

CONSULTATION PAPER

on the proposal for Regulatory Technical
Standards specifying methodologies and
principles on the valuation of liabilities arising
from derivatives

EIOPA-BoS-25/587
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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 Regulatory Technical Standards specifying methodologies and principles on the valuation of liabilities arising from derivatives.

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_valuation_liabilities_derivatives) 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.

Publication of responses

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

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

Declaration by the contributor

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

Data protection

Please note that personal contact details (such as name of individuals, email addresses and phone numbers) will not be published.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

¹ [Public Access to Documents.](#)

CONSULTATION PAPER OVERVIEW & NEXT STEPS

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

This Consultation Paper presents the draft technical standards.

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

Next steps

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

1. BACKGROUND AND ANALYSIS

1.1. Introduction and mandate

EIOPA's approach in drafting these regulatory technical standards (RTS) aims to ensure a level playing field across financial sectors in respect of the methodologies and principles on the valuation of liabilities arising from derivatives, while having regard to any specificities for the resolution of (re)insurance undertakings.

The consultation proposal was developed in line with EIOPA's views for better regulation and supervision², thereby enhancing supervisory convergence through simpler, more efficient frameworks.

The resolution framework laid down in Directive (EU) 2025/1 (Insurance Recovery and Resolution Directive, IRRD) entrusts the resolution authority with a set of tools and powers to intervene swiftly and at a sufficiently early stage in a non-viable insurance or reinsurance undertaking, in order to ensure continuity of the undertaking's critical functions, while minimising the impact of its potential failure on the economy and the financial system.

The write-down or conversion tool defined by the IRRD ensures that losses arising from the insurance or reinsurance undertaking's failure are borne first by shareholders, followed by the claims of general creditors as per their ranking in the hierarchy.

Concretely, Article 40 of the IRRD sets forth requirements regarding the write-down or conversion of derivative contracts, especially with respect to the determination of the value of the liability at the point of intervention. Article 40 of the IRRD provides that resolution authorities may write-down or convert derivative contracts only 'upon or after closing-out the derivatives'. Where a derivative contract is subject to a netting agreement, Article 40 requires the liability to be determined on a net basis, in accordance with the terms of the agreement.

Insurance and reinsurance undertakings perform derivative transactions with a relatively small number of counterparties, which are mainly banks. Such transactions involve a clearing house which acts as an intermediary between the buyers and the sellers, ensuring a smooth and secure processing of derivative transactions.

Until recently insurance and reinsurance undertakings were often clients of clearing members without holding an account with a central counter party (CCP). Clearing houses have in the meantime evolved their access models to allow insurance or reinsurance undertakings to become direct members of CCPs under the so-called 'sponsored model', meaning that insurance and reinsurance undertakings can hold an account with a CCP.

As a specificity of the insurance industry, life insurance contracts with profit participation may account gains on derivative positions as future discretionary benefits. Those benefits may be caused by an expected gain from derivatives that are not linked to the insurance contracts themselves, but are simply

² [Bolder, Simpler, Faster: EIOPA's views for better regulation and supervision](#)

part of an insurer-wide mandatory profit sharing mechanism. In any case, it means that a part of the technical provisions may be linked to the expected future value of derivatives contracts. In that case, the financial consequences from the closing-out or writing down and converting of the derivatives may not be immediately apparent through the simple valuation of the derivatives itself but should be calculated through the change in own funds stemming from all changes in the valuation of assets and liabilities arising from the closeout of derivatives.

1.2. Approach

1.2.1. Valuation methodologies

Article 40 of the IRRD sets out the procedure for the write-down or conversion of derivative contracts. When the conditions for resolution have been met, resolution authorities are empowered to close out and write-down or convert derivatives, and to determine a valuation of the derivative liability at the moment of the exercise of the resolution power. As required under Article 40 of the IRRD, these draft RTS provide a methodology to be followed by resolution authorities in order to conclude the valuation of derivative contracts upon closeout. The methodology set forth in these draft RTS determine the closeout amount based on the principle of 'replacement cost'. In general, replacement cost represents the actual or hypothetical cost which the non-defaulting counterparty would incur in order to replace the terminated contract, after taking into account any collateral posted or received. The principle of replacement cost as a determinant for the closeout valuation aims at achieving an outcome similar overall to valuations which are performed under contracts upon closeout. Consequently, the replacement cost approach will also minimise the risk of depriving counterparties of no-creditor-worse-off protection, as the approach to valuing the outstanding liability would be aligned with common market practice in insolvency proceedings.

