Comments Template on EIOPA-XX-16-XXX Discussion Paper on Potential harmonisation of recovery and resolution frameworks for insurers		**Deadline 28.02.2017 23:59 CET**
Name of company:	**Bund der Versicherten (BdV – German Association of the Insured)**	
Disclosure of comments:	EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential. Please indicate if your comments should be treated as confidential, by deleting the word Public in the column to the right and by inserting the word Confidential.	Public
	Please follow the instructions for filling in the template: ⇨ Do **not** change the numbering in column "Reference"; if you change numbering, your comment cannot be processed by our IT tool. ⇨ Leave the last column empty. ⇨ Please fill in your comment in the relevant row. If you have no comment on a paragraph or a cell, keep the row empty. ⇨ Our IT tool does not allow processing of comments which do not refer to the specific numbers below. **Please send the completed template, in Word Format, to CP-16-009@eiopa.europa.eu, by 28 February 2017.** **Our IT tool does not allow processing of any other formats.** The numbering of the questions correspond with the questions included in the Discussion Paper on Potential harmonisation of recovery and resolution frameworks for insurers.	
Reference	**Comment**	
General comment	As Germany's most important NGO of consumer protection related to private insurances (with more than 50.000 members) we would like to thank EIOPA for the opportunity to publish comments on this consultation. We fully support EIOPA's objective to develop a minimum harmonisation of recovery and	

	resolution frameworks for insurers, i.e. a kind of common "toolkit" available to all national supervisory authorities. This objective is clearly consistent with the objectives which are already implemented in other sectors of the financial industry (BRRD, FSB Key Attributes etc.). Additionally EIOPA has recently shown again by its Reports on Financial Stability and on Stress Tests both for insurers in December 2016 that the European macroeconomic environment remains fragile with potential dangers for the solvability at individual, group and system-wide level of insurers. EIOPA's proposal for a minimum harmonization of recovery and resolution frameworks is a principle-based one and therefore it remains on a very general level. That's simultaneously good and bad. For example the protection of policyholders is clearly mentioned, but in fact it remains vague and represents at best just one objective among many others. From a consumer's perspective this is unacceptable, because the ongoing payments of premiums by the policyholders remain the main capital source of the insurers and - unlike investors - policyholders seek for fundamental risk coverage and not just for a return on investment. But we acknowledge that, due to very different supervisory pre-conditions at the national level (home of global companies or not, existence of an Insurance Guarantee Scheme or not, existence of pre-emptive RRPs or not, etc.), it appears to be useful and appropriate to apply a principle-based approach being consistent with the proportionality principle. We stress the importance of the preliminary research work done by the Financial Stability Board (mainly FSB Key Attributes in 2014 and FSB Resolution Strategies and Plans in 2016) which are comprehensive and consistent. Therefore with some amendments related to an enhanced policyholder protection, we advocate the minimum harmonisation based predominantly on the FSB principles must become a *mandatory* framework for any RRPs in the EU Member States. These principles becoming mandatory is the *necessary* and at the same time the *sufficient* step.	
Q1	The five arguments in favour of harmonisation are exhaustive, but they should strongly be weighted: The consistency in reinforcing national frameworks is the most urgent task because, even if the Member States have their own national recovery and resolution frameworks, in some cases they are limited to normal insolvency procedures. The introduction of the concept	

