

FINAL REPORT

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on the draft Regulatory Technical Standards on
criteria for pre-emptive recovery planning
requirements and methods to be used when
determining the market shares

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eiopa

European Insurance and
Occupational Pensions Authority

TABLE OF CONTENTS

1. Executive summary	3
2. Background and rationale	4
3. Draft Technical Standards	6
Annex 1: Impact assessment	15
Annex 2: Feedback statement	27

1. EXECUTIVE SUMMARY

INTRODUCTION

On 29 April 2025, EIOPA launched a public consultation on the proposal for Regulatory Technical Standards on criteria for pre-emptive recovery planning requirements and methods to be used when determining the market shares. This final report sets out the final text of the draft RTS including an impact assessment and a feedback statement on the public consultation.

CONTENT

Article 5(2) of Directive (EU) 2025/1 sets out the criteria that supervisory authorities should use to subject insurance and reinsurance undertakings to pre-emptive recovery planning requirements, namely size, business model, risk profile, interconnectedness and substitutability, their importance for the economy of the Member States in which they operate, and their cross-border activities, in particular significant cross-border activities. Moreover, Supervisory authorities shall ensure that the minimum market coverage level of at least 60% for both life and non-life market is met.

These draft RTS further specify the criteria, in particular as regards cross-border activity, referred to in Article 5(2), first subparagraph and the methods to be used when determining the market shares referred to in Article 5(2), second and third subparagraphs. The criteria are further specified by indicating quantitative and qualitative factors that supervisory authority should assess for deciding on the entities that are to be subject to pre-emptive recovery planning requirements. Additionally, they also provide guidance on the operationalization of the calculation of the market coverage level.

PUBLIC CONSULTATION

EIOPA conducted a public consultation on these draft RTS between 29 April 2025 and 31 July 2025. A stakeholder event was held on 13 June 2025 to discuss the consultation paper. Eight stakeholders provided feedback on the consultation paper. Based on the stakeholder feedback, the drafting of these draft RTS was refined, without changing the general approach set out in the consultation paper.

NEXT STEPS

These draft RTS will be submitted to the European Commission. In accordance with Article 10 of Regulation (EU) No 1094/2010 (EIOPA Regulation)¹, the Commission will decide on the adoption of these draft RTS.

¹ Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC, OJ L 331, 15.12.2010, p. 48–83

2. BACKGROUND AND RATIONALE

1. The global financial crisis of 2008 highlighted the need to develop an appropriate recovery and resolution framework for insurance and reinsurance undertakings and groups. More recent failures have reinforced the need for such a framework. Supervisors or resolution authorities as well as insurance and reinsurance undertakings and groups must be prepared in advance to implement crisis management solutions, by having in place robust pre-emptive recovery planning and resolution planning processes. A comprehensive recovery and resolution framework reduces the likelihood of failure and limits the impact in case the failure finally materialises. Furthermore, it should be considered that crisis prevention and preparation is deemed more efficient and less costly than crisis management. Although a crisis at an insurer generally unfolds more slowly than at a bank, fast-moving scenarios are also possible in the insurance sector. Therefore, EIOPA considers it essential that the pre-emptive recovery and resolution framework for insurers is capable of addressing such situations as well.
2. According to Article 5(12) of Directive (EU) 2025/1 EIOPA shall develop draft regulatory technical standards to specify further:
 - a. *the criteria, in particular as regards cross-border activity, referred to in paragraph 2, first subparagraph;*
 - b. *the methods to be used when determining the market shares referred to in paragraph 2, second and third subparagraphs;*
3. According to Article 5(2), first subparagraph, of Directive (EU) 2025/1, 'Member states shall ensure that the supervisory authority subjects insurance and reinsurance undertakings to pre-emptive recovery planning requirements on the basis of their:
 - a. Size
 - b. Business model
 - c. Risk profile
 - d. Interconnectedness
 - e. Substitutability
 - f. Importance for the economy of the Member States in which they operate
 - g. Cross-border activities, in particular significant cross-border activities.
4. Article 5(2), second subparagraph, of Directive (EU) 2025/1 sets out an obligation for supervisory authorities to ensure that at least 60% of the Member State's life insurance and reinsurance market and at least 60% of its non-life insurance and reinsurance market, the life market share being based on gross technical provisions and the non-life market share being based on gross written premiums, are subject to pre-emptive recovery planning requirements.
5. In the calculation of the market coverage level, the subsidiary insurance or reinsurance undertakings of a group may be taken into account where those subsidiary insurance or

reinsurance undertakings are part of a group for which the ultimate parent undertaking is drawing up and maintaining a group pre-emptive recovery plan as per Article 5(2), third subparagraph, of the Directive (EU) 2025/1 or where the supervisory authority of that subsidiary insurance or reinsurance undertaking requires it to submit a pre-emptive recovery plan.