To maintain consistency with standard netting agreements and the treatment of derivatives in insolvency, these draft RTS provide that resolution authorities shall notify the counterparty of the termination and closeout of the derivative contract, and give counterparties the possibility to provide evidence of commercially reasonable replacement trades within a set deadline. The counterparty is not obliged to enter into replacement trades, but if it does, and provides evidence of commercially reasonable replacement trades within the deadline, the valuer will endorse the trades as the price for the closed-out contract. If, in contrast, the counterparty does not provide evidence of commercially reasonable replacement trades within the deadline, resolution authorities will be authorised to construct their final, non-provisional closeout valuation on the basis of mid-prices and bid-offer spreads.

1.2.1.1. Articulation of these draft RTS with the valuation of assets and liabilities under Article 23, Article 24 and Article 25 of the IRRD

Articles 23, 24, 25 and 40 of the IRRD provide a valuation process that is compatible with the swiftness inherent in the resolution process, allowing for a valuation on the basis of prudential assumptions and objective elements.

As provided under Article 40(2) of the IRRD, the valuation of derivative liabilities should be made as part of the valuation of assets and liabilities carried out pursuant to Article 23 of the IRRD, and

specifically form part of a valuation for the purpose of informing the extent of the write-down or conversion of eligible liabilities. The methodologies contained in these draft RTS will ensure that, when employing the write-down or conversion tool, losses under derivative contracts are fully recognised at the moment the resolution tools are applied, in accordance with Article 23(3)(b) of the IRRD.

Under Article 25(1) of the IRRD, valuations may be conducted on a provisional basis where it is not possible to fulfil all of the requirements laid down in Article 24(2). Under the IRRD a provisional valuation is also a valid basis for resolution actions. The draft RTS reflect this possibility in Article 8(2).

1.2.1.2. Treatment of CCP-cleared derivatives

Insofar as centrally cleared derivatives would not be exempted from write-down or conversion, these draft RTS balance, on one hand the interests of the resolution authority in conducting a write-down or conversion process of derivatives in line with the IRRD provisions and within a reasonable timescale, against, on the other hand, the specificities of centrally cleared derivatives and the protection accorded to CCPs. When derivative contracts between a clearing member and a CCP are closed out, for instance when the clearing member defaults, the CCP will seek to re-hedge its open positions and replace the trades it had with another – solvent – clearing member, thereby avoiding open positions and an ‘unbalanced book’. The resolution authority will notify its decision to close out the contract and agree with the CCP and its competent authority on a deadline by which the CCP should provide its replacement costs, taking into account the CCP’s default procedures and the resolution timeline. That deadline may be extended by common agreement of the resolution authority, CCP and CCP’s competent authority.

In the exceptional case of the CCP not providing its replacement costs by the agreed deadline or where there is evidence that the CCP did not follow its default procedures, the resolution authority will be able to apply the statutory methodology otherwise applicable to non-centrally cleared derivatives, after consulting the CCP’s competent authority. Any valuation not based on the CCP’s default procedures would only serve resolution purposes. CCPs will still be expected to run their default procedures according to their contractual and rulebook obligations.

When the resolution authority performs a provisional valuation, justified under the conditions of Article 25 of the IRRD, CCPs will also have the possibility to provide the valuer with estimates of the expected outcome of their default procedure and, if the resolution authority decides to wait, with the outcome of their default procedure. In case the resolution authority concludes the valuation not based on the CCP default procedure, any divergence between the two values will then be dealt with in the context of the nocreditor-worse-off valuation under Article 56 of the IRRD or subsequent legal proceedings.

1.2.2. Destruction in value

Resolution authorities are required under the IRRD to seek to minimise the cost of resolution to avoid unnecessary destruction of value and to avoid significant adverse effects on the financial system.

In line with Article 40(3)(c) of the IRRD, these draft RTS set out the approach to be followed by resolution authorities when making a comparison between, on one hand, the destruction in value that

would arise from the closeout and write-down or conversion of derivatives and, on the other hand, the amount of losses that would be borne by those derivatives in a write-down or conversion.

Under the draft RTS, resolution authorities, on a case-by-case basis, will assess the potential destruction in value which would arise from the closeout and write-down or conversion of derivatives. On the basis of this and other factors, resolution authorities will determine any liability exemptions that might follow as a consequence.

