

Final response - RTS on valuation 3

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Contact person:	Prudential team	E-mail:	
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1. General comments

Q1. *Do you have general comments on the consultation paper?*

- **Overall assessment:** Insurance Europe supports a robust implementation of the no creditor worse off (NCWO) safeguard in Article 56 IRRD. Valuation 3 must, however, reproduce the treatment that shareholders, policyholders, beneficiaries, claimants and other creditors would have received under the applicable normal insolvency proceedings. The RTS may specify a valuation methodology, but it should not create uniform substantive insolvency consequences or a new compensation regime that departs from national law. European rules should apply only as gap-filling rules where national insolvency law or established practice does not prescribe the relevant treatment. This limitation should be placed in paragraph 1 and should apply to every subsequent paragraph.
- **Main industry concerns.** The principal concerns are:
 - the general assumption of policy discontinuation in Recital 6 and Article 4(2), which conflicts with the qualification in Article 6(1) and may override national law;
 - an overly broad concept of replacement costs, including gross new premiums and undefined 'adverse effects of no coverage';
 - full inventories and potentially individual calculations for very large policy populations without express cohort, sampling or materiality provisions;
 - the use of group-level concepts despite entity-specific insolvency estates and creditor rankings;
 - broad discount-rate and distressed-price methodologies that may double count risk;
 - clarity is needed on how valuations should allow for existing national insurance guarantee schemes; and
 - a valuation-report regime that does not adequately operationalise the required separation of Valuation 2 and Valuation 3 and whose impact assessment assumes possible public disclosure.
- **Financing impact.** Overstatement of the hypothetical insolvency outcome or replacement costs directly increases potential Article 57 compensation and may ultimately affect industry-funded financing

arrangements under Article 81 IRRD. The methodology must therefore protect policyholders while preventing overcompensation, speculative consequential-loss claims and double counting.

2. Background and Analysis

Q2. *Do you have comments on the Background and Analysis Section?*

- **Limits of the BRRD and CCP analogy.** Valuation 3 for insurers cannot be derived directly from banking or CCP precedents. The counterfactual is determined by national insurance insolvency law, the treatment of policyholder claims, cover assets, insurance guarantee schemes, long-duration contracts, reinsurance and the possibility that coverage is maintained or transferred. These features require a genuinely insurance-specific methodology.
- **Inconsistency between analysis and draft provisions.** The Background and Analysis states that the high-level EU rules apply only to the extent consistent with applicable insolvency law or practice and that national insolvency regimes retain precedence. Several operative provisions are nevertheless framed as unconditional requirements, most notably the policy-discontinuation assumption. The national-law limitation should be stated in a binding horizontal provision and repeated wherever a specific methodology may conflict with the lex concursus.
- **Impact assessment.** The impact assessment is high-level and qualitative and considers only the hypothetical-insolvency assumptions and the report. It does not adequately assess the operational burden of policy-level inventories, claims ranking, cohort construction, replacement-cost modelling, legal-entity allocation, reconciliation with Valuation 2, data protection, litigation risk and potential industry levies.

3. Draft Technical Standards

Recitals

Q3. *Do you have comments on the Recitals?*

- **Recital 3 - hindsight.** Post-resolution information should be usable only as evidence of facts that existed at the resolution decision date and were actually available or could have been identified through reasonable and customary diligence within the time then available. The recital should expressly prohibit the use of subsequent events or outcomes as independent valuation inputs.
- **Recitals 4 and 5 - granularity.** A comprehensive valuation does not require a policy-by-policy or creditor-by-creditor model where homogeneous claims receive identical legal and economic treatment. The recitals should recognise materiality, cohorting, statistical sampling and the use of existing claims and policy-administration systems, subject to reconciliation to the legal-entity accounts.
- **Recital 6 - policy discontinuation.** The conclusion that the definition of winding-up requires the valuer to assume discontinuation of all policies should be deleted. Winding-up describes the collective proceeding; it does not itself determine the contractual consequences for each class of policy. Those consequences are governed by applicable national law and may include continuation, portfolio transfer, run-off or termination.
- **Recital 8 - burden reduction.** The assertion that combining the mandates in one act supports simplification and burden reduction is not sufficient. The substantive requirements themselves must be proportionate and should not create a standing obligation to maintain a complete Valuation 3 dataset.
- **Recital 9 - separation.** A report explaining differences does not by itself ensure the separation required by Article 24(6)(c) IRRD. The recital should refer to separate objectives, reference dates, information cut-offs, assumptions, governance and review processes, while allowing the same valuer where conflicts

are managed and functional separation is documented. Mandating two entirely separate external valuers would create unnecessary cost and should not be required.