	of “non-viability”, deriving from the 2014 FSB Key Attributes of Effective Resolution Regimes for Financial Resolutions, is an outstanding example for this necessary ubiquitous consistency. If consistency is implemented, ongoing fragmentation can be avoided by the comprehensive enhancement of cross-border cooperation and coordination by the supervisory authorities. Consequently fragile market environment and possible systemic risks will be identified more quickly and therefore enhance - in the long term - the single market for insurances, too. We clearly reject the arguments against harmonisation outlined in the Discussion Paper (DP), especially those emphasizing possible administrative burdens and costs for the insurers and national authorities. The proposals for the minimum harmonisation do not consist in formally judicial procedures but are principle-based, and therefore the proportionality will be safeguarded. As Mr. Bernardino, Chair of EIOPA, had put it: “Needless to say, the combination of non-harmonised recovery and resolution regimes, with non-harmonized Insurance Guarantee Schemes, would make the management of a stressed situation much more difficult” (letter to the EU commissioner, DG FISMA, Lord Hill, 6 February 2015).	
Q2	We underline the importance of the results by EIOPA’s recent research work, Financial Stability Report (FSR) and Stress Test Report (STR), published both in December 2016. It is clearly pointed out that “the most challenging risk factor remains the low interest rate environment” (cf. FSR, p. 54) and the probability of a low-for-long yield scenario inevitably increases even “emulating a situation of entrenched secular stagnation”. The necessary consequence is that ”supervisory vigilance is required in order to avoid a misestimate of the risks due to the longer-term type of concerns implied by the scenario” (cf. STR, p. 3). We consider this conclusion as a major argument in order to strengthen the supervisory vigilance by an appropriate regulatory framework of recovery and resolution for insurers (cf. 2014 EIOPA Opinion on Sound Principles for Crisis Prevention, Management and Resolution preparedness of NCAs, especially principles 2, 5 and 6). Additionally we remember that one of the crucial elements of recovery and resolution plans (RRPs) is the following pre-condition: “RRPs should make no assumption that taxpayers’ funds can be relied on to resolve the firm” (cf. 2014 FSB Key Attributes, I-Annex 4: Objectives and	

	governance of the RRP, no. 1.3, p. 43). We urge to add to this pre-condition the savings and their allocated surplus of all other policyholders which must be not misused. Any future harmonisation must exclude any possible abuse by those who are responsible for actual branch or group failures in a national frame aiming at recovering these failures by cross-border capital flows. Unequivocal responsibilities must not be "softened". Only in the case of cross-border groups, if the headquarter is partially or even fully responsible for any failures of a branch in a different member state, cross-border recovery measures by intragroup financing agreements would be appropriate (cf. DP, chapter 4.7, no. 241, p. 62; cf. our comments on Q 34 and 37).	
Q3	We agree upon the proposal of the four main building blocks with their 11 sub-building blocks (cf. Chart 16, in: DP, chapter 4.2, p. 43). They are sufficiently comprehensive as well as flexible in order to cope with their projected tasks. We agree upon EIOPA's opinion, too, that in the context of insurers, the "triggers for intervention" related to supervision, recovery and resolution are usually a more gradual process compared to banking, as a "run on the company" is less likely to happen (cf. 2014 EIOPA Opinion for Sound Principles, principle 9). Therefore the proposed building blocks clearly outline and define the necessary sequential process "intensified supervision-recovery-resolution" for a crisis management.	
Q4	No additional building blocks should be considered.	
Q5	We fully agree upon EIOPA's opinion that the scope of the future recovery and resolution framework should be aligned both with the 2014 FSB Key Attributes (requirement of "all domestically incorporated" Global Systemically Important Insurers (G-SIIs) as upper qualitative threshold) and with Solvency II (exclusion from its scope due to the small size of the insurer; cf. DP, Chapter 4.3.1, no. 155, page 44). Only G-SIIs should fully be subject to the harmonized recovery and resolution framework. National or regional insurers should be subject to simplified obligations, especially if they are members of an Insurance Guarantee Scheme (IGS) or of a Policyholder Protection Scheme (PPS). This regulation would be consistent with the banking sector (cf. BRRD article 4 (8)b).	

