

# CONSULTATION PAPER

on the proposal for Regulatory Technical Standards on contractual recognition of resolution stay powers under Article 52 of the 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

EIOPA-BoS-25/586  
8 December 2025



**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 Regulatory Technical Standards on contractual recognition of resolution stay powers under Article 52 of the 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.

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 ([https://ec.europa.eu/eusurvey/runner/RTS\\_recognition\\_of\\_stay\\_powers](https://ec.europa.eu/eusurvey/runner/RTS_recognition_of_stay_powers)) by 20 March 2026, 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](mailto: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.<sup>1</sup>

### 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

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<sup>1</sup> [Public Access to Documents.](#)

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.

## 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

Article 52(1) of Directive (EU) 2025/1<sup>2</sup> (IRRD) requires entities referred to in Article 1(1), point (a) to (e), to include in any financial contract which they enter into and which is governed by third-country law, terms by which the parties recognise that the financial contract may be subject to the exercise of powers by the resolution authority to suspend or restrict rights and obligations under Articles 49, 50 and 51, and recognise that they are bound by the requirements of Article 48 of the IRRD.

Article 52(5) of the IRRD requires EIOPA to develop draft regulatory technical standards (RTS) to specify the contents of the contractual terms of financial contracts referred to above, taking into account the different business models of the entities concerned.

### OBJECTIVE

The exercise of powers by the resolution authority to suspend or restrict rights and obligations, known as resolution ‘stay powers’ give a resolution authority time to facilitate an orderly resolution. The stay power allows, for example, a temporary stay on counterparties’ early termination rights.

Where financial contracts are governed by the law of a Member State, the application of the resolution authority’s stay powers is effective by operation of the law within the European Union. Where financial contracts are governed by the law of a third country, the inclusion of specific contractual terms recognizing the resolution authority’s stay powers would be beneficial to ensure their enforceability under the applicable third-country law.

Therefore, the objective of the contractual specification for the recognition of the resolution authority’s stay powers in a financial contract governed by third-country law, is to ensure that the resolution powers are applied effectively with cross-border effect to resolution actions. In the absence of a similar legal framework applicable in the third country, the contractual recognition can support the cross-border enforceability of temporary restrictions or stays on the exercise of early termination rights under financial contracts governed by the law of a third-country jurisdiction.<sup>3</sup> The resolution measures can then be recognised with an adequate degree of predictability and certainty in the other relevant jurisdiction. Defining the terms for such contractual recognition can promote awareness and convergent practices.

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<sup>2</sup> 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.

<sup>3</sup> Financial Stability Board, [Principles for Cross-border Effectiveness of Resolution Actions](#) (2015).

## ANALYSIS

EIOPA's approach in drafting the RTS aims to ensure a level playing field across financial sectors for the recognition of stay powers in resolution, while having regard to any specificities for the resolution of (re)insurance entities. The consultation proposal was developed in line with EIOPA's views for better regulation and supervision, thereby enhancing supervisory convergence through simpler, more efficient frameworks.<sup>4</sup>

The analysis addresses potential specificities for the resolution of (re)insurance entities<sup>5</sup> and includes, where relevant, a comparison with the regulation applicable to the resolution of credit institutions and investment firms or central counterparties.

The mandates under Article 52 of the IRRD and Article 71a of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms (Bank Recovery and Resolution Directive, BRRD)<sup>6</sup> are identical in their request to determine the contents of the contractual term(s) by which parties recognize that the financial contract that is governed by third-country law may be subject to the exercise of stay powers.<sup>7</sup> Regulation 2021/23 on a framework for the recovery and resolution of central counterparties (CCPRR Regulation) does not set out a mandate for an RTS to specify the terms of such a provision, and ESMA did not propose guidelines on the matter.

