

FINAL REPORT

on the Regulatory Technical Standards on contractual recognition of resolution stay powers under Directive (EU) 2025/1

EIOPA-BoS-26-265

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eiopa

European Insurance and
Occupational Pensions Authority

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1. EXECUTIVE SUMMARY

INTRODUCTION

On 09 December 2025, EIOPA launched a public consultation on draft regulatory technical standards (RTS) that further specify the contents of the contractual terms of financial contracts that would allow the resolution authority to exercise its stay powers (i.e., powers to suspend or restrict rights and obligations) over contracts governed by third-country law.

This final report includes EIOPA's proposal for the draft RTS, explains the approach that EIOPA has taken in relation to this proposal, and presents the impact assessment and a feedback statement on the public consultation.

CONTENT

In consistency with its mandate under Article 52(5) of Directive (EU) 2025/1¹, EIOPA has proposed in the draft RTS a list of mandatory components that must be present as contractual terms required in financial contracts. These include provisions specifying the acknowledgement and acceptance that the contract may be subject to the exercise of the powers by the resolution authority, a description of or a reference to the powers in question, the acknowledgement and acceptance by the parties that they are bound by those powers to suspend certain obligations and restrict some rights and that they are bound by the requirements of Article 48 of Directive (EU) 2025/1. In addition, the parties must acknowledge that no other contractual term impairs the effectiveness and enforceability of the contractual terms allowing the resolution authority to exercise its stay powers.

The goal of the draft RTS is to ensure the consistent recognition of such powers over financial contracts governed by third-country law, and through this, to support and facilitate the cross-border enforceability of the resolution authority's powers in relation to those financial contracts.

PUBLIC CONSULTATION

EIOPA conducted a public consultation on the draft RTS between 9 December 2025 and 20 March 2026. A stakeholder event was held on 6 March 2026 to discuss the consultation paper. Following the publication of the consultation paper, two stakeholders provided feedback on the consultation paper. Based on the stakeholder feedback, the drafting of the RTS was refined. These revisions did, however, not lead to a change in the general approach set out in the consultation paper.

¹ Directive (EU) 2025/1 of the European Parliament and of the Council of 27 November 2024 establishing a framework for the recovery and resolution of insurance and reinsurance undertakings and amending Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132 and Regulations (EU) No 1094/2010, (EU) No 648/2012, (EU) No 806/2014 and (EU) 2017/1129.

NEXT STEPS

EIOPA shall, by 29 July 2027, submit those draft regulatory technical standards to the Commission, in accordance with Article 52(5) of the Directive (EU) 2025/1, and Articles 10 to 14 of Regulation (EU) No 1094/2010 (EIOPA Regulation).

2. BACKGROUND AND RATIONALE

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

Article 52(5) of Directive (EU) 2025/1 requires EIOPA to develop draft regulatory technical standards (RTS) to specify the contents of the contractual terms of financial contracts referred to above, taking into account the different business models of the entities concerned.

OBJECTIVE

The exercise of powers by the resolution authority to suspend or restrict rights and obligations, known as resolution ‘stay powers’ give a resolution authority time to facilitate an orderly resolution.

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

Therefore, the objective of the contractual specification for the recognition of the resolution authority’s stay powers in a financial contract governed by third-country law, is to ensure that the resolution powers are applied effectively with cross-border effect to resolution actions. In the absence of a similar legal framework applicable in the third country, the contractual recognition can support the cross-border enforceability of temporary restrictions or stays on the exercise of early termination rights under financial contracts governed by the law of a third-country jurisdiction.² The resolution measures can then be recognised with an adequate degree of predictability and certainty in the third-country jurisdiction. Defining the terms for such contractual recognition can promote awareness and convergent practices.

