Position Paper

Insurance Europe response to EIOPA discussion paper on resolution funding and national IGS

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General comments

It is premature to elaborate EU-level rules concerning insurance guarantee schemes (IGS) in the absence of a consistent application of the Solvency II framework at national competent authority (NCA) level. Solvency II has been in force for less than three years and more time is needed before conclusions can be drawn which may result in substantial changes. Rather than considering new rules for IGS, existing tools and powers should be fully used and resources adequately assigned towards their proper enforcement. In Insurance Europe's view, this would constitute a pragmatic approach. Therefore, Insurance Europe strongly supports maintaining the status quo and would like to emphasise that any substantial discussion on IGS requires an efficient and sustainable supervision of Freedom of Service / Freedom of Establishment (FoS / FoE) as a precondition.

In order to satisfy the fundamental principles of proportionality and subsidiarity, the establishment, functioning and funding of IGS have to be left to the discretion of member states. Any further work at European level should be outcome oriented and abstain from harmonising, for example, the organisation or funding of IGS.

- It is important to reiterate that Solvency II already provides several policyholder safeguards that need to be duly considered. The Solvency Capital Requirement (SCR) ensures a high level of capital buffer, calibrated to ensure a firm will remain able to meet all obligations to policyholders even after a 1-in-200-year loss event. The supervisory ladder of intervention in Solvency II allows supervisors to begin taking actions when the SCR is breached and to fully take over the company if the MCR is breached – a point at which an insurance company still has significant assets in excess of those needed to meet its obligations to policyholders. While Solvency II compliance is not a guarantee against insolvency in the insurance industry, it is undeniable that it significantly diminishes this risk. Even before Solvency II, there were very few failures and even fewer resulting in any losses for policyholders. Insurers have rarely needed to benefit from government support, and under Solvency II they will be far less likely to do so in the future. Finally, Solvency II also includes provisions for the winding-up of insurers and national insolvency laws to complement these.
- As stated by EIOPA itself in the discussion paper, "adequate protection of policyholders is at the core of Solvency II". Yet there is a profound lack of any assessment in the discussion paper of the effects

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that Solvency II has had on the risks in insurance companies, and how this affects the need for changes to the existing regime of national IGS. Also, several insurance failures and near misses referred to in the discussion paper date back to the pre-Solvency II regime and are therefore no longer relevant. There needs to be a thorough assessment of the effects of Solvency II on policyholder protection before any proposals on harmonisation of IGS could be considered.

- EIOPA published earlier this year an ambitious Supervisory Convergence Plan for 2018-2019 that would ensure an effective and consistent level of supervision with the aim of guaranteeing a similar level of protection of policyholders and beneficiaries across jurisdictions, regardless of the location of the insurance undertaking's head office. Insurance Europe agrees with the main objective of this plan and believes that adequate prevention is better than any curative measure.
- EIOPA should better recognise that consumer protection needs are different in the insurance sector to the banking sector. The type of problems that bank guarantee schemes address does not exist in the insurance sector, where winding-up procedures usually take years and there is less risk of contagion between entities.
- Insurance Europe would also point out that a more solid statistical basis would be needed for any new proposal on IGS. First, the bankruptcy data used by EIOPA in this discussion paper relates to the pre-Solvency II period, and are not suitable to assess policies in the post-Solvency II period, in which the risk of bankruptcy has significantly diminished. And second, important elements are missing from this data, relating to, for example, a differentiation of insurers surveyed according to business lines and geographical coverage, supervisory involvement in the insolvency process, primary cause of irregular performance and the functioning of existing guarantee schemes etc.

While Insurance Europe strongly supports maintaining the status quo, it has responded to the questions in this discussion paper that relate to minimum harmonisation in order to highlight particular concerns and views. In general, Insurance Europe believes that national authorities should be allowed significant flexibility to choose the features that best suit their market, to reflect that there are important differences between member states regarding social welfare systems, winding-up process for insurers and insurance product lines.

To summarise the comments relating to IGS features, Insurance Europe tends to favour the home-country principle, in order to be consistent with the EU supervisory framework (ie, Art. 30 of Solvency II). Under minimum harmonisation, only life insurance policies - which typically involve larger amounts and longer-term commitments with insurers - should be considered. Insurance Europe also believes that only consumers should be considered under minimum harmonisation and that decisions on funding arrangements should be left to member states, provided that effective protection of policyholders is ensured.