- **Additional recital.** A recital should state that the RTS is methodological only, that applicable national insolvency law and practice determine substantive rights and contractual effects, and that the valuation must be performed legal-entity by legal-entity.

Articles

Q4. *Do you have comments on the following articles?*

Article 1 - General provisions

- **Resolution-decision-date information.** The 'could reasonably have been known' test should be defined objectively. Information obtained later may be used only to evidence a fact existing at the resolution decision date where that fact could have been identified through specifically identifiable and reasonable diligence at that time. It should not permit hindsight based on subsequent claims development, market movements, purchaser behaviour or the eventual success of the resolution action.
- **Common reference date.** The hypothetical insolvency outcome and the actual treatment must be compared at the same economic reference date. Where actual treatment occurs later, all material cash flows should be discounted or accrued consistently. The exception for a 'negligible' discounting impact should be supported by a documented materiality threshold and should not result in a comparison of undiscounted actual proceeds with discounted hypothetical proceeds on different bases.
- **Legal-entity scope.** References to an 'undertaking or group' should not imply a consolidated insolvency estate. The valuation should be performed separately for each legal entity subject to resolution, with group interactions reflected only through legally enforceable claims, guarantees, reinsurance, collateral and other arrangements recognised under the applicable insolvency law.

Article 2 - Inventory of assets and claims

- **Inventory requirements.** An inventory of all identifiable and contingent assets and a list of all claims and contingent claims may be disproportionate and operationally impossible within a reasonable timeframe for an insurer with millions of policies. The RTS should require completeness at the level necessary to determine material valuation outcomes, while expressly allowing existing registers, reconciled aggregates, homogeneous cohorts, statistical sampling and de minimis thresholds.
- **Entity-specific insolvency estates.** For groups, the inventory and ranking must be prepared legal entity by legal entity. German law does not create a single consolidated insurance-group insolvency estate. Group coordination does not eliminate separate legal personality, entity-specific cover assets or separate creditor rankings. The wording 'undertaking or group' should therefore be amended throughout the RTS.
- **National ranking and cover assets.** The claim list must reflect the applicable national ranking and asset pools.
- **Contingent items and specialist advice.** Only contingent assets and claims that existed at the resolution decision date and can be estimated on a reasonable and evidenced basis should be included. Specialist advice should be proportionate and should not result in open-ended legal-review costs where the ranking is already clear from national law and established practice.

Article 3 - Steps of the valuation

- **Use of cohorts.** Article 56 IRRD requires an assessment of whether an affected person is worse off, but this does not require individual modelling where persons in a homogeneous class have the same contractual terms, insolvency rank and resolution treatment. The RTS should expressly permit cohort-based calculations and representative sampling, with individual calculations reserved for materially different contract features, disputed claims or cases where the cohort result indicates a potential difference in treatment.
- **Consistent comparison.** The hypothetical and actual outcomes should be valued net of the same categories of directly attributable costs and at the same reference date. Any discounting should use consistent assumptions. The report should separately identify differences caused by the resolution action and differences caused solely by different valuation bases.
- **Legal-entity allocation.** The priority waterfall must be applied separately for each legal entity and each legally distinct pool of cover assets. Group-level aggregation could redistribute value between creditors in a manner not permitted by national insolvency law.
- **De minimis and operational safeguards.** A de minimis threshold and rules for small residual amounts should be introduced to prevent disproportionate individual calculations and payments where the administrative cost would exceed the potential difference, subject to appropriate policyholder protection.

