

CONSULTATION
PAPER

CONSULTATION PAPER

on the proposal for Regulatory Technical
Standards on criteria for pre-emptive recovery
planning requirements and methods to be used
when determining the market shares

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eiopa

European Insurance and
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RESPONDING TO THIS PAPER

EIOPA welcomes comments on the Consultation Paper on the proposal for Regulatory Technical Standards on criteria for pre-emptive recovery planning requirements and methods to be used when determining the market shares.

Comments are most helpful if they:

- ▶ respond to the question stated, where applicable;
- ▶ contain a clear rationale; and
- ▶ describe any alternatives EIOPA should consider.

Please send your comments to EIOPA via EU Survey ([link](#)) by 31 July 2025, 23:59 CET.

Contributions not provided via EU Survey or after the deadline will not be processed. In case you have any questions please contact IRRD_PC@eiopa.europa.eu.

Publication of responses

Your responses will be published on the EIOPA website unless: you request to treat them confidential, or they are unlawful, or they would infringe the rights of any third-party. Please, indicate clearly and prominently in your submission any part you do not wish to be publicly disclosed. EIOPA may also publish a summary of the survey input received on its website.

Please note that EIOPA is subject to Regulation (EC) No 1049/2001 regarding public access to documents and EIOPA's rules on public access to documents.¹

Declaration by the contributor

By sending your contribution to EIOPA you consent to publication of all non-confidential information in your contribution, in whole/in part – as indicated in your responses, including to the publication of the name of your organisation, and you thereby declare that nothing within your response is unlawful or would infringe the rights of any third party in a manner that would prevent the publication.

Data protection

Please note that personal contact details (such as name of individuals, email addresses and phone numbers) will not be published. EIOPA, as a European Authority, will process any personal data in line with Regulation (EU) 2018/1725. More information on how personal data are treated can be found in the privacy statement at the end of this material.

¹ [Public Access to Documents.](#)

CONSULTATION PAPER OVERVIEW & NEXT STEPS

EIOPA carries out consultations with regard to its draft technical standards in accordance with Articles 10 and 15 of Regulation (EU) No 1094/2010.

This Consultation Paper presents the draft technical standards.

The analysis of the expected impact from the proposed policy is covered under Annex I (Impact Assessment).

Next steps

EIOPA will revise the proposal in view of the stakeholder comments received. EIOPA will publish a report on the consultation including the revised proposal and the resolution of stakeholder comments.

1. BACKGROUND AND ANALYSIS

1. The global financial crisis of 2008 highlighted the need to develop an appropriate recovery and resolution framework for insurance and reinsurance undertakings and groups. More recent failures have reinforced the need for such a framework. Problems can appear suddenly and require swift and decisive actions. Therefore, supervisors and/or resolution authorities as well as insurance and reinsurance undertakings and groups must be prepared in advance to implement crisis management solutions, by having in place robust pre-emptive recovery planning and resolution planning processes. A comprehensive recovery and resolution framework reduces the likelihood of failure and limits the impact in case the failure finally materialises. Furthermore, it should be considered that crisis prevention and preparation is deemed more efficient and less costly than crisis management.
2. According to Article 5(12) of Directive (EU) 2025/1 EIOPA shall develop draft regulatory technical standards to specify further:
 - a. *the criteria, in particular as regards cross-border activity, referred to in paragraph 2, first subparagraph;*
 - b. *the methods to be used when determining the market shares referred to in paragraph 2, second and third subparagraphs;*
3. According to Article 5(2), first subparagraph, of Directive (EU) 2025/1, 'Member states shall ensure that the supervisory authority subjects insurance and reinsurance undertakings to pre-emptive recovery planning requirements on the basis of their:
 - a. Size
 - b. Business model
 - c. Risk profile
 - d. Interconnectedness
 - e. Substitutability
 - f. Importance for the economy of the Member States in which they operate
 - g. Cross-border activities, in particular significant cross-border activities'
4. Article 5(2), second subparagraph, of Directive (EU) 2025/1 sets out an obligation for supervisory authorities to ensure that at least 60% of the Member State's life insurance and reinsurance market and at least 60% of its non-life insurance and reinsurance market, the life market share being based on gross technical provisions and the non-life market share being based on gross written premiums, are subject to pre-emptive recovery planning requirements.
5. In the calculation of the market coverage level, the subsidiary insurance or reinsurance undertakings of a group may be taken into account where those subsidiary insurance or reinsurance undertakings are part of a group for which the ultimate parent undertaking is drawing up and maintaining a group pre-emptive recovery plan as per Article 5(2) subparagraph 3 of the

Directive (EU) 2025/1 or where the supervisory authority of that subsidiary insurance or reinsurance undertaking requires it to submit a pre-emptive recovery plan.