	Insurers which are excluded from the scope of Solvency II should be exempted from additional recovery obligations in this framework due to the proportionality principle. We agree upon the flexibility of decision given to the Member States and their NCAs on this issue. Their decisions should be based on an insurer's size, complexity and business type as well as the interconnectedness of an insurer with the rest of the system. We urge EIOPA publishing guidelines on the relevant scope criteria in order to avoid supervisory arbitrage.	
Q6	Yes, we agree that the proportionality principle must be the overarching principle for any requirements imposed on insurers and national authorities and to the exercise of powers (cf. our General Comment).	
Q7	Yes, we agree on the need for pre-emptive recovery planning, but it must be proportionate. It is impossible to predict all parameters of severe crisis scenarios: "Emergency plans should not aim at covering all possible scenarios" (cf. 2014 EIOPA Opinion on Sound Principles, principle 2, no. 14). That is why in this pre-crisis phase the access to relevant and updated information and information sharing is most important (cf. 2014 FSB Key Attributes, chapter 12). The proportionate planning should rather be a summary of options for recommended actions than a precise regulation for crisis management and, by doing so, increase the general awareness of these crisis situations (cf. 2014 FSB Key Attributes, Chapter 11.5: Recovery Plan). Any additional information resulting from ORSA and other requirements under Solvency shall serve as input for the development of pre-emptive recovery plans (cf. DP, chapter 4.4.2, no. 165-167).	
Q8	Simplified obligations should be applied by all those insurers which are not classified as Global Systemically Important Insurers (G-SIIs) and which already are member of an Insurance Guarantee Scheme (cf. our comment on Q5).	
Q9	The conditions determining the range of insurers which may be exempted from the requirement to develop recovery plans should be aligned with those which determine the exclusion from the scope of Solvency II (cf. DP, Chapter 4.3.1, no. 155, page 44). Consistency with Solvency II Regulation should be maintained in any case. For any ultimate decision the NCAs should take into consideration several conditions including the size, complexity and business type as well as the interconnectedness of an insurer with the	

	rest of the system (cf. our comment on Q5).	
Q10	As overarching principle the content of pre-emptive recovery plans must be aligned with the requirements pointed out by the 2014 FSB Key (cf. Chapter 11 and I-Annex 4: Essential Elements of RRPs). It must be ensured that all Member States apply these principles as a common minimum harmonization. Additional important elements of emergency plans were already pointed out by EIOPA's Opinion on Sound Principles for Crisis Prevention, Management and Resolution preparedness of NCAs in November 2014 (especially principle 2, no. 15). In order to underline the fundamental objective of consumer protection, the strategic analysis (cf. DP, chapter 4.4.2, no. 169, p. 47) should be focused on the business model and on the core business line. Consequently the chosen stress scenarios should include any possible and realistic consumer detriment (i.e. considerable reductions of pay-outs), because obviously consumers depend from the offered risk coverage in the most crucial way. Annual updating should be sufficient or when there are material changes to the risk profile, business or group structure (cf. DP, no. 171, page 47).	
Q11	Yes, we strongly agree upon the need for pre-emptive resolution planning, and there should be no difference in the scope for pre-emptive recovery planning and for pre-emptive resolution planning. We clearly reject any option for the resolution authorities to allow waiving the requirement to develop pre-emptive resolution plans even for smaller insurers. There must not be any difference in the level and standards of consumer protection in relation to the size of the insurers. That is why we strongly advocate that the primary objective for this planning must be the protection of policyholders which has to be strengthened. In contrast to shareholder or creditors policyholders do not primarily seek for return on investment, but their premiums shall provide for risk coverage. The risks which shall be covered are mostly of existential importance (longevity, family securisation, health, long-term care, disability, liability, home etc.). That is why policyholders will be victim of any value destruction in a much more direct and tangible way than by any threats to the financial stability in general. These objectives set out in Solvency II (article 141) must strictly be followed (cf. DP, chapter 2.4.2, no. 71, page 19).	

	In consequence there must not be any contradiction between this primary objective of consumer protection and the hierarchy of claims in liquidation of any other stakeholders (like shareholders, creditors or even taxpayers; cf. 2014 EIOPA's Opinion on Sound Principles, principle 8, no. 27).	
Q12	The requirement to develop pre-emptive resolution plans must not be waived for any range of insurers by any resolution authority (cf. our comment on Q 11).	
Q13	We agree upon the general possibility to apply only simplified obligations for those insurers which are not classified as Global Systemically Important Insurers (G-SIIs). But for any ultimate decision the NCAs should take into consideration several conditions including size, complexity and business type as well as the interconnectedness of an insurer with the rest of the national and regional system (cf. our comment on Q5).	
Q14	Of course, any pre-emptive resolution plans must be aligned with all those requirements, which are already pointed out by the 2014 FSB Key Attributes (Chapter 11.6, especially data requirements). For the pre-emptive resolution planning the data requirements on the firm's business operations, structures and systemically important functions should be fulfilled by an enhanced Management Information System (cf. FSB Developing Effective Resolution Strategies and Plans for Systemically Important Insurers, chapter 3.3.2, box 2, page 19, June 2016).	
Q15	Yes, we agree with reference to the proportionality principle and to the responses given by the NCAs (DP, chapter 2.2.3, no. 53). Any assessment of resolvability should be based on a pre-emptive resolution plan, but the requirements for these plans must be harmonized on EU level in order to achieve supervisory consistency (cf. 2014 FSB Key Attributes, Chapter 10.2).	
Q16	Yes, we agree that resolution authorities should have the power to require the removal of significant impediments to the resolvability of an insurer. We emphasize again that any assessment of the feasibility and credibility of resolution strategies shall be focused on the safeguard of the policyholder's savings, and therefore they should particularly pay attention to any impediments related to the following issues: • the time needed to evaluate policyholder liabilities; • the capacity of the policyholder protection scheme to fund a transfer, • the risk that the insurer will not remain solvent for the whole duration of the run-off;	