ANALYSIS

EIOPA’s approach in drafting the RTS aims to ensure a level playing field across financial sectors for the recognition of stay powers in resolution, while having regard to any specificities for the resolution of (re)insurance entities. The consultation proposal was developed in line with EIOPA’s views for better regulation and supervision, thereby enhancing supervisory convergence through simpler, more efficient frameworks.³

² Financial Stability Board, [Principles for Cross-border Effectiveness of Resolution Actions](#) (2015).

³ [Bolder, Simpler, Faster: EIOPA’s views for better regulation and supervision](#) (EIOPA-BoS-25/118), 8 April 2025.

The analysis addresses potential specificities for the resolution of (re)insurance entities⁴ and includes, where relevant, a comparison with the regulation applicable to the resolution of credit institutions and investment firms or central counterparties.

The mandates under Article 52 of Directive (EU) 2025/1 and Article 71a of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms⁵ are identical in their request to determine the contents of the contractual term(s) by which parties recognize that the financial contract that is governed by third-country law may be subject to the exercise of stay powers.⁶ Regulation (EU) 2021/23 on a framework for the recovery and resolution of central counterparties⁷ does not set out a mandate for an RTS to specify the terms of such a provision, and ESMA did not propose guidelines on the matter.

Cross-sectoral comparison covered the following:

- For the resolution of credit institutions and investment firms, the analysis covered Commission Delegated Regulation (EU) 2021/1340⁸. Other references included the Financial Stability Board [Principles for Cross-border Effectiveness of Resolution Actions](#) (2015), the Single Resolution Board [Expectations for banks 2020](#) and the ISDA [BRRD II Omnibus Jurisdictional Module](#) (2021).
- For the resolution of central counterparties, the analysis covered Article 53 of Regulation (EU) 2021/23, which stipulates that the resolution authority shall require the central counterparty to ensure the inclusion of a provision in its contracts and other agreements with clearing members and holders of instruments of ownership and debt instruments located in or governed by the law of third countries by which they agree to be bound by any action in respect of their assets, contracts, rights, obligations and liabilities taken by the resolution authority. The resolution authority may require the central counterparty to provide it with a reasoned

⁴ See also International Association of Insurance Supervisors, [Application Paper on Resolution Powers and Planning](#) (2021).

⁵ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council.

⁶ The BRRD empowerment refers to powers under Article 33a and 69 of the BRRD. Article 33a sets out the power to suspend certain obligations, i.e. payment or delivery of obligations pursuant to any contracts to which [a credit institution or investment firm] is a party and where the [credit institution or investment firm] is failing or likely to fail. This includes the power to suspend obligations in respect of eligible deposits. Article 69 covers the same power to suspend certain obligations, during resolution (Title IV, Chapter VI – Resolution powers). This power can also be extended to eligible deposits. See also: COM FAQ on BRRD: [eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC1202\(01\)](#)

⁷ Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132.

⁸ Commission Delegated Regulation (EU) 2021/1340 of 22 April 2021 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards determining the content of the contractual terms on recognition of resolution stay powers.

legal opinion by an independent legal expert confirming the legal enforceability and effectiveness of such provisions.

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

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

Definition of financial contracts

As regards Article 53(2) of Regulation (EU) 2021/23⁹, Article 71a of Directive 2014/59/EU and Article 52 of the Directive (EU) 2025/1¹⁰ it is noted that all three frameworks share the same definition of 'financial contracts' which is provided in Article 2(1), point (100) of Directive 2014/59/EU. According to this definition, financial contracts include following contracts and agreements:

(a) securities contracts, including:

- (i) contracts for the purchase, sale or loan of a security, a group or index of securities;*
- (ii) options on a security or group or index of securities;*
- (iii) repurchase or reverse repurchase transactions on any such security, group or index;*

(b) commodities contracts, including:

- (i) contracts for the purchase, sale or loan of a commodity or group or index of commodities for future delivery;*
- (ii) options on a commodity or group or index of commodities;*
- (iii) repurchase or reverse repurchase transactions on any such commodity, group or index;*