6. These draft Regulatory Technical Standards further specify the methods to be used when determining the market shares referred to in Article 5(2), second subparagraph, of Directive (EU) 2025/1 and the criteria, in particular as regards cross-border activity, referred to in Article 5(2), first subparagraph, of Directive (EU) 2025/1.
7. Supervisory authorities would need to verify the compliance with the minimum market coverage level of at least 60% on an ongoing basis and, at a minimum, when the pre-emptive recovery plans will be updated as part of a regular update or in case of a material change to the re(insurance) undertaking as per Article 5(4) of Directive (EU) 2025/1.
8. These Draft Regulatory Technical Standards should apply to both solo undertakings and groups.
9. Furthermore, it should be noted that according to Article 5(3), first subparagraph, of Directive (EU) 2025/1 any insurance or reinsurance undertaking which is subject to a resolution plan (pursuant to Article 9) shall be subject to pre-emptive recovery planning requirements.
10. In accordance with Article 5(3), second subparagraph, of Directive (EU) 2025/1, small and non-complex undertakings shall not be subject to pre-emptive recovery planning requirements, except where a supervisory authority considers that such an undertaking represents a particular risk at national or regional level. In this case, when a pre-emptive recovery plan is requested to the undertaking, the market share of the abovementioned undertaking should be accounted for when assessing the coverage of the 60% market share requirement.
11. The criteria in accordance with Article 5(2) of Directive (EU) 2025/1 are specified in Articles 1 to 7 of these Draft Regulatory Technical Standards.
12. The risk profile criterion definition is based on the IAIS glossary.
13. These Draft Regulatory Technical Standards were developed in line with EIOPA's views for better regulation and supervision, thereby enhancing supervisory convergence through simpler, more efficient frameworks.²

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

3. DRAFT TECHNICAL STANDARDS



EUROPEAN COMMISSION

Brussels, 29.6.2011
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COMMISSION DELEGATED REGULATION (EU) .../..

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supplementing Directive 2025/1/EC of the European Parliament and of the Council with regard to regulatory technical standards on criteria for pre-emptive recovery planning requirements and methods to be used when determining the market shares

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 on 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 5(12), third subparagraph, thereof,

Whereas:

- (1) According to Article 5(2) of the Directive (EU) 2025/1, Member States are to ensure that the supervisory authority subjects insurance and reinsurance undertakings to pre-emptive recovery planning requirements on the basis of their size, business model, risk profile, interconnectedness and substitutability, their importance for the economy of the Member States in which they operate, and their cross-border activities, in particular significant cross-border activities. Furthermore, according to Article 5(2), second and third subparagraph of Directive (EU) 2025/1, supervisory authorities are to ensure that at least 60% of the Member State's life insurance and reinsurance market and at least 60 % of its non-life insurance and reinsurance market is subject to pre-emptive recovery planning requirements.
- (2) For the assessment of the criterion of size, supervisory authorities should use the amount of gross technical provisions for life insurance or reinsurance undertakings, and the amount of gross written premiums for non-life insurance or reinsurance undertaking. Supervisory authorities should supplement the assessment by considering the amount of total assets as a metric whenever this is deemed necessary, notably in cases involving insurance undertakings pursuing both life and non-life activities.
- (3) In the calculation of the market coverage level, supervisory authorities may take into account the subsidiary insurance or reinsurance undertakings of a group, where those subsidiary insurance or reinsurance undertakings are part of a group for which the ultimate parent undertaking is drawing up and maintaining a group pre-emptive recovery plan.
- (4) For the assessment of the criterion of cross-border activities, supervisory authorities should consider the trade-off between a more complex crisis management, and diversification in cross-border insurance and reinsurance business. This is particularly true for certain insurance and reinsurance lines of business for which there is *de facto* a global market whose efficiency and resilience comes from its global nature.

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OJ.....

- (5) For the assessment of the criterion of interconnectedness, the high number of counterparties should be assessed in the context of how the failure of a single undertaking could impact numerous interconnected entities, potentially triggering cascading effects and amplifying systemic risks.
- (6) For the purpose of determining the market share of undertakings pursuing both life and non-life insurance activities, this Regulation clarifies that their market share should be accounted for separately: the life insurance activities for the calculation of the life insurance market and the non-life insurance activities for the calculation of the non-life insurance market.
- (7) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Insurance and Occupational Pensions Authority.
- (8) 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.

HAS ADOPTED THIS REGULATION:

Article 1

Size criterion

1. The size of a life insurance or reinsurance undertaking shall be assessed using the amount of gross technical provisions, and the size of a non-life insurance or reinsurance undertaking shall be assessed using the amount of gross written premiums. Where relevant, the assessment of size may be supplemented by the amount of total assets.
2. Based on the assessment, supervisory authorities shall consider larger insurance or reinsurance undertakings or groups as being more prone to be subject to pre-emptive recovery planning.

Article 2

Business model criterion

1. Supervisory authorities shall assess the business model criterion taking into consideration, at least, the following factors in their assessment of potential vulnerabilities in the insurance or reinsurance undertaking's or group's business:
 - a) factors by which it generates profit and losses, including its profitability ratios;
 - b) lines of business in which it operates, taking into account both the relative contribution of each line of business to the undertaking or group total gross written premiums and their riskiness;
 - c) types of products it offers;
 - d) investment strategy followed by the insurance or reinsurance undertaking or group;
 - e) distribution model and distribution channels and their diversification;
 - f) stability of business model, considering also the diversification of its business.
2. Based on the assessment, supervisory authorities shall consider more prone to be subject to pre-emptive recovery planning insurance or reinsurance undertakings or groups whenever they show unsustainable profit generation or low profitability ratios, concentration in fewer lines of business or products, notably the ones that are deemed to be riskier, undiversified investment strategies and distribution model or channels or an overall instability of the business model, particularly analysing the degree of business diversification.