	• the legal, operational and financial separateness of traditional insurance business from non-traditional insurance business and especially non-insurance business; • the quality of management information systems and the capacity of the insurer to deliver detailed, accurate and timely information on the relevant data and information needed for the purposes of orderly resolution. There must not be any disruption to the continuity of insurance cover and payment creating a lack of confidence even in other insurers triggering a policyholder run (cf. 2014 FSB Key Attributes, Chapter 10 as well as I-Annex 3, especially Management Information System, and II-Annex 2, Chapters 8.3, 8.4 and 10.1).	
Q17	Of course, we agree upon EIOPA's opinion that "the power to require the removal of impediments should be exercised in a proportionate manner and the insurer should first be given the opportunity to make its own proposal to remove any identified impediments" (cf. DP, chapter 4.4.4, no. 188, p. 50). Simultaneously we clearly stress that the primary objective for any resolvability assessment must not only be the protection of taxpayers, but of policyholders as well (cf. our comments on Q 11 and Q 16).	
Q18	Yes, we agree. The fact stated by EIOPA that "one third of the NSAs indicated that they have identified deficiencies in their early intervention powers" (cf. DP, chapter 4.5.1, page 51) should unequivocally be enough evidence that early intervention powers must be part of a recovery and resolution framework for insurers.	
Q19	We agree upon EIOPA's view that the introduction of early intervention conditions should allow for sufficient degree of supervisory judgement and discretion. A new intervention level or even an extra level of solvency should be avoided. But as these conditions should be based rather on judgement than on hard and fast rules, there should be established a binding hierarchy of the indicators to be taken into account: first the specific financial indicators and secondly the relevant external financial indicators. Non-financial indicators like increase in life expectancy should be omitted, because any changes of these indicators occur very slowly and, in any case, must be part of the strategic risk analysis	

	for the development of new business lines (cf. DP, chapter 4.5.2, no. 196). Additional early warning indicators were already highlighted by 2014 EIOPA's Opinion on Sound Principles (especially principle 7, no. 24).	
Q20	In its survey EIOPA has shown that there exist deep divergences among the EU NCAs with regard to their early intervention powers (cf. DP, chapter 2.3, pages 15-17). As Europe is one of the most important insurance markets in the world, including five out of nine Global Players (cf. our comment on Q 35), this inequality and lack of consistency of the empowerment of the NCAs must not continue. Therefore we strongly agree upon EIOPA's proposal that a harmonized framework must provide for a minimum set of common early intervention powers as pointed out in Table 3 (cf. DP, chapter 4.5.3, pages 53/54).	
Q21	We consider the early intervention powers listed in Table 3 (cf. DP, chapter 4.5.3, pages 53/54) as sufficient. But again we emphasize that there must not be any contradiction between the primary objective of consumer protection and the hierarchy of claims in liquidation of any other stakeholders (like shareholders, creditors or even taxpayers; cf. our comment on Q 11). The list of essential RRP elements established by the 2014 FSB Key Attributes should strongly be taken into consideration (cf. II Annex-2, Chapter 9.10, pages 83-84).	
Q22	Yes, we agree. The resolution authority should preferably be part of the National Supervisory/Competent Authority in order to assure financial and judicial independence, competent manpower, unimpeded access to firms and regulatory consistency on EU level (cf. 2014 FSB Key Attributes, chapter 2: Resolution authority).	
Q23	Yes, we agree with the resolution objectives as pointed out in DP, chapter 4.6.3, no. 214. The FSB proposals for the "Strategic analysis underlying the development of the resolution strategy" (with regard to business segments, critical functions, operational continuity and cross-border cooperation) should obligatorily be taken into consideration by any resolution authority (cf. FSB Developing Effective Resolution Strategies and Plans for Systemically Important Insurers, chapter 3, June 2016).	