Cross-sectoral comparison covered the following:

- For the resolution of credit institutions and investment firms, the analysis covered Commission Delegated Regulation (EU) 2021/1340 of 22 April 2021 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards determining the content of the contractual terms on recognition of resolution stay powers. Other references included the Financial Stability Board [Principles for Cross-border Effectiveness of Resolution Actions](#) (2015), the Single Resolution Board [Expectations for banks 2020](#) and the ISDA [BRRD II Omnibus Jurisdictional Module](#) (2021).
- For the resolution of central counterparties, the analysis covered Article 53 of CCPRR Regulation, which stipulates that the resolution authority shall require the central counterparty to ensure the inclusion of a provision in its contracts and other agreements with clearing members and holders of instruments of ownership and debt instruments located in or governed by the law of third countries by which they agree to be bound by any action in respect of their assets, contracts, rights, obligations and liabilities taken by the resolution authority. The resolution authority may require

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<sup>4</sup> [Bolder, Simpler, Faster: EIOPA's views for better regulation and supervision](#) (EIOPA-BoS-25/118), 8 April 2025.

<sup>5</sup> See also International Association of Insurance Supervisors, [Application Paper on Resolution Powers and Planning](#) (2021).

<sup>6</sup> Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council.

<sup>7</sup> The BRRD empowerment refers to powers under Article 33a and 69 of the BRRD. Article 33a sets out the power to suspend certain obligations, i.e. payment or delivery of obligations pursuant to any contracts to which [a credit institution or investment firm] is a party and where the [credit institution or investment firm] is failing or likely to fail. This includes the power to suspend obligations in respect of eligible deposits. Article 69 covers the same power to suspend certain obligations, during resolution (Title IV, Chapter VI – Resolution powers). This power can also be extended to eligible deposits. See also: COM FAQ on BRRD: [eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC1202\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC1202(01))

the central counterparty to provide it with a reasoned legal opinion by an independent legal expert confirming the legal enforceability and effectiveness of such provisions.

To determine the content of the contractual terms, EIOPA aimed to follow a proportionate approach, which secures cross-sectoral consistency. Furthermore, in defining the terms, it is important for the regulation to enable capturing differences in legal systems of third countries as well as different forms of financial contracts. In its analysis, EIOPA focused on identifying whether any insurance specificities would require a specific treatment, in comparison to banks or central counterparties.

The following elements were analysed in more detail with a view to further assess potential insurance specificities:

#### *Definition of financial contracts*

For the definition of financial contracts, Article 2(1) of the CCPRR Regulation, Article 71a of the BRRD and Article 52 of the IRRD<sup>8</sup> refer to the same definition of ‘financial contracts’ which is provided in Article 2(1), point (100) of the BRRD. According to this definition, financial contracts include following contracts and agreements<sup>9</sup>:

- (a) **securities contracts**, including:*
  - (i) contracts for the purchase, sale or loan of a security, a group or index of securities;*
  - (ii) options on a security or group or index of securities;*
  - (iii) repurchase or reverse repurchase transactions on any such security, group or index;*
- (b) **commodities contracts**, including:*
  - (i) contracts for the purchase, sale or loan of a commodity or group or index of commodities for future delivery;*
  - (ii) options on a commodity or group or index of commodities;*
  - (iii) repurchase or reverse repurchase transactions on any such commodity, group or index;*
- (c) **futures and forwards contracts**, including contracts (other than a commodities contract) for the purchase, sale or transfer of a commodity or property of any other description, service, right or interest for a specified price at a future date;*
- (d) **swap agreements**, including:*
  - (i) swaps and options relating to interest rates; spot or other foreign exchange agreements; currency; an equity index or equity; a debt index or debt; commodity indexes or commodities; weather; emissions or inflation;*
  - (ii) total return, credit spread or credit swaps;*
  - (iii) any agreements or transactions that are similar to an agreement referred to in point (i) or (ii) which is the subject of recurrent dealing in the swaps or derivatives markets;*
- (e) **inter-bank borrowing agreements** where the term of the borrowing is three months or less;*
- (f) master agreements for any of the contracts or agreements referred to in points (a) to (e);*

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<sup>8</sup> Article 2(78) of the IRRD.

<sup>9</sup> In the comparable, but not identical text of Article 53 of Regulation 2021/23/EU on a framework for the recovery and resolution of central counterparties CCP Directive, reference is made to ‘contracts and other agreements with clearing members and holders of instruments of ownership and debt instruments located in or governed by the law of third countries.’