Detailed comments

Q1 - *Do you have any comments to the analysis on the potential problems of the existing situation?*

- The introduction of Solvency II in 2016 has significantly enhanced policyholder protection. As a risk-based system, Solvency II takes into account all risks in each insurance undertaking and, through the frequent reporting required by Solvency II, the supervisory authorities will be able to intervene at the earliest possible moment when a deterioration in an insurer's position occurs. While Solvency II compliance is not a guarantee against insolvency in the insurance industry, it is undeniable that it significantly diminishes this risk
- As stated by EIOPA itself in the discussion paper, "adequate protection of policyholders is at the core of Solvency II". Yet there is a profound lack of any assessment in the discussion paper of the effects Solvency II has had on the risks in insurance companies, and how this affects the need for changes to the existing regime of national IGS. Also, several insurance failures and near misses referred to in the discussion paper date back to the pre-Solvency II regime and are therefore no longer relevant. There needs to be a thorough assessment of the effects of Solvency II on policyholder protection before any proposals on harmonisation of IGS could be considered.

- Therefore, it is premature to elaborate EU-level rules concerning IGS in the absence of a consistent application of the Solvency II framework at NCA level. Solvency II has been in force for less than three years and more time is needed before drawing conclusions which may result in substantial changes. Rather than considering new rules for IGS, existing tools and powers should be fully used and resources adequately assigned towards a proper enforcement of Solvency II. In Insurance Europe's view, this would constitute a pragmatic approach.
- EIOPA published earlier this year an ambitious Supervisory Convergence Plan for 2018-2019 that would ensure an effective and consistent level of supervision with the aim of guaranteeing a similar level of protection of policyholders and beneficiaries across jurisdictions, regardless of the location of the insurance undertaking's head office. Insurance Europe agrees with the main objective of this plan and believes that adequate prevention is better than any curative measure.
- The argument that policyholders are unequally protected in the status quo does not seem valid to justify legislative action in the area of IGS. Indeed, European minimum harmonisation rules will not change this situation significantly because European policyholders will always be in unequal situations according to the place where they subscribe to their insurance contract. Moreover, member states will always have the possibility to go further than EU regulation in terms of the protection of insured persons and beneficiaries.
- Furthermore, Insurance Europe believes that a level playing field cannot be created by implementing minimum harmonisation on IGS. There are significant differences between member states, for example, between product lines, tax systems and insurance creditor hierarchy in the event of winding up. To have a level playing field, these factors would also need to be harmonised between the member states.
- Insurance Europe disagrees with the statement in the discussion paper that there is a major problem with the lack of consumer confidence in the non-life and life insurance market.

Q2 - *In case where a host-country principle is adopted, what are your views on who should pay the final costs of policyholder compensation in case of failures of incoming insurers? Should the costs be borne by the IGS of the country of the defaulting insurer, as proposed by the European Commission for motor insurance (see Box 1)? Or should there be a difference between motor insurance and other LoBs?*

Should minimum harmonisation be considered, **Insurance Europe tends to favour a home-country principle,** in order to be consistent with the EU supervisory framework. However, Insurance Europe also believes that member states should have a degree of national flexibility on the geographical scope. This is to reflect that there are important differences between member states regarding social welfare systems, winding-up process for insurers and insurance product lines. Consequently, the need for policyholders to be covered by IGS differs between member states. But regardless of what system is chosen, the final burden of any liquidation should always be on the home country.

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The following elements should be taken into account when deciding on the geographical scope:

- The main argument in favour of the home-country principle is that, because the financial supervision of insurance and reinsurance undertakings, including business under FoS and FoE, is the sole responsibility of the home Member State (Article 30 of Solvency II), it must therefore also be the responsibility of the home Member State to deal with the consequences of an insolvent insurer, wherever its activities are located.

- Under the home-country principle, national IGS would need to cooperate with each other to provide information to consumers in their own languages.
- In some cases, member states may decide that a combination of both the home and host-country principles could better deliver equal protection to policyholders affected by the same insolvency event, regardless of the location of the insurer/risk.
- In some other cases, a Member State could favour a host-country principle, but Insurance Europe would point out that:
    - This may result in coverage duplication or gaps in coverage, if other member states opt primarily for the home-country principle.
    - The host-country should not be the final debitor, as it would be unfair for host-country companies (and thus host-country policyholders) to fund the failure of a home-country company.
    - Even if the final debitor is the home-country and despite minimum harmonisation, the rules for intervention will never be completely identical. It seems unrealistic to assume that the host-country IGS will know and apply exactly the rules of operation and compensation of the home-country IGS.
- Any harmonised approach should take into account already existing national schemes to avoid incurring additional costs on insurers and policyholders. A certain variety between IGS across Europe should be accepted under minimum harmonisation.