6. These draft Regulatory Technical Standards further specify the methods to be used when determining the market shares referred to in Article 5(2) second subparagraph of Directive (EU) 2025/1 and the criteria, in particular as regards cross-border activity, referred to in Article 5(2) first subparagraph of Directive (EU) 2025/1.
7. Supervisory authorities would need to verify the compliance with the minimum market coverage level of 60% on an ongoing basis and, at a minimum, when the pre-emptive recovery plans will be updated as part of a regular update or in case of a material change to the re(insurance) undertaking as per Article 5(4) of Directive (EU) 2025/1.
8. These Draft Regulatory Technical Standards should apply to both solo undertakings and groups.
9. Furthermore, it should be noted that according to Article 5(3) first subparagraph of Directive (EU) 2025/1 any insurance or reinsurance undertaking which is subject to a resolution plan (pursuant to Article 9) shall be subject to pre-emptive recovery planning requirements.
10. In accordance with Article 5(3) second subparagraph of Directive (EU) 2025/1, small and non-complex undertakings shall not be subject to pre-emptive recovery planning requirements, except where a supervisory authority considers that such an undertaking represents a particular risk at national or regional level. In this case, when a pre-emptive recovery plan is requested to the undertaking, the market share of the abovementioned undertaking should be accounted for when assessing the coverage of the 60% market share requirement.
11. The criteria in accordance with Article 5(2) of Directive (EU) 2025/1 are specified in Articles 2 to 8 of these Draft Regulatory Technical Standards.
12. The risk profile criterion definition is based on the IAIS glossary.

2. DRAFT TECHNICAL STANDARD



EUROPEAN COMMISSION

Brussels, 29.6.2011
C(20..) yyy final

COMMISSION DELEGATED REGULATION (EU) No .../..

of []

COMMISSION DELEGATED REGULATION (EU) No .../...

of DD Month YYYY

supplementing Directive 2025/1/EC of the European Parliament and of the Council with regard to regulatory technical standards on criteria for pre-emptive recovery planning requirements and methods to be used when determining the market shares

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive (EU) 2025/1 of the European Parliament and of the Council of 27 November 2024 on establishing a framework for the recovery and resolution of insurance and reinsurance undertakings and amending Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132 and Regulations (EU) No 1094/2010, (EU) No 648/2012, (EU) No 806/2014 and (EU) 2017/1129², and in particular Article 5(12), third subparagraph, thereof,

Whereas:

- (1) According to Article 5(2) of the Directive (EU) 2025/1 (hereinafter, the Directive), Member States shall ensure that the supervisory authority subjects insurance and reinsurance undertakings to pre-emptive recovery planning requirements on the basis of their size, business model, risk profile, interconnectedness and substitutability, their importance for the economy of the Member States in which they operate, and their cross-border activities, in particular significant cross-border activities. Furthermore, according to Article 5(2), second and third subparagraph of Directive (EU) 2025/1, supervisory authorities shall ensure that at least 60% of the Member State's life insurance and reinsurance market and at least 60 % of its non-life insurance and reinsurance market is subject to pre-emptive recovery planning requirements.
- (2) For the assessment of the size criterion, supervisory authorities should use the amount of gross technical provisions for life insurance or reinsurance undertakings, and the amount of gross written premiums for non-life insurance or reinsurance undertaking. Supervisory authorities should supplement the assessment by considering the amount of total assets as a metric whenever this is deemed necessary, for example in the case of insurance undertakings pursuing both life and non-life activities.
- (3) In the calculation of the market coverage level, supervisory authorities may take into account the subsidiary insurance or reinsurance undertakings of a group, where those subsidiary insurance or reinsurance undertakings are part of a group for which the ultimate parent undertaking is drawing up and maintaining a group pre-emptive recovery plan.
- (4) For the purpose of verifying compliance with Article 5(2) second subparagraph of the Directive, these Regulatory Technical Standards clarify that, the market share of undertakings pursuing both life and non-life insurance activities should be accounted separately: the life insurance business for the calculation of the life insurance market and the non-life insurance business for the calculation of the non-life insurance market.

² OJ.....

- (5) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Insurance and Occupational Pensions Authority.
- (6) The European Insurance and Occupational Pensions Authority has conducted open public consultations on the draft Regulatory Technical Standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Insurance and Reinsurance Stakeholder Group established by Article 37 of Regulation (EU) No 1094/2010.

HAS ADOPTED THIS REGULATION:

Article 1

Size criterion

1. The size of a life insurance or reinsurance undertaking shall be assessed using the amount of gross technical provisions, and the size of a non-life insurance or reinsurance undertaking shall be assessed using the amount of gross written premiums. Where relevant, the assessment of size may be supplemented by the amount of total assets.
2. When assessing the size criterion, supervisory authorities shall consider larger insurance or reinsurance undertakings or groups as being more prone to be subject to pre-emptive recovery planning.

