

<b>Comments Template on EIOPA-BoS-19-259</b> <b>Consultation Paper on</b> <b>Proposals for Solvency II 2020 Review</b> <b>Harmonisation of National Insurance Guarantee Schemes</b>		<b>Deadline</b> <b>18 October</b> <b>2019</b> <b>23:59 CET</b>
<b>Name of company:</b>	<b>Dutch Association of Insurers</b>	
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<b>Reference</b>	<b>Comment</b>	<b>EIOPA</b>
General comments	<p><b>Level playing field in insurance:</b> Paragraph 26 of the consultation paper suggests that the fragmentation in the IGS landscape might have implications for the level playing field in insurance and as a consequence for the proper functioning of the internal market and policyholders in the EU may have a different level of IGS protection.</p> <p>Different levels of IGS protection across the EU are not necessarily indicative of the level of <i>policyholder</i> protection across the EU. This is also influenced by other factors, such as the presence and the design of a recovery &amp; resolution framework, preferential rights of policyholders in case of a failure of an insurance company, and the manner in which Solvency II is implemented in member states. Therefore, we believe the focus of the consultation paper should be on the level of <i>policyholder protection</i> across the EU, rather than on the level of protection that an <i>insurance guarantee scheme</i> offers, as an isolated matter.</p> <p><b>Cross-sectoral distortion of the level playing field:</b> Paragraph 27 of the consultation paper states that customers of banks and investment firms are protected by harmonised EU rules for guarantee schemes. The fact that consumers of insurers are lacking such EU harmonised rules sectorial differences could impact the level playing field of competing financial products. We believe this view is too narrow. 'Competing' financial products are offered under different regulatory regimes with different requirements that are tailored to the types of companies offering these products. This leads inherently to differences in the manner in which customers are protected under different regimes and the role guarantee schemes play</p>	

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in the protection of their customers. The presence or absence of a (harmonised) guarantee scheme in a specific sector does not mean in itself that a customer is better or less protected, i.e. that this would lead to a distortion of the cross-sectoral level playing field. The absence or presence of capital requirements, liquidity requirements, asset segregation requirements and the manner in which companies are resolved when they fail play a role as well.

Furthermore, the protection that a deposit guarantee scheme needs to offer to bank clients, is relatively straight forward: an absolute amount of currently 100.000 euro per client per bank to cover (in whole or in part) for the amount that a client has deposited with its bank. Through this deposit, the client has a direct exposure on the bank.

Instead, a policyholder pays a premium to an insurance company but has no direct claim to receive this premium back from the insurance company at any point in time. If the insured event does not occur, the policyholder will only have received insurance coverage but will never be entitled to any amount. If the insured event does occur, there may or may not be a correlation with the amount of premium the policyholder has paid to the insurance company but the payment the policyholder receives is not comparable to a bank deposit. In some cases, he/she or the beneficiary may even be entitled to a significant amount when having paid only a limited amount of premium.

In addition, bank clients are able to limit their exposure by spreading their savings over a number of banks, which allows them to increase the coverage of the deposit guarantee scheme. Insurance companies cover risks, that are more difficult to assess, that may significantly exceed an amount of 100.000 euro and are often more difficult to spread. It usually makes no sense for clients and/or is impossible to spread insurance risk across various insurance companies to make optimal use of insurance guarantee schemes.

Therefore, inevitably, there are substantial sectorial differences, even between competing products, but that does not mean that there is a distortion of the cross-sectoral level playing

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field. Even if there are similarities between products, in our view the product propositions are sufficiently distinct to be justified without concluding that there is a risk of distorting of the level playing field.

One of the key risks that a deposit guarantee scheme attempts to address is the risk of a bank run. Notably, the risk of runs on an insurance company is not comparable to the risk of a bank run.<sup>1</sup>

**The need for and impact of harmonisation of insurance guarantee schemes can only be assessed properly if a clear position is taken on the desired level of consumer protection.** The EIOPA paper expresses a preference for a network of national IGSs across Member States that are sufficiently harmonised and adequately funded. We believe this conclusion is premature, because the paper fails to express any position on the desired level of protection of policyholders, nor does it take into account the effects of other regulatory tools available that can reduce and/or eliminate policyholder detriment. We believe that full compensation of policyholders/beneficiaries in all circumstances through an IGS is not realistic and will be too costly, in particular to cover for the failure of larger insurers in concentrated markets.