Q3 - *Do you think that a potential harmonised approach towards IGSs should also trigger a discussion about the potential need for the harmonisation of national insolvency regimes, with the aim of ensuring more protection to policyholders?*

Insurance Europe believes that Solvency II provisions regarding winding-up proceedings are sufficient. According to Article 274 (1) of Solvency II "the decision to open winding-up proceedings with regard to an insurance undertaking, the winding-up proceedings and their effects shall be governed by the law applicable in the home Member State (…)" which is adequate, because legal forms of insurance undertakings in member states are governed by different national rules and, consequently, by different winding-up proceedings. In addition to that, many IGS and similar arrangements can in some cases provide a "second line of defence" for policyholders.

National insolvency systems are designed to give policyholders priority over other creditors in the insolvency process, and there are close links between insolvency systems, recovery and resolution systems and IGS. In the discussion paper, however, there is only an overview of the existing national IGS. The differences in national insolvency regimes between member states are only analysed to a very limited extent, as is the dependency between existing national insolvency regimes and the need for IGS. It is necessary to conduct a thorough analysis of the combined impact of all policyholder protection systems before any changes to existing IGS arrangements are considered.

Q4 - *Do you have any comments on the arguments in favour of maintaining the status quo? Are any relevant aspects missing?*

Insurance Europe generally agrees with the arguments in favour of maintaining the status quo, but believes that some considerations are missing:

- The costs associated with an IGS could be substantial. In concentrated markets, there will be few insurers to share the costs of funding an IGS. At the same time, an IGS in such a market would need to be of considerable size to have the intended effect if a large insurer fails. This means that the failure of a large insurer could put the remaining insurers under considerable financial strain to cover for the cost of failing insurers. This could threaten financial stability, and – as pointed out by EIOPA in the discussion paper – should be subject to careful consideration. Yet EIOPA only makes a few references to the costs of IGS, and the risk to financial stability is only briefly mentioned.

- In any case, there needs to be a thorough assessment of the actual costs and benefits associated with any changes to the current IGS regime, as well as an analysis of how such changes could impact financial stability.
- As stated by EIOPA itself in the discussion paper, "adequate protection of policyholders is at the core of Solvency II". Yet there is a profound lack of any assessment in the discussion paper of the effects Solvency II has had on the risks in insurance companies, and how this affects the need for changes to the existing regime of national IGS. Insurance Europe believes that the main objective of policymakers should rather be the uniform and consistent application of Solvency II at national level.

Q5 - *Do you have any comments on the arguments in favour of a European network of national IGSs? Are any relevant aspects missing?*

Insurance Europe believes that many of the arguments in favour of a European network of national IGS in the discussion paper are not valid and should be excluded, for example:

- The existence of IGSs in certain member states is not a valid argument for moving towards introducing an obligation to having such national schemes everywhere. There may be good reasons for having IGS in one Member State, but these reasons do not necessary apply to other member states.
- The level playing field is not a valid argument for a network of national IGS. There are significant differences between member states in terms of product lines, tax systems and insurance creditor hierarchy in the event of winding up which would not be eliminated by harmonising IGS.
- Many of the examples used as an argument in favour of national IGS refer to motor insurance (see, for example, para 110 and the case study for Ireland in Box 5), even though motor insurance is to a large extent exempted of the scope of the discussion paper (see para 9 -11). Thus, these examples are not valid as an argument for the need of IGS outside motor insurance and should, therefore, not have been included in the discussion paper.

Q6 - *Do you have any comments on the conclusions of EIOPA?*

Insurance Europe disagrees with EIOPA's conclusion. The discussion paper lacks some arguments in favour of status quo whereas several arguments in favour of minimum harmonisation are not valid.

