# ANNEX 2 TO THE OPINION ON THE USE OF RISK MITIGATION TECHNIQUES BY INSURANCE UNDERTAKINGS: REINSURANCE AGREEMENTS' TERMINATION CLAUSES

EIOPA REGULAR USE

EIOPA-BoS-25/288
15 July 2025

European Insurance and
Occupational Pensions Authority

# 1. INTRODUCTION

1.1 Reinsurance is an important tool for capital and risk management, and it is also used for risk diversification, access to additional underwriting capacity for portfolio expansion, addressing protection gaps and increasing financial stability. It plays a crucial role in the insurance industry's ability to operate and provide coverage to individuals and businesses.

1.2 The transition to a risk-based regime led to an increase of the use of non-traditional risk mitigation techniques. Consequently, EIOPA published its Opinion on the use of risk mitigation techniques by insurance undertakings (EIOPA-BoS-21/036)1 on 9 July 2021. This Opinion provides guidance on the assessment of risk mitigation techniques, in particular regarding the consistency between the risk transfer and effects on the Solvency Capital Requirement (SCR). Where the allowance for a risk mitigating effect of a reinsurance treaty in the SCR would lead to a reduction in the SCR that is not commensurate with the extent of the risk transferred or due to an inappropriate treatment within the SCR, insurance and reinsurance undertakings should conclude that the risk-mitigating technique does not provide an effective transfer of risk.

1.3 This Annex aims to extend the guidance provided in the Opinion, considering Articles 209–211 and Articles 213–214 of Commission Delegated Regulation (EU) 2015/35 (DR), and reflecting on terms of reinsurance agreements that can compromise the effective transfer of risk.

[1] https://www.eiopa.europa.eu/publications/opinion-use-risk-mitigation-techniques-insurance-undertakings_en

# 2 REINSURANCE AGREEMENTS' TERMINATION CLAUSES

2.1 In accordance with Article 210 of the DR, the contractual arrangements governing the risk-mitigation technique shall ensure that the extent of the cover provided by the risk-mitigation technique and the transfer of risk is clearly defined and incontrovertible. The determination that the contractual arrangements and transfer of risk is legally effective and enforceable in all relevant jurisdictions in accordance with Article 209(1)(a) shall consider the criteria established in Article 210 (4).

2.2 One aspect to be considered is whether the terms of a reinsurance agreement that have been negotiated between the parties and are subject to national contract law, compromise the effective transfer of risk. Where the transfer of risk is compromised, the capital relief in the SCR calculation provided by the risk mitigation technique cannot be considered.

2.3 It is common for reinsurance agreements to include termination clauses. Depending if the reinsurance agreement is on a 'risk attaching' or 'loss occurring' basis, the reinsurer is typically responsible in case of termination of the reinsurance agreement for all legitimate losses arising from policies that were issued or renewed during the period of effect of the reinsurance agreement, or losses incurred and/or reported within the reinsurance agreement period, respectively. As regards the new losses after the termination of the reinsurance agreement, different articulations can be observed (run-off provisions). These provisions per se do not compromise the transfer of risk.

2.4 However, reinsurance agreements with termination clauses fully or partially releasing in substance the reinsurer from its obligations regarding the legitimately incurred losses within the period of effect of the reinsurance agreement, and/or committing the ceding undertaking to pay to the reinsurer upon termination a compensation not based on objectively measurable contract-related costs or benefits, in the event of:

- insolvency of the ceding undertaking or of a parent undertaking of the ceding undertaking, or
- any imposed form of administration of the ceding undertaking or of a parent undertaking of the ceding undertaking by a competent regulatory body or court, or
- actions by a national competent authority,

should not be considered to effectively transfer risk in the sense of Article 210(4)(a) of the DR for the purposes of the solvency calculation.

2.5 The above does not apply to termination clauses that stipulate that premiums, claims, expenses and fees (as applicable) related to the period prior the occurrence of the event are to be settled as of the termination date in accordance with the provisions of the reinsurance agreement.

2.6 Where assets are transferred simultaneously under a clause stating that all premiums paid and transferred assets which are held by the reinsurer at the termination date shall be unconditionally retained by the reinsurer which will be free of all obligations, significant concerns arise in terms of policyholder protection. This arrangement prejudices the fulfilment of reinsured insurance claims in case of insolvency and creates a disproportionate contractual balance between the rights and obligations of the ceding undertaking and of the reinsurer. If there is a risk of insolvency, the national competent authority of the ceding undertaking should consider requesting the relevant national competent authorities to prohibit the free disposal of the assets that following the transfer are located within their territory.

2.7 In addition, such situations raise questions as regards the undertaking and group's application of the prudent person principle (in the sense of Article 132(2) of Directive 2009/138/EC (Solvency II Directive)), system of governance and fitness and propriety of the individuals running the undertaking and the group including the actuarial and risk management functions (in the sense of Articles 42(1), 44 (2) (f) and 48 (1)(h) and (2) of the Solvency II Directive). Factors such as the timing of the signing of the reinsurance agreement, the counterparty (e.g. if intra-group reinsurer), and the terms of the contract, should be taken into consideration in the assessment of the fitness and propriety of the individuals running the undertaking and the group as per Articles 42(1) and 257 of the Solvency II Directive.