



Resolution

**The public interest assessment of
insurance undertakings**

Resolution Directorate

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THE PUBLIC INTEREST ASSESSMENT OF INSURANCE UNDERTAKINGS

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The ACPR's approach

The issue of the public interest assessment is crucial for the preparation and implementation of resolution, as it draws the line between judicial liquidation and resolution which is a regime derogating from the ordinary law.

I. PUBLIC INTEREST ASSESSMENT: CONCEPT AND CONSTITUENT ELEMENTS

A. The concept of public interest assessment

Pursuant to Article L. 311-18 of the French Insurance Code (hereinafter referred to as the *Code des Assurances*), the Supervisory College, as well as certain members of the Resolution College¹, may refer the matter to the Resolution College, with a view to implementing one or several resolution measures, where an insurance undertaking or an insurance group is deemed to be either failing or likely to fail. These resolution measures may be applied to any insurance undertaking subject to Solvency II and to any supplementary occupational pension institution, whether or not it is subject to the preventive part of the resolution regime².

The Resolution College may only take these measures provided that all the cumulative conditions mentioned in section III of Article L. 311-18 of the *Code des Assurances* are met. Among these conditions, the College must ensure that **the judicial liquidation procedure does not allow for the resolution objectives to be achieved to the same extent**³. The verification of this condition, prior to the initiation of resolution proceedings, includes the public interest assessment.

More specifically, **the public interest assessment consists of assessing whether it is necessary to implement one or more resolution measures in order to safeguard at least one of the four resolution objectives**, striking a fair balance between them while ensuring that judicial liquidation would not safeguard the achievement of these objectives to the same extent.

¹ Those members referred to in sections 1° and 2° of Article L. 612-8-1 of the *Code monétaire et financier*, the French Monetary and Financial Code, namely the Governor of the Banque de France or his representative or designated chair, and the Permanent Head of the Directorate General of the (French) Treasury or his representative.

² In line with Article L. 311-1 of the *Code des assurances*.

³ Refer to part 3°, section III, of Article L. 311-18 of the *Code des assurances*: “Resolution action is necessary in light of the resolution objectives referred to in section I of Article L. 311-22, and insofar as the compulsory liquidation procedure provided for in Chapter VI of Title II of Book III of the present Code, in Section 3 of Chapter II of Title I of Book II of the *Code de la mutualité*, the French Mutual Insurance Code, and in Section 5 of Chapter I of Title III of Book IX of the *Code de la sécurité sociale*, the French Social Security Code, would not enable these objectives to be achieved to the same extent”. As a reminder, the other three cumulative conditions for entry into resolution are the status of the insurance undertaking concerned as failing or likely to fail, the fact that such failure cannot be avoided within a reasonable timeframe other than by implementing resolution measures, and a check that the value of the undertaking's assets exceeds that of its liabilities (as the resolution measures provided for under the insurance resolution regime would then be unable to prevent the undertaking from being wound up).

As a reminder, the aforementioned four objectives of resolution⁴ are the following:

Objective 1: Ensuring the continuity of critical functions

According to Article L. 311-2 of the *Code des assurances*, “critical functions” refer to the activities, services or operations of a person, with the following characteristics:

- They are provided by this person to external third parties;
- The inability of this person to perform them would be likely to have a significant impact on financial stability or on the real economy;
- This person cannot be substituted at a reasonable cost and within a reasonable timeframe.

In the case of undertakings subject to the preventive part of the resolution regime, critical functions are identified by the ACPR, through the analysis of insurers' activities in their pre-emptive resolution plans, which factors in, where applicable, the self-assessment carried out by insurers in their pre-emptive recovery plans, in accordance with both the national framework applicable and the ACPR's approach.

Objective 2: Avoiding or mitigating adverse effects on financial stability

Potential threats resulting from the liquidation or resolution of an insurance undertaking are assessed in terms of their impact on financial stability, through contagion with direct and indirect adverse effects or through other negative repercussions on the economy.