- The existence of IGS in certain member states is not a valid argument for moving towards introducing an obligation to having such national schemes everywhere. There may be good reasons for having IGS in one Member State, but these reasons do not necessary apply to other member states.
- The level playing field is not a valid argument for a network of national IGS. There are significant differences between member states in terms of product lines, tax systems and insurance creditor hierarchy in the event of winding up which would not be eliminated by harmonising IGS.
- Good internal governance and control, appropriate capital requirements and effective supervision are much more important to good policyholder protection than IGS harmonisation.
- Insurance Europe believes that it is premature to elaborate EU-level rules concerning IGS in the absence of a consistent application of the Solvency II framework at NCA level. Solvency II has been in force for less than three years and more time is needed before drawing conclusions which may result in substantial changes. Rather than considering new rules for IGS, existing tools and powers should be fully used and resources adequately assigned towards a proper enforcement of Solvency II. In Insurance Europe's view, this would constitute a pragmatic approach.
- Any harmonised approach should take into account existing national schemes to avoid incurring additional costs on insurers and policyholders. A certain variety between IGS across Europe should be accepted under minimum harmonisation.

Q7 - *What are your views regarding the role of national IGSs? Should national IGSs be solely designed to provide compensation to policyholders for their losses in liquidation? Or should they be used in resolution to ensure the continuation of the insurance policies?*

In principle, national IGS should be solely designed to provide compensation to policyholders for their losses in liquidation. Any potential use of IGS as tools to ensure the continuation of the insurance policies will change the core of their mission. The intervention of insurance mechanisms must be curative not preventive: ie, exclusively limited to funding the gap between the benefit due to policyholders and the remaining resources of the insolvent undertaking. National IGS should also not be used to provide compensation to consumers other than insurance policyholders whose claims arise directly from the liquidation of an authorised insurer – for example, compensation claims arising from liquidations of other financial services firms, including intermediaries, should be out of scope.

Having said this, Insurance Europe recognises that the role of an IGS depends on the realities of the market in which it is embedded and therefore determining the role of national IGS should be a matter of national discretion.

Q8 - *In relation to this, what are your views regarding the potential benefits and costs of merging the functions of the IGS with those of a potential resolution fund?*

IGS should not play any role or cover costs related to the resolution of insurers. This should be a matter for the national supervisory/resolution authorities (who have the power to initiate liquidation procedures) and for the Member State to decide how the cost of financing resolution (including any losses generated by a reduction of insurance obligations) should be covered.

Insurance Europe strongly opposes any move towards harmonised resolution funds, as they create incentives for negligent supervision and hazardous risk-taking behaviour. If harmonised resolution funds are considered necessary, there needs to be a clear distinction between resolution funds and IGS, especially in terms of their respective mandate. Resolution funds should then be characterised by monitoring commitment and payback duties.

Q9 - *What are your views regarding the geographical scope of IGSs?*

Should minimum harmonisation be considered, Insurance Europe tends to favour a home-country principle, in order to be consistent with the EU supervisory framework. However, Insurance Europe also believes that member states should have a degree of national flexibility on the geographical scope. This to reflect the important differences between member states regarding social welfare systems, winding-up process for insurers and insurance product lines. Consequently, the need of policyholders to be covered by IGS differs between member states. But regardless of what system is chosen, the final burden of any liquidation should always be on the home country.

The following elements should be taken into account when deciding on the geographical scope:

- The main argument in favour of the home-country principle is that, because the financial supervision of insurance and reinsurance undertakings, including business under FoS and FoE, is the sole responsibility of the home Member State (Article 30 of Solvency II), it must therefore also be the responsibility of the home Member State to deal with the consequences of an insolvent insurer, wherever its activities are located.
- Under the home-country principle, national IGS would need to cooperate with each other to provide information to consumers in their own languages.

- In some cases, member states may decide that a combination of both the home and host-country principles could better deliver equal protection to policyholders affected by the same insolvency event, regardless of the location of the insurer/risk.
- In some other cases, a Member State could favour a host-country principle, but Insurance Europe would point out that:
    - This may result in coverage duplication or gaps in coverage, if other member states opt primarily for the home-country principle.
    - The host-country should not be the final debitor, as it would be unfair for host-country companies (and thus host-country policyholders) to fund the failure of a home-country company.
    - Even if the final debitor is the home-country and despite minimum harmonisation, the rules for intervention will never be completely identical. It seems unrealistic to assume that the host-country IGS will know and apply exactly the rules of operation and compensation of the home-country IGS.
- Any harmonised approach should take into account already existing national schemes to avoid incurring additional costs on insurers and policyholders. A certain variety between IGS across Europe should be accepted under minimum harmonisation.

