

CONSULTATION
PAPER

CONSULTATION PAPER

on the proposal for Guidelines on criteria for
the identification of critical functions

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eiopa

European Insurance and
Occupational Pensions Authority

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RESPONDING TO THIS PAPER

EIOPA welcomes comments on the Consultation Paper on the proposal for Guidelines on criteria for the identification of critical functions.

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Please note that personal contact details (such as name of individuals, email addresses and phone numbers) will not be published.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 is treated can be found in the privacy statement at the end of this material.

¹ [Public Access to Documents](#)

CONSULTATION PAPER OVERVIEW AND NEXT STEPS

EIOPA carries out consultations in the case of Guidelines and Recommendations in accordance with Article 16 (2) of the EIOPA Regulation.

This Consultation Paper presents the draft Guidelines, explanatory text and a technical annex where relevant.

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. GUIDELINES

INTRODUCTION

- 1.1. In accordance with Article 16 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (EIOPA Regulation)² and with Article 9(9) of Directive (EU) 2025/1 of the European Parliament and of the Council of 27 November 2024 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) 2017/1129 (“IRRD”), EIOPA issues these Guidelines to specify further the criteria for the identification of critical functions.

Article 2(25) of the IRRD stipulates a definition of critical functions.

- 1.2. The disruption of a critical function can have a severely negative impact on policyholders, beneficiaries and injured parties, the real economy or financial stability as a whole. The identification of critical functions is therefore a key element in the process of resolution planning and in the decision whether taking a resolution action is in the public interest.
- 1.3. During the development of these Guidelines EIOPA has considered the work of international bodies on critical functions such as the International Association of Insurance Supervisors (IAIS) and the Financial Stability Board (FSB). In particular, the Guidelines consider the 2016 FSB Guidance “Developing Effective Resolution Strategies and Plans for Systemically Important Insurers” and the 2023 FSB practices paper for the “Identification of Critical Functions of Insurers” as a basis.
- 1.4. The structure of these Guidelines builds on the several elements included in the definition of critical functions as provided for in Article 2(25) of the IRRD. This includes a section on general elements and specific sections covering the assessment of the likely significant impact on the real economy or the financial system and the analysis of the substitution at a reasonable cost and within a reasonable time.

In these sections the Guidelines also cover some firm-specific factors which are relevant for the impact assessment or substitutability analysis.

- 1.5. The Guidelines are not meant to provide a fully prescribed assessment process.
- 1.6. In 2023 the FSB suggested a list of functions provided by insurance and reinsurance undertakings that might be critical. Some of the Guidelines refer to these functions as described by the FSB for the identification of critical functions. The functions are: (i) Insurance coverage as a precondition for economic activities; (ii) Insurance coverage as a precondition for individuals to go about their daily lives; (iii) insurance payments that are vital to individuals’ financial security; (iv) investment in and lending to the real economy; (v) acting

² OJ L 331, 15.12.2010, p. 48–83

as a counterparty in derivatives, repo and securities lending markets and (vi) pooling of risk, particularly reinsurance, as an economic function.

- 1.7. The Guidelines also cover potentially critical functions that are not directly related to insurance, such as investments in and lending to the real economy and acting as a counterparty in derivative transactions, but the main emphasis is on the insurance functions.
- 1.8. The identification of critical functions is the responsibility of the resolution authority and should be carried out as part of the resolution planning process as specified in Article 9(2) of the IRRD. The resolution authority performs its own assessment considering national specificities.
- 1.9. For the purpose of identifying critical functions, the resolution authority may engage in a dialogue with the insurance supervisory authority, in accordance with Article 12 of the IRRD to collect additional information on specificities of the insurance market in the given Member State.
- 1.10. These Guidelines are addressed to resolution authorities as defined in Article 2(12) of the IRRD
- 1.11. If not defined in these Guidelines, the terms have the meaning defined in the legal acts referred to in the introduction.
- 1.12. The Guidelines shall apply from DayMonthYear.