**Insurance Guarantee Schemes should not alter rights of creditors in insolvency, other than potentially increasing rights of policyholders.**

**No analysis of the level of protection that Solvency II already offers and, as a a consequence, of the additional need for IGS protection.** The EIOPA paper does not take

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<sup>1</sup> The example referred to on page 12 (footnote 15) of the consultation paper seems a very specific case, which we believe provides insufficient basis that a significant risk of runs exist. Moreover, as mentioned on the same page, there are mechanisms in insurance that help dampen the impact (e.g. surrender penalties, lengthy cancellation procedures).

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any position on the aspired (minimum) level of protection of policyholders/beneficiaries across member states. This makes it impossible to answer the question if a minimum level of harmonisation (and introduction of insurance guarantee schemes in member states that currently do not have such schemes) is needed. Solvency II requirements are calibrated at a confidence level equal to a 1 in 200 years event. In addition, the possibility for orderly resolution in some member states reduces the risk of losses to policyholders/beneficiaries further. Additional protection is achieved by granting policyholders high preferential rights in insolvency. These factors need to be quantified and taken into account before a position can be taken on the need for additional policyholder protection through an insurance guarantee scheme.

**Ex post financing would give a certain recognition to member states that have in place a credible recovery and resolution regime.** Although failures of insurance companies do occur, these remain rare and even in case of insurance failures, there is a significant likelihood that obligations towards policyholders can continue to be met, in particular if the insurance company/insurance portfolio is resolved in an orderly manner and/or the portfolio is transferred to a third party or temporarily bridge institution. A credible recovery and resolution framework and the ability to resolve an insurance portfolio in an orderly manner reduces the need to rely on an insurance guarantee scheme because losses incurred through disorderly bankruptcy proceedings can be avoided (e.g. fire sales of assets). If member states that have in place credible recovery and resolution frameworks would be obliged to have in place ex ante funded insurance guarantee schemes to a similar extent as member states that do not have such a framework in place, insurance companies in these member states would, in a way, be 'punished' or disadvantaged compared to other member states that do not have adequate recovery and resolution frameworks. Insurance companies in member states that have a recovery and resolution frameworks in place incur substantial costs for developing and maintaining recovery plans and being prepared for orderly resolution. This results in policyholders and beneficiaries being better protected against the failure and in case of resolution of insurance companies/portfolio. If, at the same time, insurance companies need to

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fund an insurance guarantee scheme 'ex ante' to the same extent as member states that do not have in place a recovery and resolution framework, this would lead to an unlevel playing field. While for policyholders/beneficiaries it does not make a fundamental difference how he/she is compensated (either from the assets or the failed insurance company or from an insurance guarantee scheme), the investments in time and resources that are being made for recovery and resolution planning are not recognised, and the incentives for other member states to develop recovery and resolution frameworks is taken away.

Ex post financing of insurance guarantee schemes (on a home state basis) allows to take into accounts the merits of recovery and resolution planning and orderly resolution and may incentivise other member states as well to develop recovery and resolution frameworks.

**An Insurance Guarantee Scheme should allow for the payment of compensation to policyholders/beneficiaries in line with the contractual expectations of policyholders and beneficiaries over time.** We believe that an IGS framework should allow for the payment of compensation to policyholders in line with the regular obligations in the insurance contract, effectively by taking over the obligations from the failed insurer. Effectively this means running off the insurance portfolio over time, and avoiding damage to policyholders. Potential shortfalls could be covered (subject to limitations) by the insurance guarantee schemes. We believe this might be a feasible framework to safeguard rights of policyholders of both larger and smaller insurance companies because it could prevent unnecessary losses, causes by liquidation in bankruptcy.

U Q1) Do you agree that the legal structure of policyholder protection schemes should be left to the