Q10 *- Should the geographical scope of potential harmonised national IGSs be set at the home-country principle, the host-country principle or a combination of both?*

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Comment on Box 4: Insurance Europe does not see how the Swedish case study in Box 4 serves as an example for the geographical scope, nor IGS in general, for the following reasons:

- In the end, the insurer didn't fail. So, there is no way of knowing if the Swedish policyholders would have been damaged and by how much had there been an actual failure.
- As the origin of the insurer is not known, it is hard to say how general this problem is. In addition, the description of the liquidation process is not accurate.
- In the case of the liquidation of a Swedish insurer, Swedish policyholders would have priority rights to the registered assets covering the technical provisions and not to the whole assets, as the case study states. From the case study, it can be concluded that policyholder protection is inferior when priority rights are on the registered assets. In fact, policyholder protection is at least as strong in this situation as when the rights are on the whole assets, as evidenced by the fact that Solvency II places these two situations on equal footing.

Q11 - *Is your view on the host-country principle dependent on the final body that bears the cost of a cross-border failure?*

Insurance Europe believes that regardless of what system is chosen, the final burden of any liquidation should always be on the home country.

Q12 - *What are your views regarding the type of policies that potential harmonised national IGSs should cover at a minimum?*

Insurance Europe tends to believe that only life insurance products as defined by Article 2 of Solvency II should be considered under minimum harmonisation, as these policies involve larger amounts and long-term commitments with insurers, often with a retirement objective. However, Insurance Europe also believes that member states should have a degree of national flexibility on which types of insurance contracts will be covered by the IGS, as there are fundamental differences between member states regarding the social welfare system, the winding up-process of insurers and insurance products lines. Thus, the relative importance of different types of insurance for policyholders differ between member states. This is precisely why there are significant differences in this respect between current IGS in EU member states.

Any harmonised approach should take into account already existing national schemes to avoid incurring additional costs on insurers and policyholders. A certain variety between IGS across Europe should be accepted under minimum harmonisation.

Q13 - *Should the IGSs be required to cover, at a minimum, all mandatory insurance liabilities? Should there be any limits to the amounts covered for these liabilities?*

Insurance Europe believes that member states should have a degree of national flexibility on which types of insurance contracts will be covered by the IGS, as there are fundamental differences between member states regarding the social welfare system, the winding up-process of insurers and insurance products lines.

Any harmonised approach should take into account already existing national schemes to avoid incurring additional costs on insurers and policyholders. A certain variety between IGS across Europe should be accepted under minimum harmonisation.

Q14 - *Should the IGSs cover (selected) life, non-life insurance, reinsurance contracts or all?*

Insurance Europe tends to believe that only life insurance products as defined by Article 2 of Solvency II should be considered under minimum harmonisation, as these policies involve larger amounts and long-term commitments with insurers, often with a retirement objective. However, Insurance Europe also believes that member states should have a degree of national flexibility on which types of insurance contracts will be covered by the IGS, as there are fundamental differences between member states regarding social welfare systems, winding up-process of insurers and insurance product lines. Thus, the relative importance of different types of insurance for policyholders differs between member states. This is precisely why there are significant differences in this respect between current IGS in EU member states.

In addition, Insurance Europe does not believe that it would be appropriate for reinsurance contracts to be included within the scope of IGS, because insurers and not consumers are the clients of pure reinsurers.

The following elements should be taken into account when deciding what types of products should be covered by IGS:

- Due to the long-term nature of the contracts and the social security implications to a broad cross-section of the population, the need for policyholder protection for life insurance policies is higher. These policies involve larger amounts and long-term commitments with insurers, often with a retirement objective.
- There are significant differences between different types of life insurance products that have to be taken into consideration. For example, the risks differ significantly between unit-linked products without guarantees and (traditional) life insurance products with guarantees. Therefore, the costs for the IGS will most likely be smaller for failures involving the former in comparison to those involving the latter. It may therefore be reasonable to exclude unit-linked and custody account products without guarantees from IGS or to have separate IGS for them.
- In contrast to life insurance, non-life insurance is characterised by a short contract duration (often a one-year policy) and lacks a savings element. In the case of insolvency of a non-life insurance undertaking, the consumer can easily switch from the insolvent insurer to another insurer since, in contrast to life insurance, there is no deterioration of the insured risk with time. Unlike in the case of bank deposits or investments, compensation only must be paid if the insured event occurred and the policyholder's claim is justified. Consequently, the affected number of policyholders is considerably smaller in relation to the total insured portfolio.
- If including non-life insurance in the scope is considered, Insurance Europe believes that member states should be able to maintain well-functioning existing IGS covering non-life insurance, without interfering with their design (which is based on local market and economic realities and aims to best address local consumer protection needs). Interference with existing IGS management, functioning and organisation could prevent those schemes from performing effectively and from achieving their objectives.
- This is the case of the existing workmen's compensation schemes which provide cover for beneficiaries as a primary source of social security. member states should therefore be allowed to continue requiring 100% coverage by the concerned IGS for foreign (and national) providers, if there is no comparable IGS scheme in the home country of such a foreign or national provider.
- Moreover, since life and non-life insurance contracts differ significantly and are handled differently in the event of insolvency, Insurance Europe believes that life and non-life insurance should be treated and administered by separate IGS entities.