Type of potential critical functions

Guideline 1 – Scope of potential critical functions

- 1.13. When assessing whether the insurance or reinsurance undertaking provides critical functions, the resolution authority should consider all functions provided to a third party, including the following categories of functions:
- (a) Insurance or reinsurance functions, including underwriting new (re)insurance business, providing coverage for already underwritten risks and settling claims due under existing insurance contracts; specific coverages falling in the scope of these key insurance or reinsurance functions are:
 - i. Insurance/ reinsurance coverage as a precondition for economic activities,
 - ii. Insurance/reinsurance coverage as a precondition for individuals to go about their daily lives,
 - iii. Insurance/ reinsurance payments that are vital to individuals' financial security.
 - (b) Non-insurance functions, including investment in and lending to the real economy, acting as a counterparty in derivatives, repo and securities lending markets and pooling of risks, particularly reinsurance, as an economic function.
 - (c) Insurance or reinsurance related functions, including claims management, actuarial services, pension fund management, asset management and other administrative functions.

General requirements for the identification of critical functions

Guideline 2 – Geographical Level

- 1.14. The resolution authority should make an assessment for each Member State in which the insurance or reinsurance undertaking provides a function that may be likely to have a significant impact on the financial system or the real economy in that Member State.
- 1.15. For the purpose of this assessment, the resolution authority should assess the impact of the inability of the insurance or reinsurance undertaking to perform activities, services or operations on the financial system or the real economy and their substitutability for the Member State as a whole.
- 1.16. Notwithstanding the previous point 1.14, the resolution authority may decide to assess the impact and substitutability also at a regional level based on factors such as the importance or characteristics of the region for the Member State, the severity of the disruption at regional level, the potential contagion and differences between the Member State level and the regional level.

Guideline 3 - Consideration of an insurance guarantee scheme, measures under normal insolvency proceedings, and use of public funds in the identification of critical functions

- 1.17. When assessing whether activities, services or operations performed by an insurance or reinsurance undertaking meet the conditions set out in Article 2(25) of the IRRD, the resolution authority should not consider the following elements in order to make an appropriate assessment of the criticality of the functions, without consideration of factors that belong to a separate stage of the process, such as the public interest assessment and the assessment of resolvability:
- (a) measures under normal insolvency proceedings if they reduce the impact of the inability to perform the function on the financial system or the real economy or facilitate substitution at a reasonable cost and within a reasonable time.
 - (b) the use of an insurance guarantee scheme which is applicable to that insurance or reinsurance undertaking if the conditions for normal insolvency proceedings are met.
 - (c) the use of public funds.

Specific requirements for the assessment of the likelihood of a significant impact on the financial system or the real economy

Guideline 4 - Inability to provide the function

- 1.18. When assessing whether the inability of the insurance or reinsurance undertaking to provide a function that consists of certain activities, services or operations results in a significant impact, the resolution authority should use the assumption that these activities and operations cease completely and that the services are no longer provided.

This means:

- (a) for the function of underwriting new insurance business for certain risks that, inter alia, no new business is written for these risks.
- (b) for the function of providing coverage for certain risks which have already been underwritten that, inter alia, cover for these risks is no longer provided.
- (c) for the function of making payments to certain policyholders, beneficiaries or claimants that, inter alia, no payments are made to these policyholders, beneficiaries or claimants.
- (d) for the function of investing in or providing funding to certain entities in the real economy that, inter alia, no new investments and loans into these entities are made and that existing investments including loans into these entities are immediately sold or called in.
- (e) for the function of acting as counterparty in certain derivatives, repo or securities lending transactions that, inter alia, the insurance or reinsurance undertaking does not enter into new transactions and that existing transactions are immediately terminated.