Objective 3: Protecting public funds by minimising reliance on extraordinary public financial support

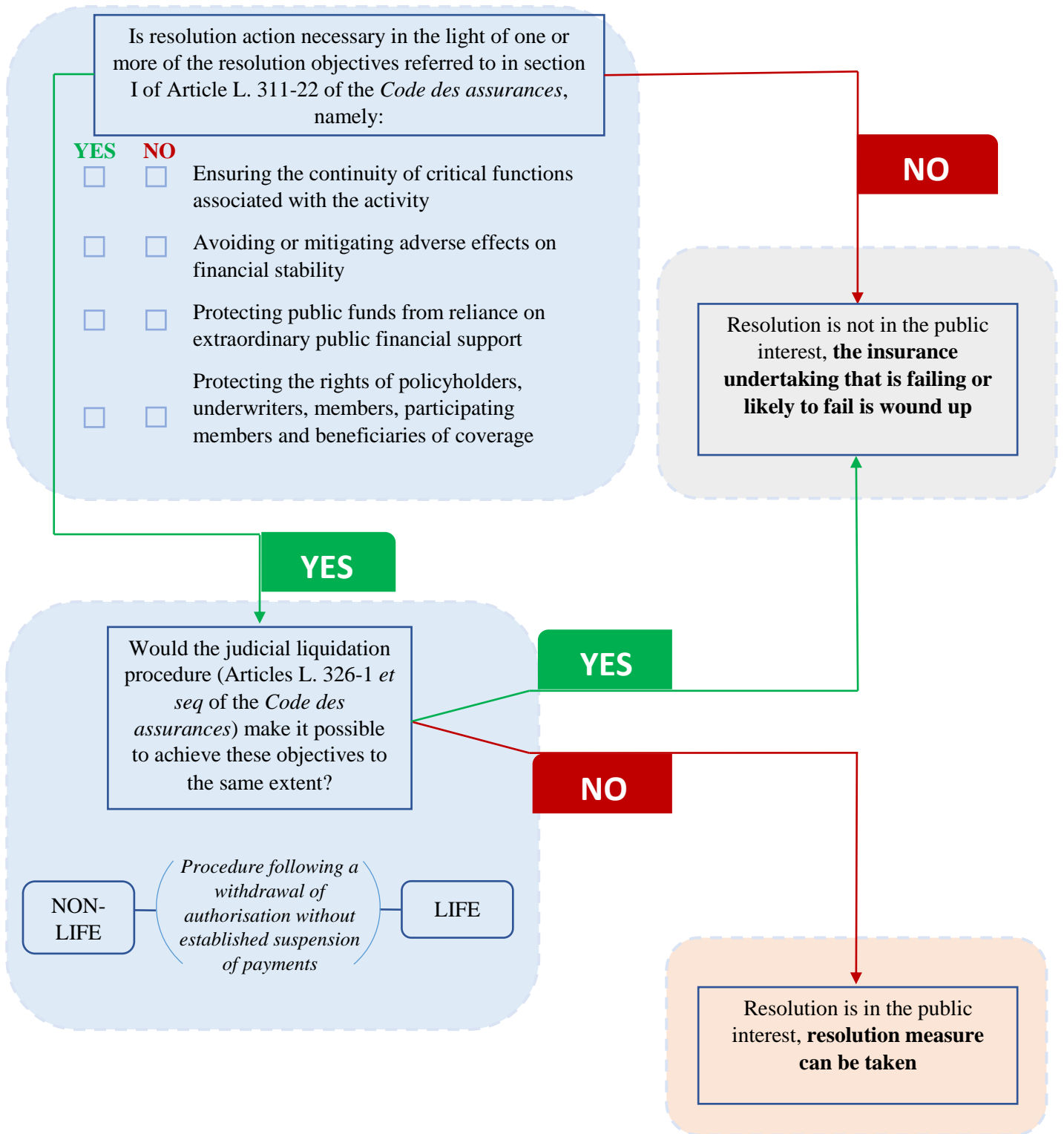
Whenever an insurance undertaking is failing or likely to fail, recourse to public financial support is strictly limited and only occurs under exceptional circumstances, in order to protect public funds.

Objective 4: Protecting the rights of policyholders, underwriters, members, participating members and beneficiaries of coverage.

The rights of policyholders, underwriters, members, participating members and beneficiaries of insurance coverage are protected in accordance with the national law applicable.

In practice, the public interest assessment evaluates whether a judicial liquidation procedure for the failing undertaking would not have achieved the resolution objectives to the same extent as a resolution procedure. This public interest assessment may be considered positive if a judicial liquidation procedure would not be deemed credible - and therefore would not be feasible (given the risks to financial stability and/or to the real economy in particular) or if it would not ensure that the resolution objectives are safeguarded (for instance, critical functions are not protected in judicial liquidation).

⁴ Refer to Article L. 311-22 of the *Code des assurances*.