*Stay powers related to redemption rights for life insurance contracts and stay powers related to reinsurance contracts in a potential third-country context*

As part of the analysis, the question was raised whether to include a provision for the contractual recognition of the resolution powers to temporarily suspend redemption rights for life insurance contracts in Article 53 of the IRRD. This power is an important resolution power as well as a supervisory power in Solvency II in accordance with Article 144b(3)(e), which can be used to remedy liquidity vulnerabilities in exceptional circumstances. Also, the question was raised whether such provision would also safeguard the power to suspend termination rights for reinsurance contracts according to Article 51 of the IRRD in a third-country context.<sup>10</sup>

Article 52 of the IRRD refers exclusively to financial contracts as defined above, and not to insurance or reinsurance contracts. Furthermore, Article 52 refers exclusively to the stay powers to suspend certain obligations for payment or delivery pursuant to any contract that the (re)insurance undertakings is a party to (Article 49), to restrict the enforcement of security interests (Article 50) and to temporarily suspend termination rights (Article 51). For this reason, stay powers related to redemption rights for life insurance contracts and to (re)insurance contracts under Article 53 and 51 of the IRRD are not in the scope of this RTS.

It should be noted that the stay powers of resolution authorities do not evolve from the contractual terms, but are self-standing rights of the resolution authorities.

Member States are, however, not prevented from requiring, if they deem relevant, the inclusion of a contractual provision for the recognition of stay powers in (re)insurance contracts that would be governed by third-country law.

*Insurance 'business models'*

The mandate requires the RTS to take into account the different business models of the entities referred to therein. EIOPA's understanding is that if an undertaking enters into a certain type of financial contracts as listed above, the form or content of that contract will not vary in accordance with the type of (re)insurance business model (e.g. whether the (re)insurer conducts life or non-life business or specialises in certain lines of business). Hence, the RTS does not need to differentiate the content of the contractual recognition clauses for different business models.

*Conclusion of the analysis*

Based on the analysis of potential insurance-specific requirements, EIOPA found that no insurance specificities need to be addressed in comparison to the text of Commission Delegated Regulation (EU) 2021/1340 of 22 April 2021, supplementing the BRRD.

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<sup>10</sup> 144b(3) of Solvency II Directive: *Member States shall ensure that, in relation to individual undertakings facing material liquidity risks that may cause an imminent threat to the protection of policy holders or to the stability of the financial system, supervisory authorities have the power to temporarily: [...] suspend redemption rights of life insurance policy holders. [...] The power to suspend redemption rights shall only be exercised in exceptional circumstances which affect the undertaking, as a last resort measure and where that is in the collective interest of policy holders and beneficiaries of the undertaking. Before exercising that power, the supervisory authority shall take into account potential unintended effects on financial markets and on the rights of policy holders and beneficiaries of the undertaking, including in a cross-border context. Supervisory authorities shall make public their reasons for the application of that power.*

Hence, this RTS follows the approach to not overly prescribe the terms and only include minimum requirements. As a consequence, the content of the contractual provision would typically be phrased as '*the parties acknowledge and accept that...*', supplemented by the relevant regulatory references to the relevant stay powers from the IRRD.

Such an approach allows counterparties to agree on their terms in a flexible manner, as long as they meet the mandatory requirements and do not otherwise impair the resolution powers under Articles 48 through 51 of the IRRD. This approach also supports regulatory convergence across the banking and insurance industry in this area.

## 2. DRAFT TECHNICAL STANDARD



EUROPEAN COMMISSION

Brussels, xx.xx.20xx  
C(20..) yyy final

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

**of XXX**

**supplementing Directive (EU) 2025/1 of the European Parliament and of the Council of 27  
November 2024 with regard to regulatory technical standards specifying the contents of the  
contractual terms for the recognition of resolution stay powers**

**(Text with EEA relevance)**

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 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<sup>11</sup>, and in particular Article 52(5), third subparagraph, thereof,

Whereas:

- (1) Directive (EU) 2025/1 introduces certain safeguards to enhance the effective execution of resolution in relation to financial contracts governed by third-country law.
- (2) In accordance with Article 52 of Directive (EU) 2025/1, entities are required to include in any financial contract they enter into and which is governed by third-country law, terms by which the parties recognise the stay powers of the resolution authorities .
- (3) In order to ensure the effectiveness of resolution and promote consistency in the approaches adopted by Member States, and in order to ensure that differences in their legal systems or differences arising from a particular contractual form can be taken into account, it is appropriate to lay down the mandatory content for the contractual terms. For the purpose of specifying the content of the contractual terms, this Regulation does not differentiate the content of these terms according to different business models. While the exposure to financial contracts may vary, depending on entity's individual business model, the requirement for recognition of the applicable stay powers applies to all contracts listed in Article 52 of Directive (EU) 2025/1 irrespective of the entity's business model.
- (4) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Insurance and Occupational Pensions Authority.
- (5) 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.