- 1.19. Alternatively, the resolution authority may assume a partial cease of the activities or operations of a certain function or the partial provision of the services of a certain function, which means that they are still performed or provided but no longer to a comparable extent, under comparable conditions and with comparable quality. Such approach can be taken only if the resolution authority can ensure, based on objective criteria and reasonable assumptions, that this results in a more accurate assessment of the impact.

Guideline 5 - Transmission channels

- 1.20. When assessing the potential significant impact of the inability to provide a function on the real economy or the financial system, the resolution authority should consider at least the following transmission channels and/or their resulting impact:
- (a) direct impact on third parties to which the function is provided. Depending on the specific function this includes, *inter alia*, a reduction in the level of activities, including the purchase of goods and services, and in the ability to meet obligations.
 - (b) contagion from third parties to which the function is provided to other parties in the financial system or the real economy.
- 1.21. The resolution authority should consider whether it is necessary for the assessment referred to in the previous point to consider any of the following elements:
- (a) the potential impact on the financial system, including on financial markets, financial market infrastructures, banks, insurance and reinsurance undertakings, IORPs or hedge funds, public services.
 - (b) the potential impact on the real economy, including on the level of activity, output, employment, consumption, prices, incomes or profits in non-financial sectors of the economy.
 - (c) further contagion including from the financial system to the real economy and vice versa.

Guideline 6 - Factors to consider for the assessment whether a significant impact on the real economy or the financial system is likely

- 1.22. When assessing the significant impact of the inability to provide a function on the real economy or the financial system, the resolution authority should consider, *inter alia*, the following factors:
- (a) the characteristics of the function, including, where relevant, the risk(s) covered, the type of products, services or activities and in the case of insurance whether a mandatory coverage or coverage with specific legal requirements provided.
 - (b) the type of third parties to which the function is provided, such as individuals, small and mediums sized enterprises (SMEs), large corporations, financial industry, state owned companies and public institutions, and the nature of their reliance on the continuing provision of the function.

- (c) the number of third parties to which the function is provided, the total volume and number of activities, services and operations and the respective market share of the insurance or reinsurance undertaking.
 - (d) the geographical level at which the function is provided.
 - (e) the impact of the disruption of the function on the third parties to which it is provided, including to what extent and how long they can continue their activities without the function or whether they can easily adjust their activities without a negative impact in terms of income or the assets' value.
 - (f) the potential for contagion to other related parties, such as competitors, intermediaries, suppliers or creditors and the speed of such contagion, including the interdependencies between the third parties to which the function is provided and other parties, the potential for contagion following a change in societal sentiment and the relevance of the other parties to the financial system or the real economy.
 - (g) Without prejudice to 1.17 (b), the potential for contagion to other insurance or reinsurance undertakings following a significant use of an IGS that could trigger a substantial degree of ex-post funding putting a financial strain on those other insurance or reinsurance undertakings
- 1.23. The resolution authority should consider whether there are any factors specific to the insurance or reinsurance undertaking, not already included in the previous point, that may change the assessment on whether the inability to provide the function is likely to have a significant impact on the real economy or the financial system. Possible factors are, inter alia:
- (a) significance of the insurance or reinsurance undertaking's operations, which may be assessed based on its nature, size, market share (in the EU's internal market, national market or in markets for specific business lines), external and internal interconnectedness, complexity, extent of the cross-border activity and reputational risk (i.e. potential negative impact on the confidence in the whole sector in case of failure);
 - (b) significant differences in the way the insurance or reinsurance undertaking performs the function compared to other insurance or reinsurance undertakings.
 - (c) specifics in terms of interconnections between several functions provided to third parties, especially if they are critical.
 - (d) significant differences in the composition of the third parties to which the insurance or reinsurance undertaking provides the function compared to its competitors.