B. Public interest assessment timeframe

The conduction of a public interest assessment comprises two dimensions. On the one hand, it must be carried out as part of the resolution planning phase, in order to assess the strategy that would be applied in the event of a crisis - or, more specifically, in the case where the insurance undertaking concerned is either failing or likely to fail. On the other hand, that assessment must also be reconsidered whenever that undertaking faces a crisis, to take account of the specific features of the event. Thus, the public interest assessment can be summarised as follows:

Timeframe	Evaluation...
During the resolution planning phase ⁵	1. ...of the need for one or more resolution actions, having regard to the resolution objectives
At the time the undertaking is failing or likely to fail	2. ...of the credibility of a judicial liquidation procedure and of the latter's ability to achieve the resolution objectives to the same extent.

C. Insurance undertakings subject to public interest assessment

In the case of an insurance group, the Resolution College may theoretically conduct the public interest assessment at different **points of entry**, that is to say at the level of the group head (on a consolidated or combined basis, and regardless of whether it is a holding company or an insurance undertaking) and/or at the level of the operational subsidiaries. **However, resolution measures can only be taken at the level of a legal person that has been deemed failing or likely to fail.**

Therefore, in practice, this issue concerning the point of entry of the public interest assessment is directly linked to **the legal form, structure, and business model of the insurance undertakings that are part of that group, as well as to the level of interconnectedness within that group**⁶.

In terms of resolution strategy, there are two possible **approaches to identifying the point(s) of entry into resolution:**

- one strategy at the level of the parent entity, referred to as “**single point of entry**” (SPE), can be considered where the parent entity bears joint and several liability with its subsidiaries and bears their losses in the event of a crisis, or if the group is highly interconnected. This type of group structure centralises a significant portion of capital as well as insurance risks, especially through internal reinsurance, and financial risks.

⁵ For undertakings to which the pre-emptive recovery and resolution component of the regime applies.

⁶ While it is recognised that interconnectedness is significantly lower within insurance undertakings than within banking groups (see FSB (2016) *Developing Effective Resolution Strategies and Plans for Systemically Important Insurers*, page 8), insurance undertakings nevertheless remain interconnected, for instance through risk management, internal reinsurance mechanisms, governance, internal support clauses between subsidiaries, and financial solidarity clauses between affiliated undertakings in the framework of a mutual insurance group.

This strategy amounts to concentrating the implementation of resolution powers and measures at the level of the group head;

- a “**multiple points of entry**” (MPE) strategy may be preferred where the group is comprised of subgroups that are not highly interconnected, which makes it possible for a potential individual failure to happen without significant disruption to the remainder of the consolidated (or combined) group. This approach amounts to considering that the implementation of resolution powers and measures will occur at different resolution points of entry. Where more than one authority is involved, each authority implements the appropriate resolution powers and measures at the level of the point of entry that is under its jurisdiction.

In the context of the preventive resolution planning, this assessment work carried out on the group’s business model and internal interconnections is carried out by the resolution directorate’s staff **on a case-by-case basis**, and a dialogue is engaged with the group to ensure the relevance of the analysis. The pre-emptive resolution plan drawn by the resolution directorate staff builds on the outcome of that assessment. Indeed, the choices derived from the public interest assessment are then validated by the Resolution College when it adopts the pre-emptive resolution plan, it being specified that this *ex ante* approval is intended to facilitate assessment, without pre-empting the analysis that may be made in the event of an actual crisis.

D. Public interest assessment territoriality

Article L. 311-8 of the *Code des assurances*, which broaches the issue of the geographical scope of pre-emptive resolution plans, provides that ‘*group pre-emptive resolution plans cover the group as a whole, and provide for resolution measures that may be taken against the ultimate parent undertaking established in France and against its connected undertakings established on the territory of the French Republic and referred to in Article L. 311-1 [...]*’ (emphasis added).

As a result, the scope of a public interest assessment is identical when conducted in the context of a pre-emptive resolution plan and when an entity goes under resolution.

However, it should be noted that the Resolution College reserves its right to carry out this public interest assessment on a smaller scale⁷ -not at the level of the group as a whole, but at that of a subsidiary- to take account of certain specific features that may be relevant to capture resolution objectives. This flexibility makes it possible, for instance, to factor in the specific features associated with certain regional or overseas markets.

⁷ The assessment would be carried out at the level of the group holding company and/or at that of specific operational subsidiaries.

Clarification on the territoriality of the French resolution regime

In accordance with Article L. 311-1 of the *Code des assurances*, the French resolution regime notably applies to:

- Undertakings conducting direct insurance business as referred to in Article L. 310-1, with the exception of the undertakings not covered by the “Solvency II”, which are listed in Article L. 310-3-2;
- Undertakings referred to in Article L. 310-1-1, that conduct reinsurance business and the head office of which is located in France [...].