Article 2

Business model criterion

1. Supervisory authorities shall assess the business model criterion taking into consideration, amongst others, the following factors in their assessment of potential vulnerabilities in the insurance or reinsurance undertaking's business:
 - a) factors by which it generates profit and losses, including its profitability ratios;
 - b) lines of business in which it operates, taking into account both the share of the undertaking or group total gross written premiums in each line of business and their riskiness;
 - c) types of products it offers;
 - d) investment strategy followed by the insurance or reinsurance undertaking or group;
 - e) distribution model and distribution channels and their diversification;
 - f) stability of business model, considering also the diversification of its business.
2. Based on the assessment, supervisory authorities shall consider more prone to be subject to pre-emptive recovery planning insurance or reinsurance undertakings or groups whenever they show unsustainable profit generation or low profitability ratios, concentration in fewer lines of business or products, especially the ones that are deemed to be riskier, undiversified investment strategies and distribution model or channels or an overall instability of the business model, particularly analysing the degree of business diversification.

Article 3

Risk profile criterion

1. Supervisory authorities shall assess the risk profile considering the gross and, as appropriate, net risk exposures of an insurance or reinsurance undertaking or a group.
2. When assessing the risk profile criterion, supervisory authorities shall consider, amongst others, the following elements:
 - a) the total Solvency Capital Requirement of the insurance or reinsurance undertaking, as provided for in Article 100 of Directive 2009/138/EC, or the total group Solvency Capital Requirement, as provided for in Article 218 of Directive 2009/138/EC;

- b) the quality of the own funds and the percentage that they represent over the total Solvency Capital Requirement;
 - c) whether risk exposures, measured by Solvency Capital Requirement modules or submodules, pose higher risk for the undertaking in comparison to other undertakings on the market;
 - d) the undertaking's risk appetite considering it, where relevant, in the context of the solvency and financial condition;
 - e) the liquidity risk.
3. The supervisory authorities shall assess the risk profile of an insurance or reinsurance undertaking or group using the own risk and solvency assessment (ORSA), as provided for in Articles 45 and 246 of Directive 2009/138/EC, the liquidity risk management plans as per Article 144a of Directive 2009/138/EC where available, as well as other data and information that supervisory authorities deem appropriate.
4. Based on the assessment, supervisory authorities shall consider more prone to be subject to pre-emptive recovery planning insurance or reinsurance undertakings or groups with high Solvency Capital Requirement, low quality of own funds, high risk exposure compared to other undertakings or groups, high risk appetite, or high liquidity risk.

Article 4

Interconnectedness criterion

1. Supervisory authorities shall assess interconnectedness considering internal interlinkages of the insurance or reinsurance undertaking within its group as well as external interlinkages with financial institutions and markets and with the real economy.
2. When assessing the interconnectedness criterion, supervisory authorities shall consider, amongst others, the following factors:
- a) exposures to counterparties in the broader financial system and real economy from the asset-side and, where relevant and available, the liability-side;
 - b) concentration of the financial instruments held and their corresponding volumes, considering, where relevant, derivative positions, repos and securities lending positions and collateral agreements;
 - c) contagion risks among undertakings in the group, considering also the volume of intra-group transactions and reinsurance;
 - d) relevance of the insurance or reinsurance undertaking's operational services for the group.
3. Based on the assessment, supervisory authorities shall consider more prone to be subject to pre-emptive recovery planning insurance or reinsurance undertakings or groups that have a high exposure to many counterparties, a high concentration in terms of numbers in fewer financial instruments held or their high volume with respect to the total assets, high contagion risk or high relevance of the operational services for the group.

Article 5

Substitutability criterion

1. Supervisory authorities shall assess substitutability as the degree to which policyholders and beneficiaries have the possibility to replace insurance products or policies or exchange them for another insurance product or policy or similar financial product within a reasonable timeframe and at a reasonable cost and the capacity of other market participants to absorb the demand for substitution.
2. When determining whether the timeframe and cost are reasonable, supervisory authority shall assess those aspects in conjunction, taking into account the balance between them. Supervisory authorities shall take into consideration a possible trade-off between cost and time, as combinations of shorter time plus higher cost and longer time and lower cost may both be reasonable.
3. For that purpose, supervisory authorities shall assess the following quantitative and qualitative criteria:
 - a. the number of insurance or reinsurance undertakings carrying out the specific activity being assessed or providing similar products in the Member States, or the market concentration;
 - b. the characteristics of policyholders, beneficiaries and any relevant third parties;
 - c. the size of the portfolio and the complexity of the products offered;
4. Based on the assessment, supervisory authorities shall consider more prone to be subject to pre-emptive recovery planning insurance or reinsurance undertakings or groups whose activities are deemed less substitutable, i.e. when there is a low number of alternatives, a significant impact on policyholders, beneficiaries and any relevant third parties or the insurance or reinsurance undertaking or group has a large portfolio and the products offered are complex.

Article 6

Importance for the economy of the Member State criterion

1. Supervisory authorities shall assess the importance for the economy criterion, considering, amongst others, the following aspects:
 - a. impact of a discontinuation of the insurance coverage in non-financial sectors that are relevant for the economy of the Member State;
 - b. the role as institutional investor in the Member State's market;
 - c. impact on the employment in the Member State's market;
 - d. the contribution to the gross domestic product of the Member State in terms of gross written premium to GDP.
2. Based on the assessment, supervisory authorities shall consider more prone to be subject to pre-emptive recovery planning insurance or reinsurance undertakings or groups when there is a high impact from the discontinuation of their insurance coverage, they play a role as an institutional investor, they have a high impact on the employment or they highly contribute to the gross domestic product of the Member State.