Guideline 7 - Impact resulting from effects on the social welfare of a large number of policy holders and from the systemic disruption in the provision of insurance services

- 1.24. When assessing whether there are functions for which the inability of the insurance or reinsurance undertaking to provide them is likely to have a significant impact on the real economy or the financial system resulting from effects on the social welfare of a large number of policy holders, beneficiaries or injured parties, the resolution authority should consider, inter alia, the specific coverages referred to in point 1.13 (a).

- 1.25. When assessing whether there are functions for which the inability of the individual insurance or reinsurance undertaking to provide them is likely to have a significant impact on the real economy or the financial system resulting from the systemic disruption of insurance services the resolution authority should consider, *inter alia*, functions where the inability to provide them creates a risk to the financial stability, in particular resulting from the systemic relevance of the insurance or reinsurance undertaking that provides the function, according to the criteria in point 1.18(a).
- 1.26. Possible indicators for a risk to financial stability as referred to in the previous point are, *inter alia*, the impact on the third parties to which the function is provided and, for third parties providing financial services, their size, market share, external and internal interconnectedness, complexity, and cross-border activities.

Guideline 8 - Loss of general confidence in the provision of insurance services

- 1.27. When assessing whether there are functions for which the inability of the insurance or reinsurance undertaking to provide them is likely to have a significant impact on the real economy or the financial system resulting from the loss of general confidence in the provision of insurance services, the resolution authority should consider, *inter alia*, the following aspects:
- (a) a loss of confidence may occur for the whole market or for one or more segments.
 - (b) there may be a loss of confidence in the ability of insurance undertakings to meet their existing obligations or in the availability of new insurance coverage.
 - (c) the likelihood that the inability to provide a function results in a loss of confidence may depend, *inter alia*, on the impact, on the substitutability and on the perception of the situation by third parties to which the function is provided and by other parties.

Specific requirements for the analysis of the substitutability at a reasonable cost and in a reasonable time

Guideline 9 - Approach to reasonable time and reasonable cost

- 1.28. The resolution authority should consider whether the condition of substitutability within a reasonable time and at a reasonable cost can be met. This is the case if there are other entities available which are able and willing to replace the function with activities, services or operations:
- (a) that provide the same or a similar economic function; and
 - (b) at a certain cost for the third parties and within a certain timeframe, that makes a significant impact on the real economy or the financial system not likely.

Guideline 10 - Further elements of the substitutability within a reasonable time and at a reasonable cost

- 1.29. When assessing whether a substitution is possible at a reasonable time and at a reasonable cost the resolution authority should, *inter alia*, consider all of the following:
- (a) in the case of savings products with no or minimal coverage of biometric risks, non-insurance undertakings, such as investment funds, may provide the same or similar economic function.
 - (b) the same, or a similar, economic function may only be provided by the substitute contracts if the counterparties have at least the same credit quality as the insurance undertaking. This is normally more relevant for reinsurance as well as functions provided to non-insurance financial institutions.
 - (c) the condition for substitutability as set out in Article 2(25) of the IRRD is only met if both the timeframe and cost are reasonable, as set out in Guideline 9. Both conditions have to be assessed together.
 - (d) there may be a trade-off between cost and timeframe: combinations of shorter time plus higher cost and longer time and lower cost may be reasonable when assessed together.
 - (e) Provided that any other conditions remain equal, the reasonable time for substitution becomes shorter if:
 - (i) the speed with which the inability to perform the function impacts the real economy or the financial system increases.
 - (ii) the magnitude of the impact increases.
 - (f) The reasonable cost can be higher than the current costs for the third party associated with the current contract with the insurance or reinsurance undertaking.
 - (g) The substitute contracts do not have to be available to all third parties to which the insurance or reinsurance undertaking provides the function and not all third parties to whom they are available are necessarily required to enter into them.