Article 3

Risk profile criterion

1. Supervisory authorities shall assess the risk profile considering the gross and, as appropriate, net risk exposures of an insurance or reinsurance undertaking or a group.
2. When assessing the risk profile criterion, supervisory authorities shall consider, at least, the following factors:
 - a) the Solvency Capital Requirement of the insurance or reinsurance undertaking, as provided for in Article 100 of Directive 2009/138/EC, or the group Solvency Capital Requirement, as provided for in Article 218 of Directive 2009/138/EC;
 - b) the quality of the own funds and the percentage that they represent over the Solvency Capital Requirement;

- c) whether risk exposures, measured by Solvency Capital Requirement modules or submodules, pose higher risk for the undertaking in comparison to other undertakings on the market;
 - d) the undertaking's risk appetite considering it, where relevant, in the context of the solvency and financial condition;
 - e) the liquidity risk.
- 3. The supervisory authorities shall assess the risk profile of an insurance or reinsurance undertaking or group as stipulated above using already existing information, including the own risk and solvency assessment (ORSA) in accordance with in Articles 45 and 246 of Directive 2009/138/EC, the liquidity risk management plans in accordance with Article 144a of Directive 2009/138/EC, where available, as well as other data and information that supervisory authorities deem appropriate.
- 4. Based on the assessment, supervisory authorities shall consider more prone to be subject to pre-emptive recovery planning insurance or reinsurance undertakings or groups with high Solvency Capital Requirement, low quality of own funds, high risk exposure compared to other undertakings or groups, high risk appetite, or high liquidity risk.

Article 4

Interconnectedness criterion

- 1. Supervisory authorities shall assess interconnectedness considering internal interlinkages of the insurance or reinsurance undertaking within its group as well as external interlinkages with financial institutions and markets and with the real economy.
- 2. When assessing the interconnectedness criterion, supervisory authorities shall consider, at least, the following factors:
 - a) exposures to counterparties in the broader financial system and real economy;
 - b) concentration of the financial instruments held and their corresponding volumes, considering, where relevant, derivative positions, repos and securities lending positions and collateral agreements;
 - c) contagion risks among undertakings in the group, considering also the volume of intra-group transactions and reinsurance;
 - d) relevance of the insurance or reinsurance undertaking's operational services for the group.
- 3. Based on the assessment, supervisory authorities shall consider more prone to be subject to pre-emptive recovery planning insurance or reinsurance undertakings or groups that have a high exposure to many counterparties, a high concentration of the financial instruments held, their high volume with respect to the total assets, high contagion risk or high relevance of the operational services for the group.

Article 5

Substitutability criterion

1. Supervisory authorities shall assess substitutability as the degree to which policyholders and beneficiaries have the possibility to replace insurance products or policies or exchange them for another insurance product or policy or similar financial product within a reasonable timeframe and at a reasonable cost and the capacity of other market participants to absorb the demand for substitution.
2. When determining whether the timeframe and cost are reasonable, supervisory authority shall assess those aspects together, taking into consideration a possible trade-off between cost and time.
3. For that purpose, supervisory authorities shall assess the following quantitative and qualitative factors:
 - a. the number of insurance or reinsurance undertakings carrying out the specific activity being assessed or providing similar products in the Member States, or the market concentration;
 - b. the characteristics of policyholders, beneficiaries and any relevant third parties;
 - c. the size of the portfolio and the complexity of the products offered.
4. Based on the assessment, supervisory authorities shall consider more prone to be subject to pre-emptive recovery planning insurance or reinsurance undertakings or groups whose products or policies are deemed less substitutable, where there is a low number of alternatives, a significant impact on policyholders, beneficiaries and any relevant third parties or the insurance or reinsurance undertaking or group has a large portfolio and the products offered are complex.

Article 6

Importance for the economy of the Member State criterion

1. Supervisory authorities shall assess the importance for the economy criterion, considering, at least, the following factors:
 - a. impact of a discontinuation of the insurance coverage in non-financial sectors that are relevant for the economy of the Member State;
 - b. the role as institutional investor in the Member State's market;
 - c. impact on the employment in the Member State's market;
 - d. the contribution to the gross domestic product of the Member State in terms of gross written premium to GDP.
2. Based on the assessment, supervisory authorities shall consider more prone to be subject to pre-emptive recovery planning insurance or reinsurance undertakings or groups where there is a high impact from the discontinuation of their insurance coverage, they play a role as an institutional investor, they have a high impact on the employment or they highly contribute to the gross domestic product of the Member State.

Article 7

Cross-border activities criterion

1. Supervisory authorities shall, in particular, assess cross-border activities by analysing the share of annual gross written premium income from activities carried out under the right of establishment or freedom to provide services by the insurance or reinsurance undertaking over the total annual gross written premium income. Supervisory authorities shall assess, where appropriate, the number of countries in which the insurance or reinsurance undertaking is underwriting cross-border business and the corresponding volumes.
2. When assessing the cross-border criterion for groups, supervisory authorities shall conduct the evaluation described above also for the subsidiaries within the group.
3. Based on the assessment, supervisory authorities shall consider more prone to be subject to pre-emptive recovery planning insurance or reinsurance undertakings or groups whose subsidiaries are having a high share of cross-border gross written premiums income, cross-border activities carried out in a high number of countries or a high share of cross border activities in fewer countries. Additionally, supervisory authorities shall consider more prone to be subject to pre-emptive recovery planning insurance or reinsurance undertakings carrying out significant cross border activities in accordance with Article 152aa of Directive 2009/138/EC.