Article 7

Cross-border activities criterion

1. Supervisory authorities shall, in particular, assess cross-border activities by analysing the share of annual gross written premium income from activities carried out under the right of establishment or freedom to provide services by the insurance or reinsurance undertaking, as well as by the subsidiary undertaking, over the total annual gross written premium income. Supervisory authorities shall assess, where appropriate, the number of countries in which the insurance or reinsurance undertaking is underwriting cross-border business and the corresponding volumes.
2. Based on the assessment, supervisory authorities shall consider more prone to be subject to pre-emptive recovery planning insurance or reinsurance undertakings or groups whose subsidiaries are having a high share of cross-border gross written premiums income, cross-border activities carried out in a high number of countries or a high share of cross border activities in fewer countries. Additionally, supervisory authorities shall consider more prone to be subject to pre-emptive recovery planning insurance or reinsurance undertakings carrying out significant cross border activities, as defined in Article 152aa(1) of Directive 2009/138/EC and further specified in accordance with Article 152aa(2) of that Directive.

Article 8

Combination of criteria

1. Supervisory authorities shall ensure that the criteria laid down in Article 2 to Article 8 of this Regulation are considered and combined as appropriate.
2. For the purpose of assessing the criteria defined in Articles 2 to 8, supervisory authorities shall use data from supervisory reporting provided on the basis of Article 35, Article 244, Article 245 and Article 254 of Directive 2009/138/EC, as well as other data or information that supervisory authorities deem appropriate.

Article 9

Operational considerations for the calculation of the market coverage level

1. Supervisory authorities shall determine the value of the Member State's life insurance and reinsurance market by aggregating the amount of gross technical provisions of the life business, including technical provisions for index-linked and unit-linked insurance, of the insurance and reinsurance undertakings authorised in their Member State.
2. Supervisory authorities shall determine the value of the Member State's non-life insurance and reinsurance market by aggregating the amount of gross written premiums of the non-life business of the insurance and reinsurance undertakings authorised in their Member State.

3. Supervisory authorities may aggregate the market share of subsidiaries belonging to the same group and operating in their Member State and account their market share as a single (sub)group in their respective national markets. Supervisory authorities may use the consolidated data when the group and all its subsidiaries are established in their Member State.
4. For the purpose of the calculation of the market coverage level, supervisory authorities shall use data from supervisory reporting provided by insurance and reinsurance undertakings on the basis of Article 35 and Article 254 Directive 2009/138/EC.
5. The business undertaken by insurance and reinsurance undertakings under the right of establishment or freedom to provide services shall be considered in the relevant market shares of the country where the insurance or reinsurance undertaking is authorised.
6. Supervisory authorities shall include small and non-complex undertakings in the determination of the value of the total insurance and reinsurance market of the Member State, i.e. in the denominator of the market share.

Article 10

Accounting for the market share of the subsidiary of a group based in a different Member State

1. Group supervisors shall, in advance of consultation of Article 8(1) of Directive (EU) 2025/1, communicate and share information with college members and with other supervisory authorities of subsidiaries or related insurance or reinsurance undertakings belonging to the same group, using the usual communication channels of colleges of supervisors, to inform them whether the group, to which the subsidiary belongs to, is subject to pre-emptive recovery planning, so that they may use the information in the determination of the national market share.
2. When supervisory authorities assess, based on the risk-based criteria laid down in Article 2 to Article 8 of this Regulation, that a subsidiary shall be subject to pre-emptive recovery planning, they shall verify the existence of a group pre-emptive recovery plan that sufficiently considers the subsidiary. In case the subsidiary is part of a group for which the ultimate parent undertaking is drawing up and maintaining a group pre-emptive recovery plan, third subparagraph of Article 5(2) of Directive (EU) 2025/1 shall be applied. In case an individual pre-emptive recovery plan is requested to the subsidiary undertaking, the market share of the subsidiary shall be accounted for towards reaching at least 60% of market coverage.
3. When supervisory authorities assess, based on the risk-based criteria laid down in Article 2 to Article 8 of this Regulation, that a subsidiary undertaking of a group established in a different Member State does not need to be subject to an individual pre-emptive recovery planning, however the subsidiary is part of a group for which the ultimate parent undertaking is drawing up and maintaining a group pre-emptive recovery plan, third subparagraph of Article 5(2) of Directive (EU) 2025/1 shall be applied.