In addition, pursuant to Article L. 310-2 of the *Code des assurances*, and subject to the provisions laid down in Article L. 310-10, direct insurance operations defined in Article L. 310-1 may only be conducted in the territory of the French Republic by the following:

- 1° undertakings the head office of which is located in France [...];

In addition, pursuant to Article L. 310-2 of the *Code des assurances*, and subject to the provisions laid down in Article L. 310-10, direct insurance operations defined in Article L. 310-1 may only be conducted in the territory of the French Republic by the following:

- 1° undertakings the head office of which is located in France [...];
- 2° foreign undertakings the head office of which is located in a Member State of the European Union, [...];
- 3° the foreign undertakings referred to in Article L. 310-10-1, by way of their branches legally established in France, [...].

In the present case, in line with Article L. 300-1, section II, of the *Code des assurances*, the term “in France” refers to “mainland France, the territorial communities governed by Article 73 of the Constitution, Saint-Barthélemy and Saint-Martin, Saint-Pierre-et-Miquelon and the Territory of the Wallis and Futuna Islands”.

II. EX ANTE ASSESSMENT OF THE NEED TO IMPLEMENT ONE OR MORE RESOLUTION MEASURES

- A. Prior determination of the credibility of a resolution strategy (in the planning phase, within the preventive part of the regime)
1. Establishing the need for a resolution measure to achieve the four objectives of resolution

This step consists in **verifying whether the achievement of the resolution objectives defined in section I of Article L. 311-22 of the *Code des assurances*⁸ would be under significant threat in the event of the failure of the insurance undertaking.**

At this stage, for the first resolution plans, the Resolution College conducted the public interest assessment pragmatically, **bearing in mind the objective of ensuring the continuity of critical functions**. Indeed, the concept of critical function plays a pivotal role, and overlaps, to a greater or lesser degree, with each of the objectives of resolution⁹. However, this approach does not prejudge subsequent work which may, where necessary, further develop the "resolution objective by resolution objective" assessment in order to ensure a "fair balance between these equally important objectives"¹⁰.

- *Ensuring the continuity of critical functions arising from the activities of the insurance undertaking*

In January 2021, the Resolution College published a methodological paper on the assessment of critical functions¹¹. On the basis of this methodology, the College identified six functions that are critical by nature:

- Savings, in euro and unit-linked;
- motor insurance, including civil liability insurance;
- medical liability insurance;
- construction insurance;
- agricultural insurance;
- credit insurance and guarantee.

Under the current preventive part of the resolution regime, insurance undertakings are identified as performing critical functions **when they exceed the 10% market share threshold**¹². This threshold was established based on an estimate of the market's capacity to offer new coverage.

At present, this criticality threshold is applied with a certain degree of automaticity. This choice reflects a pragmatic approach, given the relatively recent developments in the national recovery and resolution framework and the need to take a more in-depth look at this issue,

⁸ See above

⁹ Refer to Article L. 311-11 of the *Code des assurances*: 'when drawing up individual or group pre-emptive resolution plans and when updating each of these plans, the Resolution College shall assess the extent to which the persons concerned may [...] be subject to one or more of the resolution measures [...], while ensuring the continuity of critical functions' (emphasis added)

¹⁰ Refer to Article L. 311-22 of the *Code des assurances*.

¹¹ [Identification of the critical functions of insurance undertakings \(Dec 2020\)](#)

¹² A threshold set by the Resolution College.

drawing on the experience gained from each new planning cycle. The determination of this threshold was therefore a matter of empirical analysis, bearing in mind that the criticality analysis also depends on the specific context, and in particular on the market structure and the geographical area considered, as stated in the methodological paper on the assessment of critical functions.

In this respect, where an undertaking is identified as performing a critical function beyond the abovementioned 10% threshold, there is a strong presumption that the public interest assessment would be positive, which will have to be considered in the light of expert judgement. Specifically, expert judgement could be used to include, for a given undertaking or group, and depending on its specific circumstances, an activity despite its market share being below the set threshold.

This approach allows for the key objective of ensuring the continuity of critical functions to be adequately factored in, while upholding the aim of ensuring a fair balance between the four resolution objectives as set out in the regulations¹³.

