



EUROPEAN COMMISSION

*Brussels, 23.5.2022
C(2022) 3517 final*

Dear President,

The Commission would like to thank the Bundesrat for its Opinion on the proposal for a Directive of the European Parliament and of the Council laying down a framework for the recovery and resolution of insurance and reinsurance undertakings and amending Directives 2002/47/EC, 2004/25/EC, 2009/138/EC, (EU) 2017/1132 and Regulations (EU) No 1094/2010 and (EU) No 648/2012 {COM(2021) 582 final}.

There are currently no harmonised procedures at European level for resolving insurers. This results in considerable substantive and procedural differences between the laws, regulations and administrative provisions that govern the failure of insurers in the Member States. In addition, corporate insolvency procedures may not be appropriate for insurance, as they may not always ensure an adequate continuation of critical functions.

The Commission proposal is designed to provide authorities with a credible set of resolution tools to intervene sufficiently early and quickly if insurers are failing or likely to fail to ensure a better outcome for policy holders, while minimising the impact on the economy, the financial system, and any recourse to taxpayers' money.

The Commission welcomes the Bundesrat's broad support for the aims of the proposal but notes its concerns relating, among others, to proportionality, protection of policy holders, recognition of existing German guarantee funds, equal treatment of insured persons in resolution, the scope of mandates provided to EIOPA and possible representation of insured persons by consumer associations. The Commission is pleased to have this opportunity, in the attached Annex, to provide a number of clarifications regarding its proposal and hopes that they address the Bundesrat's concerns.

Yours faithfully,

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Vice-President*

*Mairead McGuinness
Member of the Commission*

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Annex

The Commission welcomes the inquiry that the Bundesrat has carried out into this important subject. Whilst the Commission does not necessarily share all conclusions drawn in the Opinion, the detailed work that the Bundesrat has undertaken constitutes an important contribution to the debate that is now underway.

As regards the points that have given rise to the Bundesrat's concerns, the Commission would like to make the following comments:

Point 2: The principle of proportionality is strongly embedded in the proposal. The provisions on simplified obligations (Article 4) allow resolution authorities to reduce the number of regulatory obligations for both the undertakings and the authorities concerned. Similarly, exemptions from recovery and resolution planning for low risk profile undertakings (Articles 5(3) and 9(2)) should ensure that such undertakings do not incur the expenditures associated with being subject to the framework. In addition, and in keeping with the principle of proportionality, the scope of entities subject to resolution planning (70% market share threshold) remains narrower than that for pre-emptive recovery (80%) (Articles 9(2) and 5(2), respectively). Overall, the Commission expects that the requirements on pre-emptive recovery will not introduce significant additional requirements going beyond the rules on this subject already in force in Germany.

Point 4: The proposal contains a number of safeguards for policy holders, the most important one of them being the No Creditor Worse Off (NCWO) principle (Article 22(1), point (g)). In accordance with this principle, policy holders (but also shareholders and other creditors) of a resolved undertaking should not be worse off in resolution than they would have been had the undertaking entered normal insolvency proceedings. If, following resolution action, it turns out that the NCWO principle has not been respected, the affected shareholders and creditors (including policy holders) shall be entitled to compensation (Article 55). Moreover, the proposal ensures (Article 22(1), point (b)) that policy holders continue to enjoy in resolution the high ranking that is afforded to them under Article 275 of Directive 2009/138/EC (Solvency II; as transposed into national law).

Points 5 and 6: The Commission remains open to discussing any proposals regarding recognition of German guarantee funds, in particular their potential role in facilitating continuity of insurance coverage in case of resolution. The same applies to possible recognition of arrangements already existing at national level, such as a 'Protektor AG' or 'Medicator AG', that could play the role of a bridge undertaking (Article 32) in Germany.

Point 7: One of the general principles governing resolution (Article 27(1), point (f)) provides that, as a rule, creditors of the same class should be treated in an equitable manner. This provision also applies to policy holders and therefore should ensure equal treatment of insured persons (taken as a class) in resolution.

Point 9: The Commission proposal frames the mandates for regulatory technical standards and guidelines to be developed by EIOPA in a way that avoids the delegation of essential elements of the Directive. Comparable empowerments are contained in the EU resolution frameworks in the sectors of banking and financial market infrastructures. In comparison to those, the IRRD includes fewer EIOPA empowerments. The Commission remains open to discuss concerns about specific EIOPA mandates included in the proposal.

Point 10: The proposal does not include any provisions that would prevent consumer associations from representing the interests of insured persons, but the Commission would be open to discuss explicit recognition of such possibility.
