

Comments Template on EIOPA-CP-18-003 Discussion Paper on Resolution funding and national IGSs		Deadline 26/10/2018 23:59 CET
Name of company:	
Disclosure of comments:	<p>EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential.</p> <p>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".</p>	Public
<p>Please follow the instructions for filling in the template:</p> <ul style="list-style-type: none"> ⇒ Leave the last column <u>empty</u>. ⇒ Please fill in your comment in the relevant row. If you have <u>no comment</u> on a paragraph or a cell, keep the row <u>empty</u>. <p>Please send the completed template, in Word Format, to CP-18-003@eiopa.europa.eu by 26 October 2018. Our IT tool does not allow processing of any other formats.</p> <p>The numbering of the questions correspond with the questions included in the Discussion Paper.</p>		
Reference	Comment	
General comments	<p>Having in a place an appropriate insurance recovery and resolution framework is an important part on ensuring financial stability in the EU. Safeguards should be in place to ensure that taxpayers do not end up footing the bill for insurance company failures. This should include ensuring that insurance company failures are properly managed and that management of the companies is held sufficiently to account in these cases to avoid moral hazard issues.</p> <p>Under the Capital Markets Union agenda the European Commission aims to incentivise EU citizens to consume products provided by the financial services industry to supplement, or replace, services that may have been guaranteed by governments, such as pensions. This is</p>	

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	likely to further increase the criticality of services provided by private-sector financial services companies and puts a greater importance on having a proper framework in place to ensure that they are properly dealt with if they fail.	
Q1	The analysis rightly identifies the issues with policyholder protection and where there is a need to harmonise IGSs. The analysis of the problem does not, however, look at the potential impact on IGSs of the failure of large insurers. As outlined in the ESRB 2017 paper ¹ the resilience of IGSs in these cases has not been tested yet and may well be lacking. There is therefore a need to look at recovery and resolution tools to strengthen the existing provisions under Solvency II and to take into account the ways in which the sector may pose systemic risks (ESRB 2017 paper, 2.2, para. 19).	
Q2	The costs should be borne by the country where the insurer has its head office, in line with the European Commission proposal on motor insurance. Two important elements to this are that the 'home' supervisor is the authorising supervisor and that proper communication and cooperation are must be ensured with the 'host' supervisor. However, this approach does require a harmonisation of IGSs, to avoid the issue outlined in para. 85. Clearly defined and properly enforced rules under any harmonised approach would also be another essential element to ensure that the issues under para. 84 and 86 are addressed.	
Q3	Both the discussion paper produced by EIOPA and the referred to ESRB paper from 2017 rightly identify the need to have a recovery and resolution framework in place that avoids the need to resort to public funds in the case of an insurance company failure. Policyholder protection through harmonised IGSs is an important step in the right direction, but ensuring proper resolution measures in place is another essential component to a putting in place a needed EU recovery and resolution framework. Experience with the recovery and resolution	

¹ https://www.esrb.europa.eu/pub/pdf/reports/esrb.reports170817_recoveryandresolution.en.pdf

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	framework for banks (BRRD) has demonstrated that material divergences between Member State insolvency regimes have the potential to produce very different outcomes in the application of the relevant EU rules and thus undermine their effectiveness and, by implication, the integrity of the Single Market.	
Q4	<p>In order to fully qualify and justify the statement that contagion risk is lower in the insurance sector, EIOPA should look at whether reactions to the crisis have led to a transfer of risk from banks to institutional investors. As part of this EIOPA should look at possible implications of interdependencies between insurers and between insurers and other financial market participants, as a result of the use of capital insurance bonds or equivalents to meet capital adequacy requirements, as well as their involvement in non-traditional and non-insurance activities.</p> <p>The argument that insurance companies were able to, by and large, weather the last financial crisis so do not need to be more closely regulated does not hold. The next financial crisis will not unfold in the same way as before, given that both the post-crisis economic environment and regulation has impacted on the areas of weakness in the financial system.</p> <p>The current provisions for supervisors to step in and ensure recovery or orderly winding down under Solvency II are based on SCR and MCR being too low. A minimum first step should be to give supervisors the power to impose early intervention measures, analogous to the powers conferred upon banking supervisors by Art. 27 BRRD, and/or place a distressed company under administration when the SCR is breached. This should not mean an obligation to assume control of the company, but would leave this as a tool to be used where needed.</p>	
Q5	The approach would be a positive step forward, but is also presented by EIOPA with a lack of ambition. This lack of ambition on recovery and resolution can be clearly seen running through from EIOPA's 2017 paper ² , despite having identified a need for a proper framework to be put	

² [https://eiopa.europa.eu/Publications/Opinions/EIOPA-BoS-17-148_Opinion_on_recovery_and_resolution_for_\(re\)insurers.pdf](https://eiopa.europa.eu/Publications/Opinions/EIOPA-BoS-17-148_Opinion_on_recovery_and_resolution_for_(re)insurers.pdf)