Article 4 - Treatment in normal insolvency proceedings

- **Policy discontinuation must follow national law.** Article 4(2) should not impose an unconditional discontinuation assumption. It conflicts with Article 6(1), which refers to discontinuation 'according to applicable insolvency law', and risks harmonising substantive insolvency consequences beyond the mandate in Article 56(4) IRRD. The counterfactual should reflect the contractual treatment that would actually follow from the relevant national normal insolvency proceedings, including any legally required pre-opening or guarantee-scheme measures.
- **Recommended wording.** Article 4(2) should state that the valuation is based on the winding-up or other normal-insolvency scenario prescribed by applicable national law and practice, including the resulting continuation, transfer, run-off, modification or termination of policies and any relevant intervention by an insurance guarantee scheme.

Article 5 - Valuation of assets and claims in normal insolvency proceedings

- **Primacy of national law.** The methodologies in Article 5 should apply only as gap-filling valuation rules where national insolvency law or established practice does not prescribe the relevant treatment. This limitation should be placed in paragraph 1 and should apply to every subsequent paragraph.
- **Discount-rate hierarchy.** The RTS should establish a clear hierarchy: statutory or established insolvency rates first; otherwise a risk-free term structure appropriate to the timing and currency of the cash flows, with only evidenced adjustments for risks not already reflected in the cash flows. Potential-acquirer discount rates should not be a general input to a normal-insolvency valuation, as they may include purchaser-specific return targets and financing constraints.
- **Costs.** Administration, transaction, maintenance, disposal and financing costs should be limited to direct, reasonably foreseeable and incremental costs of the hypothetical proceedings. General overhead, speculative financing costs and costs already reflected in recovery rates or discount rates should be excluded. An express anti-double-counting rule is required.
- **Market evidence.** Prices from distressed transactions or resolution transfers should be secondary evidence only. They must be adjusted for forced-sale timing, restricted purchaser populations, public

support, resolution powers and other transaction-specific effects before being used in the normal-insolvency counterfactual.

- **Disposal period and asset-liability management.** The disposal period should reflect the actual powers and likely strategy of the insolvency administrator under national law. It should not assume immediate liquidation of long-term, cash-flow-generating or matched assets where an orderly run-off or transfer would be legally possible and economically rational.
- **Allocation.** Paragraph 8 must account for legally separate cover-asset pools and insurance-claim priorities before any residual proceeds are distributed under the general insolvency ranking.

Article 6 - Specific provisions for valuation of claims related to insurance policies in normal insolvency proceedings

- **Internal inconsistency.** The qualification in paragraph 1 - discontinuation according to applicable insolvency law - should prevail over Article 4(2) and Recital 6. The three provisions should be aligned so that no policy is treated as discontinued unless that is the outcome under the relevant national law and the applicable pre-opening or guarantee-scheme framework.
- **Net incremental replacement cost.** Replacement cost should be the direct, necessary and commercially reasonable incremental cost of obtaining genuinely comparable cover for the remaining coverage period. Gross new premiums are not themselves a loss: the valuation must deduct premiums that would have remained payable under the old policy, refunds or distributions received on termination, and any other avoided costs or benefits. Coverage enhancements, lower deductibles or broader terms under the replacement policy must not be charged to the financing arrangement.
- **Comparable cover and mitigation.** The methodology should require a like-for-like comparison, reasonable policyholder mitigation and evidence of the market terms available at the relevant time. Standardised cohort assumptions may be used for homogeneous products. Where comparable cover is unavailable or cannot be obtained because of age, health status, claims history or market capacity, the valuer should use a transparent and bounded actuarial proxy rather than a speculative or unlimited amount.
- **Coverage gap.** Point (c), referring to the 'adverse effects of no coverage', should be deleted or narrowly confined to direct, unavoidable and evidenced costs of arranging replacement cover. It must not extend to consequential losses, loss of profit, uninsured claims occurring during a gap, reputational damage or other general damages. Such items are not replacement costs and would create a substantive compensation regime beyond the Article 56(4) mandate.
- **Treatment of ongoing coverage.** Where coverage is maintained or transferred, as in the German case, replacement costs should arise only to the extent that the statutory treatment creates a demonstrable gap or materially less favourable cover. A hypothetical termination and replacement cost should not be added where the national counterfactual preserves the policy.