Article 11

Considerations regarding insurance undertakings pursuing both life and non-life activities

1. Insurance undertakings pursuing both life and non-life activities shall be assessed by supervisory authorities, by means of the criteria defined in Articles 1 to 7 of this Regulation, as a single insurance undertaking, including both its life and non-life activities in the assessment.
2. If, following the assessment, it is decided to subject the insurance undertaking to pre-emptive recovery planning, the market share of its non-life part shall be accounted towards reaching at least 60% of market coverage of the non-life market and the market share of its life part shall be accounted towards reaching at least 60% market coverage of the life market.

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

[For the Commission

The

President]

[For the Commission

On behalf of the President]

[Position]

ANNEX I: IMPACT ASSESSMENT

OBJECTIVES

In accordance with Article 29 of the EIOPA Regulation, EIOPA carries out, where relevant, analyses of costs and benefits during the policy development process. The analysis of costs and benefits is undertaken according to an impact assessment methodology.

The starting point for this impact assessment is that existing provisions following from the level 1 text are already in place and that the other provisions included in this consultation paper will be implemented as proposed. As a result, this assessment only considers the additional impact of each specific policy issue under discussion.

In drafting these technical standards, EIOPA takes the general resolution objectives of the Directive (EU) 2025/1 as a basis, supplementing them with other relevant objectives specifically focused on the recovery phase or implicit in the spirit of the Directive:

- Enhance preparation, coordination and cooperation.
- Reduce the likelihood of failure.
- Ensure proper functioning of the internal market and level playing field.

In particular, in view of the specific purpose of these technical standards, the following more specific objectives were identified:

- Promoting a risk-based framework and limiting the burden for (re)insurance undertakings representing lower risk.
- Ensuring a level playing field through common minimum harmonisation rules.
- Improving transparency in the implementation of pre-emptive recovery planning requirements and better comparability in the identification of the insurance and reinsurance undertakings and groups under the scope of the pre-emptive recovery planning requirements performed by national supervisory authorities.

POLICY ISSUES

POLICY ISSUE A: DEFINITION OF A METRIC FOR ASSESSING THE SIZE CRITERION

This policy issue focuses on the size criterion, and more specifically on the level of prescriptiveness of the article 2 of the Draft RTS. As Article 5(12) of the IRRD requires to further specify the criteria defined in Article 5(2), three different options for the definition of a metric for the size criterion are analysed.

POLICY ISSUE B: SUBSTITUTABILITY OF INSURANCE PRODUCTS OR POLICIES

For assessing the substitutability criterion, the Draft RTS require the analysis of the possibility of policyholders and beneficiaries to replace or exchange insurance products or policies. To gain a more comprehensive understanding, the assessment could be expanded to include also financial products in the assessment, allowing for a broader picture of the potential alternatives that policyholders and beneficiaries may have in the market.

POLICY ISSUE C: DEDUCTION OF INTRA-GROUP TRANSACTIONS

When calculating the market share for the purpose of determining if the market coverage level of at least 60% is reached, when aggregating the market shares of the (individual) insurance undertakings belonging to the same group, there might be a double counting of some gross written premiums and technical provisions.

POLICY OPTIONS

POLICY ISSUE A: DEFINITION OF A METRIC FOR THE SIZE CRITERION

Policy option A.0: No metric provided

This policy option assumes that no metric is provided for the assessment of the size criterion, leaving the choice of the metric or indicator entirely to the supervisory authority.

Policy option A.1: Restrict the metric to be used to gross written premiums and technical provisions

In this option, the size of a life insurance or reinsurance undertaking is assessed by using the amount of technical provisions and the size of a non-life insurance or reinsurance undertaking is assessed by using the amount of gross written premiums.

Policy option A.2: Use gross written premiums and technical provisions in combination with total assets

The last policy option considered allows to supplement, where relevant, the assessment of the size criterion using the amount of total assets as an additional metric. This might be relevant, for example, when assessing undertakings pursuing both life and non-life insurance activities.

POLICY ISSUE B: SUBSTITUTABILITY OF INSURANCE PRODUCTS OR POLICIES

Policy option B.0: No specification on the type of alternative products that should be considered by supervisory authorities to assess substitutability

This option implies that the Draft RTS would remain silent about the option to replace or exchange products or policies in the substitutability criterion, leaving full discretion on the comparable products to supervisory authorities.

Policy option B.1: Assess substitutability only with other insurance products and policies

The second policy option involves restricting the analysis on whether policyholders and beneficiaries have the possibility to replace insurance products or policies or exchange them only to consider another insurance product or policy.

Policy option B.2: Include similar financial products in the assessment

Another option considered when referring to substitutability, is to consider the possibility of policyholders and beneficiaries to replace or exchange insurance products or policies for another insurance product or policy or similar financial product

POLICY ISSUE C: DEDUCTION OF INTRA-GROUP TRANSACTIONS

Policy option C.0: No prescription on the deduction of intra-group transactions

The first option is not to be prescriptive with respect to the deduction of intra-group transactions in Article 10 of Draft RTS, therefore leaving this possible deduction to the discretion of the supervisory authority when performing the assessment.