In order to compare the destruction in value that would arise from the closeout and write-down or conversion of derivative contracts with the amount of losses that would be borne by derivatives in a write-down or conversion, resolution authorities should compare (a) the amount of losses that would be borne by the derivative contracts in a write-down or conversion as part of the valuation under Article 23 taken into account the pro quota share of derivatives within equally ranking liabilities and all applicable exemptions that would reduce the loss-absorption capacity of the liability, and (b) an assessment of the amount of the costs, expenses or other loss in value that would be incurred as a result of the closeout of the derivative contracts.

In order to align the principles for comparison of the losses borne by derivative contracts in write-down or conversion and the destruction in value from the closeout in derivatives, with the specificities of the insurance industry as described under the sub-chapter 1.1. above, any variation in value in the Solvency II technical provisions incurred due to the closing-out of derivative contracts should be also considered, given that such variations would change the broader economic loss of value caused by the closeout of the derivatives contracts.

2. DRAFT REGULATORY TECHNICAL STANDARD



EUROPEAN COMMISSION

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

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

of XXX

supplementing Directive (EU) 2025/1 of the European Parliament and of the Council with regard to regulatory technical standards specifying methodologies and principles on the valuation of liabilities arising from derivatives

(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) 2017/1129³, and in particular Article 40(4), third subparagraph, thereof,

Whereas:

- (1) Derivative contracts subject to a netting agreement give rise to a single closeout amount in the event of a contractual early termination. Article 40(2) of Directive (EU) 2025/1 provides that the value of such contracts is determined on a net basis in accordance with the terms of the agreement. The resolution authority or independent valuer should therefore respect netting sets defined in the netting arrangements without being able to choose certain contracts and exclude others.
- (2) Pursuant to Article 40 of Directive (EU) 2025/1, the value of derivative contracts is determined by the resolution authority or independent valuer as part of the valuation process carried out under Article 23 of that Directive. With respect to derivative liabilities, the valuation process should aim to determine a prompt and *ex ante* valuation for write-down or conversion purposes, and at the same time allow the resolution authority adequate flexibility for *ex post* adjustment of claim amounts.
- (3) The assessment of whether to apply the write-down or conversion tool to a liability arising from a derivative contract or to exclude this liability from application of the write-down or conversion tool pursuant to Article 35(5) or 35(8) of Directive (EU) 2025/1 should be made prior to the decision to close out the derivative contract.
- (4) The closeout of derivative contracts may crystallise additional losses that are not reflected in the going-concern valuation, stemming for example from actual replacement costs incurred by the counterparty that would increase the closeout costs owed by the insurance or reinsurance undertaking under resolution, or from costs incurred by the insurance or reinsurance undertaking under resolution in re-establishing trades on exposures subject to open market risk resulting from the closeout. If the losses incurred or expected to be incurred from the closeout of derivatives exceed the share of the corresponding liabilities that would be effectively available for write-down or conversion, the excess loss may increase the burden of write-down or conversion for other creditors of the insurance or reinsurance undertaking under resolution. In such cases, the amount of losses that would be borne by liabilities not arising from derivative contracts in the case of write-down or conversion would be higher than without the closeout and write-down or conversion of derivative contracts. Any exercise of the write-down or conversion power in relation to such liabilities should

³ OJ L, 2025/1, 8.1.2025

be subject to the exclusions set out in Article 35(5) of Directive (EU) 2025/1 and to the discretionary exclusions laid down in Article 35(8) of that Directive.

- (5) In applying the valuation methodology, the resolution authority should be able to rely on various sources of data, including data sources provided by the insurance or reinsurance undertaking under resolution, counterparties or third parties. It is nevertheless appropriate to set out principles on the types of data that have to be taken into consideration in the course of the valuation in order to ensure an objective determination of value.
- (6) Following the trigger event, the resolution authority should agree with the CCP and its competent authority on a deadline by which the early termination amount has to be determined, taking into account both the constraints of the CCP and those of the resolution authority.
- (7) The early termination amount should be endorsed by the valuer. Where the CCP fails to determine the early termination amount within the agreed deadline or does not apply its default procedures, the resolution authority should have the possibility to rely on its own estimates to determine the early termination amount. The resolution authority should also be able to apply a provisional determination based on its own estimates where such action is justified by the urgency of the resolution process and provided it updates its valuation upon completion of the CCP default procedure at the expiry of the deadline. The resolution authority should be able to consider information provided by the CCP after the deadline in the *ex post* definitive valuation, if available at that time, and in any event when performing the valuation of difference in treatment pursuant to Article 56 of Directive 2025/1. This Regulation should be without prejudice to the default management procedures run by CCPs in accordance with Regulation (EU) No 648/2012.
- (8) The point in time for the valuation of derivative contracts should reflect the valuation principle which takes into account the actual or the hypothetical replacement costs incurred by counterparties. In order for the valuation to be as accurate as possible, the valuation should be carried out on the closeout date or, if that would not be commercially reasonable, the first day and time on which a market price is available for the underlying asset. In those cases where the early termination amount is determined by a CCP or is determined at the price of replacement trades, the reference point in time should be that of the CCP determination or that of the replacement trades.
- (9) This Regulation is based on the draft regulatory technical standards submitted by the European Insurance and Occupational Pensions Authority to the Commission.
- (10) The European Insurance and Occupational Pensions Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, has consulted the European Securities and Markets Authority, has analysed the potential related costs and benefits and requested the advice of the Insurance and Reinsurance Stakeholder Group established by Article 37 of Regulation (EU) No 1094/2010.