(c) futures and forwards contracts, including contracts (other than a commodities contract) for the purchase, sale or transfer of a commodity or property of any other description, service, right or interest for a specified price at a future date;

(d) swap agreements, including:

- (i) swaps and options relating to interest rates; spot or other foreign exchange agreements; currency; an equity index or equity; a debt index or debt; commodity indexes or commodities; weather; emissions or inflation;*
- (ii) total return, credit spread or credit swaps;*
- (iii) any agreements or transactions that are similar to an agreement referred to in point (i) or (ii) which is the subject of recurrent dealing in the swaps or derivatives markets;*

(e) inter-bank borrowing agreements where the term of the borrowing is three months or less;

(f) master agreements for any of the contracts or agreements referred to in points (a) to (e);

⁹ In the comparable (even if not identical) text of Article 53 of Regulation (EU) 2021/23 reference is made to 'contracts and other agreements with clearing members and holders of instruments of ownership and debt instruments located in or governed by the law of third countries.'

¹⁰ Article 2(78) of Directive (EU) 2025/1.

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

As part of the analysis, the question was raised whether to include a provision for the contractual recognition of the resolution powers to temporarily suspend redemption rights for life insurance contracts in Article 53 of Directive (EU) 2025/1. This power is an important resolution power as well as a supervisory power in Directive 2009/138/EC (Solvency II) in accordance with Article 144b(3)(e) of this Directive, which can be used to remedy liquidity vulnerabilities in exceptional circumstances. Also, the question was raised whether such provision would also safeguard the power to suspend termination rights for reinsurance contracts according to Article 51 of Directive (EU) 2025/1 in a third-country context.¹¹

Article 52 of Directive (EU) 2025/1 refers exclusively to financial contracts as defined above, and not to insurance or reinsurance contracts. Furthermore, Article 52 of Directive (EU) 2025/1 refers exclusively to the stay powers to suspend certain obligations for payment or delivery pursuant to any contract that the (re)insurance undertakings is a party to (Article 49 of Directive (EU) 2025/1), to restrict the enforcement of security interests (Article 50 of Directive (EU) 2025/1), and to temporarily suspend termination rights (Article 51 of Directive (EU) 2025/1). For this reason, stay powers related to redemption rights for life insurance contracts and to (re)insurance contracts under Articles 53 and 51 of Directive (EU) 2025/1 are not in the scope of this draft RTS. Member States are, however, not prevented from requiring, if they deem relevant, the inclusion of a contractual provision for the recognition of stay powers in (re)insurance contracts that would be governed by third-country law.

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

Insurance 'business models'

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

Conclusion of the analysis

¹¹ Article 144b(3) of Solvency II Directive: *Member States shall ensure that, in relation to individual undertakings facing material liquidity risks that may cause an imminent threat to the protection of policy holders or to the stability of the financial system, supervisory authorities have the power to temporarily: [...] suspend redemption rights of life insurance policy holders. [...] The power to suspend redemption rights shall only be exercised in exceptional circumstances which affect the undertaking, as a last resort measure and where that is in the collective interest of policy holders and beneficiaries of the undertaking. Before exercising that power, the supervisory authority shall take into account potential unintended effects on financial markets and on the rights of policy holders and beneficiaries of the undertaking, including in a cross-border context. Supervisory authorities shall make public their reasons for the application of that power.*

Based on the analysis of potential insurance-specific requirements, EIOPA found that no insurance specificities need to be addressed in comparison to the text of Commission Delegated Regulation (EU) 2021/1340, supplementing Directive 2014/59/EU.

Hence, the draft RTS follows the approach to not overly prescribe the terms and only includes minimum requirements. As a consequence, the content of the contractual provision would typically be phrased as 'the parties acknowledge and accept that...', supplemented by the relevant regulatory references to the relevant stay powers from Directive (EU) 2025/1.