Having said this, Insurance Europe believes that the evidence in this paper is insufficient to form a basis for harmonised IGS in the life insurance sector. This is primarily because the bankruptcy-related data used in the paper was gathered before Solvency II entered into force and, while Solvency II compliance is not a guarantee against insolvency in the insurance industry, it is undeniable that it significantly diminishes this risk. In addition, there is still a lack of data-gathering experience under Solvency II and of a detailed analysis of causes, sequence of events, supervisory activities etc. with respect to insurers on the verge of bankruptcy or where bankruptcy is averted at a late stage.

Q15 - *Should there be any limits to the amounts covered for life insurance liabilities and/or other liabilities?*

Policyholder compensation should only be considered within the limits of contractual guarantees and the principle of an individual limit of compensation should be introduced as well.

Q16 - *Should the IGSs cover non-compensatory credits of insurance creditors (i.e. unearned premiums and premiums owned by insurers as a result of the non-conclusion or cancellation of insurance contracts and operations)?*

National IGS should be used exclusively to compensate liabilities under policies which remain unpaid as a result of the failure of an insurer. Coverage of non-compensatory credits of insurance creditors should be decided solely at national level according to local needs.

Q17 - *What are your views regarding the eligible policyholders that should be covered by an IGS? Should potential harmonised national IGSs cover (i) natural persons only, (ii) natural and selected legal persons or (iii) all types of legal persons?*

Should minimum harmonisation be considered and because the primary aim of harmonising national IGS is effective consumer protection, Insurance Europe believes that the IGS should cover consumers (natural persons which also includes consumers insured via group insurance contracts) only and that it should be at the discretion of member states to decide whether a wider scope is justified.

Insurance Europe would add that, in contrast to consumers, micro- and small-sized undertakings can assess their chosen insurers' strength, seek professional advice and guide themselves by ratings. The administrative and financial burden resulting from the inclusion of such companies under the scope of a harmonised IGS may therefore ultimately be to the detriment of a quick and effective settlement of consumer claims (given the different definition of this concept across member states).

Q18 - *What are your views regarding the inclusion of restrictions on policyholders' eligibility?*

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Q19 - *What are your views regarding the introduction of limits to the amount of compensation paid per claim/policyholder? What type of limits should be introduced? Should the limits for life and saving policies be equal to the limit set in Directive 2014/49/EU to avoid arbitrage between financial institutions?*

The compensation paid in the case of a life insurer's insolvency is normally limited to the guaranteed sums and main commitments of the life insurance contract, whereas non-life insurance normally concentrates on outstanding claims and excludes the repayment of pre-paid premiums.

Insurance Europe therefore supports the introduction of minimum requirements on caps and compensation limits, to guarantee appropriate consumer protection while ensuring the financial stability of the national IGS and mitigating dangers of moral hazard. Member states should decide which compensation limits are adequate for the sustainability of their national IGS. They may provide for:

- a minimum limit for IGS intervention;

- a de minimis rule which avoids a disproportionate, excessive administrative burden that has only a very minor advantage for the consumer;
- a maximum limit for IGS intervention;
- within the maximum limit, a maximum percentage of the insurance claim covered by the IGS; and, a perennial maximum limit of IGS intervention;

Unlimited contributions may otherwise be very burdensome and undermine undertakings' positions.

Q20 - *What are your views regarding the timing of the funding of IGSs, i.e. funding on an ex-ante basis, ex-post basis or a combination of both?*

Even under minimum harmonisation, Insurance Europe believes that decisions relating to IGS funding should be left to member states' consideration, in consultation with local stakeholders. Minimum harmonisation should merely encourage member states to establish funding systems that would deliver effective consumer protection if an insurance company fails.