Guideline 11 - Factors to consider when assessing the substitutability of a function within a reasonable time and at a reasonable cost

- 1.30. When assessing whether a function can be substituted within a reasonable time and at a reasonable cost the resolution authority should consider, *inter alia*, the factors listed below:
- (a) characteristics of the function including the type of products, services or activities.
 - (b) properties of the market for the function (number, type and size of suppliers (including from other markets) providing the same or an equivalent function; level of market concentration; degree of product standardization; level of competitiveness; geographical level of the market; type of third parties to which the function is provided; timeliness and costs related to moving to a provider of a similar or equivalent function).
 - (c) appetite and ability of other market participants to provide the same or similar function to the third parties, including the volume of the activities, services or

operations to be substituted and the number of third parties to which they are provided; market share of the insurance or reinsurance undertaking with respect to the function provided; attractiveness of the business in terms of profitability and technical complexity; overall strategy of other market participants, the overall market environment; presence of barriers to entry in terms of requirements to perform the function (such as HR-related) or any absorption issues in terms of the financial and solvency capacity to take over the business or large exposures.

- (d) obstacles to the provision of activities, services or operations by other entities (regulatory issues, including regarding competition; legal issues; unavailability of reinsurance in case of a transfer of contracts; operational issues, including with regard to IT.
 - (e) any obstacles for the third parties to engage with the activities, services or operations provided by other entities, including any obstacles for policyholders to acquire new policies with the same or similar coverage due to, *inter alia*, a higher age or a deterioration in health, the availability of coverage (including the coverage capacity of a potential replacing party) or the time required to switch to a new product and any costs associated with such a move.
 - (f) nature of the failure of the insurance or reinsurance undertaking, in particular whether the failure is idiosyncratic or occurring in the context of a system-wide crisis, as this impacts the availability of any replacing entities to provide the function.
- 1.31. The resolution authority should consider whether there are any other factors specific to the insurance or reinsurance undertaking, not already included in the above list, that may alter the assessment. Possible other factors are, *inter alia*, those referred to in point 1.23.

Specific requirements for cross-border activities and groups

Guideline 12 - Treatment of significant cross-border activities

- 1.32. When assessing whether any significant cross-border activities within the meaning of Chapter VIII of Directive 2009/138/EU of the European Parliament and of the Council of 25 November 2009 on the taking up and pursuit of the business of Insurance and Reinsurance (Solvency II)³ performed by the insurance or reinsurance undertaking include a provision of a critical function in the host Member State, the resolution authority should apply the same criteria as in the identification of a critical function for an insurance or reinsurance undertaking.
- 1.33. In case an insurance or reinsurance undertaking engages in significant cross-border activities the resolution authority should liaise with the resolution authority or resolution authorities of the host Member State or Member States to collect information on any specificities in the

³ OJ L 2, 8.1.2025, p.53

host Member State that might be relevant for the decision whether the insurance or reinsurance undertaking provides a critical function in the host Member State.

Guideline 13 - Group aspects in the Identification of critical functions

- 1.34. In the assessment whether an insurance or reinsurance undertaking that is part of a group provides a critical function, the resolution authority should only consider activities, services and operations provided to entities outside the group.
- 1.35. In case two or more entities within the group provide the same activity, service or operation which is not deemed as critical at individual entity level, in a certain Member State, the resolution authority should assess the significant impact of this function in that Member State.

COMPLIANCE AND REPORTING RULES

- 1.1. This document contains Guidelines issued under Article 16 of the EIOPA Regulation. In accordance with Article 16(3) of the EIOPA Regulation, resolution authorities shall make every effort to comply with guidelines and recommendations.
- 1.2. Resolution authorities that comply or intend to comply with these Guidelines should incorporate them into their regulatory or supervisory framework in an appropriate manner.
- 1.3. Resolution authorities shall confirm to EIOPA whether they comply or intend to comply with these Guidelines, with reasons for non-compliance, within two months after the issuance of the translated versions.
- 1.4. In the absence of a response by this deadline, resolution authorities will be considered as non-compliant to the reporting and reported as such.

