach outlined in 16.16 (i.e. to assess the requirement for pre-emptive recovery plans using risk-based criteria).

Requiring pre-emptive recovery plans from (large) proportions of each market will create unnecessary burdens for insurers (and supervisors) without any commensurate benefits.

68 *Comments on proposed changes to ICP guidance 16.16.8*

Each crisis situation is different, and none can be accurately predicted. Therefore, actual recovery measures should depend on the specificities of the distressed situations irrespective of whether they are included in the pre-emptive recovery plan. Insurance Europe therefore request the following change, "**Notwithstanding the existence of a recovery plan, the supervisor should require the insurer to take action for recovery if the insurer comes under severe stress specific to the circumstances.**"

Insurance Europe is the European insurance and reinsurance federation. Through its 37 member bodies — the national insurance associations — it represents all types and sizes of insurance and reinsurance undertakings. Insurance Europe, which is based in Brussels, represents undertakings that account for around 95% of total European premium income. Insurance makes a major contribution to Europe's economic growth and development. European insurers pay out over €1 000bn annually — or €2.8bn a day — in claims, directly employ more than 920 000 people and invest over €10.6trn in the economy.