Article 7 - Supplementary provisions for specific contracts in normal insolvency proceedings

- **Derivatives.** The use of the separate derivatives methodology should remain expressly subject to the applicable insolvency law, close-out netting, collateral, contractual termination rights and the relevant reference date. The cross-reference must be finalised before the RTS applies.
- **Reinsurance.** Reinsurance settlements should reflect enforceable contractual rights, insolvency clauses, set off and netting rights, collateral and any statutory restrictions. The same counterparty or termination effect must not be reflected both in the projected cash flows and through an additional haircut.

- **Legal-entity basis.** Reinsurance claims and collateral must be allocated to the legal entity that is party to the contract. Group-level netting or fungibility should not be assumed unless legally enforceable in insolvency.

Article 8 - Determination of the actual treatment of shareholders, policyholders, beneficiaries, claimants and other creditors in resolution

- **Assignment and data burden.** Identifying all outstanding claims and assigning them to every person who held the relevant status at the resolution decision date may require very large policy-level reconciliations. Existing policy-administration and claims systems, homogeneous cohorts and sampling should be permitted, with individual tracing where ownership, assignment or treatment is materially different.
- **Common economic basis.** The actual treatment and hypothetical insolvency treatment must be valued on a comparable economic basis. For modified policies, a Solvency II valuation of the undertaking's liability is not automatically equivalent to the economic value received by the policyholder. The RTS should require an explicit bridge covering discount rates, options and guarantees, future discretionary benefits, premiums, administration costs and uncertainty.
- **Equity and debt compensation.** Market prices may be used only where the instruments are sufficiently liquid and the price is not distorted by resolution announcements, temporary restrictions or limited free float. Otherwise, generally accepted valuation methods should be applied using information available at the relevant treatment date and discounted consistently to the resolution decision date.

Article 9 - Valuation report

- **Minimum content and proportionality.** A minimum report can support consistency, but the content should be proportionate to the complexity and materiality of the case. The report should distinguish legal assumptions determined by national insolvency law from valuation assumptions selected by the valuer and should provide a reconciliation between Valuation 2 and Valuation 3 without importing Valuation 2 assumptions automatically.
- **Separation of valuations.** Article 9 does not sufficiently implement the mandate in Article 24(6)(c) IRRD. Separation requires distinct objectives, reference dates, information cut-offs, scenario assumptions, governance, quality assurance and audit trails. The same independent valuer may be used where appropriate to reduce cost, but separate workstreams, conflict management and documented independent challenge should be required. A second external valuer should not be mandatory.
- **Confidentiality and no public-disclosure assumption.** The report should be addressed to the resolution authority and protected by professional secrecy, commercial confidentiality, legal privilege and data-protection rules. The RTS does not require publication, and the impact assessment should not assume that the report will be public or provided to policyholders on request. Any disclosure requires a separate legal basis, appropriate aggregation and redaction, and a clear statement that third parties may not rely on the report.
- **Factual accuracy review.** The undertaking should be allowed a short, controlled review to identify factual errors, data-mapping issues and misunderstandings of policy or reinsurance terms. This would not allow the undertaking to influence the valuer's independent judgement.

Article 10 - Entry into force and application

- **Implementation period.** Application on the twentieth day after publication is not feasible for a methodology that requires new legal-entity mappings, creditor classifications, policy cohorts, replacement-cost models, data-protection controls and governance for the separation of valuations. A

separate application date with at least 12 months of preparation time should be introduced and aligned with the national application of the IRRD framework.

- **Final cross-references.** All references to the other valuation and derivatives delegated acts should be completed and tested before application.