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (1) 'netting set' means a group of contracts subject to a netting arrangement as defined in Article 2(76) of Directive (EU) 2025/1;
- (2) 'central counterparty', or 'CCP', means a CCP as defined in Article 2(1) of Regulation (EU) No 648/2012, to the extent that it is either:
 - (a) established in the Union and authorised in accordance with the procedure set out in Articles 14 to 21 of Regulation (EU) No 648/2012;
 - (b) established in a third country and recognised in accordance with the procedure set out in Article 25 of Regulation (EU) No 648/2012;
- (3) 'clearing member' means a clearing member as defined in Article 2(14) of Regulation (EU) No 648/2012;
- (4) 'closeout date' means the day and time of the closeout specified in the communication by the resolution authority of the decision to closeout;
- (5) 'replacement trade' means a transaction entered into on or after the closeout date of a derivative contract to re-establish, on a net risk exposure basis, any hedge or related trading position that has been terminated on equivalent economic terms as the closed-out transaction;
- (6) 'commercially reasonable replacement trade' means a replacement trade entered into on a netted risk exposure basis, on terms consistent with common market practice and by making reasonable efforts to obtain best value for money.

Article 2

Comparison between the destruction in value that would arise from the close out and the amount of losses that would be borne by derivatives in a write-down or conversion

1. For the purpose of Article 40(3)(c) of Directive (EU) 2025/1, the resolution authority shall compare the following:
 - (a) the amount of losses that would be borne by the derivative contracts in a write-down or conversion, obtained by multiplying:
 - (i) the share, within all equally ranked liabilities, of liabilities arising from the derivative contracts determined as part of the valuation under Article 23 of Directive (EU) 2025/1 and not falling within the exclusions from write-down or conversion pursuant to Article 35(5) of that Directive; by
 - (ii) the total losses expected to be borne by all liabilities ranking equally to derivatives, including the derivative liabilities stemming from the closeout;

(b) the destruction in value based on an assessment of the amount of the costs, expenses, or other loss in value that is expected to be incurred as a result of the closeout of the derivative contracts, and obtained by calculating the sum of the following elements:

- (i) the risk of an increased counterparty closeout claim arising from re-hedging costs expected to be incurred by the counterparty, by taking into account the bid-offer, mid-to-bid or mid-to-offer spreads in line with Article 6(2)(b);
 - (ii) the cost expected to be incurred by the undertaking under resolution in establishing any comparable derivative trades considered necessary in order to re-establish a hedge for any open exposure or in order to maintain an acceptable risk profile in line with the resolution strategy. The establishment of a comparable derivative trade may be achieved by taking into consideration initial margin requirements and prevailing bid-offer spreads;
 - (iii) a variation in own funds calculated as per Directive 2009/138/EC, stemming from any changes in the valuation of assets and liabilities arising from the closeout of derivatives;
 - (iv) any precautionary buffer against possible adverse implications from closeout, such as errors and disputes in respect of transactions or collateral exchange.
2. The comparison under paragraph 1 shall be made before a decision to closeout is taken, as part of the valuation to inform decisions about resolution actions required under Article 23 of Directive (EU) 2025/1.

