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Response to EIOPA Consultation Paper

EIOPA-BoS-26-267: Draft RTS on the methodologies for assessing the difference in treatment between resolution and insolvency, the estimation of replacement costs and the separation of valuations (Valuation 3, IRRD)

15 October 2026

Introduction

The Actuarial Association of Europe ('AAE') welcomes the opportunity to respond to EIOPA's Consultation Paper on the draft Regulatory Technical Standards (RTS) on the methodologies for assessing the difference in treatment between resolution and insolvency, the estimation of replacement costs and the separation of valuations (Valuation 3, EIOPA-BoS-26-267).

The AAE is the umbrella organisation for the actuarial associations in Europe. Several elements of Valuation 3, including the valuation of insurance claims, cash flow projections, discounting and the estimation of replacement costs, are closely linked to actuarial expertise. This response has been prepared with input from several AAE member associations. It should be read together with our response to the parallel consultation on Valuation 1 and 2 (EIOPA-BoS-26-268).

1. General comments

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

Answer: Yes

We welcome the proposed RTS on Valuation 3 and support the objective of establishing a more harmonised and transparent methodology for the no creditor worse off (NCWO) assessment. We also recognise that the hypothetical insolvency scenario must remain anchored in the relevant national insolvency law.

We suggest that the final RTS clarify two cross-cutting matters: the interaction between Valuation 3 and Valuations 1 and 2, and the permitted use of information that becomes available after the resolution decision date. We comment on both below, under the Recitals and Articles 1 and 9.

Several aspects of Valuation 3, including the estimation of insurance liabilities, replacement costs, policyholder behaviour and cash flow projections, are inherently actuarial in nature. We welcome the fact that Recital (4) and Article 2(2) allow the valuer to obtain specialist advice. We suggest that the RTS explicitly recognise the role of actuarial expertise and clarify that valuers should have access to appropriately qualified actuarial resources where relevant.

We also welcome the reliance on existing Solvency II valuation methodologies in Article 8(4), which supports consistency and limits unnecessary duplication of work.

2. Background and Analysis

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

Answer: Yes

The Background and Analysis section clearly explains the role of Valuation 3 as an ex-post safeguard for shareholders, policyholders, beneficiaries, claimants and other creditors. We support EIOPA's aim of increasing consistency across Member States while preserving the necessary link to national insolvency frameworks.

3. Draft Technical Standards

Recitals

Q3. Do you have comments on the Recitals?

Answer: Yes

Recital (3). In practice, it may be difficult to determine whether information obtained after the resolution decision date 'could reasonably have been known' at that date, since the valuation will inevitably be performed with hindsight. We understand the intention to be that the valuer may use all asset and liability information held on the undertaking's systems that could reasonably have been valued at that date, including information on distressed or illiquid assets, but not later developments, such as emerging legal information or subsequent agreements with reinsurers, outsourcing providers, group entities or competitors. To support consistent application, we suggest that the RTS distinguish between:

- facts known or reasonably knowable at the resolution decision date;
- subsequent information that provides evidence of conditions existing at that date, which may be used; and
- genuinely new events arising after that date, which should not be used.

Recital (5). The Recital refers to 'the relevant discount rate or rates' without further specification. We would welcome clarification on this point and refer to our comments on Article 5(2).

Recital (6). The assumption that insurance policies are discontinued may not always be consistent with national insolvency frameworks. In some Member States, insolvency law specifies which contracts terminate and which continue. We suggest aligning the wording of Recital (6) and Article 4(2) with Article 6(1), which refers to discontinuation 'according to applicable insolvency law'. We return to this point under Article 4.

Articles

Q4. Do you have comments on the following articles?

Article 1 - General provisions

Answer: Yes

Paragraph 1. This RTS uses the term 'resolution decision date', whereas the draft RTS on Valuation 1 and 2 (EIOPA-BoS-26-268) uses 'resolution date' for what appears to be the same date. We suggest aligning the terminology.

Paragraph 1 and post-resolution information. The RTS could make clearer how information emerging after the resolution decision date should be treated. Otherwise the 'could reasonably have been known' threshold may lead to inconsistent treatment of items such as reserve deterioration, particularly for long-tail non-life business. We refer to the three-way distinction proposed under Q3.

Paragraph 3. There is likely to be considerable uncertainty about the timing of the actual treatment dates for different stakeholders, both under the chosen resolution action and under normal insolvency proceedings. This uncertainty could be made more transparent through sensitivity analysis. Where the valuer considers the impact of discounting to be negligible, it would be helpful for the valuation report to explain why.