Article 8

Combination of criteria

1. Supervisory authorities shall ensure that the criteria laid down in Articles 1 to 7 of this Delegated Regulation are considered in combination with one another.
2. For the purpose of assessing the criteria defined in Articles 1 to 7, supervisory authorities shall use data from supervisory reporting provided on the basis of Articles 35, 244, 245, and 254 of Directive 2009/138/EC, as well as other data or information that supervisory authorities deem appropriate.

Article 9

Methods to determine the market coverage level

1. Supervisory authorities shall determine the value of the Member State's life insurance and reinsurance market by aggregating the amount of gross technical provisions of the life business, including technical provisions for index-linked and unit-linked insurance, of the insurance and reinsurance undertakings authorised in their Member State.
2. Supervisory authorities shall determine the value of the Member State's non-life insurance and reinsurance market by aggregating the amount of gross written premiums of the non-life business of the insurance and reinsurance undertakings authorised in their Member State.
3. Supervisory authorities may aggregate the market share of subsidiaries belonging to the same group and operating in their Member State and account their market share as a single (sub)group in their respective Member State markets. Supervisory authorities may use the consolidated data when the group and all its subsidiaries are established in their Member State.

4. For the purpose of the calculation of the market coverage level, supervisory authorities shall use data from supervisory reporting provided by insurance and reinsurance undertakings on the basis of Articles 35 and 254 of Directive 2009/138/EC.
5. The business undertaken by insurance and reinsurance undertakings under the right of establishment or freedom to provide services shall be considered in the relevant market shares of the Member State where the insurance or reinsurance undertaking is authorised.
6. Supervisory authorities shall include small and non-complex undertakings in the determination of the total value of the insurance and reinsurance market of the Member State, used as the denominator of the market share.

Article 10

Methods to determine the market share of the subsidiary of a group based in a different Member State

1. Group supervisors shall, in advance of consultation in Article 8(1) of Directive (EU) 2025/1, communicate and share information with college members and with other supervisory authorities of subsidiaries or related insurance or reinsurance undertakings belonging to the same group, using the usual communication channels of colleges of supervisors, to inform them as to whether the group, to which the subsidiary belongs to, is subject to pre-emptive recovery planning, in order to ensure that this piece of information is considered in the determination of the relevant Member State market share.
2. Where supervisory authorities determined, based on the assessment of criteria laid down in Articles 1 to 7 of this Delegated Regulation, that a subsidiary shall be subject to pre-emptive recovery planning, they shall verify the existence of a group pre-emptive recovery plan that sufficiently considers the subsidiary. In case the subsidiary is part of a group for which the ultimate parent undertaking is drawing up and maintaining a group pre-emptive recovery plan, third subparagraph of Article 5(2) of Directive (EU) 2025/1 shall be applied. In case an individual pre-emptive recovery plan is requested to the subsidiary undertaking, the market share of the subsidiary shall be accounted for towards reaching the market coverage level of at least 60%.
3. Where supervisory authorities determined, based on the assessment of criteria laid down in Articles 1 to 7 of this Delegated Regulation, that a subsidiary undertaking of a group established in a different Member State does not need to be subject to an individual pre-emptive recovery planning, whilst the subsidiary is part of a group for which the ultimate parent undertaking is drawing up and maintaining a group pre-emptive recovery plan, third subparagraph of Article 5(2) of Directive (EU) 2025/1 shall be applied.

Article 11

Methods to determine the market share of undertakings pursuing both life and non-life activities

1. Insurance undertakings pursuing both life and non-life activities shall be assessed by supervisory authorities, by means of the criteria defined in Articles 1 to 7 of this Delegated Regulation, as a single insurance undertaking. Both its life and non-life activities shall be included in the assessment.

2. If, following the assessment, the supervisory authority determined that the insurance undertaking is subject to pre-emptive recovery planning, the market share of its non-life part shall be accounted towards reaching the market coverage level of at least 60% of the non-life market and the market share of its life part shall be accounted towards reaching the market coverage level of at least 60% of the life market.

Article 12

Entry into force

This Delegated Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Delegated 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 1: 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.

In drafting these technical standards, EIOPA takes the general objectives of the Directive (EU) 2025/1 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.
- Ensure proper functioning of the internal market and level playing field.

In particular, in view of the specific purpose of these technical standards, the following more specific objectives were identified:

- Promoting a risk-based framework and limiting the burden for (re)insurance undertakings representing lower risk.
- Ensuring a level playing field through common minimum harmonisation rules.
- Improving transparency in the implementation of pre-emptive recovery planning requirements and better comparability in the identification of the insurance and reinsurance undertakings and groups under the scope of the pre-emptive recovery planning requirements performed by national supervisory authorities.

POLICY ISSUES

POLICY ISSUE A: DEFINITION OF A METRIC FOR ASSESSING THE SIZE CRITERION

This policy issue focuses on the size criterion, and more specifically on the level of prescriptiveness of the article 2 of the Draft RTS. As Article 5(12) of the Directive (EU) 2025/1 requires to further specify the criteria defined in Article 5(2), three different options for the definition of a metric for the size criterion are analysed.