Policy option C.1: Prescription of the deduction of intra-group transactions

This policy option refers to the addition, in Article 10 of the Draft RTS, of a provision that prescribes that supervisory authorities deduct intra-group transactions, both in terms of gross written premiums and technical provisions, when calculating the market share for the purpose of determining if the minimum market share of 60% in a Member State is met.

IMPACT OF THE POLICY OPTIONS

POLICY ISSUE A: DEFINITION OF A METRIC FOR THE SIZE CRITERION

Policy option A.0: No metric provided

The costs of this option outweigh the benefits as there is indeed more flexibility for supervisors but in turn there is the requirement for them to define their own metric, which also implies no or little harmonisation among supervisory authorities and less predictability and transparency for the market and the industry.

Policy option A.0		
Costs	Policyholders	No material impact
	Industry	Less predictability and transparency on the metrics used to subject insurance or reinsurance undertakings or groups to pre-emptive recovery planning. Possible requirement of additional data.
	Supervisors	Need to determine their own measure/indicator
	Other	No or little harmonisation
Benefits	Policyholders	No material impact
	Industry	No material impact

	Supervisors	More flexibility in the assessment
	Other	No material impact

Policy option A.1: Restrict the metric to be used to gross written premiums and technical provisions

This option is more balanced, as it is based on data that is available to supervisors, which are not required to define any metric and provides a high degree of harmonisation, but on the other hand it is more prescriptive and it raises concerns when assessing undertakings pursuing both life and non-life activities, as they may have one side of the business that is dominant, making the comparison with other undertakings imprecise.

Policy option A.1		
Costs	Policyholders	No material impact
	Industry	Less accurate assessment of undertakings pursuing both life and non-life activities
	Supervisors	Less flexibility in the assessment
	Other	No material impact
Benefits	Policyholders	No material impact
	Industry	The analysis is based on data already available in regular supervisory reporting, therefore the industry should not be burdened by additional reporting cost and effort. More predictability in the outcome of the assessment of this criterion
	Supervisors	No need to define own metric
	Other	Full degree of harmonisation and more comparability across the insurance market

Policy option A.2: Use gross written premiums and technical provisions in combination with total assets

While presenting some degree of prescriptiveness, this option allows for more flexibility for supervisors, as they can include total assets in the assessment of the size criterion, and a significant level of harmonisation. Supervisors are not required to define any metric, as this is already specified in the Draft RTS.

Moreover, the inclusion of total assets, provides a more accurate assessment of undertakings pursuing both life and non-life activities, as this metric is a neutral indicator, that leaves features related to the business aside of the analysis.

Policy option A.2		
Costs	Policyholders	No material impact
	Industry	No material impact
	Supervisors	As supervisory authorities have more metrics available, the outcome of the assessment will be less comparable among peers.
	Other	No material impact
Benefits	Policyholders	No material impact
	Industry	Assessment of undertakings pursuing both life and non-life activities is more accurate and data already available from regular reporting
	Supervisors	No need to determine their own metric and more flexibility
	Other	Significant level of harmonisation. Comparability with banking sector

POLICY ISSUE B: SUBSTITUTABILITY OF INSURANCE PRODUCTS OR POLICIES

Policy option B.0: No specification on the type of products that should be considered by supervisory authorities to assess substitutability

Policy option B.0		
Costs	Policyholders	No material impact
	Industry	Lack of clarity on the factors considered by supervisory authorities
	Supervisors	Less predictability in the assessment
	Other	No material impact
Benefits	Policyholders	No material impact
	Industry	No material impact
	Supervisors	More flexibility to assess each individual case
	Other	No material impact

Policy option B.1: Assess substitutability only with other insurance products and policies

This policy option presents the benefit of being easier to assess. The costs suggest that the assessment overlooks the possibility that policyholders and beneficiaries may have to explore alternative coverage options, such as non-insurance sources or other providers.

Consequently, this approach may not provide the most accurate representation when assessing substitutability, leading to a possible underestimation of the substitutability of activities carried out by insurance or reinsurance undertakings or groups.

Policy option B.1		
Costs	Policyholders	No material impact
	Industry	Possible underestimation of the substitutability of activities of insurance and reinsurance undertakings and groups
	Supervisors	By focusing on similar insurance products, the assessment might underestimate the ability of the market and policyholders to adapt to alternative solutions.
	Other	No material impact
Benefits	Policyholders	No material impact
	Industry	No material impact
	Supervisors	More easily assessable as it involves only looking at the insurance market
	Other	No material impact

Policy option B.2: Include similar financial products in the assessment

This option requires a more thorough assessment of the options that policyholders and beneficiaries have to replace or exchange insurance products or policies. This assessment may be more onerous, however it has the benefit of providing a more accurate reflection of the actual market dynamics and the broad range of options available to policyholders and beneficiaries. Moreover, this gives supervisors a more detailed understanding of the market.

Lastly, by including financial products in the assessment, activities carried out by insurance and reinsurance undertakings may be seen as having a greater degree of substitutability.