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<sup>11</sup> OJ L, 2025/1, 8.1.2025

HAS ADOPTED THIS REGULATION:

### *Article 1*

#### **Contents of the contractual terms**

The contractual terms of a relevant financial contract governed by third-country law which an entity, as referred to in Article 1(1), point (a) to (e), of Directive (EU) 2025/1 enters into, shall include the following:

(1) the acknowledgement and acceptance by the parties that the contract may be subject to the exercise of powers by a resolution authority to suspend or restrict rights and obligations arising from such a contract under Articles 49, 50 and 51 of Directive (EU) 2025/1 as transposed by the applicable national law and that the requirements of Article 48 of that Directive as transposed by the applicable national law will apply.

(2) a description of or a reference to the powers of the resolution authority as set out in Articles 49, 50 and 51 of Directive (EU) 2025/1, as transposed by the applicable national law, and a description of or a reference to the requirements of Article 48 of Directive (EU) 2025/1 as transposed by the applicable national law.

(3) the acknowledgement and acceptance by the parties:

(a) that they are bound by the effect of an application of the following powers:

— the suspension of any payment or delivery obligation in accordance with Article 49 of Directive (EU) 2025/1 as transposed by the applicable national law;

— the restriction of enforcement of any security interest in accordance with Article 50 of Directive (EU) 2025/1 as transposed by the applicable national law;

— the temporary suspension of any termination right under the contract in accordance with Article 51 of Directive (EU) 2025/1 as transposed by the applicable national law;

(b) that they are bound by the requirements of Article 48 of Directive (EU) 2025/1 as transposed by the applicable national law;

(4) the acknowledgement and acceptance by the parties that the contractual terms are exhaustive on the matters described therein to the exclusion of any other agreements, arrangements or understandings between the counterparties.

### *Article 2*

#### **Entry into force**

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

The main objective of the technical standards is to fulfil the mandate established in Article 52(5) of the IRRD. In drafting these technical standards, EIOPA takes the general resolution objectives of the IRRD 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
- Meeting the resolution objectives
- Proper functioning of the internal market and ensuring level-playing field

With regard to the above objectives, the following specific objectives have been pursued in drafting the RTS:

- Ensure a **level playing field** through common minimum harmonisation rules across the financial sector: an uneven playing field may lead to the situation where comparable stay powers for similar financial contracts may be treated differently. This may lead to arbitrage or competitive disadvantages.
- Ensure **convergence** among entities and Member States: while the IRRD is a minimum harmonization directive, the lack of convergence across entities and Member States may lead to situations where a contractual term would be effective for some jurisdictions and not for others. This could have implications for the cost of funding of entities.
- Ensure an **effective and efficient policyholder protection in resolution**: the enforcement of stay powers supports the effective and efficient protection of policyholders. Different (legal) interpretation of the terms could hamper the enforceability of the stay power. This could have financial stability implications for the Member State and the Union.

### POLICY ISSUES

#### Policy Issue A: level of prescription of the contractual terms

Article 52 of the IRRD requires entities to include in any financial contract they enter into and which is governed by third-country law, terms by which the parties recognise the stay powers of the resolution authorities as listed under Articles 49, 50 and 51 of that Directive. In addition, Article 52 of the IRRD requires that parties recognise in the content of the contractual terms

that they are bound by the requirements of Article 48 of that Directive. EIOPA is mandated to specify the content of the contractual terms.

To ensure the effectiveness of the contractual terms, and with it, the effective enforceability of the resolution power in the presence of financial contracts governed by third-country law, an appropriate level of prescription on detailed contractual terms needs to be balanced with a more principle-based approach allowing for contract-related or jurisdictional specificities. The impact assessment balances the options and costs of having detailed specified terms – with or without a certain degree of flexibility to supplement the terms.