Annex I: Impact assessment

Q5. *Do you have any comments on the policy issues in the Impact Assessment?*

Policy issue A: Assumptions used for the valuation in the hypothetical insolvency scenario

- **Policy option A.2.** High-level EU principles may improve consistency only if they are expressly subordinate to applicable national insolvency law and practice. The RTS should not presume that an EU valuation rule is valid unless a conflict with national law is proven; rather, national law should determine the substantive counterfactual, and the EU methodology should fill genuine valuation gaps.
- **National law implications.** The impact assessment should address differentiated national outcomes such as the continuation or transfer of contracts. A blanket discontinuation assumption would not preserve the precedence of national law described in the preferred option.
- **Entity-level analysis.** The assessment should also recognise that group coordination does not create a consolidated insolvency estate. Costs and outcomes must be assessed for each legal entity and each relevant asset pool.
- **Costs and legal risk.** The adaptation costs are unlikely to be merely limited and one-off. Valuers and undertakings will require legal opinions on multiple national regimes, new data mappings, policy cohorts, claims-ranking logic and reconciliation with Valuation 2. These costs should be quantitatively tested.

Policy issue B: The valuer prepares and submits to the resolution authority a valuation report

- **Policy option B.2.** A defined minimum report can reduce ad hoc requests, but the impact assessment materially understates industry costs. The undertaking must provide and validate the underlying policy, claims, reinsurance, asset and insolvency-ranking data; support alternative cash-flow and replacement-cost calculations; and reconcile the report to Valuation 2 and accounting and supervisory data.
- **Public-disclosure assumption.** The footnote assuming that the report may be made public or provided to policyholders should be removed from the cost-benefit analysis unless a separate legal basis and a complete confidentiality framework are identified. Public disclosure would create significant data-protection, commercial-secrecy, market-sensitivity, litigation and professional-liability risks.
- **Proportionality.** The minimum elements should be decision-useful and materiality-based. Standardised headings should not result in mandatory full sensitivity suites, individual policy schedules or disclosure of privileged legal analysis in every case.
- **Industry financing.** The assessment should include the effect of methodology-driven increases in NCWO compensation on industry-funded financing arrangements, as well as external valuer, legal, actuarial and IT costs.

Q6. *Are there any elements in the proposed RTS which could be modified to reduce the administrative burden or improve the (cost) efficiency of the requirements? If so, please provide a (monetary) assessment of the expected efficiency brought by the proposed change.*

- **Priority burden-reduction measures.** As set out above, the RTS should:

- establish a binding national-law-precedence clause;
 - require legal-entity rather than consolidated group valuations;
 - permit materiality thresholds, homogeneous policyholder and creditor cohorts, statistical sampling and de minimis treatment;
 - reuse existing policy, claims, Solvency II and accounting data;
 - replace gross new premiums with a net incremental replacement-cost method;
 - delete or narrowly limit 'adverse effects of no coverage';
 - introduce standardised assumptions for comparable cover where market evidence is unavailable;
 - avoid mandatory publication and provide confidentiality and no-third-party-reliance safeguards;
 - allow functional separation without automatically requiring two external valuers; and
 - provide an adequate implementation period.
- **Monetary assessment.** A reliable uniform euro estimate is not possible without information on the number of affected legal entities, policies, claim types and required individual calculations. EIOPA should conduct a quantitative field test. The largest efficiency gain would come from replacing a potentially millions-of-record policy-by-policy calculation with reconciled homogeneous cohorts and targeted individual analysis. Additional material savings would result from avoiding duplicate legal opinions, separate external valuers and public-disclosure preparation.

Any other comments

Q7. Do you have any other comments?

- **Use of 'group'.** The repeated references to an 'undertaking or group' should be reviewed. Normal insolvency proceedings, asset pools and creditor rankings generally attach to legal entities. Group relationships should be reflected through enforceable intra-group claims and arrangements, not through consolidation of estates.
- **Consistency across the two RTS.** The two consultation papers describe the scope of the Article 24(6)(c) separation mandate differently. The final texts should state consistently which valuations are to be separated and should set out a coherent governance and information-cut-off framework.
- **Terminology.** The final RTS should use the IRRD terms 'normal insolvency proceedings', 'resolution decision date', 'actual treatment', 'replacement costs' and 'no creditor worse off' consistently and should avoid language that could be read as creating a separate EU insolvency or damages regime.