Policy option B.2		
Costs	Policyholders	No material impact

	Industry	No material impact
	Supervisors	Bigger effort to assess the whole financial market
	Other	No material impact
Benefits	Policyholders	No material impact
	Industry	The activities carried out by insurance and reinsurance undertakings or groups may be assessed as more substitutable Including financial products better reflects the reality of a market where insurance and financial products sometimes compete to attract the same customers.
	Supervisors	More accurate view of the market
	Other	No material impact

POLICY ISSUE C: DEDUCTION OF INTRA-GROUP TRANSACTIONS

Policy option C.0: No prescription on the deduction of intra-group transactions

This policy option requires supervisory authorities to make their own assessment when it come to the deduction of intra-group reinsurance transactions and evaluate if it is necessary to deduct from the market share. In the supervisory authority decides not to deduct intra-group transactions, this option has the advantage of not having to require additional data, that might be needed to perform the assessment and might not be available to supervisory authorities through regular data reporting.

Not deducting intra-group reinsurance transactions from the market share might have the effect of overestimating the total market share, however this overestimation was assessed as not being significant in most of the cases and it is certainly outweighed by the benefit of having a much easier computation of the market share. Moreover, the differences in treatment of these transactions will not undermine the objective of setting out a minimum harmonisation framework, as this is achieved by defining and reaching a common understanding of the criteria, by the existence of a minimum market share of 60% established in the IRRD and the requirement that all the criteria are considered by supervisory authorities.

Policy option C.0		
Costs	Policyholders	No material impact
	Industry	No material impact
	Supervisors	Potential overestimation of the market share in some cases, when there are intra-group transactions that are not deducted

	Other	Less harmonisation among Member States
Benefits	Policyholders	No material impact
	Industry	No additional data required, based on the supervisory authority decision on the deduction
	Supervisors	More flexibility and simpler computation of the market share. Focus on the risk-based criteria.
	Other	No material impact

Policy option C.1: Prescription of the deduction of intra-group transactions

This option presents the benefits of having a provision in the technical standards that gives more legal certainty on the deduction of intra-group transactions. Moreover, this avoids double counting of gross written premiums and technical provisions for those groups that provide these types of transactions among the entities of the group authorised in the same member State.

On the other hand, supervisors are required to do a more complex computation of the market share and the data required for this deduction might not always already be available for supervisors and might need to be requested to insurance or reinsurance undertakings or groups.

Policy option C.1		
Costs	Policyholders	No material impact
	Industry	Additional data will be requested to perform the deduction, if this is not already available to supervisory authorities
	Supervisors	More complex calculation of the market share. Less flexibility
	Other	No material impact
Benefits	Policyholders	No material impact
	Industry	Avoids double counting of gross written premiums and technical provisions
	Supervisors	Explicit empowerment to supervisory authorities to deduct intra-group transactions
	Other	More harmonisation

COMPARISON OF POLICY OPTIONS

DEFINITION OF A METRIC FOR THE SIZE CRITERION

EFFECTIVENESS			
	Promoting a risk-based framework, limit burden	Level playing field	Improve transparency and better comparability
Policy option A.0	0	0	0
Policy option A.1	+	+	+
Policy option A.2	+	+	++

EFFICIENCY			
	Promoting a risk-based framework, limit burden	Level playing field	Improve transparency and better comparability
Policy option A.0	0	0	0
Policy option A.1	+	+	+
Policy option A.2	+	+	++

SUBSTITUTABILITY OF INSURANCE PRODUCTS OR POLICIES

EFFECTIVENESS			
	Promoting a risk-based framework, limit burden	Level playing field	Improve transparency and better comparability
Policy option B.0	0	0	0
Policy option B.1	+	+	+
Policy option B.2	++	++	+

EFFICIENCY			
	Promoting a risk-based framework, limit burden	Level playing field	Improve transparency and better comparability
Policy option B.0	0	0	0
Policy option B.1	+	+	+

Policy option B.2	+	++	+
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DEDUCTION OF INTRA-GROUP TRANSACTIONS

EFFECTIVENESS			
	Promoting a risk-based framework, limit burden	Level playing field	Improve transparency and better comparability
Policy option C.0	+	+	0
Policy option C.1	0	+	+

EFFICIENCY			
	Promoting a risk-based framework, limit burden	Level playing field	Improve transparency and better comparability
Policy option C.0	++	+	0
Policy option C.1	0	+	+

PREFERRED OPTION

For the policy option Issue A: Definition of a metric for assessing the size criterion, the preferred option is A.2, the assessment of size in terms of gross written premiums and technical provisions with the additional use of total assets where relevant. This option appears to be better both in terms of effectiveness, as it ensures a level playing field through a common understanding of the assessment of the size criterion, it improves transparency and better comparability and at the same time limiting the burden for insurance and reinsurance undertakings representing lower risk. Moreover, the benefits/costs analysis suggests that this option is the most efficient, as it is the ones that is more balanced and provide more benefits both to supervisors and the industry.