Article 3

Communication of the decision to closeout

1. Prior to exercising the write-down and conversion powers in relation to liabilities arising from derivative contracts, the resolution authority shall communicate the decision to close out contracts pursuant to Article 42(1), point (m), of Directive (EU) 2025/1 to the counterparties to those contracts.
2. The decision to close out shall take effect immediately, or at a later closeout date and time as specified in the communication.
3. In the decision referred to in paragraph 1, the resolution authority shall specify a date and time, taking account of the requirements in Article 8(1), point (c), by which counterparties may provide evidence to the resolution authority of commercially reasonable replacement trades for the purpose of determining the closeout amount pursuant to Article 6(1). The counterparty shall also provide to the resolution authority a summary of any commercially reasonable replacement trades.
4. The resolution authority may change the date and time by which counterparties may provide evidence of commercially reasonable replacement trades where such change is consistent with Article 8(1), point (c). Any decision to change the date and time by which counterparties may provide evidence of commercially reasonable replacement trades shall be communicated to the counterparty.
5. In the decision referred to in paragraph 1, the resolution authority may specify the criteria it intends to apply when assessing whether replacement trades are commercially reasonable.
6. This Article shall not apply to the closeout and valuation of centrally cleared derivative contracts entered into between the undertaking under resolution, acting as a clearing member, and a CCP.

Article 4

Role of netting agreement

For contracts subject to a netting agreement, the valuer shall determine, in accordance with Articles 2, 5, 6, and 7, a single amount which the undertaking under resolution has the legal right to receive or the legal obligation to pay as a result of the closeout of all the derivative contracts in the netting set, as defined in the netting agreement.

Article 5

Valuation principle for early termination amount

1. The valuer shall determine the value of liabilities arising from derivative contracts as an early termination amount calculated as the sum of the following amounts:
 - (a) unpaid amounts, collateral or other amounts due from the undertaking under resolution to the counterparty, less unpaid amounts, collateral and other amounts due from the counterparty to the undertaking under resolution on the closeout date; and
 - (b) a closeout amount covering the amount of losses or costs incurred by derivative counterparties, or gains realised by them, by replacing or obtaining the economic equivalent of material terms of the terminated contracts and the option rights of the parties in respect of those contracts.
2. For purposes of paragraph 1, unpaid amounts means, in respect of closed-out derivative contracts, the sum of the following:
 - (a) amounts that became payable on or prior to the closeout date and which remain unpaid on that date;
 - (b) an amount equal to the fair market value of the asset which was required to be delivered for each obligation of the derivative contracts which was required to be settled by delivery on or prior to the closeout date and which has not been settled as at the closeout date;
 - (c) amounts in respect of interest or compensation accrued during the period from the date on which relevant payment or delivery obligations fell due through to the closeout date.

Article 6

Determination of the closeout amount

1. Where a counterparty has provided evidence of commercially reasonable replacement trades within the deadline set out in Article 3(3), the valuer shall determine the closeout amount at the prices of those replacement trades.
2. Where a counterparty has not provided evidence of any replacement trades within the deadline set out in Article 3(3), where the valuer concludes that the communicated replacement trades were not concluded on commercially reasonable terms, or where Articles 7(7) or 8(2) apply, the valuer shall determine the closeout amount on the basis of the following:
 - (a) the mid-market end-of-day prices in line with the business-as-usual processes within the undertaking under resolution at the date determined pursuant to Article 8;
 - (b) the mid-to-bid spread or mid-to-offer spread, depending on the direction of the netted risk position;

- (c) adjustments to the prices and spreads mentioned in points (a) and (b) where necessary to reflect the liquidity of the market for the underlying risks or instruments and the size of the exposure relative to market depth, as well as possible model risk.
3. With regard to intra-group liabilities, the valuer may establish the value at mid-market end-of-day prices as referred to in paragraph 2(a), without regard to paragraph 2, point (b), and 2, point (c), where the resolution strategy would imply re-hedging the terminated transactions via another intra-group derivative transaction or group of transactions.
4. For determining a value of the closeout amount pursuant to paragraph 2, the valuer shall consider a full range of available and reliable data sources and may rely on observable market data or theoretical prices generated by valuation models aimed at estimating values, including the following sources of data:
- (a) data provided by third parties, such as observable market data or valuation parameters data and quotes from market-makers or, where a contract is centrally cleared, values or estimates obtained from CCPs;
 - (b) for standardised products, valuations generated by the valuer's own systems;
 - (c) data available within the undertaking under resolution, such as valuations performed pursuant to Article 75 of Directive 2009/138/EC, including the documented policies, procedures and processes performed and used to ensure an independent review and verification of the information, data, and assumptions which are used in those valuations pursuant to Article 267 of Commission Delegated Regulation (EU) 2015/35;
 - (d) data provided by counterparties other than evidence of replacement trades communicated pursuant to Article 3(3), including data on current or previous valuation disputes with regard to similar or related transactions and quotes;
 - (e) any other relevant data.
5. For the purpose of paragraph 2, point (b), the resolution authority may instruct the undertaking under resolution to perform an updated independent review and verification of the information, data and assumptions pursuant to paragraph 4, point (c), as at the reference point in time determined pursuant to Article 8, using end-of-day information available on the closeout date.
6. This Article shall not apply to the determination of a closeout amount for cleared derivative contracts entered into between an undertaking under resolution and a CCP, except in the exceptional circumstances set out in Article 7(7).