– *Avoiding or mitigating adverse effects on financial stability*

This objective is, to a large extent, integrated into the consideration of critical functions, which also incorporates the systemic dimension and leads, for instance, to the identification of the life insurance and savings function as being critical by nature (see above). It reflects the **potential for direct or indirect contagion** to financial markets, especially through reputational risk and a widespread surrender phenomenon against all life insurers in the event of a failure to meet their commitments. A shock could also spread through massive asset sales initiated by the insurer to cope with surrenders, which in turn could destabilise financial markets.

Leading work in this area has been carried out by the Financial Stability Board (FSB) between 2013 and 2022¹⁴ within the framework of the assessment of the systemic nature of insurance undertakings. **Systemic importance was assessed on the basis of the following criteria:** i) size; ii) international activity; iii) direct or indirect interconnections with the financial system; iv) substitutability; v) activities other than traditional insurance (banking products, financial guarantees, liquid liabilities, etc.) which have gradually evolved towards the concept of products carrying "a risk linked to the liquidation of assets".

More specifically, the International Association of Insurance Supervisors (IAIS) has identified quantitative indicators for the assessment of these criteria by the FSB. These indicators are summarised in the table below:

¹³ Refer to Article L. 311-22 of the *Code des assurances*.

¹⁴ https://www.fsb.org/wp-content/uploads/r_130718.pdf ; in fact, the definitive list was only published between 2012 and 2016.

Category	Subcategory	Indicator
Size		Total assets
		Total revenues
Global activity		Revenues derived outside of home country
		Number of countries
Interconnectedness	Counterparty exposure	Intra-financial assets
		Intra-financial liabilities
		Reinsurance
		Derivatives
	Macroeconomic exposure	Derivatives trading (CDS or similar derivatives sold)
		Financial guarantees
Minimum guarantees on variable products		
Asset liquidation ¹⁵		Non-policy holder liabilities and non-insurance revenues
		Short-term funding
		Level 3 assets
		Turnover (i.e. trading volume)
		Liability liquidity (i.e. risk of run)
Substitutability		Premiums for specific business lines

Source: *Global Systemically Important Insurers: Updated assessment methodology*

(Link <https://www.iaisweb.org/uploads/2022/01/160616-Updated-G-SII-Assessment-Methodology-New.pdf>)

These criteria, which are no longer used today as the FSB, in consultation with the IAIS¹⁶, stopped carrying out the identification of global systemically important insurers¹⁷ in December 2022, still remain relevant¹⁸. The IAIS has adjusted and integrated this multi-criteria analysis (referred to as the “global monitoring exercise” or GME) into one of the three pillars of a “holistic framework”. It is supplemented by a “supervisory material” pillar (i.e. a list of criteria relating to supervision and the applicable recovery and resolution regime) and an “implementation assessment” pillar (i.e. assessment of supervisory practices¹⁹). Although it does not provide information on an individual basis, the most recent GME report, published in December 2022²⁰, highlights an increase in systemic risk over the last five years, driven by the increase in **interconnectedness** and **liquidity risk**.

– *Protecting public funds from reliance on extraordinary public financial support*

The Resolution College must assess the consequences of an insurer’s failure on public funds and the possibility of government intervention, which must be avoided.

¹⁵ The previous designation of this category gave a clearer indication of what it is designed to measure: “non-traditional insurance activities and non-insurance activities”.

¹⁶ International Association of Insurance Supervisors (IAIS)

¹⁷ Global systemically important insurers (G-SIIs)

¹⁸ This work made it possible to identify quantitative indicators for the assessment of the criticality criteria of insurance undertakings

¹⁹ https://www.bis.org/fsi/fsisummaries/holistic_frame.pdf

²⁰ <https://www.iaisweb.org/uploads/2022/12/GIMAR-2022.pdf>

A demonstrable need for public funding may arise, for example, in the event that insurance undertakings deemed failing or likely to fail provide certain insurance services either compulsory or necessary for the proper functioning of the real economy.

- ***Protecting the rights of policyholders, underwriters, members, participating members and beneficiaries of coverage.***

This resolution objective is threatened where the anticipated repercussions of the liquidation of a given insurer on the real economy or financial stability are excessively negative, to the point of disrupting the proper functioning of critical functions. This dimension of the public interest assessment is inherently tied to critical functions and financial stability (objectives 1 and 2, i.e. the first two indents of II, A, 1).

