



European Commission's Better Regulation Consultation "Proposal for a Directive of the European Parliament and of the Council establishing a framework for the recovery and resolution of insurance and reinsurance undertakings and amending Directives 2002/47/EC, 2004/25/EC, 2009/138/EC, (EU) 2017/1132 and Regulations (EU) No 1094/2010 and (EU) No 648/2012"

Executive summary

Mutual/cooperative insurers are responsible for approximately one-third of all insurance business in Europe. They are characterised by a central focus on their policyholders, who are generally their owners rather than external investors. Any benefits from the running of the organisation are for policyholders' best interests. Mutual/cooperative insurers add to the diversity of the European insurance sector, providing competition, financial stability and sustainability, and are represented in all insurer sizes.

Legal recognition of the business model varies across Member States: mutual insurers are regulated and formed under national law in different ways, frequently reflecting national distinctions such as social welfare systems. The IRRD proposals create a significant challenge since they address insurers with a "one size fits all" approach, demonstrated with the emphasis on the distinction between shareholders and policyholders/beneficiaries when describing resolution activities. Mutual insurance undertakings have no external owners so there are no shareholders to bear first losses, only policyholders.

The IRRD proposals, particularly the resolution tools, are therefore unsuitable for mutual insurers. Resolution objectives focus on protecting policyholders, beneficiaries and claimants; this does not respond to the mutual legal form, and further could create challenges for resolution authorities to respect the legal form, particularly with regard to retaining mutual status.

Recent events have demonstrated the insurance industry's resilience and sustainability in the face of extreme events. EIOPA's 2021 Stress Test demonstrates this, and its recent report on insurance failures and near misses, built on pre-Solvency II data, identifies factors such as deteriorating capital strength as early identifiers of problems. These factors are now fundamentally addressed in Solvency II which is a robust and powerful regulatory regime. Its inbuilt sturdiness should be assessed rather than an early application of an IRRD regime to further augment regulatory requirements. Where there are concerns about cross-border insurance, these should be addressed separately and tools not be applied wholesale.

While we agree that a recovery regime is important, such a scheme should be better aligned with the characteristics of the insurance industry, and not reflective of banking requirements due to the very different nature of the businesses. Insurance has been proven to not have the same risk profile as banks, and should problems arise within an insurer, there is significant time to manage them. The Solvency II ladder of intervention provides clear markers for regulatory intervention aligned with SCR levels, providing clarity and certainty. Proposals under the IRRD allow earlier intervention from resolution authorities bringing uncertainty, and potentially higher capital levels would result, ultimately detrimentally affecting policyholders with no clear



commensurate protection.

The resolution framework proposals are disproportionate and will not benefit policyholders as intended. They are likely to conflict with national company law and treatments of liquidations and similar instruments. To reflect the national variations in the legal forms, liquidating, winding-up or any other form of termination of a legal entity must therefore be regulated at the same level.

These ramifications, along with the challenges for many Member States of establishing the proposed frameworks, will put greater burdens on taxpayers as well as on insurers and policyholders.

We propose that the Solvency II structure for insurer recovery is therefore further examined before a new structure is proposed and implemented, and at a minimum that mutual/cooperative insurers with a less critical function in their market are descoped. Resolution proposals should not be applied as they are proposed, and reassessed in the light of the risks posed by the insurance sector.



European Commission Consultation:

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AMICE, the Association of Mutual Insurers and Insurance Cooperatives in Europe, represents a specific sector of the European insurance industry. Our members are characterised by their central focus on their policyholders, who are generally the owners of their insurers rather than the external investment community. The products, services and benefits derived from our members’ activities are conceived and applied for the best interests of their policyholders, with a long-term perspective at the core of the relationship between the mutual/cooperative insurer and the policyholders. Mutual/cooperative insurers represent approximately one-third of all insurance business in Europe, and range from some of the smallest insurance entities to some of the largest in the region.

AMICE would like to thank the European Commission for the opportunity to provide our members’ views on the proposals to establish a framework for the recovery and resolution of insurance and reinsurance undertakings.