POLICY ISSUE B: SUBSTITUTABILITY OF INSURANCE PRODUCTS OR POLICIES

For assessing the substitutability criterion, the Draft RTS require the analysis of the possibility of policyholders and beneficiaries to replace or exchange insurance products or policies. To gain a more comprehensive understanding, the assessment could be expanded to include also financial products in the assessment, allowing for a broader picture of the potential alternatives that policyholders and beneficiaries may have in the market.

POLICY ISSUE C: DEDUCTION OF INTRA-GROUP TRANSACTIONS

When calculating the market share for the purpose of determining if the market coverage level of at least 60% is reached, when aggregating the market shares of the (individual) insurance undertakings belonging to the same group, there might be a double counting of some gross written premiums and technical provisions.

POLICY OPTIONS

POLICY ISSUE A: DEFINITION OF A METRIC FOR THE SIZE CRITERION

Policy option A.0: No metric provided

This policy option assumes that no metric is provided for the assessment of the size criterion, leaving the choice of the metric or indicator entirely to the supervisory authority.

Policy option A.1: Restrict the metric to be used to gross written premiums and technical provisions

In this option, the size of a life insurance or reinsurance undertaking is assessed by using the amount of technical provisions and the size of a non-life insurance or reinsurance undertaking is assessed by using the amount of gross written premiums.

Policy option A.2: Use gross written premiums and technical provisions in combination with total assets

The last policy option considered allows to supplement, where relevant, the assessment of the size criterion using the amount of total assets as an additional metric. This might be relevant, for example, when assessing undertakings pursuing both life and non-life insurance activities.

POLICY ISSUE B: SUBSTITUTABILITY OF INSURANCE PRODUCTS OR POLICIES

Policy option B.0: No specification on the type of alternative products that should be considered by supervisory authorities to assess substitutability

This option implies that the Draft RTS would remain silent about the option to replace or exchange products or policies in the substitutability criterion, leaving full discretion on the comparable products to supervisory authorities.

Policy option B.1: Assess substitutability only with other insurance products and policies

The second policy option involves restricting the analysis on whether policyholders and beneficiaries have the possibility to replace insurance products or policies or exchange them only to consider another insurance product or policy.

Policy option B.2: Include similar financial products in the assessment

Another option considered when referring to substitutability, is to consider the possibility of policyholders and beneficiaries to replace or exchange insurance products or policies for another insurance product or policy or similar financial product

POLICY ISSUE C: DEDUCTION OF INTRA-GROUP TRANSACTIONS

Policy option C.0: No prescription on the deduction of intra-group transactions

The first option is not to be prescriptive with respect to the deduction of intra-group transactions in Article 10 of Draft RTS, therefore leaving this possible deduction to the discretion of the supervisory authority when performing the assessment.

Policy option C.1: Prescription of the deduction of intra-group transactions

This policy option refers to the addition, in Article 10 of the Draft RTS, of a provision that prescribes that supervisory authorities deduct intra-group transactions, both in terms of gross written premiums and technical provisions, when calculating the market share for the purpose of determining if the market coverage level of at least 60% in a Member State is met.

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 different variables, such as the company-specific process and procedures, the size and nature of the entity.

POLICY ISSUE A: DEFINITION OF A METRIC FOR THE SIZE CRITERION

Policy option A.0: No metric provided

The costs of this option outweigh the benefits as there is indeed more flexibility for supervisors but in turn there is the requirement for them to define their own metric, which also implies no or little harmonisation among supervisory authorities and less predictability and transparency for the market and the industry.

Policy option A.0		
Costs	Policyholders	No material impact
	Industry	Less predictability and transparency on the metrics used to subject insurance or reinsurance undertakings or groups to pre-emptive recovery planning. The potential need for additional data may require more resources for its collection and incur increased costs.

	Supervisors	Need to determine their own measure/indicator
	Other	No or little harmonisation
Benefits	Policyholders	No material impact
	Industry	No material impact
	Supervisors	More flexibility in the assessment
	Other	No material impact

Policy option A.1: Restrict the metric to be used to gross written premiums and technical provisions

This option is more balanced, as it is based on data that is available to supervisors, which are not required to define any metric and provides a high degree of harmonisation, but on the other hand it is more prescriptive and it raises concerns when assessing undertakings pursuing both life and non-life activities, as they may have one side of the business that is dominant, making the comparison with other undertakings imprecise.

Policy option A.1		
Costs	Policyholders	No material impact
	Industry	Less accurate assessment of undertakings pursuing both life and non-life activities. This could place additional financial burden on the undertaking, due to the imprecise comparison with other entities.
	Supervisors	Less flexibility in the assessment
	Other	No material impact
Benefits	Policyholders	No material impact
	Industry	The analysis is based on data already available in regular supervisory reporting, therefore the industry should not be burdened by additional reporting cost and effort. More predictability in the outcome of the assessment of this criterion
	Supervisors	No need to define own metric
	Other	Full degree of harmonisation and more comparability across the insurance market

Policy option A.2: Use gross written premiums and technical provisions in combination with total assets

While presenting some degree of prescriptiveness, this option allows for more flexibility for supervisors, as they can include total assets in the assessment of the size criterion, and a significant level of harmonisation. Supervisors are not required to define any metric, as this is already specified in the Draft RTS.

Moreover, the inclusion of total assets, provides a more accurate assessment of undertakings pursuing both life and non-life activities, as this metric is a neutral indicator, that leaves features related to the business aside of the analysis.