## POLICY OPTIONS

The baseline scenario of ‘no option’ is discarded on the basis of the requirement in Directive (EU) 2025/1 to provide the content of the contractual terms.

### Policy Issue A: level of prescription of the contractual terms

**Policy option A.1: detailed specification of the mandatory contractual terms, with no flexibility for entities to supplement these terms**

This option would specify in detail the specific wording of each term, without allowing entities to amend or supplement the terms of the clause.

**Policy option A.2: specification of the mandatory contractual terms, with flexibility for entities to supplement with additional components from a closed list set out in the RTS**

This option would allow entities to amend or supplement the terms of the clause, by choosing from a closed list of provisions specified in the technical standard.

**Policy option A.3: specification of the contractual terms, with flexibility for entities to supplement additional components (without a closed list)**

This option would allow entities to amend or supplement the terms of the minimum mandatory content of the clause, without reference to a closed list specified in the technical standard.

## IMPACT OF THE POLICY OPTIONS

In assessing the impact of the policy options, special attention is devoted to the potential areas or functions where the costs could arise as a result of the different policy options. A more detailed estimation of the (monetary) costs would depend on several variables, such as the company-specific process and procedures, the size and nature of the entity and the applicable



resolution framework at national level, including the potential contribution to financing arrangements.

**Policy option A.1: detailed specification of the mandatory contractual terms, with no flexibility to supplement**

Policy option A.1		
<b>Costs</b>	Policyholders	Potential ineffectiveness of the clause where relevant specificities related to the contract or the (third country) jurisdiction are not covered. This may render the resolution more burdensome or costly, at the potential expense of the policyholders due to additional resolution expenses incurred by the resolution authority/undertaking.
	Industry	The set provisions may not cover the contractual and legal specificities. This may render the resolution more burdensome or costly, and additional expenses may arise. Depending on the financing arrangement, such costs may have to be borne by the entity under resolution or spill over to other insurers in the market
	Resolution authorities	Risk of incompatibility of the content with specificities under national law. This may lead to legal uncertainty and purported difficulties to exercise the stay power. This may eventually prolonge the resolution, or add additional (legal) costs, which could come at the expense of the resolution authority, or the applicable financing arrangement for the resolution.
	Other	Uneven playing field in the financial sector (banking and central counterparties). Costs of non-convergent regulatory requirements may add compliance, legal or operational costs to the undertaking, in particular if active cross-sectorally (e.g. bancassurance).
<b>Benefits</b>	Policyholders	Small implementation burden for the undertaking, which limits overhead cost.
	Industry	Same contractual terms, with no need for/opportunity to amend - small implementation burden at face value.
	Resolution authorities	Convergent approaches; convergent supervision.
	Other	No beneficial impact apart from apparent simplicity of implementation.

**Policy option A.2: specification of the mandatory contractual terms, with flexibility to supplement with additional components from a closed listed**

Policy option A.2		
<b>Costs</b>	Policyholders	Potential ineffectiveness of the clause where relevant specificities related to the contract or the (third country) jurisdiction are not covered in the closed list. This may render the resolution more burdensome or costly, at the potential expense of the policyholders due to additional resolution expenses incurred by the resolution authority/undertaking.
	Industry	The closed list still may not cover all contractual and legal specificities at hand. This may render the resolution more burdensome or costly, and additional expenses. Depending on the financing arrangement, such costs may have to be borne by the entity under resolution or spill over to other insurers in the market.
	Resolution authorities	Risk of incompatibility of the content with specificities under national law. This may lead to legal uncertainty and purported difficulties to exercise the stay power. This may eventually prolonge the resolution, or add additional (legal) costs, which could come at the expense of the resolution authority, or the applicable financing arrangement for the resolution.
	Other	Uneven playing field in the financial sector (banking and central counterparties). Costs of non-convergent regulatory requirements may add compliance, legal or operational costs to the undertaking, in particular if active cross-sectorally (e.g. bancassurance).
<b>Benefits</b>	Policyholders	Compared to A.1: potential reduced costs which would have arisen from ineffectiveness of the clause as some specificities related to the contract/jurisdiction may be covered in the closed list.
	Industry	Possibility to adapt the terms to the circumstances of the contract to some extent. This may limit the potential costs related to a clause which cannot be amended.
	Resolution authorities	Convergent approach, with possibility to cater potentially for Member State specificities through the closed list. This may reduce the potential costs for resolution authorities in comparison to a clause without any flexibility.
	Other	Potentially more beneficial impact than providing a clause with no flexibility (option A.1) – hence potential to limit costs to policyholders, industry or resolution authorities.