The mutual / cooperative insurance model

The mutual/cooperative insurance model is focused on the core relationship between the insurer and its members/policyholders, who are generally the owners and/or controllers of the insurer. Typically, these types of insurers do not have external shareholders and are defined by key principles of solidarity, democratic governance and sustainability. The close relationship between the insurer and its members/policyholders gives a deep understanding of policyholder needs, resulting in appropriate products and actions for the benefit of the members/policyholders.

The mutual insurance model is legally recognised most EU Member States, with distinctions in this recognition at national level, often reflecting the social and legal systems in different countries. Some of the oldest insurance companies in Europe are mutuals, reflecting the long-term nature of the form and the stability of structure.

Approximately half the insurance firms in Europe are mutuals or cooperatives or their subsidiaries and they represent approximately 400 million members/policyholders underwriting more than €400 billion in insurance premiums. One-third of all insurance in Europe is placed with insurance companies which follow the mutual/cooperative model¹.

Mutual and cooperative insurers in Europe are involved in all lines of insurance and pensions

¹ ICMIF Global Mutual Market Share 10 <https://www.icmif.org/wp-content/uploads/2020/11/MMS-ENG-1.pdf>



business. They range from some of the largest insurers in Europe, providing insurance to commercial and personal customers across many types of products and several countries, to some of the smallest, offering specialised insurance to a specific group of members.

Furthermore, mutual and cooperative insurers bring stability to the market through diversity, competitiveness and a long-term business model. Their focus on the primacy of their policyholders gives them a significant role in addressing the insurance protection gap.

Mutual/cooperative insurance and the IRRD proposals

We are seriously concerned that the IRRD proposals as they are currently formulated do not address the mutual/cooperative business model and will have a significant and deleterious effect if applied in their present form.

Legal recognition of the mutual business model varies across Member States: mutual insurers are regulated and formulated under national laws in different ways, frequently reflecting national distinctions such as social welfare systems. The IRRD proposals create a significant challenge since they address insurers with a “one size fits all” approach, demonstrated with the emphasis on the distinction between shareholders and policyholders/beneficiaries when describing resolution activities. Mutual insurance undertakings have no external owners so there are no shareholders to bear first losses, only policyholders; business models in which there are no external shareholders are not addressed in the proposals, and we are concerned that the proposals as they stand would serve only to confound the situation should they be applied to such an insurance entity. Additionally, with the mutual insurance form recognised within national legal systems, we believe that resolution activities should be regulated at the same level.

Resolution objectives focus on protecting policyholders, beneficiaries and claimants; this does not respond to the mutual legal form. Tools such as bridging would appear to automatically override the mutual status of the insurer, and the proposals do not indicate how this could be addressed in the resolution regime. Therefore, this could create challenges for resolution authorities to respect the legal form, particularly with regard to retaining mutual status.

The IRRD proposals, particularly the resolution tools, are therefore unsuitable for mutual/cooperative insurers.

Wider concerns

The IRRD proposals appear to reflect the banking requirements and do not properly take into account the different nature of the insurance business; insurance does not have the same systemic risk as banks, nor liquidity stresses.

Both the financial crisis of 2008-2009 and the more recent experience of the Covid-19 pandemic have proven the insurance industry’s resilience and sustainability in the face of extreme events.

EIOPA's 2021 stress test² demonstrates this, and its recent report on insurance failures and near misses³, built on pre-Solvency II data, identifies factors such as deteriorating capital strength as early identifiers of problems. These factors are now fundamentally addressed in Solvency II, which itself is formulated around the key premise of policyholder protection.

We believe that **Solvency II provides a robust and powerful regulatory regime**, which is currently undergoing a thorough review with potential enhancements as a result of that. In the light of the demonstrated resilience of the prudential regulatory requirements and the Solvency II 2020 Review, we believe that the evidence from the stress test indicates that it is more appropriate to undertake an impact assessment on the need for a recovery and resolution regime, rather than implement an early application of an IRRD regime to further augment regulatory requirements.

Where there are concerns about cross-border insurance, we believe that these should be addressed separately, identifying the sources for the concerns. EIOPA has identified that less than 11% of EEA insurance business is cross-border in nature⁴, thus it would be disproportionate to apply tools to address specific concerns for this type of business to the entire EU insurance industry.