Article 7

Valuation of cleared derivative contracts entered into between an undertaking under resolution and a CCP

1. The valuer shall establish the value of liabilities arising from derivative contracts entered between an undertaking under resolution acting as a clearing member and a CCP, based on the valuation principle specified in Article 5. The early termination amount shall be determined by the CCP, within the deadline specified in paragraph 5, in accordance with the CCP default procedures, after deducting the collateral provided by the undertaking under resolution including initial margin, variation margin and contributions of the undertaking under resolution to the default fund of the CCP.

2. The resolution authority shall communicate to the CCP and the CCP's competent authority its decision to close out the derivative contracts pursuant to Article 42(1), point (m), of Directive (EU) 2025/1. The decision to close out shall take effect immediately, or on the date and time specified in the communication.
3. The resolution authority shall instruct the CCP to provide its valuation of the early termination amount for all the derivative contracts in the relevant netting set, in accordance with the CCP default procedure.
4. The CCP shall provide the resolution authority with the CCP default procedure documents and shall report the default management steps undertaken.
5. The resolution authority shall, in agreement with the CCP and the CCP's competent authority, set the deadline by which the CCP must provide the valuation of the early termination amount. For that purpose, the resolution authority, the CCP and the CCP's competent authority shall take both of the following into account:
 - (a) the default procedure, as established by the CCP governance rules in compliance with Article 48 of Regulation (EU) No 648/2012;
 - (b) the resolution timeline.
6. The resolution authority may change the deadline set under paragraph 5 upon agreement with the CCP and the CCP's competent authority.
7. By derogation to paragraph 1, the resolution authority may decide to apply the methodology laid down in Article 6, after consulting the CCP's competent authority, in either of the following cases:
 - (a) the CCP does not provide the valuation of the early termination amount within the deadline set by the resolution authority pursuant to paragraph 5; or
 - (b) the CCP's valuation of the early termination amount is not in line with the CCP default procedures set out in Article 48 of Regulation (EU) No 648/2012.

Article 8

Point in time for establishing the value of derivative liabilities and early determination

1. The valuer shall determine the value of derivative liabilities at the following point in time:
 - (a) where the valuer determines the early termination amount at the prices of replacement trades pursuant to Article 6(1), the day and time of the conclusion of the replacement trades;
 - (b) where the valuer determines the early termination amount in accordance with the CCP default procedures pursuant to Article 7(1), the day and time when the early termination amount has been determined by the CCP;
 - (c) in all other cases, the closeout date or, where that would not be commercially reasonable, the day and time at which a market price is available for the underlying asset.
2. The valuer may, as part of a provisional valuation carried out pursuant to Article 25(1) of Directive (EU) 2025/1, determine the value of liabilities arising from derivatives earlier than at the point in time determined pursuant to paragraph 1. Such early determination shall be made on the basis of

estimates, relying on the principles laid down in Article 5 and Article 6(2) to (5), and on data available at the time of the determination.

3. Where the valuer carries out an early determination pursuant to paragraph 2, the resolution authority may at any time request the valuer to update the provisional valuation to take into account relevant observable market developments or evidence of commercially reasonable replacement trades concluded at the point in time determined pursuant to paragraph 1. These developments or evidence, where available by the date and time specified pursuant to Article 3(2), shall be taken into account in the definitive valuation carried out pursuant to Article 25(1) and Article 25(2) of Directive (EU) 2025/1.
4. Where the valuer carries out an early determination pursuant to paragraph 2 in relation to derivative contracts entered into between an undertaking under resolution acting as a clearing member and a CCP, the valuer shall take due account of any estimate of expected closeout costs provided by the CCP.
5. Where the CCP provides a valuation of the early termination amount in accordance with the CCP default procedures by the deadline set pursuant to Article 7(5) and (6), that valuation shall be taken into account in the definitive valuation carried out pursuant to Article 25(1) and Article 25(2) of Directive (EU) 2025/1.

Article 9

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

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.

