Ministerie van Financiën

Dutch R&R framework: *bail-in and portfolio transfer*

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Background on the legislative initiative

- 2014 major Dutch insurer in difficulty
- Balancesheet +/- 60 bln.
- 6 mln. Policyholders across life & non-life.
- Likely infraction of capital requirements.
- ‘Houston, we have a problem.’; existing legal framework insufficient.

New Dutch recovery and resolution framework

- New legislative framework based on 2 pillars:
  - Overhaul of insurer insolvency rules. For example advances on payments on policyholder claims on the estate.
  - Resolution powers inspired by B.R.R.D.
    - » Bridge institution
    - » AMV
    - » Portfolio transfer
    - » Bail-in

- Primary resolution objective: safeguard position of policyholders. This means continuation of insur**ance** not necessarily of insur**er**!

Policyholder bail-in powers in NL preexistent

- Article 3:195 Act on Financial Supervision. Summary: if trustee transfers insurance assets and liabilities the court can grant a trustee a mandate to ***alter the insurance contract***.

- Examples to date: early termination of contracts (Ageas N.V., non-life) but also lowering policyholder claims (Vie d’Or, life).

Bail-in and the policyholder paradox.

- Why is it a good thing for a policyholder if his or her claim is bailed-in?

- Because **continuation** of an insurance policy (most notably life insurance) is almost always the **prefered option** as opposed to termination in insolvency proceedings! Even after a bail-in!

- Damage from termination can be significant. Analyses in actual case (Conservatrix life) has shown damages as large as **81 million on 650 million technical provisions**. In other words continuation with a bail-in as large as 80 million will be preferable to policyholders as opposed to termination in insolvency. This is true even if pay-out = 100% of insurance claim.

- Origin of damage is f.e. first costs with new insurer, aging (higher premium).

Bail-in and portfolio transfer.

- Continuation after bail-in with recapitalized insurer (‘restart’) or portfolio transfer.
- Resolution objective: continuation of insur**ance** not necessarily of insur**er!** So restart is not an objective in itself.
- Unlikely that without some form of bail-in portfolio transfer is possible. Remember, the insurer is failing.
- Possible alteration of contracts besides nominal write-down also include f.e. lowering of guarantees.

Safeguards

- No Creditor worse off (than in insolvency)
- By ranking in insolvency, so shareholders first and policyholders (almost) last...but major part of insurer liabilities =/= technical provisions.
- Possible quarantee schemes, f.e Dutch motor third-party liability insurance scheme will compensate in case of bail-in.

Questions?