

<p>Comments Template on EIOPA-BoS-19-259</p> <p><b>Consultation Paper on</b></p> <p><b>Proposals for Solvency II 2020 Review</b></p> <p><b>Harmonisation of National Insurance Guarantee Schemes</b></p>			<p>EIOPA-IRSG-19-37</p> <p>22 October 2019</p>
<b>Name of company:</b>	<b>Insurance and Reinsurance Stakeholder Group</b>		
<b>Disclosure of comments:</b>	<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 leaving only the word "Confidential".</p>	Public	
<p>Disclosure of comments: <input type="checkbox"/> EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential.</p> <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</p>	<p>Please follow the instructions for filling in the template:</p> <ul style="list-style-type: none"> <li>⇒ Leave the last column <u>empty</u>.</li> <li>⇒ 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>.</li> </ul> <p><b>Please send the completed template, in Word Format, to <a href="mailto:CP-19-005@eiopa.europa.eu">CP-19-005@eiopa.europa.eu</a> by <b>Friday 18 October 2019</b>.</b></p>		

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"Public" in the column to the right and leaving only the word "Confidential".  
Public / Confidential

<b>Reference</b>	<b>Comment</b>	<b>EIOPA</b>
General comments	<p>The IRSG considers that policyholder protection has significantly improved since the introduction of Solvency II (SII) as both governance requirements and quantitative risk measures have forced insurers to better understand risks and risk based decision-making. The IRSG considers that a move toward any higher degree of consumer protection should be built step-by-step to avoid any unwanted consequences, as new regulation might change market practice and policyholder behaviour. Any prescription of requirements in relation to Insurance Guarantee Schemes (IGSs) should take into account the provisions and protections of the regime as a whole and should not be dealt with separately. Any higher degree of consumer protection should also be considered in the context of the overall calibration of Solvency II. Elements of the regime to be taken into account include</p> <ul style="list-style-type: none"><li>• Harmonisation of application of SII</li><li>• Strength of cross border (FoS/FoE) supervision</li><li>• Recovery and Resolution framework</li><li>• Ranking of policyholder rights on insurer failure</li></ul> <p>The IRSG has different opinions as to the appropriate level of prescription of IGSs. The two options favoured are</p> <ul style="list-style-type: none"><li>• Maintain status quo, and</li><li>• European network of sufficiently harmonised IGSs - minimum harmonisation</li></ul> <p>Proponents of the first option above consider that IGSs currently in place, which vary significantly across Europe, work generally well within their local context and laws, that even</p>	

minimum harmonisation would create significant costs and involve complex challenges. They argue that the focus and priority should instead be on ensuring that Solvency II is applied appropriately in all Member States and that there is coordinated supervision of FOS/FOE. Proponents of the second option above consider that there is still a risk of failure of insurance undertakings and that in fact this risk is elevated by the interest rate and macroeconomic conditions in which insurers now operate. They also consider that introduction of minimum harmonisation for IGSs would increase policyholder protection and reduce the current fragmented, inconsistent approach.

The IRSG identifies some practical challenges with minimum harmonization which would need to be addressed, e.g.

- Differences in insurance, social welfare, taxation and other legislation between Member States
- Distinct features of cross border and "within border" business
- Market impacts of IGSs following implementation

Planning with a number of Member States in relation to these practical aspects in advance of introducing formal requirements would be beneficial in surfacing likely issues and enabling more considered outcomes from the outset.

On the issue of IGS funding, the IRSG considers that specific requirements in this regard should not be imposed but that the robustness and likely effectiveness of chosen funding mechanisms, reflecting the long term nature of the insurance business model, should be fully considered in each case, taking into extent all relevant factors including size of market, level of capitalisation, number of insurers, level of FoS and FoE business, etc. Whichever the solution, some members believe that a risk-based approach is likely to provide a more appropriate and sustainable funding mechanism, while others consider that fixed rates are more appropriate.