Article 2 - Inventory of assets and claims

Answer: Yes

The Article refers to claims of individual creditors. We note that several insurance liability items, such as premium provisions, reserves for claims incurred but not reported (IBNR) and reported but not settled (RBNS), and collective undistributed bonus funds, are not immediately attributable to individual policyholders or groups of policyholders. It would be helpful for the RTS to clarify how such items should be allocated for the purposes of the inventory and the NCWO comparison. This is consistent with our earlier observation, in the context of insurance guarantee schemes, that the value of profit-participation products in a failure scenario is complex to determine, as entitlements depend on investment performance and discretionary surplus allocation.

Contingent claims. We would welcome clarification of the evidential threshold for recognising contingent claims, for example latent and environmental claims in non-life business.

Paragraph 2. We welcome the possibility for the valuer to obtain specialist advice. We suggest that this explicitly include actuarial expertise, as noted under Q1.

Article 3 - Steps of the valuation

Answer: Yes

Point (a). The term 'relevant insurance guarantee schemes' could be defined more precisely. In particular, it is not clear whether it covers only schemes established by law or also the industry-based schemes that exist in some Member States. It may also be unclear whether such schemes can be accessed in a resolution scenario. We suggest that the RTS clarify these points, as they affect the comparison under Articles 4 and 8. This reflects the considerable diversity of guarantee scheme arrangements across Member States, which we highlighted in our response on minimum common standards for insurance guarantee schemes.

Article 4 - Treatment in normal insolvency proceedings

Answer: Yes

As Article 4 is central to the NCWO safeguard, the valuation needs to be performed at a sufficiently granular level. We suggest that the impact of payments from insurance guarantee schemes and from compensation bodies under Directive 2009/103/EC be disclosed separately, where applicable. This would help identify any additional funding needs arising from those arrangements. It would also be beneficial for the valuer to document in the valuation report the selected insolvency strategy, its legal basis, timing, costs and funding assumptions, as well as credible alternatives, with a level of detail proportionate to materiality.

Paragraph 2. The RTS could clarify how portfolio transfers, continuation arrangements and insurance guarantee schemes should be reflected in the hypothetical insolvency scenario. Assuming immediate discontinuation of all policies may not reflect the likely outcome in some cases, particularly for non-life business, and could create inconsistencies across jurisdictions. In some Member States, insolvency law determines which contracts terminate and which continue. We therefore suggest that paragraph 2 refer to discontinuation 'in accordance with applicable insolvency law', consistent with Article 6(1).

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

Answer: Yes

Paragraph 2, relevant discount rate. We would welcome a more precise specification of the relevant discount rate. The current drafting lists a broad range of potentially competing considerations, including unspecified risk-free rates, risk premia, market conditions and discount rates applied by potential acquirers, without indicating how they should be determined, balanced or prioritised. Given that small changes in the discount rate can materially affect NCWO outcomes, particular for long-tail business, the current drafting may lead to significantly different results depending on the valuer's interpretation.

The valuation may also have significant financial consequences for stakeholders whose interests are not aligned. A clear hierarchy of considerations would promote consistency and comparability. It would also give valuers a more objective framework, strengthening their independence and reducing the scope for challenge. As one option, EIOPA could consider a hierarchy under which any rates specified in insolvency law apply first; otherwise, the risk-free interest rate term structure published by EIOPA under Article 77e of Directive 2009/138/EC would serve as the reference point, with any adjustments justified and documented. We also note that the reference to 'risk premia for similar financial instruments or agreements issued by similar entities' reflects banking practice and may be difficult to interpret for insurance claims. Clarification of how it applies to policyholder claims would be welcome.

Expected cash flows. The valuation basis should reflect realisable economic value under the selected insolvency strategy. For assets, assumptions should cover the timing and manner of disposal, market depth, concentration, encumbrances, transaction costs and whether forced-sale discounts are justified. For claims, they should cover timing, ranking, legal enforceability and likely settlement costs. Sensitivity analysis for material assumptions and expert judgements, such as the timing of asset sales and discounts, should be disclosed. Further guidance on reflecting reserve uncertainty,

claims inflation, latent exposures and claims handling costs within expected cash flows would also be helpful.

Paragraph 4. We suggest clarifying that the 'observed price' for assets traded in an active market is the observed bid price, net of all associated costs including taxes or stamp duties, that is, the amount that would actually be received on sale.