FINAL PROVISION ON REVIEWS

- 1.5. The present Guidelines shall be subject to a review by EIOPA by DayMonthYear.

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.

This impact assessment covers the assumptions used for the assessment of the impact of the inability to provide a function (policy issue A). The impact assessment is based on a qualitative assessment performed by EIOPA.

In drafting these Guidelines, EIOPA sticks to general objectives of the IRRD, as agreed by the legislators.

These general objectives are to enable the authorities to:

- Protect the collective interest of policyholders, beneficiaries and claimants.
- Maintain financial stability and ensure continuity of critical functions.
- Protect public funds by minimizing reliance on extraordinary public financial support.
- Ensure proper functioning of the internal market.

In view of the specific purpose of these Guidelines, the following more specific objectives were identified:

- Ensure a level playing field through common minimum harmonization rules that promote a convergent approach with regard to the identification of the critical functions.
- Ensure sufficient level of flexibility for resolution authorities to consider the specificities of national markets.
- Promoting a risk-based framework and limiting the burden for (re)insurance undertakings representing lower risk.

POLICY ISSUES

POLICY ISSUE A: ASSUMPTIONS USED FOR THE ASSESSMENT OF THE IMPACT OF THE INABILITY TO PROVIDE A FUNCTION

This policy issue is about to determine the assumptions used when assessing the inability to provide a function. For the identification of critical functions, a key aspect which needs to be assessed is the impact of the inability of insurance or reinsurance undertaking to perform those functions. With regard

to this inability, two policy options could be considered: The first option would be to assume that the function stops completely (“complete stop”), and this would represent **policy option A.1**.

Under the second option, the Guidelines would include the possibility to assume, under certain conditions, that the function is still provided, but no longer to a comparable extent, under comparable conditions or with comparable quality (“partial stop”), which would constitute **policy option A.2**.

The “complete stop” and “partial stop” are to be seen as assumptions used as inputs to the analysis of the impact of the inability to provide a function. In case a “complete stop” is assumed, the impact is expected to be higher, and more critical functions will be identified than under the assumption of a “partial stop”. The question whether a certain function is critical should be distinguished from the question whether the continuity of a critical function is ensured in case of failure. The concept of critical functions is not limited to a situation of actual failure; critical functions are also playing an important role in the pre-emptive recovery plans.

POLICY OPTIONS

POLICY ISSUE A: ASSUMPTIONS USED FOR THE ASSESSMENT OF THE IMPACT OF THE INABILITY TO PROVIDE A FUNCTION

Policy option A.1: The provision of the function that could be critical is assumed to cease completely (“complete stop”)

This approach assumes that a sudden and complete discontinuation of a function occurs and it cannot be substituted within a reasonable period of time and at reasonable cost. This assumption should be used as a default by the resolution authorities when assessing the impact of the inability to provide a function.

Policy option A.2: The resolution authority may assume that under certain conditions the function is still provided, but no longer to the same extent (“partial stop”)

This approach allows resolution authorities to assume a partial cease of the activities or operations of a certain function, or the partial provision of the services of a certain function, meaning that these are provided but no longer to a comparable extent, under comparable conditions and with comparable quality. In addition, the resolution authority has to ensure that objective criteria and reasonable assumptions were made during the assessment and that this results in a more accurate assessment of the impact.

IMPACT OF THE POLICY OPTIONS

POLICY ISSUE A: ASSUMPTIONS USED FOR THE ASSESSMENT OF THE IMPACT OF THE INABILITY TO PROVIDE A FUNCTION

| Policy option A.1: The provision of the function that could be critical is assumed to cease completely (“complete stop”) | | |
|--|------------------------|--|
| Costs | Policyholders | No impact |
| | Industry | No impact |
| | Resolution authorities | -Less potential to identify critical functions adjusted to the market realities or the specificities of the local market -Additional administrative costs for potentially higher number of resolution plans expected to be drafted as a consequence of a higher number of identified critical functions |
| | Other | No impact |
| Benefits | Policyholders | No impact |
| | Industry | No impact |
| | Resolution authorities | -No additional administrative costs due to simplicity of assessment -Limit the risk that assumptions about the ability to provide the function partly may prove false when the insurer is failing or likely to fail (FOLTF) |
| | Other | Higher level of harmonization in the application of criteria (assessment of partial inability would vary considerably across Member States) |