**Policy option A.3: specification of the contractual terms, with flexibility to supplement additional components without a closed list**

Policy option A.3		
<b>Costs</b>	Policyholders	More flexibility may increase costs (incl. legal fees) to ensure clarity of the terms. These costs may in turn affect policyholders as beneficiaries of cost-efficient resolution activities.
	Industry	More flexibility may increase costs (legal fees) to ensure clarity of the terms. Depending on the financing arrangement, such costs may have to be borne by the entity under resolution or spill over to other insurers in the market.
	Resolution authorities	Least convergent approach, which can be to the detriment of resolution authorities seeking (legal) certainty in implementing the clause, as they may seek further legal advice.
	Other	Potential costs due to lack of specification of the terms may involve obtaining legal advice, potentially increasing expenses incurred for the resolution.
<b>Benefits</b>	Policyholders	Less risk of ineffectiveness of the clause as specificities can be covered. This could reduce operational, legal/compliance costs related to ineffectiveness of the clause, which may be at the expense of the policyholder, depending on the financing arrangement.
	Industry	Less risk of ineffectiveness of the clause as specificities can be covered. This could reduce operational, legal/compliance costs related to ineffectiveness of the clause, which may need to be covered by the entity under resolution, depending on the financing arrangement.
	Resolution authorities	Potentially more effective enforceability of stay powers, which supports the actions of the resolution authority, and potentially reduces (legal, operational) costs which would otherwise be incurred as a result of an ineffective clause.
	Other	More beneficial impact than providing a clause with no or limited flexibility (option A.1 and A.2) – hence potential to further limit costs to policyholders, industry or resolution authorities.

## COMPARISON OF POLICY OPTIONS

EFFECTIVENESS (0,+,++)			
	Level playing field in financial sector	Convergence across entities and Member States	Effective and efficient policyholder protection
<b>Policy option A.1</b>	0	++	+

<b>Policy option A.2</b>	0	+	+
<b>Policy option A.3</b>	++	+	++

<b>EFFICIENCY (0,+,++)</b>			
	Level playing field in financial sector	Convergence across entities and Member States	Effective and efficient policyholder protection
<b>Policy option A.1</b>	0	+	+
<b>Policy option A.2</b>	0	+	+
<b>Policy option A.3</b>	++	+	++

The (monetary) costs for undertakings of inserting a strict contractual wordings may seem the most cost efficient, as it requires less legal interpretation. However, a too restrictive wording may hamper the effective resolution, adding potential (legal, operational) costs to the resolution activity. Depending on the financing arrangement, such costs may have to be borne by the entity under resolution or spill over to other insurers in the market, or borne by the resolution authority. This may eventually affect the protection of the policyholders of the entity under resolution, also in monetary terms.

## PREFERRED OPTION

Option A.1 would specify the contents of the contractual term with no flexibility for entities to supplement these components. This option would ensure a high degree of consistency among Member States and entities. This could be justified in light of the fact that financial contracts are defined in the IRRD and would not require specifications in light of the potential business model of the (re)insurer. However, such pre-defined clauses, which apply in a mandatory manner for all entities, may forego the possibility to take account of any specificities arising in relation to a particular type of financial contract or to the application of a third country law. At the same time, it may unintentionally prevent the clause from capturing any national specificities in the transposition of the IRRD. This may put at risk the effectiveness of the clause and of the enforcement of the resolution authorities' stay power, with consequential legal and operational expenses.

While Option A.2 would give greater flexibility to entities, the same challenges apply as for Option A.1, with the additional challenge to identify and anticipate in law all potential specificities, which would give rise to further interpretation. This may prove inefficient to regulate and in addition produce similar consequential operational or legal costs.