Such an approach allows counterparties to agree on their terms in a flexible manner, as long as they meet the mandatory requirements and do not otherwise impair the resolution powers under Articles 48 through 51 of Directive (EU) 2025/1. This approach also supports regulatory convergence across the banking and insurance industry in this area.

3. DRAFT REGULATORY TECHNICAL STANDARDS



EUROPEAN COMMISSION

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

COMMISSION DELEGATED REGULATION (EU) .../...

of XXX

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

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive (EU) 2025/1 of the European Parliament and of the Council of 27 November 2024 establishing a framework for the recovery and resolution of insurance and reinsurance undertakings and amending Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132 and Regulations (EU) No 1094/2010, (EU) No 648/2012, (EU) No 806/2014 and (EU) 2017/1129¹², and in particular Article 52(5), third subparagraph, thereof,

Whereas:

- (1) Directive (EU) 2025/1 introduces certain safeguards to enhance the effective execution of resolution in relation to financial contracts governed by third-country law. In accordance with Article 52(1) of that Directive, entities are required to include in any financial contract they enter into and which is governed by third-country law, terms by which the parties recognise the stay powers of the resolution authorities.
- (2) In order to ensure the effectiveness of resolution and promote consistency in the approaches adopted by Member States, and in order to ensure that differences in their legal systems or differences arising from a particular contractual form can be taken into account, it is appropriate to lay down the mandatory content for the contractual terms. For the purpose of specifying the content of the contractual terms, this Regulation does not differentiate the content of these terms according to different business models. While the exposure to financial contracts may vary, depending on entity's individual business model, the requirement for recognition of the applicable stay powers applies to all contracts listed in Article 52 of Directive (EU) 2025/1 irrespective of the entity's business model.
- (3) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Insurance and Occupational Pensions Authority.
- (4) 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.
- (5) In order to ensure alignment with the application of Directive (EU) 2025/1, this Regulation should apply from 30 January 2027.

¹² OJ L, 2025/1, 8.1.2025

HAS ADOPTED THIS REGULATION:

Article 1

Contents of the contractual terms

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

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

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

(3) the acknowledgement and acceptance by the parties:

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

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

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

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

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

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

Article 2

Entry into force and application

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

It shall apply from 30 January 2027.

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 1: IMPACT ASSESSMENT

OBJECTIVES

The main objective of the technical standards is to fulfil the mandate established in Article 52(5) of Directive (EU) 2025/1. In drafting these technical standards, EIOPA takes the general resolution objectives of 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
- Meeting the resolution objectives
- Proper functioning of the internal market and ensuring level-playing field

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

- Ensure a **level playing field** through common minimum harmonisation rules across the financial sector: an uneven playing field may lead to the situation where comparable stay powers for similar financial contracts may be treated differently. This may lead to arbitrage or competitive disadvantages.
- Ensure **convergence** among entities and Member States: while Directive (EU) 2025/1 is a minimum harmonization directive, the lack of convergence across entities and Member States may lead to situations where a contractual term would be effective for some jurisdictions and not for others. This could have implications for the cost of funding of entities.
- Ensure **effective and efficient policyholder protection in resolution**: the enforcement of stay powers supports the effective and efficient protection of policyholders. Different (legal) interpretation of the terms could hamper the enforceability of the stay power. This could have financial stability implications for the Member States and the Union.

POLICY ISSUES

Policy Issue A: level of prescription of the contractual terms

Article 52 of Directive (EU) 2025/1 requires entities to include in any financial contract they enter into, and which is governed by third-country law, terms by which the parties recognise the stay powers of the resolution authorities as listed under Articles 49, 50 and 51 of that Directive. In addition, Article 52 of Directive (EU) 2025/1 requires that parties recognise in the content of the contractual terms that they are bound by the requirements of Article 48 of that Directive. EIOPA is mandated to specify the content of the contractual terms.