We agree that a recovery regime is important, but advocate that such a scheme should be better aligned with the characteristics and knowledge of the insurance industry, and not reflective of banking requirements due to the very different nature of the businesses.

In particular, the insurance model is such that there are significant indicators of potential issues in advance of those problems arising, particularly under the Solvency II regime. The ladder of intervention within Solvency II provides clear markers for regulatory intervention aligned with solvency levels, providing clarity and certainty, and is an appropriate tool for regulators. By comparison, the proposals for resolution authority actions within the IRRD are of serious concern since they permit earlier and lesser determined intervention, in advance of specified solvency markers, and may therefore have significant negative impacts. In order for these threats to be avoided, there may be measures taken by insurers such as potentially higher capital levels put into place. Again, this is of particular challenge to the mutual/cooperative insurance model since these increasingly conservative levels would ultimately be applied to the policyholders, alongside the other implementation effects of the IRRD, as detailed elsewhere in this response.

Alongside the solvency regime, Solvency II has strong governance requirements which tackle the challenges of internal risks relating to management and corporate governance identified in the EIOPA report on insurance failures and near misses. These are vital contributors to policyholder protection and in association with the capital and reporting requirements provide the regulatory tools for NSA insight and action.

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https://www.eiopa.europa.eu/sites/default/files/financial_stability/insurance_stress_test/insurance_stress_test_2021/eiopa-bos-21-552-2021-stress-test-report_0.pdf

³ https://www.eiopa.europa.eu/document-library/report/failures-and-near-misses-insurance_en?source=search

⁴ EIOPA: *Peer review on EIOPA's Decision on the collaboration of the insurance supervisory authorities*, https://www.eiopa.europa.eu/content/peer-review-eiopa-decision-collaboration-insurance-supervisory-authorities_en

Thus, the resolution framework proposals are disproportionate and will not benefit policyholders as intended. They are likely to conflict with national company law and treatments of liquidations and similar instruments. To reflect the national variations in the legal forms, liquidating, winding-up or any other form of termination of a legal entity should therefore be regulated at the same level.

It has been identified that there will be significant action required to implement the proposed IRRD requirements, particularly for insurers based in Member States which currently do not operate a similar regime⁵. This is likely to extend to systems, structures, contracts, etc, requiring significant resource both for establishment and ongoing activities; in the mutual/cooperative business model, the cost for these activities will be inevitably assumed by the policyholders, and this leads to questions about whether they will result in commensurate protection for them.

These ramifications, along with the challenges for many Member States of establishing the proposed frameworks, will put greater burdens on taxpayers as well as on insurers and policyholders.

As stated earlier, the mutual/cooperative insurance model assists in closing the insurance protection gap. If such steps are required under the IRRD, we foresee the possibility that the increased costs for implementing them will increase costs for policyholders, possibly increasing premium levels. For the financially vulnerable, increase premiums could result in insurance becoming too expensive, therefore leading to a widening rather than narrowing protection gap. Additionally, if resolution authorities take particular positions on certain types of insurance cover, it could limit the appetite for insurers to provide them even where they are requested by policyholders.

We welcome the inclusion of proportionality measures within the proposed IRRD regime. We are concerned about the market share approach being taken within the proposals, which will not reflect similarly in different Member States because of the unique characteristics of each insurance market. Other measures such as the provision of critical functions are much more appropriate to the possible inclusion of insurers into the regime.

Conclusions

- The IRRD proposals do not properly recognise the mutual/cooperative insurance model.
- Applying the IRRD proposals as they are currently formulated will discriminate against policyholders of the mutual/cooperative insurers, increasing costs and not protecting them in the way foreseen.
- Mutual insurers are recognised as such under national legal systems, and therefore these systems should also have control over any resolution requirements.
- Mutual/cooperative insurers with a less critical function in their market should therefore not be in scope of the IRRD proposals.

⁵ Clifford Chance: *The New EU Insurance Recovery and Resolution Directive*, October 2021



- Solvency II provides a sophisticated regime covering capital requirements, governance and reporting which has a clear ladder of intervention for regulatory intervention well in advance of an insurer “near miss” or failure, providing policyholder protection as a key aim of the regime.
- An impact assessment of the efficacy of the current regime should be undertaken before the IRRD proposals are further pursued.