Option A.3 aims to balance the need for specifying the mandatory content of the contractual terms with the above identified challenge to anticipate all cases of application. While under this option, insurance undertakings may want to seek legal advice to adapt potentially the clause to the concrete circumstances of the contract, this cost may not weigh up to the potential consequences of a legal dispute on the effectiveness of the clause which may hamper the swift implementation of the stay power if the clause would be ill-defined. Finally, considering the standard nature of these financial contracts to which the clause would apply, there may be little need to further specify the clause, hence limiting costs for legal advice.

The assessment of the efficiency across the options considered how the technical standard can practically anticipate all cases, without setting out regulatory requirements that may be unduly prescriptive or irrelevant over time. As such, all three options show a moderate level of efficiency when it comes to promoting convergence: in the case of Option A.1 and A.2, the requirements may at face value ensure convergence, but in practice may lead to unclarity about the (legal) interpretation. Hence, also here specific attention is paid to the objective of efficient policyholder protection through the effective enforcement of the stay power, and limiting potential costs that would come from ill-adapted clauses. The impact of a too restrictive wording as outlined under option A.1 and A.2 may hamper the effective resolution, which can eventually cause legal and operational costs for the resolution authority or entity and impact the effective and efficient policyholder protection, also in monetary terms.

In comparing the options, consideration should also be given to the approaches applied in Commission Delegated Regulation (EU) 2021/1340 and Regulation 2021/23/EU. No further specifications have been made for the resolution of central counterparties and Commission Delegated Regulation (EU) 2021/1340 has opted for specifying the mandatory contents with flexibility for credit and investment entities and institutions to supplement freely (as in Option A.3). This would reduce any costs associated with implementing different clauses by a cross-sectorally active entity, such as for bancassurance, for financial contracts that are after all relatively similar, irrespective of the business.

Finally, the assessment of the effectiveness across the objectives mostly considers how the different options can ensure the enforceability of the stay power, which should benefit the orderly resolution, benefiting the protection of the policyholders and beneficiaries. The cost of a potentially ineffective resolution would likely be greater than the cost of implementing mandatory contractual terms, with flexibility to supplement with additional components and seeking relevant legal or other advice to do so.

**On the basis of the above assessment, the technical standard implements Option A.3.**

## ANNEX II: OVERVIEW OF QUESTIONS FOR CONSULTATION

The questions are set out in an EU-Survey ([https://ec.europa.eu/eusurvey/runner/RTS\\_recognition\\_of\\_stay\\_powers](https://ec.europa.eu/eusurvey/runner/RTS_recognition_of_stay_powers)).

## PRIVACY STATEMENT

### ► Introduction

1. The European Insurance and Occupational Pension authority (EIOPA) is committed to protecting individuals' personal data in accordance with Regulation (EU) 2018/1725<sup>12</sup> (further referred as "the Regulation").
2. In line with Articles 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 EUSurvey<sup>13</sup>, 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, 29 and 71 thereof
  - EIOPA's Public Statement on Public Consultations
  - EIOPA's Handbook on Public Consultations

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<sup>12</sup> 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.

<sup>13</sup> For more information on the processing of personal data in EUSurvey, please see the [dedicated privacy statement](#).

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.

► **Controller of the personal data processing**

7. The (internal) controller responsible for the processing of personal data is the Head of EIOPA's Risks and Financial Stability Department.

8. Address and email address of the controller:

Westhafen Tower, Westhafenplatz 1  
60327 Frankfurt am Main  
Germany  
[DataController@eiopa.europa.eu](mailto:DataController@eiopa.europa.eu)

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

9. Westhafenplatz 1, 60327 Frankfurt am Main, Germany  
[dpo@eiopa.europa.eu](mailto: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](mailto: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 the internal Data Controller ([DataController@eiopa.europa.eu](mailto:DataController@eiopa.europa.eu)) or EIOPA's DPO ([dpo@eiopa.europa.eu](mailto:dpo@eiopa.europa.eu)).
22. Alternatively, the data subjects can have recourse to the **European Data Protection Supervisor** ([www.edps.europa.eu](http://www.edps.europa.eu)) at any time, **as provided in Article 63 of the Regulation.**