To ensure the effectiveness of the contractual terms, and with it, the effective enforceability of the resolution power in the presence of financial contracts governed by third-country law, an appropriate

level of prescription on detailed contractual terms needs to be balanced with a more principle-based approach allowing for contract-related or jurisdictional specificities. The impact assessment balances the options and costs of having detailed specified terms – with or without a certain degree of flexibility to supplement the terms.

POLICY OPTIONS

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

Policy Issue A: level of prescription of the contractual terms

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

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

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

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

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

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

IMPACT OF THE POLICY OPTIONS

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

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

Policy option A.1

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

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

Policy option A.2		
Costs	Policyholders	Potential ineffectiveness of the clause where relevant specificities related to the contract or the (third country) jurisdiction are not covered in the closed list. This may render the resolution more burdensome or costly, at the potential expense of the policyholders due to additional resolution expenses incurred by the resolution authority/undertaking.

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

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

Policy option A.3		
Costs	Policyholders	More flexibility may increase costs (including legal fees) to ensure clarity of the terms. These costs may in turn affect policyholders as beneficiaries of cost-efficient resolution activities.
	Industry	More flexibility may increase costs (including legal fees) to ensure clarity of the terms. Depending on the financing arrangement, such costs may have to be borne by the entity under resolution or spill over to other insurers in the market.

	Resolution authorities	Least convergent approach, which can be to the detriment of resolution authorities seeking (legal) certainty in implementing the clause, as they may seek further legal advice.
	Other	Potential costs due to lack of specification of the terms may involve obtaining legal advice, potentially increasing expenses incurred for the resolution.
Benefits	Policyholders	Less risk of ineffectiveness of the clause as specificities can be covered. This could reduce operational, legal/compliance costs related to ineffectiveness of the clause, which may be at the expense of the policyholders, depending on the financing arrangement.
	Industry	Less risk of ineffectiveness of the clause as specificities can be covered. This could reduce operational, legal/compliance costs related to ineffectiveness of the clause, which may need to be covered by the entity under resolution, depending on the financing arrangement.
	Resolution authorities	Potentially more effective enforceability of stay powers, which supports the actions of the resolution authority, and potentially reduces (legal, operational) costs which would otherwise be incurred as a result of an ineffective clause.
	Other	More beneficial impact than providing a clause with no or limited flexibility (option A.1 and A.2) – hence potential to further limit costs to policyholders, industry or resolution authorities.

COMPARISON OF POLICY OPTIONS

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

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

Policy option A.3	++	+	++
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The (monetary) costs for undertakings of inserting strict contractual wording may seem the most cost-effective, as it requires less legal interpretation. However, too restrictive wording may hamper the effective resolution, adding potential (legal, operational) costs to the resolution activity. Depending on the financing arrangement, such costs may have to be borne by the entity under resolution or spill over to other insurers in the market, or borne by the resolution authority. This may eventually affect the protection of the policyholders of the entity under resolution, also in monetary terms.

PREFERRED OPTION

Option A.1 would specify the contents of the contractual term with no flexibility for entities to supplement these components. This option would ensure a high degree of consistency among Member States and entities. This could be justified in light of the fact that financial contracts are defined in Directive (EU) 2025/1 and would not require specifications in light of the potential business model of the (re)insurer. However, such pre-defined clauses, which apply in a mandatory manner for all entities, may forgo the possibility to take account of any specificities arising in relation to a particular type of financial contract or to the application of a third country law. At the same time, it may unintentionally prevent the clause from capturing any national specificities in the transposition of Directive (EU) 2025/1. This may put at risk the effectiveness of the clause and of the enforcement of the resolution authorities' stay power, with consequential legal and operational expenses.

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

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

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

clauses. The impact of too restrictive wording as outlined under Options A.1 and A.2 may hamper the effective resolution, which can eventually cause legal and operational costs for the resolution authority or entity and impact the effective and efficient policyholders' protection, also in monetary terms.