| Policy option A.2: The resolution authority can assume that under certain conditions the function is still provided, but no longer to the same extent (“partial stop”) | | |
|--|------------------------|--|
| Costs | Policyholders | No impact |
| | Industry | No impact |
| | Resolution authorities | -Potential higher administrative costs, as the partial stop needs to be assessed based on objective criteria and reasonable assumptions -More complex assessment, including the analysis of comparability |

| | | |
|-----------------|------------------------|--|
| | Other | Lower level of harmonization of assumptions in the EU |
| Benefits | Policyholders | No impact |
| | Industry | No impact |
| | Resolution authorities | -Higher flexibility for the resolution authorities to capture national specificities and reflect economic reality in the identification of critical functions -Less burden due to lower expected number of resolution plans |
| | Other | No impact |

COMPARISON OF POLICY OPTIONS

POLICY ISSUE A: ASSUMPTIONS USED FOR THE ASSESSMENT OF THE IMPACT OF THE INABILITY TO PROVIDE A FUNCTION

| EFFECTIVENESS | | | |
|-------------------|---|--|---|
| | Level playing field through sufficiently harmonized rules | Flexibility for the resolution authorities and potential for the consideration of national specificities | Promoting a risk-based framework and limiting the burden for (re)insurance undertakings representing lower risk |
| Policy option A.1 | ++ | 0 | 0 |
| Policy option A.2 | 0 | ++ | + |

| EFFICIENCY | | | |
|-------------------|---|--|---|
| | Level playing field through sufficiently harmonized rules | Flexibility for the resolution authorities and potential for the consideration of national specificities | Promoting a risk-based framework and limiting the burden for (re)insurance undertakings representing lower risk |
| Policy option A.1 | ++ | 0 | 0 |
| Policy option A.2 | 0 | ++ | + |

PREFERRED OPTION

The impact assessment considers the option of a partial inability to provide a function (“partial stop”) as an additional assumption when identifying critical functions.

The assumption of a complete inability to provide a function may lead to higher harmonization and have a greater potential for ensuring a level playing field, however, this assumption may result in an unrealistic assessment by potentially determining a higher number of critical functions, consequently resulting in a higher number of resolution plans. Although this would provide a more detailed and prudent analysis of the critical function in the resolution plan, it might not be proportionate to the economic and legal reality.

The assumption of a partial stop may better reflect economic and legal reality as in practice there might be ways to partially continue the function.

Based on these considerations, it was decided to favor an approach that ensures more flexibility to the resolution authorities to better reflect the economic situation and the specificities of the local markets and that will also influence the outcome of the public interest.

2. EXPLANATORY TEXT

GUIDELINE 1 – SCOPE OF POTENTIAL CRITICAL FUNCTIONS

1.13. When assessing whether the insurance or reinsurance undertaking provides critical functions, the resolution authority should consider all functions provided to a third party, including the following categories of functions:

(a) Insurance or reinsurance functions, including underwriting new (re)insurance business, providing coverage for already underwritten risks and settling claims due under existing insurance contracts; specific coverages falling in the scope of these key insurance or reinsurance functions are:

- i. Insurance/ reinsurance coverage as a precondition for economic activities,
- ii. Insurance/reinsurance coverage as a precondition for individuals to go about their daily lives,
- iii. Insurance/ reinsurance payments that are vital to individuals' financial security.

(b) Non-insurance functions, including investment in and lending to the real economy, acting as a counterparty in derivatives, repo and securities lending markets and pooling of risks, particularly reinsurance, as an economic function.