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Q24	Yes, the resolution objectives should be ranked with strong priority given to consumer protection, because consumers are the weakest of all possible stakeholders with regard to the hierarchy of claims in liquidation (cf. our comment on Q 11). Nevertheless we acknowledge the FSB assessment that policyholders will not be fully protected under all circumstances and that there is the possibility of losses (cf. DP, chapter 4.6.3, no. 216, page 56).	
Q25	Yes, we agree with the proposal of the conditions for entry into resolution (cf. DP, chapter 4.6.4, no. 220, p. 57). Additionally we underline the importance of the identifying points of entry into resolution for individual operating entities and for holdings already pointed out by 2016 FSB Developing Effective Resolution Strategies and Plans for Systemically Important Insurers (chapter 2.1, pages 8/9).	
Q26	Yes, we agree (following to proposed specifications of “non-viability”: cf. DP, chapter 4.6.4, no. 221, p. 57).	
Q27		
Q28	Yes, we agree (cf. Table 4 – List of resolution powers, in: DP, chapter 4.6.5, no. 228). With regard to the power to “allocate losses to creditors and policyholders”, we again underline the necessity that the resolution objectives should be ranked with strong priority given to consumer protection. Policyholders will be victim of any value destruction, or even worse of any disruption of coverage, in a much more direct and tangible way than any other stakeholder group (cf. our comment on Q 11). The use of this power must only “be a last resort measure and subject to adequate safeguards” (e.g against the loss of any “hidden” capital reserves). In this context the authorities must assess the availability and scope of cover under an Insurance Guarantee Scheme (IGS) or a Policyholder Protection Scheme (PPS) as well as the extent to which IGS/PPS can assist in securing continuity of insurance cover and payments (cf. 2016 FSB Developing Effective Resolution Strategies and Plans, chapter 3.5).	
Q29	This list must not be exclusive and/or exhaustive. Member States should be entitled to add other powers if necessary in the specific national context.	
Q30	Cf. our comment on Q 32.	
Q31	The primary macro-economic objective of the insurance industry must not be the increase of the “shareholder value” for investors, but the provision of comprehensive risk coverage. Insurance Europe, the association of the European insurers, has stated: “The essential role of	

	insurers is to provide policyholders protection from risk. In exchange for premiums, insurers promise to compensate policyholders should certain events occur" (cf. Insurance Europe: Why insurers differ from banks, October 2014, p. 42). As shareholders and creditors are capital investors who primarily seek for as much return on investment as possible (unlike policyholders, cf. our comment on Q 32), their possible bail-in is necessary and indispensable. So "if things go wrong", any bail-in constitutes the inevitable counterpart of capital investment.	
Q32	In contrast to shareholder or creditors (cf. our comment on Q 31) policyholders do not primarily seek for the return on investment, but their premiums shall provide for risk coverage. The risks which shall be covered are mostly of existential importance (longevity, family securisation, health, long-term care, disability, liability, home etc.). That is why a premium is not an "investment" but a payment for the coverage of a fundamental need, which the insurers have to fulfill (cf. our comment on Q 31). Therefore the payment of a premium must not create the obligation of any bail-in in case of capital loss. Additionally as most life insurance products are not transparent with regard to costs and to with-profit-mechanisms, it is very likely that the policyholders – in an unintended way – already contribute to a constant "bail-in" even in times when "things go well". Due to the current low interest rate phase the dividends of shareholders of insurance companies are generally higher than the payouts of surplus for life insurance policyholders. In 2015 the German Allianz Group had a total net gain of 6,9 bn Euro. In 2016 Allianz paid a dividend per share of 7,30 Euro (only Munich Re paid more with 8,25 Euro), so the dividend yield ratio was at 5,2% (cf. Frankfurter Allgemeine Zeitung, 6 July 2016). But the guaranteed surplus for 2016 was fixed at 3,1% ("Überschussbeteiligung"), so the total return for classical life insurances was at about 3,7% ("Gesamtverzinsung"; for the entire German insurance branch the average total return was only at 2,79% (following the BaFin Yearbook 2015, p. 207 – German version). That is why we reject any kind of formal bail-in of policyholders.	