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

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

On the basis of the above assessment, the draft technical standards implements Option A.3.

ANNEX 2: FEEDBACK STATEMENT

This feedback statement sets out a high-level summary of the comments received during the public consultation, and EIOPA's assessment of them. The full list of non-confidential comments provided can be found on EIOPA's website. EIOPA received comments from two stakeholders representing insurance industry associations and federations.

As part of the consultation EIOPA held a workshop with stakeholders to discuss the draft RTS on 06 March 2026.

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

CROSS-SECTORAL CONSISTENCY

Stakeholders' comments

The stakeholders supported the draft RTS being aligned with the Commission Delegated Regulation (EU) 2021/1340, noting that such approach deliberately pursues cross sectoral consistency with the existing banking regime, thereby supporting a level playing field and legal certainty for cross border groups (including bancassurance structures).

Assessment

EIOPA appreciates the positive feedback.

INSURANCE SPECIFICITIES AND ENFORCABILITY CHALLENGES

Stakeholders' comments

The stakeholders supported EIOPA's decision not to address insurance-specific requirements and expressed their agreement that the draft RTS does not need to differentiate clause content by insurance business model because the relevant financial contracts are standardised by nature. However, these stakeholders also noted operational and legal complexities for insurers as being underestimated and suggested a pragmatic approach.

Assessment

While developing the draft RTS, EIOPA did not identify any evidence indicating operational and legal complexities faced by entities that may be particular for the insurance sector. The draft RTS does not overly prescribe the terms but rather lists minimum mandatory elements that must be present in the contractual terms required in the financial contracts covered by third-country law. Therefore, no changes were made to the legal text of the draft RTS in response to these comments.

EXCLUSION OF INSURANCE AND REINSURANCE CONTRACTS

Stakeholders' comments

The stakeholders supported EIOPA analysis and exclusion of insurance and reinsurance contracts from the scope of the draft RTS, recognising that Article 52 of Directive (EU) 2025/1 refers exclusively to financial contracts as defined in Article 2(1), point (100) of Directive 2014/59/EU.

Assessment

EIOPA appreciates the positive feedback.

RECITALS AND HARMONISATION

Stakeholders' comments

The stakeholders suggested for the Recitals to be further developed to emphasize the cross-sectoral alignment with the BRRD RTS, and the exclusion of insurance and reinsurance contracts from the scope of the draft RTS.

Assessment

No change has been applied to the recitals as EIOPA clarifies that recitals are intended to provide context for the provisions set out in the draft RTS. As such, they are not the appropriate place to emphasize the cross-sectoral alignment of the draft RTS with the BRRD RTS and to specify which types of contracts fall outside the scope of Article 52 of Directive (EU) 2025/1 and of EIOPA's mandate pursuant to Article 52(5) of Directive (EU) 2025/1.

PROPOSED TIMELINE AND TRANSITIONAL ARRANGEMENTS

Stakeholders' comments

The stakeholders expressed concerns about the entry into force timeline since this was considered challenging due to contract renegotiation cycles and made suggestions for transitional arrangements or grandfathering provisions.

Assessment

No changes were made to the draft RTS as a response to these comments. Firstly, because this is outside EIOPA's mandate. Additionally, it is not legally feasible to implement transitional periods for new rules in an RTS. In any event, a transitional element is already provided for in Article 52(3)(a) of Directive (EU) 2025/1, which limits the application of paragraph 1 to financial contracts that create new obligations or materially amend existing obligations after the entry into force of the national transposition measures.

STAY POWERS ON CROSS-BORDER CONTEXT

Stakeholders' comments

One stakeholder sought clarifications regarding the stay powers for European solo undertakings and groups that are active in multiple Member States and/or outside of the European Economic Area.

Assessment

No changes were made to the draft RTS as a response to these comments. EIOPA notes that such considerations are outside the scope of the draft RTS.