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	in place. EIOPA should not recommend the minimum approach it judges to be politically achievable, but should analyse and propose what is needed to ensure financial stability and policyholder protection.	
Q6	EIOPA should look further than IGS and consider filling the gaps left by the Solvency II Directive, around early intervention in particular, through putting in place a comprehensive recovery and resolution framework, including the obligation for insurance groups, except for the very smallest, to prepare formal, ex-ante recovery and resolution plans. This would ensure that National Competent Authorities (NCAs) are able to take the necessary steps to protect policyholders and ensure financial stability. A further important step for EIOPA would then also be to ensure consistent implementation and enforcement of a recovery and resolution framework, including measures to harmonise IGSs. This role is particularly important given the possible cross-border contagion triggered by failures.	
Q7	Using ISGs to facilitate orderly resolution would be an important step to help ensure stability in the insurance sector. However, work needs to be done to ensure that NCAs have the necessary powers and tools to trigger and implement early intervention. These tools should be flexible enough for NCAs to ensure continuity where possible and avoid negatively impacting policyholders or financial stability.	
Q8	Giving selected resolution powers to IGSs could help ensure protection of policyholders. If IGS are able to use certain resolution powers, including portfolio transfer, helping to fund recovery as a last resort and avoiding the need for governments to fund resolution or recovery.	
Q9	Introducing a harmonised approach to IGS would ensure proper coverage of policies. The home-country principle should be used in this context.	
Q10	There are valid arguments for both approaches. In a single, pan-European market the home-country principle would ensure that authorisation and "going concern" supervision are aligned with recovery and consolidated resolution responsibilities in the hands of the "home country" authorities. This approach would, however, require full harmonisation of IGSs to avoid the issue outlined in para. 85. Structurally, the "home country" approach raises questions of "burden-shifting", i.e. IGS contributions drawn from premia paid in by "home country" policyholders may be used to compensate "host country" policyholders. It could also, in an	

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	<p>extreme crisis scenario, overburden the "home-country" IGS.</p> <p>The "host-country" approach may be easier to implement and co ordinate, at least initially, because compensation rules and funding would be set at the national level, albeit still within the boundaries of a harmonised EU framework. On the other hand, it may be less effective in tackling the risk of cross border spillover as it requires close cooperation between different Member State supervisory and resolution authorities and IGSs in a crisis situation to stabilise/resolve a large cross-border group. It would also place more responsibility on "host country" authorities in respect of the supervision of foreign insurers operating on their territory and would therefore have to be accompanied by review of their relevant supervisory powers to prevent the scenario set out in para. 82.</p> <p>To mitigate "home-host" issues, which are most likely to arise with large, cross-border groups, the introduction of a harmonised EU recovery and resolution framework for insurers should be accompanied by a strengthening of the role of supervisors and resolution colleges in coordinating supervision and, in particular, developing recovery and resolution plans. EIOPA should have a cross-border mediation and monitoring role to ensure the success of a harmonised approach.</p>	
Q11	<p>As discussed previously (Q10) the principal objective of this initiative should be the harmonisation of IGS rules in order to prevent the spread of systemic risk and ensure the protection of policyholders at the highest level. To this end, the effectiveness of supervision and resolution, the level and scope of IGS protection and the modalities for accessing compensation need to be brought up to a common, high standard, and IGSs need to be adequately funded. Contributions from foreign insurers' subsidiaries or branches to "host-country" IGSs should be calibrated accordingly (see also Q21-25). By introducing a harmonised approach principle, there should be full coverage of policies being offered. The issue at stake is that cases where cross-border failures are likely or possible are identified</p>	

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	through early intervention measures, including the use of recovery and resolution plans and monitoring of enforcement by EIOPA.	
Q12	IGS should cover both life and non-life insurance policies. If IGS are relied on to ensure greater financial stability and policyholder protection then full coverage of insurance policies is important. Not achieving this risks exacerbating any patchwork effects from the current lack of harmonisation for the policies not covered.	
Q13	<p>As a matter of principle, requiring IGSs to cover all mandatory insurance liabilities would be consistent with an approach to include all natural persons and selected legal persons, in particular micro-, small and medium enterprises, in the schemes. This should be considered as a minimum level of coverage. The need for a cap on certain types of contracts, e.g. life assurance, should be reviewed on the basis of a comprehensive and detailed impact assessment. Based on close monitoring by EIOPA on the effectiveness of this approach a further decision should be taken to see whether all legal persons should be covered.</p> <p>The argument that it may be excessively costly to provide such cover should be examined more specifically as part of a comprehensive impact assessment and cost-benefit analysis. This analysis should assess whether any increases in cost of premiums for lines of business related to IGSs change, in conjunction with the profits from these lines of business.</p>	
Q14	IGSs should aim to cover all life and non-life contracts. If the option of covering all life and only selected non-life insurance contracts is chosen, then clear break downs of the expected costs and impact on the industry must be presented to justify this as part of a detailed cost-benefit analysis. Under all scenarios any increases in cost of premiums for lines of business related to IGSs should be monitored, in conjunction with the profits from these lines of business. This is in order to assess to what extent these costs are impacting insurance undertakings and being passed on to policyholders.	
Q15	The need for a cap on certain types of contracts, e.g. life assurance, to be reviewed on the basis of a comprehensive and detailed impact assessment.	