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discretion of Member States? Please explain your reasoning.		
Q2) Do you see the need of a parallel development of the topics recovery and resolution framework and IGSs? Please explain your reasoning.	<p>Yes, we do. We believe credible recovery and resolution frameworks can help to limit the costs for compensation of policyholders that may have to be borne by an insurance guarantee scheme.</p> <p>In addition, we believe that the effectiveness of national recovery and resolution frameworks can be enhanced to address crossborder aspects of resolution, such as in the area of cooperation and coordination between national resolution authorities and supervisors and mutual recognition of resolution actions.</p>	
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)?	<p>If the primary objective of an IGS is policyholder protection, the answer is yes. Moreover, we expect the inclusion of continuity of policies as an objective will reduce the total costs of IGSs and may help to facilitate a solution for policyholders of both larger and smaller insurance companies. If an IGS is exclusively tailored to pay compensation to policyholders, funds may well be inadequate to compensate policyholders of larger insurance companies, who will, especially in concentrated markets, bear the major part of the contributions of the fund. This means that they will pay for an IGS (and may also have ex ante recovery and resolution plans in place) but their policyholders may receive less protection than policyholders of smaller insurance companies, the costs of which can more easily be borne by an IGS.</p> <p>For policyholders of larger insurance companies, a run-off might be the best or only viable solution, so it appears reasonable that the costs of resolving larger insurance portfolios (but obviously not for the recapitalisation of these insurance companies in order to facilitate a return to going concern) can also be borne by an insurance guarantee scheme.</p> <p>We would like to draw attention to (e.g.) the Canadian system, that combines the two options and has been capable of resolving larger insurance portfolios, without significant damage to policyholders. As we understand the mechanics of this system, the resolution/insurance guarantee fund takes over the policyholder obligations and essentially runs off the portfolio</p>	

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	over a long period of time, and pays out to policyholders as obligations fall due, instead of paying distributions to policyholders as part of bankruptcy proceedings. This appears a relatively cost efficient manner, compared to compensation, to resolve larger insurance portfolio.	
Q4) Do you agree that the continuation of the policies should take precedence in case of life and some long-term-life policies? Please explain your reasoning.	<p>Yes, this is likely to be the best solution for policyholders, because policies continue according to the initial insurance contract, limits unnecessary damage to the insurance assets and avoids that policyholders incur indirect damages such as higher premiums due to deteriorated health, aging, or risk not being able to obtain new insurance at all.</p> <p>We would like to stress that this does not mean the continuation of the failed insurance company, because the starting point should be that insurance companies are able to fail, but it means that the continuation of policies is preferred over cancellation + the payment of compensation.</p>	
Q5) What aspects are relevant to be taken into consideration for the effective implementation of the home-country principle?	<p>Both the home and the host state model have advantages and disadvantages. Overall we tentatively favour the home state model. However, we believe it is important that 'going concern' supervisors have attention for the ability of the home state insurance market to support the failure of a large insurance company that is primarily active on a cross border basis.</p> <p>Transparency about the limitations of insurance guarantee schemes.</p>	
Q6) Specifically, should the following options be added to the principles of the home-country approach: • the possibility	<p>We doubt if the host country is in a better position to take the position of 'front office.' Policyholder information is probably better available in the home state, where the insurance company is based.</p> <p>The same is true for the function of 'back-office.' Policyholder information is likely to be available to the company which is supervised in the home state. We do not expect that a host</p>	



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of the IGS of the host-country to function as a “front office” for the identification of the affected policyholders and beneficiaries?

- 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”)?

state supervisor will have better access to such information.

Furthermore, as explained above, if minimum harmonisation of insurance guarantee schemes is introduced, we are in favour of an *ex post* financed system. In such a system, or in a partly *ex ante*, partly *ex post* financed system, the host state may not have funds to make advance payments on behalf of the home state.

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?

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Q8) Do you believe that the criteria for selecting the eligible 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)?

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.

Q11) Which criteria should be used to determine/exclude the eligible claimants?

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<p>Q12) Should coverage be extended to large legal persons where the ultimate 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>We believe a certain level of burden sharing by policyholders is appropriate. The level of coverage should be such that a policyholder/beneficiary is not in a better position through the payment of compensation from an insurance guarantee scheme than a policyholder/beneficiary of which the portfolio is resolved under a resolution framework.</p> <p>In general we favour an insurance guarantee scheme structure that pays out as insurance obligations fall due (essentially a run-off by the insurance guarantee scheme).</p>	
<p>Q14) What should be the relevant criteria to determine the target level for national IGSs?</p>		
<p>Q15) What should be the relevant criteria to determine the level of the annual contributions per individual insurer into IGSs, including the method of calculating such contributions</p>		

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(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)?		
Q17) Are there any other elements that should be included in the disclosure requirements to policyholders? If so, what are those?		
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 context of the home-country approach,		

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<p>please also refer to Q4 and Q5)? If so, what are those?</p>		