Market participants enter into derivative transactions with among others insurance companies and banks as counterparties. For these market participants it is important to know how they will be treated in relation to derivative transactions with insurance companies and banks if these entities are subject to resolution actions. From the perspective of these market participants similar rules are preferable. At the same time, it is important, in particular from the perspective of resolution authorities that insurance specificities are sufficiently reflected. This impact assessment covers the options whether to follow the approach of EBA as closely as possible, and to only include insurance specificities to the extent necessary, or to develop a completely new approach which might even better ensure that all insurance specificities are reflected.

The impact assessment is high-level and based on a qualitative assessment performed by EIOPA.

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

These general objectives are to enable the authorities to:

- Enhance preparation, coordination and cooperation.
- Proper functioning of the internal market and ensuring level-playing field.

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

- Ensuring a level playing field through common minimum harmonization rules.
- Improving transparency and better comparability.
- Enhanced cooperation and coordination between competent authorities.

POLICY ISSUES

Policy Issue A: whether to follow the approach of EBA considering the insurance specificities or to develop a completely new approach

The main question which needs to be addressed by the draft RTS is how to specify methodologies and principles on the valuation of liabilities arising from derivatives in the most efficient and effective way, given the similar mandates and subject matter of the RTS as well as the limited impact of the insurance specificities considering the scope of the draft RTS.

The approach which needs to be taken in the draft RTS is to achieve the right balance between contributing to the efficient functioning of financial markets, that is, counterparties in derivative transactions shall be treated similarly, regardless of whether they have an exposure to a credit institution or an insurance or reinsurance undertaking in resolution and appropriately considering particularities of the insurance business.

POLICY OPTIONS

Policy Issue A: Whether to follow the approach of EBA taking into account the insurance specificities or to develop a completely new approach

Policy option A.1: Develop a new RTS, with its own structure and terminology

This option would entail developing a process with the following steps:

- (1) Perform an analysis of the usage of derivatives by the insurance industry within the Union;
- (2) Identify the problem(s), prepare an overview of the findings regarding the problem(s) to be dealt with as well as the solutions proposed;
- (3) Based on the above, define the objectives of the RTS;
- (4) Define specific subject areas and related policy options;
- (5) Determine the potential impact of these options and select the most effective and efficient one.

Policy option A.2: To follow the approach taken by EBA considering the insurance specificities

This approach considers following the EBA approach given the identical mandates of EBA and EIOPA as well as identical or similar prescriptive rules and requirements for specifying methodologies and principles for valuation of liabilities arising from derivatives, including similar power to resolution authorities to closeout and terminate financial contracts and derivatives. This option would consider, if and when necessary, any relevant insurance specificities.

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 Issue A: Whether to follow the approach of EBA taking into account the insurance specificities or to develop a completely new approach

Policy option A.1: Develop a new RTS, with its own structure and terminology		
Costs	Policyholders	No direct impact on policyholder is expected in this case however, any additional administrative cost or otherwise additional resources (e.g. time, additional headcount) incurred by resolution authorities an/or industry, might ultimately impact the cost of the insurance service, including the insurance premium.
	Industry	Additional administrative costs for counterparties in derivative transactions may be incurred due to the need to develop separate processes etc. to accommodate various regulations in banking and insurance. Developing and implementing additional processes may entail quite substantial costs, as depending on the complexity of such processes, dedicated external expertise would need to be employed. Furthermore, if additional or different valuation would be required, in terms of complexity, additional data/information to be collected, external expertise required to be engaged, etc.), this may result in substantial additional operational costs for the entity under resolution and/or the industry, depending on the applicable financing arrangement.
	Resolution authorities	Time-consuming and costly processes may need to be implemented in order to apply various requirements to treat derivatives in a resolution scenario. In case the resolution authority performs valuations, this would include any additional costs incurred in case additional or different valuations would be required, in terms of complexity of the processes, engagement of external expertise etc.) This is especially relevant for integrated authorities (banking and insurance) which would also need to define and implement processes to ensure accurate and timely alignment of the sectoral rules and regulations, keeping them up to date whenever there is a change in any given sector. As a result, the regulatory burden would increase, as well as the overall running costs for the resolution

		authorities, potentially affecting, with a cascading effect, the industry as well as, ultimately, the policyholders.
	Other	Other stakeholders (e.g. creditors etc.) may be affected by the costs referred above, however, this might be less relevant than for the other stakeholders referred in this Policy Option.
Benefits	Policyholders	There is no anticipated direct benefit for the policyholders .
	Industry	There is no anticipated direct benefit for the industry .
	Resolution authorities	Developing a specific RTS might be easier to apply in case of an insurer's failure, as there is no need for additional resources (time, staff with a high level of expertise) and processes to handle specific insurance matters. Therefore, resolution authorities can ensure that e any specific insurance related aspect is duly considered.
	Other	There is no anticipated direct benefit for other stakeholders