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Q16	Here the relevant points from the 2017 EIOPA opinion ³ on recovery and resolution should be considered. Para. 111 sets out the minimum set of powers that should be in place.	
Q17	IGSs should, at least, cover all natural persons and selected legal persons, in particular micro-, small and medium enterprises. Based on close monitoring by EIOPA on the effectiveness of this approach a further decision should be taken to see whether all legal persons should be covered. The argument that it may be excessively costly to provide such cover can also be the subject of a constant cost-benefit analysis. This analysis can assess whether any increases in cost of premiums for lines of business related to IGSs change, in conjunction with the profits from these lines of business.	
Q18	It is important to address the issue by looking at what an initial minimum starting point could be; which would include all natural persons and at least selected legal persons (see Q17). As part of this approach it would be worth considering additional coverage of all lines of compulsory insurance for legal persons. Other measures, such as exclusion of compensation for related parties, could also help to increase citizen's confidence in IGSs.	
Q19	Any caps on compensation considered should be set at a sufficiently high threshold: the minimum level set in Directive 2014/49/EU for Deposit Guarantee Schemes should be considered as a minimum level for life assurance and savings products. Given the role of life assurance as a repository of long-term savings and as an essential source of retirement income, a higher level of protection may be appropriate and should be considered as part of a comprehensive and detailed impact assessment. Policies taken out from separate branches or subsidiaries of the same insurance group could, for instance, be subject to separate limits ⁴ . In any event, a resolution framework for insurers should incorporate the 'NCWOL' ('No Creditor Worse Off than in Liquidation') principle.	
Q20	Ex-ante funding would be more appropriate to enable the IGS to intervene rapidly and to	

³ [https://eiopa.europa.eu/Publications/Opinions/EIOPA-BoS-17-148_Opinion_on_recovery_and_resolution_for_\(re\)insurers.pdf](https://eiopa.europa.eu/Publications/Opinions/EIOPA-BoS-17-148_Opinion_on_recovery_and_resolution_for_(re)insurers.pdf)

⁴ <https://www.beuc.eu/publications/2010-00790-01-e.pdf>

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	<p>minimise the risk of dilatory action or political interference. The availability of ex-ante funding, accumulated over time, would also ensure that no additional stresses are placed on insurers in moments of potential instability, i.e. during a crisis. It would also potentially reduce the need for government guarantees. Ex-ante funding also allows contributions to be calculated on the basis of the risks that insurers take. A phase-in period should be set with the objective of reaching a defined target amount for the IGS at the end of that period. The target amount should be sufficient to cover the level of sector-wide losses observed in previous crises. Ex-ante contributions to the IGS during the phase-in period should be calibrated accordingly. Additional ex-post funding should be made available to recoup the cost of larger-than-anticipated failures without exposing taxpayers.</p>	
Q21	<p>IGS should be funded by the insurance industry and not be directly fully transferred to policyholders. Any increases in cost of premiums for lines of business related to IGSs should be monitored, in conjunction with the profits from these lines of business. IGS funding and the costs of other regulatory measures should be viewed as a responsibility of any company that is authorised to provide the implicated lines of business.</p>	
Q22	<p>Contributions should be risk-based and calculated on the basis of several indicators that reflect the individual insurer's risk profile. These could cover the portfolio of insured risks, solvency and asset quality⁵. The methodology for calculating contributions should be legally harmonised at the EU level.</p>	
Q23	<p>A combination of a risk-neutral, size-based variable minimum contribution (floor) and an additional risk-weighted element would seem to be the most appropriate solution. They could help to ensure that insurers are obliged to make a minimum contribution to sectoral stability in line with their overall financial capacity and that they are incentivised, individually, to monitor and manage their risk profiles continuously and prudently.</p>	
Q24	<p>A target ceiling for contributions could be set for IGSs to reach within a defined transition period. However, this should be as part of a hybrid funding approach, where ex-post contributions can be collected if necessary (see Q20).</p>	

⁵ http://ec.europa.eu/finance/consultations/2010/whitepaper-on-igs/docs/whitepaper_en.pdf

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Q25	This is an important power and critical for the credibility of the IGS. It would function well as part of a hybrid funding approach, as discussed in our answers to previous questions (see Q20 and Q24).	
Q26	Properly informing policyholders of their rights and the levels of protection they are entitled to is a key responsibility of governments, NCAs and insurance companies. Adequate disclosure is indispensable. The disclosure requirement should be considered in the context of finding the best way to ensure that policyholders understand the commitments they undertake and benefits they receive when entering into insurance contracts. This means it should not necessarily be considered as another page to be initialled without having read it as part of the contract terms and conditions.	