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

Answer: Yes

Paragraph 2, replacement costs. We recognise the importance of estimating replacement costs. We note, however, that this can be a complex exercise with a potentially very wide scope. It is not clear to what extent policyholder-specific rating factors, such as age, health status or occupation, and prevailing market conditions should be reflected. We suggest that the methodology be linked to the contractual protection actually lost and to the availability of a reasonably comparable replacement contract at the relevant date.

Care will be needed in defining 'comparable cover', given differences in guarantees, exclusions, underwriting status and service levels, all of which affect premium levels. In practice, full replacement may not be available, and only partial replacement, or none at all, may be possible. For contracts that cannot realistically be replaced, such as impaired-life cover, legacy guarantees and closed books no longer available on the market, an alternative approach is likely to be needed. The same applies to bespoke or highly specialised non-life policies, where equivalent cover may be unavailable or offered only on narrower or more expensive terms.

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

Answer: Yes

Paragraph 2. The RTS could clarify the treatment of disputed reinsurance recoveries, commutations, reinsurer default risk and termination clauses triggered by insolvency.

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

Answer: Yes

Paragraph 4. We support the pragmatic approach of relying on existing Solvency II valuation methodologies. We suggest adding explicitly that the undertaking's own actuarial models may be reused for this purpose. In practice, reflecting modifications to future benefits and premiums may be very demanding for an independent valuer, which reinforces the value of reusing existing models.

It would also be helpful to clarify how any contributions from insurance guarantee schemes in resolution should be reflected in the actual treatment, consistent with our comment on Article 3.

Article 9 - Valuation report

Answer: Yes

We support the specification of a minimum set of elements for the valuation report. Where the valuer presents a valuation range under point (a), all subsequent results, including the NCWO

outcome, will also be expressed as ranges. The RTS could clarify how such a range should be used when determining any compensation.

Point (c). We suggest that the report explain material differences from prior valuations, in particular between the assumptions used for Valuation 2 and Valuation 3. It should also identify information received after the resolution decision date and explain how it has been treated, using the distinction proposed under Q3. In addition, the report should identify the material reserving and reinsurance assumptions, the sources of claims uncertainty and the related sensitivities affecting the NCWO assessment, particularly for long-tail business. The level of detail should remain proportionate to the materiality of the items and creditor classes concerned, consistent with the emphasis on proportionality in our earlier IRRD responses.

Article 10 - Entry into force and application

Answer: Yes

Given the complexity of the valuation and the introduction of new methodologies, we would welcome consideration of an appropriate period between entry into force and application, to allow valuers, undertakings and authorities to prepare.

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

Answer: Yes

On balance, we support EIOPA's preferred option A.2 of setting common high-level principles for the valuation in the hypothetical insolvency scenario, applied to the extent that they are consistent with national insolvency law and practice. This provides an appropriate balance between harmonisation and legal realism. It is also consistent with our requests for further guidance, for example on discount rates and replacement costs, set out in our comments on the Articles.

We also see merit in the reasoning behind option A.1. Insolvency regimes differ significantly across Member States, and a valuation closely aligned with the legal framework that would actually apply is likely to provide the most realistic basis. We therefore suggest that the final RTS make clear that national insolvency law and established practice take precedence wherever they are specific. The common principles should support consistency where national law leaves room for judgement, without adding complexity that does not improve the accuracy of the assessment. This is consistent with the view expressed in our response on insurance guarantee schemes that, given the diversity of national insolvency regimes, minimum harmonisation is the appropriate design choice.

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

Answer: Yes

We support EIOPA's preferred option B.2 of a standardised valuation report with minimum documentation requirements. This should improve transparency and comparability without preventing the valuer from applying professional judgement where necessary. Our suggestions on the content of the report are set out under Article 9.

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.

Answer: Yes

The administrative burden could be reduced by clarifying that existing Solvency II, ORSA, recovery planning and actuarial documentation may be used as inputs where relevant. Explicitly allowing the reuse of the undertaking's own actuarial models, as suggested under Article 8, would also improve efficiency. In addition, applying proportionality would allow the analysis to focus on the creditor and policyholder groups most likely to be materially affected.

A monetary assessment would depend heavily on undertaking-specific factors and the circumstances of each resolution case, and we are therefore not in a position to provide one.

Any other comments

Q7. Do you have any other comments?

Answer: Yes

We encourage consistency of terminology and concepts between this RTS and the RTS on Valuation 1 and 2, including the definition of the resolution decision date, the treatment of value ranges and the use of the undertaking's Solvency II models. Our response to the Valuation 1 and 2 consultation should be read together with this response.