Policy option A.2: To follow the approach taken by EBA considering the insurance specificities		
Costs	Policyholders	No direct impact on policyholder is expected in this case
	Industry	No direct impact on the industry is expected in this case.
	Resolution authorities	No direct impact expected.
	Other	No direct impact expected.
Benefits	Policyholders	As less burden is put on the resolution authorities in terms of costs, need for additional resources (time, staff) etc., more streamlined and efficient processes could be put in place which ultimately would positively benefit policyholders as no additional resolution costs would be generated
	Industry	This Policy Option would ensure ythat there is consistency with the approach taken for a derivative counterparty (e.g. a bank). Furthermore, this option would ensure transparency and comparability with similar situations e.g. with valuations of liabilities from derivatives in a resolution situation in the banking sector, as counterparties in derivative transactions will be treated similarly, regardless of whether they have exposure to a credit institution or an insurance or reinsurance undertaking in resolution.
	Resolution authorities	Consistent approach, processes and tools would ensure clear and transparent communication with other competent authoritiesand counterparties in derivative transactions etc.

		<p>Such consistency would further ensure that the valuation processes can run without additional need of resources, data or special expertise.</p> <p>In addition, in case of integrated authorities, the resources already existing in the banking sector can be deployed in an efficient and timely manner for the insurance cases.</p> <p>In this context, no additional costs are expected to be incurred.</p>
	Other	<p>The consistency in approach, processes and tools would ensure a higher predictability for counterparties and other stakeholders involved or affected by this regulation. No additional costs are to be incurred by any other stakeholder (e.g. creditors etc.)</p>

COMPARISON OF POLICY OPTIONS

Policy Issue A: Whether to follow the approach of EBA taking into account the insurance specificities or to develop a completely new approach

EFFECTIVENESS			
	Ensuring a level playing field through common minimum harmonization rules	Improving transparency and better comparability	Enhanced cooperation and coordination between competent authorities
Policy option A.1	+	0	0
Policy option A.2	+	++	+

EFFICIENCY			
	Ensuring a level playing field through common minimum harmonization rules	Improving transparency and better comparability	Enhanced cooperation and coordination between competent authorities
Policy option A.1	-	0	0
Policy option A.2	+	++	++

The potential additional costs for the industry in case a completely new RTS would be developed, with its own structure and terminology, could be substantial, depending on the complexity of the new processes, the need to involve dedicated external expertise, especially in case additional or different valuations would need to be performed., Furthermore, additional administrative costs might be incurred

by the counterparties in derivative transactions, as they might need to develop separate processes to accommodate various and/or inconsistent regulations in banking and insurance.

Resolution authorities would need to develop and implement time-consuming and costly processes in order to accommodate various requirements to treat derivatives in a resolution scenario. For integrated authorities (banking and insurance) the inefficiency implied by separate sets of rules, processes and procedures would be even more costly. Alongside with the increased overall running costs, the regulatory burden would increase, all these potentially affecting, with a cascading effect, the industry as well as, ultimately, the policyholders. Preferred option

Based on the qualitative assessment of EIOPA, policy option A.1 would indicate that while there might be an advantage of following an extensive process for developing an EIOPA RTS with its own structure and terminology, this might imply that counterparties in derivative transactions might be faced with additional and potentially significantly high operational costs to understand how they might be treated differently in resolution when entering into transactions with either banks or insurance companies.. Policy option A.2 mitigates this risk and might increase transparency and convergence among various stakeholders, as it might ensure that counterparties in derivative transactions are treated similarly, regardless of whether they have an exposure to a credit institution or an insurance or reinsurance undertaking in resolution.

Based on the impact assessment, **it was decided to follow policy option A. 2, namely, to develop the RTS on specifying methodologies and principles for the valuation of liabilities arising from derivatives, following the approach taken by the EBA**, duly considering any specificity of the insurance business as the case may be.

ANNEX II: OVERVIEW OF QUESTIONS FOR CONSULTATION

The questions are set out in an EU-Survey (https://ec.europa.eu/eusurvey/runner/RTS_valuation_liabilities_derivatives).

PRIVACY STATEMENT

► Introduction

1. The European Insurance and Occupational Pension authority (EIOPA) is committed to protecting individuals' personal data in accordance with Regulation (EU) 2018/1725⁴ (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 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, 29 and 71 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.

► Controller of the personal data processing

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](#).

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

► **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 the internal Data Controller (DataController@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.**