Policy option A.2		
Costs	Policyholders	No material impact
	Industry	No material impact, there are no additional costs derived from e.g. data reporting.
	Supervisors	As supervisory authorities have more metrics available, the outcome of the assessment will be less comparable among peers.
	Other	No material impact
Benefits	Policyholders	No material impact
	Industry	Assessment of undertakings pursuing both life and non-life activities is more accurate and data already available from regular reporting, not increasing the reporting burdens for the entities.
	Supervisors	No need to determine their own metric and more flexibility
	Other	Significant level of harmonisation. Comparability with banking sector

POLICY ISSUE B: SUBSTITUTABILITY OF INSURANCE PRODUCTS OR POLICIES

Policy option B.0: No specification on the type of products that should be considered by supervisory authorities to assess substitutability

Policy option B.0		
Costs	Policyholders	No material impact
	Industry	Lack of clarity on the factors considered by supervisory authorities
	Supervisors	Less predictability in the assessment
	Other	No material impact

Benefits	Policyholders	No material impact
	Industry	No material impact
	Supervisors	More flexibility to assess each individual case
	Other	No material impact

Policy option B.1: Assess substitutability only with other insurance products and policies

This policy option presents the benefit of being easier to assess. The costs suggest that the assessment overlooks the possibility that policyholders and beneficiaries may have to explore alternative coverage options, such as non-insurance sources or other providers.

Consequently, this approach may not provide the most accurate representation when assessing substitutability, leading to a possible underestimation of the substitutability of activities carried out by insurance or reinsurance undertakings or groups.

Policy option B.1		
Costs	Policyholders	No material impact
	Industry	Possible underestimation of the substitutability of activities of insurance and reinsurance undertakings and groups, increasing the possibility of overestimating the risk, and an increased costs in case the undertaking is included in the coverage of the 60% market share requirement.
	Supervisors	By focusing on similar insurance products, the assessment might underestimate the ability of the market and policyholders to adapt to alternative solutions.
	Other	No material impact
Benefits	Policyholders	No material impact
	Industry	No material impact
	Supervisors	More easily assessable as it involves only looking at the insurance market
	Other	No material impact

Policy option B.2: Include similar financial products in the assessment

This option requires a more thorough assessment of the options that policyholders and beneficiaries have to replace or exchange insurance products or policies. This assessment may be more onerous,

however it has the benefit of providing a more accurate reflection of the actual market dynamics and the broad range of options available to policyholders and beneficiaries. Moreover, this gives supervisors a more detailed understanding of the market.

Lastly, by including financial products in the assessment, activities carried out by insurance and reinsurance undertakings may be seen as having a greater degree of substitutability.

Policy option B.2		
Costs	Policyholders	No material impact
	Industry	No material impact
	Supervisors	Bigger effort to assess the whole financial market, increasing the costs in term of resources to perform the assessment.
	Other	No material impact
Benefits	Policyholders	No material impact
	Industry	The activities carried out by insurance and reinsurance undertakings or groups may be assessed as more substitutable Including financial products better reflects the reality of a market where insurance and financial products sometimes compete to attract the same customers.
	Supervisors	More accurate view of the market
	Other	No material impact

POLICY ISSUE C: DEDUCTION OF INTRA-GROUP TRANSACTIONS

Policy option C.0: No prescription on the deduction of intra-group transactions

This policy option requires supervisory authorities to make their own assessment when it comes to the deduction of intra-group reinsurance transactions and evaluate if it is necessary to deduct from the market share. In the supervisory authority decides not to deduct intra-group transactions, this option has the advantage of not having to require additional data, that might be needed to perform the assessment and might not be available to supervisory authorities through regular data reporting.

Not deducting intra-group reinsurance transactions from the market share might have the effect of overestimating the total market share, however this overestimation was assessed as not being significant in most of the cases and it is certainly outweighed by the benefit of having a much easier computation of the market share. Moreover, the differences in treatment of these transactions will not undermine the objective of setting out a minimum harmonisation framework, as this is achieved by defining and reaching a common understanding of the criteria, by the existence of a market coverage

level of at least 60% established in the Directive (EU) 2025/1 and the requirement that all the criteria are considered by supervisory authorities.

Policy option C.0		
Costs	Policyholders	No material impact
	Industry	No material impact
	Supervisors	Potential overestimation of the market share in some cases, when there are intra-group transactions that are not deducted
	Other	Less harmonisation among Member States
Benefits	Policyholders	No material impact
	Industry	No additional data required, based on the supervisory authority decision on the deduction
	Supervisors	More flexibility and simpler computation of the market share. Focus on the risk-based criteria.
	Other	No material impact

Policy option C.1: Prescription of the deduction of intra-group transactions

This option presents the benefits of having a provision in the technical standards that gives more legal certainty on the deduction of intra-group transactions. Moreover, this avoids double counting of gross written premiums and technical provisions for those groups that provide these types of transactions among the entities of the group authorised in the same member State.

On the other hand, supervisors are required to do a more complex computation of the market share and the data required for this deduction might not always already be available for supervisors and might need to be requested to insurance or reinsurance undertakings or groups.