2. Procedure used to assess the existence of public interest

Pursuant to the adoption of the preventive resolution plan, and in order to determine whether the resolution of an insurance undertaking would be in the public interest, the *Code des assurances* requires the Resolution College to adopt a two-tiered approach:

- a) **the Resolution College assesses the need for resolution action in view of the resolution objectives;**
- b) **the Resolution College then assesses whether judicial liquidation would not allow for these objectives to be achieved to the same or to a better extent.**

If, as a result of this assessment, the Resolution College finds **that there are significant impediments** to the insurance undertaking concerned being subject to either collective insolvency proceedings or resolution action pursuant to Article L. 311-12 of the *Code des assurances*, it shall be responsible for taking measures to reduce or remove these impediments.

The College may then, for instance, require changes to the group's legal and operational structure in order to reduce complexity, and allow for the legal and operational separation of critical functions in the event of the application of resolution measures. This assessment of the resolvability of insurance undertakings will then be the subject of a dedicated in-depth analysis.

B. Prior determination of the credibility of a liquidation strategy (during the planning phase, within the preventive part of the regime)

Two types of judicial liquidation procedures coexist for the insurance sector. The table below outlines these two procedures according to the grounds on which they are triggered:

Grounds for triggering liquidation procedures	Associated liquidation procedure
<p>1</p> <p>Assumption of withdrawal of authorisation. The insurance undertaking is declared failing or likely to fail but the suspension of payments is not established.</p>	<p>Procedure provided for in Chapter VI of Title II of Book III of the <i>Code des assurances</i> (Articles L. 326-1 <i>et seq.</i>)</p>
<p>2</p> <p>Assumption that the undertaking has been declared failing or likely to fail and is unable to pay its debts, other than its contractual obligations towards its policyholders, subscribers, members, participants or beneficiaries or with respect to its other liabilities when they fall due (condition to be compared with a state of established suspension of payments).</p>	<p>Procedure provided for in Chapter I of Title I of Book III of the <i>Code des assurances</i> (Article L. 310-255)</p>

As part of the public interest assessment, and regardless of the grounds on which default was triggered, the comparative exercise **is always carried out with reference to the procedure set out in Article L. 326-1 *et seq.*** of the *Code des assurances*, and referred to in Article L. 311-18 of the same Code, the latter being deemed the most protective. Indeed, unlike under ordinary law, the *Code des assurances* provides for a specific treatment to be applied to insurance policies:

- For non-life: policies covering the risks referred to in points 2 and 3 of Article L. 310-1 of the *Code des assurances* shall cease to have effect **at noon on the fortieth day after publication, in the Official Journal, of the authorisation withdrawal decision by the ACPR²¹**;
- For life: in relation to policies underwritten with an undertaking referred to in the first and last subparagraphs of Article L. 310-1 of the *Code des assurances*: the Supervisory College **may, at the request of the liquidator and upon the report of the official receiver, set the date on which the contracts cease to have effect, authorise their transfer, in whole or in part, to one or more undertakings, extend their term, decide to reduce amounts payable in the event of life or death as well as allocated profits and surrender values, so as to reduce the value of the undertaking's liabilities to the amount that the circumstances of liquidation allow to be covered.** Regular premium payments are suspended 10 days after the appointment of the liquidator and until the ACPR issues a decision setting the date on which policies cease

²¹ Refer to Article L. 326-12 of the *Code des assurances*.

to have effect. In the event of a portfolio transfer, the suspended payments are made to the accepting undertaking, according to a reduction rate set by the ACPR²².

Furthermore, it bears mentioning that the liquidator's objective is to maximise the value of the assets realised, and that the liquidator represents the collective interest of the creditors only, whereas the Resolution College endeavours to safeguard all the objectives of resolution.

Resolution measures should be considered where liquidation does not allow for achievement of resolution objectives to the same extent as resolution action would.

III. EVALUATION OF THE PUBLIC INTEREST ASSESSMENT AT THE TIME AN UNDERTAKING IS FAILING OR LIKELY TO FAIL

The Resolution College carries out a public interest assessment for all undertakings subject to Solvency II that are failing or likely to fail, in order to establish whether a resolution procedure should be initiated.

The method used for this assessment is identical to that used during the planning phase. Furthermore, for those entities subject to the preventive part of the resolution regime, the outcome of the assessment conducted during the planning phase may not, for security reasons, prejudge the outcome of the assessment conducted during the resolution phase. Indeed, a liquidation procedure that has been established through the public interest assessment during the planning phase is liable to no longer achieving the resolution objectives to the same extent as resolution action would, once the entity goes under resolution; and the liquidation of the undertaking is not contemplated after the public interest assessment conducted during the resolution phase, and resolution measures are preferred (and *vice versa*).

²² Refer to Article L. 326-13 of the *Code des assurances*.