The following elements should be taken into account when deciding on the timing of the funding of an IGS:

- The main arguments in favour of ex-post funding are that this will not result in contributions from insurers unless there is a failure, so insurers will have more funds at their disposal. This reduces management costs and avoids investment risks. Contributions to the fund will be computed according to actual need (outstanding claims/policies concerned). With ex-post funding, a certain amount of liquidity is needed on a rather short-notice, yet there is no risk that funds are not used exclusively for the defined purposes of the IGS. However, in this case, the failing company will not have contributed to the fund.
- Some member states could see ex-ante funding as a more efficient way to ensure speedy pay-outs to policyholders in case of an insurer's insolvency. With ex-ante funding, contributors can better schedule payments into the fund. In addition, all insurers (including the one that will fail) will have contributed in advance, which seems a fairer outcome.
- But ex-ante funding also has a number of disadvantages, especially with regard to financial management. Experience has shown that funding on an ex-ante basis often leads to the multiplication of the tasks that the fund needs to run. Ex-ante funding with immediate fund transfer to the IGS also involves greater administrative duties and costs. Unused funds (which become disproportionately large when insurance failures are infrequent or have a limited impact) would block financial resources for a long period of time, exposing them to risks of inefficient use and bad management.
- In any case, an IGS should not be expected to guarantee to repay policyholders in full. Therefore, one would expect there to be restrictions (caps and limits) on the amounts that can be reclaimed under this system and IGS funds cannot be expected to be equivalent to the full value of the technical provisions.
- In small, concentrated markets, IGS will only be able to protect consumers from the failure of small insurance companies. Any failure of a medium-sized or large company in a small, concentrated market will require state assistance in order to protect consumers effectively. In the absence of state assistance, and should sound companies be required to fill in funding gaps if a large insurance company collapses, interconnectedness between insurance companies operating in such markets would increase and this would give rise to systemic risks concerns.

Q21 - *What are your views regarding the contributors to the IGSs, i.e. should the IGS be funded by insurers, policyholders or otherwise?*

IGS funding should be left to member states in consultation with local stakeholders.

Q22 - *What are your views regarding the calculation basis when the IGS is (partially or fully) funded by contributions from insurers, i.e. (gross or net) technical provisions, written premiums or other?*

IGS funding should be left to member states in consultation with local stakeholders.

Q23 - *What are your views regarding the contribution basis, i.e. fixed, variable or risk-weighted contributions?*

The contribution basis depends on the type of funding used and, because Insurance Europe argues that IGS funding should be left to member states' consideration, in consultation with local stakeholders, this should extend to the choice of contribution basis. When an ex-post funding system is chosen, the contributions should be fixed and based on the net technical provisions. If Member States choose an ex-ante funding system, risk-weighted contributions make more sense.

Q25 - *What are your views regarding the power of IGSs to require additional contributions from insurers or raise additional capital in case of shortfalls?*

The existence of upper limits in insurers' contributions excludes any further power of IGS to require additional contributions from the industry. It is unlikely that an IGS would be able to levy sufficient capital to finance the failure of a large insurance company. In such cases, the IGS should not be expected to guarantee the repayment of policyholders in full. However, this risk can be reduced by IGS being able to borrow funds so as to spread the cost of such a failure of a large insurance company over a number of years rather than just one year.

Q26 - *What are your views regarding the inclusion of a requirement for disclosure to policyholders?*

Experience has shown that consumers often are unaware whether - in the event of their insurer's bankruptcy - they are covered by an IGS and of what their basic rights to compensation are. Therefore, Insurance Europe believes that insurers should disclose to their policyholders if their insurance policy is covered by a guarantee scheme and, if so, specify which one. Insurers should also provide information about the basic rules governing the entitlement to coverage under such scheme. At the same time, this should not result in an information overload for consumers, as this would defeat the purpose of disclosure requirements.

Insurance Europe would point out that, in the case of insurance-based investment products, the PRIIPs regulation already provides for disclosure under Art 8(3)(e):
"(e) under a section titled 'What happens if [the name of the PRIIP manufacturer] is unable to pay out?', a brief description of whether the related loss is covered by an investor compensation or guarantee scheme and if so, which scheme it is, the name of the guarantor and which risks are covered by the scheme and which are not;"