The IRSG *is supportive of* EIOPA proposals relating to

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- legal structures of IGSs being left to the discretion of Member States
- that IGSs should act as a mechanism with the primary aim to protect policyholders
- that IGSs should seek to enable the continuation of policies for life and for some long-term non-life insurance policies, subject to feasibility.
- some members believe that the scope of products included under any minimum harmonisation should be as limited and focussed as possible
- that any harmonisation of the geographical coverage of national IGSs should be on the basis of the home-country principle, but enabling provision of host country involvement where prospects of satisfactory resolution would be enhanced
- that IGSs should have in place adequate systems to determine their potential liabilities
- that upper limits to the annual contributions made by an individual insurer or from the industry as a whole into IGSs should be considered to mitigate the risk of industry financial stress and/or additional cost to insurance consumers
- that cross-border cooperation and coordination arrangements between national IGSs should be established
- regular reviews of any harmonised principles should be implemented.

But *challenges* EIOPA proposals relating to

- national IGSs should cover natural persons and micro- and small-sized legal entities (i.e. policyholders and beneficiaries). The IRSG proposes that, alternatively, consideration should be given to minimum harmonisation only including consumers (natural persons)
- that there should be a minimum harmonised coverage level for claimants, on the basis that appropriate minimum levels may differ depending on individual market features

The IRSG also proposes that discrete features of FoS/FoE business may support consideration of separate IGSs for domestic and FoS/FoE business.

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	The IRSG proposes that NCAs should be explicitly required to clarify their approach to IGSs.	
Q1) Do you agree that the legal structure of policyholder protection schemes should be left to the discretion of Member States? Please explain your reasoning.	Legal structures of IGS should be left to the discretion of Member States. Different insurance policies have different characteristics, insurance market backgrounds and risk profiles and, in the absence of market consistency, it would be difficult to seek to fully reflect these differences in a uniform set of legal requirements.	
Q2) Do you see the need of a parallel development of the topics recovery and resolution framework and IGSs? Please explain your reasoning.	The IRSG considers that a minimum level of harmonisation of the recovery and resolution framework should be considered at European level, but that this consideration should take account of recovery and resolution as one element of a framework which includes Solvency II, IGSs, recovery and resolution, etc. A holistic assessment of the regime and its impact on the risks in insurance companies and on policyholder protection be required in advance of implementation of individual elements.	
Q3) Do you agree that the primary objective of an IGS can be achieved by means of the two options proposed (i.e. paying compensation and ensuring the continuity of policies)?	Yes	
Q4) Do you agree	Yes.	

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<p>that the continuation of the policies should take precedence in case of life and some long-term-life policies? Please explain your reasoning.</p>	<p>Termination of contracts would in some cases put policyholders in a very difficult situation as they might not be able to replace coverage in similar terms (long-term guarantees, medicals as part of underwriting etc.).</p>	
<p>Q5) What aspects are relevant to be taken into consideration for the effective implementation of the home-country principle?</p>	<ul style="list-style-type: none"> <li>• Ability of home-country regulator to access host-country market information</li> <li>• Ability of home-country regulator to effectively access and understand risk elements of insurance being offered in host-country, both in isolation and in context of overall operations of relevant insurer</li> <li>• Differences in level of coverage between home and host which may introduce limitation in IGS coverage. Solutions offered by home-country IGS may be considered inappropriate by affected policyholders</li> <li>• Language and cultural differences</li> </ul>	
<p>Q6) Specifically, should the following options be added to the principles of the home-country approach:</p> <ul style="list-style-type: none"> <li>• the possibility of the IGS of the host-country to function as a "front office" for the identification of the</li> </ul>	<ul style="list-style-type: none"> <li>• Yes. The Host country can play a valuable role as a "front office" to facilitate customer identification, communication in local language, to apply relevant local laws and to ensure that all customers within one country are treated equally.</li> </ul>	