Policy option C.1		
Costs	Policyholders	No material impact
	Industry	Additional data will be requested to perform the deduction, if this is not already available to supervisory authorities. The potential need for additional data may require more resources for its collection and incur increased costs.
	Supervisors	More complex calculation of the market share. Less flexibility

	Other	No material impact
Benefits	Policyholders	No material impact
	Industry	Avoids double counting of gross written premiums and technical provisions
	Supervisors	Explicit empowerment to supervisory authorities to deduct intra-group transactions
	Other	More harmonisation

COMPARISON OF POLICY OPTIONS

DEFINITION OF A METRIC FOR THE SIZE CRITERION

EFFECTIVENESS			
	Promoting a risk-based framework, limit burden	Level playing field	Improve transparency and better comparability
Policy option A.0	0	0	0
Policy option A.1	+	+	+
Policy option A.2	+	+	++

EFFICIENCY			
	Promoting a risk-based framework, limit burden	Level playing field	Improve transparency and better comparability
Policy option A.0	0	0	0
Policy option A.1	+	+	+
Policy option A.2	+	+	++

When comparing the cost implications of the policy options: Options A1 and A2 are cost-comparable because they do not require entities to report additional data for assessment. Existing reporting frameworks and data collection processes would suffice, avoiding new administrative or compliance burdens. Option A0, however, could increase costs for

undertakings. This is because the supervisory authority has the flexibility to define custom measures, potentially requiring new data not previously collected or reported. Such flexibility may lead to higher administrative expenses for gathering, verifying, and submitting this additional information, depending on the authority's specific requirements.

In summary, A1 and A2 maintain cost efficiency by leveraging existing data, while A0 introduces potential variability and cost risks due to its open-ended nature.

SUBSTITUTABILITY OF INSURANCE PRODUCTS OR POLICIES

EFFECTIVENESS			
	Promoting a risk-based framework, limit burden	Level playing field	Improve transparency and better comparability
Policy option B.0	0	0	0
Policy option B.1	+	+	+
Policy option B.2	++	++	+

EFFICIENCY			
	Promoting a risk-based framework, limit burden	Level playing field	Improve transparency and better comparability
Policy option B.0	0	0	0
Policy option B.1	+	+	+
Policy option B.2	+	++	+

When comparing the cost implications of the policy options:

All three options are broadly cost-similar. However, option B1 introduces a potential overestimation of risk for the industry. This could lead to higher costs that would materialize only in case the undertaking is included in the coverage of the 60% market share requirement. Option B2 increases costs for supervisory authorities, as they would need to assess the entire financial market (rather than only the insurance market), requiring more resources and effort for data analysis and monitoring.

In summary, while baseline costs are comparable, B1 carries conditional industry costs tied to the inclusion in the coverage of the market share, and B2 imposes higher administrative burdens on supervisors.

DEDUCTION OF INTRA-GROUP TRANSACTIONS

EFFECTIVENESS			
	Promoting a risk-based framework, limit burden	Level playing field	Improve transparency and better comparability
Policy option C.0	+	+	0
Policy option C.1	0	+	+

EFFICIENCY			
	Promoting a risk-based framework, limit burden	Level playing field	Improve transparency and better comparability
Policy option C.0	++	+	0
Policy option C.1	0	+	+

When comparing the cost implications of the two policy options:

Policy Option C.1 (requiring deduction of intra-group transactions) may increase costs for the industry. This stems from the need to collect and process additional data related to intra-group activities, which could require enhanced systems, staff training, or external expertise. The administrative burden and compliance costs would likely rise, particularly for firms with complex group structures.

In summary, C.1 introduces higher industry costs due to data collection and processing demands, while the alternative maintains cost efficiency by leveraging current reporting.

PREFERRED OPTION

For the policy option Issue A: Definition of a metric for assessing the size criterion, **the preferred option is A.2, the assessment of size in terms of gross written premiums and technical provisions with the additional use of total assets where relevant.** This option appears to be better both in terms of effectiveness, as it ensures a level playing field through a common understanding of the assessment of the size criterion, it improves transparency and better comparability and at the same time limiting the burden for insurance and reinsurance undertakings representing lower risk. Moreover, the benefits/costs analysis suggests that this option is the most efficient, as it is the ones that is more balanced and provide more benefits both to supervisors and the industry, while not adding additional burden on the industry, as the assessment is based on existing reported data.

The **preferred option** from the assessment of policy option B, substitutability of insurance products or policies, is **option B.2**. With this option, all three objectives are best accomplished, namely this promotes a risk-based framework, ensures a level playing field and harmonisation as all supervisory authorities should base their assessment on a common criterion and it also improves transparency and better comparability. By including other financial products in the assessment, the cost of having to perform a more thorough assessment is outweighed by the benefit of having a better overview of the substitutability of insurance products or policies.

The assessment of policy option C seems to be more complex, as both options have benefits and costs that are comparable and very similar. Moreover, the quantification of the impact can only be accurately determined with data available at the national level, which varies in availability and completeness across different jurisdictions. Additionally, since **option C.0** is the one that limits the burden for (re)insurance undertakings representing lower risk more than the others, this option **is the preferred one**.

ANNEX 2: FEEDBACK STATEMENT

This feedback statement sets out a high-level summary of the consultation comments received and EIOPA's assessment of them. The full list of all the non-confidential comments provided can be found on EIOPA's website.

EIOPA received comments from its Insurance and Reinsurance Stakeholder Group (IRSG) and from seven other stakeholders, mainly insurance industry and associations.