The preferred option from the assessment of policy option B, substitutability of insurance products or policies, is option B.2. With this option, all three objectives are best accomplished, namely this promotes a risk-based framework, ensures a level playing field and harmonisation as all supervisory authorities should base their assessment on a common criterion and it also improves transparency and better comparability. By including other financial products in the assessment, the cost of having to perform a more thorough assessment is outweighed by the benefit of having a better overview of the substitutability of insurance products or policies.

The assessment of policy option C seems to be more complex, as both options have benefits and costs that are comparable and very similar. Moreover, the quantification of the impact can only be accurately determined with data available at the national level, which varies in availability and completeness

across different jurisdictions. Additionally, since option C.0 is the one that limits the burden for (re)insurance undertakings representing lower risk more than the others, this option is the preferred one.

OVERVIEW OF QUESTIONS FOR CONSULTATION

The questions are set out in an EU-Survey ([link](#)).

Privacy statement related to Public (online) Consultations

▶ Introduction

1. The European Insurance and Occupational Pension authority (EIOPA) is committed to protecting individuals' personal data in accordance with Regulation (EU) 2018/1725³ (further referred as "the Regulation").
2. In line with article 15 and 16 of the Regulation, this privacy statement provides information to the data subjects relating to the processing of their personal data carried out by EIOPA.

▶ Purpose of the processing of personal data

3. Personal data is collected and processed to manage online public consultations EIOPA launches, and to conduct online surveys, including via online platform EUSurvey⁴, and to facilitate further communication with participating stakeholders (e.g., when clarifications are needed on the information supplied or for the purposes of follow-up discussions that the participating stakeholders may agree to in the context of the consultations or surveys).
4. The data will not be used for any purposes other than the performance of the activities specified above. Otherwise you will be informed accordingly.

▶ Legal basis of the processing of personal data and/or contractual or other obligation imposing it

5. The legal basis for this processing operation are the following :
 - Regulation (EU) 1094/2010, and notably Articles 8, 10, 15, 16, 16a and 29 thereof
 - EIOPA's Public Statement on Public Consultations
 - EIOPA's Handbook on Public Consultations
6. In addition, in accordance with Article 5(1)(a) of the Regulation, processing is lawful as it is necessary for the performance of a task carried out in the public interest.

³ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39–98.

⁴ For more information on the processing of personal data in EUSurvey, please see the [dedicated privacy statement](#).

▶ **Controller of the personal data processing**

7. The controller responsible for processing the data is EIOPA's Executive Director.
8. Address and email address of the controller:

Westhafen Tower, Westhafenplatz 1

60327 Frankfurt am Main

Germany

fausto.parente@eiopa.europa.eu

▶ **Contact detail of EIOPA's Data Protection Officer (DPO)**

9. Westhafenplatz 1, 60327 Frankfurt am Main, Germany
dpo@eiopa.europa.eu

▶ **Types of personal data collected**

10. The following personal data might be processed:
 - Contact details (name, email address, phone number).
 - Employment details (company and job title).

▶ **Recipients/processors of the personal data collected**

11. Data will be collected and disclosed to the relevant staff members part of the Department/Unit in charge of the consultation/surveys and also to other EIOPA's staff on a need-to-know basis (e.g IT staff, security officer).

▶ **Retention period**

12. Personal data collected are kept by until the finalisation of the project the public consultation or the survey relate to.
13. The personal data collected in EUSurvey are deleted from EUSurvey as soon as the period to provide answers elapsed.

▶ **Transfer of personal data to a third country or international organisations**

14. No personal data will be transferred to a third country or international organisation. The service provider is located in the European Union.

▶ **Automated decision-making**

15. No automated decision-making including profiling is performed in the context of this processing operation.

► **What are the rights of the data subject?**

16. Data subjects have the right to access their personal data, receive a copy of them in a structured and machine-readable format or have them directly transmitted to another controller, as well as request their rectification or update in case they are not accurate. Data subjects also have the right to request the erasure of their personal data, as well as object to or obtain the restriction of their processing.
17. Where processing is based solely on the consent, data subjects have the right to withdraw their consent to the processing of their personal data at any time.
18. Restrictions of certain rights of the data subject may apply, in accordance with Article 25 of Regulation (EU) 2018/1725.
19. For the protection of the data subjects' privacy and security, every reasonable step shall be taken to ensure that their identity is verified before granting access, or rectification, or deletion.
20. Should the data subjects wish to exercise any of the rights provided in paragraphs 16 and 17 above, please contact EIOPA's DPO (dpo@eiopa.europa.eu).

► **Who to contact if the data subjects have any questions or complaints regarding data protection?**

21. Any questions or complaints concerning the processing of the personal data can be addressed to EIOPA's Data Controller (fausto.parente@eiopa.europa.eu) or EIOPA's DPO (dpo@eiopa.europa.eu).
22. Alternatively, the data subjects can have recourse to the **European Data Protection Supervisor** (www.edps.europa.eu) at any time, **as provided in Article 63 of the Regulation**.