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Q33	As pointed out in our comment to Q 32, we reject any kind of formal bail-in of policyholders.	
Q34	Yes, we strongly think that others safeguards are needed. As already pointed out in our comments on questions 11, 21, 24 and 32, policyholders are not just one group of creditors among all others, but they play the key role by pre-funding the activities of the insurers: “Due to their constant income from premiums which are paid upfront, insurers need very limited short-term refinancing and hence face only minor liquidity risks” (in contrast to banks; cf. Insurance Europe: Why insurers differ from banks, October 2014, p. 35). We strongly advocate that in the hierarchy of claims the policyholders should constitute the “senior debt holders” with regard to all other investors or creditors. As the FSB has clearly stated, “…no loss should be imposed on senior debt holders until subordinated debt has been written-off entirely” (cf. 2014 Key Attributes, chapter 5: Safeguards, p. 11). With regard to the nature and location of loss-absorbing resources in resolution (especially including those which are transferable within the group; cf. 2016 FSB Resolution Strategies and Plans, chapter 3.6, p. 20), we strongly emphasize the following requirement. Any future harmonisation must exclude any possible abuse by those who are responsible for actual branch or group failures in a national frame (for example by aiming at recovering these failures by cross-border capital flows). Unequivocal responsibilities must not be “softened”. Only in the case of cross-border groups, if the headquarter is partially or even fully responsible for any failures of a branch in a different member state, cross-border recovery measures by intragroup financing agreements would be appropriate (cf. our comments on Q 2 and 37). Any kind of differential treatment of policyholders (with guaranteed rates / unit-linked products, incurred / future claims, etc.) must be based on an independent judicial assessment (by trustee, ombudsman etc.). Apart from this we agree with the principle “no creditors worse off”.	
Q35	Following to the FSB 2016 list of global systemically important insurers (G-SIIs), out of nine G-SIIs five of these insurers have their head quarters in one of the EU Member States (Aegon, Allianz, Aviva, Axa and Prudential).	

	This fact alone proofs the urgent need to establish a formal crisis management group in the EU. Because of this high concentration of G-SIIs in only one part of the entire world insurance market, cross-border cooperation and coordination arrangements must be established among the competent authorities of all EU Member States and not only among those where G-SIIs are headquatered.	
Q36	We consider it as a minimum requirement that following to the FSB Key Attributes (Chapter 12) the full access to information and information sharing is guaranteed by legislation in all EU Member States. A formal crisis management group has definitely to be established in all those states where G-SIIs are headquatered (cf. our comment on Q 35). All other insurers on the national or regional level shall maintain appropriate Management Information Systems even in the pre-crisis phase. Any further cross-border cooperation arrangements for efficient decision-making process should be considered under the premise of proportionality and flexibility. We clearly advocate that the reference to the FSB Key Attributes must be mandatory, which provide for relevant and appropriate principles of Home and Host authorities' commitments as well as of firms' commitments (cf. I-Annex 2, especially paragraphs 4 to 7).	
Q37	In order to make work the cross-border cooperation arrangements more effectively and efficiently, we refer to the issues outlined in Chapter 3.4 of 2016 FSB Resolution Strategies and Plans. Additionally, as already pointed out in our comments on Q 2 and 34, in case of failures of cross-border groups the resolution authorities must particularly take into consideration the interests of the policyholders of all those member states in which the failed branch is not located. It must be excluded that the premiums and savings of the policyholders in other Member State will be misused for any "hidden" cross-border capital transfers. Policyholders must have the primary position in the hierarchy of claims.	
Q38	As the FSB Key Attributes were endorsed by the G20 Heads of States and Government already in 2011, the EU institutions should make any possible effort aiming at implementing these principles as "a new international standards for resolution regimes".	