As part of the consultation EIOPA held a workshop with stakeholders to discuss the draft RTS on 13 June 2025.

EIOPA would like to express its appreciation for the feedback of the stakeholders during the preparation of the draft RTS.

NO QUANTIFICATION OF IMPACT

Stakeholder comments

Stakeholders pointed out that the impact assessment contains no quantitative cost assessment. Without understanding the impact of regulations, it is very difficult to successfully reduce their burden, in line with the Commission's simplification agenda to reduce operational and reporting burdens on firms. In addition, the impact assessment should also tabulate the least number of undertakings/groups to fulfil the requirement of market coverage of 60 % for each MS with the chosen method and other possible methods to calculate the market coverage to enable comparisons to be made.

Assessment

The impact assessment does not focus on the Directive (EU) 2025/1 itself but on specific policy options. A quantitative assessment of the costs associated with such policy options is not feasible due to the lack of information and the difficulty of monetizing the (mostly) administrative costs, which are influenced by various factors such as organizational efficiency and labour costs. However, a comprehensive impact assessment has been conducted to evaluate the benefits and costs of the different options on a qualitative basis, ensuring that the instrument is proportionate, effective, and efficient in achieving its intended outcomes while minimizing unnecessary burdens on stakeholders. The impact assessment has been carefully evaluated and refined to fulfil the expected requirements to the extent possible.

Additionally, with the information available, EIOPA could only provide a partial table, which may not give a complete picture of the number of undertakings or groups required to cover at least 60% of the market share, as some criteria can only be assessed by national supervisors.

CALCULATION OF THE MARKET COVERAGE AND TREATMENT OF SUBSIDIARIES

Stakeholder comments

Multiple stakeholders highlighted that the calculation method for market coverage levels, as outlined in the RTS and Directive (EU) 2025/1, lacks clarity. These groups often maintain a comprehensive group-level pre-emptive recovery plan but are not required to create individual subsidiary plans. Mandating separate plans for subsidiaries would impose unnecessary operational and financial burdens, especially when a robust group-level plan already exists. Groups should retain the flexibility to either develop individual plans or strengthen the group-level plan to meet National Competent Authorities (NCAs)' requirements.

Therefore, the industry requires that the RTS clearly state that subsidiaries covered by group pre-emptive recovery plans shall be taken into account in the specific market of the Member State when determining if the market coverage level of at least 60% is reached. This is intended to strengthen the more flexible language ('may') used in the Directive, which allows for discretionary consideration of such subsidiaries by the supervisory authorities. Additionally, industry would welcome a statement by EIOPA that should emphasize that the 60% minimum market coverage threshold is typically sufficient and that national supervisors should only require additional entities in exceptional cases, introducing safeguards against an excessively conservative approach.

Assessment

The market coverage level of at least 60% as well as the treatment of the subsidiaries in the market share calculation are governed by second and third subparagraph of Article 5(2) of Directive (EU) 2025/1, and the RTS references the Directive (EU) 2025/1.

The RTS must strictly align with the requirements set out in Article 5(2) and cannot introduce additional or stricter conditions than those already established in the Level 1 legal framework. This ensures compliance with the EU regulatory hierarchy, where Level 2 standards are subordinate to the overarching provisions of Level 1 texts.

Moreover, the requested statement would be outside of the mandate of the RTS.

SPECIFICITIES OF THE REINSURANCE BUSINESS AND DIVERSIFICATION

Stakeholder comments

Stakeholders indicated that Articles 4 and 7 seem to imply that diversification could be risky (e.g. by having higher numbers of counterparties or operating in multiple countries). They do not view diversification as increasing risk and recommend rewording the Articles to remove this implication. In addition, stakeholder recommend the addition of a recital clarifying that authorities should recognize the cross-border nature of the reinsurance business, when evaluating cross-border activities for reinsurance undertakings. Risk diversification through such operations is a core strength of the reinsurance model, boosting efficiency and resilience. Cross-border activity should not be overstated or misinterpreted as heightened risk.

Assessment

EIOPA acknowledges the importance of diversification of business models in the insurance and reinsurance sectors. The current phrasing suggests considering specific scenarios where the form or quality of diversification may introduce systemic or operational risks. This was further clarified in two recitals.

The new recitals explicitly address diversification in two aspects: the number of counterparties and cross-border business activities. While the stakeholders have initially requested such consideration primarily for reinsurance undertakings, the recital clarifies that these principles apply equally to all types of insurance and reinsurance undertakings under the Directive (EU) 2025/1 framework. This broader scope ensures alignment with the Directive (EU) 2025/1 overarching goal of establishing a general framework for all undertakings and groups. Moreover, the Directive (EU) 2025/1 requires that all criteria are assessed holistically, and the business model criterion takes into account the diversification of the business model.

USE OF RELATIVES TERMS AND IMPRECISE WORDING

Stakeholder comments

Some stakeholders observed that some criteria are defined in relative terms e.g. 'larger', 'fewer', 'riskier', 'high' resulting in a lack of harmonisation across the EU.

Assessment

EIOPA clarifies that the Directive (EU) 2025/1 establishes a minimum harmonisation framework through the existence of a market coverage level of at least 60%, an alignment in the interpretation of the criteria set out in Article 5(2) and the requirement that all the criteria are considered by supervisory authorities. The wording used is consistent with the Directive (EU) 2025/1 framework.