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<p>affected policyholders and beneficiaries?</p> <ul style="list-style-type: none"> <li>the possibility of the IGS of the host-country to make payments to the affected policyholders and beneficiaries (in their country of residence), and then have a right of recourse against the IGS of the home-country ("back office")?</li> </ul>	<ul style="list-style-type: none"> <li>Some members consider that this should be added, with a requirement for clear, comprehensive and formalised communication and cooperation between home- and host-country IGSs. Other members believe that such a mechanism would be very risky for the host-country IGS and host-country policyholders and would therefore not be feasible to implement.</li> </ul>	
<p>Q7) Do you have any other comments on the geographical coverage? For instance, are there any cases, especially in statutory lines of business, where the host-country principle should be preferred?</p>	<p>While IRSG considers that a mixed home/host approach is preferred with home country providing payment and the host country providing support as necessary, there are still significant challenges in applying this across the EU. For example, how would the home country ensure sufficient funds are collected or available if the home country has a very small market relative to the potential liability from its market's FOS activities in much larger host markets?</p>	
<p>Q8) Do you believe that the criteria for selecting the eligible</p>	<p>Yes, with the first criterion being key. Some members of the IRSG consider that the scope of products included under any minimum harmonisation should be as limited and focussed as</p>	

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possible, in order to focus protection on areas of most need.	
policies (as set out in paragraph 149) capture all relevant policies which should be subject to IGS protection? Please explain your reasoning.	
Q9) Which policies should at least be eligible for IGS protection based on these criteria (as set out in paragraph 149)?	Further work is required to rank types of insurance business against the various criteria, e.g. potential degrees of hardship caused, consumer v corporate, impact of underwriting, replaceability of cover, treatment under any legacy IGS schemes, etc.
Q10) Are there any other considerations to be taken into account to select the range of policies to be covered by an IGS? Please explain your reasoning.	See Q9 above.
Q11) Which criteria should be used to determine/exclude the eligible claimants?	Some members consider that any minimum harmonisation should only include consumers (natural persons), as these are most at risk from insurance failure.
Q12) Should coverage be extended to large legal persons where the ultimate	See Q11 above.



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<p>beneficiary are retail customers (such as large corporates offering pensions for customers)?</p>		
<p>Q13) What should be the relevant criteria to determine a minimum coverage level at EU level for different types of insurances?</p>	<p>Some criteria which may be applied include:</p> <ul style="list-style-type: none"> <li>• Whether the appropriate approach for the affected business is continuation of cover, refund of premium or payment of claim.</li> <li>• Nature of affected business, e.g. Life or Non-Life, i.e. the approach needs to reflect the heterogeneity of types of business</li> <li>• Economic conditions and level of insurance business in Member State</li> </ul> <p>The minimum coverage level should reflect market conditions and customer need, and that the default should not be to apply the same level as other financial industries, e.g. banking, without consideration of potentially different customer needs.</p>	
<p>Q14) What should be the relevant criteria to determine the target level for national IGSSs?</p>	<p>The IRSG agrees that target levels for the funding of IGSSs should be at the discretion of Member States, taking into account the national market specificities. Target levels should take account of the funding methodology and the strength of capitalisation and supervision in the relevant State.</p>	
<p>Q15) What should be the relevant criteria to determine the level of the annual contributions per individual insurer into IGSSs, including the</p>	<p>The IRSG believes that levels of contributions for individual (re)insurers should be at the discretion of Member States, taking into account the national market specificities, e.g. target level of funding, levels of risk in participating (re)insurers, etc.</p>	

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method of calculating such contributions (risk-based, fixed rate, other)?		
Q16) What should be the relevant criteria to determine the level of the annual contributions for the industry as a whole, including the method of calculating such contributions (risk-based, fixed rate, other)?	Some members consider that levels of contributions for the industry as a whole should be risk-weighted and should be at the discretion of Member States, taking into account the national market specificities, e.g. target level of funding, levels of risk in market, level of FoS/FoE business, levels of funding in legacy schemes, etc. Other members believe that contributions should in general be based on fixed rates.	
Q17) Are there any other elements that should be included in the disclosure requirements to policyholders? If so, what are those?	The IRSG has not identified additional elements which should be included. It is supportive of the provision of information to policyholders which provides appropriate levels of confidence in the financial strength of their insurers and the framework supporting their insurers, without entirely absolving consumers of responsibility to exercise appropriate caution in buying decisions.	
Q18) Are there any other elements that are relevant in the context of cross-border cooperation and coordination arrangements in this field, particularly in the	No. See questions 4 to 7.	

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context of the home-country approach, please also refer to Q4 and Q5)? If so, what are those?