(c) Insurance or reinsurance related functions, including claims management, actuarial services, pension fund management, asset management and other administrative functions. You need to insert a table and copy paste the text of the GL].

2.1. No function qualifies automatically as critical function as defined in Article 2(25) IRRD for all the insurance or reinsurance undertakings that provide it. This depends on several factors other than the characteristics of the function, such as the Member State where it is provided and the volume. Depending on the Member State the properties of certain functions may however materially increase the chances that the conditions set out in Article 2(25) IRRD are met. These characteristics include, but are not limited to coverage mandated by law, existence of long-term liabilities/guarantees, certain types of third parties to which the function is provided and the fact that they are the precondition for certain economic activities.

2.2. The following non-exhaustive list of potential critical functions has been compiled based on the current experience of some resolution authorities and it is provided for illustrative purposes. The list sets out economic and social functions provided by insurance undertaking that may be eligible for criticality due to their characteristics and role for the real economy. Its purpose is to serve as a reference for resolution authorities when deciding whether an insurance or reinsurance undertaking provides a critical function.

2.3. Resolution authorities may decide not to use the list, for example if they conclude that it does not reflect the specific features of their market. Before classifying a function in the list as critical the

resolution authority shall assess whether the conditions set out in Article 2(25) IRRD are met. Functions not included in the list below can still qualify as critical.

2.4. The list is broken down by lines of business and products. The names of these lines of business and products strive to follow the classes of insurance as defined in Annex I and Annex II of the Solvency II Directive, however in some instances business terminology prevails.

(1) Lines of business and products related to Life insurance:

- Annuities
- Index-linked and unit-linked insurance
- Insurance with profit participation
- Life insurance as defined under Class I of Annex II of the Solvency II Directive, inter alia:
 - Endowments
 - Permanent life insurance with or without a savings component
 - Term life insurance
- Other life insurance, such as:
 - Life insurance contracts securing a mortgage loan
 - Long-term savings products of a retirement nature
 - Pension closeout
 - Supplementary insurance contracts underwritten in connection with life assurance

(2) Lines of business and products related to Non-life insurance:

- Accident (including industrial injury and occupational diseases):
 - Emergency medical expenses (e.g. Travel insurance)
 - Workers' compensation insurance
- Health Insurance, inter alia:
 - Long-term care insurance
 - Long term disability/loss of earning capacity
 - Mandatory health coverage or medical coverage
- Assistance insurance
- Credit and suretyship insurance
 - Credit default and insolvency insurance
 - Export credit insurance
 - Instalment credit insurance
 - Mortgage insurance
 - Other insurance products with credit component, such as:
 - Captive/fronting business
 - Political risk
 - Suretyship/ bonding insurance
- Fire, natural forces and Other Damage to Property Insurance
 - Agricultural insurance

- Crop insurance
 - Multi-risk agricultural insurance
 - Construction insurance
 - Fire (as precondition for mortgage loan/security)
 - Insurance related to natural disasters and environmental damage, such as:
 - Building, flood, or earthquake risk coverage
 - General liability, such as:
 - Construction liability insurance
 - Insurance for legal professionals
 - Medical liability insurance
 - Professional indemnity liability (other regulated professional liability)
 - Product liability insurance
 - Public liability insurance
 - Marine, aviation and transport insurance, including related liability insurance
 - Aviation insurance, including aircraft liability
 - Marine insurance, including liability for ships
 - Transport insurance
 - Miscellaneous financial losses, such as:
 - Income protection insurance
 - Motor vehicle liability
- (3) Lines of business and products related to Reinsurance, such as:
- Facultative or treaty reinsurance
 - Financial (re)insurance (Insurance of settlements between counterparties)

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) 2018/1725⁴ (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 EUSurvey⁵, 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.

⁴ 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.

⁵ 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.